

2026

BOOK REVIEW

Some Optimism About Protecting Sacred Sites

John Greil

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John Greil, *Some Optimism About Protecting Sacred Sites*, 1 INDEP. L.J. 126 (2026).

BOOK REVIEW

SOME OPTIMISM ABOUT PROTECTING SACRED SITES

LAND IS KIN: SOVEREIGNTY, RELIGIOUS FREEDOM, AND INDIGENOUS SACRED SITES.
By Dana Lloyd. Lawrence, KS: University Press of Kansas. 2024. Pp. 224. \$39.95.

*Reviewed by John Greil**

This Review examines Dana Lloyd's *Land Is Kin: Sovereignty, Religious Freedom, and Indigenous Sacred Sites* (2024), a major intervention in Indigenous sacred-sites scholarship. In *Lyng v. Nw. Indian Cemetery Ass'n*, the Supreme Court effectively held that government destruction of indigenous religious practices at a sacred site does not implicate the Free Exercise Clause if the government owns the land. Through a close reading of the *Lyng* litigation, including the trial transcripts, Lloyd analyzes the High Country at issue in *Lyng* as "home," "property," "sacred," "wild," and "kin," and highlights the Yurok Tribal Council's recent recognition of the Klamath River as a rights-bearing person with remedies in tribal court. This review (1) presents and reconstructs the book's argument on its own terms; (2) locates *Land Is Kin* as a first-of-its-kind settler-colonial intervention in a field recently dominated by postcolonial theory; (3) connects Lloyd's critiques to Catholic social thought; and (4) advances a doctrinal case for optimism grounded in the Free Exercise Clause's original public meaning and recent developments in the Supreme Court.

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INTRODUCTION

In February 2025, the CEO of the world’s second-largest mining company began his company’s quarterly earnings call with a land acknowledgement: “Before we begin, I acknowledge and pay my respect to all traditional owners and First Nations people that host our operations around the world.”¹ Beyond the usual corporate pablum, the acknowledgment was unusual. At the time of that earnings call, Rio Tinto was hoping that the Supreme Court would allow its subsidiary to go ahead with a “mine that will undisputedly destroy Oak Flat,” a site known as *Chi’chil Bildagoteel* to the Western Apaches who hold it sacred. The site, home of spiritual beings called Ga’an, hosts religious ceremonies that cannot take place anywhere else. The proposed Resolution Copper Mine would swallow Oak Flat “in a massive crater” that would end “sacred Apache rituals forever.”²

Oak Flat was the subject of years of litigation, mostly under the caption *Apache Stronghold v. United States*, where various stakeholders sued under RFRA, the Free Exercise Clause, and the 1852 Treaty of Santa Fe, to stop the federal government from transferring the land to Resolution Copper.³ After the district court denied a preliminary injunction and a peripatetic series of Ninth Circuit decisions at the emergency, panel, and en banc stage, Apache Stronghold sought Supreme Court review.⁴

The question presented was whether the Supreme Court’s decision in *Lyng*⁵ should control the interpretation of the term “substantial burden” in the federal Religious Freedom Restoration Act (RFRA).⁶ Justice O’Connor’s majority opinion in *Lyng* earned infamy with native tribes and scholars of religious freedom.⁷ The Court held that the Free Exercise Clause was not implicated by the federal government building a logging road that would make indigenous religious practices impossible, because the road would be built on federal land. “The crucial word in the constitutional text is ‘prohibit’” and permanently destroying the site would not “prohibit” the plaintiffs from exercising their religion because it neither coerced nor penalized them, the Court reasoned.⁸ Accordingly, the plaintiffs’ religious exercise was not legally burdened by the government action, and the government did not even need to satisfy rational basis review, much less the strict scrutiny that plaintiffs asked for.⁹

Lyng was immediately and widely criticized.¹⁰ But it remains the law of the land, making it all but impossible for indigenous plaintiffs to succeed on claims aiming to block or alter the government destruction of sacred sites necessary for religious practices. *Apache*

¹ *Rio Tinto Group (RIO) Q4 2024 Earnings Call Transcript*, MOTLEY FOOL TRANSCRIBING (Feb. 19, 2025), <https://www.fool.com/earnings/call-transcripts/2025/02/19/rio-tinto-group-rio-q4-2024-earnings-call-transcri/>. The prior quarter’s land acknowledgement received minor virality on social media. See, e.g., Kate Aronoff (@KateAronoff), X (Sep. 10, 2024, 2:01 PM), <https://x.com/KateAronoff/status/1833566497450397700>.

² Petition for Writ of Certiorari at i, *Apache Stronghold v. United States*, 145 S. Ct. 1480 (2025) (No. 24-291).

³ See Complaint at 6, *Apache Stronghold v. United States*, No. 2:21-cv-00050-CDB, 2021 WL 126630 (D. Ariz. Jan. 12, 2021).

⁴ *Apache Stronghold v. United States*, 519 F. Supp. 3d 591 (D. Ariz. Feb. 12, 2021), *stay pending appeal denied by*, No. CV-21-00050-PHX-SPL, 2021 WL 689906 (D. Ariz. Feb. 22, 2021), and *injunction pending appeal denied by*, No. 21-15295, 2021 WL 12295173 (9th Cir. 2021), and *aff’d by*, 38 F.4th 742 (9th Cir. 2022), *reh’g en banc granted and vac’d*, 56 F.4th 636 (9th Cir. 2022), and *on reh’g en banc*, 95 F.4th 608 (9th Cir. 2024), *amended and superseded in denial of reh’g en banc*, 101 F.4th 1036 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1480 (2025) (mem.).

⁵ 485 U.S. 439 (1988).

⁶ 42 U.S.C. §§ 2000bb–2000bb-4.

⁷ See, e.g., Richard L. Barnes, *A Woman of The West, But Not The Tribes: Justice Sandra Day O’Connor And The State-Tribe Relationship*, 58 LOY. L. REV. 39 (2012), <https://law.loyno.edu/sites/law.loyno.edu/files/Barnes2-FINAL-AJH3.pdf>; Adam Creppelle, *Judicial Imperialism: The Supreme Court’s Assault on Tribal Sovereignty and the Rule of Law*, 102 WASH. U. L. REV. 1331 (2025), <https://wustllawreview.org/2025/06/20/judicial-imperialism-the-supreme-courts-assault-on-tribal-sovereignty-and-the-rule-of-law/>.

⁸ *Lyng*, at 449.

⁹ *Id.* at 449–53.

¹⁰ See, e.g., Donald Falk, *Lyng v. Northwest Indian Cemetery Protective Association: Bulldozing First Amendment Protection of Indian Sacred Lands*, 16 ECOLOGY L.Q. 515 (1990) (arguing the decision sharply constricts Free Exercise protection for site-specific Indigenous religious practices on public land); Peggy Healy, *Lyng v. Northwest Indian Cemetery Protective Association: A Form-Over-Effect Standard for the Free Exercise Clause*, 20 LOY. U. CHI. L.J. 171 (1988) (criticizing the Court’s Free Exercise “coercion/penalty” framing as privileging form over real-world effects on Native religious practice); S. Alan Ray, *Lyng v. Northwest Indian Cemetery Protective Association: Government Property Rights and the Free Exercise Clause*, 16 HASTINGS CONST. L.Q. 483 (1989) (criticizing the Court for elevating government property rights and land-management discretion over Free Exercise burdens).

Stronghold was primarily a RFRA case, not a Free Exercise case, because RFRA provides statutory strict scrutiny protections for religious exercise that had been eliminated in *Emp. Div., Dep't of Human Res. of Ore. v. Smith*.¹¹ The text of RFRA explicitly notes Congress' disagreement with the constitutional holding of *Smith*, and states that the statute's purpose was to "restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases *where free exercise of religion is substantially burdened*."¹² But RFRA does not define substantial burden, thus leaving open whether "substantial burdens" on religion should be determined through the ordinary, plain meaning of the text, or whether the phrase should be understood as a legal term of art that "subsumes" prior Supreme Court case law—including *Lyng*.

The *Apache Stronghold* litigation was the most sophisticated and well-organized attempt to cabin *Lyng* in recent memory. Litigated by religious liberty powerhouse the Becket Fund for Religious Liberty and appellate counsel from leading Supreme Court advocate Erin Murphy, *Apache Stronghold*¹³ sought to avoid *Lyng*'s holding by relying on the federal Religious Freedom Restoration Act. While *Lyng* was litigated solely under the Free Exercise Clause of the First Amendment, *Apache Stronghold* was able to invoke RFRA, which was passed precisely to supersede the Supreme Court's extreme narrowing of the Free Exercise Clause in *Smith*.¹⁴ What is more, the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)¹⁵ amended RFRA to expand the statute's definition of religion.¹⁶

Nevertheless, in a badly fractured en banc decision, the Ninth Circuit ultimately held that RFRA "subsumes" *Lyng*, and therefore in cases involving "the Government's management of its own land and internal affairs," the ordinary meaning of "substantial burden" does not apply.¹⁷ *Apache Stronghold* filed a petition for certiorari, and in May 2025 the Supreme Court denied certiorari.¹⁸ Barring an unexpected political intervention, the United States will transfer Oak Flat to Resolution Copper, forever ending the Western Apaches' ability to perform their ancient religious practices.

Dana Lloyd's *Land is Kin: Sovereignty, Religious Freedom, and Indigenous Sacred Sites*¹⁹ thus comes at a fitting time. The *Apache Stronghold* litigation plays an important role in Lloyd's new book, which looks to the past (*Lyng*), present (*Apache Stronghold*), and future (the Yurok Tribal Council's granting of legal rights to the Klamath River) of indigenous sacred site cases in America.

The book centers the High Country, the area at issue in *Lyng*, and aims to give voice to the Yurok, Karuk, and Tolowa peoples who hold that place sacred. In doing so, Lloyd provides fuller context to the *Lyng* case—the history before the case, the stories omitted in the justices' opinions, and what ended up happening to the land after the case was over. The book's method is elegant: the five chapters each "center one legal text, one concept of land that appears in that text, and a theoretical framework against which [Lloyd] understand[s] the respective conceptions of land of the different chapters."²⁰ Those concepts, leading up to the framework that gives the book its name, are "land as home, land as property, land as sacred, land as wild,

¹¹ 494 U.S. 872 (1990).

¹² 42 U.S.C. §§ 2000bb-(b)(1) (emphasis added).

¹³ "Apache Stronghold is an Arizona nonprofit founded by Dr. Wendsler Nosie, former Chairman of the San Carlos Apache Tribe and direct descendant of Western Apache prisoners of war. Dr. Nosie founded Apache Stronghold to unite Western Apaches with other Native and non-Native allies to preserve indigenous sacred sites." Petition for Writ of Certiorari, *supra* note 2, at 16.

¹⁴ See 42 U.S.C. § 2000bb(a)(4) ("[I]n *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion.").

¹⁵ 42 U.S.C. §§ 2000cc–2000cc-5.

¹⁶ See 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A)–(B) (defining "religious exercise" as including "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," including "[t]he use, building, or conversion of real property for the purpose of religious exercise"). RLUIPA broadened the definition of "religious exercise" by including land use, religious exercises unimpelled by religious beliefs, and non-central religious beliefs.

¹⁷ *Apache Stronghold v. United States*, 95 F.4th 608, 623 (9th Cir. 2024) (en banc). (Collins, J.).

¹⁸ Denial of Petition for Writ of Certiorari, *Apache Stronghold v. United States*, 145 S. Ct. 1480 (2025) (No. 24-291). Justice Gorsuch, joined by Justice Thomas, wrote a spirited dissent from denial of certiorari, which I discuss later. See *infra* Part II.C.

¹⁹ DANA LLOYD, *LAND IS KIN: SOVEREIGNTY, RELIGIOUS FREEDOM, AND INDIGENOUS SACRED SITES* 67 (2023) ("*Lyng* was argued as a case about religious freedom and decided as a case about property rights.").

