

BOOK REVIEW SYMPOSIUM

Secularism and the Freedom to (Self-)Regulate: A Response to Michael McNally's *Defend the Sacred*

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

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

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Keywords: secularism; religious freedom; Native American religions; bureaucracy; policing

I am grateful for the opportunity to read and discuss this provocative and deeply learned new book. With *Defend the Sacred*, Michael McNally has produced an immensely valuable work that combines meticulous explanations with strong, creative, and, above all, useful arguments. I am a religious studies scholar who is often critical of religious freedom, and this book is just what I needed to read. McNally grants the legitimacy of the critiques raised both by many interested parties and by religious studies scholars. And he generally agrees that *religion* is a colonialist category; religious freedom privileges individual believers; it perpetuates racial liberalism; and Native Americans almost always lose free-exercise cases. This book is not a call to double down on the narrow protections of First Amendment free exercise claims, hoping that the protection of sacred sites, for instance, will eventually be regarded by federal judges as a matter of ensuring the protection of sincerely held beliefs. Indeed, McNally takes the failures of free-exercise claims not as an occasion to abandon religious freedom but as an invitation to think more capaciously, creatively, and strategically about what religious freedom is and can do.

Other contributors to this forum are better equipped than I am to assess the plausibility and promise of McNally's suggestions. In many ways, McNally thinks like a lawyer (here, I mean that as a compliment), which is to say, strategically, in order to accomplish his aims. In so doing, though, he is not doctrinaire or pedantic; he has a pragmatic will to try, to collaborate and experiment and see what works. This is an approach to law and religion that is too rare, and I found it a refreshingly practical, sensible, and grounding book to think with. Leaving the more fine-grain analysis to those with more expertise, I respond to this book by discussing three related clusters of thoughts it provoked. In what follows, I first put McNally's work in conversation with secularism studies and ask what this book can teach us about how secular governance works in practice. Second, I think with McNally about spirituality and sincere belief. And finally, I conclude with some brief thoughts on the postsecular and the sacred.

To discuss the first two issues, I offer a case study. In the summer of 2016, an Indigenous activist named Josie Valadez Fraire was arrested in Denver while she was protesting then presidential candidate Donald Trump. At the time of her arrest, she was smudging. A forty-nine-second video of the encounter was posted on YouTube.¹ Fraire argues, “there is no crime” while her fellow protestors chant “Let her go.” And then, as the police officers try to take her sage bundle so they can put her hands behind her back and handcuff her, Fraire says, “This is Indigenous spirituality! You are not allowed!” One officer looks to another and turns his palm upward; he looks genuinely confused. A third officer has Fraire’s right arm behind her back. The confused officer has ahold of Fraire’s left wrist, and the sage is in her left hand. For a moment, it is a stalemate. He does not want to release her wrist, but he also is not sure whether or how to grab the sage. He asks the other officer, “What do we do with this?”² Quickly, he decides to pry it from her hand.

When Fraire said, “This is Indigenous spirituality! You are not allowed!” she was making, in so many words, a religious freedom argument. One reason that Native Americans often lose religious freedom cases in US courts is that they are not understood to be sincere believers. Which is not to say, of course, that they are *insincere* or *fraudulent* (although, as McNally notes, sometimes there is suspicion that they are “using” the rhetoric of religion to get what they *really* want, which is not essentially religious) but that their religion is not primarily understood or expressed as sincere belief. The normative religious subject believes like a Protestant. Or, as McNally puts it, “The very notion of religious freedom can have baked into it a subtle but no less forceful discrimination that naturalizes and universalizes the individual, interior, subjective, chosen, belief-oriented piety characteristic of Protestant Christianity and enables such a piety to flourish at the expense of traditions characterized more by community obligations, law, and ritualized practice” (14). McNally’s contribution to this conversation is not to disagree but to take the argument toward a different conclusion. It would be easy enough to say that there are two options: either translate Native American claims into the existing language of “religion” or, conversely, give up on “religious freedom” and seek power and dignity in other ways. We might think of these as “liberal inclusion” and “abolition.” McNally charts a third way, working toward something called “religious sovereignty,” which results from a “bundle or hybrid” of rights and protections. Is Fraire a sincere believer? This is not really a useful question. It is even less useful, of course, when the issue at stake is not an individual smudging but, for instance, peoples’ rights to determine the future of their relationship with land and water.

