

Devils Tower and Sacred Land Disputes

It is 4 am and Oglala Lakota Chief Oliver Red Cloud is bent over a picnic table piled high with sage at a camp on the Belle Fourche River in northeastern Wyoming. The silhouette of Devils Tower national Monument looms one mile to the west. At this hour it is hard to see what the chief is fussing with, from a distance he seems to be changing a baby. Soon he looks up from the sage to the Tower and begins to pray.

He and other Lakotas have gathered here to pray and speak about this place just three days before the summer solstice. In one hour he will lead a pipe ceremony at Joyner Ridge, a saddle of deep grass $\frac{3}{4}$ of a mile west of the tower. It will be a renewal ceremony, he says, after which he hopes to dispatch 170 Indian runners for the last leg of the 15th annual Sacred Hoop 500-mile run around the Black Hills. They will reenact the Lakota myth of an epic race between the two-legged and the four-legged around the Black Hills. With the help of the bird people, the two-legged won over the four-legged. For the Lakotas, the Tower marks the northern tip of that mythic racetrack.

Oliver Red Cloud's tribe is among 23 American and Canadian tribes who claim cultural and religious ties to the Tower and the rest of the Black Hills. Among these tribes are the Cheyenne, Crow, Arikara and Kiowa, all of whom say that the Tower has been a sacred site to them for hundreds of years. The Lakotas drove many of these tribes from the coveted Black Hills when they moved westward from Minnesota in the middle of the eighteenth century. Because of this history, the Tower and the rest of the hills have been associated with the Lakotas ever since.

In 1868, Oliver Red Cloud's great-grandfather, the famous Lakota chief, Red Cloud, signed a treaty which for many Lakotas established their rights to the Tower to this day. In exchange for a peaceful resolution to the Sioux Wars, the Treaty of 1868 set aside present-day South Dakota west of the Missouri River, including the Black Hills, as the Great Sioux Reservation.

Devils Tower and the rest of the Powder River Country of northeastern Wyoming became part of what was called "Unceded Indian Territory" (Lazarus). In order to gain entrance into this area, whites had to ask permission of the Lakotas. More than a century after that disputed treaty, Red Cloud's great-grandson must now ask permission to conduct ceremonies at the Tower. He wants the right to pray at the rock in peace, undisturbed by the scores of recreational climbers who are drawn by its world-class crack climbing.

As a result of a voluntary ban on recreational climbing for the month of June, the National Park Service and Cheyenne River Sioux Tribe are being sued in federal court by a local group of recreational use advocates, Bear Lodge Multiple Use Association. The case raises 1st Amendment questions over potential Establishment Clause conflicts, but also casts a new, critical eye on the validity of Native American stories which link tribal spirituality to sacred sites. Finally, it is another test of the religious protection granted under the provisions of American Indian Religious Freedom Act.

Native American traditions have had a rough reception in the courts. Indian religious freedom was restricted in Supreme Court decisions of 1988 and 1990. In the Devils Tower case we rediscover once again the depth of bitterness and indifference which divide these cultures. And the potential for

misunderstanding is only aggravated when each individual elder seems to tell a different story about this butte.

The Kiowas have a myth about the Tower. Many tribes tell a version of this story. In it, some children were playing; when a girl imitated a bear she turned into the animal and killed her playmates, but spared her sister, whom she enslaved. The girl's six brothers soon freed their sister, wounding the bear. When they ran away, the bear followed them until they came to a rock which rose to the sky as they stood on it. The seven became the Pleiades. The lean of the Tower was caused by the bear hurling its body against it, trying to get at the kids. Deep grooves were left by the claws.

Because of their rendition of this story, the Lakota know this place as "Mato Tipila," or "Bear's Lodge;" others refer to it as "Grey Horn Butte." But we'll also find it called Mythic Owl Mountain, Ghost Mountain and Bear Dwelling.

Ironically, the English name "Devils Tower" reflects only fear of the place, a feeling shared by some of the area's earliest settlers. This name gradually supplanted Bear's Lodge when it first appeared in the book "The Black Hills" by Colonel Dodge in 1876. The naming fight continues in the courts today. This debate demonstrates that Euro-Americans of the nearby town of Hulett are also connected to this piece of rock. Locals spoke to me proudly of rancher William Ripley who made the first known ascent of the Tower on July 4th, 1893. Like any good conqueror, Ripley erected an American flag at the summit. That was thirty-three years after the first group of explorers, the Raynold's expedition, reached the Tower in 1859. Others had mapped the Tower before them, but none had ever made the full trip to its base.

By the turn of the century, the place was such a draw to tourists that in 1906, Roosevelt christened it the nation's first national monument (1,152.91 acres). From then tourists and climbers have come from all around the world to challenge the rock, or shuffle around its base. Since Richard Dreyfuss ascended in an alien spaceship from the Tower in "Close Encounters of the Third Kind," tourism has only increased. In 1996 approximately a half a million people visited the Tower.

But Indian religious use of the Tower is harder to document. One can easily overlook an Indian praying high in its talus slopes. While climbing is a public pursuit carried out in noisy teams, yelling instructions and encouragement to one another, Indian fasting and vision questing are solitary, silent, private. Indians feel that climbing disrupts their spiritual focus, that climbers desecrate the sacred butte by hammering pitons into its "traprock" columns.