²⁰ *Id.* at 19.

and land as kin.”²¹

Lloyd is at her best when performing close readings and excavating real people’s stories that become hidden behind the final legal text. Her presentation of the trial testimony, which aims to amplify the voices of the *witnesses* instead of the lawyers, can be both powerful and beautiful:

In his disarmingly simple, straightforward way, Sam described how his mother, a medicine woman, directed him to go to the Sacred High Country for protection and guidance before he was sent off to World War II. Despite being a machine gunner in some of the most intense battles of the war, Sam returned unscathed. Those of us in the courtroom that day remember Sam saying, “Well all I know is, it works. It’s always worked for us and has always worked for our people and if you destroy the center of the universe, I don’t know what will happen.”²²

Lloyd’s close reading illuminates negative space in Justice O’Connor’s opinion that I had not seen before, despite having read the decision probably two dozen times. For instance, to take one simple but striking example, the opinion never names the tribes fighting to preserve the High Country. Lloyd, on the other hand, writes in a multivocal manner amplifying the voices of the Yurok, Karuk, and Tolowa, who fought for their land in *Lyng*, and following the works of indigenous scholars wherever possible.²³

Lloyd’s ending point, as one may surmise from the book’s subtitle, is that religious freedom is not the right tool to protect these sacred sites. Her goal is to “explain[] why religious freedom in particular, and settler law more generally, is not the answer that those who want to protect Native American sacred sites are looking for[.]”²⁴ And this brings in my interest in the book. Because over the past years, my co-counsel and I have devoted thousands of hours of our lives to using religious freedom law to protect a Native American sacred site: Yanaguana.

Yanaguana, or the spirit waters (today, the San Antonio River), flows through Brackenridge Park, a large urban greenspace in San Antonio, Texas.²⁵ A specific bend in that river mirrors the constellation Eridanus, and that location connects the upper spirit world, our world, and the underworld. The river, the trees around the bend, the cormorants (a migratory water bird) and the stars above come together to form a spiritual ecology that exists nowhere else on earth. Some ceremonies can only be held on the south shore of that site, looking north, as the cycle of cormorants nesting, laying eggs, migrating away, and returning, stays intact.

The City of San Antonio wants to destroy that spiritual ecology, restoring a historical retaining wall from a whites-only beach, removing the sacred trees, and permanently destroying the cormorants’ ability to nest. That dynamic makes the case unique, as far as I know, in the area of indigenous sacred site litigation: this is City-owned, not federally-owned, land, and that allows us to aggressively rely on the Texas RFRA and constitution in addition to federal law. As of the summer of 2025, the case has had a panel opinion in the Fifth Circuit,²⁶ a revised opinion that certified a state constitutional question to the state supreme court,²⁷ and a state supreme court decision.²⁸ We also have the federal constitutional claims to distinguish, narrow, or overturn *Lyng*.

In that litigation, *Perez v. City of San Antonio*, my clients, Gary Perez and Matilde Torres are not members of a federally recognized tribe. Mr. Perez serves as the principal chief and cultural preservation officer for the Pakahua/Coahuiltecan Peoples of Mexico and Texas,

²¹ *Id.* at 17.

²² *Id.* at 40.

²³ *Id.* at 130.

²⁴ *Id.* at 1.

²⁵ This description comes from the courtroom testimony of Gary Perez and Matilde Torres. See Brief of Appellants at 8–13, *Perez v. City of San Antonio*, No. 24-0714 (Tex. 2024).

²⁶ *Perez v. City of San Antonio*, 98 F.4th 586 (5th Cir. 2024).

²⁷ *Perez v. City of San Antonio*, 115 F.4th 422 (5th Cir. 2024).

²⁸ *Perez v. City of San Antonio*, 715 S.W.3d 709 (Tex. 2025).

which is recognized by the state of Coahuila; Ms. Torres is also a member of the Pakahua. Yet the importance of Yanaguana extends even further: the Comanche Nation, Lipan Apache Tribe of Texas, and the Lipan Apache Band of Texas, each objected to the project in its planning phase. The Ponca Tribe of Indians of Oklahoma notified the U.S. Army Corps of Engineers that they objected, and the Comanche Nation engaged the agency in the formal regulatory consultation project.

We have lost in the district court and the court of appeals,²⁹ and the state supreme court interpreted a new state constitutional amendment in a way that did not offer protection to my clients.³⁰ But I remain optimistic: My clients are right on the law, and on the side of justice.

Lloyd's book, even as it departs from the religious freedom framework, is a welcome addition to the scholarship of protecting indigenous sacred sites. It challenges core assumptions of both postcolonial sacred-sites scholarship and religious-freedom advocacy. As to the former, she reads *Lyng* as a current instantiation of colonialism. As to the latter, she rejects the "rights talk" of constitutional law and instead grounds a future in indigenous sovereignty and tribal law.

While recent sacred-sites scholarship has been framed in postcolonial terms, Lloyd offers a distinctly settler-colonial account. In the postcolonial frame, scholars tend to treat disputes like *Lyng* as part of the aftermath of colonization—situated in a "third space" of hybrid or negotiated sovereignty shaped by colonial impositions and Indigenous resistance.³¹ By contrast, settler-colonial theory treats colonization not as a past event but as an ongoing structure, defined by what Patrick Wolfe calls a "logic of elimination," in which the state continues to erase Indigenous presence so that settlers can replace them.³² Given academic shifts in both indigenous studies and legal scholarship, the book will likely prove a pioneer in that regard.

In reviewing the book, I hope to present Lloyd's argument as it moves through different conceptions of land, highlighting the strengths of the argument and some flaws. I situate *Land Is Kin* as a settler-colonial intervention in contemporary sacred sites scholarship. The review outlines some of the surprising connections between Lloyd's approach and the environmental teachings of the Catholic Church. Finally, I will lay out why I still maintain optimism about using American religious freedom law to protect indigenous sacred sites: *Lyng* is wrong as a matter of the Constitution's original public meaning, and the Supreme Court's originalist turn makes the case vulnerable to overturning.

I. LAND AS KIN

This half of the review will proceed chapter-by-chapter, presenting Lloyd's arguments and evidence through five frames of land. In *Land as Home* (I.A), Lloyd returns to the bench trial and centers testimony of individual witnesses fighting to protect their home. In *Land as Property* (Part I.B), she contends that Justice O'Connor erects a false binary between land as "sacred" and "property," urging that the real question is sovereignty—who decides what is done to the land. In *Land as Sacred* (Part I.C), she reads Justice Brennan's dissent to claim that "sacred-land" discourse, however well-intentioned, entrenches harmful primitivist stereotypes that would make religious freedom claims pyrrhic victories even if they succeeded. In *Land as Wild* (Part I.D), she focuses on "wilderness" designation, arguing that settler preservation law actually dispossesses the indigenous. And in *Land as Kin* (Part I.E), she turns to the Yurok recognition of the Klamath River as a rights-bearing entity, shifting the vocabulary from rights to responsibilities and establishing a new relationship of mutual obligation.

²⁹ *Perez v. City of San Antonio*, No. SA-23-CV-977-FB, 2023 WL 6629823 (W.D. Tex. Oct. 11, 2023), *judgment aff'd and appeal dismissed in part*, 98 F.4th 586 (5th Cir. 2024), *opinion withdrawn and superseded on reh'g*, 115 F.4th 422 (5th Cir. 2024).

³⁰ *Perez v. City of San Antonio*, 715 S.W.3d 709 (Tex. 2025).

³¹ See, e.g., KEVIN BRUYNEEL, *THE THIRD SPACE OF SOVEREIGNTY: THE POSTCOLONIAL POLITICS OF U.S.—INDIGENOUS RELATIONS* (2007).

³² Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 387 (2006).

A. Land as Home

Lloyd's first chapter takes the reader inside the courtroom of the bench trial at the heart of *Lyng*. The chapter is a deep reading of the transcript and the testimony of the indigenous witnesses. At one level, Lloyd aims to show that "[w]e cannot understand the religious centrality of this place to Yurok, Karuk, and Tolowa people without thinking of it as their home."³³ At another level, by engaging a law and literature approach, Lloyd portrays Indigenous storytelling "as a form of resistance to the colonial narrative of law" and "ask[s] to read the testimonies in the G-O Road case as a way of resistance through storytelling."³⁴

This chapter sees Lloyd at her best, deploying an eye, ear, and heart for a trial transcript that showcases the strength of her interdisciplinary approach. The book's greatest strength is its ability to pinpoint negative space; to put a finger on what has been thoughtlessly overlooked or purposely omitted. She explains that she focuses on the trial court testimony, because "[w]hen we listen to the witnesses, we can hear a story that cannot be told in the court decision[.]"³⁵ This is undoubtedly true, and Lloyd humanizes the brave individuals who went into a strange and hostile place to protect their home.

Lloyd wants to "center[] the concrete and the specific instead of generalizing and abstracting."³⁶ She undoubtedly succeeds. The individual testimonies of the High Country, its spiritual power, the ceremonies performed there, and the connection of the witnesses to the place cannot be summarized or paraphrased in this review because of the attention to detail Lloyd provides. It is a testament to Lloyd's writing abilities that she manages to frame the witnesses as not only persons and characters but also as contributors to the trial's drama. She introduces us to Lowanna Brantner, a Yurok elder and "the quintessence of Yurok aristocracy," born in 1908.³⁷ Brantner tells of the regalia used in dances, which she regarded as "living beings who kept her safe." When it came time for someone to perform a dance, "we give them so many piece relics they need and the other people do the same so that the dance can be performed the true way as it has been for thousands of years."³⁸

The Justices omit, Lloyd notes, the concrete image of Lowanna Brantner and her regalia ("living beings who kept her safe") from their *Lyng* opinions.³⁹ The opinions efface almost all the human, individualized specifics from the courtroom that Lloyd foregrounds. Again, Lloyd's eye for what is absent shines. Lloyd perceptively notes that Justice O'Connor's opinion "refer[s] to the High Country not as Yurok, Karuk, and Tolowa homeland but as a portion of a national forest: 'This case requires us to consider whether the First Amendment's Free Exercise Clause prohibits the Government from permitting timber harvesting in, or constructing a road through, a portion of a National Forest that has traditionally been used for religious purposes by members of three American Indian tribes in northwestern California.'"⁴⁰ Lloyd notes both the temporal "start" of the story (which proceeds from the settlers' perspective, and not the tribes') as well as the identification of the main characters (the tribes are not named).⁴¹ In both ways, *Lyng* contrasts sharply with Justice Gorsuch's majority opinion in *McGirt v. Oklahoma*: "On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever."⁴²

For Lloyd, "[w]hen the court's starting point is thinking of the land as a portion of a national forest—public land, belonging to the US public, managed by the US government—it

³³ LLOYD, *supra* note 19, at 24.

³⁴ *Id.* at 32–33.

³⁵ *Id.* at 25.

³⁶ *Id.* at 39.

³⁷ *Id.* at 30.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 25 (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 441–42 (1988)).

⁴¹ *Id.* at 27.

⁴² 591 U.S. 894, 897 (2020).

is not surprising that the court's conclusion is that the government can do with this place as it wishes."⁴³ But in judicial writing, Justice O'Connor's opening seems more likely a rhetorical move than a demonstration of the reasoning process. The opinion recognizes that "the Chimney Rock area has historically been used for religious purposes by Yurok, Karuk, and Tolowa Indians."⁴⁴

Lloyd's law and literature approach risks minimizing the human reasons that real individuals go to court: to preserve their land, religious practices, and lifeways. According to Lloyd, "Yurok, Karuk, and Tolowa people do not treat storytelling, law, and religion as separate," and therefore the witnesses' testimony "bring[s] Yurok, Karuk, and Tolowa law into a settler court."⁴⁵ "Chris Peters, the central Yurok/Karuk witness," we are told, "is not there [testifying] to win a case; he is there to set his story of the High Country loose in the world."⁴⁶ But how do we know this? Not from any secondary-source quotes of Mr. Peters, nor from his trial testimony. It seems to me that Lloyd presents a false binary between *either* telling a story *or* trying to win a case. Or, at the least, recasting Peters's legal struggle as if it were primarily a narrative act. More likely, he was doing both; he testified so a court would issue legal relief, and he let his story loose on the world in the process.