As McNally shows, especially in the second chapter, the discourse of “spirituality” is suited to free exercise claims, because spirituality is often understood as “private, individual, believed” (70). So, here is the rub: “Those winning free exercise claims are not those of Native *peoples*, but Native *people*, Native individuals as individuals” (70). I recently completed a book about religious freedom and the character of the sincere believer.³ Part of my argument is that “sincerely held religious belief” became a commonsense formulation of normative religion because of the deinstitutionalization and individualization of religion as a category, within law, culture, and politics. For example, in conscientious objection law, which became quite relevant for free exercise, religious beliefs were redefined as any sincere belief of “ultimate concern” and deep importance, held “in a place parallel” to that of an “orthodox” believer.⁴ In this imaginary, every individual is religious or spiritual, or has

¹ CyborgNBV Mari, “Native Woman Josie Valadez Fraire Arrested for Burning Sage,” YouTube, July 3, 2016, <https://www.youtube.com/watch?v=Y76eflLN0Tg>. For more context, see “Charges Dropped against Indigenous Woman for Ancient Practice,” The Nation Report, August 1, 2016, <http://www.thenationreport.org/charges-dropped-against-indigenous-woman-for-ancient-religious-practice/>. See also Jonina Diele, “Activism in Denver: Get to Know Josie Valadez Fraire,” *303 Magazine*, May 18, 2017.

² CyborgNBV Mari, “Native Woman Josie Valadez Fraire Arrested.” (The exchange is a little hard to make out. Perhaps he says “What do I do with this?” or “What are we doing with this?”)

³ Charles McCrary, *Sincerely Held: American Secularism and Its Believers* (Chicago: University of Chicago Press, 2022).

⁴ U.S. v. Seeger, 380 U.S. 163 (1965).

the capacity to be. But, McNally argues, “spirituality is no mere synonym for Native American religion, religions, or religious exercise; it is invoked as a term to distinguish spirituality from particular tribal religions” (77). When Fraire says “this is Indigenous spirituality,” she appeals not really to religious sovereignty, in McNally’s terms, but free exercise. She is, in that moment, not someone with a particular tribal religion but an individual with a spiritual practice. There is nothing wrong with this, necessarily, and in many cases such claims both could and should be effective. But such spirituality is not, ultimately, an effective overall strategy for defending the sacred.

The second point finds inspiration in the officer’s question, “What do we do with this?” The “this” in question is, most immediately, the sage bundle. But the “this” is also Fraire’s larger claim, that it is “Indigenous spirituality.” The officer’s question is one that someone asks when their ready-to-hand vocabularies and frames of reference are not adequate. There is something in the question that encapsulates a larger truth about secular governance. One of *Defend the Sacred*’s most valuable contributions is to attune scholars of religion and secularism to the many agents of secularism, the bureaucrats and police and park rangers and prison wardens and others who encounter religious claims and must figure out what to do with this. “This” might be a sage bundle or access to a sweat lodge or Bears Ears National Monument. McNally’s primary focus is on Native actors, their arguments and activism. But, as other scholars use and extend this book, one fruitful path will be to look anew at the vast machinery of secular governance and find more characters who are not Supreme Court justices. McNally’s range extends from his pragmatic approach. If the courts are not the sole arena of religious freedom, where else can we look? What about international law, human rights, historic preservation, cultural resource law? There are other ways to study religious freedom; and, more importantly, there could be other ways to get it.

Just as McNally looks “beyond the First Amendment,” scholars of religion and law and secularism must look beyond the courts. In this way, McNally ably takes up Winnifred Sullivan’s call for scholars to account for the “overlapping and competing normative orders, religious and nonreligious, [that] compete to direct [subjects’] thoughts and activities.”⁵ I wonder if we could push that further, to say even more about Native American *legal* thinking, such that the sacred is just as much a legal category as a religious one.

This brings me to my third issue, which I raise somewhat tentatively. What is the sacred, exactly, and what does it mean to defend it? One reason “sincerity” became important was that courts (and scholars) wanted to stop evaluating the veracity of religious, theological claims. Law and religious studies scholarship both depend on some ironic distance: we deal in “truth claims,” not truth. At least, when it comes to spiritual matters. And yet, as I have been discussing, most Native Americans do not explain their religion in terms of sincere belief. And saying “the mountain is sacred” is not the same as saying “I believe that the mountain is sacred.” Some scholars recently have attempted to reduce or even collapse the distance between the two. There are compelling reasons to do so, including that to perpetuate that secularist split replicates the same binaries we seek to historicize, critique, and undo as we move beyond Enlightened liberalism and the figure of the human.⁶ If scholars are to “take seriously” our subjects’ worlds, dismissing their ontologies out of hand seems like a strange move. To uphold such a limited view might entail, perhaps inevitably, taking a side. Activism and allyship are tricky if you are always “bracketing” your claims.

⁵ Winnifred Fallers Sullivan, afterword to *Religion, Law, USA*, ed. Joshua Dubler and Isaac Weiner (New York: New York University Press, 2019), 283–88, at 287.

