

FISH, FORESTS, FIRE, AND FREEDOM:  
INFRINGEMENTS OF KARUK RELIGIOUS FREEDOM THROUGH FEDERAL  
NATURAL RESOURCE MANAGEMENT

By

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## ABSTRACT

### Fish, Forests, Fire, and Freedom: Infringements of Karuk Religious Freedom Through Federal Natural Resource Management

Robert Holmlund

Religious freedom is necessarily a broad concept since it must apply to a wide range of religions. Yet, religious freedom in the United States is rooted in the First Amendment, which was created for a limited set of religions (i.e., Protestant Christian faiths) by a group of men with a limited range of knowledge about other religions and cultures at a time when slavery was legal and the mass extermination of Native Americans was common. These historically-based limitations of the First Amendment remain today, meaning that for Native Americans religious freedom is not as easily secured as it is for the Christian people for whom the First Amendment was originally intended. Among the many challenges facing American Indian attempts to obtain full religious freedom, Native religions are inherently bound in environmental relationships. Therefore, actions that lead to environmental or ecological alterations can be a violation of Native American religious freedom. The right to free exercise, for many Indians, must include the right to engage in the spiritually-enriched environmental relationships that are foundational to their particular faiths. The viability of this right is directly dependent upon the health and integrity of select ecosystems. In this way, religious freedom is intimately linked to environmental issues. American Indian Tribes have repeated

appealed to the Supreme Court in pursuit of religious freedom protections related to environmental concerns, but have yet to receive a favorable verdict.

The Karuk Tribe of California is among the Tribes currently seeking religious freedom protections. In particular, the Tribe seeks to practice their spiritually-guided systems of ecological management. Religious freedom for the Karuk requires more than separation of church and state; the right to the free exercise of religion for Karuk peoples hinges upon the ecological integrity of the Klamath River and its surrounding biomes. As a series of interviews conducted specifically for this study indicates, Karuk Tribal members believe their religious freedom is being violated in several ways, particularly through environmental alterations perpetuated by Federal Natural Resource Agencies. These violations must be acknowledged by the federal government, for each individual person within each generation must have the autonomy and opportunity to practice the tenets of their religious beliefs. This is the heart of a universal religious freedom that all people inherently deserve. Yet, if the conditions that make Tribal religions possible – social, cultural, or ecological – are in any way eliminated, the religious freedoms of current and coming generations are destroyed.

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## CHAPTER ONE: THESIS INTRODUCTION

*It is important to remember that there are many indigenous voices, not a single voice. For political purposes, however, it can be useful to raise many voices together, to be better heard by those who threaten the safety of sacred sites and Indian religions. (Carmichael, Hubert, & Reeves 1994, 2)*

A reoccurring issue throughout this work focuses on the shortcomings of the First Amendment in safeguarding the religious freedoms of American Indians. These shortcomings fall into two main camps. First, based on the historical and cultural context of its creation, the First Amendment contains inherent deficiencies in its applicability to American Indians. This particular flaw of the First Amendment is significant because the religious freedoms it promises are meant to apply all American citizens. As research below indicates, however, the First Amendment is fundamentally biased towards Christian religions. Yet, as innately insufficient as the First Amendment may be for American Indians, with the proper interpretations it has the potential to provide some protection to Indian religions. However, history reveals a second shortcoming of the First Amendment: the unfavorable ways this article of Religious Freedom has been interpreted in the context of American Indian religions. As this thesis demonstrates, each of the three branches of government have failed to uphold the limited promise of the First Amendment by interpreting it in ways that undermine Indian religions. These two shortcomings work together to make the guarantee of religious freedom an elusive goal

for American Indians in the United States. This thesis explores the struggle among American Indians to secure their religious freedom in light of these shortcomings, with particular emphasis given to the Karuk Tribe of California.

The Karuk Tribe is currently experiencing violations of their religious freedom as guaranteed by the First Amendment of the U.S. Constitution. Numerous federal natural resource policies and practices directly alter the Klamath River and its surrounding biomes, which, as a complex whole, form the basis of the Karuk religion. These alterations, and their subsequent obstructions of Karuk religious practices, range from regulation of water flow in the Klamath River to fire suppression by the Forest Service to mandated herbicide spraying of invasive species.

This thesis is an investigation into the meaning and application of religious freedom in America. More specifically, the purpose of this research is to explore how religious freedom applies to Native Americans,<sup>1</sup> particularly in the context of special relationships to landscapes. These conceptual explorations of religious freedom and American Indian struggles is highlighted in a case study chronicling the Karuk Tribe of California, their families, their values, and the injustices they suffer at the hands of the

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<sup>1</sup> The terms “Native American,” “Tribe,” “Indian,” “Native,” and “American Indian” will be used interchangeably throughout this thesis with the recognition that each term carries particular negative and positive connotations to different people. The term “Indian” is most often used by the Karuk peoples with whom I directly communicated, thus this term will be used most often in discussing the Karuk.



greater society. As their story reveals, America's ethnocidal<sup>2</sup> tendencies towards Indians are not limited to the past. Entire communities of strong, culturally rich people with sincere spiritual needs continue to endure century-old injustices.

Though much of the content includes legal concepts, this is first and foremost a human story: a story of broken promises, conflicting values, and threatened exercise of spiritual/religious practice. Much of the content is theoretical and based in analysis of law, but in the end it is the story of the Karuk that most thoroughly illuminates the challenges Native Americans face in securing their religious freedom.

In no way will this research attempt to define, classify, or explain the Karuk religion, culture, or history; only the Karuk themselves are capable of these tasks. Nor will this research seek to condemn any federal or state agency. Instead, this research is designed primarily to explore the conflict between the Karuk religious relationship with their surroundings and those natural resource policies and practices that interfere with and alter that relationship.

It must be noted that not all Native Americans in this nation continue to practice their Tribal religions. Indeed, many American Indians are strictly Christian. However, it is important to acknowledge that in many cases entire Tribal communities believe and practice precepts of traditional Tribal spiritual systems, sometimes while simultaneously engaging in other religions such as Christianity. In these cases, such individuals will find

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<sup>2</sup> For the purposes of this thesis, ethnocide is defined as the systematic destruction of a culture or way of life.

that the freedom to practice the Christian aspects of their faith is much easier to secure than expressions of their Native spirituality. This thesis focuses on those Native Americans that subscribe to some form of traditional or Tribal religion, regardless of whether or not this religion is exclusively non-Western or a blending of two or more faiths.

Though not all Karuk, or for that matter all Native Americans, practice their Tribal religions, for those who seek to engage in traditional spiritual practices and beliefs, the guarantee of religious freedom must be sound. Nearly every Tribe in this nation has experienced waves of cultural and religious revivals in recent decades, yet obtaining religious freedom remains a constant struggle for American Indians. This thesis argues that in order for genuine social justice to exist in this nation, each individual person within each culture and within each generation must have the autonomy and opportunity to practice the tenets of their religious beliefs. Indeed, this is the heart of religious freedom. Yet, for American Indians the rights to practice Tribal religions are constantly compromised. A first step in ending such injustice is to acknowledge that once the conditions that make Tribal religions possible – social, cultural, or ecological – are in any way compromised, American Indian religious freedom is diminished.

This thesis is organized into four primary chapters: Introduction, Methods, Literature Review, and Case Study. The Methods Chapter outlines the means by which the information in this thesis was gathered and analyzed, with particular emphasis given

to explaining the development of the case study. The Literature Review Chapter includes three sections. In order to provide the reader with an informed background understanding of the issues involved, each section of the literature review concentrates on a different piece of the story: political theory and history, Native American religious sociology, and jurisprudence and law. The first section is heavily theoretical, with each subsequent section increasing in direct relevance to the case study of the Karuk Tribe.

Section One of the literature review offers a theoretical overview of religious freedom and the concepts that it encompasses. The scope of this section is broad, covering religions and cultures far beyond those of American Indians in order to establish an objective review of religious freedom theory. Section Two surveys American Indian religions, spirituality, and sacred relationships with landscapes as a means of determining the religious freedom needs of Native Americans. A contrast of the content of these first two sections of the literature review reveals that America's guarantee of religious freedom – the First Amendment – is insufficient to protect the religious needs of American Indians. This is demonstrated in Section Three of the literature review, which presents several case examples of failed attempts by Tribes to secure religious freedom. In exploring these cases, this section identifies several selected problems facing American Indian attempts to gain equitable religious freedom and finally examines potential solutions that exist for these problems.

The research culminates in Chapter Four with the Case Study: a detailed investigation into the religious freedom needs and challenges facing the Karuk Tribe of California. The case study serves the important purpose of documenting direct and indirect repression of Karuk religious freedoms through the actions of federal and state natural resource regulatory agencies. A series of interviews with Karuk Tribal members conducted specifically for this case study revealed several key topics of concern to the Karuk, specifically revolving around the themes of fish, forests, and fire. Following the case study are the final conclusions and recommendations.

A major contribution of this work is the primary research that constitutes the Case Study. Gathered via interviews with over a dozen social and spiritual leaders of the Tribe, the primary research of the Case Study reveals the inherent deficiencies of the First Amendment in regards to the religious freedom of American Indians as well as the religious freedom violations consistently perpetuated by the Federal Government against the Karuk Tribe. By utilizing direct quotes from interviews, the Case Study grants the Karuk a distinct voice in the analysis of their struggles to secure the sanctity of their sacred sites and the integrity of the rich ecosystems to which they are spiritually bound.

The Karuk language does not have a word for “religion” or “ecology.” Both of these notions are so intimately integrated into general social life that they cannot be extracted as individual concepts. For the Karuk, to manage a forested landscape with controlled fires is to care for the living world as though it were family. To fish from a

river is to be immersed in sacred meaning. Inspired by this seamlessly integrated vision of the ecological and spiritual worlds, this thesis incorporates research from political science, Native American studies, and ecology into the field of social science and consequently contains significant implications for each of these areas of study. This integrated comprehensive approach to a challenging social problem is among the most important contributions of this thesis.

While the Karuk foster unique spiritual relationships with the places in which they live, the Tribe is not alone in its concern for these places. The fate of the Klamath River, its ecosystems and species, and the dams that impede its flow are all currently important topics to many individuals and groups in Northern California. Likewise, the environmental consequences of logging have been an issue of considerable regional interest for many years. This thesis sheds new light on these and similar subjects by considering the connection between natural resource management and the religious freedom needs of the Karuk Tribe. In this way, the ancient cultural and religious relationships the Karuk share with fish, forests, and fire become spotlights illuminating much broader issues.

This work is significant because it is about hope for a people who have experienced generations of genocide and continue to suffer from religious oppression. A Karuk elder suggested to me that his people have only been able to survive to this point by remaining invisible. His sentiment was that in order for the Karuk to exist, they must

keep their culture and spiritual lives hidden. As a consequence, horrendous violations of Karuk religious freedom have also remained obscured. Written and researched in collaboration with the Karuk Tribe, this thesis seeks to right this wrong by illuminating a hidden story of the Karuk. It is the author's hope that the findings of this thesis will act as seeds, growing and evolving into new studies in various fields that will each offer fresh insights and novel collaborations and that will each strengthen the cultural sovereignty of Native peoples.

## CHAPTER TWO: METHODS

### Introduction

Multiple methods were employed in the research stages of this thesis, including: (1) interviews of Tribal members, (2) participant observation at two events related to the topic of this thesis, (3) analysis of U.S. law and court cases, and (4) a review of pertinent historical, legal, theoretical, and anthropological literature. The author conducted all data collection and analysis. The first two methods (interviews and participant observation) were direct observational tools applied specifically to gather information for this research, in which dialogue and interactions with Karuk Tribal members provided intimate knowledge of the religious freedom issues facing the Tribe today. The motivation behind these first two methods was to uncover the primary ways in which the Karuk feel that their religious beliefs, choices, and practices are threatened. The final two methods (analysis of law/court cases and review of literature) were literary research methods employed first to identify general topics to be explored in further detail during interviews. Following the completion of the interviews, further analysis of law/court cases and review of literature was utilized to verify and supplement the information collected during the interviews and participant observation.

Research began with a theoretical exploration of the concept of religious freedom, setting a foundation for the remainder of the thesis. This was followed by an extensive

review of ethnographic and historic literature regarding the Karuk and their surrounding geography. The data regarding religious freedom theory and the information collected about the Karuk provided a framework for the investigation into relevant religious freedom laws and court cases. Emphasis was given to information specifically related to Native American struggles for religious freedom. Given the immense range of this topic, the general information that had been gathered about the Karuk Tribe provided specific themes that served to limit the scope of study. Utilizing these themes, several American Indian cases with similarities to the Karuk were selected to serve as guiding case examples. Finally, these case examples were examined to pinpoint precise issues that could potentially relate to the Karuk.

The literature review represents the theoretical exploration of religious freedom, the ethnographic and historic review of Karuk literature, the investigation of religious freedom laws and cases, and the examination of case examples. Armed with an understanding of the general information presented in the literature review, a series of interviews was conducted with 18 Karuk Tribal members from December 2004 through the spring of 2005. During the same period, I acted as a participant observer during two workshops in which the Karuk presented specific environmental concerns to federal agencies, which inherently included religious issues. The following explains how primary information was gathered for the case study.



## Interviews

King (2004) indicates that interviews are the most common data gathering technique for qualitative research, particularly because interviews are the most effective means of understanding a research topic from the perspective of the interviewee. The interviews conducted for this research were arranged by Ron Reed, the primary key informant for the case study portion of this thesis. Mr. Reed is a Karuk Tribal member, an active traditional fisherman, and cultural biologist for the Tribe. Serving as cultural liaison and cultural interpreter, Mr. Reed attended all but one of the interviews conducted for this thesis. His participation in the interviewing processes proved absolutely essential to the success of uncovering specific religious freedom needs and concerns of his people.

Each interview was recorded with the permission of each interviewee and transcribed in the weeks following. It was originally intended that the interviews take the form of semi-standardized key informant interviews as defined by Berg (2000, p. 70). Each interview was to have a structured set of predetermined questions asked of each interviewee in a systematic and consistent order. However, during the interview process it was determined that a more informal dialogue type of interview was more appropriate for the purposes of this research. Therefore, the interviews were allowed to evolve organically depending upon how the respondent reacted to the various topics. Given the sensitive nature of the topic of religious practices and beliefs, some interviewees opted to not answer certain questions while other informants enthusiastically responded to all

questions. In addition, Karuk individuals each practice their spirituality in slightly different ways depending upon their family contexts and cultural specialties. For instance, spirituality for a Karuk fisherman and for a Karuk basketweaver, through overlapping in many respects, will differ in very important ways. Therefore, the series of questions asked during interviews was not rigorously or consistently asked of each interviewee, reflecting the fact that consistency of questioning was not a priority in the interviews. Instead, the primary goal of the interviews was to expose a range of religious freedom challenges faced by the Karuk. Therefore, questioning was allowed to evolve during each interview in order to reflect the cultural specialties, specific knowledge, and particular concerns unique to each individual.

The ultimate interview method employed for this study matches with King's (2004) suggestion that in order to effectively understand how and why the interviewee has come to a particular perspective, qualitative research interviews often employ a low degree of structure imposed by the interviewer, utilizing instead "a preponderance of open questions" that have a specific focus (p. 11). Such qualitative interviews allow for the interviewee to become an active participant in the research by shaping the interview to reflect individual expertise instead of having the interviewee merely respond passively to pre-set questions (p. 11).

### Participant Observation

Waddington (2004) suggests that the most accurate means of understanding and gathering direct information about people is through sharing their experiences, which is known as participant observation (p. 154). The idea of participant observation is to study first-hand the experiences and behavior of subjects in particular situations. Beyond the interviews conducted for this study, I engaged in two sessions of participant observation.

In early February of 2005, I attended the First Greater Klamath Stakeholders Consensus Meeting in Klamath. The three-day-long meeting was a gathering of several conflicting interest groups seeking to reconcile their varying visions for the future of the Klamath River. Representing the voices of the people from the headwaters of the Klamath to its mouth, over 150 participants attended the four-series meetings. During the first meeting in February that I attended, representatives of the Karuk Tribe presented their perspectives and statements of needs regarding the future of the Klamath River, with particular emphasis given to how their spiritual beliefs are affected by the dams. In addition to this direct testimony from Tribal representatives to the overall gathering, the mediator initiated a series of guided small-group discussions to foster open, honest dialogue between several groups, including Karuk Tribal members, ranchers, farmers, fisherman, and others. As a participant observer at this meeting, I gathered information regarding Karuk religious freedom needs during the overall presentation by the Karuk, as well as during the series of small-group discussions. The information collected as

participant observer was valuable in identifying how the Karuk express their religious needs outside of private interviews. It was through this meeting and through direct dialogue with Karuk informants that I was informed of how to accurately and appropriately portray the Karuk to non-Indians. This experience also allowed me to observe how the Karuk present their religious perspectives to private citizens, which contrasts with my second experience as a participant observer in which I was able to observe how the Karuk express their religious perspectives to governmental agencies. These findings match with Waddington's (2004) suggestion that the experiences and knowledge gained through participant observation often form the basis of important hypotheses (p. 155).

In June of 2005, I acted as a participant observer during a conference hosted by the Karuk, Yurok, and Hoopa Tribes entitled, "Traditional Knowledge and Environmental Stewardship." Several Federal Resource Management Agencies were invited to the conference, in which Karuk representatives and representatives of the other Tribes outlined for representatives of the Federal government the Tribal spiritual perspective of land management. In addition to observing and taking notes regarding the series of presentations by Tribal experts in Traditional Environmental Management, I was also able to observe interactions between Tribal members and government representatives. This experience as a participant observer provided me with great insight

into the Karuk's religious freedom needs in regards to the management of their surrounding landscape.

## CHAPTER THREE: LITERATURE REVIEW: THE FAILED PROMISE OF THE FIRST AMENDMENT

### Section One: A Theoretical Review of Religious Freedom

*As human beings continue to struggle for political participation and for economic and social justice, they do so according to differing perceptions of individual and communal well-being, and they inevitably adopt different approaches toward the realization of the objectives. (An-Na'im 1999, p. 121)*

*The violation of a man's religion or conscience often works an exceptional harm to him which, unless justified by the most stringent social needs, constitutes a moral wrong in and of itself. The cost to a principled individual of failing to do his moral duty is generally severe, in terms of supernatural sanction or the loss of moral self-respect. (Clark as cited in Baker 1985, p. 273)*

### Introduction

Section One of the literature review attempts to lay the foundation for the remainder of this thesis by demonstrating the fact that the First Amendment was not designed to – and therefore cannot be expected to – provide the same level of protection to Native American religions as to Christian denominations. In order to prove this point, a large part of Section One is dedicated to reviewing literature regarding general theories of religious freedom. Thus, the early part of the section does not directly examine the First Amendment itself, but rather lays a foundation of what experts suggest the concept of religious freedom actually should be.

Section One is also not directly related to the Karuk or Native Americans.

Multiple examples appear throughout this review that consider a variety of religions. Though this thesis is directly related to the religion of the Karuk Tribe, and to the plight of Native American religious practitioners in general, the theoretical portion of section one provides a diversity of examples in order to demonstrate that all religions have needs and vulnerabilities. The religious freedoms of any faith are capable of being protected *or* violated. Thus, a purpose of this section is to demonstrate that the calls for religious freedom by Native Americans, and specifically the Karuk, are well within the bounds of what other religions expect and demand.

Using this variety of examples to establish a theory of religious freedom, the concepts explored in the first half of Section One are crucial to the remainder of the thesis. Once a general framework is established, a review of the First Amendment and the struggles of the Karuk will follow. Thus, I request patience on behalf of the reader to consider several general theories of religious freedom prior to any actual critiques or interpretations of America's version of religious freedom – the First Amendment – and how that article has failed to sufficiently apply to the Karuk.

#### Defining the problem of religious freedom and the state

From a purely rationalist perspective, the prevalence of religion in all societies arises out of the inadequacy of reason or logic to explain the mysterious elements of life

and death. Devout practitioners of most religions, however, profess that their worldviews represent nothing less than ultimate truth. In either case the liberty to freely believe and exercise notions of faith is an necessary in any free society. In other words, religious freedom requires the right to develop and participate in systems of belief regardless of whether the universe hatched from a cosmic egg, slowly evolved following a massive explosion, or was formed by the conscious design of spirit people.

The tendency to develop and engage in a system of belief arises out of what Peter Berger calls the religious impulse. “The religious impulse, the quest for meaning that transcends the restricted space of empirical existence in this world, has been a perennial feature of humanity. It would require something close to a mutation of the species to extinguish this impulse for good” (Berger 1999, p. 13). In other words, religion is here to stay. Religion, however, does not take the form of a single, human “quest for meaning,” but instead exists in countless forms and varieties. Since religion is such a deeply ingrained component of the human experience that will be with us perpetually, and since religions exist in a multitude of forms, our social systems require mechanisms designed to ensure the equal safeguarding of all systems of belief. A theory of “Freedom of Religion” may serve as such a mechanism.

As is suggested below in numerous models, the concept of freedom of religion<sup>3</sup> holds as its basic premise that all individuals possess the right to autonomy over their

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<sup>3</sup> The terms “freedom of religion” and “religious freedom” will be used interchangeably.



own spiritual concerns. No limits or obstacles should exist in belief, conscience, or matters of faith. This is especially important in the arena of politics: the state should have no influence in conceptualizations of and engagements with metaphysical concerns. Accordingly, the state exists solely to manage the earthly affairs of humanity, leaving otherworldly concerns far outside of its intended realm of influence.<sup>4</sup>

Clearly, this demand by “freedom of religion” for autonomy from the state creates some obvious challenges. For instance, “otherworldly concerns,” which are meant to exist outside of the state’s intended realm of influence, include many dynamic factors that impact earthly affairs, which is *precisely* the state’s intended realm of influence (e.g., for spiritual reasons a faith could require its practitioners to consume substances that the state has deemed illegal). Thus, paradoxically, the state is forced to continually regulate the real-life impacts of otherworldly concerns without actually influencing or interfering with them. In addition, many “otherworldly concerns” do not fit into easily identifiable categories, meaning that the state inherits the awkward responsibility of granting sovereignty to aspects of religion that are difficult to classify. Furthermore, according to the tenets of religious freedom, the state should never attempt to define such otherworldly concerns, because to define such concepts is to bind them, clearly violating the mandate that the state must only manage earthly affairs. Inevitably, this difficult position of the

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<sup>4</sup> Of course, this theory takes the existence of a “state” for granted. Ironically, for many indigenous peoples the entire concept of religious freedom was never necessary until the colonial influences of “states” interfered with their lives.

state generates a wide variety of disputes and challenges. Regardless, religious freedom is a necessary condition that must be accommodated in some way within any freely democratic and pluralistic society.

### Defining religious freedom: belief, choice, and exercise

The need for religious freedom has not waned in the modern era. As Berger (1999) insists, “The assumption that we live in a secularized world is false. The world today... is as furiously religious as it ever was, and in some places more so than ever” (p. 2). This ever-increasing religiosity of humanity seems to contradict the rise of modernity and rationalism. Yet, it is true that in an age when the genetic manipulation of organisms is routine, it is still common for political leaders to be openly and devoutly religious. Balancing the faith-based sentiment of religion with the reason-based logic of secular government has proven to be a challenge throughout modern history, creating the need for politically sanctioned religious freedom. The following is a review of several approaches to the creation of religious freedom and the various forms that it can take.

Freedom of religion has many potential degrees. In other words, “religious liberty is not reducible to a single core value but encompasses a family of related values” (Evans 1997, p. 11). The first of these is freedom of conscience or freedom of belief. This “freedom” is the easiest to exercise given the fact that belief is purely an individual mental activity over which all individuals have ultimate control. Even under the most

brutally repressive conditions, people are still free to believe whatever it is that they hold in their conscience. Individuals may be forced to speak or behave against their conscience, but no one can be forced to believe against their conscience, even when the outward expression of such beliefs is forbidden. In fact, “it is precisely because belief is not governed by the will that freedom of conscience is unalienable. Even if he would, a person could not give it up” (Sandel 1990, p. 88).

In this way, it is possible to regulate public statements of belief, but impossible to regulate belief itself. Historical examples of this phenomenon include the continued, but secret, practice of Judaism during the Spanish Inquisition and the spread of Christianity during the anti-Christian era of Rome. In both cases, to confess a belief in the forbidden faith would result in persecution or death. Yet, some individuals certainly retained their beliefs in private while renouncing them in public. This was only possible because the phenomenon of belief is exclusively individualistic. Therefore, the freedom of conscience is not especially liberating without further protections; the ability to freely believe as one chooses is very limited on its own.

This leads to a second slightly more tangible type of religious freedom. With freedom of choice, individuals are granted the ability to choose (or not to choose) any faith or system of belief at their disposal. One may choose to be a Hindu, a Methodist, an Atheist, or any other conceivable religious orientation. More importantly, this freedom does not expire, allowing the freedom to choose, un-choose, and re-choose. This

freedom is most needed in response to totalitarian regimes that forbid citizens from selecting any faith other than the state-sanctioned religion. However, this freedom, like the first, is limited in its usefulness without further protections. In fact, in any relatively open, non-dictatorial society, the freedom of choice is only an extension of the freedom to believe; in most cases they can be considered as one.

A third type of religious freedom is much stronger and therefore more important. The freedom to exercise, or practice, as one chooses is the paramount liberty in regards to religion (and will be the cornerstone of this thesis). Without the ability to exercise the beliefs of a chosen faith, the first two freedoms are of little value. This is because there is practically no need to secure the freedom of belief, as it is truly inalienable. Likewise, as described above, little is required to ensure freedom of choice. Of course, full extensions of these first two freedoms could potentially lead to conditions that some people would deem “offensive,” causing conflicts between groups. However, based exclusively on conceptual grounds, such conflicts would be benign and easy to mediate.

Full extensions of the freedom to *exercise* beliefs, on the other hand, could lead to an infinite range of potential activities, many of which may conflict with state or social interests. In other words, “in a simple, perhaps trivial, sense it is true that beliefs are protected absolutely; governments have neither the technology nor the interest to intrude into the realm of pure thought. It is only some kind of external behavior that raises

governmental issues” (Evans 1997, p. 76). It is this freedom of “external behavior” (i.e., the freedom to exercise) that will be a central concern to this thesis.

Three main challenges present themselves when attempting to secure the freedom to exercise, or “manifest,” ones beliefs. First is the immense difficulty in defining the concept. Second is what I have defined as the “Call for Order” challenge, which leads directly to the third, the “Inevitable Bias” challenge. The first applies specifically to the freedom to exercise religion, while the second and third, though applicable to the theory of religious freedom in general, are most relevant to the freedom to exercise. The second and third challenges comprise the primary arguments for the limitations that will inevitably constrain any theory of religious freedom and are examined together in the next subsection. First, however, is a discussion of the difficulty in defining the concept of the freedom to exercise religion.

#### Challenge #1: The difficulty of defining “freedom to exercise”

According to international legal scholar, Natan Lerner (2000), “the freedom to manifest religion or belief... encompasses a broad range of acts,” which includes, but is not limited to the following list drawn from Lerner and Evans: the building of places of worship; the use of ritual formulas and objects; the display of symbols; bathing; singing; chanting; meditating; the observance of holy days and days of rest; dietary regulations; the ingesting of alcoholic beverages or hallucinogenic drugs; making symbolic sacrifices

or sacrificing live animals; clothing requirements; the use of a particular language; rituals associated with certain stages in life; and the rights to choose religious leaders and teachers, establish seminaries or religious schools, and prepare and distribute religious texts and publications (Lerner 2000, p. 16; and Evans 1997, p. 98). However, it is important to note that the freedom to exercise a religion actually involves such a multitude of additional activities or tangible expressions that no list could ever be satisfactory. In other words, “the scope of religiously motivated behaviors is virtually incalculable” (Evans 1997, p. 98). Evans, also notes that religiously motivated behavior can influence realms of life ranging from “social responsibility, education, child rearing and relations between the sexes, medical practices, appropriate employment, financial decisions, and countless other aspects of life” (p. 98).

Given the incredibly large range of potential religious practices, it is practically impossible to grant absolute protections to all faiths. Regardless, as described above, protection of the free exercise of religion is absolutely necessary for any truly acceptable level of overall religious freedom. To offer such protections, the concept of religious exercise must be better understood.

Evans (1997) offers a useful three-part typology of religious practices: (1) worship, (2) personal care mandates, and (3) religiously motivated cultural practices.<sup>5</sup>

The first category, though certainly not the most important, is often regarded by the U.S.

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<sup>5</sup> Each of these three types of religious practices will be reconsidered in Section Four, focusing specifically on the Karuk.

court system as the primary type of religious practices worth protecting. However, as demonstrated below, all three categories must be considered as having equal significance. In fact, the three components of this typology should never be ranked or weighed against one another, for each religious tradition is unique and inevitably retains its own particularities. Thus, to favor any of the three types of practice would be advantageous to some faiths and disadvantageous to others.

Worship practices are formal, direct, and systematic efforts to spiritually engage in or with the sacred, however it may be defined. Though occasionally individualistic and private, worship practices are most often group activities particular to specific places, times, and circumstances. Practitioners intentionally engage in these activities for designated spiritual purposes (Evans 1997, p. 101). As such, worship practices are relatively inflexible, making them vulnerable to outside interference. In addition, given their obvious and deliberate nature, worship practices are the easiest of all religious exercises to identify. Indeed, as vulnerable, observable, and crucial activities, worship practices are the most common types of religious exercises identified by outsiders.

An example of worship practice is the Islamic system of prayer, which is a formal, direct, and systematic effort to spiritually interact with Allah. Though at times practiced in private, Muslim prayer is also engaged in publicly. Muslims pray at particular times, under specific circumstances, often in special places, and always for

designated spiritual purposes. Prayer is a component of Islam that is simultaneously crucial to the faith and immediately identifiable as a religious practice by non-Muslims.

Evans' second category of religious practice, personal care mandates, include "dietary and cleanliness practices, religiously mandated health care, [and] hairstyles and other appearance requirements or prohibitions" (p. 101). Unlike worship practices, these mandates are rarely limited by place or time. Instead, these more intimate practices are a part of daily living. Though often confused with "optional" cultural behavior, personal care mandates are similar to worship practices in that they are crucial religious exercises. Examples include Jewish Kosher laws, many Native American hairstyles, and head coverings for certain Hindu sects.

The third category, religiously motivated cultural practices, is the broadest and therefore the most contestable. Potentially seen as secular activities motivated by religious faith, this form of religious exercise includes the innate rules of conduct subconsciously embedded in daily life that are induced by a religion's unobserved value system. Too broad to clearly define, religiously motivated cultural practices include a multitude of subtle minutiae that may be unidentifiable or even incomprehensible to outsiders. In many cases, these practices are such a deep-seated and ingrained part of religious identity that they are taken for granted as fixed components of reality by faithful practitioners but often confused as non-religious activities by uninformed outsiders.



Regardless, religiously motivated cultural practices, no matter how latent, are as crucial to some faiths as are much more discernable and obvious religious rituals.<sup>6</sup>

In outlining this typology, Evans insists that the arrangement is not intended to represent a hierarchy of religious exercises. Worship practices are not necessarily more important than personal care mandates. “Indeed, many religious people insist that the interpersonal, ethical behavior mandated by their religious beliefs is more important than their rituals or personal care” (p. 102). In other words, subtle religious customs may in many ways be more important than outright blatant rituals. However, even this may not be true for all religions. Thus, a universal ranking system for these categories simply is not possible.

Given the diverse range of activities that may be included in the realm of religious exercise, many limitations will certainly arise. “Inevitably, certain religious rites, customs, and rules of behavior clash with public norms, health, or morals, and judicial intervention... becomes necessary” (Lerner 2000, p. 16). Of course, defining “public norms” is a contestable process, making any form of state intervention equally contestable. In other words, “morality is indisputably the outcome of cultural and historic factors that vary from society to society, and the determination of... [any] minimum standard may not be equally acceptable to all religions...” (p. 16). This leads

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<sup>6</sup> To provide an example of this type of religious practice may be misleading. For all practical purposes, religiously motivated cultural practices include all forms of religious practice not covered by the first two categories.

to the second and third challenges of the freedom to exercise religion, which together comprise the next subsection.

### The inevitable limitations of religious freedom

#### Challenge #2 – fear of anarchy: The “call for order” challenge

The primary limitation of religious freedom, especially freedom to exercise, stems from the fear of “anarchy” that any fully unrestricted freedom could initiate. I have termed this type of restriction the “call for order” limitation to religious freedom, which, in the name of public order, declares that some beliefs and practices simply could not be accommodated in contemporary society. For instance, a mass revival of the Aztec faith, requiring the regular ritual sacrifice of humans, could not reasonably expect an unchecked level of freedom. Likewise, an individual subscribing to a faith requiring ceremonial cannibalism would be foolish to expect a socially sanctioned freedom for such an exercise. Obviously, practices such as these simply will not be tolerated in the modern world. Unfortunately, not all examples are so clear-cut.

The problem with the “call for order” restrictions against freedom of religion is the difficulty in delineating the boundaries of what can and cannot be accommodated in contemporary society. The plight of the Santeria faith in the city of Hialeah, Florida provides an excellent example. In direct response to the Afro-Caribbean religion’s

practice of ritual bird sacrifice, the city passed a series of ordinances against animal sacrifice. In response to the new laws, which effectively eliminated important Santerian religious practices, Santerian community leader Ernesto Pichardo stated, “You can kill a turkey in your backyard, put it on the table, say a prayer and serve it for Thanksgiving, but if we pray over the turkey, kill, then eat it, we violate the law” (Mazur 1999, p. 3). Another observer noted, “An animal can be killed for any reason in Hialeah, except for religious and ceremonial ones. You can boil lobsters alive; feed live rats to pet snakes; kill for food or for sport; slaughter unwanted pets in you front yard – as long as you do not perform a ritual while doing so” (p. 3).

This case is an example of an improper application of restrictions against religious freedom for the sake of maintaining public order. Though offensive to non-Santeria residents of Hialeah, the ritual sacrifice of birds did not pose the types of immediate threats to civil society that would require such direct constraints. It was because of perceived offensiveness, not immediate potential dangers, that the laws were enacted. Such reactions are common, especially in the case of insular communities that face sudden exposure to unfamiliar religious traditions. Divergent social values and severe cultural misunderstandings can lead to confusions about the difference between offensiveness and danger. Such confusion was precisely the case in Hialeah. Among the many reasons the city council listed as justifications for the ban on animal sacrifices was

the need to prevent “possible psychological ill effects on children who might witness animal sacrifice” (Mazur 1999, p. 2).

The protection of children may be a justifiable rationale for restricting religious freedom. However, this justification must be thoroughly examined to ensure a just and equal application to all faiths. If the city is willing to restrict one faith on the basis that offensive practices may be psychologically damaging to children, other faiths may suffer the same fate – at least, this would be the case in a city that offers a genuinely equal level of religious freedom. For instance, based on the “child protection” logic employed by the city, one could argue that the ubiquitous image of a dead man nailed to a cross could be psychologically damaging and should therefore be banned. Or, more akin to the Santeria example, it is possible to imagine a scenario where Catholic Communion (i.e., the ritual symbolic consumption of “flesh and blood”) would not be tolerated because of the offensive imagery the practice evokes. A false understanding of this crucial Catholic ceremony could be misinterpreted as a barbaric promotion of cannibalism, with subsequent “psychological ill effects on children.” Understood in proper context, however, communion is in many ways an important tool for teaching children – and adults – deep spiritual lessons. Though obviously misunderstood by outsiders, ritual animal sacrifice by Santerians could also be a crucial component of teaching deep spiritual lessons. The city’s residents and leaders had no intention of seeking an accurate

understanding of this minority religion, leading to an unjustified restriction of religious freedom targeting one specific faith.

Though cases such as the one above demonstrate the absolute necessity to take subtle cultural considerations into account, the restriction of religious freedom to prevent anarchy does have very real and very important applications, most often in regards to criminal law. “To insist that people have a constitutional right to exemptions from the criminal law for religiously motivated behavior would render ineffectual the criminal law and produce a kind of anarchy” (Evans 1997, p. 185). This argument represents one of the most difficult challenges facing the concept of freedom of religion. For individuals seeking to live by the doctrine and values prescribed by their faith, the legal standards of the state may function as blatant obstacles. However, unavoidably, the state *must* establish and maintain explicit standards for acceptable behavior for the purposes of social stability and public order.

This all leads to a very important point: when the tenets of a religion clash with the standards of the state, religious freedom must be compromised or the state must grant specific exemptions. If the state is not willing to concede in at least some cases, religious freedom is extremely confined by near-despotism. However, if the state is willing to continually compromise its standards equally for all faiths, those standards will quickly erode into irrelevance. In other words, if a state always concedes to calls for religious freedom, there are no laws; if a state never concedes, there is no freedom. Supreme

Court Justice, Anthony Scalia, explains that to excuse individuals for illegal actions because of the mandates of their faith “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself” (Eason 2004, 344 quoting *Employment Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 879 (1990)).<sup>7</sup>

Of course, even given its undeniable logic, this argument brings up some very relevant challenges. First, though the argument that permitting one religion exemptions against particular laws would invite anarchy because other religions would demand their own exemptions, some cases are simply more poignant and relevant than others. Some cases simply dictate a genuine need for specific exceptions to unjust or unnecessarily restrictive laws, while others demonstrate less pressing conditions.

A second argument against the “call to order” justifications to restrict religious freedom questions the founding principles utilized to develop standards of order within a society. Recall that the state must establish and maintain explicit standards of acceptable behavior for the purposes of social stability and public order. These standards create the basis for laws, which in turn delineate the boundaries of religious freedom. However, any definition of social stability and public order will necessarily be based upon very specific cultural and historical conditions that necessarily favor the doctrines of some religions over others.

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<sup>7</sup> This case has been specially overturned by Congress.

For example, in the case of the United States, the founding generations were predominantly Euro-Caucasian Protestants who collectively held a culturally specific definition of religion, which consequently influenced their definitions of social stability and public order. These limited definitions led to limited laws, which can be expected to favor Protestantism. Thus, laws created in the United States originally had, and continue to retain, an extreme bias favorable to Christianity. This means that Christian faiths, as opposed to others, will experience a much lower frequency of the *need* to challenge laws that were written at a time when their religion dominated the political process of America.<sup>8</sup> In the words of Craycraft (1999):

From the beginning, though far from religiously homogeneous, the early Republic was politically dominated by a few Protestant denominations. By controlling the instruments of power and legislating based on parallel visions of law and religion, they could make laws that anticipated their religious sensibilities, creating for themselves a comfortable position with regard to the law while they were at it. (p. 6)

Furthermore, this bias towards Christianity is not limited to history; as demonstrated above in the case of the Santeria, animal sacrifice and not Communion was deemed illegal.

Another compelling example demonstrates that laws continue to favor Christian religions to this day. Research conducted by Frank Way and Barbara Burt reveals the extreme variance in the need between mainstream (i.e., Protestant Christian) and

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<sup>8</sup> This is true to a lesser degree for minority Christian denominations stray from the majority. For instance, Mormons, Jehovah's Witness, and Amish sects have each found the need to challenge laws.

nonmainstream religious communities to invoke the First Amendment. According to their findings, "... those communities traditionally understood as mainstream rarely participate in free exercise cases as litigants and... when they do, the topic of the case – for example, tax issues – reflects their status as established members of the community" (Craycraft 1999, p. 7). Because they are by far the majority in American, Christians rarely need to pursue First Amendment claims in court. The vast majority of such claims are made by other religions. This demonstrates the pre-established bias towards Christianity that exists in the foundations and interpretations of American religious freedom. However, as explained below in the discussion regarding the third challenge, it is literally impossible to avoid at least some degree of bias in defining and establishing religious freedom.

### Challenge #3 - competing values: The unavoidable bias challenge

A major challenge that will inevitably limit religious freedom is the unavoidable fact that any group or nation that seeks to define religious freedom will hold unexamined biases in their foundational values and worldviews. For instance, the simple adoption of particular legal standards and precedents upon a nation's founding will establish unintended biases towards specific faiths, with patterns of favoritism resonating far into the future. Such biases are not difficult to expose. Consider the following example: an irreconcilable ideological clash between two or more faiths is serious enough to provoke



state intervention and mediation. In such a case, the state may be forced to choose between the conflicting faiths, necessarily limiting the freedom of one group and favoring that of the other. Such a choice could never be entirely objective since the basis of the state's decision will lie in its legal traditions, based on its foundational values, which will be more compatible with some religions over others.<sup>9</sup> Though such a forced action by the state could be undertaken without any *intended* bias, such a scenario demonstrates the near impossibility of a priori neutrality in matters of religious freedom. Indeed, as historian Steve Smith explains, partiality on the part of the state in defining religious freedom is entirely unavoidable.

The problem, simply put, is that theories of religious freedom seek to reconcile or to mediate among competing religious and secular positions within a society, but those competing positions disagree about the very background beliefs on which a theory of religious freedom must rest. One religion will maintain beliefs about theology, government, and human nature that may support a particular version of religious freedom. A different religion or secular viewpoint will support different background beliefs that logically generate different views or theories of religious freedom. In adopting a theory of religious freedom that is consistent with some background beliefs but not with others, therefore, government must adopt, or privilege, one of the competing secular or religious positions. Yet this adopting or preferring of one secular or religious position over its competitors is precisely what modern theories of religious freedom seek to avoid. Hence, theories of religious freedom can function only by implicitly betraying their own objectives. (Smith 1995, p. 68)

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<sup>9</sup> Indeed, even without a particular bias, *any* decision that the state makes in such a conflict would favor one side over the other – including the decision to keep out of the matter, which would inevitably favor the more powerful of the parties.