By beginning with the courtroom testimony trial, Lloyd restores the names and voices—Lowanna Brantner, Jimmie James, Chris Peters—that the appellate opinions abstract away. And it is only through the "concrete and the specific" that the reader can understand what it means for those witnesses to call the High Country their home.⁴⁷

B. Land as Property

In "Land as Property," Lloyd tackles Justice O'Connor's opinion for the Court in *Lyng*. The chapter, highlighting Lloyd's strengths as a close reader, included insights that were fresh to me, despite having read the opinion dozens of times. For instance, she points out that Justice O'Connor "begins her story about the G-O Road case in 1977, when 'the Forest Service issued a draft environmental impact statement that discussed proposals for upgrading an existing unpaved road that runs through the Chimney Rock area.'"⁴⁸ That is not a detail, I confess, I had ever noticed, but it is key to the opinion's rhetorical position.

Lloyd's more significant move in the chapter is to argue that O'Connor's opinion created a false binary: *either* the case is about religious freedom *or* it is about government property.⁴⁹ But neither of those frameworks suffices, says Lloyd, who "propose[s] that the question is really about sovereignty," because "the question at the center of *Lyng* is about what is allowed to be done to the land."⁵⁰ Lloyd is correct that *Lyng* does not attempt to justify the government's interest, but rather "embraces the Government's contention that its *prerogative as landowner should always take precedence over a claim that a particular use of federal property infringes religious practice*."⁵¹

But Lloyd takes her argument a step further—a step that I do not believe American property and constitutional doctrine permit. Lloyd says that "if the land is understood as the Yurok's, Karuk's, and Tolowa's home," then their "opposition to the development plan would be respected, not because they have the constitutional right to worship on government property but because the place is recognized as their traditional home, which in turn gives them the authority to decide how it will be used."⁵² It seems that Lloyd believes that "home" in property law entails special rights and privileges, akin to the highest protection afforded the home under

⁴³ *Id.*

⁴⁴ *Lyng*, 485 U.S. at 442.

⁴⁵ LLOYD, *supra* note 19, at 27.

⁴⁶ *Id.* at 28–29.

⁴⁷ *Id.*

⁴⁸ *Id.* at 60.

⁴⁹ *Id.* at 67.

⁵⁰ *Id.*

⁵¹ *Id.* at 54 (emphasis in original).

⁵² *Id.* at 130.

the Fourth Amendment. But reading her language—land, home, development plan, authority to decide how it will be used—I was reminded of a seminal case demonstrating that the recognition of property as “home” does no such thing: *Kelo v. City of New London*.⁵³

In *Kelo*, the Supreme Court redefined “public use” to include economic development under the Takings Clause.⁵⁴ A “Lloyd-ian” close reading of *Kelo*, in light of *Land Is Kin*, proves quite illuminating. Justice Stevens does not once call the doomed properties the plaintiffs’ homes. Imagine writing the following, and not using that wonderful, cozy word: “Petitioner Wilhelmina Dery was born in her Fort Trumbull house in 1918 and has lived there her entire life. Her husband Charles (also a petitioner) has lived in the house since they married some 60 years ago.”⁵⁵ Contrast that with Justice O’Connor’s dissent: “To save their homes, petitioners sued New London”⁵⁶ Justice Thomas addressed the legal significance of the home head on:

The Court has elsewhere recognized “the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic,” when the issue is only whether the government may search a home. Yet today the Court tells us that we are not to “second-guess the City’s considered judgments,” when the issue is, instead, whether the government may take the infinitely more intrusive step of tearing down petitioners’ homes.⁵⁷

In *Kelo*, (as in the similar case, *Poletown Neighborhood Council v. City of Detroit*, where dozens of ethnically Polish homes and churches in Detroit were razed to make way for a General Motors factory),⁵⁸ “home” was not sufficient, nor was “property”—even fee simple was not enough. No force could overcome the power of the state.

That is not to say that “home” holds no special place in American law. Quite the opposite: homestead exemptions in many states shield a primary residence from certain creditors and property taxes; the Fourth Amendment’s “sanctity of the home” doctrine gives houses the highest protection against searches and seizures;⁵⁹ and landlord-tenant and eviction law often builds in additional procedural safeguards before private actors or the state may remove people from their homes. In many doctrinal contexts, “home” does important work. What *Kelo* and *Poletown* show is that this special status has limits, and that the “home” often gives way to the prospect of economic development.

I had never considered *Lyng* and *Kelo* as kindred cases. I am unaware of any scholarly work that has critically compared *Kelo* and *Lyng*,⁶⁰ beyond a couple of student notes. But *Kelo* at least complicates the “logic of elimination” thesis. As Lloyd explains that logic: “what the government (backed up by the court) was telling Indigenous plaintiffs was ‘we need you gone.’”⁶¹ It is certainly true that “[i]n the United States, American Indians have experienced a unique legacy of dispossession.”⁶² Yet *Kelo* and *Poletown* show that this dispossession is not confined to Indian law, and not confined to past history. It can be a present act, wielded against any community that stands in the way of economic development. In *Lyng* (logging), *Apache Stronghold* (mining), *Poletown* (auto manufacturing), and *Kelo* (pharmaceutical production),

⁵³ 545 U.S. 469, 476 (2005).

⁵⁴ *Id.* at 488–90.

⁵⁵ *Id.* at 476.

⁵⁶ *Id.* at 495 (O’Connor, J., dissenting) (emphasis added).

⁵⁷ *Id.* at 518 (Thomas, J., dissenting).

⁵⁸ See *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981).

⁵⁹ See, e.g., *Boyd v. United States*, 116 U.S. 616, 630 (1886) (“The principles laid down in this opinion affect the very essence of constitutional liberty and security. They . . . apply to all invasions on the part of the government and its employes of the sanctity of a man’s home and the privacies of life.”).

⁶⁰ There are two student notes addressing whether eminent domain falls within the ambit of RLUIPA, but they do not draw broader fruit from the *Lyng/Kelo* analysis. G. David Mathues, *Shadow of A Bulldozer?: RLUIPA and Eminent Domain After Kelo*, 81 NOTRE DAME L. REV. 1653 (2006); Daniel N. Lerman, *Taking the Temple: Eminent Domain and the Limits of RLUIPA*, 96 GEO. L.J. 2057 (2008).

⁶¹ LLOYD, *supra* note 19, at 18.

⁶² Kristen A. Carpenter, Sonia K. Katyal, & Angela R. Riley, *In Defense of Property*, 118 YALE L.J. 1022, 1060 (2009).

state power clears the way for private entities to displace the people and uses already present. Economic power combines with state power to tell the dispossessed “we need you gone.”

Kelo suggests that the “logic of elimination” is not only a feature of Indian law but also a present power the state can wield against any community that stands in the way of development. Put differently, even if Lloyd were right about *Lyng*’s outcome had the Court recognized the High Country as the tribes’ home, her method has implications well beyond this book.

C. Land as Sacred

Lloyd then turns to Justice Brennan’s *Lyng* dissent, provocatively arguing that “the discourse of sacred land he develops in *Lyng* is ultimately harmful to indigenous struggles for sovereignty and justice.”⁶³ Justice Brennan receives some praise: Lloyd agrees with him that “a six-mile segment of a road cannot be significant enough to justify the destruction of a two-hundred-year-old religious practice.”⁶⁴ Nevertheless, Lloyd aims to “show how destructive this notion is to Native thriving in the United States, because it plays right into the stereotype of the Indigenous as ‘primitive’ and erases the specific history of genocide (through attempts to destroy religious practice, among other things) in Northern California and elsewhere.”⁶⁵

Here, I will take a brief detour into the most influential recent legal article on *Lyng*—Stephanie Barclay’s and Michalyn Steele’s *Rethinking Protections for Indigenous Sacred Sites*.⁶⁶ Lloyd highlights this piece, noting that she shares the notion of Barclay and Steele, that the history and current actions of the United States have “resulted in catastrophic interference with Indigenous spiritual practices related to particular sites – often operating as an effective prohibition on these practices.”⁶⁷

Barclay and Steele argue that *Lyng* misunderstands coercion, and that the real “important question is whether the government is bringing to bear its sovereign power in a way that inhibits the important ideal of religious voluntarism.”⁶⁸ They analogize indigenous sacred sites cases to scenarios where the government’s complete control sets a “baseline of passive government interference,” such as prison, the military, and zoning.⁶⁹ In those situations, “religious individuals are unable to voluntarily perform their desired religious practices unless the government affirmatively acts to lift its coercive power through a religious accommodation.”⁷⁰ The current American government facilitates such situations with sacred sites on federal lands due to the historic seizure of indigenous lands and displacement of indigenous peoples. Therefore, *Lyng* had the *most* wrong holding: Government ought not be free to disclaim *all* responsibility for religious exercise on federally owned sacred sites; it should be required to affirmatively accommodate indigenous religious practices by lifting its “coercive power” and ensuring access and use of these sacred sites. At a minimum, it should be asked to offer a compelling justification, narrowly tailored, for any action that would hinder indigenous religious practices.

This argument featured in the *Apache Stronghold* litigation, which Lloyd covers in the book, and Barclay presented oral argument along those lines as amici curiae before the en banc Ninth Circuit. Judge VanDyke concurred separately to specifically address and reject Barclay and Steele’s theory, which he derisively called “a reparations version of RFRA.”⁷¹ That was an

⁶³ LLOYD, *supra* note 19, at 83.

⁶⁴ *Id.* at 83 (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439 458 (1988) (Brennan, J., dissenting)).

⁶⁵ *Id.* at 83.

⁶⁶ Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294 (2021).

⁶⁷ LLOYD, *supra* note 19, at 84 (quoting Barclay & Steele, *supra* note 66, at 1304).

⁶⁸ Barclay & Steele, *supra* note 66, at 1300.

⁶⁹ *Id.* at 1326.

⁷⁰ *Id.* at 1333.

⁷¹ *Apache Stronghold v. United States*, 101 F.4th 1036, 1125 (9th Cir. 2024) (VanDyke, J., concurring) (citing Barclay & Steele, *supra* note 66, at 1297); *see also id.* (“Boiled down, theirs is a reparations theory of religious liberty for Native Americans, and Native Americans alone.”).

unfair reading of Barclay’s and Steele’s argument. Reparations are present payments for past wrongs. Barclay and Steele argue that *past actions* have resulted in a *present situation* “where the baseline is passive government interference.”⁷² Or, as Judge Murguia explained in her en banc dissent (reinforcing Judge Berzon’s panel dissent), “Native American sacred sites—like the contexts of land-use and confinement—are unique in that ‘the government controls access to religious locations and resources.’”⁷³

This fear—that accommodating Indigenous religious exercise would make ordinary governance impossible—echoes Lloyd’s application of the logic of elimination, in which “the government needs Indigenous peoples gone so that it can conduct its business with the logging industry.”⁷⁴ But Lloyd goes further. According to her, government also needs Indigenous peoples gone:

so that it doesn’t have to question its social security system, or its unemployment benefits system, or its drug laws. The government needs Indigenous peoples to disappear, either through removal, death, or assimilation, not only so that it can take their lands but also so that its (our) metaphysics, epistemology, and ethics are never challenged.⁷⁵

I do not see how that further sentiment can be squared with federal law that *has* modified its social security system,⁷⁶ unemployment benefits system,⁷⁷ and drug laws to accommodate religious practice⁷⁸—including indigenous religious practice. Lloyd’s conclusion that we “think about religious freedom as an unsuitable category for the pursuit of justice by Native Americans altogether”⁷⁹ is difficult to square with the many religious-freedom victories won by indigenous plaintiffs.⁸⁰

One cannot tell from *Land is Kin* if Lloyd is aware of these victories. There are some statements of legal doctrine that are simply not the case. For instance, Lloyd asserts that “the conflict over Native American religious freedom always involves the investigation of whether the practice in question is ‘authentically’ religious.”⁸¹ That is just not true. There was no dispute that the Plaintiffs’ practices in *Lyng* were religious. Lloyd also says that “to prevail with a free exercise claim, one has to prove that her indigeneity is authentic – that her Native American religious belief is ‘sincerely held.’”⁸² This is also not a correct statement of the law. No indigenous plaintiff needs to prove her indigeneity is authentic; sincerity is a question of whether the plaintiff really believes the things she says she believes (as opposed to, say, seeking a vaccine exemption on religious grounds when the real reason is doubts of efficacy).⁸³ For that reason, the Utah Supreme Court held that any member of the Native American Church (not merely indigenous persons, or members of recognized tribes), had a religious exemption to the state’s controlled substances act for the religious use of peyote.⁸⁴

⁷² Barclay & Steele, *supra* note 66, at 1301.

