process involves continuous consultations and collaboration rather than immediate and outright restitution. But even if this is inadequate from the Native American perspective, at the very least NAGPRA created a mechanism for them to articulate their concerns and claim their property.

NAGPRA’s aim is to generate a growing level of understanding and respect for the traditions and cultural heritage of Native peoples at the national level. The program has no deadline for the claimants, although the museums had a deadline to provide Native Americans with information. Institutionally the policy is interpreted expansively but is implemented conservatively. The power relationship between Indians and the museum establishment is therefore maintained and reflects the museum’s ambivalence to any restitution of objects. The planned establishment of the new National Museum of the American Indian on the Mall in Washington, D.C., has come to symbolize that Indian heritage has made it into “the family of world cultures as an equal member.” Aimed at displaying “native ideas, contributions, and cultural ideas,” the museum is planned as an educational institution to “share the native heritage with the public.” Will it provide a dramatic new experience of Indian life for the visitor? Or will it replicate, with some modifications, the ever-present notion of the Indians (a noble savage turned poor second-class citizen), only this time with much native input? No doubt there will be critics who think this way, but at the very least the fact that the repatriation of objects to their previous owners is a constitutive element of the museum’s agenda establishes a new era.

**Sacred Sites, Rites, and New Age**

Sacred sites are locations at which Native Americans perform religious ceremonies. They are necessary to safeguard the continuity of the Native Americans’ crucial spiritual relationships with the environment, including animals and plants. These sites may also have historical significance, say, as a battlefield. Sacred sites have been traditionally sanctified by ceremonies and prayer. Often the religious significance is consciously translated into a cultural rhetoric, for example, by a prominent Native American: “Every society needs these kinds of sacred places. They help to instill a sense of social cohesion in the people. . . . A society that cannot remember its past and honor it is in peril of losing its soul.” In Indian tradition the failure to perform sacred ceremonies at a site is viewed as detrimental to the survival of the group, and the desecration of these sacred sites, which comes in many forms, prevents them from performing divinely ordained roles. Indian religion, which is site-specific, is desolate when the site is destroyed.

In congressional testimony in 1993, Indian leaders identified more than forty sacred sites that were in imminent danger of desecration. They did not identify many more sites for cultural reasons. “Cultural reasons” ought to be understood to mean that Native Americans simply do not believe that the government would not betray them once more. Five hundred years of struggle and expropriation have disposed Indians to mistrust governmental authority and assurances. One can also safely assume that there had been many more sites that were considered sacred by previous generations but that are simply unknown to the existing generation, since much that was lost has never been recovered. In many cases knowledge of sacred sites is dependent on publications from early “explorers” and later from anthropologists. This knowledge was very partial. Even so, it is only as a result of the Indian initiative to draw attention to these past injustices that a public recognition of the need for restitution arose. This enabled the NAGPRA legislation as well as other property settlements. These in turn translated into more widespread Indian activism, as Native Americans began to demand recognition and control of many more sacred sites.

The Black Hills not only are the most valuable disputed property but are, and have been for many years, also embroiled in controversy as a religious site. The Bear Butte State Park northeast of Sturgis, South Dakota, is a religious landmark and a sacred site for several Northern Plains tribes. Until enactment of the American Indian Religious Freedom Act (AIRFA) the federal government had actively denied Indians access to sacred religious sites and interfered with religious practices. In part this was in line with the courts’ tendency to reject protection of religious groups and privilege individual rights. Even court decisions after this legislation consistently rebuffed Native Americans when they requested relief from recreational development, such as access roads, parking lots, and viewing platforms, which they believed desecrated the site. In 1982 the courts interpreted the 1978 law to say that “the free exercise clause places a duty upon a state to keep from prohibiting religious acts, not to provide the means or the environment for carrying them out.” This meant that the government is not obligated to control access to public lands in order to facilitate religious practices. By the mid-nineties the park’s growing general recreational use had colluded with increased Indian demands for recognition and control.
spect for their autonomous religious practice. To ameliorate the conflict, the state embarked upon developing policies that were sensitive to the various uses of Bear Butte. For instance, the National Park Service made two distinct trails available to visitors: one designated for hiking, the other for religious and ceremonial purposes. This in itself constitutes a dramatic shift.