Two years ago the park service finally addressed the conflicts between climbers, Indians and environmentalists. After a couple years of tension-filled meetings, Superintendent Deb Liggett initiated a "program highlighting the significance of the site to native people, as well as a request that visitors not climb during the month of June, the most important time for Indian worship" (The Nation). Bolstered by the 1978 American Indian Religious Freedom Act and President Clinton's executive order of 1994 "directing federal land managers to consult with tribes as they would with sovereign nations" (High Country News). Liggett's new policy attempted to please both Washington and the Indians. In 1996, President Clinton went even further, encouraging agency officials to "accommodate the religious practices of Native Americans, including actions affecting the physical integrity of sacred sites" (High Country News).

Despite the president's support, the National Park Service soon found themselves in a law suit brought by Mountain States Legal Foundation, a litigation firm representing a climbing guide named Andy Petefish, and the Bear Lodge Multiple Use Association. Mountain States accused the park of violating the Establishment Clause of the First Amendment by endorsing American Indian ritual practices – like fasting on the butte. Liggett makes a distinction between “prohibiting” and “managing” recreational climbing, arguing that her management plan based on mutual respect has an 85% approval rating with climbers and public alike. In Liggett's words, “a gesture of respect costs us little and benefits us as a people” (High Country News). But plaintiff Andy Petefish's outlook is based on something else: “I'm a euro-american,” he says. “I don't want to understand the Indian religion, and I don't have to” (The Nation).

Hearing sentiments like these, the Cheyenne River Sioux Tribe actually supported the National Park Service, creating a curious alliance which seemed to typify the White House's conciliatory consciousness these days. In this spirit the park service carefully strategized its management plan to steer around the trap of the Establishment Clause. But was it enough? In a preliminary judgment last year, Wyoming District Court Judge William Downes didn't think so, ruling in favor of Mountain States.

Romanus Bear Stops, a Cheyenne River spiritual leader who testified before Downes, yearns to breathe new life into his Lakota culture. He sees managing access to the Tower doing just that. Bear Stops has prayed at Mato Tipila in the past, and wants to again. “On one occasion, toward the end of my mother's life,” he says, “I went to Mato Tipila to pray for the health of my ailing mother. My mother was very sick with cancer... I took my pipe... I made flags for all the directions and offered them to the spirits... on the branches of a choke cherry tree... I offered prayers. I prayed with my tears... for many hours. My mother became well and lived for one more year after I prayed for her there.” (Bear Stops Affidavit).

President Carter signed the American Indian Religious Freedom Act of 1978 to protect the religious needs of people like Romanus Bear Stops. In the words of AIRFA proponent Senator Abourezk, “America does not need to violate the religions of her native peoples. There is room for and great value in cultural and religious diversity. We would all be poorer if these American Indian religions disappeared from the face of the earth.” (Michaelson). At the time these were encouraging words but subsequent Supreme Court decisions made it clear that, in the words of AIRFA analyst Robert S. Michaelson, “the impact of AIRFA since it became law has been minimal and disappointing.” (Michaelson).

A significant test of the act's protections came in 1988. In *Lyng v. Northwest Indian Cemetery Protective Association*, the Court proved that AIRFA added nothing to the Free Exercise Clause of the First Amendment, which is supposed to protect freedom of religious practice. The *Lyng* case saw members of the Yurok, Karok, and Tolowa bands of northern California challenge the construction of a U.S. Forest Service road through an area of high sanctity in Northern California's Six Rivers National Forest. The court decided that it needed no compelling interest to infringe on religious practices so long as that was not its intent. In ruling the *Lyng* case the Supreme Court became, “the first appellate court in a sacred lands case to defer entirely to the federal government's property rights.” (Michaelson).

In this momentous case the Court introduced a refined test which weighed what it called the ‘centrality’ and ‘indispensability’ of a religious practice. Under this test Indians had to show that a religious practice was central and indispensable and could not take place anywhere else. To AIRFA defendant Vernon Masayesva (Hopi vice-chairman) this part of the test was simple, “If we push out of

the way with a bulldozer, can you go someplace else?" This test has had, "devastating results for indian claimants." (Both citations from Michaelson).

Since the Lyng verdict District courts have used it to deny First Amendment and AIRFA protection in other sacred land disputes. In connection to land. To the park service, Native Americans practice what is called a land-based religion. In the teachings of Lakota spiritual leader Black Elk, the word for prayer means, "to claim relationship with;" (DeMallie) to pray at Mato Tipila is to claim relationships there. Christian religions however, orient themselves toward a God in heaven, giving earth largely symbolic significance. In the words of Hopi Vice-Chairman Masayesva, "For the Indians... God may be present in places or things here on earth." (Michaelson). Thus climbing the Tower is not akin to climbing the Vatican, a man-made representation of heaven on earth, but more like bursting into Heaven itself on Good Friday with a high school marching band.

Communicating Lakota religious beliefs in a strange tongue was tough for old Chief Red Cloud when negotiating with the government in 1868. And the Devils Tower case proves that these difficulties remain today. Historian Donal Worster says that Red Cloud could not express to the government the sacredness of the Black Hills, instead they heard only that the hunting there was good. The younger Red Cloud has learned from his great grandfather's experience. Before dispatching the runners for the final leg of their race, he prayed and told them of the sacredness of that place. As we wait for the final ruling in this case, the chief and all Lakota will be waiting too, waiting to reclaim their relationships there.

This article was written by Nicolas Nabokov on July 20, 1997. A title was added and minor corrections to grammar were made in transcribing it, but the document is otherwise unchanged. The court case to which the author refers was ruled in favor of the National Park Service, and the voluntary June closure and entire Climbing Management Plan of 1995 were upheld.