⁷³ *Apache Stronghold*, 101 F.4th at 1155 (citing Barclay & Steele, *supra* note 66, at 1301).

⁷⁴ LLOYD, *supra* note 19, at 18.

⁷⁵ *Id.*

⁷⁶ See *Bowen v. Roy*, 476 U.S. 693, 728 (1986) (O’Connor, J., concurring in part and dissenting in part) (holding that compelling someone to use a social security number is a burden on religious exercise).

⁷⁷ See 42 U.S.C. § 2000bb(a)(4) (specifying that Congress passed RFRA to remedy the constitutional error of *Smith*, which denied unemployment benefits due to peyote use).

⁷⁸ See 21 C.F.R. § 1307.31 (“The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration.”).

⁷⁹ LLOYD, *supra* note 19, at 84.

⁸⁰ See, e.g., *Haaland v. Brackeen*, 599 U.S. 255 (2023).

⁸¹ LLOYD, *supra* note 19, at 84.

⁸² *Id.* at 88.

⁸³ See, e.g., *Gardner-Alfred v. Fed. Rsrv. Bank of N.Y.*, 143 F.4th 51, 68 (2d Cir. 2025). (holding that religious motivation for vaccine refusal was not sincere where it was undermined by vague, contradictory testimony and inability to recall basic facts about worship services).

⁸⁴ See *State v. Mooney*, 98 P.3d 420, 422 (Utah 2004) (“On its face, the federal regulation does not restrict the exemption to members of federally recognized tribes. We therefore rule that the exemption is available to all members of the Native American Church.”).

Perhaps Lloyd's most significant doctrinal misstatement is the assertion that "to support a free exercise case, Native Americans need to prove continuity: the court wants to see that the Indigenous nation has been practicing its religion in the same way, in the same place, for a long time[.]"⁸⁵ Again, this is simply not true as a matter of legal doctrine. And having read, and reread, and reread again the chapter, I just do not see where that assertion comes from. The error seems to arise from a confusion between cultural property and historical preservation (typically an agency process) with a free exercise case (litigated in court). In any event, this premise is simply false, and the premise underlies some of Lloyd's key arguments. According to Lloyd, an Indigenous plaintiff "must prove an unsevered connection to the past" (this is not true), and that fact causes courts to "construct indigeneity as fixed and immutable, ancient, and therefore primitive."⁸⁶ I will not speak to whether this is true to a broader cultural, or even political critique, and the idea seems well-established within American indigenous studies.⁸⁷ But it is not true for free exercise or RFRA claims in our courts.

At the same time, courts and governments still *do* require continuity, even though the law does not require, and even forbids, such a showing. In our *Perez* litigation, the City of San Antonio made just such a verboten attack. There was no dispute that Mr. Perez and Ms. Torres sincerely believe that the river, trees, cormorants, and stars comprise a sacred location for necessary ceremonies. Nevertheless, in the Fifth Circuit, San Antonio argued that "the Sacred Area "lack[s] the 'spiritual ecology' that made it sacred to Plaintiffs' ancestors," because "the current confluence of stars, trees, birds, and river that Plaintiffs seek to preserve in this appeal does not—and cannot—reflect the 'spiritual ecology' that gave rise to that belief thousands of years ago."⁸⁸ And, unfortunately, the district court and original panel opinion bought off on that continuity argument.⁸⁹

Circling back to the areas where there *have* been indigenous victories, it is possible that Lloyd does not count them because they were not sacred site cases. She relays the view of religious studies scholar Jace Weaver "that because Native religion is land based, all land claims carry in them religious claims."⁹⁰ But Lloyd "would add that all Native American religious claims carry in them land claims as well."⁹¹ This seems to essentialize Native American religious claims into sacred sites claims—and that ignores sacramental peyote use,⁹² prison sweat lodges,⁹³ and hair exemptions in schools.⁹⁴ This sentiment appears elsewhere: one reads that "*Lyng* was the first case on Native American religious freedom to have reached the US Supreme Court."⁹⁵ But *Bowen v. Roy* was the single most important precedent the *Lyng* court relied on, and it involved plaintiffs who "contended that obtaining a Social Security number for their 2-year-old daughter, Little Bird of the Snow, would violate their Native

⁸⁵ LLOYD, *supra* note 19, at 109.

⁸⁶ *Id.*

⁸⁷ Similarly, I make no claims regarding federal tribal recognition.

⁸⁸ Brief of Appellee, *Perez v. City of San Antonio*, Case No. 23-50746 (5th Cir. Nov. 15, 2023), ECF 120 at 17–18, 22.

⁸⁹ *Perez v. City of San Antonio*, 98 F.4th 586, 612 n.37 (5th Cir. 2024), *withdrawn and superseded on reh'g*, 115 F.4th 422 (5th Cir. 2024) ("[T]he area does not look the same as it did thousands of years [or 100 years] ago. . . . Nor will it look the same 100 years from now.' The landscape is perpetually changing[, which] is a thing of chance and neither chance occurrence seems to be as definite . . . as [alleged].").

⁹⁰ LLOYD, *supra* note 19, at 82.

⁹¹ *Id.*

⁹² 42 U.S.C. § 1996a(b)(1) ("[T]he use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful . . . No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation."); 21 C.F.R. § 1307.31 ("The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration."). This statute and regulation are specifically targeted at protecting indigenous religious exercise: 42 U.S.C. § 1996(a) is titled "Traditional Indian religious use of peyote, and 21 C.F.R. § 1307.31 is titled "Native American Church."

⁹³ *Yellowbear v. Lampert*, 741 F.3d 48, 64 (10th Cir. 2014) (Gorsuch, J.) (applying RLUIPA to reverse summary judgment against indigenous prisoner seeking access to sweat lodge for religious purposes).

⁹⁴ *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 253 (5th Cir. 2010) (applying state RFRA to grant accommodation to indigenous student).

⁹⁵ *Id.* at 93.

American religious beliefs.”⁹⁶

Lyng is a constitutional error and an injustice. But indigenous religious liberty victories are real. Some of those victories have come from courts enforcing constitutional or statutory rights, and others from legislatures, agencies, and political actors who have expanded protections in response to religious-freedom claims that failed in court. And the process is also iterative, some protections come from specific legislation or regulation enacted to protect indigenous exercise, and some court victories derive from “catch-all” religious liberty statutes like RFRA and RLUIPA that were enacted at least in part as a response to indigenous losses in the courts—most notably *Smith*—where Al Smith was excluded from state unemployment insurance for smoking peyote; today peyote use for indigenous religious purposes is protected by federal statute.⁹⁷ Indigenous students in public schools (at least sometimes) receive religious accommodations to wear their hair in traditional styles that would otherwise be prohibited by school dress codes.⁹⁸ Indigenous prisoners receive accommodations to smoke tobacco and use sweat lodges.⁹⁹ Even *Bowen* provided individualized rights to the plaintiff. Though the Court held that the plaintiff could not stop the government from assigning and using a social security number for his child,¹⁰⁰ five Justices believed that the government could not force the plaintiff to use it.¹⁰¹

What strikes me about *Lyng* is that it is an *exception* to the generally strong religious liberty protections that Americans hold—including practitioners of indigenous faiths. That is why Barclay and Steele’s comparison of sacred sites to prisons has persuasive force. And it is why I hold out optimism for *Lyng*’s demise. I would say that *Lyng* and the disgraceful treatment of indigenous sacred sites on government property are outliers in the law of indigenous religious liberty, not representations of it. Now, they *may* be representative of the past and present of displacing indigenous populations. But that strikes me, from a practitioner’s standpoint, as a better reason to argue those cases on religious freedom grounds, not abandon them.

D. Land as Wild

Lloyd next turns to the statutory responses to the G-O Road litigation. She centers a paradox between how cultural preservation requires indigenous peoples to show a continuity of religious practice, with the wilderness designation, which requires a showing that nature is pristine and unchanged by human interaction. The point of the chapter—that settler culture believes “the Indigenous does not leave a mark on the land even when she is there”—is original.¹⁰²

This chapter also provides the best support for Lloyd’s push away from the religious freedom paradigm, and toward what she calls a politicization of religion and indigeneity. Because, as Lloyd notes, the High Country today has *not* been developed. And that is due to the political—not the legal—process. “Th[e] chapter tells the story of the High Country’s protection in the California Wilderness Act and in the Smith River National Recreation Area Act.”¹⁰³

Once again, Lloyd’s close reading shines. The chapter largely recounts and analyzes testimony from the *Lyng* trial on the impact of the G-O Road on the Chimney Rock area’s wilderness qualification. The *Lyng* decision (1988) does mention Congress’s enactment of the California Wilderness Act of 1984, forbidding timber harvesting in the area, while still allowing

⁹⁶ *Bowen v. Roy*, 476 U.S. 693, 695 (1986). “Roy [was] a Native American descended from the Abenaki Tribe,” who came to his beliefs based on “conversations with an Abenaki chief.” *Id.* at 696.

⁹⁷ 42 U.S.C. § 1996a.

⁹⁸ See *A.A. ex rel. Betenbaugh*, 611 F.3d at 253 (granting accommodation under state RFRA).

⁹⁹ See *Williams v. Hansen*, 5 F.4th 1129, 1131 (10th Cir. 2021).

¹⁰⁰ *Bowen*, 476 U.S. at 711–12.

¹⁰¹ See *id.* at 728 (O’Connor, J., concurring in part and dissenting in part).

¹⁰² LLOYD, *supra* note 19, at 110.

¹⁰³ *Id.*

the G-O road.¹⁰⁴ But the wilderness designation did not play a role in the Supreme Court.

Lloyd highlights some of the contradictions of the wilderness designation. On the one hand, designation requires expert testimony, typically by credentialed, non-indigenous academics or professionals. On the other hand, those same individuals could not have true knowledge of the High Country, which the tribes believe are off-limits to all but the chosen medicine people. I see this as an advantage of religious liberty doctrine over wilderness designation. Because for religious liberty doctrine, cases do not “turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”¹⁰⁵ Whereas historical, cultural, or environmental protection *is* likely to depend on experts: “As Yurok/Karuk leader Chris Peters says, it takes a white man or woman, it takes a PhD, to legitimize what Yuroks themselves say about the High Country.”¹⁰⁶

For some tribal members, the preservation of the High Country was bittersweet. Yurok elder Walt Lara, Sr., explained that he was “happy that to this day, our sacred area is protected” but found injustice that “a Wilderness Bill can protect animals, but the U.S. Constitution is not ‘required’ to protect human beings.”¹⁰⁷

At the level of theory, Lloyd opposes wilderness designations because they “bring[] to mind the doctrine of terra nullius and the doctrine of Christian discovery[.]”¹⁰⁸ Lloyd is acutely interested in how the idea of wilderness has “dispossess[ed] Indigenous peoples from their lands.”¹⁰⁹

This chapter sees the most direct application of Lloyd’s settler-colonial approach. She applies Wolfe’s logic of elimination to argue that the idea of wilderness erases Indigenous existence so that settlers can replace them.¹¹⁰ The optimistic view of wilderness is that “we can see the protection of the High Country as wilderness as a secular alternative to its protection as sacred.”¹¹¹ More sinisterly, however, “Indians do not see the natural world as wilderness,” and “wilderness preservation went hand in hand with native dispossession”¹¹² and the view of indigenous inhabitants as “primitive, childish, and savage.”¹¹³ Key to Lloyd’s argument is historical and anthropological research showing that the wilderness so beloved by American environmentalists has often “been shaped by Native peoples for millennia.”¹¹⁴ In other words, it’s not *wilderness*, it’s just *unsettled* by settlers.