Smith insists any theory of religious freedom cannot exist on its own, but is inevitably created, enacted, and measured within very specific contexts. Such contexts include “basic background beliefs concerning matters of religion and theology, the proper role of government, and ‘human nature’” (p. 63). In this way, Smith argues that no “autonomous” theory of religious freedom can possibly exist. Simply stated, background beliefs or premises will necessarily be a part of any theory. Besides, argues Smith, even if a completely neutral theory could be developed, in order to remain neutral it could not, by necessity, correspond to the beliefs of anyone. “What would be the sense of resolving conflicts in accordance with a theory based on premises that *no one* within the community accepts?” (p. 71). In reality, however, such a completely neutral theory – one that corresponds to absolutely no preconceived beliefs – has never been created: it is simply a matter of fact that any theory of religious freedom will be based on undeniable preconceptions.

This leads to the unavoidable conclusion that no theory of religious freedom can be ideal for everyone. Some groups will, by necessity, be disadvantaged. In the United States, for example, Mormons have been denied the right to polygamy even though many practitioners have suggested that the institution of multiple wives is a requirement of their faith. In this case, long-standing legal precedents established by Protestant lawmakers – who were strictly “monogamy-minded” – trump the religious freedom of Mormons. Likewise, the same Protestant lawmakers – who were equally as strict regarding sobriety

– created laws in the past that currently challenge the use of sacred medicinal plants, a practice central to some religions.

How can the call to order and unavoidable bias challenges be averted?<sup>10</sup> The easy answer is to suggest that a biased version of religious freedom is better than none at all. If one version of religious freedom *must* be selected, then why not choose the one that *appears* to be the most neutral and most applicable to the most people.<sup>11</sup> However, in arguing for a broader understanding of what religious freedom is and can be, Smith (1995) suggests that an amorphous, *pluralistic* conception is preferable to a singularly defined unitary definition.

We might simply relinquish the singular concept of religious freedom and admit that there are potentially many versions of religious freedom. To put it differently, we might acknowledge that there is no single or self-subsisting ‘principle’ of religious freedom; there is only a host of individuals with a host of differencing opinions and notions about how much and what kind of scope government ought to give to the exercise of religious beliefs and practices. Aquinas’s views on the subject were different from Cromwell’s; Cromwell’s were different from Madison’s. But all these figures believed in *some* version of religious freedom; they believed, that is, in giving some scope to divergent religious beliefs or practices. And it is simply misleading to suppose that there is a univocal principle of religious freedom, hovering in some Platonic realm independent of these different opinions. (Smith 1995, p. 11)

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<sup>10</sup> As I see it, best way to avoid the “call for order” and “unavoidable bias” challenges would be fivefold: (1) acknowledge the inevitable partiality of religious freedom theories; (2) continuously examine such potentially latent biases; (3) seek feedback from as many perspectives as possible, especially underrepresented minority faiths; (4) periodically re-evaluate the version of religious freedom that has been adopted; and (5) adjust its tenets and applications as needed. However, as will be noted throughout this thesis, the United States certainly has not been nearly this thorough in its approach to religious freedom. In the vast majority of cases, the status quo remains fully entrenched.

<sup>11</sup> See Smith 1997, p. 71 for an in-depth discussion of the “preferred position approach.”

In other words, no unitary principle or singular idea can possibly encompass the concept, because, as Smith explains, no precise archetype exists. Particular contexts, conditions, or interpretations can lead to inevitable limits on the acceptable parameters of religious freedom, while specific needs by various individuals or groups can necessitate expanded boundaries. This constant push-pull between limits and needs makes a precise, universal definition impossible. Thus, “there is little to be gained by trying to frame the debate as one about who really perceives the true meaning of ‘the principle of religious freedom’” (p. 11). At best, a nation defining the principle can determine the degree of liberty it believes in, weigh the needs of all potentially affected groups with the set of limitations that it deems unavoidable, and draft a principle that, as satisfactorily as possible, suits all parties. This is not to say that progress cannot be made in history’s ongoing pursuit of a more comprehensive understanding of how to frame such principles, but instead suggests that there is no ideal finish line at which the debate can conclusively end. This approach is termed the pluralist approach (p. 12).

Of course, there are dangers to this approach. In the simplest of terms, a unitary definition is much more straightforward and therefore more navigable for legislators and judges. If, for instance, many potential versions of religious freedom can simultaneously exist, which version does the Constitution represent? When no ideal principle exists, the Constitution can be interpreted and reinterpreted endlessly. With a unitary definition, on the other hand, the debate is limited to a search for the precise parameters of the ideal. In

this case, “to talk about ‘the Constitution’s version’ of religious freedom is simply to talk about the ‘true’ principle of religious freedom; finding the Constitution’s version merely involves discerning *the* principle from among the many impostors” (Smith 1995, p. 13).

In the end, however, the pluralistic approach is preferable because it takes into consideration the cultural and religious plurality of our nation. Though more complicated and contestable, an open conception of religious freedom admits that multiple legitimate versions exist, allowing for an ongoing dialogue that keeps the issue open for constant reinterpretation according to need. Inherent in such a dialogue that seeks to construct a neutral theory of religious freedom is the need to determine what will and will not qualify as religious. As should be expected, delineating such thresholds is an exceptionally complex and controversial – though unavoidable – task. The next subsection attempts to survey available literature in order to determine what the term “religion” means in the phrase “freedom of religion.”

### Defining religion

The term “religion” necessarily applies to a wide variety of diverse peoples of many different faiths and cultural backgrounds. A problem arises from the fact that the word need only be defined for political reasons; no particular faith, on its own, has any *religious* need for such a definition. Yet, in political contexts, conflicting interests are

involved and defining the word becomes problematic. For instance, to define religion by the standards of a rational political philosophy may be offensive or limiting to a devoutly faithful person. Simultaneously, to define freedom according to the narrow ideological perspective of a single religion may not be comprehensive enough to encompass the needs of other faiths or of advocates of pure secularism. W. Cole Durham (1999) describes this dilemma as a fundamentally unavoidable condition inherent in the process of defining “religion:”

Wherever one attempts to set the definitional line, there is always some new organization or group (or belief or activity) that falls outside the definition but is functionally analogous to something included in the definition and cries out for equal treatment. This equalitarian argument is either resisted, in which case one is left with difficult problems of unequal treatment, or one yields to it by progressively broadening the definition so that its periphery is pushed out further and further until almost no group would be excluded. At that point, the definition becomes vacuous because of excessive inclusion. ‘A definition [that does] not exclude, does not define.’ (p. 683)

In other words, too exclusive of a definition will wrongly omit genuine faiths with legitimate intentions, while too inclusive of a definition will mistakenly accept fraudulent “religions” with deceitful objectives.

Consequently, developing comprehensive, yet unambiguous thresholds for the definition of religion is crucial. Not surprisingly, dozens of strategies for defining religion are available in the literature. Based on a variety of such sources, Evans (1997) offers six major approaches to defining the term: (1) belief in a creator, (2) beliefs about the sacred, (3) obligations of conscience, (4) ultimate concerns, (5) communal and

institutional definitions, and (6) indicia. These approaches are defined below. First, however, is a brief discussion of the distinction between “functional” and “substantive” definitions: though the boundaries are not absolute, Evans’ first three approaches are considered “substantive,” while the second three are regard as “functional.”

According to Hunter (1990), two main *types* of definitions exist for the term “religion.” The first, substantive definitions, are narrow and are typically limited to traditional theisms: “Judaism, Christianity, Islam, Hinduism, and so on” (p. 58). Within these bounds, substantive definitions focus on the core or “substance” of a religion. This tactic is advantageous for faiths that are well organized and have clearly articulated characteristics: political organization, established literature, long-standing political acceptance within a state. However, substantive definitions fail to embrace subtle, but crucial, *experiential* details. In addition, not all religions are politically organized or have established literature. Thus, substantive definitions, by themselves, are too exclusive. This is obvious in Evans’ first (substantive) approach to defining religion: belief in a creator.

Functional definitions, on the other hand, are broader and more inclusive. Based on the meanings a faith provides to individuals and communities, functional definitions consider “...religion largely as synonymous with such terms as cultural system, belief system, meaning system, moral order, ideology, world view, and cosmology” (Hunter 1990, p. 58). With such definitions based on social functions, the existence of a deity is

not a prerequisite, nor is political organization. As an example, Hunter refers to Confucianism and Theravada Buddhism as religions that “contain no supernatural reference to speak of” (p. 58). Clearly more inclusive than the substantive model, functional definitions run into the problem of over-inclusiveness. In the case of definitions that are *too* open, space is available for “political ideologies, social movements, and therapeutic techniques,” creating categories of “quasi-religions.” As Hunter explains, “both methods for defining religions are rooted in venerable intellectual traditions in the social sciences, and no resolution has been reached” (p. 58) A review of Evans’ six major approaches helps frame the dilemma.

The first of Evans’ substantive definitions, belief in a creator, is the version used by the Framers of the U.S. Constitution and the majority of judges in U.S. history (p. 49).<sup>12</sup> Such definitions rely on religion as a “theistic belief based on faith in a deity” (p. 49). This definition accommodates those faiths of, or parallel to Western traditions, but effectively excludes, devalues, or trivializes other religions. Such narrow limits have been problematic, and yet have been continuously upheld, by the U.S. government. For example, upon creating exemptions for military service because of conscientious objections, Congress specifically accommodated only those objectors “...whose objections stemmed from ‘belief in a Supreme Being’” (p. 50). Such examples are

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<sup>12</sup> The implications of the usage of this definition for the purposes of creating and upholding the First Amendment are investigated below and serve as a major obstacle in securing genuine religious freedom for “non-traditional” religions.



ubiquitous in the U.S. political and legal record, many of which will be explored in Section Three of the literature review.

Though still substantive, Evans' second definition – beliefs about the sacred – is much more inclusive and could potentially be comprehensive enough to satisfactorily encompass all faiths. According to Evans (1997), most contemporary scholars of religion rely on the concept of the “sacred” in defining religion. The sacred “entails belief in a reality beyond everyday experience, which gives meaning to everyday reality” (Evans 1997, p. 50). Following the same vein, Mircea Eliade makes the distinction between the “sacred” and the “profane” as a central component of religion. In Eliade's analysis, the ordinary (profane) world can be enhanced by or connected to extraordinary (sacred) phenomena. Sacred places, objects, times, or acts can open “windows” through which communication with the sacred becomes possible (Eliade 1957).

The distinction between this definition of religion and “belief in creator” definitions is slight. The word creator is more or less replaced by the term “sacred.” Though the difference is primarily in wording, the repercussions of this altered wording are crucial. Whereas the first set of definitions predominantly, if not exclusively, accommodates a select few Western religions, the second set is far more inclusive.

The third approach to defining religion offered by Evans is “obligations of conscience.” The important consideration for these types of definitions is the difference between the concepts of “obligation” and “choice.” “Freedom of conscience and

freedom of choice are not the same; where conscience dictates, choice decides”

(Sandel 1990, p. 88). This is an extremely important distinction. For the devoutly faithful, engaging in spiritual practices or living by ideological principles is not always a matter of choice. Such individuals may feel that they are absolutely obligated by the doctrine of their religions and are therefore required by their conscience to live or act in specific ways. Whereas the freedom to choose is a valuable political liberty, the freedom of conscience is a *mandatory* religious liberty. An individual exercising a freedom of choice is selecting between options, while someone exercising a freedom of conscience feels utterly compelled and is without acceptable alternatives. In the words of Evans:

Most people do not experience their religious practices as acts of free choice, like consumer choices. Religious commands are powerful precisely because they are felt to be obligatory. Indeed, if religious practices were matters of choice, there would be far fewer powerful reasons for protecting them. It is their obligatory character that makes the protection of these acts seem so compelling. (Evans 1997, p. 54)

With definitions based on these parameters, the sacred not only *affects* the profane, but also *makes demands* upon it. Thus, religious matters entail “extratemporal” consequences (p. 53). Religion then becomes a powerful, binding component of people’s lives that absolutely demands unencumbered freedom. However, the major problem with such definitions is this extreme dependence upon religious compulsion. Such definitions do “...little to protect the institutional and identity interests of religious communities, nor [do they] offer protection for even individual practices where eternal damnation is not at

stake” (p. 54). By consequence, these definitions are simply too strict to encompass all faiths.

The next approach offered by Evans parallels the above approach, but is much more far-reaching and much less severe. These definitions are based on Theologian Paul Tillich’s concept of “ultimate concerns,” which include those things that people take “most seriously, without reservation” (as cited in Evans 1997, p. 56). Peter Berger (1999) refers to “ultimate questions” and the comprehensive systems of meaning that attempt to answer such questions (p. 18). The concept of ultimate concerns suggests that in Eliade’s distinction between the sacred and the profane, the sacred is a mysterious, unavoidable, and even pestering component of life. In fact, whereas the profane parts of life – such as work, bills, conflicts, love, food – come and go, the sacred parts of life are ever-present or ultimate. Thus, we cannot help but take such ever-present concerns seriously, substantiating the need for religious freedom. However, does something need to be of absolute ultimate concern to be religious? The obvious answer is “no.” The basis of this question is similar to the problem of definitions based on obligations of conscience; ultimate concern type definitions are also simply too extreme. In any religion “...the nature or function of belief is the defining element; the practices that follow from them are considered derivative” (Evans 1997, p. 62). Thus, though religions certainly do involve ultimate concerns and ultimate questions, not everything involved in religion is *by necessity* related *directly* to such distinctions of “ultimatness.”

Evan's fifth approach revolves around communal and institutional definitions. All of the above definitions are approached principally from the individual perspective, though religion is characteristically a social phenomenon. Communal and institutional definitions, on the other hand, see religion as "...the shared symbols, practices, and identities that create and sustain a community" (p. 62). If approached too exactingly, these definitions can be flawed. For instance, father of sociology of religion, Emile Durkheim, went too far by declaring "...in all history, we do not find a single religion without a Church" (as cited in Evans 1997, p. 62). This simply is not true. Many religions throughout the world do not have a formal Church.

However, communal definitions need not be so exacting. We could take Durkheim's sentiment and say instead, that in all history, we do not find a single religion without *some social components*. In this way, religion is defined by its nature of collective interaction and group functions, providing truly "functional" definitions. Perhaps the most useful characteristic of communal definitions is the fact that they can utilize the tenets of any of the above definitions as they are applied to *groups* of people. For instance, a communal definition may consider how an assembly of people collectively perceive ultimate concerns. In other words, "these definitions understand religion as not only a source of individual meaning but also encompass the collective behaviors that create and support that system of meaning" (Evans 1997, p. 63).

Though extremely useful in their consideration of social factors, communal definitions run into a major problem. Many non-religious associations and organizations, such as a philosophy club, may erroneously qualify as religions. The final approach to defining religion offered by Smith (1995) may solve this problem. Definitions based on a family of indicia, instead of single indicators, have the best chance of being applicable to the cross-cultural diversity of religious types. In using such definitions, “no single element is strictly necessary; a combination of them produce what the ordinary person would recognize as a religion” (p. 64). In this way, “social, mythic, ritual, doctrinal, ethical, artistic, and experiential dimensions” may all be considered. Obviously, in isolation any of these elements do not define a religion, but in combination a comprehensive and simultaneously unambiguous definition may be produced.

As will be argued further in Section Three of the literature review regarding the judicial struggles of Native American faiths, because of our vast pluralism, definitions of religions based on indicia are the most applicable to freedom of religion claims in the United States. For instance, the U.S. Supreme Court and Appeals Courts have been forced on multiple occasions to delineate the thresholds of what is and is not religious. Regrettably, the courts have mistakenly developed or applied belief in a creator definitions and strict institutional definitions, but have too infrequently utilized the concept of indicia.<sup>13</sup> Of course, this tendency is based on clear historical precedents with

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<sup>13</sup> See the case of *Malnak v Yogi* for a notable exception to this tendency.

undeniable consequences for the fate of religious freedom in America. The next subsection investigates these historic biases in the US by considering the intent of the Framers of the First Amendment.

### Religious freedom and the framers of the First Amendment

The Framers of the Constitution and the Bill of Rights certainly pursued ambitious moral objectives. According to popular history, they sought to form a nation based on maximum liberty for all people. However, the fact that these utopian architects were exclusively white Christian men, many of whom actively participated in the institution of slavery, drastically weakens their celebrated mythology. To the Framers, “liberty for all” did not actually include everyone. Regardless, the institutions and precedents established by these men have proven to be exceptionally adaptable given the appropriate stimulus and, if utilized properly, can potentially provide universal liberty.

In the context of the challenges of religious freedom as discussed thus far, the following historical and analytical review of the First Amendment is intended to set the stage for Sections Two and Three of the literature review. Repeatedly throughout modern history, Native Americans have experienced appalling violations of their religious freedom, often directly at the hands of the U.S. government. Why have these infringements continuously occurred in spite of our nation’s supposedly high level of

religious freedom? In order to answer this question, a historical understanding of the Christian-based biases of America's religious freedom must be considered.

Kenneth Craycraft (1999) offers an exceptional critique of the history of the First Amendment and its designers in his ingenious work *The American Myth of Religious Freedom*. The premise of his work is worth quoting at length:

Perhaps the most confused and confusing legal tradition in America today is First Amendment case law concerning religious freedom. At the American founding, a young nation composed principally of strongly religious people, came to believe erroneously that its nascent political and legal traditions were instituted in order to secure, protect, and even promote the tenets of Christianity. Supreme Court adjudication in this area has been a long-sustained struggle between those who take their measure from *popular sentiment* (especially at the time of the founding), and those who pursue the implications of the *political theory* manifested in the First Amendment. In other words, the adjudication of Supreme Court cases involving religion is often an exercise in trying to balance two competing myths – America as a “Christian” nation versus America as a “secular” nation – while remaining constitutionally committed to a third, dominant myth: the theory of religious freedom at the heart of our public life. (p. 3)

Craycraft argues that myths, or symbolic stories that form and sustain a people, are a fountain of ideological self-perception for societies. In fact, it is through the power of myths that collective groups – whether states, religious organizations, or political parties – create a common identity and retain a coherent, long-term philosophy. Whether solidly based in fact, or entirely rooted in allegorical symbolism, “myths mold mindsets, form prejudices for good or ill, and convey common points of view” (p. 11). In the U.S.,

the myth of the First Amendment serves to mold our collective perception of the “ideal” in religious liberty.

Craycraft suggests that true to the nature of myths, advocates of the First Amendment protest the suggestion that America’s vision and version of religious freedom is anything but genuine. In fact, its supporters claim that the First Amendment is fundamentally *incapable* of endorsing any myths of any kind, for to do so would be against the promise of religious freedom. Craycraft contends that such arguments are themselves part of the myth. While its advocates insist that it is the world’s apex of religious liberty, “...the First Amendment is a particular and exclusive understanding of religion, a particular story of what we Americans think... about religion and society” (p. 12). Indeed, a major component of the myth is that American religious freedom inherently applies to everyone because of its capacity to continuously evolve and morph; it has thus overcome any potential connections to myths and is therefore universally neutral. However, Craycraft strongly rejects even this argument. “The American attempt to overcome political religious myth-making has not succeeded *because it cannot succeed*. As defined by American political and legal rhetoric, there is no such thing as “religious freedom” (p. 12). Craycraft’s concept of “religious freedom as myth” will serve as the framework for the following historical review of the First Amendment.



### **The mythmakers of the First Amendment**

It is beyond the scope of this study to investigate the countless philosophers and ideas that influenced the Framers of the founding documents of the United States. The multitude of writings both referenced and created by James Madison, Thomas Jefferson, Thomas Paine, Patrick Henry, and others is extensive, reflecting a long legacy of Western political philosophy. In this context, just the literature regarding the concept of religious freedom is vast. Inspired by the theories of Locke, Hobbes, Bacon, Aquinas, Spinoza, Rousseau and many others, the Framers of the First Amendment reflected and wrote extensively about the ideal of religious liberty. Yet, in the end, all of their investments into the perfection of this concept culminated with just sixteen words: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

Efforts to extract a precise meaning out of this exceptionally concise phrase have been extensive in legal literature over the past fifty years (Smith 1995, p. 45). In attempts to accurately translate the Framers’ intentions, judges and legal scholars have analyzed the phrasing of the amendment down to individual words, focusing for instance on the use of the word “an” instead of “the” (in the phrase “...respecting an establishment...”). Instead of nitpicking such details, however, the most effective means of understanding the original intentions of the article is a thoughtful review of the conditions and contexts of the time period in which it was written.

Given the vast amount of time between the creation of the First Amendment and today, it is necessary to ask whether the perspectives of the past remain relevant to the modern world. In other words:

How is the word “religion,” [or “religious freedom”] as it was understood in 1787 or 1791 by a nation whose electorate was divided largely among Anglo-Saxon Protestant Christian denominations, to be interpreted for a nation whose electorate is divided not only among Protestants, Catholics, Jews, Muslims, all theists, but also among many other nontheistic religious groups as well as agnostics and atheists, and then cross-divided not only among whites and non-whites but also among numerous ethnic subdivisions of both whites and non-whites? (Berman 1990, p. 50)

In addition, America’s first leaders themselves must be understood in proper context. As suggested by Miller (2002), we must ask how the values and interests of these men relate to our world today. “Is there any further connection between these white eighteenth-century colonial males, slaveholders many of them, with their eighteenth-century preoccupations and colonial resentments, and our own vastly different late twentieth-century situation in a mass democracy that is a gigantic world power?” (p. 22).

This is a major challenge to understanding the First Amendment. America was simply a very different place at the time of its founding than it is today and its founders lived in a different world and were invested in very different concerns. Berman (1990) argues that the modern roles and influences of government versus religion have experienced a full reversal since the time in which the First Amendment was written. “In the 1790s religion played a primary role in social life and government played a relatively minor, though necessary, supportive role, whereas [today] religion plays a relatively

minor, though necessary, supportive role and government plays a primary role” (p. 43). Berman even suggests that in the earlier age, religion greatly shaped the government’s role in influencing social standards and laws, while today the reverse is true: the government delineates the limits of religion’s influence.

It is here that Craycraft’s myth of neutral American religious freedom is exposed. The world in which the Framers lived was almost exclusively Protestant, and the laws they created were appropriate specifically to that world, even the version of religious freedom that they produced. As Hunter and Guinness (1990) suggest, “...the practical intentions of the [First Amendment] could have only been to reduce the deep and longstanding tensions spawned by the various inter-Protestant rivalries” (p. 54). The existence of such rivalries between multiple Protestant sects was a result of the post-Reformation rise in a variety of moralistic Christian denominations each claiming to possess the truest and purest teachings. It is easy to imagine that any of them would have eagerly volunteered to serve as an official state or federal religion. Indeed, Hunter proposes that the inter-Protestant struggle to control the moral and ethical course of America “...defined the prominent cultural tensions of that time and therefore the tensions that needed to be resolved most urgently” (p. 55).

This is not to say that the early nation was completely free of non-Protestants. Other faiths certainly were present in America and the First Amendment was meant to apply to them as well. However, Catholics, as the largest religious minority at the time of

the framing of the First Amendment, comprised only 1 percent of the population, while the second largest minority, Jews, were even less populous (p. 55). It was in these conditions – with a strong and active Protestant influence in the shaping of social standards and a minuscule non-Protestant presence – that the First Amendment was written.

### **The clauses of the First Amendment as vehicles for the religious freedom myth**

Though the Framers never wrote or spoke of it as such, the First Amendment has been interpreted to consist of two clauses: (1) the Establishment Clause, which forbids the government from establishing a national religion and prohibits actions that would favor one religion over another, while (2) the Free Exercise Clause protects the rights of religious belief and practice for individuals.<sup>14</sup> The original intention of these two separate ideas is inevitably bound in the relatively narrow concerns and limited experiences of the men who wrote and ratified them. In the case of the Establishment Clause, the Framers invested a great deal of thought and political effort into ensuring that the United States never adopted an official state religion. Rose (1999) suggests that this was true to such a point for Thomas Jefferson that his vision for freedom of religion was more akin to freedom *from* religion (p. 124).

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<sup>14</sup> Congress shall make no law respecting an establishment of religion (The Establishment Clause), or prohibiting the free exercise thereof (The Free Exercise Clause).

Following the tradition of Lockean liberalism, Jefferson and Madison both firmly subscribed to the notion that religion must be segregated from the secular components of life. Indeed it was their insistence on the absolute autonomy of individuals in religious belief that led them to frame the First Amendment as they did. However, as good as their intentions may have been, their projected desires to create complete neutrality were based on many unexamined liberal and Christian notions, including the long-standing Christian perception that the sacred is separable from the profane. Martin Luther, the father of Protestant philosophy, made a clear distinction between the secular and the religious. Likewise, Roger Williams, founder of Rhode Island, subscribed to the same sentiment (Rose 1999, p. 126). John Locke, the philosopher who influenced American Constitutionalism more than any other, also clearly and forcefully wrote about the religious/secular distinction. This forced segregation of religion from everyday life is both inherent in the First Amendment and disadvantageous to faiths that do not follow the Western liberal tradition.

Rose explains this problem well:

It is this emphasis on the distinction between the religious and the secular, and the consequent emphasis on religious individualism, that guided the Framers in their construction of the Religion Clauses. [Both]... reflect a fundamental concern for the kind of metaphysical space necessary for the development of religious ideas according only to the dictates of individual conscience. Yet... the Framers' theological orientation fails to account for traditions in which the religious is inextricably intertwined with the cultural, and where the need for religious space is driven by an attachment to specific spiritual geographies. (Rose 1999, p. 128)

Though this point may at first appear to be minor, it is a good example of how the Framers failed to account for the needs and conditions of the many religions with which they were unfamiliar. In the Western tradition, exemplified by the writings of Luther, Williams, and Locke, the First Amendment takes as a given the fact that life can be divided into spheres of religious and non-religious or into “church” and “state.” Indeed, the separation of these two realms is upheld as a major component of America’s religious freedom. However, this “given” simply is not true for many Native American religions, such as that practiced by the Karuk. To such religions that do not parallel Western liberal notions of the division between the secular and the religious, the American system will be foreign at best. In other words, “the separation uses a worldview not shared by all religions, thereby imposing an implicit religious metaphysic and epistemology on all religions” (Brock 2002, p. 857). Furthermore, John Noonan identifies three additional problems with the concept of separation of church and state (in Berman 1990, 41).

First, the phrase “separation of church and state” suggests that there is a single church, but in reality America is home to innumerable religions, many of which have no church to speak of. Second, the phrase suggests that there is one state, but the U.S. is in actuality many governments, from national to state to local, with additional administrative agencies and judicial entities. Finally, “separation of church and state” suggests that these two bodies can somehow be divided from one another, though no such

division could ever be fully realized. Any participants in religion are also citizens of the state and all lawmakers and government officials have, and often engage in, the option to be religious. Thus, the power-players in both religion and government often have a foot in both worlds. In such cases, the “church” cannot be separated from the “state.” In the words of Noonan, “individuals are believers and unbelievers, citizens and officials. In one aspect of their activities, if they are religious, they usually form churches. In another aspect they form governments. Religious and governmental bodies not only coexist, but overlap. The same persons, much of the time, are both believers and wielders of power” (cited in Berman 1990, p. 41). In American history, the wielders of power have been predominantly Protestant Christians.

This long-standing dominance by one faith has even led to a very limited definition of “religion”.

When the term *religion* appears in the Constitution, it is used self-evidently as referring to something that does not need definition. The implicit default definition is andocentric and based in Enlightenment Protestantism, the religious worldview under which the secular/sacred divide is most intelligible. The Protestant Enlightenment definition of religion still dominates in American discourse and law, not because it is accurate or adequate, but because it reflects the dominant culture and its legislators, jurists, and scholars. Religions that resonate with this definition receive greater constitutional protection. Dissonant religions are not free to practice. (Brock 2002, p. 856)

In the case of the Free Exercise Clause, the same types of critiques can be offered. The Framers had very limited conceptions of religion, based primarily on Western liberal notions of reality blended with the Protestantism that formed the matrix of their social

world. “For Madison, as for Americans generally in the 1780s and 1790s, and indeed for generations thereafter, the free exercise of religion included freedom of religious groups to take an active part in regulating family responsibilities, education, health care, poor relief, and various other aspects of social life that were considered to have a significant moral dimension” (Berman 1990, p. 42). Yet, it is doubtful if Madison ever took into consideration the religious free-exercise needs of his African slaves or his Native American neighbors. Nor could he or his colleagues have begun to imagine the vast religious diversity that American would one day come to represent.

In the early part of the nineteenth century, America’s largest non-Protestant religious minority was Catholicism at only 1 percent of the population. Judaism comprised the second largest non-Christian religious minority at far less than one percent (Hunter 1990, p. 55). “Both in population and character America was indisputably Protestant” (p. 55). This near-exclusivity of Protestant America was first tested by the influx of European Catholics, who, in a broad comparative sense, were not drastically different in content or character from their reformational counterparts. Yet, while Catholics were not well-received during the massive immigrations of Irish and Germans around the 1840s, these populations had the good fortune of being Christian and Caucasian, allowing them far greater acceptance than other non-Christian, non-Caucasians. However, even given the striking similarities between Protestants and Catholics and the accompanying greater level of acceptance, nineteenth century America



did not afford the same level of religious liberty to both groups. “While no one Protestant denomination enjoyed the patronage of the state, the cause of a ‘pan-Protestantism’ had a substantial, if unofficial, government endorsement. The consequence was the restriction of the full religious liberties of other, non-Protestant communities of belief” (Hunter 1990, p. 55).

The conflict between these two main sects of Christianity was not exclusively religious in nature. Instead, competing values – social, political, and economic – formed the basis of what came down to a struggle for influence in the political sphere. “By the beginning of the twentieth century, the ideals of the First Amendment... had still not been fully realized, as the chronicle of anti-Catholicism and anti-Semitism unhappily documents” (p. 56). Considering the challenges that Catholicism had in securing religious freedom under the First Amendment during early America, the struggle of much more alien (non-Christian) faiths was obviously that much greater. Where Catholics were persecuted or denied rights, other religions were outright eliminated (e.g., American Indian religions) or utterly excluded from any opportunities for political influence.

This history is extremely relevant to today’s challenges. “The failure to fully realize the ideals of the First Amendment in the nineteenth century is significant because it provides something of a precedent for developments occurring today. Certainly, many of the social dynamics taking place in the present find a parallel in the past” (Hunter 1990, p. 56). Whereas America of the past was not religiously diverse, with only

minimal populations of non-Protestants, today's America is quite religiously diverse, with countless populations of multiple religions. Buddhists, Hindus, Jews, and Muslims each comprise a greater percent of America's population today than Catholics did in the mid-nineteenth-century (p. 56).

In light of this increased religious plurality, it becomes obvious that the Framers failed to ask a crucial question in relation to their "free exercise" clause: if Congress is to avoid making laws that prohibit the free exercise of religion, in what ways can religious practice be harmed? If genuine religious freedom is to be offered, the answer to this question is crucial. Congress cannot realistically avoid the prohibition of religious free exercise if it does not understand the ways in which such exercises can be burdened. In America's more religiously homogenous past, this question would have been nearly irrelevant. As Protestant lawmakers in an almost exclusively Christian nation, Congress would have understood well the ways in which Christian religious practices could be harmed. Armed with such knowledge, Congress easily avoided passing laws prohibiting the free exercise of (Christian) religion. As religious diversity increased, however, so too did the range of religious exercises and, consequently, the ways in which free exercise could be burdened.

As discussed above in the subsection regarding the challenges to defining free exercise, the freedom to manifest one's beliefs involves a multitude of potential practices. Given this immense range of possible religious exercises, the U.S. court system has

struggled to develop a means for evaluating them. One well-intended, but detrimental strategy has been the concept of “centrality.” According to this approach, some religious practices are more “central” than others. The closer a practice is to being a fundamental component of a religion’s core, the more constitutional protection it merits (Evans 1997, p. 99). The premise of this approach is based on the undeniable fact that for some religions, certain fundamental activities are of an obligatory nature while other peripheral activities are religiously endorsed but entirely optional. In some cases, a limited set of particular actions form the core of a religion, the burdening of which would absolutely prohibit the free exercise of religion. However, to measure such degrees of centrality as a basis of understanding the boundaries of free exercise is to assume that all religions share the same typological and hierarchical formats. This simply is not true.

In addition, “since few religions provide lexical lists of required or prohibited practices, it is not at all clear how crucial a challenged practice may be” (p. 99). In assuming that some activities are central and that other are optional, one should not make the mistake of suggesting that any practices are *dispensable*. A court that confuses an optional practice as being completely disposable is making a serious mistake. It is not the court’s place to decide what is and is not expendable for any particular religion. Also, religions cannot be reduced to a hierarchical list of rules. Thus, judging the centrality of a practice is a poor approach to understanding the burdens that may be inflicted upon

religious free exercise. Instead, it is more pertinent to consider the actual ways in which religious freedom can be burdened.

Evans (1997) identifies two main types of burdens: (1) penalties against religious acts and (2) making religious practices impossible. The first type is straightforward and will only be considered briefly. The second type is very relevant to the struggles of the Karuk and will be reviewed in greater detail.

The criminalization of a religious practice is the most obvious form of burden. To literally deem a religious act illegal is an obvious violation of the First Amendment. This does not mean, however, that such cases do not occur. As discussed above, a major obstacle to any version of religious freedom is the “call to order challenge.” Some acts – even those specifically mandated by a religion – cannot be permitted. Killing is a good example. However, such extreme examples are rarely a concern. More common are cases in which a much less threatening activity is legally forbidden. For example, the use of sacramental plants and the practice of polygamy are illegal even though both are crucial religious practices.

A second type of burden identified by Evans is much more complex. In certain, crucial cases, government actions can literally make religious practices impossible.<sup>15</sup> The most relevant of such cases concern government decisions to institute major alterations to landscapes that are crucial to Native American religions. In the words of Evans (1997):

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<sup>15</sup> This idea will be visited further in the Case Study Chapter.

Governmental destruction of Native American sacred lands, the religious sites necessary for ceremonies, is [a] dramatic example of this kind of ‘burden.’ The analogy – although perhaps an exaggerated one – would be the “burden” on ancient Judaism by the destruction of the Temple; in that case, mandated rituals were simply no longer possible. The government’s act [is] not a penalty on a religious practice; it simply prohibit[s] the practice altogether. As part of the tragic history of U.S. acquisition of the North American continent from Native America peoples, many of their sacred sites came to be owned by the U.S. government. As long as the lands were in remote places and “undeveloped,” Native Americans continued to maintain the sacred sites and use the land for traditional worship practices. As pressure for development and other uses of these lands grew, government often had to choose between traditional Native practices and other uses. Because the sites [are] considered sacred, once they [are] devoted to other uses, longstanding religious rituals, integral to the spiritual life of a people, [are] no longer possible. (p. 189)

This example demonstrates the failure (or refusal) of the government to understand the genuine spiritual needs of religious minorities. It is unlikely that at any time in the past the government acted in a way that would make the practice of a mainstream Protestant religion impossible, for at least some of the individuals that constitute that government would have clearly understood the consequential religious freedom infringements. In the case of Native Americans or other non-mainstream minority religions, however, the government unknowingly (or maliciously) creates conditions in which the free exercise of religion simply is not possible. In such cases, the religious practice is not deemed illegal or discouraged, but actually interfered with. This can only be done if the government denies the very existence of a religion. In other words, criminalizing a religious act is unnecessary if the act is never recognized as being religious. When the government has such disregard for a religion that it refuses to

acknowledge its presence, it is then capable of creating conditions in which the free exercise of that religion simply cannot occur. This means that some of the greatest burdens on religious practice are virtually invisible because the religions themselves are invisible to those who burden them. This will constitute a major argument in the case study of the Karuk in Chapter Four.

#### Conclusion: The myth exposed

In conclusion, historical context reveals the depth of Craycraft's myth. Coupled with the legal traditions of America, the First Amendment is at best a flawed and biased version of religious freedom. According to the two clauses, Congress cannot make laws favoring one religion over another and cannot make laws prohibiting the free exercise of religion. Yet, Congress has continually engaged in both of these forbidden acts. In fact, the vast majority of U.S. laws prohibit activities that are potentially crucial to certain religions. For example, laws regarding polygamy, divorce, fishing, hunting, property ownership, intoxicants, forest fires, plant harvesting, resource harvesting, education, transportation, identification, public nudity, imprisonment, pollution, land management, zoning, agriculture, artistic expression, suicide, proselytizing, conflict mediation, public demonstration, commerce, and many others *each* affect one religion or another. Though most of these were not enacted for the direct purpose of favoring or prohibiting a religion – indeed religion was not even a minor consideration in the passing of most of these laws

– they all *do* impact religion. They all *do* establish the standards of some faiths, particularly the Christian religion of the men who wrote them. And they all *do* potentially prohibit the free exercise of some other faith. As noted by Edward Egan Smith (1991), “...the state must recognize the religious nature of a belief or practice in order to avoid infringing upon it” (p. 1495). Thus, in effect, Congress would require the consultation of religious experts universally schooled in the subtleties of all existing faiths in order to ensure that each law passed did not prohibit the free exercise of any religions. Such a scenario is as unlikely as it is unrealistic. Congress cannot possibly “recognize” the religious nature of all beliefs and practices of all religions in order to avoid infringing upon them: the task is simply impossible.

Without such knowledge, each law passed by Congress may directly or indirectly prohibit the free exercise of a religion. Their unfamiliarity with the world’s faiths makes this outcome inevitable. However, the members of Congress are at least familiar with their own religious traditions, which have been – and continue to be – predominantly some form of Protestantism. In fact, for the vast majority of American history, the laws of the United States have been created, interpreted, and enforced by this limited set of religious practitioners. Hindus, Muslims, Buddhists, Native Americans, Sufis, Aboriginal Australians, and countless other peoples were not consulted in the creation of most of America’s laws. Just because Congress did not precisely state that the hunting of eagles is illegal in order to prohibit the religion of Native Americans, restrictions on the

possession of eagle feathers *does* prohibit the free exercise of many Indian faiths. Likewise, just because Congress did not openly create marriage laws in favor of Christian morality, polygamy restrictions *do* establish Christian religious standards in supposedly neutral American law. As one Supreme Court Justice said, “our civilization and our institutions are emphatically Christian... From the discovery of this continent to the present hour, there is a single voice making affirmation... that this is a Christian nation” (Justice David Brewer in *Church of the Holy Trinity v. United States*, as cited in Hunter 1990, p. 59).

Thus, the First Amendment does not need to be glaringly in favor of Christianity or obviously hostile to other religions in order to fail to protect the religious freedom of all U.S. citizens. Coupled with the history and historically-based Christian-biased laws of this nation, the First Amendment’s capacity to provide genuine religious freedom equally to all people is a myth. Granted, laws must exist in the United States. This necessary fact creates the “Call for Order” challenge to religious freedom discussed above. However, as already noted, the problem with creating laws is the difficulty in delineating the boundaries of what can and cannot be accommodated in the establishment of public order. Any definition of social stability and public order will necessarily be based upon very specific cultural and historical conditions that inevitably favor the doctrines of some religions over others, even if this is done unintentionally. In the case of the United States, the founding generations and the Framers of the First Amendment



were predominantly Euro-Caucasian Protestants who collectively held very limited definitions of social stability and public order. These limited definitions led to limited laws, which can be expected to favor the specific religions of the men who created them. In fact, according to Smith (1995), throughout the founding period and into the following century, most states purposefully restricted non-Christian influences in the creation of law by enforcing strict requirements for public office. “These requirements differed from state to state; the category of citizens excluded from office might include non-Protestants, or non-Christians, or non-Trinitarians, or persons who did not believe in a deity and an afterlife” (p. 38). Thus, in spite of the First Amendment, laws created in the United States originally had, and continue to retain, an extreme bias favorable to Christianity. Subsequently, in the light of such history, the First Amendment is simply incapable of providing adequate religious freedom to all. Even so, the article does have the potential to provide greater religious freedom to American Indians than has historically been the case, if only law makers and the courts would better understand and accept the religious freedom needs of Native Americans. The next section of Chapter Two explores American Indian religions to establish a general background understanding of such needs.

## Section Two: American Indian Religions, Spirituality, And Sacred Relationships With Landscapes

*Our stories matter. Not just for us, and not just for non-Indian Americans. Our stories matter for the whole world. (Suagee 1996, p. 149)  
Member of the Cherokee Nation*

*Indian religions – not religions in the sense of rules and dogma but rather highly individualistic approaches to honoring the Creator – are intricately bound to a tight web of place and an intimate, subtle, and even secret understanding of landscape. (Gulliford 2000, p. 69)*

### Introduction

The purpose of Section Two of the Literature Review Chapter is to examine some of the common characteristics of Tribal Native American<sup>16</sup> religions<sup>17</sup> that make them vulnerable to the inherent weaknesses of the American myth of religious freedom. The First Amendment to the U.S. Constitution is supposedly designed to provide equal protection to all faiths. However, as demonstrated in Section One, when coupled with the

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<sup>16</sup> In no way do the following generalizations apply to all Native Americans. Obviously, because of either history or personal choice, not all American Indians practice Tribal religions. This section, and this thesis in general, is intended to identify the religious freedom challenges of Native Americans who *do* currently practice some form of their Tribal religions and thus focuses exclusively on those populations. It is acknowledged here that Native American communities and individuals face many challenges because of a long history of genocide and social inequities. However, the scope of this paper only allows for the investigation of a limited set of challenges, namely religious freedom issues related to relationships with land.

<sup>17</sup> This thesis is too limited in scope to do justice to the rich diversity and complexity of Native American religions. Therefore, in no way am I suggesting that this section is capable of reviewing Native American religions in their totality. Only a summary of specific characteristics – mostly related to spiritual relationships with land – is offered.

contexts of American history and law, the First Amendment is inadequate at providing a sufficient level of secure religious freedom for Native Americans. In addition, to the degree to which the First Amendment is capable of offering such protections, it has been generally unsuccessful to date due to unfavorable interpretations by courts and legislators.

This section intends to demonstrate some general traits of Native American religions for the purpose of outlining what would be necessary in order to establish and preserve a genuine freedom of religion for Indians. In exploring these traits, it is necessary to note that Native North America consists of a highly diverse range of peoples with a multitude of cultures, beliefs, and historical contexts. However, even within such diversity, many common characteristics can be identified for the purpose of declaring a general set of religious freedom needs among American Indians.