A similar conflict developed after the 1977 movie *Close Encounters of the Third Kind* used Devils Tower as the location of alien contact. It led to a continuous tourist explosion. The landmark, an ancient volcano core in northeastern Wyoming, has been a sacred site to many Northern Plains tribes. Following the movie, the previously occasional climber turned into a steady stream of sixty-five hundred people who climb the monument annually, as well as some four hundred thousand nonclimbing tourists. Both the climbers and the religious practitioners make up only 1 or 2 percent of the visitors that the debate over access and limitations has to consider.

Native Americans are going to great lengths to inhibit outside incursion on what is left of their traditional way of life, from protesting Hindu use of Native American sites to proposing the complete closure of sacred sites to the general public during the heaviest ceremonial times. Other demands include the exclusion of drugs and alcohol and, at certain sites, a complete or partial ban on rock climbing. The Indians object to climbers' pounding steel pitons into the rock, disturbing the solitude and hurrying the erosion process: "It's a sacred site and should not be desecrated by pounding on it." Another complaint is "that climbers are the ones with the eagle view," and "some people don't appreciate someone up there looking [down] at them." Still another conflict is brewing over secret mountain shrines where the Cochiti Pueblo Indians make traditional offerings. Tourists find these shrines and "interveine" in a multitude of ways, everything from leaving crystals and letters behind, to removing the traditional offerings, to sprinkling cremated remains of loved ones amid the sacred sites. They force the Cochitis to avoid these shrines as desecrated places. Native Americans have increased their quest for restitution of land in order to counter such sacrilege and alleged theft.

The courts interpreted the 1978 law in the limited way so as to ensure equality for Native American religions without giving them the ability to control their environment. Courts have found AIRFA too vague to enforce. In addition, the courts generally reject claims that privilege the community over the individual. Most of the Indian claims fall into this category. This is especially evident in litigation over the development of sacred sites. Experience taught Indians that such protection requires additional guidelines and a new law. The courts found that the law requires government agencies to consult with Indian organizations but does not require Native American traditional religious considerations always to prevail. To date, no claim for Native American control of a sacred site has ever proved successful in federal court.

For their part, the nonjudicial branches of government have done little. Except for the National Park Service, no agency has issued rules to protect sacred sites within its jurisdiction. The legislation turned out to have been a primarily declaratory measure. It created the basis for treating Native American religion equally but not for recognizing and accommodating the difference between Indian and Western religions. But Indian lobbying in Congress for more protective legislation continues, and it is too early to predict how the process will unfold. In the mid-nineties Indians tried to enhance the protection, through the passage of the Native American Free Exercise of Religion Act, which aimed to regulate AIRFA and empower Indian individuals to counter actions that cause desecration, including the ability to halt temporarily the development of public lands. The opposition criticizes the governmental promotion of religion. Supporters counter by pointing to the unique "trust" relationship that Native Americans have with the federal government, which is responsible for the protection of Indian tribes and culture. The Indians' demand for special religious protections on public lands is fundamental to their semisovereign and indigenous status. The debate revolves around whether protection of Indian sacred sites constitutes restitution of Indian sovereignty or state protection of one religion over another. The only way Indian control over sacred sites would not violate the Constitution is to construct it as restitution. This explains why the struggle over restitution rhetoric is so crucial.