Lloyd leaves this tension implicit in *Land Is Kin*: Is the goal simply to allow the ceremonies to exist as practitioners need them to? If yes, then wilderness designations that protect religious exercise serve that purpose. Is the goal to protect sacred sites? If yes, then tribes might accept the (insulting) tradeoff of wilderness designation.¹¹⁵ Or is the goal to deconstruct settler law? If that is the case, then wilderness, perhaps, should be rejected tout court. Analysis and interviews of the tribal leaders and religious practitioners involved in these cases may prove a very fruitful area for future research.

E. *Land as Kin*

Lloyd concludes the book with a look to the future of the High Country, focusing on the 2019 resolution of the Yurok Tribal Council extending rights to the Klamath River, which

¹⁰⁴ *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 444–45 (1988).

¹⁰⁵ *Thomas v. Rev. Bd.*, 450 U.S. 707, 714 (1981).

¹⁰⁶ LLOYD, *supra* note 19, at 115.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 117.

¹⁰⁹ *Id.* at 118.

¹¹⁰ *Id.* at 127–28.

¹¹¹ *Id.* at 124.

¹¹² *Id.* at 125.

¹¹³ *Id.* at 126.

¹¹⁴ *Id.*

¹¹⁵ As Michalyn Steele pointed out to me, tribes are quite adept at making use of whatever tools get the job done. It strikes me that this is out of necessity.

was at issue in *Lyng*. Specifically, she argues that the resolution creates a kinship relation.¹¹⁶ Scholars have recently shown significant interest in the development of “rights of nature,” which tribal and aboriginal governments have written into positive law.¹¹⁷ Lloyd’s discussion is a welcome addition.

Lloyd provides a nice survey of nature rights around the world.¹¹⁸ In 2008, Ecuador enshrined a legal right of nature into its constitution.¹¹⁹ Bolivia followed in 2010; New Zealand and Uttarakhand extended rights to specific rivers in 2017, and Toledo, Ohio passed a Lake Erie Bill of Rights the same year. (Lloyd does not mention the 2006 Tamaqua resolution, where a small Appalachian Pennsylvanian town declared sewage dumping a violation of the right of nature).¹²⁰ Notably, the Supreme Court of India overturned the Uttarakhand decision,¹²¹ and a federal district court held that Toledo’s actions were “unconstitutionally vague and exceed[ed] the power of municipal government in Ohio.”¹²² She also identifies an aspect of the Klamath River resolution that some other scholars have missed in their focus on power and sovereignty: “[T]he Klamath Resolution also means that the Yurok are exercising their religion freely in their homeland.”¹²³

She also showcases her storytelling talents. Her presentation of the “fish wars” of the 1940s on the Klamath and Trinity Rivers is riveting. The clash between Yurok fishermen and non-native police led the Supreme Court, in *Mattz v. Arnett*,¹²⁴ to recognize the ongoing existence of the Klamath River Reservation.¹²⁵ And Lloyd has an eye and an ear for including humanizing, powerful, and transcendent testimony from those involved, like the statement of Yurok Elder Lavina Bowers that “[o]nce the fishing rights were given back, people could be *Indian* again. . . . People could pray out loud and in public.”¹²⁶

Lloyd reads the Klamath Resolution as formalizing a *kinship* relationship between the river and the people. Key to the notion of land as kin is that “while I have a host of rights associated with the place I call home (even if I do not own it), it is obligation, not rights, that I have toward my family. My relationship with my children, for example, is not contractual; their well-being is my well-being.”¹²⁷ The shift to land as kin can “take us away from rights discourse” that Lloyd finds lacking.¹²⁸ Although Lloyd calls it “rights discourse,” I hear the voice of Mary Ann Glendon’s *Rights Talk*.¹²⁹ Glendon teaches that rights *should not* be contrasted with obligations; rights should be properly understood as imposing concurrent duties. Glendon traces part of the American departure to the English natural right tradition, which “was a repudiation of the idea of the human person as ‘naturally’ situated within and constituted through relationships of care and dependency.”¹³⁰ And there is a healthier rights discourse that *does* impose obligations. So, it was surprising to me to see that “Glendon” does not appear in the index—and even more surprising after coming across a 2020 interview where Lloyd says that Glendon “first helped me to articulate my unease with this [rights]

¹¹⁶ LLOYD, *supra* note 19, at 128.

¹¹⁷ See, e.g., Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CALIF. L. REV. 325 (2023); Lauren van Schilfgaarde, *Restorative Justice As Regenerative Tribal Jurisdiction*, 112 CALIF. L. REV. 103 (2024); Heather Tanana, *Protecting Tribal Public Health from Climate Change*, 15 NE. U. L. REV. 89 (2023).

¹¹⁸ LLOYD, *supra* note 19, at 131–34.

¹¹⁹ CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR, Oct. 20, 2008, arts. 71–74 (Ecuador).

¹²⁰ Ley de Derechos de la Madre Tierra, Law 071 arts. 1–10 (2010); Te Awa Tupua (Whanganui River Claims Settlement Act) (2017); TOLEDO, OHIO MUN. CODE ch. XVII, § 254(a); TAMAQUA BOROUGH, SCHUYLKILL COUNTY, PENN., ORDINANCE NO. 612 (Tamaqua Borough Sewage Sludge Ordinance) (2006).

¹²¹ *Salim v. State of Uttarakhand*, (PIL) No. 126 of 2014 (Mar. 20, 2017), https://ecojurisprudence.org/wp-content/uploads/2022/02/IN_Second-Opinion-Salim-v.-State-of-Uttarakhand_126.pdf.

¹²² *Drews Farms Partnership v. City of Toledo*, <https://embed.documentcloud.org/documents/6789094-Lake-Erie-Bill-of-Rights-Opinion/#document/p1>.

¹²³ LLOYD, *supra* note 19, at 156.

¹²⁴ 412 U.S. 481 (1973).

¹²⁵ LLOYD, *supra* note 19, at 146.

¹²⁶ *Id.* (emphasis in original).

¹²⁷ *Id.* at 131.

¹²⁸ *Id.*

¹²⁹ MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991).

¹³⁰ *Id.* at 70.

discourse.”¹³¹

Yet sovereignty, more than kinship, is the heart of the chapter. The Yurok Tribal Court demonstrates the Yurok’s *sovereignty*: their ability “to make decisions about Yurok everyday life based on traditional values, and with close attention to the river and its fish that play a vital role in the economic, cultural, and spiritual identities of the Yuroks.”¹³²

For Lloyd, “the biggest potential for Indigenous sovereignty to be exercised” is the fact that “the Yurok avoid the acknowledgement of US Sovereignty, or jurisdiction, over Yurok people and lands, implied by filing a lawsuit in federal court.”¹³³ Lloyd ends with this resolution, because it allows the tribe to “adhere to Yurok law rather than to US law. If this book began by ‘looking for law in all the wrong places,’ what we find at the end is Indigenous law.”¹³⁴ And Lloyd concludes the book: “Together with the Jump Dance and the White Deerskin Dance, the Yurok court – called ‘a justice center’ – can fix the broken settler law; indeed it is fixing the world that settler law has broken.”¹³⁵

Returning to the questions I posed above, then, it seems that for Lloyd, indigenous sacred site cases are really about indigenous sovereignty.

II. THE FUTURES OF SACRED SITES

With that, I’d like to make three broader points. One on *Land Is Kin* as a work of settler colonial theory (which speaks to the future of indigenous studies), one on the surprisingly significant overlap of *Land Is Kin* with the theological teachings of the Catholic Church (which speaks to future works in religious studies), and one on the possibility of sacred sites claims succeeding through American religious liberty doctrines (which speaks to the future of the law).

A. Settler Colonial Theory

Although Lloyd holds an LL.B., LL.M., and practiced law before pursuing her dissertation, she is a religious studies scholar, and *Land is Kin* is not a legal text. Her main influences—Vine Deloria, Jr., Cutcha Risling Baldy, Michael D. McNally, and Kevin Bruyneel—either write from within the Indigenous tradition (Deloria, Baldy), or as theorists and activists of it (McNally, Bruyneel). The book notably departs from her influences in approach, and is expressly a work of settler colonial theory: “It was only when I stopped trying to understand the religious freedom aspects of *Lyng* and started thinking of the case through the lens of settler colonial theory that I received an answer to the question about the significance of those six miles in the middle of the G-O Road.”¹³⁶

This shift to settler colonial theory is a departure from past work on American Indian sacred sites but appears to be the direction of the current and next generation of scholarship. Settler colonial theory has its most direct impact on American thought through the work of Australian historian Patrick Wolfe. His *Settler Colonialism and the Transformation of Anthropology*¹³⁷ appeared in 1999, following Donald Denoon’s *Settler Capitalism* (1983)¹³⁸ and Fayeze Sayegh’s *Zionist Colonialism in Palestine* (1965).¹³⁹ The phrase’s first appearance in an American law review is a 1987 review by Lumbee Professor Robert A. Williams, Jr. of Charles F. Wilkinson’s *American Indians, Time, and the Law*.¹⁴⁰ Variations of “settler

¹³¹ LLOYD, *supra* note 19, at 156.

¹³² *Id.* at 143.

¹³³ *Id.* at 150–51.

¹³⁴ *Id.* at 151.

¹³⁵ *Id.* at 153.

¹³⁶ *Id.* at 18.

¹³⁷ PATRICK WOLFE, *SETTLER COLONIALISM AND THE TRANSFORMATION OF ANTHROPOLOGY: THE POLITICS AND POETICS OF AN ETHNOGRAPHIC EVENT* (1999).

¹³⁸ DONALD DENOON, *SETTLER CAPITALISM: THE DYNAMICS OF DEPENDENT DEVELOPMENT IN THE SOUTHERN HEMISPHERE* (1983).

¹³⁹ FAYEZE A. SAYEGH, *ZIONIST COLONIALISM IN PALESTINE* (1965).

¹⁴⁰ Robert A. Williams, Jr., *The Hermeneutics of Indian Law*, 85 MICH. L. REV. 1012, 1018 (1987) (reviewing CHARLES F. WILKINSON, *AMERICAN INDIANS, TIME, AND THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY* (1988)).

colonialism” appeared in a single law review article in 2000,¹⁴¹ and eleven articles in 2010.¹⁴² But by 2019, settler colonial theory played a prominent role in the prestigious Harvard Law Review Foreword by Professor Dorothy E. Roberts. Roberts’s *Abolition Constitutionalism* argued for understanding the American constitution as (in part) a “Settler-Colonial and Slavery Constitution”: “The constitutional government of the United States was founded on the colonization of Native tribes and the enslavement of Africans.”¹⁴³ In 2024, variations of settler colonialism appeared in at least 196 law review articles, and the number will likely be surpassed in 2025. And Tisa Wenger, an expert consultant to the San Marcos Tribe in the *Apache Stronghold* litigation, and arguably the leading current non-indigenous sacred sites scholar, has announced that her next book will be *Spirits of Empire: How Settler Colonialism Made American Religion*.¹⁴⁴

Lloyd’s book is thus vital for its entry of the settler colonial approach to American indigenous sacred sites. If, as appears, academic approaches move from postcolonial to settler colonial, *Land is Kin* will represent one of the turning points. At its most simplistic difference, while postcolonial works address the aftermath of colonization, settler colonial works analyze issues assuming that the colonial process is still underway. Postcolonial accounts often focus on contesting the legacy of empire within a formally decolonized order; settler-colonial accounts insist that there has been no real “after” because the basic structure of land seizure and replacement remains in place. In that frame, *Lyng* is not a holdover from a shameful earlier chapter of American history, but evidence that the project of eliminating Indigenous presence continues today.

Bruyneel’s *Third Space* exemplifies the postcolonial method.¹⁴⁵ For Bruyneel, indigenous sovereignty occupies a “third space” of sovereignty, “defined by colonial impositions and postcolonial resistances.”¹⁴⁶ For Lloyd, the Yurok Tribal Court’s granting of rights to the Klamath River exemplifies this type of structure that transcends the typical federal/tribal binary. Bruyneel sees the third space as a “viable, increasingly sought-after location of indigenous postcolonial political autonomy that refuses the choices set out by the settler-society.”¹⁴⁷ Lloyd adopts Bruyneel’s use of the term “concurrent sovereignty,” (itself borrowed from Australian law Professor Julie Cassidy). Bruyneel and Lloyd share sympathies. Bruyneel’s project is to “bring into clearer light the presence of and struggle over colonial rule in the modern American liberal democratic settler-state.”¹⁴⁸ And Bruyneel, like Lloyd, loves to identify and explode “false binaries.”¹⁴⁹ Both Lloyd and Bruyneel would agree that “indigenous political resistance” is itself a “refusal of a false choice.”¹⁵⁰

Yet Lloyd following *Third Space* in a work of religious studies is also notable because

¹⁴¹ Joshua Bheki Mzizi, *Challenges of Proselytization in Contemporary Swaziland*, 14 EMORY INT’L L. REV. 909, 917 n.10, 929, 932 (2000).