This section reveals that maintaining sacred relationships with landscapes is a common attribute of Native religions that currently suffers from a lack of public and legal recognition in the United States. Without such recognition, and appropriate legal protection, Native religions are in constant peril. As Gulliford (2000) explains, “the concept of sacred landscapes may exist in geography, history, and philosophy, but it must also exist in law if native peoples are to have freedom of religion” (p. 100). A crucial first step to alleviating this problem is to increase public awareness of the common traits

and needs of American Indian religions. This section offers a brief review of literature regarding such traits and needs.

An in-depth review of the nature and function of sacred sites demonstrates the indisputable importance of landscapes to Native religions. However, the focus is not on landscapes in general, but on specific locations that are sacred for very specific reasons. Not only are particular locations crucial to the practice of Native religions, the integrity and quality of those locations is also of absolute importance. Inevitably, given the need to retain the integrity of site-specific locations of worship in an era of on-going development, sacred sites and the religions attached to them are in constant danger of destruction.

A final consideration of this section is the drastic variation in the basic spiritual belief systems of American Indians versus the Western and Christian traditions that formed the foundation of American religious freedom legal systems. This is undertaken with the recognition that reviewing Indian religions via non-Indian standards is an injustice. In the words of Rhodes (1995), “reliance on Western conventions, such as the English language and the Judeo-Christian conception of religion, to explain the spirituality of American Indians is inherently problematic” (p. 17). In order to avoid such damaging biases, this section reviews literature by many Native and non-Native authors regarding the disparity between Christian/Western and Native metaphysical worldviews and concepts of sacred. Though a few notable exceptions are mentioned, the Western

traditions have an exceptionally limited conception of places that are sacred on their own without human influence. Native spirituality, on the other hand, revolves around sacred places that serve as gateways to spiritual realms and that are sacred because they have been revealed to – instead of created by – human beings. This leads to a comparison of the sacred spaces cherished by Native Americans versus their Western counterparts; whereas churches and sacred sites do share some common characteristics, their similarities are very limited. A review of their differences reveals the vulnerabilities and challenges facing Indian religions, which is reviewed in greater detail in Section Three of the literature review.

#### Addressing two misconceptions

In outlining some common traits of Native American religions, it is first necessary to dispel two common misconceptions: (1) there is one “Native American” culture and (2) Native American “religions” are simply “Indian versions” of other religions. Both of these misconceptions are inaccurate and insulting. First, the terms “Native American” and “Indian” do not refer to one, contiguous culture, but rather to a highly diverse range of peoples. Second, according to many sources, there is no such thing as a “religion” among most Tribes. Prior to exploring any common characteristics among the “...more than 500 distinct cultures...” of North America, some details of these two realities must be recognized (McLeod 2003, p. 1).

The diversity of cultures and languages of Native North America is well documented and need not be explored here in detail. However, it is especially important to note that when this thesis refers to “Indians” or “Native Americans,” the well-known multiplicity of peoples involved is acknowledged. Even as common characteristics of religions are reviewed, the intent is not to suggest any form of unified or singular belief system. As Griffin (1995) asserts, “the perceived homogeneity of Native American religion was conceived by persons ignorant of the complexity of Native American peoples” (p. 396). Or, as Winslow (1996) explains, “it is difficult to describe one Native American religion, because Native Americans identify themselves by Tribe, and many beliefs differ by Tribe. Native American religions reflect traditions that have existed in the Americas [since time immemorial], and a rich plurality of traditions have evolved” (p. 1295).

Defining any component of another group’s religion is a difficult task. Furthermore, categorizing the faiths of countless distinct peoples as one unified system of belief is unjust. Instead, the purpose of this section is to identify broad similarities among the spiritual beliefs and practices of Native Americans in the United States in order establish a foundation against which the Native American freedom of religion claims can be tested. Thus, innumerable profoundly complex religions will be encapsulated in a general examination of “Native” spirituality. Admittedly, in representing *many* native religions, such an examination covers *no* specific religion in

particular. Such an undertaking is an important means for Native communities to band together for mutually beneficial purposes. In the words of Carmichael et al. (1994),

...it is important to remember that there are many discrete indigenous voices, not a single voice. The richness and diversity of indigenous cultures would be diminished by any suggestion that there is true pan-Tribal unanimity. For political purposes, however, it can be useful to raise many voices together, to be better heard by those who threaten the safety of sacred sites. (p. 2)

Thus, the intent of exploring common traits of Indian religions is to follow Carmichael's suggestion of raising many distinct voices in unison for the purpose of political strength. Indeed, though "Indian religions cannot be discussed as a monolithic system of beliefs and practices... Tribal religions do tend to share some common features as do Judaism, Christianity, and Islam" (O'Brien 1995, p. 453 note 16).

The erroneous belief that Native American religions are simply "Indian versions" of other religions is a much more deeply entrenched misconception and thus more difficult to address. As with any word, the term "religion," as it is spoken and expressed in English, has limited meanings appropriate only to specific contexts. Undeniably, those contexts did not include the peoples of the Western Hemisphere until well after the word had adopted its limited connotations. Thus the application of the word "religion" to the spiritual belief systems of peoples to whom it was never intended to apply is misleading at best. In fact, in many ways the word is entirely inappropriate because, "in their traditional languages, Native Americans have no word for religion" (Rhodes 1995, p. 18). Or in the words of Winslow (1996) "notably, no traditional Native American language

has one word that could translate to ‘religion’” (p. 1295). Or, O’Brien (1995), “most Indian languages do not possess a word translatable as ‘religion.’ Rather, the concept of religion permeates one’s existence and is indistinguishable from one’s cultural, political, and economic existence” (p. 453).

As is revealed below, the literature suggests that there is no such thing as an “Indian Religion.” There is far too great a diversity among Native Americans for any one “religion” to be able to encompass so many distinct belief systems. In addition, even the many distinct Indian belief systems would not generally qualify as “religions” as the Western world would understand it because the “religious” aspects of Indian life are often completely impossible to discern from everyday life. Literally every action and movement through the day can hold spiritual significance. Through an academic lens – which measures religions by their division of the sacred and the profane – it is not possible for literally everything to be religious. Therefore Indians cannot possibly have a religion by traditional standards. In other words, if *everything* is religious, then *nothing* is religious.

Nonetheless, for the purposes of this paper – and for the lack of a better alternative – I will refer to Indian or Native American religions (or Native American spiritual belief systems), not in the standard Western sense, but in a manner intended to respect the intricate and inseparable cultural connections that Indian spirituality has to Indian culture. Thus, the use of the phrase “Indian religion” refers to religion in the way



that individual Tribes would define the word using their own terms and contexts, not as is it is used to define the Western religions.

#### Common traits of Native American spiritual belief systems

“Although there is great variation among the religious traditions of different American Indian Tribes, some generalizations are useful for analyzing [their religious freedom struggles]” (Hardt 1989, p. 602). Pursuing such an analysis, Rhodes (1995) suggests that “ethnological illustration will demonstrate that, despite this acknowledged diversity, the philosophy and core beliefs behind the various Tribal religions traditionally were and today remain remarkably similar” (p. 17). One of the clearest similarities among Tribes is the recognition of the supernatural as an influential and ever-present component of reality.

“While there is diversity among First Nations in terms of their religious beliefs, all recognize a number of spiritual and supernatural beings” (Cummings and Whiteduck 1998, p. 6). This recognition of the supernatural is not limited solely to beings, but also extends to familiar places and otherworldly realms. “For traditional native peoples, the landscape includes not only the physical world of rocks, trees, mountains, and plains but also the spirit world” (Gulliford 2000, p. 67). These supernatural, or intangible, realms can literally be found everywhere, permeating every element of the universe, every aspect

of life. In many ways there simply is no division between what religious sociologists refer to as the sacred and the profane. As Walker (1991) explains:

This division of the world into two domains, the one containing all that is sacred, the other all that is profane, is a distinctive trait of most religious traditions. [However], among American Indians the sacred is more founded on the idea that it is an embedded attribute of all phenomena. (p. 103)

Or, stated more suitably in the perspective of Native Americans, nothing is purely profane.

As suggested in Section One, the implications of this characteristic are important, but too often overlooked. The First Amendment was written by men who had little or no concept of such all-encompassing belief systems. These men referred to “separation of church and state,” because, to them, such a concept was not only conceivable, but actually desirable. The religious protections they imagined were inappropriate, or at least inadequate, for peoples who view the universe as a celebrated melding of the visible and the invisible, the natural and the supernatural, the spirit world and the extant world. The significance of the connection between the tangible and the intangible was overlooked by these men who were only familiar with – and respectful towards – the teachings and philosophies of Western faiths.

Evolving out of this recognition of the ever-present supernatural qualities of life is a complementary perspective of humanity’s place in the world. “A ‘striking common feature’ of native cultures is a relationship to the natural world in which humans are but a

part...” (Gardner 2002, p. 68). In other words, humanity is not superior or higher, or even more advanced, than other beings. Instead, humans are but one of many types of “people.” We live among plant people, animal people, rock people, and spirit people. According to the majority of Native American beliefs, we humans share the world with other beings as equals in a far greater sense than is common among Euro-Americans. This generous point of view, simultaneously modest and respectful, greatly impacts all other values and perspectives. As Leroy Little Bear (1998) explains, this humble view of humanity’s place in the world is a reflection of deeper metaphysical beliefs.

The aboriginal philosophy and world view expresses no ultimate cause. There may be. We may talk about Creator in the same way that we talk about God in an existential sense. ‘Creator’ really doesn’t mean the same thing that is suggested by ‘God’ in English. When I say there is no ultimate cause, it’s because there’s a realization that humans are such a small speck of dust in the total cosmos, there is no way humans could even begin to take in and understand the whole of cosmos to say, ‘this is the way it is.’ (p. 18)

Little Bear’s words are important to understand: “humans are a small speck of dust in the total cosmos.” Humanity is only a *part* of the greater picture. Humans are not the center of the universe. Humankind is a part of – not superior to – other features and beings of the world. This perspective of “humans as only as part” leads to the ideas of interdependency and interrelatedness. With all beings as equals, the world is ordered by a system of mutuality and complementary exchange. “Most Native Americans saw [and see] themselves as enmeshed in a web of interdependent and mutually complementary life” (Grinde and Johansen 1995, p. 36). This perspective is quite divergent from the

viewpoint of familiar to Euro-Americans and also has considerable implications for issues of religious freedom. “As one of earth’s many life forms, Indians perceive an interdependency between life forms that escapes the Western mind” (Rhodes 1991, p. 19).

Connected to the view of interdependency are feelings of interrelatedness. Not only are humans simply one of many types of people, we are also one branch in a large family of related beings. “The land, its birds and animals, trees and grasses, streams and lakes, valleys and mountains, winds and breezes, and boulders and stones, are all relatives of the American Indians” (Rhodes 1991, p. 21). “Our people talk about me and the land being the same, I am the environment, and the land is one of our very close relatives” (Little Bear 1998, p. 18).

Such a perspective affects how a people treat and interact with the world around them. According to American pop-culture items such as Chief Seattle bumper stickers and posters, “Indians” cared for the land in a special way. Though often a perversion of the “noble savage” myth, such sentiments are not always entirely inaccurate. “Many Native Americans practiced a stewardship ethic toward the earth long before such attitudes became popular in non-Indian society” (Grinde and Johansen 1995, p. 22). “Many native peoples honor and celebrate the plants as well as the animals that they consume, out of a belief that the essence of life that animates human beings is also present in the entire web of animate and inanimate life” (p. 42).

According to many authors, this ethic was as much a form of self-preservation as it was a spiritual practice. To treat the living and supernatural world as family is to secure one's place within that world. The center of the living and supernatural world is the landscape. Indeed, much of the literature regarding Native American spirituality focuses on the centrality of land in Indian faiths (see Brown and Cousins 2001; Carmichael et al. 1994; Cajete 1999; Churchill 2002; Deloria 1999; Grinde and Johansen 1995; Hubert 1994; Price 1994; Smith 2004; Swan 1990). Relationships and engagement with revered locations, or "sacred sites," form the foundational basis of many Native religions. Given this widely accepted notion of the importance of sacred sites to Indian religions, it is essential to note the bio-geological composition of these special places. "Over and over again these sacred places are connected with, or are, what the western world classes as 'natural' features of the 'landscape,' such as mountain peaks, springs, rivers, woods and caves" (Carmichael et al. 1994, p. 1). Understanding why and how such places are sacred is crucial to understanding Native religions.

According to Cajete (1999), the Native peoples of North America shared a common set of "life principles" revolving around the knowledge that their very survival depended entirely upon the places in which they lived (p. 6). This knowledge was based upon a broader awareness of ecology, in which "American Indians understood that an intimate relationship between themselves and their environment was the essence of their survival and identity as people" (p. 4). While the diversity of environments created a

diversity of cultures, there was a common acceptance that, for the sake of survival, interactions with the surrounding world must be enacted with a knowledge-based respect and a humble understanding of the sacred landscape. In other words, “the environments of diverse Indian peoples may have been different, but the basis of their theology was the same” (p. 6).

The basis of this “theology of place” is not just the place itself, but the holistic interconnection of that place to all of creation. This is what Carmichael et al. (1996) term “cosmotheism,” or the belief that “...all natural parts of the world have a human-like life force...” and that everything must therefore be “...treated with proper respect” (p. 6). Such an extensive belief system is due to countless generations of living in a place where the people shaped and were shaped by the geology, climate, waters, ecosystems, plants, and animals of a particular place (Cajete 1999, p. 3). Through this intimacy, many Tribes believed that the land upon which they lived was itself alive, and that its life consisted of and depended upon the many elements of its composition, including its human populations. Therefore, such Tribes would not conceive of themselves as separate from the place in which they lived (Brown and Cousins 2001, p. 14). Furthermore, “American Indians’ traditional relationship to and participation with the landscape includes not only the land itself but the way in which they have perceived themselves and all else” (Cajete 1999, p. 3).

Participation with the landscape, and with its most sacred components in particular, is another important common feature to consider. According to Deward E. Walker, Jr. (1991), engaging with the sacred in American Indian culture...

...entails actually entering sacredness rather than merely praying to it or propitiating it. Whereas Judeo-Christian religion tends to create its own sacred space and times arbitrarily by special rituals of sacralization, American Indians attempt to discover 'access points' or 'portals' to the sacred that are often impossible to know before the dreams or visions that reveal them. (p. 104)

Acknowledging this practice of engaging with, or entering into, the sacred is crucial for the purposes of providing religious freedom. If interaction with a specific place is a necessary religious act, then that place demands protection. Once the act of "entering" a place, both physically and spiritually, is required for "access" to the sacred, the destruction of that place by outside powers should be considered a legal impossibility. Yet, as is demonstrated in Section Three, U.S. courts have repeatedly failed to even recognize the importance of participation with the sacred, let alone offer protection. For this reason, it is important to consider the most important ways in which it is possible to "interact" with the sacred.

Various forms of communication are the most common means of engaging with the sacred. Whether through ceremony, ritual, prayer, or vision, connecting with the sacred through communication is a central religious practice. In fact, Walker (1991) suggests, "American Indian religions are distinguished by a strong dependence on visions, dreams, and a very exacting and demanding ceremonialism, all of which are

concerned primarily with communicating with various spirits and maintaining the natural and cultural orders” (p. 104). It is important to note that Walker refers to a “strong dependence.” Communicating with the sacred, whether in the form of visions or ceremonies, is a *necessary* and indispensable practice. As Walker implies, to lose the access points of communication with the sacred would be to lose a primary means of maintaining order in spiritual affairs. The loss of such places happens every day in the United States – as is described in Section Three – even though such losses obviously harm the religious freedom of Native Americans.

An important consideration here is the sense of obligation that Indians feel towards the preservation of and continued interaction with their holy places. Native scholar Vine Deloria even goes so far as to suggest:

People have been commanded to perform ceremonies at these holy places so that the earth and all its forms of life might survive and prosper... They must perform certain ceremonies at specific times and places in order that the sun may continue to shine, the earth prosper, and the stars remain in the heavens. (Deloria as cited in Gulliford 2000, p. 68)

If Deloria is to be taken seriously, which I believe he should be, then his words are a powerful testament to the sense of spiritual responsibility that Native Americans retain. The implications of such *requirements* cannot be ignored when considering religious freedom needs. Indeed, since “the rituals of many Indian religions are *required* to maintain the spiritual and earthly harmony and balance of nature, the community, and the person” (O’Brien 1995, p. 453) and since engaging with sacred places is required for



such rituals, then for genuine religious freedom to exist for Native Americans, their sacred places must be protected. Section Three offers a review of numerous examples in which sacred places were *not* protected despite the acknowledged spiritual obligations to which particular Tribes were held. Prior to providing analysis of these cases, however, it is first necessary to establish a clearer foundation of the spiritual relationships Native Americans can have with their land.

#### Native American relationships with landscapes

The literature strongly suggests that land is and has always been very important to Native Americans, both spiritually and culturally. As the following quotations illustrate, multiple authors highlight this sentiment.

“Risky as it is to make generalizations about all North American Indians, it is safe to say that the great majority of Tribes designated certain locales as supernaturally potent and especially beneficial – as ‘sacred’” (Nabokov 2003, p. 28).

“It is the rule rather than the exception that American Indian ritual life is inextricably tied to the natural environment” (Walker 1991, p. 110).

“American Indian world views have several common aspects, including a perception of the land as essential to the identity of the people” (Tsosie 1996, p. 276).

“A close relationship with the land ‘permeates American Indian life,’ sustaining the health and well-being of individual members and, in turn, the integrity and sovereignty of the Tribe itself” (Zellmer 2002, p. 431).

“At the center of most Native American belief systems is the basic tenet that religion and faith draws heavily upon sacred lands” (Brady 2000, p. 154).

“Native people and Tribes are meaningfully and intimately connected to the Tribal homeplace not only because it embodies their homeland, but because they are spiritually, religiously, and mythically bound to that place” (McCoy 2003, p. 438).

Native people everywhere are now conducting an underprivileged and underfunded fight against unimaginably wealthy corporations to resist logging or oil exploration or uranium mining on their own land. They persist in these struggles not just because it has always been their home, but also because in some places in it are sacred to them. (Snyder p. 2)

Unfortunately, however, “what makes the Indians’ attachment to place so tragic in North America is that, in the great majority of cases, Indians have been pushed off the land they once roamed and treasured” (Rose 1999, p. 111).

Regardless of this intense attachment, Tribes in the United States have only retained about three percent of the land they originally inhabited (Zellmer 2002, p. 434). Either through force, treaty, removal or allotment, Indians have been legally separated from the places they consider sacred (Rose 1999, p. 112). However, in many cases legal separation has not ended the spiritual and cultural attachment to sacred locations that Tribes have developed during the lives of countless generations. Vine Deloria suggests

that a people's length of tenure, measured in generations, will determine their degree of attachment to the surrounding landscape. This is not only true regarding Natives. Non-natives are also familiar with the concept of certain landscapes retaining unusual significance. Ranching and farming families commonly claim a special attachment to properties that they have lived and worked on for a few generations. In such cases, the memories of grandparents and great-grandparents can be used to measure the age of individual trees or to tell stories about special features on the land. Stories told about past elders can establish strong roots and passionate attachments among the upcoming generation. However, as Deloria notes, the length of tenure determines the degree of attachment. Whereas a continuous land-tenure of greater than five generations is rare among Euro-Americans, the length of tenure for Indians and their families is often too great to count.

Non-natives are also familiar with the concept of certain locations being special enough to warrant a protected status. The cases of Yosemite, Yellowstone, and other National Parks are good examples. These places are set aside because they are unique, because they have inspired Americans of the past and will undeniably inspire Americans of the future. Such places have even been revered for their uniqueness by some of our greatest thinkers. One only needs to look to the writings of Thoreau, Emerson, Muir, Carson, Abby, or Dillard to witness the immense admiration some Americans have had for landscapes. Zellmer (2002) even suggests that by the mid-nineteenth century, "the

beauty of the American landscape provided a surrogate for a ‘missing’ national tradition” (p. 419).

Of course, National Parks are not the only areas with protected status; less revered locations are also afforded special status. Zoning laws often restrict the construction of human structures within a set distance of the banks of protected rivers. These and many other forms of land conservation are common in America because “the natural world has been a source of spiritual inspiration for the nation, as well as a stimulant for political aspirations and nationalism throughout American history” (Zellmer 2002, p. 414).

Zellmer proposes that our national heritage and identity have often found “nature” as a “recurring motif.” Though the natural resources of public lands are undeniably one of their most valued components, their “cultural significance” is also notable. “Congress has long recognized that the remarkable natural features on our public lands are true American ‘antiquities,’ integral to American culture” (p. 414). But, the respect that Indians have for land is entirely different than any of these examples.

Rose (1999) offers three reasons why land has always been important to Indians and why their attachment to it is so intense (p. 109). First, the early presence of Tribal gods and/or spiritual beings can mark a location as the center of the universe and/or the origin-place of time. From a Tribal perspective, the birthplace of the universe and the home of the spirit beings who formed the world are powerful sites too valuable for words to describe. Such places are revered with a strong sense of devotion, awe, and respect.

Second, Rose suggests that a Tribe's homeland is important because it can also be seen as the place of *Tribal* origin. If through myth or memory members of a Tribe can recall the place of their collective origin, that place will then hold a powerful significance.

This leads to Rose's third reason for attachment to place: long-term tenure. Continuous occupation of a place for centuries or countless generations will inevitably lead to a strong sense of connection. As with the example above, when features on the landscape can be described or defined by stories about great-grandparents (or the grandparents of great-grandparents), attachment to those places will be intense. Rose suggests that territory is imbued with significance because of such connections to the past. When the soil is made of the bones of ancestors, both human and non-human, that soil is then sacred. Yet, the soil not only holds the remains of an ancestor's death, but also holds the remains of their lives. The places that provided for a Tribe's ancestors are valued precisely because, without them, current generations would not exist. Ancestors literally owed their lives to the land that provided for them and, therefore, so too do current generations. In addition, the same land can provide for the Tribe today, and if cared for properly, can also provide for future generations.

Leroy Little Bear suggests that this consideration of past and future generations is a centerpiece to Native concepts of land ownership (Cummings and Whiteduck 1998, p. 6). If a place can be owned at all, tenure extends not only to the landowner but also to generations past and present, human and non-human. "Little Bear likens this Native view

of the land, and their sharing of it, to the notion of social contract espoused by people such as Locke and Rousseau, albeit extended beyond just people to other living things” (p. 6). Instead of the word ownership, McCoy (2003) refers to “sacred-land territoriality,” which, according to the author, has three notable dimensions (p. 439).

First, sacred-land territoriality is “culturally definitional” (p. 439). This means that the culture of a Tribe is defined, at least in part, by the place in which they live. Clearly climate, topography, and ecology will impact the identity of any people. Such factors will help to define and shape a culture’s sense of community. But for Native Americans, the land itself is also a “cultural centerpiece” that serves as the source of myth and as a gateway to the intangible. As McLeod (2003) explains, sacred landscapes may be visible and quite easy to recognize, but it is the invisible and mysterious realm that “holds the key to understanding the sites Native Americans hold most precious” (p. 2). As McLeod goes on to explain, “their songs and stories, visions and prophecies, secret traditions passed down from the ancestors – these are the intangible cultural practices that honor the life force of the land and carry deep emotional power for the communities that inhabit and protect America’s sacred places” (p. 2).

The second dimension of sacred-land territoriality suggests that land can be “culturally instructive” (McCoy 2003, p. 439). In this case, sacred lands teach people how to live. Important life lessons are to be learned from the balance that is maintained between the many complex elements that coexist within a landscape. Certain locations

are used by elders to teach upcoming generations secret or sensitive knowledge. Thus, in the education of a Tribe's youth, such locations are as important as the elders themselves. The same is true of ceremonies and the places to which they are connected. The land "...instructs by the way it is used in lessons and ceremonies, and in the way it is valued and thought of by the Tribal community" (p. 439). McCoy even suggests that Tribal virtues such as wisdom, courage, generosity, and harmony are all based on the examples of stories told about mythical events tied to sacred locations (p. 439). Special places can evoke aspirations to develop or maintain "sacredly held values." In other words, a place that teaches is a place that is sacred.

Sacred land is also "culturally provisional," McCoy's third dimension of sacred-land territoriality (p. 440). The benefits and virtues that a landscape grants to the people are not provided completely unconditionally. Certain stipulations must be met. Typically, these provisions include respect, consideration, gratitude and various forms of reciprocation. In order to ensure continued provision, "it is part of the Tribal religion... to give thanks to the earth for sustaining the group" (McCoy 2003, p. 440). Gratitude is expressed in countless ways, including prayer, offerings, tobacco burning, song, dance, ceremony, ritual, and many others. Some provisions are simple and met on a daily basis, such as prayers or small offerings. Other provisions are much more consequential and require great effort. Such examples typically involve engaging with the sacred at certain locations at set times of the year. Individuals are required to visit sites of religious

significance, for those places are the exclusive gateways to sacred power (p. 440). “In some native religious systems where a certain site or set of sites provide the source of sacred power, that power or ‘medicine,’ is necessary for both the practice of the Tribe’s religion as well as for the Tribe’s successful renewal” (p. 440).

McCoy’s analysis illustrates that when a Tribe is religiously attached to a landscape, such attachment is not only to the land in general, but is also intimately focused on very precise locations. In other words, “Indians do not simply worship the earth generally, but are spiritually attached to particular places on the land” (Rose 1999, p. 110). In fact, as Little Bear explains, Tribes often navigate their territory via their relationships with specific locations. “Our way of mapping our territory is through our stories. There is a story about every place. There are songs about each place. There are ceremonies that occur about those places. The songs, the stories, the ceremonies are our map” (Little Bear 1998, p. 19). This “site-specific” nature of Native American spirituality is a clear motivation for the Native calls for the protection of sacred locations – and a subsequent justification for claims of religious freedom. “Native Americans felt [and feel] obligated to protect and defend the graves of their ancestors and the sacred locations where the Great Spirit resides and communicates with them” (Gulliford 2000, p. 67). Since specific sites, not just the landscape in general, are integral to the practice of Native American religions, it is important to establish a clearer understanding of the nature of sacred sites.



### Understanding sacred sites

Sacred sites are special locations within a larger landscape that serve a crucial spiritual purpose to one or more members of a Tribe. The relative size of such sites ranges from small caves or individual trees to large bodies of water or entire mountains. It is uncommon for sacred sites to have distinct boundaries, for such unnecessary restrictions are typically not found within traditional relationships to spiritual locations. The activities engaged in at sacred sites also ranges greatly, from simple momentary prayers by individuals to large-scale, multi-day ceremonies engaged in by hundreds of people. Despite this immense range in the types of sacred sites, the literature does suggest a number of common defining traits.

In their multitude of forms, all sacred sites serve as “conduits” to powers or “medicines.” Such power may take the form of communication with the sacred in ways that cannot be obtained in any other way or at any other place. As Evans (1997) notes, “sacred places suggest an opening between this reality and the transcendent one, where communication with the sacred is made possible” (p. 52). A host of other forms of power-relationships exist beyond communication with the sacred. Brady (2000) proposes that Native Americans are able to “channel” their beliefs, both physically and spiritually, through their engagements with sacred sites. In this way, sacred sites literally serve as a “conduit” through which religious belief and practice are channeled (p. 156). Walker (1991), describing sacred sites as “access portals” to the sacred, notes that such sites are

typically “natural and temporal discontinuities” or “points of geographical or natural transition” within a landscape (p. 110). In other words, sacred sites are often unique environmental features that radiate a sense of power.

Smith (2004) offers four main qualities of sacred sites. First, such locations are embedded within and a fundamental component of the oral traditions of the people. As noted above, long-term tenure of an area leads to great attachment to place; “...the greater the attachment, the larger the number of sacred sites” (Gulliford 2000, p. 68). Second, according to tradition, these sites witnessed or generated powerful supernatural events. Hardt (1989) also notes that sacred sites are often marked by their association with religious events of the past, either in memory or in myth (p. 605). Deloria (1999) observes that places connected to an event of miraculous or religious importance are special because they were not made sacred simply by the actions of men, but by a larger power (p. 207). Third, sacred sites contain plants, herbs, minerals, animals, waters, or other spiritual connections that have healing powers or indispensable energies. “These locations may be considered sacred... because they contain specific natural products [and] because they are the dwelling place or embodiment of spiritual beings (Hardt 1989, p. 605). Finally, a sacred site is where a person can best communicate with the supernatural world. According to Smith, many sacred sites contain some degree of each of these four qualities. However, any of these attributes can designate a site as “...an integral part of religious practices” (p. 125).

When a site performs any of the above services, its function within the accompanying religion is *essential* for the practice of that religion. In other words, the religion cannot fully operate without it. Thus, preserving the integrity of sacred sites, given their vital importance and centrality in Indian religions, dictates the faithful observation of appropriate behaviors at and near those sites. “To say that a specific place is a sacred places is not simply to describe a piece of land, or just locate it in a certain position in the landscape. What is known as a sacred site carries with it a whole range of rules and regulations regarding people’s behavior in relation to it, and implies a set of beliefs to do with a non-empirical world” (Carmichael et al. 1994, p. 3). This notion of appropriate behavior is also crucial to the application of religious freedom to Native religions.

The concomitant concepts of separateness, respect and rules of behavior seem to be common to sacred sites in different cultures. But the nature of the sacred sites themselves may be very different, and thus difficult for those outside the culture to recognize, except by observation of the rules of behavior that pertain to them. There may be no other way to recognize a sacred site, and this is of central importance, for the clash of interests... often arise because outsiders are unable to recognize the sacredness of the sites they are disturbing. (Hubert 1994, p. 11)

Other authors support Hubert’s assertion that rules of conduct, in some form, are attached to all sacred sites. One common theme is that of secrecy, which has been a major point of contention between Indians and non-Indians, both allies and opponents. In attempting to protect, or avoid the destruction of, sacred sites, outsiders are often confused or frustrated by the refusal of Native Americans to share the location, number,

or nature of sacred sites that they claim are threatened. As Griffin (1995) asserts, “quantification of sacred sites is difficult since many Native American religious beliefs are tied to maintaining secrecy of these sites” (p. 397). Without the capacity to quantify and locate sacred sites, there is great difficulty in protecting or avoiding them.

However, as Carmichael et al. noted above, sacred sites come with “a whole range of rules and regulations regarding people’s behavior.” The demands of non-Indians to understand sacred sites, for whatever reason, cannot take precedence over well-established rules of conduct. For instance, the Forest Service’s “need” to locate and identify the sacred sites located on Forest Service lands cannot possibly outweigh a Tribe’s tradition of secrecy regarding their places of spiritual importance.

McCoy’s concept of sacred lands having “provisional” qualities, outlined above, also fits into this notion of the importance of rules of conduct. As is noted, the benefits and virtues that a landscape grants to the people are not provided completely unconditionally. Certain stipulations must be met. In addition to McCoy’s references to respect, consideration, and gratitude, other authors suggest that the maintenance of the “quality” or “integrity” of sacred sites is another provision of their power. “The quality of... sites is an essential element of their sacredness” (Hardt 1989, p. 606). Gardner (2002) even suggests that the quality, or “purity,” of the surrounding landscape is important.

Specific sites or areas with such inclusive and perhaps imprecise designations as ‘the high country,’ or even an entire land form, may be

considered places where people, the world, or life began, or as axes upon which the world turns. There, people relate to ancestors and humans, animal and plant relatives, and to the most significant powers, in a relationship inextricably linked to the purity of the natural habitat. (p. 68)

The maintenance of the quality, or purity, of these sites and their surroundings is important because they cannot be replaced. “Without continuing access to many sacred sites that maintain their physical integrity, most practitioners of traditional American Indian Religions will be denied the opportunity to practice many vital ceremonies” (Walker 1991, p. 101). As Rievman (1989) explains, such ceremonies cannot be conducted elsewhere. “Sacred Indian lands often serve as the only place where a particular religious ceremony can be performed. Thus, if Native Americans are no longer able to perform both group and personal rituals at a specific site, it is entirely possible that they would abandon these rituals” (Rievman 1989, p. 173). In other words, without sacred sites that retain their integrity, Native religions will suffer greatly. This is because “...if a site is desecrated in such a way as to diminish its power, it is lost forever” (Griffin 1995, p. 397). Rose (1999) explains the dilemma well: “Indians attach religious and spiritual significance to particular sacred places and areas. Once these areas are occupied or shared in ways that inhibit Indian worship, they cannot be replaced. They are fixed geographical spots that cannot be moved and for which there is no substitute” (p. 111).

For considerations of religious freedom, this phenomenon raises serious concerns. In the case of most Christian faiths, if a church burns down, it can be replaced in the same location with the construction of a new church or it can be replaced through the use of a

different church in a different location. Thus, the loss of a church is not a serious obstacle to the practice of the Christian religion because the church *can* be replaced. The actual structure of the building and the land on which the building sits, though not unimportant, are not irreplaceable. The actual practice of the religion is not dependent upon a particular place. The most important function of the church is to provide a venue for the study of scripture. However, the scripture and the building can be separated, in which case it is the scripture, not the building, that takes precedence. This is because the scripture is a primary component of the religion, while the church is only a vehicle through which scripture is taught and learned.

In the case of Native American religions, however, specific locations *are* irreplaceable. In this way, landscapes are more similar to scripture than to churches. To lose a sacred location is to Native Americans what losing a part of the bible would be to Christians. The loss is devastating to the religion, not simply because it was a place in which religion was practiced, but because the place was *itself* the religion. “These places are, unlike churches and synagogues, ‘believed to have spiritual power in and of themselves’” (Falcone as cited in Griffin 1995, p. 397). Rose (1999) explains why this is a problem not addressed by religious freedom as it has been designed in America.

One need only pause a moment to note that a sense of space tied to structures built by humans is vastly different from a sacred geography tied to the land. Physical structures can be moved in a way that the sacred places of Indian country never can. For the Framers, as long as freedom of belief could be guaranteed, the constitutional protection of particular

sacred spaces was secondary since their sacred geographies could be created and recreated. (p. 131)

Of course, as Griffin (1995) notes, all religions have their holy places and the need to shelter such places from damage is not a foreign concept to anyone (p. 397). “However, Native American sacred sites have not been afforded the same protection as their counterparts because most Euro-Americans do not view them as conventional places of worship” (p. 397).

Hubert (1994) has identified a potential source of this lack of equal protection when he questions if the sacredness of Native religions can ever be truly understood by outsiders. “What does the word ‘sacred’ mean, anyway? Even if we can define it in our own language, to what extent is the world an adequate translation of the word or words that denote unfamiliar concepts in other cultures and religions?” (p. 10). Language is necessarily a limiting factor in understanding complex concepts, yet is the only medium through which such ideas can be expressed from one culture to another. In English, the word “sacred” is derived from Latin and pertains to the setting aside of something ordained or consecrated as holy (Hubert 1994, p. 11). This definition is limiting considering that it is applied to cultures far removed from the Latin-based languages of Western Europe.

An important consideration here is the extreme variance between what Indians consider sacred and what the Christian-minded lawmakers of the United States considered sacred when they wrote the documents and judicial decisions of America’s

religious freedom standards. The next subsection attempts to explore the extent of this clash by contrasting the common belief systems of Native Americans with the metaphysical belief systems of Christianity. Such a contrast is a useful means of better understanding the nature of the challenges Indians face in their efforts to secure religious freedom from a nation that views the world so differently.

### Contrasting Native and Christian Worldviews

The intense clash between the first Americans, more than 500 distinct cultures, and the waves of people who came here from Europe... was [and is] a clash of values, a clash of worldviews, and, at its deepest level, a metaphysical clash. At its heart, the clash entails very different views of what constitutes power and the appropriate human relationships to power. The essence of this culture clash is the question: 'What is sacred?' Or, stated another way: 'What do we as a culture value more deeply?' (McLeod 2003, p. 1)

Seeking a clear understanding of these questions regarding power relationships and values is an important step towards securing the religious freedom of Native Americans. These metaphysical clashes of values and worldviews are not limited to the past. Even today, most Euro-Americans and Native Americans would provide divergent answers to the questions of "what is sacred" and "what do we most value." There is no doubt that each of the many cultures in question would agree upon the existence of some form of otherworldly "sacredness," but their perspectives would certainly not be parallel. As Walker (1991) points out, "it is generally agreed upon among scholars that all known



religious beliefs, whether simple or complex, possess *some* sense of the sacred, although American Indian notions of the sacred may diverge somewhat from [Western definitions]” (p. 103). Hardt (1989) identifies the divergent views of “the source” of the sacred as a primary way in which concepts of the sacred differ between the West and Native Americans.

Religions of the Western traditions focus on the existence of a single, transcendent God. This singular focus is persistent to the point of intolerance; even the slightest suggestion of other sources of sacred power beyond this monolithic God is unacceptable. In American Indian traditions, on the other hand, the Supreme Being, Creator, or Spirit People is/are manifested in all objects and beings. Sacred power can be found everywhere and finding new sources and expressions of such power is always possible. Many other differences in concepts of the sacred follow these divergent perspectives of monotheism versus cosmotheism.

A primary difference evolves from the divergent views of humanity’s proper relationship to the earth. According to Genesis 1:28, God gave humans the absolute directive to “be fruitful, multiply, replenish the earth, and subdue it: and have dominion ... over every living thing that moveth upon the earth.” Thus, humans are meant to be dominant while the remainder of the physical universe is meant to be subservient. Exploitation of mountains, forest, and other living beings is not only acceptable, but actually a spiritual imperative. God deemed humankind’s relationship to the earth as one

of competition and struggle. Humans are separate from the earth and all of its components, destined to accept an administrative role.<sup>18</sup> Little Bear (1998) indicates that belief in this version of creation has led to the embedded social notion of “hierarchical order,” in which people constantly struggle to arrange themselves in ascending levels of superiority (p. 17).

Attached to this view of separateness is the perspective that humanity has been “exiled” into a “dangerous wilderness,” and that all things “wild” must be controlled and tamed (Retherford 2004, p. 970). To this end, humans are meant to populate the earth as they subdue it. Thought of only as raw material to be bought and sold, the land is objectified. It is treated as though it must be transformed from ‘wilderness’ into something worthwhile (p. 970). This perspective stuck with Europeans as they invaded North America. The “new” land was “wild, uncultivated, and apparently up for grabs” (p. 970). “Even today, this ‘prejudice against wilderness [has] the strength of centuries behind it,’ and continues to influence the policy and development choices of the United States by favoring an objectifying, utilitarian view of the land” (p. 970).

The basis of this view is man’s “fall from grace” in his exile from paradise. “When the Garden of Eden closed, nature fell with humanity and became corrupted as well. Thus, the land is a wilderness, full of the monsters of folklore and plagued by the vagaries of an indifferent nature, a place where survival is uncertain” (p. 970). Thus, in

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<sup>18</sup> This vision is based on a particular interpretation and biblical translations that not all Christians accept. An obligation of stewardship towards creation is also applicable here.

this tradition, this world is flawed and our lives upon it need only be temporarily endured. Winslow (1996) explains, “Christianity teaches that man is doomed from shortly after creation until the end of the world. Therefore, Christians look forward to the end of time as that is hopefully the date of their resurrection into heaven, and they may pray that the end should come quickly...” (p. 1298).

Native American traditions, on the other hand, perceive humanity’s proper relation to the earth in an entirely different light. “Rather than viewing the earth and its creatures as objects to be harnessed and exploited, Indians consider them equal partners in the enterprise of life” (Rhodes 1991, p. 18). The earth is not to be subdued or dominated. Exploitation is not only unacceptable, but as McCoy explains above, sacred lands come with certain provisions and must be treated with *respect* and *reverence*. In essence, this is a rejection of the “anthropocentric view that characterizes Western thought and religion” (Rhodes 1991, p. 18). Retherford (2004) insists that Indians relationships with the earth are based on dependence as opposed to dominance (p. 971).

The sense of time is another major divergence between the Judeo-Christian traditions and Native American traditions. Non-Natives view time singularly and linearly. Each minute, hour, day, and year is new (Cummings and Whiteduck 1998, p. 5). This type of thinking “...lends itself easily to dichotomies, categorizations and singularity: there is ‘right’ and ‘wrong’, only one ‘God’, and only one ‘true answer’” (p. 5). Natives, on the other hand, view time cyclically. “For native peoples, as an example,

time is often neither linear nor narrowly circumscribed by decades or centuries; rather, it is circular and without boundaries. Thus, a sacred landscape spoken of in ancient myth is as sacred today as it was when the spirits were creating it” (Gulliford 2000, p. 2).

In this way the concepts of time and *space* are connected. For Indians, a spiritually based sense of place relies on old stories, told and re-told with each subsequent generation. Protestant Christianity, on the other hand, “... has been evangelical, transportable, Bible-based and not rooted to a particular landscape” (Gulliford 2000, p. 67). Europeans were able to leave their homelands, their cathedrals, and their cemeteries without leaving their religion. “They crossed the water and then crossed the continent and reconstituted their religious communities by building new churches” (p. 67). Such a transfer of place is possible because, to Christians, time is more important than space. Teachings focus on the past and the future, not necessarily on locations. However, as Little Bear explains, the opposite is true for Native Americans.

Space, as opposed to time, is the more important referent to us. For example, if I were given a watch and it was December 25<sup>th</sup>, in the non-Indian way of thinking, it would not matter if I were in South Africa or the moon, it would be December 25<sup>th</sup>. If I was Christian, I would celebrate Christmas. In our [Native] ways, we celebrate [different rituals]. There is no fixed time to start such as 9am, July 22<sup>nd</sup>. It is when we are ready. The important thing is that it always happens at the same place. For us place or space, not time, is the important concept. (Little Bear 1998, p. 19)

Thus, Hardt (1989) describes Western traditions as “temporally oriented” and American Indian religions as “spatially oriented” (p. 603). “While the time at which a

religiously significant event occurred is the focus in Western traditions, the place where it occurred is important in Indian Religions” (p. 603). O’Brien notes that this strong religious emphasis on particular locations is outside the common experience of non-Indians and is therefore a challenging concept to grasp. “For a society accustomed to primarily attending services on Sundays and to worship *at any of several locations*, it is most difficult to appreciate a non-Western religion that requires the performance of a ritualistic act... *in a certain place* [italics added]” (p. 454).