Attempts to translate Indian culture into the language of the Western legal system are inherently problematic and ambivalent. One primary distinction between Native American and Western religions is that Native religions have neither a hierarchical doctrine nor a foundational text. The notion of the "essence" of the religion is foreign to Indians. Rather, as mentioned above, it is geographically specific, and often each location keeps its doctrine secret. A particular site could never be "central" or "essential" in the Judeo-Christian sense, but all sites are part of the religion. The courts, and even the sympathetic public, often find it hard to evaluate the significance of sacred sites that are not essential to the religious identity of the group. In Western thinking and doctrine a site either is or is not central. Therefore, in evaluating the significance
of sites, the courts continuously underestimate the importance of a "noncentral" sacred site to the identity of the group.

An even more vehement opposition to the protection of Native American sacred sites comes not from intellectual polarization in worldviews but rather from a more mundane concern for development. Critics of Native American control over sacred sites fear that the undocumented and often secretive nature of Indian religions would create chaos in land management. They are afraid that Native Americans would insist on exclusive use of their sacred sites and prohibit or severely restrict such things as maintaining the water level of an artificial lake, promoting tourism, or continuing oil and mining exploration. They protest that control over sacred sites amounts to de facto ownership of public land. Consequently, developers and Indians are on a collision course. Native Americans respond that except for the short period of time set aside for actual ceremonies, other users would not be excluded from sacred sites and that the enhancement of "multiple use" will restore balance to land use. The problem is that there are clearly polarized and noncomplementary uses. The standoff continues.

Native Americans hope that new legislation will guarantee federal protection for sacred religious sites. This would be a major achievement. But success may come at a high price because support for the bill may come from state agencies that see it as helping them overcome obstacles and limit the number of challenges to development. The current version of the proposed law would secure Indian rights only for the nation's 545 federally recognized tribes. This is intended to prevent exploitation by Indian impostors and New Age enthusiasts, but it also means preventing Native Hawaiians and many nonrecognized tribes, particularly in California, from securing protection. While it is possible to avoid some of the obvious shortcomings, the legislation is bound to have the effect of limiting the legitimacy and access of those who might otherwise be able to claim Native American protection. In the perhaps unholy alliance between recognized tribes and government agencies, the result is a shared power that keeps outsiders disempowered.24

Some of these outsiders are New Agers. While there are people who visit Bear Butte and other sacred sites for archaeological or scenic reasons, and the debate over these sites is significant, the most acute cultural conflict is between Indians and the "wanna-be" admirers of Indian religion, mostly New Agers and the men's movement. In the summer of 1994 an Indian protest against New Agers captured national headlines when two hundred demonstrators turned up for a summer solstice rally.25 The acrimonious debate is over the ownership of Indian religion as manifested in a newly evolving competition of religious ceremonies, specifically, the right of the non-Indian to perform ceremonies and of individual Indians to market the performance of ceremonies to whites. Organized Indians across the country view such marketing as religious exploitation while others, including individual Indians, view it as an issue of religious freedom. By 1993 there were official condemnations of individuals and groups that exploit Native American spiritual traditions. New Age tourism is not without its moral ambiguities: "They are adding foreign objects like crystals; white women are standing up there naked and people are profiteering."26 In the language of the National Congress of American Indians, condemnation was directed at the "unspeakable indignity of having precious Lakota ceremonies and spiritual practices desecrated, mocked, and abused by non-Indian wannabes, hucksters, cultists, commercial profiteers, and self-styled 'New Age Shamans' and their followers." Legal remedies, such as forbidding the illegal use of eagle feathers or guarding against photography on religious trails, are generally unenforceable. Both the legal and cultural issues are controversial because among those who market Indian ceremonies against the tribal wishes are Indians who participate as individuals in the growing tourist industry, which in itself is actively promoted by the state.