¹⁴² See Tayyab Mahmud, *Colonial Cartographies, Postcolonial Borders, and Enduring Failures of International Law: The Unending Wars along the Afghanistan-Pakistan Frontier*, 36 BROOK. J. INT’L L. 1 (2010); Charlotte Macdonald, *Land, Death and Dower in the Settler Empire: The Lost Cause of the Widow’s Third in Nineteenth-Century New Zealand*, 41 VICTORIA U. WELLINGTON L. REV. 493 (2010); Dylan Lino, *The Politics of Inclusion: The Right of Self-Determination, Statutory Bills of Rights and Indigenous Peoples*, 34 MELB. U. L. REV. 839 (2010); Natsu Taylor Saito, *Decolonization, Development, and Denial*, 6 FLA. A&M U. L. REV. 1 (2010); Prabhakar Singh, *Colonised’s Madness, Colonisers’ Modernity and International Law: Mythological Materialism in the East-West Telos*, 3 J. E. ASIA & INT’L L. 67 (2010); Damien Short, *Cultural Genocide and Indigenous Peoples: A Sociological Approach*, 14 INT’L J. HUM. RTS. 833 (2010); Russell Smandych, *Mapping Imperial Legal Connections: Toward a Comparative Historical Sociology of Colonial Law*, 31 ADEL. L. REV. 187 (2010); Carmela Murdocca, *There is Something in That Water: Race, Nationalism, and Legal Violence*, 35 L. & SOC. INQUIRY 369 (2010); Cheikh Anta, *Decolonization or National Liberation: Debating the End of British Colonial Rule in Africa*, 632 ANNALS AM. ACAD. POL. & SOC. SCI. 41 (2010); Duncan Bell, *John Stuart Mill on Colonies*, 38 POL. THEORY 34 (2010); Kyla Reid, *Political Legitimacy in the Wake of Indigenous Governance Claims*, 35 AUSTR. J. LEG. PHIL. 85 (2010).

¹⁴³ Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 51 (2019).

¹⁴⁴ TISA WENGER, *SPIRITS OF EMPIRE: HOW SETTLER COLONIALISM MADE AMERICAN RELIGION* (forthcoming Mar. 2026)

¹⁴⁵ See BRUYNEEL, *supra* note 31, at 226 (describing book’s project as “an application of postcolonial theory to the analysis of the contemporary colonialist-anticolonialist struggles in settler societies”).

¹⁴⁶ *Id.* at 217.

¹⁴⁷ *Id.* at 218.

¹⁴⁸ *Id.* at xiii.

¹⁴⁹ See, e.g., *id.* (“Inherent within the ‘civilized – savage’ construction are the dualisms that comprise the imperial binary: ‘progressive and backward,’ ‘inside and outside,’ and ‘independent and dependent.’”).

¹⁵⁰ *Id.* at 217.

Bruyneel is *not* concerned with indigenous religion. Bruyneel’s book is self-consciously focused on power and sovereignty. *Lyng* is not discussed in the book; religion does not appear in the index.

America’s greatest thinker on the issue, Standing Rock Sioux activist and theologian Vine Deloria, Jr., did not use the word “settler” in his 1999 collection *For This Land: Writings on Religion in America*, which includes multiple essays focused on *Lyng*.¹⁵¹ Kevin Bruyneel’s influential *The Third Space of Sovereignty* (2007), which shapes *Land is Kin*, is similarly not a work of settler colonial theory. That work proceeds under a postcolonial framework;¹⁵² neither Wolfe nor “settler colonialism” appear in the index, although Bruyneel does use the language of “settlers” throughout.¹⁵³

This approach matters not just for *how* the argument proceeds, but *why*. On the first page of *Land Is Kin*, Lloyd places the work as a response to Deloria’s call for all people to join the movement to protect indigenous sacred sites: “‘The struggle by American Indians to protect their sacred sites and to have access to them for traditional ceremonies is a movement in which all peoples should become involved,’ wrote Lakota scholar Vine Deloria, Jr., in 1991.”¹⁵⁴

Non-indigenous scholars in the area typically justify their project. Michael McNally, for instance, answers doubts about whether religious freedom is the right approach in light of the discursive harms it risks: “Why try to think through how better to articulate Indigenous claims in the language of the colonizer, and in particular in courts where religious freedom has so clearly been shown to be a discourse of exclusion rather than inclusion?”¹⁵⁵ McNally’s solution attempts to thread a conceptual needle, “eliding what’s *religious* about Native claims to sacred lands, practices, ancestors, and material heritage into notions of sovereignty and peoplehood.”¹⁵⁶ In other words, while McNally is focused on sovereignty and peoplehood, he recognizes the language of religious freedom as compelling in the political and cultural arena.

Lloyd also places sovereignty in focus but does not believe religious freedom discourse has pragmatic potential. She does not justify her book based on its likelihood of success. Answering the question why she “as a non-Indigenous immigrant to the United States,” has selected preserving sacred sites as her project, she invokes Deloria’s *Sacred Lands and Religious Freedom*: “I respond to Deloria’s call to join the movement. What I have learned is that to protect what we have come to refer to as Indigenous sacred sites, it is necessary to understand that land is kin.”¹⁵⁷

Yet Lloyd’s reason for joining the movement is not Deloria’s. Lloyd understands the key to *Lyng* as sovereignty. “While the case has been argued, decided, and studied as one about the free exercise of religion, I argue that *Lyng* is a case about sovereignty. This is so because the question at its heart is the following: who is the sovereign who can (and should) decide the fate of the High Country?”¹⁵⁸

Deloria’s writings are noteworthy here not just for their message, but for their fire. For Deloria, the problem with Native American cases in the Supreme Court is that the indigenous plaintiffs were not treated *enough* as religious practitioners, and that the Court and the country were not *religious enough*. He explained that:

Most troubling about the Supreme Court’s decision [in *Lyng*] was its insistence on analyzing tribal religions within the same conceptual framework as Western

¹⁵¹ VINE DELORIA, JR., *Sacred Lands and Religion Freedom*, in FOR THIS LAND: WRITINGS ON RELIGION IN AMERICA 212 (1999).

¹⁵² See *id.* at 226 (describing the book’s project as “an application of postcolonial theory to the analysis of the contemporary colonialist-anticolonialist struggles in settler societies”).

¹⁵³ See *id.* at ix (“The point here is that the words *Indian* and *American Indian*, like *Native American*, *aboriginal*, and *indigenous*, emerged as a product of a co-constitutive relationship with terms such as *colonizers*, *settler*, and *American*.”).

¹⁵⁴ LLOYD, *supra* note 19, at 1.

¹⁵⁵ MICHAEL D. McNALLY, DEFEND THE SACRED: NATIVE AMERICAN RELIGIOUS FREEDOM BEYOND THE FIRST AMENDMENT 11 (2020).

¹⁵⁶ LLOYD, *supra* note 19, at 19.

¹⁵⁷ *Id.* at 1–2.

¹⁵⁸ *Id.* at 4.

organized religions. Ceremonies and rituals performed for some thousands of years were treated as if they were personal fads or matters of modern emotional, personal preference based upon the erroneous assumption that belief and behavior can be separated.¹⁵⁹

Deloria wanted Western courts to avoid that conceptual error. But he also advocated for sacred sites on universalist grounds; that *all people* hold certain sites sacred, and that *all people* should respect that fact in others—including Indians. He presented what I find to be the best typology of sacred sites, broken down into four categories:

1. Sites that are sacred because of human action, like the battlefield of Gettysburg.
2. Sites where the divine intervenes in human affairs, like Joshua crossing the River Jordan.
3. Sites that are sacred in themselves. “Draw not hither; put off thy shoes from thy feet, for the place where on thou standest is holy ground.”
4. Sites where the sacred is yet to, but will, reveal itself.¹⁶⁰

Deloria treats the protection of sacred sites as paramount because these places “are the foundation of all other beliefs and practices . . . they represent the presence of the sacred in our lives.”¹⁶¹ He does not just want indigenous sites to be protected for the indigenous (although he does want that). He also wanted the broader American culture to “set[] aside additional places which have transcendent meaning,” because “both the individual and the group must have some kind of sanctity if we are to have a social order at all.”¹⁶² Deloria’s argument for protecting sacred sites depends on a truth claim that there *is* a higher power and that human nature requires society to be attuned to the sacred. These assumptions would be familiar to America’s Framers—John Adams’s familiar “[o]ur Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other,”¹⁶³ comes to mind. But these assumptions are typically absent from works of postcolonial or settler colonial theory.

For Lloyd, the denial of religious rights for Native Americans, and the use of “wilderness” designations for environmental preservation “follow[] what historian Patrick Wolfe called ‘a logic of elimination’: [they] erase[] Indigenous existence so that settlers can replace them.”¹⁶⁴ Deloria attributes a different motive; one that might surprise readers today. For Deloria, Native Americans are attacked because secular culture cannot handle them being *authentically and sincerely religious*: “Traditional [Indigenous] religions are under attack not because they are Indian but because they are fundamentally religious and are perhaps the only consistent religious groups in American society over the long term.”¹⁶⁵ Discussing *Employment Division v. Smith*, Deloria declared that “[t]he attack on religion today is a secular attack on any group that advocates and practices devotion to a value higher than the state.”¹⁶⁶ Accusing Antonin Scalia of authoring “secular attacks” that subordinates religious believers to the state sounds more like a paleoconservative Pat Buchanan than anything else. But Deloria called for religious citizens, and in particular American Christians, to take their religion more seriously.¹⁶⁷ He called Scalia’s contention in *Smith* that it would be unconstitutional to prohibit bowing down before a golden calf¹⁶⁸ “ludicrous” and “amazing;” “[b]ut even more stunning is the absence of any sense of outrage from American Christians.”¹⁶⁹

¹⁵⁹ DELORIA, JR., *supra* note 151, at 204.

¹⁶⁰ *Id.* at 207–10 (emphasis in original) (quoting *Exodus* 3:5).

¹⁶¹ *Id.* at 337.

¹⁶² *Id.* at 212.

¹⁶³ Letter From John Adams to Massachusetts Militia (Oct. 11, 1798), <https://founders.archives.gov/documents/Adams/99-02-02-3102>.

¹⁶⁴ WOLFE, *supra* note 137, at 127–28.

¹⁶⁵ LLOYD, *supra* note 19, at 81 (quoting DELORIA, JR., *supra* note 151, at 127–28).

¹⁶⁶ DELORIA, JR., *supra* note 151, at 215.

¹⁶⁷ *See id.* (“The ultimate goal of religious people today must be to establish, in belief and behavior, a clear difference between religion and secularism.”).

¹⁶⁸ *Emp. Div., Dep’t of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877–78 (1990) (“It would doubtless be unconstitutional, for example, . . . to prohibit bowing down before a golden calf.”).

¹⁶⁹ DELORIA, JR., *supra* note 151, at 215; *see also id.* at 216 (“I mourn for any Americans who don’t care to protect their own

As I described above, there are (unsurprisingly) competing inspirations for defending indigenous sacred sites, both among the indigenous and the non-indigenous. Those motivations will color both the theoretical frameworks scholars apply, the rhetoric that activists use in the public square, and legal arguments used in court. Should we see the fight as one of individual and tribal resistance? Is protecting sacred sites a call to religious and spiritual renewal for all Americans? Is it primarily an act of deconstructing and decolonizing American law and legal institutions?