Yet, the Judeo-Christian traditions are not entirely unfamiliar with the concept of sacred locations. Their outlook on the issue, however, is again very different than Indian views. Cummings and Whiteduck (1998) imply that Western faiths, particularly Christianity, rely upon “...codified texts as validators of sacredness” (p. 8). The faiths of American Indians, however, have no need of such holy manuscripts. If anything, the sacred locations on the landscape serve as their sacred texts. As Cummings and Whiteduck assert, “Sacred sites... are cultural landmarks and cultural texts” (p. 13). Unfortunately, this concept has been difficult for non-Indians to accept. Yet, holding Indian faiths to the standard of defining the sacred through codified texts “...denies First Nations peoples the right to determine their sacred traditions, history, and places. In essence, First Nations peoples would have their cultures dictated to them by an alien culture” (p. 8). What *does* validate geographic sites as sacred? Cummings and Whiteduck (1998) explain,

[Sacred sites] need not be recognized by plaques or monuments to have legitimacy. They do not need to be formally codified in a sacred text to be 'true.' They need only be recognized by the believers as sacred. They do not have to have the approval and blessing of a foreign culture to have legitimacy. One culture cannot assume the prerogative of defining, interpreting and legitimizing another culture's religion. To do so is to go beyond cultural colonialism to cultural imperialism. (p. 13)

Cummings and Whiteduck focus on this notion of "codification." They insist that Native American sacred sites, though not recorded in written texts, are present in the memories and oral traditions of their people, which is certainly enough to validate their authenticity. Historically, however, this has not been sufficient in U.S. law. The legitimacy of sacred sites has repeatedly been questioned. Yet, "in the Jewish tradition, the legitimacy of 'The Promised Land' or 'The Holy Land' is not open to debate" (p. 7). Even Christianity and Islam have adopted areas of the Middle East as important to their faith and the sacredness of these areas is never scrutinized. Why, then, do these Western faiths receive the benefit of unquestioned authenticity, while American Indian faiths must prove themselves? The answer, according to the authors, has to do with codification. These areas are worthy of the designation of sacred, "by virtue of their being recorded and codified in the sacred text (The 'Holy' Bible)" (p. 7). Thus, because American Indian religions lack such codification enjoyed by the Western traditions, "they have historically been relegated to the status of 'folk religions' at best and pagan and heathen at worst. By denying them the status of the 'Great Traditions' it becomes easier to

dismiss their legitimacy *in toto* and the significance of their sacred sites in particular”

(p. 7).

Obviously, this biased standpoint must be abandoned. Native American sacred sites should not require the same standards of authenticity and legitimacy as those of the Western faiths. In addition, not only do Indians *not need* sacred texts to legitimize their sacred sites, such texts would actually be insufficient – especially the ancient ones of the Judeo-Christian tradition that are limited exclusively to the past. Revelations regarding new locations cannot be drawn from such texts. Thus, there would be no room for what Vine Deloria has identified as one of the most important types of sacred sites: holy places not yet revealed by higher powers. According to Deloria, because of the dynamic nature of Native American faiths, new sites will be revealed at unknown points in the future. Practitioners of these religions, in their ever-expanding relationship with higher powers, must always be ready to receive new revelations at new locations.

Unfortunately, some federal courts have irrationally and arbitrarily circumscribed this universal aspect of religion by insisting that traditional religious practitioners restrict their identification of sacred locations to those places that were historically visited by Indians, implying that at least for the federal courts, God is dead. In denying the possibility of the continuing revelation of the sacred in our lives, federal courts, scholars, and state and federal agencies refuse to accord credibility to the testimony of religious leaders, demanding evidence that a ceremony or location has *always* been central to the belief and practices of the Tribe... In other words, courts will protect a religion if it shows every symptom of being dead but will severely restrict it if it appears to be alive. (Deloria 1999, p. 211)

Deloria's point cannot be overlooked. In some places Native Americans still practice intricate, "living" religions that continuously grow and evolve. Their religious identity is not restricted only by what their religions once were, but what they are constantly becoming. Hardt (1989) identifies this characteristic of Indian faiths as a major defining factor in the many ways that "...American Indian religious conceptualizations differ from those of Western traditions (p. 602). According to the author, Western faiths are "commemorative," whereas Indian traditions are "continuing." The differentiation is crucial to understanding what Native Americans *need* in order to retain genuine religious freedom.

In "commemorative" traditions, stories and concepts of origins are linked to a specific person operating at a certain time or to a certain event. The chronologies of such traditions are linked to the regular remembrance of these events and ceremonies are designed to "commemorate" them. Timing is crucial, but location is often inconsequential. The "continuing" traditions of American Indians, in contrast, have stories and concepts linked to past events and times, but are always much more focused on where such events took place. Their ceremonies are not intended to commemorate the past, but are performed as needed for a specific purpose related to present conditions such as the reestablishment of balance in the universe (p. 603). Much more important than "when" such a ceremony takes place, is that it occurs in the proper location.



Combined with Deloria's notion of unrevealed sacred sites, Hardt's concept of Native religions as "continuing" demonstrates the fact that such religions literally *need* their sacred territories for genuine religious freedom. As Deloria implied, Native Religions are not dead. In a way that the Western faiths would have trouble comprehending, Indian religions are a constant blending of the preservation of prior traditions with continuing acceptance of new visions (Cummings and Whiteduck 1998, p. 6). In both established traditions and new visions, relationships with sacred landscapes are integral to religious belief and practice. Yet, as is demonstrated in Section Three, the sacred territories and specific sacred sites of Tribes have been continuously threatened by outside powers despite repeated appeals to the First Amendment.

### Conclusion

This section attempted to demonstrate the following points: (1) relationships to landscapes are a central feature of many Indian religions; (2) the functions that sacred sites serve are absolutely essential for the practice of such religions; (3) sacred sites are always associated with codes of appropriate behavior, the faithful observation of which is also fundamentally essential; (4) Native American religions *are not dead* and continue to grow and evolve; (5) sacred sites are not limited to those locations recorded in the archives of history and anthropology, but are instead a dynamic element of an ever-growing theology of place. The next section examines how Native American systems of

spirituality have fared in attempting to apply the First Amendment and America's concept of religious freedom in the U.S. court system.

### Section Three: Cases Examples, Select Problems, and Proposed Solutions

*In seeking and guarding access to sacred sites, American Indians need a guarantee of religious freedom for their ceremonies, festivals, medicinal plant gathering, and pilgrimages, which differ from Christian traditions. Because most Americans have not understood the uniqueness of Indian religions, they have violated the free exercise of it. We need, instead to understand landscapes in the context of traditional Native American religion and the powerful, enduring presence of sacred geography (Gulliford 2000, p. 68).*

*It is very easy to fail to notice the deleterious long-term effects of the imposition of our legal, moral, and ethical tenets upon the Native American way of life (Brady 2000, p. 158).*

#### Introduction

Section Three of the literature review demonstrates what happens when the conditions of Section One meet with the conditions of Section Two: the biased version of religious freedom inherent in the First Amendment repeatedly neglects the place-based spirituality of Native Americans. Though all three branches of the U.S. government have had numerous opportunities to remedy the continual religious injustices plaguing Native Americans, each has failed to end what has become a dark tradition of religious intolerance in this nation. The judicial branch has proven especially unreasonable, inconsistent, and culturally biased. In fact, the Supreme Court has yet to hand down a verdict favorable to American Indian land-based claims for religious freedom, revealing again and again that religious freedom in America does not apply to sacred places even

though such locations are religiously indispensable to Native faiths. This prejudice displayed by the high court has proven so devastating to the religions of numerous Tribes that both the executive and legislative branches have attempted to intervene with decrees designed to protect American Indian religious freedom. Unfortunately, these supposed interventions are weak and represent non-committal attitudes towards the granting of genuine religious freedom to Native Americans. Thus far, legislative acts and executive orders have been vague, easily-evaded, and thus incapable of reversing the damaging decisions handed-down by U.S. Courts.

The purpose of this section is to review such case examples that clearly demonstrate the failure of the U.S. government to justly offer religious freedom to Native Americans. The case examples reviewed include *Sequoia v. TVA*; *Wilson v. Block*; *Fools Crow v. Gullet*; and *Badoni v. Higginson*. The religious beliefs, practices, and needs of particular Tribes were threatened by the intended actions of the U.S. government in each of these cases. Each case subsequently became a contentious legal battle between the government's use of public lands and the Tribes' religious reverence of the same lands. In all four cases the government's interests prevailed. Thus, these examples demonstrate various ways in which government uses of public lands conflict with Indian religions, and how those conflicts have been habitually resolved.

Inherent in each of these cases are reoccurring patterns and precedents, a number of which are reviewed below as serious "problems," or obstacles to American Indian

religious freedom. The details of these problems reveal serious cultural biases and insensitivities on the part of U.S. courts. A major problem embedded within these cases is the courts' insistence on isolating Indian religion from Indian culture. This erroneous application of Western religious characteristics in the cases of Indian religions has proven to be a critical flaw in the courts' logic. Similarly, the courts have repeatedly demonstrated a lack of consideration regarding Indian "religious identity" (Evans 1997). In addition, U.S. courts exclusively operate within their own Western and American traditions, forcing Indians to translate the cultural and linguistic precepts of their religions into the English and legal languages of the court. Each of these problems demonstrates the near inability of the U.S. government to practice an appropriate level of cultural sensitivity in its relations with American Indians.

The final part of this section evaluates various potential solutions to the above problems. Included in these solutions are U.S. legislative acts and executive orders regarding American Indian religious freedom. Though such acts are symbolically important, the most valuable potential solution consists of a long-standing legal precedent known as the Trust Doctrine, which in combination with the First Amendment and past legislation may prove to be the most powerful tool in the preservation of sacred sites. It is important to note that the solutions reviewed in this section, and the select problems they are intended to address, are examined because of their direct relevance to the case study of the Karuk offered in Chapter Four. Thus, the review of the cases below is

designed to reveal key patterns relevant both to the overall struggles for Native American religious freedom and the specific cases of the Karuk.

### Case examples

Indian sacred lands have been repeatedly altered, damaged, and even completely destroyed in recent American history. Given the essential nature of such lands to particular Indian faiths, these actions are clear violations of religious freedom. According to the First Amendment, the U.S. government has the constitutional responsibility to protect U.S. citizens from such violations. Yet a multitude of examples exist in which U.S. courts have failed to offer any protection. This is not surprising given the long-standing history of injustice that American Indians have suffered at the hands of the American government. Obviously, to some degree the cultural-biases of history remain. Or, in the words of Rhodes (1991), "...the ethnocentrism and discrimination that characterized America's historic treatment of Indians persists today" (p. 15). That Indians must seek protection from U.S. courts is ironic given the fact that other branches of the same government are typically the perpetrators of Native American religious freedom violations. "Natives are forced to ask the very people they believe to be infringing on their rights to protect them. In this situation there is little cause for hope" (Leosch 1996, p. 71).

Leosch (1996) asserts that “Indians almost always lose” judicial battles for sacred lands, which courts justify in three primary ways (p. 58). First, and most insulting, the government simply refuses to acknowledge “... the religious character of Indian religious claims” (p. 58). Such denials have been numerous, taking a variety of forms. With the second type of reasoning that causes Indians to lose sacred land legal contests, the government recognizes the nature of the Native religion in question, but refuses to consent that government actions will burden religious practice. In the third type of case, the government recognizes the Indian religion and acknowledges that it has burdened Native Americans’ religious practices, “...but believes that the interests of the majority culture trump the religious rights of Indians” (p. 58).

An alternate interpretation could suggest that Leosch’s third type of justification is at play in all sacred lands cases. Regardless of the type of reasoning they employ, courts are constrained by the old ethnocentric mindset that values progress before the preservation of Indian lifeways. The drive to serve the interests and values of “the majority culture” underlies each case in which the U.S. government undermines Indian culture and religion. This is as true when land management agencies literally destroy sacred sites as it is when courts fail to find such actions in violation of the First Amendment.

Hardt (1989) suggests that the problem lies within the government’s “...misunderstanding of the substantial conceptual differences between American Indian

and Western Religious traditions” (p. 692). However, Rose (1999) indicates that the problem is much deeper and more insidious. Instead of a mere “misunderstanding,” Rose points to the culturally biased misapplication of doctrines that are “inadequate to protect the religious life of Indians” (p. 131). According to Rose, such doctrines, and the agencies and courts that inappropriately apply them, are derived from “traditional Western notions.” Such notions can only be expected to apply to traditional Western peoples and values. Thus, the blatant and violent ethnocide of America’s past has evolved into latent and legal ethnocide today. The case of *Sequoyah v. Tennessee Valley Authority* perfectly demonstrates this tendency of the government to inappropriately concede to the values of the majority culture at the expense of Indian religions.

Sequoyah et al v. Tennessee Valley Authority,  
U.S. Court of Appeals, 6th Circuit, 1980

In 1966, the Tennessee Valley Authority began construction on the Tellico Dam on the Little Tennessee River. During the previous thirty years, the TVA had built over sixty dams for purposes of national defense, to enhance agricultural and industrial development opportunities, and to improve navigation and flood control (Brown 1999, p. 10). However, the Tellico site remained a low priority until 1960, when the TVA identified the only remaining stretch of the Little Tennessee River that still flowed freely (p. 10). The TVA acquired 38,000 acres for the project, with over 16,000 acres to be



inundated. The remaining land was set for industrial, commercial, and residential development. From the start, however, the project ran into serious problems.

Regrettably, the TVA ignored the fact that all of the land in question had once been sacred territory to the Cherokee Tribe. Though lost to the Tribe legally, the land remained physically available and spiritually indispensable to practitioners of the Cherokee religion (Dussias 1997, p. 808; French 1990, p. 201; Griffin 1995, p. 404; Reivman 1989, p. 187). The sacred nature of the land was multifaceted, reflecting a diverse range of religious activities and symbols permanently imbedded in the landscape. No hierarchical list of religious importance is available, because by the very nature of the Cherokee religion, each individual had the autonomy to freely cultivate their own spiritual relationships. Thus, the landscape possessed innumerable spiritual components identifiable only by individual practitioners. Though it is possible to list several very apparent spiritual components of the landscape publicly valued by the Cherokee, it is important to remember that there were far more spiritual connections of a private – and even secretive – nature.

Of those elements that the Cherokee collectively valued, the Tribe was slated to lose their ancestral birthplace, an undisclosed number of sacred sites, medicinal gathering places, cemeteries, prayer sites, and the ancient villages of Chota, Citico, Toqua, Tomotley, Mialaquo, Tuskegee, and Tanasee (Brown 1999, p. 10; Cohen 1987, p. 784; Dussias 1997, p. 808; Griffin 1995, p. 404; O'Brien 1995, p. 467). Chota was widely

recognized as the ancient Cherokee capital and the sacred birthplace of the Tribe, while the village of Tuskegee was birthplace to the legendary Sequoyah and an important spiritual home to powerful ancestors. The village of Tanasee gave its name to the state of Tennessee, reflecting the fact that the valley and its Native villages were well known to the original American settlers (Brown 1999, p. 10). In addition, the Cherokee commonly buried their dead close to the places where they lived, meaning that countless thousands of gravesites would be lost during the flooding.

The consequences of losing this range of places were far more significant than may at first be apparent. According to Griffin (1995), in losing the area to flood waters, the Tribe's ability to "pass on spiritual beliefs and knowledge would be destroyed" (p. 404). This loss alone would be significant. However, Reivman (1989) also suggests that Tribal medicine men would lose their power, the people would lose the knowledge granted to them from the valley, and that allowing such a drastic alteration to the natural landscape would constitute a major insult by the Tribe to the land they worshiped (p. 187). The immense degree of this insult, represented by the rising waters, "would prevent them from contacting the supernatural world" (Ensworth 1996, p. 156). Finally, the physical and spiritual health of the Tribe would also suffer, because "the survival of the Tribe's knowledge of medicine depend[ed] on preservation of Little Tennessee Valley" (Ensworth 1996, p. 173 note 113). In fact, according to Stambor (1996),

flooding the valley would make it “impossible” for some medicine men to continue to practice their traditional healing arts (p. 197).

Fortunately, the Cherokee were not alone in their opposition to the dam. From 1966 to 1979, eight lawsuits were brought against the construction of the dam (Stambor 1996, p. 198). Most notable of these cases was the suit initiated by the Environmental Defense Fund for the TVA’s failure to comply with regulations established by the National Environmental Policy Act. This case slowed the project long enough for an endangered species to be identified in the river, leading to the 1978 Supreme Court case of *Tennessee Valley Authority v. Hiram Hill et al.* (p. 11). In the case, the TVA sought an exemption from the Endangered Species Act and the right to extinct the snail darter. Following Section 7 of the Endangered Species Act, the court denied the requested exemption.<sup>19</sup>

Unfortunately, less than a year after the findings of *TVA v. Hill*, Congress initiated a series of hearings to consider the fate of the project. Though initially concurring with the court, Congress eventually exempted the TVA and allowed the continued construction of the dam.<sup>20</sup> Four months later, despite having witnessed years of failed resistance, the Cherokee filed suit against the TVA for violations of their religious

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<sup>19</sup> The basis of these two cases, and the findings of the courts, demonstrates the fact that the preservation of biological and environmental integrity often parallels the religious needs of Native Americans. The work done by the Environmental Defense Fund and local citizens seeking to enforce the Endangered Species Act was successful in temporarily preserving landscapes sacred to the Cherokee. This parallel between the preservation of ecological and religious integrity will be explored further in section 4.

<sup>20</sup> The details of the Congressional debate and eventual decision are complex and regarded as an example severe corruption. For further discussion, see Stambor 1996, 198; Brown 1999, 12; Ensworth 1996, 184.

freedom. The plaintiffs included Ammoneta Sequoyah – medicine man and descendant of the eighteenth-century creator of the Cherokee writing system – two other individuals, the Eastern Band of Cherokee Indians, and the United Kettoah Band of Cherokees (Brown 1999, p. 9). Given the spiritual importance of the land that was to be flooded and developed, the plaintiffs argued that the completion of the dam would infringe on their right to freely choose their faith, the right to practice their religion, and the right to access their indispensable pilgrimage sites (Dussias 1997, p. 808).

The arguments presented by the Cherokee were extensive, rooted in their cultural and religious connections to both small and large-scale components of the landscape. The destruction of multiple villages, thousands of burial sites, countless sacred sites, prayer sites, and medicinal gathering sites would be devastating. However, Brown (1999) notes an even deeper and more considerable loss:

[Though] the reserve of their ancestors and the preservation of and access to Chota and other villages sites of historical and cultural significance were dimensions of the religion that the Cherokees sought to protect, the heart of their complaint was the notion that the waters and land of the river valley were themselves sacred, holy realities that would be destroyed by the impending Tellico project. (p. 13)

With this powerful religious argument as the basis of their case, the Cherokee appealed to the religious freedom protections guaranteed by the First Amendment. However, the plaintiffs also noted that “the constitutional right that they asserted... had been crafted by thinkers of a very different religious orientation” (Brown 1999, p. 13). Acknowledging the challenge of convincing a non-Indian court that the completion of the

dam would infringe upon their religious freedoms, the Cherokee proposed several analogies. The faiths of Christianity, Judaism, and Islam all recognize specific locations as having distinct religious significance, though to a lesser degree than any Native American examples. Several affiants relied specifically upon this analogy, referring to Chota as ““analogous to a Cherokee Jerusalem”” (Cohen 1989, p. 784 note 91). In addition, a consulting anthropologist testified that the Cherokee’s relationships with the threatened land was ““analogous to reading a Christian bible”” (Cohen 1989, p. 784 note 92). In his description, it would be impossible to develop a clear understanding the Cherokee religion in the absence of their sacred sites, just as it would be impossible to understand Christianity in the absence of the Book of Genesis (Cohen 1989, p. 784 note 92).

In comparison to all of these powerful religious needs and arguments presented by the Cherokee, the government had very little justification for the construction of the dam. During the 1979 Congressional hearings, it was found that ““the project would incur large costs without adding significantly to the energy producing capacity of the T.V.A. system”” (Ensworth 1996, p. 184). In fact, Representative Breaux blatantly declared that ““the project was economically unsound”” (Ensworth 1996, p. 184 note 171). The committee also observed that the dam would operate at a \$750,000 annual deficit, that it was lacking significant dam safety standards, and that in addition to priceless cultural heritage, rich agricultural soils would be lost (Brown 1999, p. 11).

According to the committee, the “greatest benefit” to come from the completion of the dam would be “incidental creation” of a recreational lake for local residents (Ensworth 1996, p. 184). However, even this benefit was questionable considering the fact that 22 other large recreation reservoirs already existed within a 50-mile radius of the Tellico project (p. 184, note 173). Given the lack of any clearly articulated need for the dam or any obvious benefits to be drawn from its construction, the TVA repeatedly emphasized that the government legally owned the land and had already invested 111 million dollars and over 14 years in the project (McAndrew 1996, p. 249; Hardt 1989, p. 628 note 161). Regrettably, this emphasis on ownership and following through on expensive engineering ventures resonated strongly with the court.

At the conclusion of the trial, the court found for TVA, effectively signing a death warrant for the Little Tennessee River and all the religious attachments of the Cherokee. The justifications of the court were numerous, reflecting the government’s repeated tendency to default to Western values when confronted with non-Western ideals. For the purpose of better understanding how religious freedom has failed for American Indians, it is useful to analyze three specific arguments employed by the court in its rejection of the Cherokee’s religious freedom claims.

First, the court implied that none of their claims regarding the Little Tennessee Valley represented a “central” component of Cherokee religion, but were instead only peripheral beliefs and practices. Further, demonstrating a clear lack of understanding for

the religion of the Cherokees, the court declared that the Indians were promoting cultural rather than religious relationships to the landscape. Finally, and most contradictory to the spirit of the First Amendment, Judge Robert L. Taylor declared that in order to justify a religious freedom claim, the Cherokee would have had to prove that the government had coerced them to act contradictory to their religious beliefs. Each of these arguments is inappropriate and inaccurate.

In the first argument employed by the court, it was declared that the plaintiffs had failed to demonstrate the “centrality or indispensability” of the land in question to their religion (Brown 1999, p. 34; Dussias 1997, p. 808, note 258; Griffin 1995, 404; Hardt 1989, 629). In the words of the court, the Cherokee “have fallen short of demonstrating that worship at the particular geographic location in question is inseparable from the way of life, the cornerstone of their religious observance, or plays the central role in their religious ceremonies and practices” (Brown 1999, p. 35). These arguments are unreasonable and lead down a dangerous path in First Amendment jurisprudence. Many religious beliefs and practices must be protected for genuine religious freedom, regardless of how “central” a court deems them to be. In regards to the statements of “indispensability,” the court was indirectly stating that it had the right to determine which practices of a religion are and are not “dispensable.” Obviously, this does not match our nation’s goals of a universal religious freedom, for religious practitioners themselves, not the courts, must decide the makeup of their own faiths.

The second argument, that the Tribe's attachment to the valley was cultural rather than religious, represents an absolute failure on the behalf of the court to understand the religion of the Cherokee outside of a Western context. This line of reasoning was a cornerstone of the TVA's defense in the trial, based on the argument that all Cherokee arguments prior to the trial were based on protecting the cultural, historical, and archaeological value of the valley (Brown 1999, p. 26; Dussias 1997, 808). In reality, however, any argument for cultural or historical preservation is by necessity a religious issue to the Cherokee. The social, political, legal, and cultural realms of life are all inseparably bound within religious contexts. In the words of then Chief of the Onondaga Tribe, religion "permeates all aspects of Tribal society" (Brown 1999, p. 26).

This concept of the inseparability of religion from other aspects of life was not unfamiliar territory for the courts. In the 1972 Supreme Court case of *Wisconsin v. Yoder*, an Amish family challenged the state of Wisconsin in order to exempt their child from mandatory state schooling. Noting that the Amish way of life is fully bound in their religious beliefs, the court ruled in favor of the Christian sect. Thus, even though the court failed to accept the fact that "...Tribal and family folklore and traditions can be inseparable from Native American religions...", the Supreme Court had no problem in acknowledging "...that the Amish way of life is inseparable from the religion of that sect" (French 1990, p. 201).



In the case of the Cherokees, the court felt justified to determine what is and is not of a religious nature. Dussias (1997) accurately describes this action by the court as the imposition of an “ill-fitting system of categories on Cherokee beliefs and practices” (p. 808). Instead of being granted the accurate recognition of a unified socio-religious attachment to the valley, the Cherokees were accused of possessing “personal preferences” for cultural preservation (Cohen 1987, p. 785; French 1990, p. 201; O’Brien 1995, p. 467). Leosch (1996), explains that as a result of the case, “Native Americans have to worry not only that their religious rights will not be valued by the courts, but also that their actions and beliefs will not be recognized as religious at all” (p. 52).

The final argument offered by the court suggested that there were no grounds for religious freedom claims given the fact that the Cherokee were never coerced to act contrary to their beliefs. Unquestionably, the valley upon which members of the Tribe depended spiritually was set to be destroyed. Yet, according to Judge Taylor this was acceptable because the government had no intention of stopping the Cherokee from believing as they chose. In other words, the government was free to destroy the basis of a religion as long as no one was forced to act contrary to their beliefs. This loathsome argument is a clear contradiction to the First Amendment’s decree that “Congress shall make no law... prohibiting the *free exercise*” of religion. According to Taylor’s reasoning, as long as no one is forced to act against their own beliefs, it is acceptable from a religious freedom perspective for the government to destroy cathedrals, eliminate

all bibles, and barricade religious pilgrimages. Obviously this argument is completely absurd. Yet, in the eyes of the judge, this was an acceptable justification for the rejection of very logical religious freedom claims by Native Americans.

It is worth noting here that the Karuk currently face similar challenges. Chapter Four addresses the dilemmas that arise for the Tribe when federal natural resource management agencies ignore the fact that the Karuk's relationship to their surrounding landscape is highly spiritual in nature and that their interests in ecosystem restoration and management are religious. Of course, this dilemma is not uncommon. In addition to the Cherokee example outlined above, many other cases also demonstrate the government's lack of cultural understanding in religious freedom litigation.

Badoni et al v. Higginson et al,  
U.S. Court of Appeals, 10<sup>th</sup> Circuit, 1980

Near the same time as the Sequoyah case, the Navajo were also experiencing the loss of sacred lands due to dam-induced floodwaters. After the 1963 construction of Glen Canyon Dam, Lake Powell began to steadily rise, slowly immersing one Navajo sacred site after another (Rievman 1989, p. 186). According to the Navajo religion, the gods or spirit people left the earth in the distant path. However, some gods chose to remain behind in the form of "rock people," which were found throughout the arid landscape (Brown 1999, 40; Dussias 1997, 823; O'Brien 1995, p. 468). As the waters

slowly advanced towards one of the most sacred locations, Rainbow Bridge – completely submerging many other “Holy People” in the process – the Navajo adamantly protested. The beauty and power of the location was not lost to non-Indians. Back in 1910, 186 acres were taken from the Navajo reservation by Executive order for the creation of Rainbow Bridge National Monument. Regardless of this outright theft of Navajo lands, many local Natives continued to foster a spiritual relationship at the location (Rievman 1989, p. 186).

Supporters of Lake Powell, in Congress and in the court, suggested that no physical harm would be done to the sacred site, as the waters would only reach its base. In addition, they argued, given the extreme remoteness of the site, Lake Powell would provide tourist access via boat to the National Monument (Brown 1999, p. 43). The Navajo immediately challenged this argument with the recognition that increased tourist activity would inevitably interfere with prayer sessions and ceremonies, lead to graffiti and littering, and desecrate the overall sacredness of the site.

The Navajo fought this outright defilement of their religion through a series of court cases and appeals. Yet, as before with the Cherokee, at the conclusion of the trials, property interests trumped religious freedom. The Navajo lost the cases and their sacred sites continued to lie submerged under America’s newest artificial lake. Following the precedent set in *Sequoyah*, the courts declared that the site was not “central” to the faith of the Navajo (McAndrew 1996, p. 616). To add insult to injury, the Park Service, as

supervising agency of National monuments, allowed alcohol concessionaries to operate at Rainbow Bridge (Griffin 1995, p. 404). Thanks to this decision, the increased tourist influx was now more likely to be disrespectful, belligerent, and destructive. Again, the government blindly defaulted to Western values with no regard to the religious needs or sensitivities of Indian faiths.

Wilson et al. v. Block et al.,  
U.S. Court of Appeals of the D.C. Circuit, 1983

Whereas the cases of *Sequoyah* and *Badoni* involved the “drowning of Gods” (Stambor 1996) for the creation of artificial lakes, the case of *Wilson v. Block* concerned the desecration of sacred mountains for the creation of a new vacation destination. In this case, the Hopi and Navajo Nations challenged the Forest Service and the Department of Agriculture for encroaching on sacred sites and shrines on the San Francisco Peaks in the Coconino National Forest (Moore 1991, p. 85; Unmack 1996, p. 167). The sacred sites, of significant religious importance to both Tribes, were disturbed “to permit private interests to expand and develop the government-owned Snow Bowl ski area” (Wilson v. Block, 1983; Dussias 1997, p. 827). The court openly accepted that the areas concerned were of deep spiritual importance to both Tribes. However, it was determined that the government “...had not burdened their beliefs or religious practices” (Wilson v. Block, 1983; Rhodes 1991, p. 56). Also, as in the other two cases, the court announced that the

Tribes had failed to demonstrate that the sites were central to their religion. The Hopi and Navajo lost their case, demonstrating that the court believed ancient religions were of secondary importance to the construction of new ski lifts.

Fools Crow et al. v. Gullet et al.,  
U.S. Court of Appeals for the 8<sup>th</sup> Circuit, 1983

Just prior to the *Wilson* case, the Eighth Circuit Court decided that no religious infringement had taken place by the State of South Dakota in the construction of viewing platforms, parking lots, trails, bridges, and roads on and around Bear Butte, the most sacred site of the Lakota and Tsistsistas Tribes (Cohen 1987, 789; Griffin 1995, 405; Rhodes 1991, 54; Unmack 1996, p. 167). In other words, the case involved the “conversion of a sacred site into a tourist attraction” (Rhodes 1991, p. 54). Though the area had already been included within the boundaries of a state park, prior to construction the site was remote and private. These conditions of seclusion and solitude were prerequisites to the Tribes’ use of the location as a vision quest site. In complete lack of cultural sensitivity to the nature of these religions and the privacy required of their rituals, the State initiated new road construction, pathways, and viewing platforms for the express purpose of “facilitating tourism” (Rhodes 1991, p. 55). In its defense, the state declared that it had several compelling interests in completing the project, including “the protection and preservation of park visitors and the improvement of public access to a

unique geological formation” (Rievman 1989, p. 186). Improvement of public access to their religious shrines was precisely the type of actions the Tribes sought to avoid. Yet, once again, in the eyes of the government, recreation trumped religion.

These four examples are only a few of the American Indian religious freedom cases that were brought before the courts. In addition to these and other court cases, countless other similar circumstances have occurred through the U.S without reaching any level of judicial review. In fact, it is safe to presume that every Tribe in this nation has experienced serious threats to their religious freedom and spiritual autonomy in recent decades. Undeniably, Native Americans suffered generations of genocide in the past; evidence demonstrates that their plight continues today, though in altered form.

In all of the cases outlined above, the courts focused on the Tribes’ lack of property rights at the contested locations. Yet, as Brown (1999) makes clear, “In each of the Tribal cases, land held by the government had long been the traditional site of religious belief and practice for particular Tribes within the respective region” (p. 3). However, no court had the courage or conviction to note the historical contexts by which each Tribe lost access to their lands. These cases, and the hundreds of others like them, represent the U.S. government’s efforts to slowly chip away at Native American culture and religion.

Instead of attempting to reduce an Indian presence in this nation through military action as it did in the past, the U.S. government now resorts to attacking America’s

Natives with armies of lawyers and endless barrages of legal principles. However, the most devastating ammunition the government has employed against Tribes is a deplorable lack of cultural sensitivity or understanding. As Evans (1997) explains, “to take seriously the concept of the sacred, courts would have to understand that people could believe that some things, places, times, or actions are imbued with transcendent, otherworldly reality” (Evans 1997, p. 52). Yet, it seems that the courts are not willing to go this far. Instead, the concentration has been on property law, unjustifiable measurements of “centrality,” and the ethnocentric assumption that Native American religions are somehow separable from culture. These and other select problems with the government’s treatment of Tribal religions are reviewed in the next subsection.

### Select problems

As reviewed in Section One, a major challenge that Indians face in seeking religious freedom in this nation stems from the historical foundations behind the establishment of the First Amendment. As Rose (1999) explains...

At the source of the problem is the Framers’ theologies, and the inherent limitations those theologies built into the religion clauses. As courts continue to cling to doctrines developed from traditional Western notions of religious freedom, the theological disjunction between the religious clauses and Indian religion has emerged as a significant problem. A doctrinal church-based theology, or the deism of Jefferson and Madison, presupposes a separable realm of religious experience and commitment that is completely foreign to the religious life of the Indians. In light of that fact, it is unremarkable that the Framers created a set of religion

clauses which, motivated by their own theologies, have proved inadequate when applied to a spiritual life where religion is not a separable realm, but intimately bound up with cultural experience and everyday life. (p. 129)

This tendency of the U.S. government to “cling to doctrines developed from traditional Western notions” in its dealings with non-Western American Indians leads to a variety of problems. Notably, the physical and spiritual integrity of sacred sites are threatened, and often times destroyed, by outside interests. Given the well-established importance of such sites to Native religions, such threats to physical locations are also direct threats to Indian religious freedom. Griffin (1995) identifies the following types of threats to sacred sites: Western concepts of resource development, private property interests, competing land use, tourism and increased public access to sacred lands, resource exploitation, and the intrusion of New-age religious practitioners (pp. 395 – 397). McDonald and McLeod (1993) also consider the “relentless push” for resource extraction, recreational opportunities, and luxury homes to be serious threats to sacred sites.

The motivations of these threats can be considered an inevitable component of the dominant corpo-capitalist economic and social system in this nation. Such drives reflect our resource-hungry and profit-driven values. However much the people of the U.S. may vocally cherish religious freedom, resource extraction and tourism have consistently come before the religious liberties of American Indians. The truly disappointing part of this story, however, is the government’s lack of sympathy or assistance in the religious



freedom infringements faced by Tribes. The real task, then, is not to criticize the social values of the U.S., but to review some of the ways in which the government has consistently failed to uphold religious freedom. In the end, the primary problem revolves around the government's continued failure – or refusal – to understand and accept Indian religious beliefs. The three concepts described below offer an example of some of the issues Tribes face when their religious connection to place is called into question. Only a select few of the problems that underlie the government's failure are reviewed, though dozens more exist. Following this analysis, this section concludes with a review of potential solutions to the challenges Indians face in preserving the integrity of their religions.

#### Indian culture and spirituality

The case analysis above of *Sequoyah v. TVA* demonstrates the tendency of the U.S. government, in this case the Judicial Branch, to insist that Native American spirituality, or religion, is somehow separable from culture in general. In fact, this assumption is so ubiquitous that it must be addressed here as a serious obstacle to Native American procurement of religious freedom in this nation.

The literature overwhelmingly suggests that in many cases, cultural and spiritual components of Indian life are absolutely inseparable. In fact, several authors indicate that religion is indivisible from all other realms of life. “Unlike the Western world, which

isolates religion as a discrete aspect of social and individual life, religion permeates the lives of American Indians” (Rhodes 1991, p. 18). “Rather than impacting a discrete sphere, religion encompasses all aspects of a Native American’s being. It is arguably the truest expression of a Native American’s culture and heritage” (Brady 2000, p. 157).

“Unlike most Western religions, Native American religions are not limited to a discrete sphere of Indian life. Native American worship cannot be distinguished from the social, political, and cultural aspects of Indian lifestyle” (Rievman 1989, p. 173). “The concept of religion permeates one’s existence and is indistinguishable from one’s cultural, political, and economic existence” (O’Brien 1995, p. 453). “The area of worship cannot be delineated from social, political, cultur[al], and other areas of Indian life-style, including his general outlook upon economic and resource development.... This oneness of Indian life seems to be the basic difference between the Indian and non-Indians of a dominant society” (Barney Old Crow as cited in Rhodes 1991, p. 18).

Rose (1999) recognizes that religion permeates life even beyond politics, economics, and culture. Aspects of religion can be found in: all varieties of narratives, from creation stories to tales of tricksters and fools; art and architecture; spatial and landscape orientations; ritual drama, costumes, masks, and ceremonial paraphernalia; and subsistence activities such as hunting, fishing, and farming (p. 107). In fact, “we will find grand cosmological schemes and religious ideas in the rudest, most common materials and circumstances as well as in highly developed poetic, intellectual, and

artistic forms” (p. 107). Even everyday materials, such as cookpots, hold religious meaning (p. 108). This all-pervasive nature of Indian spirituality is also obviously a central tenet in relationships to landscape. Thus, any outside alterations to the geographic places important to Indian individuals or communities also entails an alteration to religion.

As demonstrated by the *Sequoyah* case, some judges and scholars involved in Indian sacred sites cases ask if religion and culture can actually be so intertwined as to erase any possible separation between them. However, this question itself reveals a distinct cultural bias. By asking if the two concepts can be separated, the poser of this question automatically assumes that there are in fact two distinct categories. In the reverse situation, in which Native Americans were in a position to evaluate the religion and culture of Euro-Americans, Indians could automatically assume that there is no possible way to disconnect the sacred from all other parts of life. From their perspective, religion and culture can never be severed from one another since no isolated concept exists for either religion *or* culture. In all practical applications, they genuinely are one and the same.

The connectedness of spirituality to all parts of life is evidenced in Native American languages. According to Winslow (1996), no traditional Native American language has a word or phrase that accurately translates to “religion” (p. 1295). This fact is connected to the Indian tendency to view the sacred as an all-encompassing part of life,

which connects spirituality to culture to a far greater degree than most Euro-Americans consider possible (p. 1295). This is often quite difficult for non-Indians to understand or accept. In fact, as Toelken explains, Indian religion "...may not involve a 'god.' It may not be signified by praying or asking for favors, or doing what may 'look' religious to people in our culture..." (as cited in Grinde and Johanson 1995, p. 44). This issue of Indian religions not "looking" or appearing to be religious has led to many problems for Indian attempts to protect their sacred places.

In the *Sequoyah* case, an entire valley full of sacred locations was flooded for the construction of a dam and reservoir. The Cherokee Indians involved attempted to halt this destruction by appealing to the First Amendment, but the court found that their relationship to the locations in question were "cultural" and not religious. Yet, as is demonstrated above, for the Cherokee, as is true for other Native Americans, there is no clear distinction between these two realms of life. To assume the possibility of a separation between the sacred and culture was a serious failure of cultural sensitivity and understanding on the part of the court. As Hardt (1989) asserts, "to separate the sacred from the secular in American Indian cosmology is to force Indian concepts into non-Indian classifications" (p. 603).

The dichotomous notion of "sacred" and "profane" is foreign in Native cultures and thus the assumption that a relationship to the land can be "cultural" but not religious is erroneous. In fact, Rose even implies that since Native Americans do not recognize a

sabbath day, "...every moment and every cultural act is infused with religious significance" (Rose 1999, p. 106). In other words, any action that threatens to disrupt a cultural activity automatically threatens a religious activity. By consequence, the First Amendment can be accurately applied to nearly all Indian cultural practices and relationships, which are inherently religious in nature.

### Religious identity

Directly related to the unity of religion and culture is the concept of religious identity. Evans (1997) focuses on the concept of religious identity as one of the primary categories of religion that requires protection for any genuine level of religious freedom (p. 168). According to Evans, religious identity is one of "...the fundamental ways that people locate themselves in their social environments and understand the meanings of large events and everyday occurrences" (p. 168). This concept is based on the notion, popularized by the field of sociology, that humans have a deep need for identity, order, and a sense of place (p. 169). One of the primary means of fulfilling this need is through a personal and group attachment to symbols (p. 169). This attachment leads to a "don't touch sentiment," creating the function of "sacralization" or the process by which religious symbols – including conceptions of reality and personal identity – are set aside and permanently "stabilized" (p. 169). Thus, one's religious identity forms the foundation upon which his/her spirituality rests. As Evans explains, religious identity

makes the continuance of religion possible. “Without participating in a social group that makes plausible the religious claims of the believer, without its rituals, myths, and other legitimating practices, the individual finds it exceedingly difficult to sustain the religion” (p. 170). Thus, religious identity is not just a part of religion, but is instead completely essential prerequisite *to* religion (p. 170).

As an essential component in the continuing existence of religion, religious identity has many implications for Native American struggles for religious freedom. Evans goes so far as to suggest that the protection of any form of religious freedom is incomprehensible without the assured protection of religious identity (p. 170). Thus, it is important to understand the religious identity needs of Indians, specifically connections to landscapes. When sacred places are threatened, it is not simply the religion of the people that is in danger, but their entire identity.

Regarding the importance of land to religious identity, McCoy (2003) explains that land is more important to Indians today than even before. “In this era of increasing industrialization, environmental misuse, urban sprawl, and the judicial diminishment of Indian sovereignty, land... sustains and shields Indian communities physically, culturally, and spiritually” (p. 422). Thus, for Native Americans, the limited amount of land that remains available is not only a source of cultural identity, but also of spiritual identity.