Certain practices are seductive to outsiders. Such are the traditional dome-shaped lodges that represent a sphere with one half submerged in the earth. Inside the lodge water is poured on heated rocks. In the dense steam participants, who are usually lightly dressed or nude, pray, sing, meditate, and give thanks. The specific ritual varies in style among tribes. Some fast before they enter the lodge, and others follow a complex series of preparations that may include collecting the stones that will heat the lodge and even erecting the lodge itself. The suburban version is more user-friendly. Non-Indian practitioners object to Indian efforts to depict them condescendingly, insisting that they embrace the Indian way to spirituality. Perhaps even more than Indian objection to the frivolous representations of New Age, it is the earnest belief in the sacredness and power of the site that instigates the confrontation. Some hope to inhibit the appropriation of their ceremonies, like the sun dance, by such efforts as insisting that those who conduct them must be fluent in Indian languages and must have undergone long training (five to seven years.)

The Native American demand for a monopoly over their own traditional culture and religion is based on the claim of uniqueness. But what does the
The uniqueness of Indian religious practices mean? Is the uniqueness of the established Indian tribes more sacred than practices by nonestablished groups or by individuals and parties that challenge the tribal governing bodies? Are Indian beliefs more of a spiritual experience than other established religions? It is easy to see how organized Indian practitioners could claim a unique status, but harder to see it accepted by all Native Americans, let alone by members of other religions. Non-Indians who seek Indian spirituality believe that they can attain it as New Agers and the like. This is particularly offensive to Indians.

The organized Indian position is very controversial, even among Indians. There are individual Indians who declare that their practice of extending Indian spirituality to the wider community is closer to Indian religious ideals. Some may do it for material gains; others because they seek greater legitimacy in the larger society; still others see integration as a means towards Indian survival. The opposite position is voiced by many Indians who see the stealing of their religion as an expanded form of colonialism and the practice of Indian religion by New Agers as replicating the vast destruction of the last five hundred years. They regard denying non-Indians access to Indian spirituality as a form of resistance: "They stole our land, they stole everything else, why do we have to give them our religion?" In 1993 the National Congress of American Indians approved a "declaration of war" against those they accuse of exploiting sacred rituals. Others of the same belief decried it as "the final phase of genocide." One reason for their fear, though it is not always articulated as such, is that the widespread New Age versions of Indian customs will be incorporated by less knowledgeable Indians as an authentic "mainstream" traditional religion.

The distinctions between authentic Indian and New Age practices is further blurred by Indian objections to making their spiritual ceremonies into a commodity and commercializing it. Indians believe that the ceremonies possess power no matter how they are conducted, thereby making them desirable in whatever form they take. The predicament for defenders of Indian spirituality is that to decry New Age practices by warning of the danger embedded in tempting the spirits through ignorance or misuse only validates these rituals. Instances such as that of the Hopi leaders who picketed a workshop at a Tucson hotel in April 1993 complaining that it would reveal sacred tribal secrets to outsiders only inspire outsiders. Indian resistance is caught between inaction, which gives default consent to New Agers, or active opposition, which serves to legitimize New Age practices.

Validates belief and arouses new, "mystical" energies among the pretenders. Indians also object to the selling of religion and the profits made by individuals who are often Indians themselves. From mainstream publications to reputed fees of hundreds and thousands of dollars, the marketing of Indian religion has evolved into a prospering industry that offends traditionalists and activists. The proliferation and sale of New Age texts are especially ironic for a culture based on oral tradition. Others are no doubt attracted to the lucrative business. Though the talk about money may seem the ultimate sacrilege, since Indian spirituality has become a business, stealing it has economic value and ramifications.

For the observer, it is hard to distinguish a "genuine" Indian shaman from an "impostor." How is one to distinguish the traditional practice of shamanism from that of the New Age? Could one legitimately participate in a "A Sweat Lodge Ceremony" on the Internet from the comfort of one's room (sometimes available at: www.wolfe.net/~cherokee/swrlg.html)? The intuitive answer is no, but the question is why not. What about the more energetic customers of the portable sweat lodges that are advertised to "come with free carrying case and handbook on the history and health benefits of Native American Sweat Lodge Ceremonies" or listeners to recordings of Lakota sun dance songs ("16 songs that come with a booklet of words in Lakota and English"). Then there are the Lakota Sweat Lodge Cards (Spiritual Teachings of the Sioux, by Chief Archie Fire Lame Deer [a Lakota Sioux holy man and son of medicine man] and Helene Sarkis [Destiny Books, 1993]). Paperback and Card Deck "draw powerful images and teachings from the Inipi to rekindle the spirit of this ancient ceremony. A variety of card spreads directs your consciousness toward the source of personal power, insight, release, and self-awakening, . . . ."