For some of those approaches, the question will turn on empirics: Does conventional legal practice in American courts produce results? (So far, the answer is an emphatic no.) Can it? Will it? (I say yes, and I hope so.) What about politics? The Keystone XL pipeline sparked significant national social media attention, although it did not stop the project. Would better resourced tribes and indigenous interests have greater success? Would that be better, or worse? Others will depend on the motivations of the individuals and tribes with the true kinship connection to the land. Under some of those motivations, it may be the case that non-indigenous voices should not play a role at all.

Scholars still need to articulate how the sovereignty paradigm provides better results than the religious-freedom framework she rejects. Lloyd frames the central question as “who is the sovereign who can (and should) decide the fate of the High Country?”¹⁷⁰ But under current law, the answer in federal courts is almost always the United States. Tribal sovereignty is infamously “domestic” and subordinate,¹⁷¹ and the federal government enjoys plenary power over Indian affairs as well as ownership and control of many sacred sites.¹⁷² If limited to the judicial process, *Lyng* as a contest of sovereigns on federal land risks confirming, rather than unsettling, the conclusion that the Forest Service may do as it wishes.

That is not to say that Lloyd’s sovereignty frame is without force. It does important analytic and political work by insisting that what appears as neutral “management” of public lands is in fact a struggle over whose law governs and whose relationship to the land counts. And in places like the Klamath River resolution and the Yurok Justice Center, “sovereignty talk” has concrete institutional expression: tribal law, tribal courts, and tribal jurisdiction structuring life on Yurok land. Those developments may well point toward a future in which tribal sovereignty claims can reshape the legal treatment of sacred sites. Accordingly, Lloyd should not be faulted if her project is primarily one of imagination, not pragmatics.

Lloyd’s work thus opens research needs on multiple fronts. I look forward to works within the indigenous studies space that dive into the different motivations, but as a question of theory and as a question of social practice. And I look forward to both pragmatic and theoretical steps forward.

B. Indigenous and Catholic Theology of Land

The next area where I look forward to future scholarship is within the area of religious studies, or perhaps more specifically, theology.

As I noted above, Lloyd’s desire to reject the false binary of American “Rights Talk” strongly echoes the work of Catholic legal scholar Mary Ann Glendon. Her description of the indigenous (and it seems she thinks, correct) understanding of our relationship with the land

religious traditions and are content with worshipping the golden calf, as recommended by the Supreme Court.”).

¹⁷⁰ *Id.* at 4.

¹⁷¹ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 2 (1831) (“[Tribes] may . . . be denominated domestic dependent nations. . . They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father.”).

¹⁷² *United States v. Lara*, 541 U.S. 193, 200 (2004) (“[T]he Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ‘plenary and exclusive.’”) (collecting cases). That said, Justice Gorsuch, joined by Justice Thomas, recently suggested that the Court should revisit the plenary power doctrine. *See Veneno v. United States*, No. 24-5191, 2025 WL 3131791 (U.S. Nov. 10, 2025) (Gorsuch, J., dissenting from denial of writ of certiorari) (“*Kagama* helped usher into our case law the theory that the federal government enjoys ‘plenary power’ over the internal affairs of Native American Tribes. It is a theory that should make this Court blush.”); *see also United States v. Kagama*, 118 U.S. 375 (1886).

bears a surprising affinity with what I would say is the most significant work of environmental theology in the 21st Century: Pope Francis's encyclical *Laudato Si*.¹⁷³ Like Glendon, neither Francis nor *Laudato Si* appear in the book, so I will take the space here to draw out the close connection between the views.

Lloyd also lays out an idea of the indigenous understanding¹⁷⁴ of the proper relationship with the land: kinship, relationality, and responsibility. We read that “those who have different relationships with a site are likely to answer the questions above in different ways—thinking of land in terms of kinship (as ‘Mother Earth’) calls for a different treatment than thinking of it in terms of ownership or sacredness.”¹⁷⁵ *Laudato Si* incorporates that idea from its very title on: Encyclicals are typically written in Latin, and take their name from the first few words of the Latin text. *Laudato Si* (“praise be”) takes its name from an Italian canticle of Saint Francis of Assisi, patron saint of ecology: “Praise be to you, my Lord, *through our Sister, Mother Earth*, who sustains and governs us, and who produces various fruit with coloured flowers and herbs.”¹⁷⁶

In Lloyd, one finds: “Central to an Indigenous understanding of kinship, and to Indigenous knowledge systems in general, is the concept of relationality.”¹⁷⁷ In *Laudato Si*, the creation stories in the Book of Genesis “suggest that human life is grounded in three fundamental and closely intertwined relationships: with God, with our neighbour and with the earth itself.”¹⁷⁸

And for responsibility, Lloyd relies on Kyle Powys Whyte, who defines “kinship relationships” within “the category of relationships grounded in responsibility. Responsibility refers to bonds of mutual caretaking and mutual guardianship.”¹⁷⁹ *Laudato Si* places the same responsibility on all people, based again on an interpretation of scriptures that “tell us to ‘till and keep’ the garden of the world ‘Tilling’ refers to cultivating, ploughing or working, while ‘keeping’ means caring, protecting, overseeing and preserving. This implies a relationship of mutual responsibility between human beings and nature.”¹⁸⁰

Lloyd's presentation of the Yurok grant of rights to the Klamath River encourages the reader to imagine beyond the accepted frameworks of the American legal system. Pope Francis called for recognition of a “Right of the Environment,” although he never proposed how it would work juridically. The Supreme Court has foreclosed the most direct application of that idea—granting natural objects standing in Article III courts.¹⁸¹ But Lloyd's work is valuable in highlighting alternatives and sparking legal imagination.

Land Is Kin could also spark reconsideration of sacred sites in foreign or international jurisdictions. The social teachings of the Catholic Church have probably had their most noticeable influence in the Universal Declaration of Human Rights of 1948.¹⁸² The UDHR includes social and economic rights¹⁸³ (in contrast to the Anglo-American tradition), protects political and civil liberties¹⁸⁴ (in contrast to the socialist regimes of the time), and pairs rights with concomitant duties.¹⁸⁵ It also focuses on the “inherent dignity” and “worth of the human

¹⁷³ Pope Francis, Encyclical Letter *Laudato Si* (2015) [hereinafter *Laudato Si*], http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html.

¹⁷⁴ I confess I lack the knowledge to know how widespread these views are and certainly do not want to essentialize or overly simplify the diverse experiences and perspectives of the uncountable indigenous peoples around the earth.

¹⁷⁵ LLOYD, *supra* note 19, at 11.

¹⁷⁶ *Laudato Si*, *supra* note 173, ¶ 1 (emphasis added).

¹⁷⁷ LLOYD, *supra* note 19, at 129.

¹⁷⁸ *Laudato Si*, *supra* note 173, ¶ 66.

¹⁷⁹ LLOYD, *supra* note 19, at 129.

¹⁸⁰ *Laudato Si*, *supra* note 173, ¶ 67; cf. *Genesis*, 2:15.

¹⁸¹ See *Sierra Club v. Morton* 405 U.S. 727, 742 (1972) (Douglas, J., dissenting); Christopher D. Stone, *Should Trees Have Standing?: Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 456 (1972).

¹⁸² See generally Mary Ann Glendon, *The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea*, 16 HARV. HUM. RTS. J. 27 (2003).

¹⁸³ See, e.g., Universal Declaration of Human Rights, Art. 23 (2023) [hereinafter UDHR] (right to equal pay for equal work, right to just compensation, right to join trade unions).

¹⁸⁴ See, e.g., *id.* at Art. 21 (right to participate in government, secret ballot, universal suffrage).

¹⁸⁵ See, e.g., *id.* at Art. 29.1 (“Everyone has duties to the community in which alone the free and full development of his personality is possible.”). In the American founding documents, on the other hand, the only duty mentioned is the duty to overthrow despotic governments. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“But when a long train of abuses and

person,”¹⁸⁶ notes that the family is the “natural and fundamental group unit of society,”¹⁸⁷ and provides that motherhood and childhood are entitled to “special care and assistance.”¹⁸⁸ That language was not the result of Catholic drafters. Charles Malik, successor to Eleanor Roosevelt as Chair of the United Nations Commission on Human Rights and an integral architect of the UDHR, was a Lebanese Arab of the Greek Orthodox faith. He developed his social justice vocabulary largely from “heavily underlined copies of *Rerum Novarum* and *Quadragesimo Anno*,”¹⁸⁹ Catholic encyclicals addressing “the worker question.” The Catholic Church teaching provided a vocabulary and a framework for discussing a topic (human rights), and the result was a text that feels (and is) foreign to the Anglo-American tradition.¹⁹⁰

The current legal discourse governing indigenous sacred sites has seen little success in protecting those sites. Whether from *Laudato Si*, or the Yurok Tribal Council, alternative visions of what can be might be the place to look.

C. Overcoming *Lyng*

My final point, as a lawyer and a legal scholar, is a point of optimism about protecting sacred sites through American constitutional and statutory religious freedom law.¹⁹¹ This analysis includes both a bit of legal formalism and a bit of legal realism. Both give hope that *Lyng* and its “substantial burden” holding can be overturned, or limited, to their facts.

First, as a matter of legal doctrine, *Lyng* is poorly reasoned, proceeds from a pragmatic (not originalist) approach, and is out of step with contemporary religious liberty doctrine.

Notably, *Lyng* does not purport to interpret the original public meaning of the Free Exercise Clause. Justice O’Connor says that “[t]he crucial word in the constitutional text is ‘prohibit.’”¹⁹² Based on that, she concludes that “incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs,”¹⁹³ cannot trigger strict scrutiny. But *Lyng* does not base that conclusion in founding era dictionaries, public debate, or legal practice.

In fact, founding era dictionaries recognized that “prohibit” included, but was not limited to, meaning “forbid by law.” It could also mean “to hinder.”¹⁹⁴ So despite *Lyng* basing its reasoning on the “crucial word” being “prohibit,” *Lyng* did not perform an actual legal analysis of that crucial word. By contrast, courts that *have* relied on dictionary definitions to analyze what a “substantial burden” is have settled on the broader meaning that would include

usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.”)

¹⁸⁶ See, e.g., G.A. Res. 217 (III) A, UDHR, U.N. Doc. A/810 at Preamble (1948) (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, . . . in the dignity and worth of the human person . . .”).

¹⁸⁷ *Id.* at Art. 16.3.

¹⁸⁸ *Id.* at Art. 25.2.

¹⁸⁹ Mary Ann Glendon, *Catholicism and Human Rights*, MARIANIST AWARD LECTURES (2001), https://ecommons.udayton.edu/cgi/viewcontent.cgi?article=1012&context=uscc_marianist_award.

¹⁹⁰ See generally *id.* (explaining that these ideas came from “the twentieth-century constitutions of many Latin American and continental European countries,” those countries got these ideas from “the programs of political parties, parties of a type that did not exist in the United States, Britain or the Soviet bloc, namely, Christian Democratic and Christian Social parties,” and those politicians got these “ideas about the family, work, civil society, and the dignity of the person. . . . from the social encyclicals *Rerum Novarum* (1891) and *Quadragesimo Anno* (1931)”).

¹⁹¹ Some of the analysis in this section draws from briefs I have filed. See, e.g., Brief for Muslim Parents, Sheikhs, and Imams as Amici Curiae supporting Petitioners, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025) (No. 24-297).

¹⁹² *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 451 (1988).

¹⁹³ *Id.*

¹⁹⁴ See SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (1st ed. 1755); THOMAS DYCHE & WILLIAM PARDON, A NEW GENERAL ENGLISH DICTIONARY (14th ed. 1771) (“[T]o forbid, bar, hinder, or keep from any thing.”); SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1785) (“1. To forbid, to interdict by authority. . . . 2. To debar; to hinder.”); JOHN ASH, THE NEW & COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1795) (“To forbid, to interdict by authority; to debar, to hinder.”); NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1st ed. 1828) (“1. To forbid; to interdict by authority; . . . 2. To hinder; to debar; to prevent; to preclude.”); JOHN BOAG, THE IMPERIAL LEXICON OF THE ENGLISH LANGUAGE 275 (1st ed. 1850) (“To forbid; to interdict by authority. To hinder; to debar; to prevent; to preclude.”).

hinder.¹⁹⁵

The substantial burden rule of *Lyng* also bears hallmarks of a holding that will not be defended by *stare decisis*. The Court looks to a decision’s “consistency with other related decisions, developments since the decision was handed down, and reliance on the decision.”¹⁹⁶ An important line of the Roberts Court’s free exercise jurisprudence has been finding free exercise violations where a state denies public benefits because of the recipient’s religious use or status.¹⁹⁷ Yet those laws do not “forbid by law” (*i.e.* the narrow definition of prohibit) any religious exercise, they do not *literally* penalize any conduct, and they do not coerce a change in behavior. At the same time, the Supreme Court has never reinforced *Lyng* by relying on it to find the lack of a substantial burden in any case.