McCoy (2003) suggests that today, land is the primary foundation of spiritual, physical, economic, and political well-being for Natives, as well as the source of

individual and collective – or community – identity (p. 422). It is for these reasons, and because relationships with holy places form a centerpiece for spirituality, that the destruction or desecration of sacred sites and revered landscapes can be a “cataclysmic event” (Gardner 2002, p. 68). This was evidenced in the destruction of the Little Tennessee River Valley with the construction of the Tellico Dam. For the trial, the Cherokee recounted a prophecy that foretold the destruction of their people. According to the divination, the future of the people was secure for “as long as the river continued to flow past Chota and the other ancestral towns” (Brown 1999, p. 15). Given the nature of their relationship to the valley, and the consequences of the prophecy, the Cherokee referred to their “ensuring destruction as a people,” demonstrating the intense connection between the physical integrity of geographical location and the security of self-identity (p. 15).

Individual and group identities are founded in multiple factors, ranging from simple family interactions to long-standing social traditions. However, the deepest questions and answers a culture produces will influence an identity on a very base level. In other words, the pressing spiritual concerns offered by religion will have a greater impact on identity than the simple mundane tasks that are also an influence on identity. For Natives, this means threats to their religions – or the places upon which their religions depend – is an attack on their very identity. As Lawrence Baca insists, “the right to practice Native religions is the right to be Indian” (Griffin 1995, p. 395). This is

the fundamental basis of religious identity and an issue too often ignored in actions that threaten sacred places.

### Lost in translation

A final problem identified here that Natives face in their pursuit of religious freedom is the burden of translating the precepts of their spirituality in every interaction they have with non-Indians. This burden of being forced to translate subtle spiritual concepts into foreign cultural and language contexts often means that something is lost. As Vecsey (1991) explains, “Indian religions always exist for non-Indians in *translation*, through filters” (p. 12). This is true beyond the use of language. Religious concepts must be translated from social and cultural contexts completely foreign to non-Indians. In cases in which sacred landscapes are either threatened or called into question, Natives are forced to communicate their spiritual needs and relationships in the English language to non-Indians unfamiliar with their rich cultural perspectives. This is even true of Tribes who primarily communicate in English, but operate within their own unique cultural contexts that must be “translated” for non-Indians.

I hypothesize that communication in English is problematic because Christianity dominated society during the early evolution of the English language. Thus the religion’s deepest metaphysical concepts to its most subtle spiritual notions have been a part of English since its conception. For many consecutive centuries, the English language



developed and grew under the direct and near-exclusive influence of Christians. The spiritual concepts and notions of Native American religions, on the other hand, are entirely new to the language. In fact, English speakers have been receptive to Native religions for only a few decades at most. Thus, the details of Native American religions are beyond the practical capacity of the English language to convey; as a medium for conveying the details of Indian spirituality, English is unqualified and entirely ineffective. Yet, as this is the only vehicle available, Natives are continuously forced to “translate” the complexities and subtleties of their religions into a language unsuited to the task.

This is not simply a matter of translation between languages, but is instead an issue of translation between cultures and value systems. Grinde and Johansen (1995) see the problem as a component of the extreme variation in “ways of knowing” and “modes of perception,” which differ greatly between Natives and non-Natives. The researchers indicate that some established customs of perceiving and experiencing the world simply are not directly translatable across cultures. As Hawk Little John explains, “it is difficult to verbalize in another language, for another culture, exactly what makes a place sacred” (Gulliford 2000, p. 67).

Miller (1998) describes this phenomenon as a consequence of the fact that “concepts of culture are employed by a set of actors,” ranging from judges, policy writers, and American Indians (p. 83). Each “actor” is bound by his/her own range of

cultural experiences, meaning that any concepts outside of that range must be translated. When American Indians are forced to take action in the protection of their sacred sites, they will have to translate for other “actors” that do not share the same cultural knowledge. When Natives must translate the details of their religion, in either a cultural or language context, something will inevitably be lost in the translation. Yet, it is inevitable that such translations will always be one-sided; it is always Indians who are expected to do the translating. No U.S. court or natural resource management agency conduct negotiations, discussions, or trials within Tribal languages or cultural systems. Therefore, in efforts to protect sacred places, Native Americans can expect to carry the burden of translating their sacred notions and beliefs into concepts that non-Indians can understand.

These three issues that Natives face in their pursuit of religious freedom are only problems when they are ignored or overlooked. Fortunately, these problems can be remedied when courts or agencies recognize the inseparability of religion from culture, the fundamental importance of religious identity, and the burden Natives face in translating their spiritual beliefs. Fortunately, multiple tools – or solutions – have been offered and are available to American Indians. The following subsection explores a number of legislative and other resolutions intended to bolster American Indian religious freedom.

## Potential solutions

### Religious freedom beyond the First Amendment

Given the historical contexts behind the creation, maintenance, and interpretations of the First Amendment, its applicability and usefulness to Native Americans have been shaky at best. As has been demonstrated, the fundamental differences between Indian belief systems and the religious leanings of the framers of the First Amendment are irreconcilable. The Framers simply did not have the knowledge or inclinations necessary to draft a declaration of religious freedom suitable for the Native inhabitants of this nation. Today, however, *more accommodating interpretations* of the First Amendment could help to undo some of the damage inflicted on Indian communities and religions over the past few centuries. Yet, as Rose insists,

The existence of a fundamental disjunction between the theology of the Religion Clauses and theology of Indian religion means that the body of traditional First Amendment doctrine growing out of those Clauses may prove ineffective in safeguarding the religious life and constitutional rights of Indians. (Rose 1999, p. 116)

This means that even given the most generous interpretations, the foundational differences between Indian spiritual beliefs and the philosophical basis of the First Amendment are simply too great. Rose (1999) argues the same sentiment in suggesting that the government cannot be blamed for its consistently unfriendly interpretations of the First Amendment in Indian cases. According to the author, the Framers did not design

the clauses of the First Amendment “to protect cultural expressions or sacred geographies because such notions were foreign to their own beliefs” (p. 139). If Native religions are to survive against the multiple interests that threaten their land base, other tools beyond the First Amendment will be necessary. The following review of such possibilities intends to consider many of the approaches the U.S. government has taken towards the protection of American Indian religions in the past few decades.

### The American Indian Religious Freedom Act

On August 11, 1978 Congress passed as a joint resolution a broad policy statement about Native American religious freedom, called the American Indian Religious Freedom Act (AIRFA). At that point in time, AIRFA was the boldest and most significant piece of legislation of its kind, representing the strongest step towards the recognition of American Indian religious needs ever taken by the U.S. Government. The document begins as a list of accolades about religious tolerance and diversity and transitions into a discussion about American Indian religious practices. Almost immediately, the document addresses the first two problems described above, referring to the unity of Indian religion and culture and the issue of religious identity: “the religious practices of the American Indian are an integral part of their culture, such practices forming the basis of Indian identity and value systems” (AIRFA 1978). Unfortunately, this recognition by the legislative branch was overlooked by the judicial branch in each of

the cases outlined above. Despite AIRFA's direct reference to the connection between culture and religion, each of the courts either ignored or misunderstood this point. Likewise, federal resource management agencies have also consistently failed to heed these words of AIRFA.

To its credit, the document does more than merely offer descriptions of Indian religions that can be accepted or rejected without accountability. Upon establishing the "indispensability" of Indian religion to Indian life, AIRFA identifies the Government's past shortcomings: "the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians." The source of such abridgements are also recognized, with references to "lack of knowledge," "insensitivities," and "inflexible enforcement of laws." These admissions are an incredibly important portion of AIRFA. Openly pointing to the Government's past "abridgements of religious freedom" is an important first step towards an acceptable resolution. The next logical step would be to suggest a course of action, which is exactly what AIRFA offers.

After acknowledging the damage that policies and procedures can inflict on Indian communities and their religious practices, the Senate and House passed two resolutions. First, it was declared the official policy of the United States to "protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise traditional religions." Second, the President was instructed to order the various

Federal departments to consult native traditional religious leaders in order to alter policies and procedures. Agencies were to “make appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.” This final portion of AIRFA is its most significant, as it calls for direct action. Finally, it seemed, the Government was making a progressive step forward towards a genuine guarantee of religious freedom for Natives. Unfortunately, the resolution has not been as effective as was intended.

The primary fault of AIRFA is the inherent weakness written into the bill: no one is held accountable and no system of evaluation is offered. At most, AIRFA is a symbolic directive requesting that agencies review their policies. However, it seems that such a review can be undertaken according to each agency’s own discretion, with no universally acknowledged goals. In other words, the document is very weak, simply offering no real enforcement power. Some authors suggest that Congress intended for the document to be mostly symbolic. For instance, Rievman (1989) proposes that AIRFA attempts to “remedy” the Federal Government’s lack of understanding regarding American Indian spirituality. According to his argument, by reviewing their policies in collaboration with Native leaders, agencies will gain a better understanding, which would in turn ensure that Indian religious practices were “recognized and preserved” (p. 183). According to the author, it is the policies of federal land management agencies that need to change, not the legislative acts of Congress.

### Executive Order 13007

On May 24, 1996 President Bill Clinton issued an executive order similar to AIRFA. The wording of E.O 13007 is much stronger than its legislative cousin, directly ordering each executive branch agency to follow two specific guidelines. First, agencies are ordered to “accommodate access to and ceremonial use of sacred sites.” Unfortunately, despite the order, this much-needed declaration represents a goal that Natives still struggle to secure. The second order directs agencies to “avoid adversely affecting the physical integrity of such sacred sites.” As has been demonstrated in this thesis, this second directive is crucial to the continuance of Indian religions. Yet, agencies continue to threaten sacred sites in a multitude of ways.

### The Trust Doctrine

The U.S. Government has a special relationship with American Indians, based in part on the fact that the lands of the United States were taken by force from Native populations. Given this sensitive past and the recognition of Indian peoples as a politically unique population, the government has assumed certain moral obligations in its relations with American Indians (Zellmer 2002, p. 433). Burton and Ruppert (1999) indicate that these obligations are based on sections of the constitution, the results of early Supreme Court cases, and the brutal subjugation of American Indians by the U.S.

military (p. 219). The specifics of this “trust obligation” or “trust doctrine” are imprecise, but can safely be viewed as the placement of “parameters” on federal agencies that regularly require a prioritization towards Indian interests (Zellmer 2002, p. 433). In other words, the trust doctrine “imposes duties and obligations” on the government in its interactions with Native Americans (Tsosie 2003, p. 271).

This guideline, more so than the First Amendment, AIRFA, or E.O. 13007, offers the greatest opportunity for American Indian religious freedom. By its own admission, the government has an obligation to ensure the continuation of Native cultures, despite its past efforts of assimilation, subjugation, and outright genocide. However, the promise to protect the security of Native cultures has been a difficult one for the government to keep, for Native cultures are inherently and permanently tied to geography. Thus, to maintain its trust obligations, the land basis of Native religions and cultures must also be secured. As Rose (1999) explains, the trust doctrine “could justify recognizing Indian claims to public lands that non-Indians could not assert” (Rose 1999, p. 139). Thus, this may be the most powerful tool at the disposal of Native Americans seeking to protect their sacred places, especially when considered in combination with the First Amendment, AIRFA, and E.O. 13007.



## Conclusion

This section intended to demonstrate what happens when America's version of religious freedom, as represented by the First Amendment, is tested by the religious needs of American Indian systems of spirituality. In our society that heavily values property ownership and development, Native religious freedom has clearly taken a backseat. The examples outlined in this section demonstrate the American priorities of profit and endless resource exploration above other concerns. In fact, these values are often more than priorities. They are, instead, unavoidable obligations for those members of the mind-set that can allow no identified resource to go untapped. In such a mind-set, a free-flowing river must be dammed; an "empty" mountain must be made "useful" by expanding ski resorts; a mountain full of coal must be emptied; oil beneath a national wildlife refuge must be drilled; a forest full of trees must be converted into timber. The sacred status of such places to American Indians is of little relevance. Instead, to allow such places to lie permanently untapped is an abomination; it is heresy. Nothing is sacred in a landscape full of resources, save for the materials that are removed and the profits that they generate. Other worldviews are trivialized and those peoples calling for limitations on development are repeatedly brushed aside.

This mind-set is old in America, marring every stage of this nation's history. Westward expansion, the devastation of buffalo, gold rushes, land rushes, mining booms, timber booms, oil booms, the damming of America's rivers, the extinction of countless

keystone species, or one of innumerable other development-related activities have directly impaired the spiritual integrity and autonomy of every Tribe on this continent. This pattern is not limited to the past, but continues in full-force even today. The next chapter considers the trials of the Karuk Tribe of California and their plight to preserve their sacred places.

## CHAPTER FOUR: CASE STUDY: THE KARUK, ENVIRONMENTAL MANAGEMENT, AND RELIGIOUS FREEDOM

*Every breath you take, every step you make is a part of who you are as a Karuk person. That's our religion. (Ron Reed, Karuk Tribe, interview, 02/07/05)*

*Everything was energy. It was spirits. And the creator talked to these spirits and said 'it is time for you to manifest into physical beings.' And so each spiritual entity manifested itself into a mountain, a type of tree, a type of shrub, a type of insect, a type of spider. Bugs, birds, fish. Every physical and biological entity that exists today came from these first spiritual beings. And so when you go to any place, you know that everything has physically manifested itself there. Those figure into the cosmology that gives us a sense of timelessness. (Frank Lake, Karuk Tribe, interview, 02/17/05)*

*Imagine being a trespasser in your own County. Imagine being made into a criminal in your own country trying to maintain traditions that are thousands of years old. For this, we're called criminals. (Leaf Hillman, Karuk Tribe, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)*

### Introduction

This chapter demonstrates that religious freedom for the Karuk Tribe of California is completely dependent on the health of the Klamath River, its tributaries, and the various ecosystems within its watershed. In order for the Tribe to experience a complete and unrestricted freedom of religion, the land upon which the Karuk Tribe are spiritually bound must be respected by the Federal Energy Regulatory Commission, the Forest Service, the Bureau of Reclamations, the Fish and Wildlife Service, and all other

Federal Agencies with influence upon those lands. The Karuk “religion”<sup>21</sup> is restricted and their freedoms are infringed upon for as long as such agencies manipulate the landscape without regard to native values.

As the issue of religious freedom is at the heart of this study, it has been my attempt to limit research to topics related to religious freedom. However, as is demonstrated below, “everything is religion” for the Karuk. With no limits or clearly defined boundaries on what is religious, the range of potential topics related to religious freedom is too extensive to cover. However, through interviews and personal communication, members of the Karuk Tribe have identified a few select issues with which they are most concerned. The case study that follows reflects those concerns and considers their connection to religious freedom.

Several peripheral issues inevitably arise in considering the story of the Karuk. Genocide is a word easily and accurately applied to the era of the gold rush through the early decades of the twentieth century. As Buckley (2002) makes clear, “there is no local [Northern California] Indian family whose history does not include a nineteenth-century legacy of attempted extermination, burnt houses, disease, murder, rape, kidnapping, and involuntary servitude” (p. 10). Whereas applying the term “genocide” to the current plight of the Karuks may be contentious to some, the word ethnocide certainly fits

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<sup>21</sup> As is discussed below, the word “religion” is not the ideal or preferred term that the Karuk use to describe their spirituality. However, the term is sufficient for the purposes of this introduction. See below for a discussion regarding the use of terminology.

without contest. Not only is the legacy of past atrocities still felt by the Karuk community, they must now contend with the continuous exploitation of the ecosystems upon which their religion and culture depend.

In the past century, several hydroelectric and irrigation dam projects and Forest Service land management practices aimed at timber production have heavily impacted the Klamath River and its surrounding ecosystems. Given the fact that the river is considered by the Karuk Tribe to be the place where the world began and where humans were created, any impacts upon the river are potential threats to the Karuk peoples and their spiritual beliefs. In recent years, Tribal protests have become increasingly common in response to the extreme ecological and landscape alterations inflicted by the resource management practices undertaken by several Federal Agencies.

Tribal and spiritual leaders opposed to projects and policies affecting the Klamath River and surrounding territory demand the opportunity to have a genuine influence over the development and implementation of policies that affect this center of their spiritual existence. As one Tribal leader declared:

This river that runs though our country and through our territory, our homeland, our home – this river is like the blood that runs though our veins. It supports us. It has always supported us. We wouldn't be here today if it were not for that river. The river is life to everything in our world. (Leaf Hillman, Karuk Tribe, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

This testimony only begins to reveal the spiritual connection the Karuk have to their ecological surroundings. Several informants interviewed for this research described a highly rich and diverse range of spiritual relationships and responsibilities that the Karuk share with their surrounding environment. A unifying theme identified among these testimonies is that Karuk spiritual relationships and responsibilities with the landscape both contribute to and are dependent upon ecosystem health. In other words, the health and quality of the environment are factors that impact Karuk religion. Informants also revealed that these relationships and responsibilities are “spiritually *necessary*,” they are an essential part of Karuk religion. Thus, the Karuk perceive engagement in a healthy ecosystem as a religious mandate. As is discussed in Section One of the literature review, the liberty to engage in those activities that are viewed as religiously *necessary* are those that are the most important for religious freedom. Therefore, in this case, any actions by outside interests that interfere with the Karuk religious mandate of spiritually participating in a healthy ecosystem are direct infringements against Karuk religious freedom. In other words, the Tribe cannot fully secure religious freedom when the health of their surrounding ecosystems is damaged or even threatened.

In addition to the religious freedom issues currently facing the Tribe, a multitude of other modern issues are also at hand. The Tribe is currently experiencing a range of social challenges, including poverty, unemployment, and, most notably, the lack of a

legal land-base. Poverty and unemployment rates for the Tribe are well above average (Census 2000; Norgaard 2004). Though the Tribe is federally recognized and has the second largest enrolled population of all California Tribes, the Karuk do not have a reservation. The area that would be their reservation, their “ancestral territory” is now entirely within the jurisdiction of the U.S. Forest Service. Without possession of an actual reservation or significant property under Federal Trust, the spiritually important locales cherished by the Tribe are under the control of the federal government. Also, though the river is a focal point of Karuk existence, they currently retain very limited fishing rights and they have few means to halt the irresponsible and destructive mismanagement undertaken by federal agencies.

The following case study of the Karuk is based on a review of ethnographic literature, scientific studies, and personal interviews. Based on the findings of the case study that follows, the religious freedom of the Karuk is currently being violated in several ways. This is not surprising considering America’s version of religious freedom has traditionally been entirely inadequate – even hostile – towards the religions of American Indians. In many ways the religious (spiritual) basis of Native American cultures is so foreign to non-Indians that it is entirely misunderstood. This has been evident in Karuk interactions with the federal government. The Karuk Tribe’s religious needs have been directly ignored or damaged in one way or another by the Forest Service, the Department of Fish and Game, the Fish and Wildlife Service, the Bureau of

Reclamations, the Federal Energy Regulator Commission, and other agencies. In addition, the U.S Supreme Court also declared the Karuk religion secondary to economic priorities in the most blatant of the U.S. Court System's repeated inability and unwillingness to understand the underlying "place-based" structure of American Indian systems of spiritual belief and practices (see "The G-O Road Case" below in the subsection "*Forests*").

In reviewing the current lifeways and political struggles of the Karuk, the case study offers perspectives of religious freedom that are not traditionally considered. For example, in order to identify the religious freedom needs of the Tribe, it is necessary to briefly outline traditional and contemporary ecological relationships that the Karuk share with their surroundings. Included in this outline is a minimal review of Karuk ecological management, which is inextricably linked to religious belief and practice. For the Karuk, the spiritual cannot be extracted from the practical. An objective of this chapter is to demonstrate that in order for the Karuk to enjoy a true freedom of religion the entire concept of "religion" must be rethought. For instance, federal agencies must accept that by altering the Klamath River and accompanying ecosystems, they are directly impacting the religion of the Karuk Tribe.

This chapter has four main sections. The first section of this chapter provides a brief background to the Karuk, their "ancestral territory," and their "religion." Particular emphasis is given to the Karuk creation story and how it influences all components of



their lives. In fact, their creation story guides the Tribe's participation in their own particular forms of land management. The second section reviews conflicting perspectives in the appropriate uses of land. Several styles of "resource management" are considered, including the spiritually-influenced environmental management of the Karuk. This leads to the third section, which provides an in-depth examination of indigenous environmental management, traditional ecological knowledge, and the place of humans in ecosystems. Finally, the fourth section of this chapter provides three case examples of Karuk environmental management and explores how the disruption of these practices is a religious freedom violation.

### Background of the Karuk

#### The Karuk ancestral territory

According to the Karuk, they have inhabited their ancestral lands since time immemorial. Archaeologists suggest that the Karuk have lived the region surrounding the Klamath River for over 10,000 years (Salter 2003, 6; Winthrop et al. 1996, p. IV-1). By either measure, the Karuk have occupied the area for an immense span of time. Accordingly, they have developed a powerful attachment to their ancestral lands. These lands are a focal point in creation stories, myths, contemporary cultural activities, and

current political struggles. Indeed, the ancestral territory and the Karuk relationship to it are the heart of their culture and spiritual beliefs and practices.

The Karuk ancestral territory is a heavily forested and mountainous area encompassing some 1.4 million acres or nearly 4,000 square miles. The territory lies within the Siskiyou and Salmon Mountains along the mid Klamath Basin centering on the Klamath and Salmon Rivers in northwestern California. The region is bordered on the west by the Coastal Mountains, by the Cascade Range to the east, and by the Siskiyou Mountains to the north. The Yurok Indians live down river along the coast centering on the mouth of the Klamath, while the Shasta live upriver. Over the mountains to the north is the territory of the Tolowa and to the south, along the Trinity River, are the Hupa people (Bell 1991, p. 7).

The territory encompasses the watershed of approximately 70 miles of the Klamath River, running a generally southwest to northeast orientation from Bluff Creek (near the Yurok village of Weitchpec) to Seiad Valley. East and west of the river the territory includes the majority of the upslope areas that drain into this 70-mile stretch of the river, including a large portion of the Salmon River. The Klamath River is such a predominate component of the landscape that the Karuk derive their name from it, as well

as their spatial orientations: *karuk* means upriver, *yuuruk* means downriver, *maruk* means away from the river, and *saruk* means towards the river (Bell 1991, p. 7).<sup>22</sup>

### The Karuk Peoples

Prior to European contact, the political organization of the Karuk peoples was much less formal than the word “Tribe” suggests, meaning that the phrase “Karuk Tribe” is only relevant in a modern context. As Keeling (1992) asserts, “before our Federal government imposed itself upon them, the [Indians] of the region did not recognize forms of societal regulation or government as we understand them” (p. 58). Instead, political organization was more akin to semi-formal relationships between groups of villages linked by linguistic and cultural relationships. Politically speaking, villages were “quite independent” (p. 58). In the economic, social, and environmental senses, however, the Karuk maintained well-structured and successful systems of organization.

The Karuk are considered among the southernmost members of the rich Pacific Northwest culture, though their language is of the Hokan family. Hokan is a group of distantly related languages ranging throughout California and Mexico, with the upriver Shasta representing the closest – though still distantly related – language (Salter 2003, 6).

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<sup>22</sup> According to an interview informant, “maruk” and “saruk” both mean “away from the river” with the former referring to “west of the river” and the latter referring to “east of the river.” The information presented above in the main text, which suggests the terms means “away” and “towards” the river, is drawn from a published text source. However, the discrepancy between these two sources is unimportant, as both translations demonstrate the spatial centrality of the Klamath River to the Karuk peoples.

In their own language, the word “Karuk” means “Upriver People,” a term that defines their self-identity as much as their location. Karuk lifeways, past and present, have centered on the Klamath River, its surrounding biomes, and their relationships with the living and spiritual beings found there. All indicators are that these patterns have persisted for millennia.

Karuk lifeways are similar to other Native groups of the Northwest Coast. Highly specialized systems of environmental management are a predominant component of such lifestyles. This is especially the case regarding salmon fisheries and the influence upon vegetative communities through the controlled use of fire. Anthropologists consider the Karuk to have been a “salmon and acorn people” (Salter 2003, p. 8) because a great majority of their diets came from these two sources. Complex systems of acquiring, managing, distributing, preserving, and preparing these resources was a central component of Karuk lives.<sup>23</sup> Given the importance of these two dietary cornerstones, Karuk life centered on the rivers, their tributaries, and surrounding oak woodlands. The people also utilized upslope areas to acquire game and a multitude of plant sources for basketry material, tool use, and food products (Salter 2003, p. 8).

The abundance of available resources in the area combined with remarkably efficient lifestyles based upon a deep knowledge of place meant that the Karuk

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<sup>23</sup> Some details of these systems are considered below in the section regarding Environmental Management.

experienced an exceptional degree of ceremonial and cultural wealth. This wealth was reflected in the richness of their spiritual relationships with the landscape, the intricacy of their ceremonies, and the quality of craftsmanship in their tools and basketry products. This high degree of wealth also allowed the Karuk to maintain a relatively dense population along the river in permanently settled villages. As anthropologist John Salter suggests, the Karuk have lived in fixed villages “from antiquity reaching back immemorially... to the time of the Ikhareya, the Immortals who prepared the way for the coming humans” (Salter 2003, p. 9). Salter’s reference to the Ikhareya raises the topic of Karuk religion and oral traditions, which is a central component of Karuk culture.

### Karuk “Religion”

Today, as in the past, the details of Karuk spirituality and mythology are unique to each family. Indeed, a primary characteristic of the Tribe’s spiritual beliefs is the high degree of individuality. As Keeling (1992) asserts, there is great room for “personal vision and creativity” among the Native peoples of Northern California (p. 5). Though there is a strong unified foundation of spiritual beliefs, representing a cohesive religious core from which individual variation radiates, it is difficult to identify a single Karuk religion.<sup>24</sup> In fact, the word “religion” is not appropriate in this case. Instead of the word

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<sup>24</sup> This is not to say that the Karuk do not have a religion in regard to the First Amendment; in a modern context the Karuk do need a guarantee of religious freedom.

religion, it is more useful to understand that Karuk families and Tribal members share a unique “spiritual belief system” that does not fit well into the traditional Western concepts of religion. Instead, many authors are more comfortable with the word spirituality. For instance, Thomas Buckley (2002) suggests that this term more accurately connotes the *individuality* experienced by the Karuk and other Tribes of Northern California. With “spirituality,” individual subjectivity and experience are the axis upon which socially shared beliefs and practices turn. In this way, the communal voice evolves out of the experience of individuals (p. 13).

In addition, Buckley (2002) suggests, to local Indians the word religion has connotations unsuited to the nature of their spiritual beliefs:

Among the Indian people in northwestern California who are concerned with such things, ‘religion’ tends to refer to Christianity, to belief and rituals that manifest institutionalized teachings. ‘Praying,’ privately or in communal rites like dances, is about something else: ‘our sacred ways,’ ‘the Indian way,’ ‘the old way,’ sometimes, locally, ‘spiritualism.’ (Buckley 2002, p. 12)

The Karuk use this range of terminology to describe spiritual matters – as opposed to the general usage of the word religion – because spiritual matters to the Karuk do not easily fit into conceptions of a religion in the traditional sense. “Religion” tends to connote notions of a hierarchical and institutionalized system with considerably fixed beliefs in which individuals are mostly passive. Such notions do not accurately describe the systems of spiritual beliefs experienced by the Karuk, which tend to be more personal, personalized, adaptive, and active. In other words, what the Karuk people

experience spiritually is generally more private in a social sense and less prescribed in an organizational sense than the most “religions.”

However, though these observations may be common among Tribal members, no generalizations should be accepted as universally applicable to the Karuk. Just as Buckley has found in his studies of the Yurok Indians, this research suggests that it is not useful to focus on any notion of a *fixed* Karuk culture. Instead, it is necessary to acknowledge that the history of Karuk spirituality is dynamic. Just as Buckley suggests of the Yurok, each Karuk generation represents one stage in a “history of constant cultural emergence” (p. 3). Buckley insists that culture is “a process,” meaning that regardless of circumstance, Karuk forms of spirituality and religious practice have and will inevitably change throughout time. In seeking greater political and spiritual autonomy, the Karuk are not seeking to return to a lost past, but are instead seeking the sovereignty to direct their own future according to their own culturally appropriate processes.

### The Karuk Creation Story

The Karuk creation story is discussed here *only* in its relevance to the Tribe’s religious freedom needs. This story is absolutely necessary in demonstrating that drastic alterations to the Karuk ancestral territory, such as those caused by dams, threaten Karuk religious freedom. The greater details of the story are far beyond the scope or capacity of

this research. In addition, the creation story of the Karuk peoples is a sacred, and in many ways private, component of their spiritual beliefs. However, the story is so pervasive in the perspectives of the Karuk that an understanding of their religious needs is impossible without some consideration of how they perceive their place in the world. Out of respect for the Karuk, the following quotes from two of the Tribe's most respected cultural leaders exclude selected details:

Our wisdom tells us that the *Ikxaéeyavs* lived on this world before Human Beings. They grew on this earth-world (as we subsequently were to grow as well). The *Ikxaéeyavs* were hyper-alive, meaning their lives were purely creative. Each moment of their existence resulted in some kind of creation: the realization of a natural law, a powerful song, or a healing herb and medicine formula to cure the gravest ill. The Earth itself was new when they were alive. And, like a new love, every moment, every movement, every idea and feeling was without precedent. All of the natural world from the earthworm to the mammals, trees, specific geological formations (certain granite outcroppings for example), sacred sites, mountains, creeks, the sun, the moon, even the mosquito, were once **Ikxaéeyav** People.

The stories reveal to us that the *Ikxaéeyav* Spirit People loved the Earth and did not want to leave altogether when their time came to its end. Their job was to learn how to live on this new Earth, to work out the intricacies of life here and unveil the natural laws on behalf of the Human Beings (*Yaas'ára*) who were to follow them. When the *Ikxaéeyavs* were told by the Creator to transform, "to go a different way," they left a part of themselves behind for the People here on Earth to remember them by, or they left behind specific knowledge to help Human. (Lang 1994, p. 24)

Another version of the story reveals the significance of the transformations that the Spirit People undertook:



At the beginning of time, the earth was a dark place. There was no light. There were spirit people who roamed this place, this dark, kind-of formless place. And then at the time we call the great transformation, the Creator transformed all of those spirit people. He transformed some of them into the rocks and the trees, the water and the air, transformed some into fish, animals, insects. Some of those spirit people he transformed into human beings. The existence of all those spirit people and the inner relationship, how they are all interrelated comes from that point, comes from that transformation. (Leaf Hillman, interview, 12/13/04)

For the purposes of this thesis, two important concepts must be drawn from these stories: (1) everything is a “living” Spirit Person, and (2) everything is related. To the Karuk “everything is alive; everything has spirit” (Leaf Hillman, interview, 12/13/04). “Everything” in this sense is meant quite literally, including rocks, trees, the air, human-produced objects, mountains, rivers, people, the celestial bodies, and just plain *everything*. In the words of Lang, “we consider all of nature to be alive, possessing both feelings and consciousness. Hence the *natural world* is capable of seeing and hearing us, ‘blessing’ us, and taking pity on us” (Lang 1994, p. 22). These beliefs reveal the profound connection the Karuk have to the world around them, especially with their ancestral territory. According to their beliefs, and the practices that evolve out of those beliefs, the Karuk strive to interact with all the various components of the world with the constant recognition that they are surrounded by the physical manifestations of the Spirit People. This point is worth repeating: according to Karuk systems of spirituality, the world consists of Spirit People with whom the Karuk strive to interact. Such interaction consists of a broad range of relationships and responsibilities.

The second consideration to be drawn from the Karuk creation story is the perspective that everything is related. “Our sense is that all of nature grows from the Earth as strands of long hair connecting the present with the beginning of time and original knowledge” (Lang 1994, p. 23). In other words, “all things are related” (Leaf Hillman, interview, 12/13/04). Humans, rocks, worms, and mountains were all at one time Spirit People and were transformed into their current states. Thus, literally everything is related since the Spirit People are the common ancestors of all “beings.” And, just as most people embrace a sense of responsibility to their families, the Karuk recognize a personal “responsibility to all [their] relations” (Leaf Hillman, interview, 12/13/04).

#### The Karuk, land management, and religious freedom

No aspect of the Karuk’s lives is left untouched by the spiritual knowledge that everything is a living Spirit Person and everything is related. As Boyd (2005) states, “if spirits are conceptualized as people, or like people in many ways but with special powers, it follows that they should be treated as people are treated” (p. 97). Following this logic, if “everything” is considered a spirit person, then everything should be treated as people are treated. In fact, since all things are related through the transformative actions of the Spirit People, everything should be treated as a personal “relation” or relative. The failure of non-Indians to understand the depth and extent of these beliefs has been a

serious threat to the religious freedom of the Karuk: many of their sacred sites have been destroyed or damaged, many of the species to which they are spiritually related and with whom they share a spiritual relationship have become extinct or endangered, the river upon which their world depends has been dammed (damned?), and the ecosystems that they spiritually and ritually manage have been dramatically altered. Furthermore, many of the spiritual relationships the Karuk share with these Spirit People through environmental management are now restricted and criminalized by federal policies.

Like all other Tribes of North America, the Karuk continuously struggle to maintain the privacy and integrity of their sacred sites.<sup>25</sup> However, Tribes in the United States can enjoy the small comfort that sacred site preservation is at least generally accepted as a *potential* religious freedom issue.<sup>26</sup> On the other hand, practically no attention has been given to the fact that the right of Tribes to practice their spiritually-guided systems of environmental management is also an issue of religious freedom. The severe lack of exposure regarding this issue became obvious in a review of ethnographic interviews and the series of personal interviews conducted specifically for this study. As an essential spiritual practice, the right to engage in environmental management by Tribal members is undoubtedly a religious freedom issue. However, Karuk peoples seeking to

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<sup>25</sup> Indeed, the Tribe was a plaintiff in the most recent and most dramatic Supreme Court case regarding sacred sites (See the G-O Road case below in the subsection “*Forests*”). The case did not end well for the Tribe and the issue of sacred site preservation remains a constant battle for the Karuk.

<sup>26</sup> See section three for a selection of several sacred site related U.S. court cases in which the preservation of sacred places was argued as a religious freedom issue.

engage in environmental management as a spiritual practice must first contend with other competing systems of “resource management.” These opposing systems alter the land in ways that interfere with Karuk spiritual practices and can even make Karuk cultural/spiritual environmental management impossible. The next sub-section considers several conflicting perspectives regarding the appropriate uses of land with the intention of demonstrating that Karuk religious freedom is threatened by the systems of land management against which the Tribe is forced to compete.

#### Appropriate uses of land: Conflicting perspectives

##### Three styles of land management

Boyd (2005) offers a useful matrix for comparing systems of “resource management” (p. 5). The author notes the frequency with which the phrase “resource management” is used in contemporary literature, but finds that no clear definition of the term exists. Seeking to establish clear-cut parameters for the concept, Boyd finds that definitions fall into two categories: “one administrative, the other ecological.”

Administrative management is primarily used in business and is to a large degree economically driven. The functions of administrative management are “planning, organizing, coordinating, directing, controlling, and supervising” (p. 5). These tasks are undertaken primarily to bring products to people outside the system being managed.

Ecological management, on the other hand, is much more concerned with “the well-being” of species and their habitats than with the people who are exploiting such resources. Benefits that *are* directed at people are more locally located. Boyd asserts that ecological management can focus on either a specific living resource, the environment that sustains that resource, or both. The degree of control in such management can range from “simple manipulation” and “simple care” to “full-scale modification” and “full-scale domestication.” In regards to ecological management, Boyd emphasizes, “there is a great range of possibilities, both in techniques and in intensity” (p. 6). As is demonstrated in greater detail below, the Karuk engage in a wide array of ecological management practices in a variety of settings.

Boyd infers that both the administrative and ecological definitions apply to whomever is engaging in management practices. All styles of land management require some degree of administrative and ecological considerations. For instance, U.S. Federal agencies tend to lean towards administrative management and utilize ecological management only towards that end, while Native Americans tend to focus more on ecological management and rely on administrative management only secondarily. Another way to apply Boyd’s parameters is to consider resource management on a scale, with administrative management on one end and ecological management on the other. However, neither end of the scale can exist in isolation. As has become evident in recent decades, the administrative management of America’s forestlands is not sustainable over

the long-term without some investments in ecological management. At the same time, it is impossible to engage in ecological management without some degree of practical administration. Included in administrative management are the much-needed functions of leadership, the maintenance of social relations, resource distribution, and the diffusion and appropriate application of technology. Without these, ecological management would be ineffective and unsustainable in a *social* context. Thus, American Indians and the Federal Government practice both forms of management, though typically on different ends of the spectrum.

Boyd also identifies “management for religious priorities” as an alternative to the two types described above (p. 6). This style of management is of extreme importance to the Karuk. In this case, activities such as formula prayers and the First Salmon Ceremony are indispensable components of their management systems. In fact, based on this type of “management for religious priorities,” it is useful to contrast Karuk systems of management with the systems they now find themselves competing against.

#### Environmental management versus resource management: A clash of values

The Karuk practiced in the past, and seek to practice today, an intricate system of landscape manipulation that they call “Environmental Management” or “Cultural-Resource Management.” Environmental management combines Boyd’s definitions of “ecological management” and “management for religious purposes” with the spiritual and

cultural contexts of the Karuk. Therefore, Karuk environmental management is cultural and spiritually driven, considers the well-being of species and their habitats, is directed at specific living resources and the environments that sustain them, and utilizes a wide range of control techniques. Federal agencies with interests in the territory of the Karuk practice a much simpler system of landscape manipulation that they call “Resource Management,” which can generally be understood as Boyd’s “administrative management.” The operation of these two systems is approached very differently, initiating very different results. Though both systems ultimately involve extraction of energy, the former system is based on reciprocal spiritual and physical relationships, long-term gain, and locally-isolated economic priorities while the later system is based on large-scale extraction, short-term gain, and nationally-driven economic priorities. These two systems represent divergent value systems, which in most cases are mutually exclusive.

Founder of the Karuk Department of Natural Resources, Leaf Hillman, suggests that a major difference between resource management and environmental management is the *location* of the “managers.” Environmental management is done from the “inside,” while resource management takes place “outside” the system. In the words of Hillman:

Western management is a management system that attempts to manage from the outside in; that doesn’t view itself as part of what is being managed. It is here and what you are managing is over there. Outside in! Managing from the inside out, you are not managing something that is separate from you. You are managing something you are a part of. And the landscape as a whole, the ecosystems, the natural systems, are

managed to meet not material desires or wants, but managed to meet material needs and spiritual needs. The spiritual component in resource management is the missing link. It is the missing link that there is no substitute for. You cannot separate the spiritual needs of people from the environment. You cannot manage simply for material needs and wants. The spiritual connection of the people to the land, the intimacy of place, the importance of place for indigenous people is vital to their continued existence. (Leaf Hillman, Traditional Knowledge and Environmental Stewardship Conference, 06/22/05)

Based on the divergence of value systems between the environmental management of the Karuk and the resource management of Federal agencies, the Karuk are currently engaged in a “war” of values. This “war” is more figurative than literal, and the various “warring” parties are not necessarily cognizant of the conflict. Nevertheless, the consequences of this “war” are very real, for it is based on divergent values and the accompanying actions that evolve out of them. As these values clash, the Karuk are finding themselves in the dangerous position of losing their cultural and spiritual viability as a people. As long as Federal agencies continue to impose regulations upon the Karuk territory that are not comparable to Karuk values, all involved parties will find themselves involved in a culture war in which Karuk religious freedom is threatened.

The Karuk, who desire to retain and develop their age-old cultural values, are seeking the political autonomy and religious freedom to practice their own culturally-appropriate systems of environmental management. The Karuk are members of an exceptionally old culture, which has developed in-place since time immemorial. The cultural values that they hold, and the systems of environmental management they seek to



practice, are based on millennial-old subsistence lifestyles. For reasons of economic practicality and spiritual connectivity to place, these values and their accompanying lifestyles literally enhance the biodiversity and over-all ecosystem integrity of the places upon which the Karuk depend. It merits serious consideration that increased ecosystem diversity is a consequence of the Karuk practice of living according to their spiritual values.

For example, as the number of species in a given area increases, the Karuk gain the opportunities to increase the quantity and quality of their subsistence and spiritual relationships with other beings. Thus, living according to their cultural values initiates a positive feedback loop in which biodiversity and ecosystem health increase the Karuk's economic and spiritual wealth, which in turn promotes spiritual and environmental management practices that encourage further biodiversity and ecosystem vitality. On the other hand, as the number of species in a given area decreases, the Karuk not only lose the quantity of their subsistence and spiritual relationships with other beings, they also lose the opportunity to continually engage in age-old spiritual relationships. Thus it is in the Karuk's best interest, both spiritually and economically, to enhance the biodiversity and over-all ecosystem health of their territory.

It is important to note, however, that while many of the values promoted by the Karuk essentially enhance biodiversity, it is not necessarily true that all cultural values of all peoples impact ecosystem health in positive ways. When outside interests seek to

realize cultural values that are divergent from those of the Karuk, the impacts on the surrounding area also differ. The Forest Service, for instance, endorses and promotes the values of “multiple use” and maximum timber yield, while the Bureau of Reclamation and the Federal Energy Regulatory Commission are advancing the conversion of the Klamath River into a mechanism for producing irrigation and electricity. Inevitably, such cultural values (e.g., profit-driven natural resource management) drastically *reduce* biodiversity and ecosystem integrity, operating in direct opposition to the values and goals of the Karuk.

As the value systems of these various parties are mutually exclusive, conflict is inevitable. As a result, a culture war between the Karuk and outside interests is currently underway, being fought in the realm of resource management. This war need not be officially endorsed by any particular party in order to be of serious consequence to the cultural and religious integrity of the Karuk peoples. Yet, for as long as outside interests impose outside cultural values upon the lands of the Karuk, biodiversity and over-all ecosystem integrity will continue to decline, with the religious freedom of the Karuk suffering as a result. The fact that religious freedom directly depends upon ecosystem health may be foreign to many readers. However, to the Karuk there is no question that environmental degradation is indeed a direct threat to their systems of spirituality.