⁶ See, for example, Stefania Pandolfo, *Knot of the Soul: Madness, Psychoanalysis, Islam* (Chicago: University of Chicago Press, 2018); Elizabeth A. Povinelli, *Geontologies: A Requiem to Late Liberalism* (Durham: Duke University Press, 2016); Eduardo Kohn, *How Forests Think: Toward an Anthropology beyond the Human* (Berkeley: University of California Press, 2013); Mayanthi L. Fernando, “Supernatureculture,” *Immanent Frame* (blog), December 11, 2017, <https://tif.ssrc.org/2017/12/11/supernatureculture/>; Gaymon Bennett, “Anima, Animism, Animate: Ethnography after Authenticity,” *Techniques Journal* 1 (2021), <https://techniquesjournal.com/app/uploads/2021/02/bennett-anima-animism-animate.pdf>.

There is something attractive about efforts to resist disenchantment and its normative narratives. But sometimes, clunkier efforts at reenchancement can look like the naturalized “spirituality” McNally critiques—and, especially when appropriated by non-Native people, this spirituality can use Indigeneity as a stamp of authenticity without real engagement with land, tradition, or peoples. In her ethnography of spirituality in Sedona, Arizona, Susannah Crockford describes how a white “neo-shamanic” practitioner named Lana helped her create sacred space, which she explained was a “‘co-creation’ of humans and nature.” As they hiked together, Crockford writes, Lana “demonstrated it by saying, ‘Shhh . . .,’ and we both quieted and all that could be heard was the wind and the birds. She said, ‘Remember to breathe,’ so I breathed deeply. A few moments went by and she touched my arm ever so softly and said, ‘We just created sacred space.’”⁷ Most Native Americans, including those whose land they were on, would say that this is not really how sacred space works.⁸ But it is how spirituality works. Native American religions, by contrast, are about specific rituals and relationships with land and water, the maintenance of sacred space and community. “Such local religions,” McNally writes, “demanding disciplines of this specificity, are not generalizable into a universal spirituality of nature seeking to reenchament a disenchanted world” (109). I wonder—and, more so, I wonder if McNally would agree—if “reenchantment,” while fashionable in scholarship, might be more of an impediment to religious sovereignty than an avenue to it.

I currently live about seventy miles from Oak Flat (Chíich’íl Biił Dagoteel) in Arizona, a site that is sacred to Western Apache and Navajo and is currently under threat from a copper mining company. As I have followed the news about Indigenous peoples’ and their allies’ attempts to defend the sacred, I have noticed a tendency among environmentalists and rock-climbers (two of the main ally groups) to refer to the land as “sacred.” It is not “believed to be sacred” or “treated as sacred.” Just sacred. I was reminded of this throughout McNally’s book, but especially this passage, which I quote at some length: “Translating religion into secular discourses (culture, development, resource, heritage, land rights, collective self-determination, cultural property) or enumerating the spiritual as among the distinct facets of those discourses worthy of enumeration in articles on, say, cultural or resource rights, reinscribes and maybe even extends the reductive logic of the Enlightenment even as it aspires to move beyond the religious/secular divide. To dissolve arguably religious claims to those of culture, or to render religion as the adjective modifier *spiritual*, can dull the edges of certain Indigenous concerns that are, for lack of a better term, irreducibly sacred, sacrosanct, urgent, or ultimate” (293). For me, at least, it would be inauthentic, perhaps even insincere, to call Oak Flat “irreducibly sacred.” I think it is incredibly beautiful, and I believe it should not be destroyed and turned into a copper mine, but it is not sacred to me. And yet it seems just as problematic to take that ironic secularizing step, the same step that makes “sincerely held religious belief” a comprehensible formation, to refer endlessly to that which is “believed to be sacred.” I would like to hear McNally expound on this problem more thoroughly, perhaps as one aspect of a larger conversation about religious studies, political action, and ontologies.

Defend the Sacred is a monumentally important book that should be useful for activists and scholars in a variety of subfields. From the perspective of religious studies, I found it to be a thought-provoking, clarifying, and much-needed contribution. We know the critiques of secularism, and we agree that “religion” is a colonialist category, and thus it is easy to dismiss religious freedom as irredeemably liberal and never truly liberatory. Anyone who makes this argument (this includes me) should read and think with *Defend the Sacred*. It is the most interesting and persuasive defense of religious freedom and the discourse of “religion” I have read. “Native American

⁷ Susannah Crockford, *Ripples of the Universe: Spirituality in Sedona, Arizona* (Chicago: University of Chicago Press, 2021), 55. For this practitioner, “the practices were inspired by nature, this was the source for both Native Americans and her, and so it was not an appropriation of Native practice but something suggested by the land itself.” Crockford, *Ripples of the Universe*, 55. For her, the land simply is sacred.

⁸ Crockford argues that “the way space is made sacred [by white spirituality practitioners] is part of the structural violence of settler colonialism . . . The sacred is easier to ‘feel’ when there are fewer other humans in it.” Crockford, *Ripples of the Universe*, 54.

religious freedom,” McNally argues, “is, importantly, a matter of Native peoples’ freedom to regulate themselves” (257). That is a freedom not quite encapsulated by cultural preservation, reparations, human rights, or even political sovereignty. *Religion* might be the best word for it.