Is commercializing these Native American commodities nonethical? If so, who should control the market and moral economy?

Participation in New Age ceremonies of authentic Indians like Chief Archie Fire Lame Deer deepens the ambiguity. For example, how does a sun dance, conducted by a medicine man of the Oglala Sioux who comes from a family of medicine men that have performed the annual ceremony in South Dakota for many years and who is assisted by other practitioners, differ from a legitimate ceremony? Does one's judgment change if the other participants are members of the White Buffalo Society, a group of white, upper-middle-class professionals? Nobody questions the authenticity of the medicine man, only his practice. For his part, the medicine man rejects the notion that his action
is sacrileg and argues that the ceremony should be shared among all people. Should non-Indians be denied access to these practices? Is Indianness limited to a group identity, or is it manifested in the individual? Are the medicine man’s identity, and therefore his ability to conduct “legitimate” ceremonies, his own or the group’s? Are sweat lodges, a growing suburban fad, to be outlawed?

What of the Eagle Bay Trading Company, a Native American business that sells works by Indian artisans. One piece it offers is a “Chief’s Medicine Wheel.” Materials: Synthetic fur, feathers, wood, beads, bone, leather, antler. Price: $12—$66.00; $15—$75.00. Representing the wheel of life, the center cross of the Medicine Wheel symbolizes the four winds, the four seasons, the four directions and the four corners of the Earth. The color of each corner represents the four colors of people, Red, Yellow, Black, and White.”

Perhaps a shade more brutal is the sales pitch to Atlanta Braves fans for a “high-quality tomahawk” pendant and tie tack that carry the traditional Gorman family Tomahawk designs and are made by a Native American artist.

These ordinary examples suggest that limiting certain claims to Indianness may be appropriate. Yet it is hard to think of denying an individual his or her identity and the freedom to do with it as he or she wishes, as ethical and legal in the United States today. But this is precisely the kind of policy that is called upon when the control of Indian practices in American culture is discussed. The question of who is an Indian, who is allowed to call herself Indian, and who decides these questions will determine who controls the market for religious and cultural patrimony and even for contemporary traditional art.

The controversy over the definition of Indian art has been aggravated since it became a major business. The competition is between those who focus on the communal economic and cultural ramifications and those who underscore the art’s creative and individualistic qualities. A fundamental legal framework was established by the Indian Arts and Crafts Act of 1990, which limited the use of an Indian art designation to pieces created by members of a recognized tribe. The law doesn’t address nonaffiliated Indian artisans who modernize traditional designs or any other variation. Should a Dream Catcher, a popular item usually made of twigs, feathers, and a webbing that holds beads and other decorations, which is sold nationwide along with a native tale about snaring nightmares, be illegal? Would the legality of the sale depend on who has the concession rights? How is one to control the veracity and authenticity of the advertised lore (in this case a “wrong” mythology)? Who are the victims?

The consumers who are misled about the role of the object or the Native Americans whose tradition is misrepresented? Should Time-Life Books be allowed to offer a free Zuñi fetish to new subscribers to its American Indian series? What about a Navajo dancing bear that exists in souvenir shops but not in Navajo culture or an “Indian Maid” trademark that is premised on either irony or consumers’ low propensity for spelling?