### Ecology and spirituality

Karuk systems of spirituality are so powerfully connected to ecology and geography that ecosystem integrity is an absolute prerequisite to their religious beliefs and practices. Based on interviews and other research, it is evident that those places that the Karuk peoples most value in a spiritual sense are also the most diverse and/or unique in a biological and geographical sense. For example, many sacred sites can be found among unusual rock outcroppings, ridgeline trails, and select fishing spots. While such places offer direct conduits for spiritual engagement, they are also inherently geographically and ecologically rich. In other words, it appears that the areas of greatest spiritual importance are also exceptionally distinctive geographically and highly diverse ecologically. The significance of this point cannot be overlooked: the integrity of Karuk spirituality is wholly dependent upon the conditions and health of their ecological and geographical surroundings.

A case in point is the Klamath River, which as one of the most important sources of spiritual power to the Karuk peoples is both a highly diverse and exceptionally unique component of the landscape. The river bisects the Karuk territory, serving as perhaps the most obvious defining feature of the area. Not only is the river central in a geographic sense, but it is also of central importance to the ecology of the region. In addition, to the Karuk the river serves as the sole access point to the Salmon Peoples and other spiritual connections found nowhere else in their world. Spiritually, the river is irreplaceable to

the Karuk, just as it is ecologically irreplaceable to fish. More importantly, these seemingly divergent categories of ecology and spirituality are in reality powerfully united.

To the present-day Karuk, the river has multiple integrated roles: distinctive geographic reference point, source of personal and Tribal identity, spring of biological diversity, indicator of ecological health, and irreplaceable access point to spiritual domains. None of these roles is complete without the others. For instance, damage to the river not only harms salmonid populations, it also disrupts Karuk spiritual relationships with the Salmon Peoples. In this sense, ecology and spirituality are one. It is not useful to determine whether the river is of more importance biologically than spiritually, for these two perspectives can be considered the same. What western science would label as the river's ecological health, the Karuk perceive as its spiritual health. Whereas wildlife biologists see the massive 2002 fish kill<sup>27</sup> in the Klamath River as an indicator of declining ecological stability, the Karuk further this perspective with a spiritual viewpoint. Fish are not just an aquatic species, they are the direct relations of all other beings. Fish do not simply play a biological role in a great ecological web; they are an aware and vital partner in a united spiritual cosmos. It is unavoidably true that such massive waves of abnormal death are of great biological consequence. Yet, they are also of undeniable spiritual concern.

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<sup>27</sup> See below for further discussion of the 2002 fish kill.

The overlap of spirituality, ecology, and geography is very evident in Karuk relationships with other beings and the responsibilities that stem from those relationships. For instance, according to Karuk spiritual beliefs, the Salmon People and the Karuk need one another, while both need the river. The river, in turn, needs the respect and care of *all* the “Peoples” of the world. These needs and responsibilities are part of a grand spiritual system in which every being has a role to play in an all-inclusive relationship of reciprocity and responsibility. In the context of Karuk relationships with salmon and the river, the Karuk are duty-bound to participate in and observe very exacting salmon fisheries. To waiver from the responsibility of maintaining these fisheries is to fail in a spiritual responsibility. Such relationships and responsibilities are not limited to fish.

Research and interviews indicate that the Karuk are actively engaged in similar spiritual relationships with dozens of other species. In just the interviews conducted for this thesis, more than 29 such species were mentioned, including raccoons, ring-tailed cats, piliated-woodpeckers, black bears, elk, deer, otter, salamander, blue jays, eagles, robins, pigeons, quail, “snow birds,” pepperwood, yew, bear grass, hazel, porcupine, black berries, suckerfish, lamprey ells, sturgeon, stealhead trout, three species of salmon, several species of oak trees (particularly tan oak), and tan-oak (matsutake) mushrooms, as well as numerous plants used for basketry materials. In studying the traditional diet of the Karuk, Norgaard (2004) identifies 11 aquatic species, 4 mammalian species, 20 species that provide nuts, seeds, and acorns, 10 vegetative species that provide bulbs and

tubers, 18 species that provide fruits and berries, and 12 species that are used as herbs and greens. Multiple other species are mentioned in interviews conducted by other researchers and it is safe to assume that the Karuk have a designated relationship (and accompanying responsibilities) with each of them.

The relationship that the Karuk have with the Salmon People is indicative of the types of spiritual engagements they experience with these other beings. Catching and consuming salmon is not a casual or carefree process, but instead involves the responsibilities of prayer, ritual, ceremony, and the observation of complex social rules. The same types of responsibilities are a part of all other relationships the Tribe shares with the other Peoples (species) of their world. The balance and continuity of the entire spiritual cosmos is dependent upon each participant in this system – from salmon, to acorns, to humans – to maintain their part in the system (i.e., to fulfill their responsibilities). From the perspective of the Karuk, it is this continual maintenance of spiritual relationships and responsibilities that create what ecologists label as ecosystem health. Ideally, for as long as each type of People maintain their place in the system, it will be healthy. In another sense, the ecological health of the Karuk's surroundings evolves out of the fulfillment of spiritual responsibilities. Yet, it becomes increasingly difficult for the Karuk to fulfill their spiritual responsibilities as the health of their ecological surroundings is degraded by external sources. For instance, large-scale logging, the construction of dams, and other similar activities drastically reduce the

population of fish in the Klamath River, making it increasingly difficult for the Karuk to fulfill their responsibilities to the Salmon People.

### Karuk environmental management

Several issues must be addressed in considering the connection between ecology and spirituality for the Karuk. First, the diverse range of relationships and responsibilities that the Karuk deem as spiritually *necessary* both contribute to and are dependent upon ecosystem health. This means that environmental issues are inextricable from Karuk religious freedom. Second, though Karuk religious freedom is in part dependent upon ecosystem health, this does not mean that the Tribe expects the federal government to “protect” ecosystems for the Tribe. Instead, the Tribe seeks to actively participate in their own culturally and spiritually-appropriate forms of environmental management. In cases where the federal government “must” be involved, the Karuk insist that their unique spiritual and ecological values must be kept in mind.

As a highly independent and interactive part of their spiritual belief systems, Karuk relationships with their surroundings reflect a system of environmental management of immense complexity. The connection between diet and ecology demonstrates this point. As the bulk of the Karuk diet once came from fishing, hunting, and gathering acorns, they invested very focused efforts into the management of fish runs, suitable habitat for big-game, and a diverse range of oak trees. It was only through

highly specialized environmental engineering, based primarily in spiritual practice, that the Karuk were able to increase the types of biodiversity and ecological integrity conducive to their economic and spiritual needs.

For instance, maintaining healthy oak groves requires sophisticated controlled burning techniques. As another example, an intricate system of social organization is required to coordinate countless fisheries along hundreds of miles of rivers and tributaries without negatively affecting fish populations while still equitably distributing fish catches through a population. Though the Karuk currently have very little opportunity to participate in such environmental management practices, the knowledge to engage in them is not dead and the spiritual desire to revive them flourishes among many Tribal members.

Though spiritual considerations are intimately linked to all practical aspects of Karuk environmental management, such management systems are not solely spiritual activities. For example, a host of functions are provided by the consumption of a traditional diet, which the Karuk make available for themselves through their own systems of environmental management. Addressing such functions within Karuk society, Norgaard (2004) emphasizes several health benefits, with particular importance given to the nutritional consequences of eating – or being denied the right to eat – a traditional diet (p. 5). According to the author, a traditional diet prevents chronic disease, provides a superior availability of key essential nutrients, and offers many other health benefits (p.



5). In addition, Norgaard also notes cultural and social roles and values of traditional foods. Celebrations, daily gathering and preparation activities, and other social contexts of food serve as “glue” that bind Karuk peoples together and provide a matrix for the socialization and education of values and information. Thus, in addition to providing an array of physical health benefits, traditional foods are indispensable component of culture. As such, Norgaard (2004) emphasizes “traditional food systems” as a crucial element of indigenous lifeways that influence cultural, social, spiritual, and physical aspects of people’s lives (p. 1).

According to Norgaard, a traditional food system is an interlinked and multifaceted network of particular food products, the resources from which those products are extracted, the socially and culturally-informed techniques of managing those resources, and the particular socio-cultural, spiritual, and physical significances they hold. In the words of Norgaard, traditional food systems include, “the food available to a particular culture and the accepted patterns for their use within that culture” (p. 1). Such systems also incorporate spiritual considerations, as well as the overall historical and socio-cultural contexts in which all these elements exist. Consequently, each element in the overall system possesses very particular meanings. For instance, distinct values exist for each type and category of food, the age and gender groups that use them, and the nutritional values and health consequences they provide (Norgaard 2004, p. 1).

In simpler terms, traditional food systems are the cultural and physical consequences that evolve out of the assets and limitations within an available resource base. Through these culturally-enriched traditional food systems, indigenous peoples sustainably exploit those resources that are abundantly available and consciously work to enhance local limitations. For the Karuk, sustainably utilizing and consciously enhancing their surroundings for the maintenance of traditional food systems is a part of environmental management. It is important to be aware that such environmental management practices are nothing less than the literal manifestations of spirituality.

In order to maintain their spiritual obligations to the other Peoples of their world, the Karuk are compelled to engage in the environmental management practices for which they believe they were created. For instance, the Karuk must use fire to manage forested landscapes, must tend certain plants for basketry materials, and must maintain Tribal fisheries. Thus, declaring Karuk systems of fire management as illegal is to criminalize a critical practice of their religion. Indiscriminately or irresponsibly using herbicides to enhance timber production is to make the spiritually-directed practice of basket-material gathering potentially life threatening. Denying the Karuk the right to maintain their Tribal fisheries is to restrict them from fulfilling their responsibilities to higher powers.

As direct and obligatory extensions of spirituality, the right of the Karuk to engage in these and other environmental management practices is an issue of religious freedom. However, the issue of religious freedom in this case is not limited to the

Karuk's right to engage in environmental management. For as long as the Klamath River is being choked by massive hydroelectric dams, the Karuk are forced to watch the slow and continuous massacring of the Salmon People and other beings that they regard as their Spiritual Relations. For as long as the Forest Service promotes the spread of monodominant stands of timber-productive trees over biodiverse woodlands with mixed-oak groves, the Karuk are forced to witness the conversion of their territory into a massive tree farm. Indeed, any actions taken or policies endorsed by Federal agencies that impair the biodiversity and ecological integrity of the Karuk territory are a violation of their religious freedom.

It is important to emphasize that the environmental management practices of the Karuk include a wide range of activities that may not appear to be any direct form of "management" from an outside perspective. To assume Karuk environmental management resembles the types of resource management familiar to Westerners is a mistake. The two systems diverge as much in their practical applications as they do in their underlying values. Just as participation in the various salmon ceremonies is an important spiritual practice, so too is the controlled utilization of fire for the maintenance of healthy oak trees. In these cases, *the spiritual cannot be extracted from the practical*. The following review of literature explores issues of environmental management and indigenous peoples with the intention of demonstrating the underlying *religious*

relationship inherent in Karuk interactions with and management of Klamath River ecosystems.

### Indigenous environmental management

#### Active environmental management: Dispelling the concept of “passive” hunter-gatherers

One of the ways in which anthropological literature of the past categorized human cultures was by determining their means of securing food. Hunter-gatherers were placed at the bottom of a scale of complexity, with pastoralists and agriculturalists representing increasingly higher degrees of complexity on the scale.<sup>28</sup> The bottom of the scale represented “food procurement” lifestyles, while the top represented “food production” lifestyles. Implied in this categorization scheme is that hunter-gatherers are passive and react to their surroundings while agriculturalists are active and shape their surroundings. However, as Blackburn and Anderson (1993) indicate, a shift in academia has been occurring in the past three decades (p. 15). This classic classification scheme has been determined to be “inadequate, over simplistic, and dangerously misleading” (p. 15).

This shift in academia is based on the growing recognition of the large range of highly complex systems of nonagricultural economies that depend upon sophisticated

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<sup>28</sup> The description offered of anthropological categorizations is oversimplified here, but is sufficient for the present discussion.

systems of traditional knowledge (p. 15). Far from being “passive” or “reactive,” hunter-gatherers are much more often dynamic agents with significant influence over their companion ecological surroundings. As Hunn and Williams (1982) assert, “hunter-gatherers organize and plan; they choose their actions strategically” (p. 7). Hunting-gathering, then, is not a “passive” or “reactive” process.

Moving away from the perspective of “passivity” requires investigation into what hunter-gatherers are “actively” doing, leading to the concept of environmental management. With intimate environmental knowledge, and a great appreciation for their place within ecological systems, hunter-gatherers can literally “restructure” their surroundings (p. 7). This is true to such a degree that Hunn and Williams suggest that hunter-gatherers can be considered *active environmental managers* that shape their world “through strategic ecological or economic courses of action, via social controls and political maneuver, or by virtue of the power of symbolic ritual” (p. 1). The emphasis here is on *active environmental management*.

A consequence of this recognition of hunter-gatherers as active managers of their environments has led to the suggested elimination of the term “hunter-gatherer.” In 1996 the Karuk Tribe prepared a document for the USDA Forest Service on the Tribe’s position regarding “the management of lands falling within aboriginal Karuk Territory” (Winthrop et al. 1996, p. iv). Early in the document, *active environmental management* is emphasized and the concept of “hunter-gatherer” is challenged: “In light of the far-

reaching ecological consequences of indigenous resource management, ‘hunter-gathering’ is no longer an adequate description of traditional resource strategies applied by California Indian peoples” (p. III4). This new concept of “indigenous resource management” is drawn from the observation that peoples such as the Karuk utilize “‘explicit’ management techniques [that are] clearly and directly related to the control of certain species” (Boyd 2005, p. 20). In other words, environmental management is the application of control techniques that are directed towards specific environmental goals.

Another noteworthy feature of indigenous resource management is the inherent choice in selecting such a lifestyle. As Hunn and Williams (1982) insist, such resource managers do not engage in or maintain their lifestyles “out of ignorance” (p. 7). Indeed, “cases of the persistence of hunting-gathering as the preferred mode of production in the presence of... alternative are well known” (p. 7). Such is the case for the Karuk. Though the past century has seen dramatic lifestyle changes for the Tribe, there remains a great desire – both economically and spiritually – to actively retain ecological management practices such as fishing, prescribed burning, and various gathering activities. In addition to the Tribe’s wish to retain their cultural heritage, these desires stem from the fact that many Karuk individuals possess a firm understanding of the Tribe’s indigenous resource management practices, as well as the Tribe’s collective “traditional environmental knowledge.”

### Traditional environmental knowledge

Indigenous resource management is based on a broad range of knowledge and is founded on the acceptance of a spiritual link between all components of existence. This broad range of knowledge is often called “Traditional Environmental Knowledge” (TEK). TEK can be defined as “an integrated body of spiritual and practical knowledge that has evolved over vast stretches of time through the successful adaptation of an indigenous people to their particular ecosystem” (Winthrop et al. 1996, p. III6). This definition advances two distinct arguments. First, TEK is an integrated body of knowledge that is both practical *and* spiritual. These are not two perspectives melded together, but are instead a unified means of perceiving and interacting with the world. Second, TEK has evolved in one particular place over a long period of time. As is stated above, the Karuk have lived along the Klamath River since time immemorial – or for over 10,000 years from the perspective of archaeologists. Such a long occupation of one specific region inevitably leads to a very intimate and very seasoned range of environmental knowledge.

One Karuk Tribal member referred to the origin of TEK as an inherently spiritual event that directly correlates to the Karuk creation story. According to Frank Lake:

Each Karuk person feels like in many ways they have responsibility to these spirits and to the creator to carry on the natural laws. When those spirits physically manifested themselves they were the teachers to the first people who came to place, and so that really was the genesis of Traditional Ecological Knowledge. (interview, 02/17/05)

Lake's testimony reveals two important concepts. First, for the Karuk the continuance of TEK is absolutely bound in a sense of spiritual responsibility. For many Karuk peoples, it is their *duty* to "carry on the natural laws." Though the exact content of "natural laws" can be interpreted in many ways, there is little doubt that one must possess some degree of Traditional Ecological Knowledge in order to fulfill this duty. In other words, for a Karuk person to successfully fulfill their spiritual responsibility of carrying on natural laws – however those may be defined – they must possess some degree of the ancient collective spiritual and practical Karuk knowledge of Klamath ecosystems. Second, Karuk TEK was born at the time of the Great Transformation, a period recognized in the Karuk creation story as among the most important spiritual events. Thus, while the responsibilities associated with Traditional Ecological Knowledge – and the practical applications that evolve out of TEK – are inherently spiritual, the knowledge itself is also sacred. For all these reasons, TEK is highly valued by indigenous peoples such as the Karuk.

The extent of traditional environmental knowledge among indigenous peoples has been surprising to some anthropologists and ecologists. Connected to the fallacy that non-agricultural peoples are merely *passive* hunter-gathers, academia has consistently underestimated the traditional environmental knowledge of indigenous peoples. The following quote by Boyd (2005) demonstrates this tendency.



Anthropological fieldworkers, particularly those working in traditional societies in the past fifty years, and with an understanding of ecological systematics, have been impressed by the breadth and depth of biological and ecological knowledge of local species and habitats possessed by traditionalist informants. (Boyd 2005, p. 21)

Though Boyd's statement acknowledges that the ecological knowledge of indigenous peoples has been underestimated, his words still demonstrate a clear bias. The author's one-sided perspective fails to consider whether the "traditionalist informants" to whom he refers have been equally as impressed by the depth of ecological knowledge possessed by the anthropological fieldworkers. Indigenous peoples are certainly capable of recognizing that place-based environmental knowledge is rare among non-traditionalists. Indeed, despite the "understanding of ecological systematics" possessed by Boyd's fieldworkers, their knowledge could not have been as intimate or seasoned as that of the "traditionalists." Years of formal scientific training could not compare with lifetimes and generations worth of intimate and seasoned life experience. The functions of direct daily experience (intimacy) and continuous lifelong experience (seasoning) certainly lead to an incalculably extensive breadth and depth of biological and ecological knowledge of local species and habitats. For this reason, it is unlikely that the Western scientists were even capable of understanding the true extent of knowledge they were witnessing.

The indigenous peoples who possess and pass on traditional ecological knowledge live their entire lives within the local environment, are raised by parents who have been

as well, and are a part of a social system that developed specifically in that local environment for countless generations. Considering the fact that such place-based lifestyles are dependent upon environmental-knowledge, it would be surprising if such indigenous peoples *did not* have a broad knowledge of their ecosystems. That anthropological fieldworkers would be impressed is a testament to the Western fallacy that only experts and specialists can possess any substantial knowledge about specific environments.

#### Determining the place of humans in ecosystems

Another common Western fallacy is the view that humans are typically intruders or foreign agents within ecosystems instead of necessary, natural components. From this perspective, human beings simply are not “natural” and therefore do not belong in “natural” systems. Such systems, therefore, must either be protected from human intrusion or entirely altered to meet the needs of people. These views are based upon the popular notion of a dichotomy between “culture” and “nature,” in which some things are distinctly natural and cannot be a part of the human world, while other things are distinctly cultural and are therefore *exclusively* a part of the human world. “In ecological thinking, this has led to the exclusion of humans from the ecosystem” (Winthrop et al. 1996, p. III1). Ecosystems are thus seen as interconnected systems of parts that function together as a unit, excluding any human components or influences (p. III1). Accordingly,

as a division of “nature”, ecosystems are distinctly free of people. Consequently, humans are only taken into account when “regarded as intrinsically harmful to ‘natural’ systems” (p. III1). Such thinking is ubiquitous in Western culture and has several implications for native peoples.

In contrast to the Western view, indigenous peoples such as the Karuk understand well that they are an innate part of the interconnected living world, albeit only one of countless many parts. No sharp division between culture and nature exists, for humanity’s place within ecosystems is a clear and simple fact. This view provides a strong contrast to the notion that the “natural” living world somehow excludes humans. In fact, from an indigenous perspective, the concept of “nature” is unknown: the world is a sacred home for all beings equally – including humans. Therefore, it is literally impossible to extract people from nature since no such concept exists. Yet, not only do indigenous perspectives incorporate people in an inclusive view of the living world, they also recognize the fact that humans actively shape ecosystems in productive and beneficial ways.

Grinde and Johansen (1995) suggest that as Europeans spread throughout North America, they mistakenly assumed that the array of landscapes they witnessed were all “natural occurrences.” However, in many cases the “park-like appearance” of these places was actually the consequence of Native peoples’ environmental management practices (p. 43). As Hillman and Salter (1997) suggest of the Karuk territory, “...native

peoples had created the astonishingly productive, varied and healthy landscape which the first Europeans mistakenly assumed was solely the work natural, not cultural processes” (Hillman and Salter 1997, p. 2). As unconditional members of the living systems around them, indigenous peoples masterfully sculpted these landscapes through environmental management. As Margolin (1993) explains of California Indians,

By doing so they created an environment very much to their liking – one that provided the best habitat for game, one that encouraged the growth of favored food and basketry plants. The landscape of old California, in other words... was not a ‘natural’ landscape. It was created by people, in many ways as ‘artificial’ as the farmlands of Europe. Thus, when [Europeans] arrived in California... they did not find (as they fondly imagined) a ‘pristine wilderness.’ They found what was in many ways a garden, a land very much shaped by thousands of years of human history and adapted to human needs. (Margolin 1993, p. 54)

Given the degree to which Native Californians were – and in many cases are – an active and functioning component of ecological systems, it becomes evident there can be no division between culture and nature. Indeed, not only can ecosystems thrive in the presence of people, some ecosystems literally need humans and their systems of environmental management as much as they need any other “natural” ecological components. Furthermore, many scholars suggest that indigenous peoples can be completely “essential for optimum ecosystem function” or necessary for the “maximization of ecosystem function” (Winthrop et al. 1996, p. III6). In such a case, humans are not an externality or intrusive agents within an ecosystem but are instead a necessary component without which the system would not continue to exist. In

ecological terms, humans can be considered a “keystone” species.<sup>29</sup> As is demonstrated below, when Indian regimes of controlled burning were disrupted over a century ago, a massive shift in ecosystems followed. Studies also suggest similar shifts occurred in riparian ecosystems following the decline in Indian fisheries along salmon-rich rivers. The presence and activities of humans (i.e., Indians) was *essential* for the continuance of such ecosystems. As humans were a keystone species, the ecosystems changed dramatically once their role in the system changed, demonstrating that people were as integral to the system as any other component.

Blackburn and Anderson (1993) note that pre-contact California Indians were a fully functioning component of their surrounding ecosystems because they consciously *shaped* those systems: “Important features of major ecosystems had developed as a result of human intervention, and many habitats... were deliberately maintained by, and essentially dependent upon, ongoing human activities of various kinds” (p. 18). This opens up the concept of purposive human intervention (p. 19) and gets to the heart of Karuk environmental management and their spiritual beliefs.

When particular systems are maintained and *regenerated* over a long period of time, those systems are at least partially defined by such actions. Experts on Native Californian environmental management note that the invasion of Euroamericans led to

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<sup>29</sup> Of course, it is not necessarily true that *all* humans need be considered keystone species. In this case, “humans” refers specifically to indigenous peoples well established in a particular environment, and more particularly to the Indian peoples of Northwest California.

the near universal disruption of such systems of maintenance and regeneration (Blackburn and Anderson 1993, p. 19). According to their research, when ecological management by Indians ceased, “a process of environmental change began that led to a gradual decline in the number, range, and diversity of many of the native species and habitat types that once flourished” (p. 19). Thus, from an ecological perspective, a particular scope of human participation in the system is necessary.

Indigenous environmental management  
as spiritual practice

Beyond the practical considerations of humanity’s place in ecosystems, a spiritual perspective must also be considered. In fact, in many ways it is impossible to extract the spiritual from the practical. From a Karuk spiritual point of view, human participation in ecosystems is a sacred *obligation* imparted to humans by the Spirit People. In the words of the Karuk Tribe’s Vice-Chairman Leaf Hillman, this means that “the cultures and lifeways of native peoples are very deeply entwined and you can’t separate them from the philosophy of sustainable management of the environment” (Leaf Hillman, Traditional Knowledge and Environmental Stewardship Conference, 06/22/05). Such management of the environment by humans is a spiritual responsibility given to the Karuk during the time of transformation. “Back in the beginning of time when we came here as spirit people, we went to the mountain and got our direction on how to live when we

transformed into humans” (Harold Tripp, interview, 02/09/05). Included in these directions on how to live was the mandate to manage the land in particular ways. Harold Tripp suggests that this is very much true today and is reflected by the roles that some people are born with: “We have roles to play in life. Some people were born fisherman, some people were born hunters, some people gathers” (Harold Tripp, interview, 02/09/05). In other words, participating in a particular branch of environmental management can be one of the spiritual purposes in a Karuk person’s life.

Blackburn and Anderson’s research notes that these spiritually informed perspectives of environmental management provide Natives with a unique understanding of shifting ecosystems:

When elders today are asked why the rich resource base and fertile landscape that they remember as having existed in the past has changed so drastically, they are apt to respond by saying simply, ‘No one is gathering anymore.’ The idea that human use *ensures* an abundance of plant and animal life appears to have been an ancient one in the minds of native peoples. (p. 19)

The spiritual perspective is most important here for the purposes of this study, but as is emphasized above, the spiritual cannot be extracted from the practical; they are unified means of perceiving and interacting with the world. The concepts of “active environmental management,” “traditional environmental knowledge,” and “humans as part of ecological systems” all stem from and are subject to the fact that environmental management is first and foremost a spiritual activity. Attached to these concepts are issues of indigenous environmental ethics. As Thomas King (2004) says of the Karuk

Tribe and their neighbors, “environmental stewardship was and is an essential element of Tribal culture in the riverscape” (p. 34). However, the sentiment is best stated in a document officially prepared by the Karuk Tribe: “It has always been the Karuk belief that our role is that of caring for the land” (Winthrop et al. 1996, p. I3).

Drawing together all this data regarding Karuk environmental management, it is evident that a sense of the sacred lies at the foundation of the Tribe’s environmental relations. Given the content of their creation story – which conveys that everything is a “living” Spirit Person and that everything is related – the Karuk observe a strong spiritual connection between all elements of the living and non-living world. This recognition of an unbreakable interrelationship between all things leads the Karuk to emphasize the health of the whole system as opposed to concentrating on the health of individual parts. In this way, ecology is an inclusive part of spirituality. However, this is not to say that the Karuk avoid specific relationships with individual species. On the contrary, *special relationships* are reserved for particular species (or Spirit People) and are accompanied by a particular sense of responsibility.

To further understand the spiritual relationships that the Tribe has with the Klamath River, its ecosystems, and particular species, three general relationships are analyzed below. It is of primary importance to emphasize that though the following subsections consider “Fish,” “Fire,” and “Forests” as separate categories, there is no way in reality to isolate any one component of ecological management. Each factor impacts and



is impacted by countless other factors. The health and vitality of the forests is heavily dependent upon the health and vitality of the fish and vice versa. For this reason, the Karuk today advocate for “holistic management practices.” Managing the landscape for *one* type of fish or *one* type of tree has repeatedly proven to be inadequate and often damaging to the system as a whole. The following discussions of “Fish,” “Forests,” and “Fire” demonstrate that while each component of Karuk ecosystem management practices can be considered separately, they are in fact each tightly connected to a unified system.

Karuk environmental management and religious freedom: Fish, forests, and fire

Fish

This section considers several species of anadromous fish upon which the Karuk are economically and spiritually dependent. Inevitably connected to these fish are the Klamath River and the landscapes through which it flows. The river, the landscape, and the beings that exist throughout each hold a place of spiritual significance to the Karuk. However, of all these elements within the Klamath region, the Karuk maintain a particularly special relationship with salmon. The depth of this relationship is reflected in the Tribe’s creation stories, oral traditions, cultural practices, diet, ethnographic histories,

and in their politically active environmental justice campaigns aimed at saving salmon from extinction.

Of all the fish in the Klamath River and its tributaries, anadromous fish species<sup>30</sup> are of particular importance to the Karuk. Anadromous fish spend the majority of their lives at sea, though they are born and breed in freshwater rivers. This habit of living in two worlds is the consequence of an exceptionally unique lifecycle. As adults, these fish seasonally migrate from oceans to the mouths of the rivers in which they were born, and swim far upstream to small tributaries where they spawn and, depending on the species, die or return to the sea. The new generation spends some time maturing in their freshwater birthing grounds until they are ready to swim downstream and out to sea. There, they will eat, grow, and mature, only to eventually return to their birthing grounds to begin the cycle again. These migrations always occur seasonally, though the specific timing is different for each species.

Because of this unique lifestyle, anadromous fishes are indispensable to the ecology of the Klamath region. When they leave the river, they are relatively small. When they return, however, they are substantially larger, having feed and grown in the ocean. Their return brings home massive quantities of nutrients to Klamath River

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<sup>30</sup> Of the anadromous species that traditionally inhabit the Klamath River, five are species of Pacific Salmon of the genus *Oncorhynchus*: *O. tshawytscha* (king or chinook), *O. kisutch* (silver or coho), *O. nerka* (sockeye or red), *O. gorbusha* (pink or humpback), and *O. keta* (chum or dog). Other anadromous fish species of the Klamath include the steelhead or rainbow trout (*Salmo gairdnerii*), white sturgeon (*Acipenser transmontanus*), green sturgeon (*A. medirostris*), and the lamprey eel (*Entosphenus tridentatus*).

ecosystems from an outside source (the ocean), directly enriching the system with their increased body mass. This sea-to-land infusion of energy is unique in the fact that within the earth's cycling of energy, nutrient flow almost exclusively travels from the land to the ocean. Able to reverse this flow, anadromous fishes bring nutrients from the ocean to the land. Oral traditions of the Karuk address the importance of this precious ecological contribution of anadromous fish by acknowledging and genuinely respecting their sacrifice. Through oral traditions, it is understood that these fish consciously leave their ocean homes and purposefully offer themselves to their landlocked relations. Whether viewed through a scientific lens or a spiritual lens, the ecological significance of anadromous fishes is unquestionable.

In addition to contributing to the ecology of the Klamath region, anadromous fishes were and are also indispensable to the *economy* of the Karuk. Swezey and Heizer (1993) indicate that the seasonal runs of anadromous fishes is concentrated, predictable, and consistently available (p. 301), making them an ideal cornerstone of a subsistence economy. In fact, partially because of the great abundance of anadromous fish in the Klamath system, Norgaard (2004) suggests that until recently, the Karuk and their neighbors were "the wealthiest people in what is now know as California" (p. 6). Stercho (2006) estimates that prior to European contact, the Karuk ate 1.2 pounds of salmon per day, or over 450 pounds per year. As is explained below, fish populations in the Klamath are significantly reduced from historic numbers. Thus, contemporary Karuk peoples

seeking to eat this much salmon would have to purchase fish from outside the region. Yet, if a two-person Karuk household were to attempt to retain a traditional diet today, they would have to spend \$4,400 or 65% of their yearly income (Stercho 2006).

This research by Stercho demonstrates the historic and modern economic importance of salmon to the Tribe. However, anadromous fish, particularly salmon, are also spiritually significant. As is true of all other things, salmon are a part of the spirit world. According to oral tradition, the Salmon People are a particularly potent class of Spirit People who live far out to sea in a village deep under the ocean. They do not remain forever in the ocean, however, for like other beings the Salmon People have a given role in this world. Their place in the greater system dictates that they faithfully journey to the land and swim up the river during annual pilgrimages with the intention of voluntarily offering themselves to humans. A condition of this sacrifice, however, is the absolute demand for respect (Grinde and Johansen 1995, p. 40). For the salmon to continue their role in their relationship with people, very exacting conditions must be observed and particular behaviors are expected from humans. If humans falter in these set obligations, the salmon may choose not to return to the rivers. Subsequently, without salmon, humans would suffer. Given this incredible need to demonstrate respect for the

Salmon People, a spiritually-informed system of fisheries management must be faithfully maintained.<sup>31</sup>

Nowhere is the spiritual relationship that the Karuk share with salmon more apparent than in how they manage their fisheries. Fisheries are traditionally managed through ceremonies, well-established distribution networks, and, most especially, through the utilization of a deep well of traditional environmental knowledge. The ability to maintain traditional fisheries is dependent upon a great range of such knowledge, including: an understanding of how to construct and maintain dip nets, fishing platforms, and a host of additional equipment; an understanding of how to responsibly manage and harvest the plant species from which such equipment is made; the skills and experience to operate and coordinate the use of such equipment; an understanding of variable river ecosystems, the seasonal lifecycles of anadromous fish, and the quantity of fish that must be allowed to pass in order for the species to perpetuate; and the insight to recognize and experience the sacred in each of these activities. This last requirement is potentially the most significant. As was revealed in several interviews, though some Karuk fishermen do not necessarily always limit themselves to fishing with traditional techniques, the observation of sacred relationships with fish is always present.

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<sup>31</sup> For an account of how Karuk fisheries management functioned prior to major losses of salmon populations in the Klamath River, see Bell, 1991; Boyd, 2005; Lang, 1994; Luthin, 2002; Margolin, 1993; Salter, 2003; Swezey and Heizer, 1993;.

Traditional fishermen with whom I personally communicated revealed that prayer is a vital component of their fishing experiences. One informant disclosed the fact that he sings to the river at night, including a song that the river itself taught him (anonymous Karuk informant, personal communication). He went on to acknowledge that his contemporaries sing similar songs and speak similar prayers, both collectively and in solitude. It is significant that these men, regardless of the actual techniques that they use, are consistent in their respect for and recognition of the sacred. In the case of fisheries management, the spiritual simply cannot be extracted from the practical.

Supporting a range of statements suggesting that personal spiritual interactions with the river and its inhabitants are an essential component of Karuk spiritual beliefs, all 18 interview informants unanimously demonstrated serious concern for the fate of salmon in the Klamath system. Their concern is well founded, as the future of Klamath salmon is seriously threatened. Of the five species that once frequented the waters of the river, chum salmon (*O. keta*) and pink salmon (*O. gorbusha*) are now extinct. Fall chinook salmon (*O. tshawytscha*) run at less than 8% of the numbers they once did, while coho salmon, listed as a threatened species, are now below 1% of their original numbers (Tucker 1). A spring run of chinook salmon, long recognized as the most important cultural fish species to the Karuk, is now so depleted that the Tribe can no

longer hold the First Salmon Ceremony, one of their most sacred practices.<sup>32</sup> As an informant suggested, "...the Spring Chinook no longer holds the status that it once did as the most relied upon species and run... because on the Klamath side it's virtually non-existent" (Leaf Hillman, interview, December 13, 2004). In fact, Hillman insists that the absence of Spring salmon has consideration spiritual implications to the Tribe:

It is with great pride I say that every one of our Tribal ceremonies has been brought back to life and is practiced today. All except one: the Spring Salmon ceremony. We don't do the Spring Salmon Ceremony – not because we don't want to, not because we don't need to. There are no spring salmon! The ability to catch that first spring salmon and to perform the rituals prescribed by the Creator at the beginning of time when salmon were made – we can't harvest that first spring fish. We can't harvest the second one or the third one where there is no fish to harvest. (Leaf Hillman, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

Several factors have contributed to this devastation of Klamath salmon, the most significant of which is a series of dams that block over 350 miles of historical salmon habitat, reduce water flow in the river, increase the water's temperature, and decrease the quality of the river's water (Tucker 2005, p. 2; Buckley 2002, p. 11). Traditional fisherman and cultural biologist for the Tribe Ron Reed attributes these impacts of the dam to the loss of Spring Chinook runs:

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<sup>32</sup> The details of the First Salmon Ceremony will not be considered here. However, it should be noted that at least 5 informants remarked that the Tribe's inability to engage in the ceremony is a significant loss. For an in-depth analysis of the First Salmon Ceremony, see Swezey and Heizer, 1993. See also: Boyd, 2005; and Salter, 2003.

When the Spring run became non-existent, the final straw on the camel's back was Iron Gate Dam. The last remaining habitat eight miles below Copco to Iron Gate was gone, and all the cold streams and all the spawning habitat. That small reach is gone. I used to harvest the spring run as a child before Labor Day, but now we don't catch anything until after Labor Day. Those dams have a tremendous impact on the spring salmon (Ron Reed, interview, 02/07/05).

Spring Chinook are not the only species in danger. Evidence suggests that the dams also have a negative impact the other runs of salmon. Norgaard (2004) asserts that "lack of water in the Klamath river has led to increased crowding and spread of diseases, overall elevated river temperatures, and the absence of the deep pools that serve as thermal refugia" (Norgaard 2004, p. 19). Estimates of salmon populations in the Klamath River system suggest that in the recent past up to 1 million fish entered the river annually (Hamilton, Curtis, Snedaker, and White, 2005; Tucker 2005), while today less than 100,000 fish return to the river (Klamath River Inter-Tribal Fish and Water Commission). Many Karuk peoples have witnessed these drastic declines in their lifetimes, leading Karuk Vice Chair Leaf Hillman to suggest that it is public knowledge that dams kill salmon:

For most people, the link between hydropower dams and the decline of salmon is readily apparent. Outside of the meeting rooms where scientists debate these issues and what the specific effects are, our own eyes and our own common sense tells us that there is a strong link and a strong association between the demise of the salmon of the Pacific Northwest and hydropower dams. (Leaf Hillman, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)



Tribal member Earl Crosby offers a unique view of how the dams affect the Klamath and salmon. According to Mr. Crosby,

The Klamath is a big organism. It's not just a thing that just sits out there in the landscape. It goes from the lips to the headwaters and all the tributaries that feed into this living organism. And what these dams are doing is cutting it off by 60%. It is like somebody has cut off your cardiovascular system by 60%. How would that affect your quality of life? Think about that! Put it in human terms since a lot of people out there are so anthropocentric. (statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

Several Karuk informants support this sentiment, collectively asserting that the dams are killing salmon. Lifelong Karuk fishermen Bill Tripp testified that the availability of salmon in the river has been noticeably declining on a nearly annual basis. According to his extensive personal knowledge of the river, anadromous species are in a seriously threatened state. "Last year was the worst I've ever seen. It wasn't good at all. The most fish I got in a day was six.... They just weren't there" (Bill Tripp, interview, 02/09/05). This testimony contrasts sharply with recollections by Bill's father, who remembers the past abundance of the Klamath River: "It's changed a whole lot. There was fish everywhere when I was a kid: like in the Fifties [1950s]. All the creeks were loaded with fish, nice fish, big fish. The Salmon River used to have millions of salmon and steelhead... We had salmon at every meal!" (Harold Tripp, interview, 02/09/05). This contrast between the salmon populations of today and those of the 1950s is significant both spiritually and culturally to the Tribe. At the most base level, the

reduced numbers of salmon seriously affects the sacred relationship the Karuk share with these beings.

It is important to note that the availability of salmon has drastically fallen within the lifetimes of currently active Karuk fishermen. As Norgaard (2004) suggests, “the dramatic decline in eel and salmonid populations that once supplied over half the Karuk diet has occurred within the lifetime of most adults alive today” (p. 16). However, perhaps the most memorable loss of salmon has happened quite recently. In 2002, tens of thousands of salmon died a mass death, with the number of individuals lost ranging from 33,000 to 68,000 (National Research Council, 2004; Tucker, 2005, Norgaard, 2004; Stercho, 2005).

Many Karuks personally witnessed the effects of the 2002 fish kill. Traditional fisherman Bill Tripp expressed great disgust concerning his experiences that year, recalling his personal observations that the fish desperately needed more water:

Hopefully, none of that stuff like the fish kill ever happens again. That was bad. I've never seen fish sick like that before. They were dying right there in the net when we were catching them. Bleeding... they were sick. [But], when they [the Bureau of Reclamations] increased the water level, the flows, there were some fish that were getting a bit more healthy. (Bill Tripp, interview, 02/09/05)

As Tripp indicates, fish need the water that the dams hold back. Dams not only reduce the quantity of water in the river, they also decrease water quality and increase water temperature. These combined conditions alter the river in such a way that disease is more likely to spread and the success of spawning is reduced. The observations of the

Karuk are also backed by science. According to Moore, Maclin, and Kershner (2001), “biological research reports a significant decline of species richness and biodiversity in U.S. freshwater systems, due in part to the severe impact of dams on river ecosystems” (p. 424).

These reductions in the quality and quantity of the river’s water leaves the Karuk fearing for the future of salmon. Such a prospect is seriously threatening to many Tribal members. In reflecting on the importance of fish to the Tribe, one informant suggested that the Karuk’s fate depends upon the presence of fish in the river. Recalling the drastic reduction of eels and salmon that he has witnessed in his lifetime, David Arwood fears for the future of his people:

When I was little, you could see all these eels. Now, the eels are almost gone. And the river plants: I haven’t seen any of those for years. They’re gone. Now they want to do the salmon in. When the salmon are gone, the [Karuk] people are gone. There won’t be any more (David Arwood, interview, 02/14/05).