Besides *Lyng* itself, there is little in the black-letter law that would doctrinally preclude these claims. The real obstacle is not some hidden doctrinal requirement peculiar to indigenous plaintiffs, but *Lyng*’s narrow reading of “prohibit.”

Second, as a matter of legal realism (or counting noses), the conditions seem right for overturning *Lyng*.

The *Apache Stronghold* litigation, which features in *Land is Kin*, is a significant signal, even if it ends with the permanent destruction and desecration of *Chi’chil Bildagoteel*. That case did not ask whether *Lyng* is a proper interpretation of the Constitution but whether the holding of *Lyng* should be imported into the Religious Freedom Restoration Act. Yet Justice Gorsuch, joined by Justice Thomas, authored a dissent from denial of certiorari which represents the Supreme Court opinion specifically targeting *Lyng* for its injustice and incorrectness.¹⁹⁸

Moreover, three Justices have endorsed the broader reading of “prohibit” as including “to hinder,” as discussed above. Justice Alito (who recused in *Apache Stronghold*), authored a concurrence in the judgment in *Fulton v. City of Philadelphia* calling for the Court to overturn *Smith*.¹⁹⁹ Relying on founding era dictionaries, Justice Alito reasoned that “the ordinary meaning of ‘prohibiting the free exercise of religion’ was (and still is) forbidding or hindering unrestrained religious practices or worship.”²⁰⁰ There is no question that the destruction of these sacred sites that are necessary to religious ceremonies hinders religious practices or worship.

The fight to save Oak Flat also reveals that judges from across the ideological spectrum believe that sacred site claims should be viable. In the Ninth Circuit’s en banc review of *Apache Stronghold*, the five dissenters who sided with the plaintiffs consisted of four Democratic-appointed judges and one Republican-appointed judge.²⁰¹ Judge Patrick Bumatay, a Trump appointee, dissented to side with the plaintiffs, writing that “The Western Apaches’ exercise of religion at Oak Flat will not be burdened—it will be obliterated.”²⁰²

And at the Supreme Court, it was the court’s most conservative members who sided with the indigenous plaintiffs: Justice Gorsuch, joined by Justice Thomas (and although Justice Alito was recused, given his *Fulton* concurrence, he seems likely to have agreed with Justice Gorsuch). On the other hand, all the judges who voted with the government in the Ninth Circuit en banc session were Republican-appointed.

This is significant doctrinally because it means multiple roads can lead to Rome: whether one adopts Justice Brennan’s *Lyng* dissent, or the original public meaning originalism

¹⁹⁵ See, e.g., *Barr v. City of Sinton*, 295 S.W.3d 287, 301–02 (Tex. 2009) (using Webster’s Third New International Dictionary to interpret state RFRA); *Apache Stronghold*, 101 F.4th 1036, 1136 (9th Cir. 2024) (Murguia, J., dissenting) (using Webster’s Third New International Dictionary, Black’s Law Dictionary, and Oxford English Dictionary to interpret federal RFRA).

¹⁹⁶ *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018).

¹⁹⁷ See, e.g., *Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 450 (2017).

¹⁹⁸ See generally *Apache Stronghold v. United States*, 145 S. Ct. 1480 (Gorsuch, J., dissenting).

¹⁹⁹ *Fulton v. City of Philadelphia*, 593 U.S. 522, 545–627 (2021) (Alito, J., concurring in the judgment).

²⁰⁰ *Id.* at 567.

²⁰¹ Chief Judge Murguia, and Judges Gould, Berzon, and Mendoza were democratic appointees; Judge Lee was appointed by President Trump.

²⁰² Order Denying Emergency Mot. for Injunction Pending Appeal at 9, *Apache Stronghold*, 2021 WL 689906 (9th Cir. Mar. 5, 2021).

of Justices Gorsuch and Thomas, *Lyng* is wrongly decided. Justice Gorsuch, writing separately, also sends the valuable signal that it is “ok” for legal conservatives to side with indigenous plaintiffs. Accordingly, supporting indigenous communities is not viewed as inconsistent with legal conservatism. If it’s good enough for Justice Thomas, then lower court judges need not fear criticism for not being conservative enough if siding with indigenous plaintiffs.

This type of cross-ideological coalition building is commonly recognized in the political or organizing medium, but it bears analyzing in the legal context as well. Incorrect assumptions here can lead to incorrect conclusions. On the first page of *Land is Kin*, we read that “in the thirty years that have passed since Deloria wrote this text: . . . religious freedom has become the tool of conservative Christians[.]”²⁰³ That ignores that religious freedom has ensured that Santeria practitioners can perform animal sacrifices,²⁰⁴ indigenous Brazilians can use ayahuasca for religious purposes,²⁰⁵ Muslim prisoners can grow beards,²⁰⁶ and Buddhists can have spiritual advisors accompany them during their executions.²⁰⁷ And cases that involve a Christian plaintiff will often disproportionately benefit members of less common religions; before *Groff v. DeJoy*²⁰⁸ expanded the religious accommodations required of employers, half of all victims of religious discrimination were Seventh-Day Adventists, members of the Worldwide Church of God, or Orthodox Jews.²⁰⁹ That same rule will also provide religious garment accommodations that are much more common for Sikhs or Muslims than Christians.

Given the current Supreme Court, an ideological coalition that includes conservatives is probably necessary as a matter of tactics. But it may also be more present than authors writing settler colonial theory recognize. One curious aside in *Land is Kin* comes to mind. Discussing the Yurok granting rights to the Klamath River, Lloyd writes:

While the extension of personhood to corporations and to human fetuses has been cynically used against marginalized groups and especially against the reproductive rights of women, and therefore legal personhood may be justly critiqued by feminist thinkers, this chapter shows that the recognition of the Klamath River (as well as of other nature entities) as a person is different, and the difference has to do with the notions of kinship and of responsibility that drive this recognition.²¹⁰

These seem to me two very different objections. Lloyd does not expand either objection beyond this aside. And their real work is to draw the boundaries of permissible coalition partners. As to corporations—bishoprics and universities were long recognized as persons for the purpose of perpetual legal existence. Granting rights to a river does not make it a corporation.

The human fetuses (referring to the unborn personhood movement) objection I find much more interesting. To my ears, “Kin” and “Responsibility” seem much more direct and literal for one’s unborn child than for a river. To the extent Lloyd disagrees, I would have liked to see the argument either fleshed out or omitted. In fact, she implicitly recognizes some of that tension: if recognizing the legal personhood of the unborn reduces the reproductive rights of women, does not recognizing the legal personhood of the Klamath River reduce the property and use rights of others? That seems to be what Lloyd alludes to when she notes that *nature* personhood laws are often “met with resistance from industry, farmers, and river communities who argue that giving nature personhood infringes on their rights and livelihoods.”²¹¹

²⁰³ LLOYD, *supra* note 19, at 1.

²⁰⁴ Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 523 (1993).

²⁰⁵ Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 423 (2006).

²⁰⁶ Holt v. Hobbs, 574 U.S. 352, 356 (2015).

²⁰⁷ Murphy v. Collier, 587 U.S. 901, 901 (2019).

²⁰⁸ 600 U.S. 447 (2023).

²⁰⁹ See Brief for Adam T. Uddain, Steven T. Collis, and the American Jewish Committee as Amici Curiae Supporting Petitioner, *Groff v. DeJoy*, 600 U.S. 447 (2023) (No. 22-174).

²¹⁰ LLOYD, *supra* note 19, at 129.

²¹¹ *Id.* at 132.

On the topics of pragmatic coalitions and the imagining of other theoretical possibilities, Lloyd's comparison of rights of nature and rights of the unborn may have more in common than she thinks. It will surprise many Americans on both the political right and political left that Pope Francis in *Laudato Si* explicitly tied care for the environment with care for the unborn:

Since everything is interrelated, concern for the protection of nature is also incompatible with the justification of abortion. How can we genuinely teach the importance of concern for other vulnerable beings, however troublesome or inconvenient they may be, if we fail to protect a human embryo, even when its presence is uncomfortable and creates difficulties?²¹²

I do not expect Lloyd to share this sentiment. But I would be interested in her thoughts. The multivocality of the text is one of its great virtues. There are surely even more voices and perspectives that will benefit from joining the discourse.

Of course, as an advocate still seeking justice for my clients, I have a duty to bring together the best coalition I can to deliver judicial relief for Gary Perez and Matilde Torres. Scholars play a different role; but even rejecting other views would be a welcome addition to the conversation.

In any event, I would like to note one more surprising coalition partner that has joined the fight to protect indigenous sacred sites: red states. The most surprising, and perhaps most persuasive amicus brief filed at the *Apache Stronghold* cert stage was filed by four states: Oklahoma, Mississippi, Oregon, and South Carolina. Notably, Oklahoma, Mississippi, and South Carolina are unquestionably “red” states. Their brief presented *Comanche Nation v. United States*,²¹³ in which the Comanche Nation successfully challenged the Army's construction of a large warehouse at Medicine Bluffs. Most persuasively, those states explained that “[i]n the 16 years since *Comanche Nation* was decided in Oklahoma, that ruling has not led, so far as *Amici* States are aware, to any tribe's imposition of a ‘religious servitude that would divest the Government of its right to use what is, after all, *its* land.’”²¹⁴ Justice O'Connor's *Lyng* opinion was ultimately one of pragmatism, resting on the belief that “government simply could not operate if it were required to satisfy every citizen's religious needs and desires.”²¹⁵ The States' brief puts judges with that fear to rest.

So why does that leave me optimistic about the future of indigenous sacred site claims? First, they are correct under the best reading of the law. Second, the current legal landscape is fertile enough for the change to occur. And third, there is a broad potential coalition of partners willing to join the fight.

Putting that together, I believe the courts *can* protect indigenous sacred sites, and I have hope that they *will*. Of course, the history of those claims presents little to reassure that. Ultimately, the proof will be in the pudding, but I am willing to put down my stake predicting success.

CONCLUSION

Lloyd has written a book that stays with the reader because it insists on “the concrete and the specific.” Her deep readings name witnesses, amplify their stories, and identify what courts omit. These will prove valuable for readers from many disciplines, including law. The book employs a moral grammar of *place* and asks the reader to acknowledge what our law

²¹² *Laudato Si*, *supra* note 173, ¶ 120.

²¹³ *Comanche Nation v. United States*, No. CIV-08-849-D, 2008 WL 4426621 (W.D. Okla. Sep. 23, 2008).

²¹⁴ Amicus Brief Supporting Petitioners at 12, *Comanche Nation v. United States*, No. CIV-08-849-D (quoting *Apache Stronghold v. United States*, 101 F.4th 1036, 1051 (9th Cir. 2024) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449, 452–53 (1988))).

²¹⁵ *Lyng*, 485 U.S. at 452.

refuses to see.

Land Is Kin helps us identify and speak more plainly about what is at stake in sacred site cases. It is religious freedom, yes—but also sovereignty, and kinship, and home, and property, and dispossession. Through the story and history of the Yurok Justice Center and the Klamath River Resolution, Lloyd also shows us how to imagine new possibilities. Those developments may prove a promising path forward. Litigation in the courts can only be reactive to new threats. Yet I believe it remains a valuable tool, even in a world where rights of nature play a more prominent part.

The history of indigenous sacred site claims in American courts is not reassuring. *Apache Stronghold*'s cert denial is just the most recent example. But in prisons, schools, and sacramental substance use, Indigenous religious-liberty victories have been real. The outlier now is *Lyng*, and I believe its days are numbered. *Lyng* is not the end of the story for American constitutional law, just as *Lyng* was not the end of the story for the High Country.