Truth in advertising is addressed by the Indian Arts & Crafts Association in its code of ethics. But regardless of legality or commercial ethics, many Indians decry the selling of Indian culture that leads to economic success as an extension of a plunder mentality. Both government and leaders of organized tribes support limiting access to the category of Indian. Defining and confining Indianness allow a more controlled division of resources. Organized Indians argue that the law excludes only those who have benefited unfairly from their association with Indianness. Critics see it as an unfair, not to mention unconstitutional, prohibition that keeps many Indian artists who are of mixed ancestry or unaffiliated from presenting their art as Indian. Yet combating phony Indian artists, writers, New Age medicine men, and spiritualists; preventing the use of pseudo-Indian names; and exposing fraudulent college scholarships and jobs are big business in Indian country. Having been victimized for so long, Indians feel especially exploited when their tradition is appropriated, and limiting Indianness to Indians may be the most effective form of restitution. The government seemed to support this method of restitution when it declared its intention to pursue a modest independent agency within the Interior Department through the Indian Arts and Crafts Board, but it has yet to translate these identity issues into a set of regulations.

A NEW NATIVE IDENTITY

The place of Native Americans in the national fabric is changing as a result of restitution discourse. The debate is over sovereignty and its manifestation through a casino industry, states-tribes rivalry, and political power. The increased power would extend Indian prosperity and independence in the future but would also cause a backlash in Congress. The more the rhetoric of historical injustices is constrained, the more prosperous Indians would become. But the fundamental justification of restitution continues to provide the debate’s moral fabric and its drive. At the same time, one should not claim too
much for restitution. The growing legitimization of Indians as part of the American heritage and national patrimony encourages sentiments that validate Indian demands to correct past prejudices and injustices, but the Indian renaissance is obviously not focused on restitution issues alone. Yet the challenge that restitution to Native Americans presents, especially regarding the relationship between religion and the state and between Indian tradition and commitments to science and even more generally to American pluralism, should not be underestimated.

In the previous pages I have only alluded to the potential economic impact restitution may have on Native Americans, since so far there have been only a few marginal cases. Indian prosperity has been fractured and has mostly benefited a small portion of Indians and local economies, and in most cases Indian acquisition of new resources was not the result of explicit restitution. But if we understand restitution as the moral principle that guides the correcting of historical injustices and atoning for national guilt, many pro-Indian policies can be viewed as restitution; restitution rhetoric and practice can become the major hope Indians have for building anew.

Culturally restitution reshapes the competition between Indians and the national heritage custodians in museums and the scientific community for ownership of the Native American past. The Indian worldview currently enjoys a new status that challenges Western scientific and secular perspectives. Critics warn that native usage may lead at times to incorporating the objects in a living culture in a way that would result in their destruction. In other cases it would merely be destroyed or reburied. This practical predicament, however, may not be imminent. Museums and historical societies possess and preserve mountains of native material culture. The current scale of restitution is unlikely to deplete this treasure in a meaningful way. Certain components and objects will no doubt be lost, but the fear that Native American material culture would disappear as a result of restitution is more a part of the “disappearing native” trope that, under different guises, has survived for at least two hundred years. In actuality, restitution may result in preserving an invigorated living culture.

One may ponder, however, what ought to be the moral stance should the danger of Native American material culture disappearance become real. The evolution of restitution may provide a guide. The pragmatic growth of restitution resulted from the public’s recognition that this was a viable and cost-effective way to amend injustices. Scarcity of Native American material culture would make the objects invaluable and would very likely bring restitution to a halt. Numerous Indians would support such a position. The precise threshold would be determined by the moral economy—namely, at the point at which interested parties perceive the scarcity as constituting a danger of cultural elimination. For the foreseeable future, restitution can continue with little risk of transforming market forces, leading to a scarcity of Indian objects or significantly compromising the integrity of the Constitution. For now Congress views the ambivalence of two worldviews introduced into the system by restitution as an acceptable infringement and a reasonable cost for amending injustices. The principles of moral economy have mediated a common ground among the various vague needs. The application of these principles and the specific “pricing” will be continuously negotiated in the future.