Traditional fisherman Kenneth Brink makes a similar suggestion:

We believe as Karuk people that that river is like our church. Those fish exist in our church. And we believe when those fish are gone, we’re also going to be gone as humans as we know it. This is a way of life for our people and these fish have to survive. (Kenneth Brink, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

Arwood’s and Brink’s comments reveal the deep spiritual connection that many Karuk peoples share with salmon. According to some, the destiny of the Karuk is

intimately connected to salmon. Other informants expressed more immediate concerns, reflecting on the recent impacts the dams have had on fish and the spiritual practices of the Karuk:

The dams have impacted the habitat quality and the life history requirements of the fish species, meaning that we don't have those fish species available. Then we don't have what is in many ways our sacred food to feed our people for religious events or subsistence needs. (Frank Lake, interview, 02/17/05)

As far as Salmon, you know, that's really gone down. It has gone down so bad. We just barely got enough this year. We do a Tribal Reunion and invite all the Tribal members... and we just barely had enough... Ten years ago we just had so much salmon. It's just really going down each year. (Blanche Moore, interview, 02/14/05)

My people are fish people. We attend and have ceremonies in honor of the fish and ask the fish to come back each year to provide sustenance to the people. My people have directed me to represent them as a Tribal council member. And, in representing them, I have to represent the fish as well. It seems that if I do not, their voice will not be heard. (Bob Goodwin, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

Fish are our very close relations. They come back here because they have a responsibility to us. They come back here because of the honor that they have to subsist our people, to be consumed by our people in ceremonies and to subsist our people in their daily lives. This is the great honor for them. This is why they come back, why they fight so hard to return. We have a responsibility to make sure that we can continue to honor them by fulfilling our obligation to them. We must catch those fish and we must consume those fish because that's our obligation to do that. It's their obligation to come back. So we're both in the same kind of fix here. (Leaf Hillman, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005)

Given the tremendous spiritual weight of salmon, eels, and the river to the Karuk people, it seems apparent that these dams interfere with the Tribe's religious freedom. For this and other reasons, the Tribe has strongly suggested that the dams come down. Opponents of this suggestion adamantly lament the potential loss of these structures, which supply a source of irrigation water to farmers in the Upper Klamath Basin. Yet, considering the deep spiritual convictions of the Karuk peoples, the removal of these dams is the only solution they find acceptable. For, to understand the spirituality of the Karuk, it is necessary to regard the Klamath as an interwoven complex of sacred sites and the survival of salmon as integral to the Tribe's cultural and spiritual needs. Consequently, since Karuk culture and spirituality depend directly on salmon, the threat that dams pose to these species can be considered ethnocide. Indeed, several authors have drawn a parallel of this case to the shameful desolation of Plains Indians and Buffalo.<sup>33</sup>

Just as the buffalo was driven to near extinction by government policy, so the Klamath salmon is suffering under Bureau of Reclamation actions... As the buffalo fed Native culture on the plains, so the salmon sustains the Karuk of Northern California. The destruction of a species and a people in the name of agriculture may have been more intentional 150 years ago, but it is still happening today on the Klamath River. (Peña 2005, p. 15)

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<sup>33</sup> See also the film: *Salmon on the Backs of Buffalo*.

Given the centrality of salmon in the Karuk world, the loss of these beings would be a devastating blow to the Tribe's cultural identity, economy, and spiritual well-being. Thus, from the Tribe's perspective, in seeking to secure their own religious freedom, the dams must go.<sup>34</sup>

Thomas King (2004), writing for the Klamath River Inter-Tribal Fish and Water Commission, developed a report analyzing the effects of the Klamath River dams on the Yurok, Karuk, Hoopa, and Shasta Tribes. The study is directed at the Federal Energy Regulatory Commission (FERC), the Federal agency responsible for relicensing the dams and reservoirs on the Klamath, and the Bureau of Reclamation (BOR), which determines the amount of water that will be allocated for irrigation versus the amount of water that will be released from the dams. In his study, King verifies that each of the Tribes directly depend upon "the Klamath River, its water, its fish, and other elements of the Klamath Riverscape for religious purposes" (p. 50). Considering the diversity of spiritual beliefs and practices that the river and its beings provide for the Tribes, King emphasizes that the river is "central to the religious practices of the Tribes" (p. 50). As the dams significantly alter the river and threaten the species that live in it, they clearly have negative influences on the religions of the Tribes. Seeking to identify specific impacts, King outlines several

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<sup>34</sup> Numerous sources are available regarding the impact of the dams upon salmon and the range of devastating effects that the loss of salmon would have on the Karuk. See, for instance, Stercho, 2005; Norgaard, 2005; King, 2004; The Pelican Network: <http://www.pelicannetwork.net>; The Salmon River Restoration Council: <http://www.SRRC.org>; the Klamath River Inter-Tribal Fish and Water Commission: <http://www.KRITFWC.org>; Klamath Basin Ecosystem Foundation: <http://www.OneBasin.org>.

key affects of the dams that alter the river in ways that are “deleterious to Tribal religious practice:”

They do this by altering the quality of the river’s water, which is traditionally used for purification rituals. They do this by altering the habits and habitats of fish that play central roles in religious belief. They do this by causing erosion of locations where key spiritual activities must take place. They do this by fundamentally altering the character of the river as an environment in which people can touch the immortal. (King 2004, p. 50)

Contrasting these findings with his analysis of the American Indian Religious Freedom Act<sup>35</sup> and the Federal trust responsibility that the government owes Native American Tribes, King asserts that FERC and other Federal agencies need to consider at least two courses of action. First, agencies are “obligated” to consult with Tribes in regards to *any* decisions that will affect the river so as to ensure that no further injury is inflicted upon the Tribe’s religious practices. Second, these agencies, particularly FERC, should take the initiative to help “undo damage done in the past in order to help the Tribes regain the ability to practice their religion [as they see fit]” (p. 50). Of course, this second recommendation must also be undertaken only under the direct consultation of the Tribes. Agencies would be wise to begin with the four specific threats to the religions of the Tribes as identified by King: (1) the reduction of water quality, (2) negative impacts on the lives of salmon, (3) an increase in erosion, and (4) the fundamentally altering of the spiritual character of the river.

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<sup>35</sup> Discussed in detail in Chapter 3.

King concludes his report with the observation that the impacts of the dams “fall disproportionately on the Tribes” (p. 59), opening room for a discussion regarding environmental justice. President Clinton issued Executive Order 12898, in which the Federal government is given the responsibility to prevent unfavorable environmental effects on low income and minority populations. Further analysis of these environmental justice issues opened by King is beyond the scope of this thesis. However, it is important to note that King’s study identifies several Federal responsibilities (i.e., trust responsibility, AIRFA, Executive Order 12898) that are neglected in light of the dam’s effects on the Klamath River. (In light of research conducted for this thesis, it is also evident in this case that the Federal government has the obligation to uphold the free exercise clause of the First Amendment.) Considering these Federal obligations to Indians, King advocates for the removal of the dams and proposes the adoption of cooperative, holistic management by Federal agencies in collaboration with Tribes through continuous consultation.

In addition to the dams, other factors contribute to the devastation of salmon populations, the reduction of water quality, the increase of erosion, and the fundamental altering of the river’s spiritual character. For instance, gold mining, past and present, has led to siltation of the river and to serious damage to salmon habitat. Though not as ubiquitous as in the past, “recreational” gold mining is still prevalent today. The current technique of gold mining is suction dredging, in which riverbank soils and sand are



pulled through a tube using a vacuum system and deposited into a sluice box where gold dust settles. Unwanted sand and soil are released into the water flow, clouding the river channel. In the processes of dredging, riverbanks are eroded, meaning that critical spawning habitat for salmon is disturbed. Today, recreational gold mining requires little more than a permit. To the detriment of the Salmon and Klamath Rivers, recreational mining has seen a surge of popularity in the past five years. The Forest Service is the agency responsible for granting permits and regulating gold mining in the area. To this point, the agency has been faithful to its multiple use mandate and allowed mining to continue despite the effects that such actions have on the fate of salmon and the spiritual beliefs of the Karuk.

Another major threat to salmon, water quality, erosion control, and the spiritual character of the river is industrial logging, which, as is demonstrated in the next section, has had a severe impact on the lands of the Karuk ancestral territory. These radical alterations to forested lands have undisputable negative effects on water quality, such as the increase of sedimentation, chemical runoff, and major alterations to streamside vegetative communities. Ninety-five percent of the Karuk ancestral territory is currently within the jurisdiction of the Forest Service, which manages timber sales, administers road-building projects, and grants grazing permits. Each of these activities has significant impacts on the four threats to the religions of the Tribes identified by King.

Regarding the direct impact to salmon, Norgaard (2004) indicates that “logging and its associated road-building have greatly increased erosion on the steep and fragile slopes of the watershed and have reduced shading of small tributaries, thus increasing water temperatures” (p. 19). Buckley (2002) also notes that industrial logging degrades spawning habitat in multiple ways, one of which is the “defoliation of deciduous growth with herbicides containing the carcinogenic compounds 2,4D” (p. 11). For logging purposes, hardwoods are undesirable because they compete for space and energy with faster-growing, profit-yielding conifers. However, as is demonstrated below, hardwoods, particularly select oak species, are among the most culturally and spiritually valued of beings to the Karuk. Thus, the loss of these trees is significant enough in itself to warrant concern. However, it is also possible that the loss of hardwoods has an effect on salmon. The Tribe’s cultural biologist has suggested that the tannins released from acorns and oak foliage have beneficial affects on water quality and directly influence the migratory behavior of salmon (Ron Reed, personal communication, 02/07/05). As an example of Traditional Ecological Knowledge – which in this case is based in a continuous tradition of living along the river for countless generations – this observation by Reed is cannot be ignored: the health of oak trees and salmon is interlinked.

In addition, Reed’s observation is also supported by modern science. In attempting to explain the techniques salmon use to faithfully return to their natal streams, salmon expert Rupert Watson (1999) notes that the most credible explanation is that “fish

are imprinted with the distinctive scent or flavor of their own river” (p. 56). Such evidence may verify the Karuk recognition of the relationship between the presence of upslope hardwoods and salmon migratory behavior, for the composition of vegetative communities near waterways may influence the “scent or flavor” of a river. Thus, decreasing the number of hardwoods upslope of the river and its tributaries can alter the “scent” of water, thereby making the journeys of already vulnerable salmon that much more difficult. In other words, a vast reduction in the overall hardwood to conifer ratio upslope of important salmon habitat may eliminate the distinct environmental conditions of each waterway, which can reduce the factors that draw salmon back to their birthing grounds. Whereas the Karuk recognize this fact, the Forest Service has historically ignored such details. Thus, once again, while the Karuk system of environmental management recognizes the interconnectivity of all systems, the individual *resource* focus of Federal agencies divides the world into discrete sectors while ignoring the bigger picture.

Considering the Karuk’s spiritual attachment to salmon, the fate of the species is certainly a religious freedom issue. This is especially true when the policies and actions of Federal agencies have direct effects on the lives and habitats of the species. From a religious freedom perspective, the Karuk cannot afford to lose the spiritual relationship they share with salmon. Spring runs and the First Salmon Ceremony have already all but been lost to the Tribe. Indeed, as Swezey and Heizer (1993) indicate, the spring run of

salmon in *all of California* has effectively been eliminated through the actions of “...mining, large scale damming and diversion of water flow, farmland and range erosion, soil runoff due to lumbering and deforestation, overfishing, and stream pollution from sawmills and other sources” (p. 326). Though in some ways conditions have improved in past decades, each of these threats continues today. Individually, each is an obstacle to the recovery of salmon in the Klamath. In combination, they could lead to the total extinction of the species. Most significantly, each of these factors has either been directly implemented or indirectly regulated by the Federal government, meaning that in this case the government has restricted the free exercise of Karuk religion by contributing to the destruction of a chapter in the cosmological text of the natural world that is the equivalent to the Karuk bible.

The fish kill of 2002 – in which 33,000 to 68,000 salmon died an unnatural mass death – demonstrates that salmon today are in great danger. Accordingly, the religious free exercise of the Karuk Tribe is also threatened. Therefore, for the U.S. government to hold true to its Trust obligations and to the tenants of religious freedom, a genuine recognition of the status of salmon in the spiritual cosmos of the Karuk must be at the forefront of all Federal policies and actions in the Klamath region. Whenever dams, forest management plans, or dredge mining operations threaten salmon, they also threaten the free exercise of Karuk religion. It is no longer adequate to limit the right to free exercise to conventional parameters; the life and death of spiritually significant species

must now be a consideration. The following section considers additional threats to Karuk religious freedom through a review of Karuk environmental management in upslope (forest) areas.

### Forests

In addition to the Klamath River and its tributaries, the forested lands, or “upslope” areas, of the Karuk ancestral territory are also spiritually important to the Tribe. There, the Karuk visit sacred sites, hunt, collect medicinal herbs, gather mushrooms and cultural-use plants, and engage in several other spiritually-influenced activities. The range of such activities varies greatly among Karuk peoples, who may participate in formal ceremonies or simply enjoy a casual and informal hike with family. Whereas many such activities are clearly religious in nature by any measure, other practices, such as the gathering of basket materials, may seem entirely secular. However, interviews conducted for this study and a survey of available ethnographic data indicate that Karuk relationships with forested areas are unquestionably spiritual and deserving of religious freedom.

Like their relationship with salmon and the river, Karuk spiritual connectivity to upslope areas is reflected in their creation stories, oral traditions, cultural practices, diet, ethnographic histories, and in their constant efforts to preserve the environmental conditions necessary for the continued survival of particular sacred sites, species, and

ecosystem communities. Though they vary considerably and are often quite subtle, the spiritual activities associated with forested areas are as deep and intimate as those the Karuk share with the Klamath River and its creatures. Within forested areas, the Tribe values a multitude of plant and animal species, as well as a great diversity of geographical and ecological systems. In fact, ecological health and diversity are crucial since many religious and cultural practices absolutely necessitate a variety of upslope forested landscapes. Consequently, traditional environmental management is a sincere component of the Tribe's spiritual relationship with forests. Cooperative relationships with animal and plant communities must be maintained, delicate landscapes must be tended, vigorous ecosystems must be controlled through the use of fire, dynamic sacred places must be respected, and countless other responsibilities must be honored.

In discussing modern Karuk relationships with forests it is necessary to consider the extreme landscape alterations that have taken place over the past 150 years. A driving attitude behind such alterations has been the misguided perspective of "wilderness" endorsed by Westerners, a concept that is in many ways still prevalent today. According to this point of view, "wild" lands are those places that are neither cultivated nor inhabited by human beings (Ortiz 1993, p. 151). However, unquestioned assumptions inherently underlie this concept of wilderness. For instance, in order to view a place as "wild," one must accept severely limited definitions of "cultivation" and "inhabitation," which is exactly what invading Europeans did when they settled the

Karuk territory. However, the Karuk undoubtedly both inhabited and cultivated their land, regardless of how Europeans applied their limited conceptions of these conditions. Incredibly, the false perception that the Karuk did not cultivate the land continues to this day, even though they have done so since time immemorial.

Kat Anderson (1993) notes, “almost everywhere that Westerners have gone, they have underestimated the skill, ingenuity, and capacity for shaping the landscape of the peoples they have displaced” (p. 152). This type of underestimation stems from the complete inability to recognize the extent and complexity of indigenous environmental management. In the Karuk territory, such an inability to see the extent of Indian influence upon the land had detrimental affects on the Tribe. Europeans viewed the region as a mere “wild” place, and subsequently “cultivated and inhabited” it according to their own Western standards. This conversion of the “wild” drastically altered the Native-constructed environments upon which Indians were directly dependent for spiritual, cultural, social, and economic survival.

This pattern of perceiving Karuk lands as “wild” and transforming them with construed visions of cultivation has not been limited to the past. To this day, the concept of a wilderness that must be tamed persists in spite of the fact that Native communities continue to engage in age-old techniques of environmental management. Just as in the past, many of those places in which the Karuk actively participate in a spiritual and practical relationship are misunderstood as “unused” and “wild” and subsequently

altered, to the detriment of Tribal peoples. Yet, cultural anthropologist and Karuk specialist John Salter (2003) finds that the concept of a “wilderness” in the Karuk territory is indisputably inaccurate. According to Salter, Tribal members maintain systems of environmental management to this day that involve rich and elaborate spiritual expressions stemming from an extensive tradition reaching far into the past (p. 11).

Over an uninterrupted period of thousands of years the Karuk people developed land management to a fine science. The conjunction of ritual, spiritual and technical elements for the management of sustained vigorous ecosystems resulted in a system of land management and cultural perspectives among the Karuk and the neighboring Tribes which not only were not destructive of the natural systems within which they lived, but which in fact served consciously to enhance and enrich the diversity of these systems. (p. 13)

Though Westerners did not recognize the products of such environmental management, just as is often the case today, there is no doubt that the upslope forested areas of the Karuk ancestral territory were (and are) anything but an untamed wilderness. In fact, Thomas King (2004) says of the Karuk and their neighbors, “the Tribes maintained and still believe in maintaining a healthy symbiotic relationship with the [region’s] plants, animals, water, and soil” (p. 34). Among the many roles and responsibilities the Karuk play in this great environmental symbiosis is the continual observation of a fine-tuned environmental management regime. However, because of the limitations placed upon them by the Western concept of “wilderness,” the Karuk ability to enact such management has been disrupted.



In the Karuk territory, the concept of an untamed wilderness first came to play in the Gold Rush era, in which the majority of the Karuk population was devastated and most Karuk villages were burnt to the ground (Keeling 1992, p. 28). Yet, losses went beyond the destruction of human life and home. As Buckley (2002) points out, drastic alterations to the environment were a significant component of the genocide wrought by Europeans and Americans. By his measure:

Ecological devastation was as much a part of the great human tragedy engendered by the white invasion and occupation of the later nineteenth century as demographic collapse. Human beings, flora, fauna, and minerals were all reduced to objects subject to commodification when possible, extermination when not, in a white rage for profit that has yet to be exhausted. (p. 10)

Buckley's comments are a powerful reminder that worldviews can have a serious impact on places and people. For instance, the view that an untamed wilderness can be converted into financial gain had immediate effects on Native people and environments.

Continuing mining's legacy, logging became the second great ecological disruption in the Karuk territory (Buckley 2002, p. 11). These two forces began a tradition of severe landscape alteration in the Karuk territory that has yet to end. History indisputably reveals that the destruction of vast ecologically-rich areas due to hydraulic mining and industrial logging seriously threatened Karuk lifeways. However, it may be difficult for some people to accept the fact that such devastation has continued to the present day, though in altered form. Replacing the unregulated miners and loggers of the past, federal resource management agencies now dominate the Karuk ancestral territory.

In many ways, these agencies still hold fast to the concept of a wilderness that must be tamed, the consequences of which continue to threaten the cultural and spiritual customs of the Karuk.

Cultural Anthropologist Thomas King addresses this issue in a document he wrote and researched on behalf of four Tribes along the Klamath River. Noting that agencies such as the Bureau of Land Management, the Forest Service, and the Fish and Wildlife Service have jurisdiction over the lands that Indians depend upon culturally and spiritually, King identifies how federal resource management negatively impacts such lands. According to the author, federal agencies...

...have control or influence over a wide range of activities that contribute to adverse effects of the Klamath Riverscape, notably logging, roadbuilding, and grazing. Each timber sale, grazing lease, or fire road may have only minuscule impacts, but collectively they contribute to river pollution and siltation, which in turn affect the health of the river for fish, wildlife, and plants, which in turn affects the [region's] cultural qualities. (King 2004, p. 56)

The Forest Service, which holds over 95% of the Karuk ancestral territory, typifies the type of landscape alterations that evolve out of a continued acceptance of the wilderness myth. Though the impacts of the agency's forest management policies are beyond the scope of this paper, one particular incident clearly demonstrates this point. In the late 1970s, the Forest Service planned to build a seventy-five mile road between the towns of Gasquet and Orleans, from which would radiate 400 miles of logging roads (Reivman 1989, p. 188). Locally dubbed the "G-O Road," the route was to pass through

the Blue Creek Unit of the Six Rivers National Forest, the northwestern portion of which is particularly sacred territory to the Karuk, Yurok, and Tolowa Tribes (Hardt 1989, p. 638). In addition to the proposed harvesting of 733 million board feet of timber, the Forest Service selected a route for the G-O Road that would pass near several sacred sites (Unmack 1996, p. 169; Hardt 1989, p. 638). Countless such spiritually significant sights can be found in the area, which is collectively referred to as “the High Country” by the three Tribes involved (Reivman 1989, p. 189; Unmack 1996, p. 169).

Though the Forest Service received protests from the three Tribes and officially “evaluated the environmental and cultural impacts of the road” (Unmack 1996, p. 169), the agency chose to carry out the project. Nearly \$22 million dollars was spent to pave forty-nine miles of the road – despite Tribal protests that the venture was desecrating sacred areas – before the Tribes and several conservation groups were successful in stopping construction through a court injunction (Hardt 1989, p. 638; Griffin 1995, p. 405). Subsequently, because members of the Tribes utilize the area for ceremonial purposes, in order to communicate on an emotional and spiritual level with their creator, to train their religious leaders, and to gather sacred healing plants and powers, the case was brought to court under First Amendment and religious freedom arguments. Though initially faring well for the Tribes, the case eventually landed in the Supreme Court, where it was decided that the development interests of the Forest Service trumped the religious needs of the Tribes (Griffin 1995, p. 407; Brown 1999, p. 169). Though the

road was never ultimately completed and the sacred High Country was essentially spared development, the G-O Road case demonstrates that the conversion of “wilderness” into productive land is still an objective of federal resource management agencies. For the Karuk, this has led to a constant struggle to preserve sacred sites.

Ron Reed, cultural biologist for the Karuk Tribe, notes that the protection of sacred sites is a particularly challenging matter when the policies and objectives of federal agencies are involved. In his view, the Karuk vision of the region as a place of immense sacred power must be taken into consideration prior to the development of any management policies or actions. As was evidenced in the G-O Road case, the Karuk religious attachment to the landscape has not found particular support from the Federal government in recent history. It seems that the range and diversity of sacred places is difficult for Federal agencies to accept. According to Reed,

Upslope, we have a high country. We have prairie spots. We have meadows. We have different places where we go to worship. We have places where we go to manage for our medicinal plants. Those are pretty obvious. Not so obvious: we're supposed to go out and bathe in the [Klamath] river every day of the year. So I think that [river] is a sacred site. That's where you go out and you do your meditation every day to go out and figure out how you take care of what you did yesterday and how you look forward for today. (Ron Reed, interview, 02/07/05)

Reed's testimony addresses two important points. First, some sacred places are more “obvious” than others. It may be easier to identify sacred mountains or frequently used ceremonial sites than a grove of seemingly ordinary oak trees or, as Reed suggests, the entire Klamath River. However, it is likely that most sacred places are not “obvious”

to non-Karuk peoples, even the resource agencies responsible for their protection.

Second, there is a great range of sacred places, whether or not they are obvious. Such places take several forms, some of which constitute entire ecosystems. Thus, sacred sites cannot be thought of only as prominent rocks or mountaintops. Sometimes, sacred sites are large ecologically-rich areas with no discernable boundaries. Tribal member Frank Lake explains that biogeographical diversity is indeed an inherent component of sacred sites.

When you look at the most sacred sites, they are also the most ecological diverse: in physical topography, soil types, and the overlaying vegetation communities. And so if you believe that each physical and biological individual entity or collection of things are spirits, then it would make sense that those areas that are the most ecological diverse are also going to be the most sacred. And so when you are in those places, you are covered, or shrouded, or encompassed with all those physical sacred things around you. (Frank Lank, interview, 02/17/05)

Reflecting on the Karuk creation story, in which Spirit People were transformed into all the geographical and living elements of the world, Lake points to a direct one-to-one correlation between sacredness and the concentration of biogeographical elements. In other words, a location that has caves, large rocks, views of mountains, springs, ancient trees, and a wealth of living beings is absolutely enriched with opportunities to interact with a multitude of Spirit People. High levels of biogeographical density and diversity inherently make a place super-saturated with a spiritual presence.

Lake also suggests that the most sacred places in the high country are valued in part because one must make a journey to get to them, which requires the visitation of

other sacred places along the way. For instance, going to sacred places in the high country may first require visiting a spring at the base of a mountain, where it is possible to encounter a salamander, *puuf puuf*, purifier of the water. Other beings such as blue jays will certainly be seen along the way, each of which is a particular Spirit Person about whom creation stories can be told and to whom special prayers can be said. As the journey continues, it is necessary to travel along trails in which sacred mountains can be seen in the distance, leading to additional prayer and reflection. Lake suggests that this diverse chain of spiritual interactions leads to a “geography of place,” in which it becomes obvious that everything is intertwined. Since going to the most sacred of places requires visiting the places below it, each step in the journey has its own lesson in the overall spiritual experience.

The most important places always have an affinity with something else. In an ecological sense, Western science does not see a causal link between an upslope sacred place and a river sacred place, but within a Karuk mythology and a Karuk spiritual perspective of their world, these things are inseparable. (Frank Lake, interview, 02/17/05)

This interconnectedness of the sacred presents a serious challenge to the safeguarding of Karuk spiritual places. Sacred sites are intimately connected to each other and to the surrounding landscape, thus their fate is linked to larger environmental conditions. Efforts toward the preservation of sacred sites must consider the fact that each site is eternally linked to the world beyond it. Thus, no place can be considered in isolation; their surroundings must also be taken into account. For Reed, it is a question of

“how do we manage around those types of sites?” In other words, for genuine protection of sacred sites, the question is not how to protect them as individual entities, but how to manage the spaces between them. If all the spaces around sacred sites are protected, then the sites themselves will also be secure. Reed’s answer to his own question is not to simply isolate sacred places, not to set them aside, nor to protect them from human activities. Instead, his suggested solution parallels the sentiment of many of his contemporaries:

My answer is traditional management processes. The things that made this great ecosystem the way it was, the way it can be again. Indigenous management practices are available throughout the system. The more we can lend these processes to Western science, the more you’re going to see immediate results. I think you’re going to see huge contributions of the processes to the overall health of not only Karuk people, not only the forest, but also to the public. (Ron Reed, interview, 02/07/05)

The Karuk understand that the only assured means of protecting sacred sites is through traditional environmental management. This is because Karuk styles of management are conducted on a system-wide basis, ensuring the integrity of not only sacred sites, but also the landscapes surrounding them. Conversely, forms of sacred site protection that isolate and detach locations from the greater system are insufficient.

Testimony from several Tribal members suggested that traditional management is a necessary component of Karuk spirituality. In fact, the Tribe’s capacity to engage in environmental management of upslope areas is a considerable religious freedom issue for at least three interconnected reasons. First, the sacred places valued by the Karuk require

special forms of maintenance and protection, the details of which only the Karuk are qualified to conduct. Second, it is a strong Karuk belief that at the beginning of time, the Karuk were entrusted with the responsibility to manage the land. Third, many cultural and dietary requirements can only be cultivated and procured through particular environmental management techniques.

Without the ability to participate in environmental management, these three spiritual needs of the Karuk are denied. A spokesman for the Karuk says it best: “when you’re not able to go upslope and manage, you’re not able to go produce for your children and give things for the well being of life. You are not able to get these things that have been given to us by the creator” (Ron Reed, interview, 02/07/05). One of the many obstacles the Karuk face in their desires to participate in upslope management is restrictions placed upon them by Federal agencies. For instance, the requirement for permits placed upon Karuk gatherers is a serious obstacle to religious freedom.<sup>36</sup>

Gathering is among the most important of Karuk traditional management practices. Gathering takes many forms, each of which has direct spiritual components. Based on interviews, seven categories of gathering have been identified. Gatherers collect for: medicinal herbs, materials for tool-use, basketry materials, food items, firewood, ceremonial regalia, and materials for building structures. Though the Karuk themselves do not break gathering into these separate categories, there does appear to be

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<sup>36</sup> The next section considers fire suppression policies, a related religious freedom issue facing the Karuk.



a well recognized distinction between them. However, one universal element within all types of gathering is the observance of gratitude. As Tribal member Marge Houston says, “You always have to give thanks for what you take... Always! Whether it’s a medicine root or a basket root or whatever” (Marge Houston, interview 02/28/05). Basketweaver Renee Shaffer suggests that such gratitude is based in recognition of the Karuk creation story: “When we gather, we know that those plants are Sprit People. They have spirits. So when we go to gather we say a prayer before gathering, thanking that plant for providing whatever it is providing for us, whether it be food, or whether it be materials for baskets” (Renee Shaffer, Environmental Management Conference). As gathering is clearly spiritual in nature, interference with such practices poses an obstacle to religious freedom.

Several informants raised the issue of permits. Most notably, Marge Houston expressed frustration over the fact that she was forced to seek “permission” from the Forest Service to gather from the very places where her ancestors have always lived.

The regulations from Forest Service are getting ridiculous. I don’t see why I need a permit to go out there and gather my basket material and or food that my people have been doing here forever. I just can’t see why I need to go and buy a permit to do that. It’s against my belief. (Marge Houston, interview 02/28/05)

Houston’s sentiment was supported by several of her contemporaries. One anonymous informant insisted, “we’ve been told that we’ve got to cut them [mushrooms] in half before we can take them home and eat them. But I’m not going to sell my

mushrooms and I'm not going to cut them in half. Why should I?" (Anonymous Karuk Informant). Such a reaction is not blind rebelliousness, but is instead a reaction to regulations that do not take Karuk values or spirituality into consideration. The regulation requiring mushrooms to be cut in half was issued to ensure that mushroom hunters would leave behind a sufficient number of spores so the organisms can reproduce. However, the Karuk practice a different system of resource conservation, in which the smaller specimens of a mushroom patch are left untouched to ensure the propagation of the species (Marge Houston, interview, 02/28/05; Ron Reed, interview, 02/07/05; David Arwood, interview, 02/14/05). Either system will work, though the Karuk adamantly prefer to utilize their own culturally-appropriate methods.

Forcing the Karuk to abandon their time tested method of harvesting mushrooms in favor of federally mandated regulations has not been well received. Such regulations are perceived as a threat to the sovereignty and cultural continuity of the Tribe, particularly because of the potential disruption of culturally-based environmental knowledge. While the "cut-mushrooms-in-half" rule requires nothing more than a knife, the mushroom harvesting system practiced by the Karuk reflects their great respect for and understanding of intricate environmental details. For many Karuk peoples, the possession of such an understanding goes beyond the simple conservation of a resource. For instance, Carrie Davis suggests that members of her family "...know every mushroom that could possibly grow out there. And even the flowers, not just food. They

even know exactly where the violets are” (Carrie Davis, interview, 02/28/05).

Davis’s statement reveals a particular level of pride in an extensive understanding of local ecology. Understandably, any threats to such family knowledge will be resisted.

The issue of sovereignty is at the forefront of many Karuk people’s calls for religious freedom. Whether they are protesting permits or harvesting regulations, the real concern lies with the Tribe’s ability to maintain its own values, religion, and culture. A story by Frank Lake demonstrates this point:

When I used to go out with my grandfather to get Port Orford cedar to build a Katamin pit or to build other dance grounds, well, you are supposed to ask the Forest Service for a permit, and they are going to say ‘you can’t cut this, you can’t take that’ and all these restrictions. As soon as you go to the Federal Government and ask for permits, you give up and relinquish your sovereignty to practice your religious freedom. So it’s often in the face of that, in defiance, to maintain religion and cultural practices that most Karuk members will go out still get the resources they need to support their religion in the ceremonies. If they have to go ask for a permit or ‘permission’, they relinquish their sovereignty. (interview, 02/17/05)

From the Karuk perspective, permits and hunting/fishing regulations are detrimental for at least five reasons. First, Tribal members already observe their own well-established systems of resource regulation. Ortiz (1993) notes that “old time rules or prohibitions” have guided basketweavers for countless generations (p. 196). Clearly, the “old” rules the Karuk have observed since time immemorial are far different from those drafted by federal agencies. The Tribe’s own system of rules and prohibitions is an important part of their culture. Thus, forcing *outside* regulations on the Karuk disrupts

their traditional systems of social organization and resource management, reducing the Tribe's sovereignty.

Second, gathering is understood by the Karuk as a sacred means of participating in the landscape. Many Karuk peoples find it demeaning to cheapen such spiritual practices with formalized bureaucratic regulations. McCarthy (1993) indicates that though Native peoples employ a wide range of forest management techniques, "these objective strategies can only be effective within a climate of positive spiritual relationships between themselves, the land, and the resources it provides" (p. 224). Purchasing permits from and negotiating with a federal agency in order to maintain traditional gathering practices certainly does not foster a "climate of positive spiritual relationships." Even the traditional social regulations the Karuk place on themselves are secondary to the spiritual considerations of fostering positive relationships with the land. In fact, the management of gathering materials cannot be extracted from the practices of song, stories, prayer, and offerings; these are all a part of Karuk environmental management.

A third objection to permits and regulations relates to what Norgaard (2004) refers to as "denied access to traditional foods" (p. 25). Harvesting of non-timber forest products by non-Indian peoples has increased in recent decades. For example, this is particularly true of "tan-oak" or Matsutake mushrooms. The "discovery" of these financially valuable mushrooms by commercial mushroom hunters has recently brought

an influx of peoples from all over California, Oregon, and Washington (Norgaard 2004; Hillman, Traditional Knowledge and Environmental Stewardship Conference, 06/22/05; Shaffer, Traditional Knowledge and Environmental Stewardship Conference, 06/22/05). Commercial hunters have flooded the Karuk ancestral territory to gather and sell mushrooms to places as far away as Japan. Several informants suggested that many of the best mushroom patches traditionally tended and harvested by Karuk peoples have quickly disappeared due to mismanagement and overharvesting by outsiders. Norgaard (2004) notes “patches that were within walking distance for Karuk elders were often destroyed first” (p. 25). In response to such depleted populations, the Forest Service has created regulations governing mushroom harvesting. However, “these regulations have often failed to take into account the Karuk as original inhabitants and the subsistence nature of Karuk harvests” (p. 26). Thus, the Karuk are hit from both directions. Outsiders deplete and damage the resource base upon which the Tribe is economically and spiritually dependent, while culturally-insensitive regulations restrict Karuk access to their traditional foods. The case of mushrooms is only one of many examples. The scenario is remarkably similar for other harvested materials, as well as for fishing and hunting.

A fourth objection to permits and regulations is financial hardship. An economic study of the Karuk conducted by Stercho (2006) indicates that permits present a serious economic barrier to the Karuk. The average two-person income for Karuk peoples is

\$13,530 per year, while \$666.75 is required on an annual basis to obtain all permits and licenses to hunt, fish, and gather the culturally and spiritually important materials valued by the Karuk. While facing such economic poverty – which it must be noted is a direct consequence of generations of genocide, forced assimilation, and the destruction of their resource base – such high permitting and licensing fees are often impossible for Karuk peoples to afford.

A fifth objection to permits and hunting/fishing regulations is the effect of “criminalizing” what has long been a cultural and spiritual practice. Considering the four arguments above, some Karuk people secretly choose not to purchase permits or follow regulations. Several reasons may be behind this difficult choice. They may be seeking to retain traditional cultural rules and regulations, striving to preserve a climate of positive spiritual relationships, struggling to maintain access to a traditional diet, or may be financially incapable of affording permits. Countless other personal and spiritual motivations could prompt Karuk peoples to break permit and regulatory laws. Obviously, making such a decision risks a variety of legal consequences. Tribal member Leaf Hillman describes how this situation affects Karuk people:

In order to maintain a traditional Karuk lifestyle today, you need to be an outlaw, a criminal. And you had better be a good one or you’ll likely end up spending a great portion of your life in prison. The fact of the matter is that it is a criminal act to practice a traditional lifestyle and to maintain traditional cultural practices necessary to manage important food resources or even to practice our religion. If we as Karuk people obey the ‘laws of nature’ and the mandates of our Creator, we are necessarily in violation of

the white man's laws. It is a criminal act to be a Karuk Indian in the 21<sup>st</sup> century. (Leaf Hillman, quoted in Norgaard 2004)

Hillman's testimony reveals the pain and anger that permits and regulations cause the Karuk. He also exposes the fact that maintaining traditional religious and cultural practices is in many ways "illegal." Unfortunately, some Tribal members react to the dishonor that permits and regulations place upon them by abandoning traditional gathering practices. Stercho (2006) found that 36% of Karuk people living within the ancestral territory have decreased their gathering activities because of negative encounters they have had with agency officials while gathering. Thus, the Karuk are being denied the right to feel secure in their own cultural and spiritual practices. However, as Hillman suggests, some Karuk refuse to allow permits and regulations to infringe upon their religious freedom, regardless of the consequences.

Clearly, agency regulation in the Karuk territory disrupts the Tribe's culture and spirituality in several ways. Overall, the issue comes down to political sovereignty and cultural autonomy. As a distinct cultural entity, the Karuk possess the right to direct their own future according to their own cultural values. As is demonstrated by the five arguments above, permits and regulations challenge Tribal sovereignty and cultural autonomy. In addition, several agency policies also present such challenges. A statement by Frank Lake readdresses the issue of sacred sites by considering a Forest Service policy with wide-spread influence over the Karuk ancestral territory and therefore their religious freedom. According to his observations:

Sometimes sacred sites are thought of as geographic icons, such as a high peak. But then there are other places, like springs or gathering sites. Well, forest management based on a western view, in the interest of outside pressures for timber commodities, can destroy these places because they are not protected. With the Karuk, because sacred sites are located on federal lands, you have competing interests with multiple use management objectives of the agency. (interview, 02/17/05)

This application of the multiple use policy has proven to be a serious obstacle to the spiritual practices and beliefs of the Karuk. According to the agency, “multiple use” involves the most efficient combined use of as many of the resources with the National Forest System as possible with the focus of best meeting the needs of all Americans (Price 1994, p. 262). However, this approach often takes the needs of the greater society into consideration over the needs of the local peoples who are directly impacted by such management. In the case of the Karuk, the sacred and cultural components of the land are only considered as one of many uses. Yet, as Price indicates, the Forest Service simply does not have “the expertise” to manage Public Lands though the multiple use principal and still maintain the sacred nature of select upslope locations valued by the Tribe (p. 262).

Indeed, it may be impossible to manage with the multiple use policy without interfering with or altering sacred places. In many cases, the sacred character of gathering sites and prayer locations requires very exacting conditions that cannot viably be combined with other “uses.” In addition, Price reveals that most federal agencies demand that issues of sacred relationships with landscapes be debated (p. 262). This



suggestion is in clear violation of the nature of the First Amendment; the tenets of one's religion cannot be "debated" by the federal government. Yet, such discussions are continuously forced upon Indian peoples, despite the degradation of religious freedom that evolves out of mandatory debates about the genuine sacredness of landscapes. Nowhere has this problem been more evident than with the Forest Service, because, as Price explains, "there is no place in the multiple use system to access the spiritual quality of the land and its ecosystems" (p. 262). As is evident in the G-O Road case, the spiritual quality of the land is often incompatible with the other uses the Forest Service seeks to promote.

A serious challenge facing federal agencies such as the Forest Service is the undeniable fact that the spiritual quality of the land can be extremely personal, with some sacred sites known only to individual families. To the Karuk as a whole the landscape is a spiritual realm. The physical environment and all its components, from mountains, to rocks, to trees, to small plants, are all the direct products of the Spirit People and at the same time literally constitute various manifestations of Spirit People. Therefore, the sacred quality of the land is simply inherent. Indeed, several locations are socially revered for their sacred nature. However, it is also true that each individual person or family may recognize particular locations as discrete sacred locations known to no one else. According to Karuk belief, the nature and location of such places must never be revealed. As Ron Reed suggests, "the Karuk tradition is that you don't divulge that type

of information to anybody other than those people you train” (Ron Reed, interview, 02/07/05). This can present a serious obstacle to protecting such places. A Karuk informant explains:

Some people do family or individual practices in special places that they do not want to disclose. So they can't say why they don't want a timber sale there, or why they don't want mining there, or why they don't want a road put through that site, or why they do not want it turned into a recreational ATV or biker trail, but there is some reason that the place is sacred to them and that plays a pivotal role in their well being. (Frank Lake, interview, 02/17/05)

Several informants commented on the individual nature of sacred places, particularly traditional family sites. “Where my people are from is sacred. My brother still lives there. We've lived there for a long, long time. So that is sacred” (Ron Reed, interview, 02/07/05). Testimony from Scott Quinn suggested the same notion of individual connectivity to place:

The connection for the land is really, really strong. Even if it's just that little parcel that your family comes from. That's where we come from. That's the place we hold dear. It's hard to explain. I think it's the connection to the land and knowing that's where your people come from. It's different for each family and there are a lot of different families. There are hunting areas and where you gather acorns, mushrooms, and all that sort of stuff. (Scott Quinn, interview, 02/28/05)

Harold Tripp even suggested, “there are different types of sites that relate to different families” (Harold Tripp, interview, 02/09/05). Because of this wide-ranging view of the sacred that can differ with each family, and because so many places are potentially included in the undisclosed list of sacred sites, it has been suggested by

several informants that not only is every *place* sacred to the Karuk, but literally *everything* can be considered sacred (Jim Henderson, Karuk Tribe Department of Natural Resources Fisheries Biologist, personal communication).

This notion that everything is sacred is also implied by Keeling (1992), who suggests that in explaining their culture to outsiders, elderly Indian persons of the Klamath River region often insist “that in ancient times, everything used to be religious” (Keeling 1992, p. 5). Though Keeling’s observation is useful in explaining the extent of Karuk religion belief, the phrase “ancient times” is misleading. First, it was only a little over 150 years ago that the Karuk existed entirely unmolested by White culture. In addition, Karuk heritage, though shaken through many generations of genocide and ethnocide, represents a continuous chain from the present extending back to time immemorial. Thus, it is difficult to say when the “ancient times” actually began or ended. Regardless, the view that “everything is religious” persists among the Karuk today. Many contacts with whom I communicated through personal interview directly stated that even today, “every breath we take and every step we take is part of our religion” (Ron Reed, personal communication; Leaf Hillman, statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005). Keeling supports this notion in his suggestion that “even walking along a trail” is a spiritual act and that trails themselves are spiritual beings (p. 6). This demonstrates the

omnipresent nature of Karuk spirituality that cannot be ignored in decisions affecting upslope areas.

That the Karuk revere their entire world as a spiritually-important place is an important consideration for securing their religious freedom. However, it must also be emphasized that Karuk spirituality is not limited to passive “worship” types of belief. Instead, the Karuk are quite *active* in their spiritual relationships with the landscape. If the Karuk simply worshiped the environment, their religious freedom might be easier to secure. However, their spirituality is richer and more complex than simple worship. It is literally a religious mandate that the Karuk active engage in environmental management. As an example, this notion of active participation in the environment as a religious mandate is well-reflected in the spiritually-influenced practices of plant gathering.

Anderson (1993) indicates, “there is a common feeling among elders today that plants *want* to be *used*” (p. 155; emphasis added). In other words, honoring an active relationship with plants is a necessary component of revering them as living Spirit People. Reverence alone is not enough. In this way, the needs and desires of plants constitute a part of their relationship with humans. This view is supported by ethnographic research conducted among Native Californians by Helen McCarthy (1994). McCarthy asserts that many spiritually, culturally, and materially important plant species no longer exist or no longer produce as they once did precisely because people no longer use them. Her findings indicate a strong spiritual and practical interdependence between

people and plant communities (p. 225). Native beliefs emphasize the fact that many living resources exist specifically to fulfill a relationship of mutuality with humans. As McCarthy explains, just as people need plants to supply food and materials, the plants need people “to gather their seeds, and leaves, and roots, and to talk and sing and pray to them” (p. 225). Thus, if humans fail to uphold their part in the relationship, plants will as well.

Contrary to the notions of plants needing protection from humans, the Karuk understand that some plants actually need interactive relationships with humans. McCarthy (1993) indicates that by some Native accounts, cultural-use plants will not continue to exist without human interaction. “If plants are not used by people, the spiritual relationship is broken, and the plants no longer have a place” (McCarthy 1993, p. 225). This long-held belief directly challenges the myth of wilderness. Instead of overuse by Indians, the real threats to such plants are from “recent changes in the land use practices of Anglo-American settlers” (Anderson 1993, p. 171). Indeed, many plants that are either now extinct or endangered are among the dozens of species in which Natives have had a spiritual and practical relationship for countless generations.

According to research conducted by Anderson (1993), cultural-use species – from wild onions and lilies to mushrooms and ferns – are harvested on a “sustained-yield basis,” which through the preservation of vegetative reproductive structures ensures a perpetual population of valued plants (p. 152). By understanding the vulnerabilities as

well as the self-renewing capacities of such plants, a continual, but well-monitored, harvesting regime is possible. Anderson emphasizes that these processes can only be realized through the long-term development of an intimate knowledge gained by living and participating directly in living landscapes. Such a process clearly refutes the concept of a wild nature that thrives only in the absence of humans (p. 154).

Anderson (1993) indicates that the spiritual belief that plants need humans for their continued existence is supported by modern ecology. According to her research, areas that are home to desirable plants can be transformed into productive gathering sites through the use of specific environmental management practices. Thus, a respectful spiritual relationship can lead to a mutually beneficial practical relationship. Instead of evolving out of “purely natural processes,” Anderson finds that the perpetuation of rich gathering locations is the direct result of “human manipulation, technology, labor, and indigenous conservation rules” (p. 155). Buckley (2002), refers to this intermingling of the sacred with the practical as “experiential spirituality,” which manifests itself in action rather than mere belief (p. 19). For the Karuk, this means religious freedom is dependent upon the relationships they share with elements of the living world.

In addition, research conducted by the Karuk Tribe suggests that some areas are left entirely unmanaged for a variety of reasons, including “sacred, religious and ceremonial considerations, and the maintenance of particular animal habitats” (Winthrop et al. 1996, p. III5). This demonstrates that while areas rich in cultural-use plants must be

recognized and respected by management agencies, areas specifically not used also qualify as areas of spiritual importance. Thus, the places in which the Karuk are spiritually active range from ceremonial locations, sacred sites, and gathering places to completely unmanaged areas.

The notion that the Karuk must actively engage in environmental management is deeply embedded in their spirituality and is therefore a prerequisite to their religious freedom. Yet, the basis of these spiritual interactions between the Karuk and their surroundings is threatened today from multiple sources. Ortiz (1993) identifies several:

Modern land changes have affected the relationship between the weavers and the basketry plants they use. Buildings, roads, reservoirs, and parking lots have covered gathering sites used for generations. Stream channelization, overgrazing, agricultural and mining practices, and pollution have also taken their toll.<sup>37</sup> (Ortiz 1993, p. 205)

Logging and fire suppression have also contributed to the alteration of plant communities and ecosystems, endangering the spiritual relationships the Karuk share with those places. Ortiz suggests that these mounting threats to sensitive species have entrenched the popular view of “wilderness” even deeper into the Western psyche so that now Native cultural users of plants are deemed by some environmentalists as a threat to the continued viability of plants. As Ortiz suggests, “land untouched has become a gauge

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<sup>37</sup> Another related issue is the spraying of herbicides on cultural use plants, which is beyond the scope of this study. The Forest Service has a well-documented history of mandated herbicide use to reduce invasive species. Such spraying is often conducted in the vicinity of cultural use plants, which subsequently become unknowingly toxic to cultural-plant users. Several informants indicated that they suspect cases of stillborn children and high cancer rates can be attributed to the poisoning of basketry plants.

against which weavers are judged” (p. 205). This backwards way of thinking places the Karuk as a threat to the very plants upon which they are spiritually connected and with whom they have shared a mutually sustainable bond for thousands of years.

The notion of protecting “the wild” by eliminating human presence fits well with the concept of wilderness, in which humans can only cause harm to an ecological system. By this measure, Indians are asked by some to hold back on their use of cultural plants for the good of the ecological community. Subsequently, permitting procedures have been implemented by land management agencies such as the Forest Service to restrict plant gathering. This scenario is ironic. In many cases, such as the building of roads or the granting of large timber sales, the Forest Service contributes to environmental *alterations* that intrude on Karuk spiritual practices. Yet in other cases, such as the enforcement of permits or gathering restrictions, the Forest Service creates environmental *restrictions* that are equally intrusive. These two seemingly contrasting scenarios are both partly symptoms of the wilderness myth. As separate entities from the remainder of the world, humans are either destroyers or protectors; they are never equals or genuine participants in environmental systems. This clearly clashes with the views of the Karuk.

In summary, Karuk relationships with forested, upslope lands include a diverse range of formal and informal activities that may not always appear to be spiritual. However, to the Karuk, practices as simple as collecting mushrooms are deeply spiritual. One reason behind the Tribe’s recognition of upslope engagements as inherently spiritual



is the reverence the Tribe has for healthy, diverse ecosystems. However, their observance of the spiritual qualities of the world does not end there. Indeed, the Karuk feel obligated to uphold certain responsibilities to plant and animal communities. These responsibilities, which are an inseparable part of their spirituality, take the form of particular environmental management practices in which the Karuk must actively participate. However, the Tribe currently faces several obstacles in their efforts to meet these spiritual responsibilities. In addition to those described above, one such obstacle is the restriction of the culturally and spiritually important practice of fire-management, an ancient form of Karuk environmental management. The next section explores the use of fire by the Tribe as an important practical and spiritual component of their religion.

### Fire

The use of fire by Native Californians as an environmental management tool is well documented in the literature.<sup>38</sup> However, the details of native fire management are far beyond the scope of this thesis. Entire volumes are dedicated to understanding the elaborate burning regimes of California Indians and the rich ecological systems that they fostered. In addition, most indigenous fire management knowledge is held not within texts, but is instead a part of the great chain of knowledge held by the environmental management experts within Tribes.

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<sup>38</sup> See Blackburn and Anderson 1993; Boyd 1999; Lewis, 1982; Lewis, 1993; Ortiz, 1993.

For the purposes of this study, it is only necessary to understand the *spiritual relationship* the Karuk have in regards to fire management. The challenge of this task, however, is the fact that the spiritual cannot be extracted from the practical. Karuk Tribal members wishing to practice traditional fire management do not seek to engage in burning as a purely spiritual ritual, nor is their intended goal solely practical. Instead, the two are completely merged: the practice of burning is itself a spiritual act while the practical results of fire management also have spiritual benefits, including the cultivation of an intimate relationship with the landscape, an increase in culturally/spiritually-valued plant communities, and the promotion of an open, healthy forest.

In regards to environmental management by California Indians, Blackburn and Anderson (1993) insist that the use of fire was “the most powerful, effective, and widely employed tool in the native repertoire for directly manipulating the environment” (p. 19). Fire management had countless uses, including the management of game, the cultivation of plant communities, the promotion of plant regeneration, to prevent catastrophic wild fires, and to moderate epidemic diseases and pest infestations among select vegetative species (Grinde and Johansen 1995; Winthrop et al 1996; Anderson 1993). According to Ortiz (1993), controlled understory and brush burning is an important tool to basket weavers, while Boyd (1999) and McCarthy (1993) argue that such burning is necessary for the health of oak trees and acorn crops. Given this array of potential uses, the scale of

burning can range from individual plants to entire hillsides and the techniques utilized are equally diverse (Anderson 1993, p. 163; Hillman and Salter 1997; Winthrop et al. 1996).

Considering the unpredictability, consequences, and complexities of fire, the environmental management practice of burning is a highly refined science. For instance, prescribed burning takes into consideration the fact that fires are cooler and more controlled when burning is initiated from the top of a ridge toward the bottom. In addition, when fire is used as a management practice, factors such as the time of the year, humidity, wind, and temperature are all carefully considered (Hillman and Salter 1997, p. 3). These techniques of “slow burning” create an open canopy, promote fertile soil, produce straight hazel shoots for basketry, and enhance a variety of food and medicinal plants (Winthrop et al. 1996, p. 13). However, even these practical considerations cannot be taken out of a cultural and spiritual context. Like fishing, basketweaving, or hunting, burning is a spiritual practice that requires a dedicated study and understanding of sacred landscapes.

One of the most important reasons the Karuk seek to continue traditional fire management is the fact that several plant communities have depended upon the Karuk for many thousands of years. As Tribal member and Air Quality Coordinator for the Tribe, Bill Tripp suggests, “eighty percent of our [Karuk] cultural-use plants are fire-dependent species. They need low intensity fire” (Bill Tripp, interview, 02/09/05). It has been the

role of the Karuk to initiate and manage the fires upon which these species depend.

Tripp briefly explains the nature of this process:

You have to be out there to push wild fire around and make sure it stays within certain areas and to burn out areas at different times and to spot burn certain different kinds of materials at certain times. Its all part of the natural environment that helps those resources be of usable quality. And it helps makes enough food for enough deer populations so we can eat them without killing them all. Everything! There's a spiritual connection to all of it. (Bill Tripp, interview, 02/09/05)

In this way, the use of fire to create particular environments, such as open woodlands, is a spiritual act that literally shapes the landscape into a sacred place.

Cultural-use plants, which are particular Spirit People, expect the Karuk to fulfill their role in the overall scheme of life, including the management of the landscape through the use of fire.

As a management tool used on a wide-ranging scale of intensity, fire is recognized by the Karuk as a necessary component of their relationship to the land.

Several Karuk informants interviewed for this thesis supported this sentiment. A main point informants wanted understood is that without traditional fire management, the landscape is quickly changing, which in turn alters the lives and spiritual capacities of the

Tribe:

The biggest impact on our way of life, believe it or not, was that when the foresters came here and took over all the management of this land, they didn't allow us to burn any more. That seriously impacted everything. Because if you don't burn, you don't have the plants growing back that you need. You have plants that you don't need starting to take over the forest. And it's rampant. Now when you walk out into the forest,

just about anywhere, you can see all the brush and stuff. A long time ago there were fires everywhere because that was healthy for the forest. (David Arwood, interview, 02/14/05)

According to archived interviews, Bessie Tripp, a Karuk woman born in 1876, personally witnessed how fire suppression changed the plant-use habits of Karuk peoples (Winthrop et al. 1996, p. II2). According to her testimony, she saw within her lifetime a great reduction in the availability of several spiritually important plants, particularly vegetative food sources that depend upon seasonal burnings. The cessation of fire management led to conditions in which many plants were either impossible to find or very difficult to locate (p. II2). Tripp's recollections suggest a cycle of dependence in which the Karuk depend upon plants and plants depend upon controlled seasonal fires.

Fire suppression policies have greatly interfered with this cycle. Karuk elder Marge Houston finds mushrooms and acorns are becoming more difficult to locate without controlled burns. "You can't even walk up there where we used to get mushrooms comfortably anymore because the brush is so deep... no more mushrooms. No more acorns" (Marge Houston, interview 02/28/05).

According to the traditional environmental knowledge of the Karuk, small but frequent fires positively affect the health of the forests. Tribal member Frank Lake suggests that it is for this reason that the Karuk continue to seek the opportunity to engage in fire management.

Karuk people are trying to continue cultural burning practices to maintain the ecological quality of the environment and to maintain environmental

integrity and to have fire-induced resources, mainly plant and wildlife habitat. They are trying to maintain habitat structure and to support and to maintain Karuk material culture. (Frank Lake, interview, 02/17/05)

Without the fires that have always kept the forests in balance, the entire landscape quickly changes, a process that many Karuk peoples have personally witnessed in their lifetimes. Forest Service policies made the cultural use of fire illegal for several decades, leading to massive shifts in the ecosystems upon which the Karuk depend culturally and spiritually. Ron Reed, cultural biologist for the Tribe, suggests “the Karuk lifestyle began to diminish in substantial ways when fire suppression became a part of the forest management process. The Forest Service has that directly on their shoulders because, right now, burning is part of our religion” (Ron Reed, interview, 02/07/05).

Reed offers several ways in which cultural burning is a spiritual practice, including the propagation of medicinal and cultural-use plants and the perpetuation of prairies and meadows. Reed even describes a specific case in which sacred burning rituals are no longer possible.

One of the most profound examples is that at the climax of the world-renewal-ceremony the medicine man kicks a burning stump or a burning log off the mountain... to initiate the burn season. That’s the creation-story that we are carrying on. But, today we’re unable to carry that on because of the huge catastrophic fire risk that is out in the forest right now.” (Ron Reed, interview, 02/07/05)

Frank Lake suggests that many people have the responsibility of engaging in specific fire-lighting rituals, but that such responsibilities can no longer be fulfilled out of fear:

As fire owners, some people are required to burn off certain places for religious purposes that had direct ecological maintenance and environmental quality maintenance issues. And that is a big issue that is still in people's minds. You go out and burn after a ceremony. But there is the fear that the Forest Service will find you, punish you, and stick you with fines and hold you liable for whatever else they want to that is tied to that act of arson, when it really was an ecological and culturally beneficial burn. (interview, 02/17/05)

The fear of starting a catastrophic fire and the fear of legal retributions by the Forest Service are directly linked. According to Peña (2004), any Indians caught utilizing fire management –“committing cultural arson” – in the early part of the 20<sup>th</sup> century received punishments, such as the death penalty, for their actions (p. 15). Harold Tripp stated, “They had signs up around here, to kill any Indian on sight” (Harold Tripp, interview, 02/09/05). Today, unauthorized fire management can result in several legal penalties. Because of the harsh punishments involved – both past and present – the use of fire management by Tribal members has been greatly reduced. Without frequent controlled-burns, forests have become primed for a major forest fire in a way that was never before possible. Now, cultural fire management is a risky practice, not only because of potential legal penalties, but also because of the potential for massive fires that cannot be controlled.

The suppression of traditional fire-management has had a long chain of effects on the spiritual practices of the Karuk. For example, without fires the Tribe continually loses access to medicinal, cultural-use, and subsistence plants. Furthermore, the threat of catastrophic fires endangers those resources that remain. Thus, the Tribe is in a difficult situation. Even now that the Forest Service is beginning to recognize the value of controlled fires, the Karuk still have serious concerns:

Western science tells us right now that burning is good. It took them nearly a hundred years to figure that out. But now the foresters want to burn everything and we have to say "Wait!" We have to prep these lands now, because they've been mismanaged for so long. We need to go down and prep our acorn trees, prep our medicinal plants, prep our riparian resources. We need to have a management plan that reflects our values to show Western science what we really mean. (Ron Reed, interview, 02/07/05)

Well, the Forest Service, they think, 'Spring burning? All right, we're going to have it. The Tribe wants us to do spring burning.' So they say, 'Okay. We can do that.' Well, they go out there and start burning when all the birds are nesting. Start killing all kinds of wildlife. And not even thinking those things out. They're not even trying to want to understand. They just want to have control and be in charge. They think that you're some kind of a nut if you're trying to show that you're concerned about all these little bird nests and stuff. They think that you've got some kind of a problem. But really that's who we are. That's what we believe. And like Bill said earlier, those are our spiritual brothers and sisters so we have to care about them too. Unlike the Forest Service. They care about their conifers. Different species of trees that don't even belong here, a lot of them. And some of our goals is to turn that back around. (Harold Tripp, interview, 02/09/05)

Reed calls for co-management with the Forest Service, in which the Tribe and the agency work together. The fact that the Forest Service is slowly growing to accept the



ecological benefits of fire-management is a significant step forward. However, the issue is far from being resolved, particularly since the agency continues to resist Tribal input into the process (Hillman and Salter 1997, p. 3; Bill Tripp, interview, 02/09/05). As Harold and Bill Tripp say for the Tribe, “we would like to be in there right now doing burning today but... we can’t get any agreements in place with them on it” (Bill Tripp, interview, 02/09/05). It seems that constant shifts in the bureaucratic structure are a major problem:

We want to do work out on public lands to help manage for our cultural resources which is everything basically, except for fir trees, which is the only damn thing that has a value to this system. But we’re willing to help manage conifers even. That’s how far we’re willing to go. But it’s hard to break through the barriers. We had the Klamath Forest [Service Office] convinced it was the right thing to do. We were on a pretty fast track headed that direction and they changed the forest over to Six Rivers and we haven’t done a damn thing since. (Harold Tripp, interview, 02/09/05).

Sometimes, we get close. We’re being able to start doing more of that stuff and then we get a new ranger or a new supervisor and we have to start all over again and it’s kind of a frustrating process because every time you think that you’re about to do something good, something happens and we can’t do it anymore. (Bill Tripp, interview, 02/09/05)

These testimonies reveal the seriousness of Karuk desires to engage in fire management. Recognizing the jurisdictional authority of the Forest Service, the Tribe is willing – and able – to become advisors, collaborators, and co-managers with the agency in fire management decisions. As an officially recognized sovereign Tribe, the Karuk retain the legal right to such “government-to-government” relations with federal agencies

such as the Forest Service. Yet, testimony from Karuk leaders reveals that the sovereignty of the Tribe is not always respected and that the right to engage in and influence fire management practices is a constant struggle. This is a topic of serious concern, not only because retaining traditional burning practices is in many ways necessary in order to maintain Karuk culture, but because burning is a spiritual practice on many fronts. Therefore, that the Forest Service interferes with or restricts this portion of Karuk religion is a violation of the First Amendment by the Federal government. Though it may be difficult for non-Karuk peoples to understand, the use of fire management is a mandatory spiritual practice to the Tribe. In addition, many of the sacred plants and ecosystems of the Karuk depend directly upon fire management. Thus, the religious freedom of the Karuk depends directly on their ability to engage in this ancient and sacred type of environmental management.

### Conclusion

This section demonstrates that philosophical and practical discourse regarding Native American freedom of religion is incomplete without some regard to the fact that the right of Tribes to practice their spiritually-guided systems of environmental management is an indispensable component of religious freedom. Karuk wisdom and tradition indicate that the universe came into existence through the transformative actions of powerful Spirit Beings. No aspect of the Karuk's lives is left untouched by this

spiritual knowledge, including the religious mandate honored by the Tribe directing them to manage their ecological surroundings according to specific spiritual tenets. Without the capacity to engage in such management, the Karuk cannot experience the religious freedom they are constitutionally guaranteed.

To the Karuk, Traditional Environmental Management is a religious practice. As is discussed in Section One of the literature review, the three branches of religious freedom are the liberties to believe, choose, and practice according to the tenets of one's faith. The freedom to practice a religion is the most important and most difficult of these to protect, for the freedoms to believe in and choose one's religion are of little use without the freedom to engage in religious practices.

Evans (1997) offers a useful three-part typology of religious practices, each of which is relevant to this Case Study of the Karuk: (1) worship, (2) personal care mandates, and (3) religiously motivated cultural practices. Worship practices are formal, direct, and systematic efforts to spiritually engage in or with the sacred. Though occasionally private, worship practices are most often group activities particular to specific places, times, and circumstances. Worship practices are relatively inflexible, making them vulnerable to outside interference.

Evans' second category of religious practice, personal care mandates, includes "dietary and cleanliness practices, religiously mandated health care, [and] hairstyles and other appearance requirements or prohibitions" (p. 101). Unlike worship practices, these

mandates are rarely limited by place or time. Instead, these more intimate practices are a part of daily living. Though often confused with “optional” cultural behavior, personal care mandates are similar to worship practices in that they are crucial religious exercises.

The third category, religiously motivated cultural practices, is the broadest and therefore the most contestable. Potentially seen as secular activities motivated by religious faith, this form of religious exercise includes the innate rules of conduct subconsciously embedded in daily life that are induced by a religion’s unobserved value system. Too broad to clearly define, religiously motivated cultural practices include a multitude of subtle minutiae that may be unidentifiable or even incomprehensible to outsiders. In many cases, these practices are such a deep-seated and ingrained part of religious identity that they are taken for granted as fixed components of reality by faithful practitioners, but often confused as non-religious activities by uninformed outsiders. Regardless, religiously motivated cultural practices, no matter how latent, are as crucial to some faiths as are much more discernable and obvious religious rituals.

Government actions can literally make these three types of religious practices impossible, such as when federal agencies institute decisions that lead to major alterations to the landscapes crucial to Native American religions. Evans (1997) identifies such “actions or policies that make religious acts impossible” as a severe

burden to religious freedom (p. 189). In regard to government sanctioned destruction or alteration of Native American sacred lands, Evans suggests:

The government's act [is] not a penalty on a religious practice; it simply prohibit[s] the practice altogether. As part of the tragic history of U.S. acquisition of the North American continent from Native America peoples, many sacred sites came to be owned by the U.S. government. As pressure for development and other uses of these lands grew, the government often had to choose between traditional Native practices and other uses. Once [such lands are] devoted to other uses, longstanding religious rituals, integral to the spiritual life of a people, [are] no longer possible. (p. 189)

In this way, the government is capable of creating conditions in which the free exercise of religion simply cannot occur. In such cases, religious practice is not deemed illegal or discouraged, but literally terminated. This means that some of the greatest burdens on religious practice are virtually invisible because the religions themselves become invisible and obsolete through government actions that make their very existence impossible.

Table 5.1 offers several examples, already highlighted throughout the Case Study, in which each of the three types of religious practices are made impossible by government action. These examples and the interviews conducted for this research clearly indicate that the capacity to engage in (i.e., practice) traditional environmental management is among the primary religious freedom needs of the Karuk. The Tribe is much more capable of protecting their own spiritual needs when they are able to engage in such religious practices, which influence worship, personal care mandates, and

Table 1: Examples of Karuk Religious Practices That are Made Impossible by Government Actions

	<b>Worship Practices</b>	<b>Personal care mandates</b>	<b>Religiously motivated cultural practices</b>
Definition	Formal, direct, and systematic efforts to spiritually engage in or with the sacred.	Dietary and cleanliness practices, religiously mandated health care, and hairstyles and other appearance requirements or prohibitions.	The broad range of innate rules of conduct subconsciously embedded in daily life and that are induced by a religion's unobserved value system.
Sample Karuk Religious Practice	Prayer in the Sacred High Country	Consuming a diet rich in salmon	Fishing
Government Action that Makes the Religious Practice Impossible	<i>Made impossible when sacred lands are logged, desecrated by road building, or ecologically altered through fire suppression.</i>	<i>Made impossible when dam building endangers fish populations; made impossible when the Karuk Tribe is denied fishing rights; made impossible when over harvesting of timber causes severe declines in water quality.</i>	<i>Made impossible when dam building endangers fish populations; made impossible when the Karuk Tribe is denied fishing rights; made impossible when over harvesting of timber causes severe declines in water quality.</i>
Sample Karuk Religious Practice	Lighting of Sacred Fires during Ceremonies	Consuming a diet rich in acorns	Gathering of Basket Making Materials
Government Action that Makes the Religious Practice Impossible	<i>Made impossible by Fire Suppression Laws.</i>	<i>Made impossible when oak trees become less populous due to diseases attributed to fire suppression; made impossible when timber management favors profit-yielding conifers over acorn-yielding oaks.</i>	<i>Made impossible when Forest Management plans deny the Tribe the right to engage in Traditional Management Practices.</i>

religiously motivated cultural practices. A recommendation of this research is that agencies with an influence over the ancestral territory of the Karuk seek ongoing government-to-government co-management agreements with the Karuk that allow for the religious practices bound within traditional environmental management.

Religious freedom to the Karuk Tribe depends on the health, interconnectedness, and traditional management of fish, forests, and fire. In fact, Karuk systems of spirituality are so powerfully connected to ecology and geography that ecosystem integrity is an absolute prerequisite to their religious beliefs and practices. In this case, freedom of religion is completely dependent on the health of the Klamath River, its tributaries, and the various ecosystems within its watershed. Therefore, the land upon which the Karuk People are spiritually bound must be acknowledged as such by the federal agencies that have influence upon those lands. The Karuk “religion” is restricted and their freedoms are infringed upon for as long as such agencies manipulate the landscape without regard to native values.

To identify the religious freedom needs of the Karuk, this case study examined perspectives of religion not typically considered: traditional and contemporary ecological relationships that the Karuk share with their surroundings must be a part of the equation. In other words, ecological relationships such as Karuk environmental management must be recognized as inextricably linked to religious belief and practice. Thus, in order for the Karuk to enjoy a true freedom of religion the entire concept of “religion” must be rethought. For instance, federal agencies must accept that by altering the Klamath River and accompanying ecosystems, they are directly impacting the religion of the Karuk Tribe.

Responsibilities are a part of all other relationships the Tribe shares with the other peoples (species) of their world. The balance and continuity of the entire spiritual cosmos is dependent upon each participant in this system – from salmon to acorns to humans – to maintain their part in the system (i.e., to fulfill their responsibilities). Ideally, for as long as each type of people maintains its place in the system, it will be healthy. In another sense, the ecological health of Karuk surroundings evolves out of the fulfillment of spiritual responsibilities. Yet, it becomes increasingly difficult for the Karuk to fulfill their spiritual responsibilities as the health of their ecological surroundings is degraded by external sources. For instance, large-scale logging, the construction of dams, and other similar activities drastically reduce the population of fish in the Klamath River, making it increasingly difficult for the Karuk to fulfill their responsibilities to the Salmon People. It is important to be aware that environmental management practices are nothing less than the literal manifestations of spirituality. In order to maintain their spiritual obligations to the other peoples of their world, the Karuk are compelled to engage in the environmental management practices for which they believe they were created.



## CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

### Introduction

A purpose of this thesis has been to demonstrate that the concept of religious freedom is subject to historical and cultural biases, a fact that is well demonstrated by the problems confronting American Indians in the United States. Case examples throughout this thesis reveal the repeated inability of Tribes to fully secure religious freedom, despite promises from the Federal Government and consistently well-justified appeals by Tribes to the U.S. court system. Furthermore, the case study of the Karuk Tribe of California outlines several specific obstacles facing Karuk peoples in the constant battle to halt infringements of their religious liberties.

The concept of freedom of religion holds as its basic premise that all individuals possess the right to complete autonomy over their own spiritual concerns. No limits or obstacles should exist in belief, conscience, or matters of faith. Yet, because of cultural biases rooted in history, religious freedom for American Indians has been shaky at best. Indian sacred lands have been repeatedly altered, damaged, and even completely destroyed in recent American history. Given the essential nature of such lands to particular Indian faiths, these actions are clear violations of religious freedom. In addition, as is demonstrated in the case study, the right of Indians to *practice* the tenets of their religions has also been repeatedly denied.

According to the First Amendment, the U.S. government has the constitutional responsibility to protect U.S. citizens from such violations. Yet a multitude of examples exist in which the U.S. government has failed in its obligations. The drive to serve the interests and values of “the majority culture” underlies each case in which the U.S. government undermines Indian culture and religion. This is as true when land management agencies literally destroy sacred sites as it is when courts fail to find such actions in violation of the First Amendment.

A major challenge that Indians face in seeking religious freedom in this nation stems from the historical foundations behind the establishment of the First Amendment. According to popular history, the Framers sought to form a nation based on maximum liberty for all people. However, the fact that these utopian architects were exclusively white Christian men – many of whom actively participated in the institution of slavery and the designed exterminations of American Indians – drastically weakens their celebrated mythology. To the Framers, “liberty for all” did not actually include everyone. As Rose (1999) suggests, the source of the problem lies in the limitations in knowledge and intent of the men who founded and enforced religious freedom in American for the first 150 years of its history. For instance, “a doctrinal church-based theology, or the deism of Jefferson and Madison, presupposes a separable realm of religious experience and commitment that is completely foreign to the religious life of

Indians” (p. 129). Because of this history, the Religious Freedom Clauses of the First Amendment can never be entirely suitable to American Indians.

The First Amendment was written by men who had little or no concept of the all-encompassing belief systems of American Indians. These men referred to “separation of church and state,” because, to them, such a concept was not only conceivable, but actually desirable. The religious protections they imagined were inappropriate, or at least inadequate, for peoples who view the universe as a celebrated melding of the visible and the invisible, the natural and the supernatural, the spirit world and the extant world. The significance of the connection between the tangible and the intangible was overlooked by these men who were only familiar with – and respectful toward – the teachings and philosophies of Western traditions and faiths. As is shown in the case study, these oversights in the drafting of America’s vision of religious freedom have meant that religious freedom is an elusive “promise” for American Indians.

The recommendations that follow are presented here in order to address some of the inadequacies and inequities of religious freedom in the United States as experienced by American Indians. Recommendations are based on findings throughout the thesis, particularly the case examples presented in Section Three of the literature review and in the Case Study. The recommendations made here are general and limited, but in combination could potentially address many key religious freedom needs experienced by American Indians. Six recommendations are addressed below.

## Recommendations

### 1. Tribal trust, Tribal sovereignty, and government-to-government relationship

The U.S. Government has a special relationship with American Indians, based in part on the fact that the lands of the United States were taken by force from Native populations. Given this sensitive past and the recognition of Indian peoples as a politically unique population, the government has assumed certain moral obligations in its relations with American Indians (Zellmer 2002, p. 433). Burton and Ruppert (1999) indicate that these obligations are based on sections of the constitution, the results of early Supreme Court cases, and the brutal subjugation of American Indians by the U.S. military (p. 219). The specifics of this “trust obligation” or “trust doctrine” are imprecise, but can safely be viewed as the placement of “parameters” on federal agencies that regularly require a prioritization favoring Indian interests (Zellmer 2002, p. 433). In other words, the trust doctrine “imposes duties and obligations” on the government in its interactions with Native Americans (Tsosie 2003, p. 271).

In addition, on November 6, 2000 the President of the United States issued Executive Order 13175: Consultation and Coordination with Indian Tribal Governments. According to the order, in any formulation or implementation of policies that affect U.S. Tribes, federal agencies must be guided by several established principles. First is the establishment of a “Trust Relationship,” in which the federal government recognizes

Indian Tribes as domestic dependent nations that possess the right to self-government and inherent sovereign powers. Therefore, any interaction between Tribes and the U.S. government must take place on a “government-to-government” basis in which Tribal sovereignty and self-determination are recognized and respected. As a guiding principle in these government-to-government relations, “the Federal Government shall grant Indian Tribal governments the maximum administrative discretion possible,” meaning that Tribes are encouraged to develop their own policies to achieve their own program objectives and that the U.S. government will defer to Indian Tribes to establish standards.

When necessary, agencies are instructed to consult with Tribal officials. In these consultations, agencies must employ a process with a measure of accountability, one that ensures meaningful and timely input by Tribal officials will occur in the development of regulatory policies that have Tribal implications. In the context of Karuk efforts to revive Traditional Environmental Management, the government-to-government consultation process and the Federal Government’s trust responsibility to the Karuk Tribe are emphasized. This thesis recommends that the Forest Service, the National Park Service, the FERC, and any other governmental agencies with influence over the lands held as religiously important to the Karuk Tribe comply with E.O. 13175, the Trust Responsibility, and the government-to-government consultation processes.

## 2. Acknowledgement of the importance of religious identity for religious freedom

According to Lawrence R. Baca, the right to practice native religions “is the right to be Indian” (as cited in Griffin 1995, p. 395). This is because religions and spiritual beliefs/practices that are transmitted across generations have the power to create and sustain a common group identity that defines a coherent, long-term philosophy for a group of people. Yet, religious beliefs and practices can be such a deep-seated and ingrained part of a group identity that they are taken for granted as fixed components of reality by insiders, while often confused as non-religious activities by uninformed outsiders. For instance, in regard to American Indians, Rose (1999) finds that religion permeates all categories of life, within and beyond politics, economics, and general culture. Aspects of religion can be found in: all varieties of narratives, from creation stories to tales of tricksters and fools; art and architecture; spatial and landscape orientations; ritual drama, costumes, masks, and ceremonial paraphernalia; and subsistence activities such as hunting, fishing, and farming (p. 107). However, for non-Indians most of these activities are not typically viewed as religious activities and therefore are not recognized by non-Indians as crucial components of Indian identity. As a consequence, when beliefs and practices of American Indians are not afforded adequate religious freedom protections, the very identity of Tribal members may be threatened.

Evans (1997) suggests that religious identity may be threatened in four ways: (1) when by official action a person is made to feel like an “outsider” because of his/her religious identity, (2) when official action subjects particular religious practitioners to public disapprobation because of their religious identities, (3) when the state literally deprives a person or group a symbol of their religious identity, and (4) when the state deprives a person or group of the ability to create or sustain a religious identity (p. 174).

This thesis recommends that the Federal Government recognize the importance of religious identity and the consequences of threatening religious identity when creating any policies that may affect American Indians. As an example, in the case of the Karuk, the U.S. government may be depriving the Tribe of the ability to sustain their religious identity by altering the Klamath River. In line with Evans (1997), this thesis recommends that Tribes clearly articulate that such places, objects, and practices are religiously necessary for the *identity* of their people. When the U.S. government openly respects the concept of religious identity, Native religions will enjoy one more level of security.

### 3. Reconsidering the boundaries of religious freedom

However much the people of the U.S. may vocally cherish religious freedom, resource extraction and tourism have consistently come before the religious liberties of American Indians. The truly disappointing part of this story, however, is the

government's lack of sympathy or assistance in the religious freedom infringements faced by Tribes. In the end, the primary problem revolves around the government's continued failure – or refusal – to understand and accept the nature and extent of Indian religious beliefs. This failure is at least partially based in history, particularly in the fundamental differences between Indian belief systems and the religious leanings of the framers of the First Amendment, not to mention modern legislators and judges. As Rose (1999) explains, the Framers did not design the clauses of the First Amendment “to protect cultural expressions or sacred geographies because such notions were foreign to their own beliefs” (p. 139). The Framers simply did not have the knowledge or inclinations necessary to draft a declaration of religious freedom suitable for the Native inhabitants of this nation. Today, however, *more accommodating interpretations* of the First Amendment and a broader understanding of religion could help to undo some of the damage inflicted to Indian communities and religions over the past few centuries.

In order for equitable religious freedom to exist in this nation, the boundaries defining what is and is not religious must be reconsidered. For instance, Unmack (1996) suggests that the requirement within Native American religions to utilize specific natural sites for the discovery of personal truth and power is a foreign concept to many non-Indians. While it is not possible or desirable for everyone to know and understand the importance of sacred geography to Native Americans, it must be socially accepted that the ecological quality of certain locations is absolutely essential. For as long as the



concept of religious freedom fails to respect the unique environmentally-related religious needs of American Indians, Tribes will continue to be forced into fighting for their religious rights.

Interviews conducted for this research clearly indicate that the capacity to engage in traditional environmental management is among the primary religious freedom needs of the Karuk. Yet, in many ways this need of the Tribe has not been recognized as religious in nature. Similar experiences have been true for other Tribes. A recommendation of this research is that agencies with an influence over the lands of American Indians, including the ancestral territory of the Karuk, seek ongoing co-management agreements *based on an open and accommodating understanding of Indian religions and the concept of religious freedom.*

#### 4. Acknowledgement by federal agencies of the spiritual nature of ecosystems and species

The free exercise of the Karuk Tribe's "religion" depends directly upon the ecological health of their ancestral territory. Individual living beings, entire species, and whole ecosystems are indispensable components of the Karuk spiritual cosmos. Therefore, for the U.S. government to hold true to its trust obligations and to the tenets of religious freedom, a genuine recognition of the status of the living world as a foundational belief must be at the forefront of all Federal policies and actions in the

Klamath region. Whenever dams, forest management plans, or dredge mining operations threaten species or ecosystems, they also threaten the free exercise of Karuk religion. It is no longer adequate to limit the right to free exercise to conventional parameters; the life and death of spiritually significant species must now be a consideration.

#### 5. Recommendations for further research regarding Karuk religious freedom

This thesis was written with the hope that it will serve as a preliminary investigation to further studies. This thesis is based in the social sciences and in part seeks to understand how natural resource management by outside interests impacts Karuk religious freedom. Not offered in this study is research based in the hard sciences that directly investigate exactly *how* such resource management affects ecological integrity, ecological/geographical diversity, and therefore Karuk religion. Therefore, it is recommended that further studies be conducted with an emphasis on empirical ecological data regarding the correlation between spiritual practice, ecological integrity, and ecological/geographical diversity.

For example, any one of the following research topics would provide relevant data to further research: (1) The effects of intensive logging activity on large mammal

populations in the Six Rivers National Forest; (2) A comparison of biodiversity in traditionally-managed cultural-use areas versus federally-managed resource-extraction areas; (3) The impact of reduced water quantity and quality on salmonid populations since the construction of dams in the Upper Klamath Basin; (4) The change in plant succession rates following the adoption of Karuk Environmental Management in the Ti Bar Demonstration Project; (5) The impact of recreational mining on salmon spawning habitat; or (6) The influence of agricultural runoff on the population of lamprey eels. Each of these hypothetical studies would likely indicate an observable alteration in biodiversity and ecological integrity, with direct subsequent impacts on Karuk spiritual practices and therefore on Karuk religious freedom. Despite the fact that this thesis does not directly reference such data, studies similar to these theoretical examples certainly exist. For the scope of this study, however, such data was not collected or presented. Nonetheless, further study regarding Karuk religious freedom would greatly benefit from empirical ecological data that directly compares factors of biodiversity and ecological health to activities of Karuk spiritual practice. It is recommended that students in the natural resource and ecological Sciences actively collaborate with Tribes, particularly the Karuk, to establish an unequivocal connection between the quality of environmental conditions and American Indian religious freedom.

## 6. Remove all obstacles to Karuk religious freedom

The following recommendations to the Federal Government are strongly encouraged and, in combination, represent the most important actions that must be taken in order for the Karuk to finally experience religious freedom:

- Take down the dams on the Klamath River
- Collaborate with the Tribes to conduct a full-scale ecological restoration of the Klamath River
- End the cutting of old growth forests and trees
- End the construction of logging roads
- Conduct forest management with fish and their ecosystems in mind
- Consult with the Tribe to develop a work plan outlining the policies necessary for the restoration of Traditional Karuk Cultural/Environmental Resource Management
- Work with the Karuk Tribe to reduce the fuel load within the Karuk territory through Prescribed Burns and other Karuk-directed Fire Management Techniques
- Create a Karuk Reservation encompassing the Karuk ancestral territory

As Evans (1997) suggests, government actions or policies that make American Indian religions impossible are a serious burden to religious freedom. These eight suggestions for removing obstacles to Karuk religious freedom represent the type of actions that the U.S. government must pursue in order to guarantee a genuine level of religious freedom to the Karuk. Removal of the dams on the Klamath River, coupled

with a collaborative effort between the Tribes along the Klamath River and the U.S. government to conduct a full-scale ecological restoration of the Klamath River, should be a priority first step to securing Karuk religious freedom. The Forest Service should end the cutting of old growth forests, end the construction of logging roads, and conduct forest management with the health and future of fish in mind.

One of the most effective ways in which the U.S. government can remove obstacles to Karuk religious freedom is by enacting policies granting the Karuk the autonomy to engage in traditional environmental management. Included would be a Karuk right to fish throughout their aboriginal territory, the reinstatement of Karuk Fire Management, and other religiously related practices. The final and most important recommendation of this thesis is for the Federal Government to return the Karuk ancestral territory to the Tribe as a Reservation. This would benefit Karuk religious freedom more than any other recommendation outlined above.

### Conclusion

Seeking to maintain sacred relationships with landscapes is a common attribute of Native religions. However, this common mission of American Indians is impeded by a lack of public and legal recognition of the needs of their religions. Without such recognition, and appropriate legal protection, Native religions are in constant peril. Yet, not only are particular locations crucial to the practice of Native religions, the integrity

and quality of those locations is also of absolute importance. Inevitably, given the need to retain the integrity of site-specific locations of worship in an era of ongoing development, sacred sites and the religions attached to them are in constant danger of destruction.

The Karuk Tribe of California is one such Tribe whose religion is in constant peril, but whose tenacity and cultural strength has allowed for great success in the revival and protection of their religion. The all-inclusive, holistic environmental management systems of the Karuk were effective for countless centuries, while the species-specific, isolated resource management of the past century has proven to be less effective. Thus, the wisdom and experience of the region's Indian peoples can be an invaluable asset to the maintenance of the regions ecological health.

As Price (1994) suggests, to Native Americans such as the Karuk, "the highest and best use of land is that which ensures the spiritual harmony of the area, past, present, and future" (p. 262). This is not to suggest that the Karuk are entirely opposed to resource management or even development. Instead, the issue is one of priorities. In management or development decisions, the Karuk would prefer the autonomy to utilize the land in ways that best suit *their* cultural values, as opposed to the cultural values that have dominated the landscape for the past 150 years. At the very least, the Tribe seeks to be consulted in all management activities within their aboriginal territory. At best, the

Tribe would like to resume autonomy over the Karuk ancestral territory for the sake of their spiritual integrity.

Hoping to see a positive change over the next 150 years, Karuk Tribal member Ron Reed looks to the future: “I think that I’ll be fighting to the end of my life and then, hopefully, I hand it off to my children. And their grandchildren will be their legacy. They’ll bring what we’re doing right now. So it’s all about legacy. It’s about what you do to better your people, to better your existence” (Ron Reed, interview, 02/07/05).

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