

## *Appendix 2*

### *Peyote Religion: A Case Study*

[2009.07.20] The Native American Church is among the most obvious analogies to the Church of the Universe. Both originated precisely in order to secure exemptions to laws that prohibited the possession, use, and distribution of drugs—peyote in the former case and marijuana in the latter. Both argued, in fact, that they did so for purely religious reasons; denying them exemptions, therefore, amounted to denying them the constitutionally guaranteed freedom to practice their religions.

After (1) a brief look at the historical background of peyote religion in general and the Native American Church in particular along with (2) legal battles in the United States over peyote, we will examine (3) peyote religion in connection with the ten characteristic features of religion that we have used to define religion.

Peyote religion has evolved in three stages. Everyone agrees that the use of peyote for religious purposes began long ago—before the arrival of Europeans—in what is now Mexico. In the sixteenth century, a Spanish missionary reported that the local people were using it to communicate with spirits, to encourage prophecy, to seek supernatural help, for medicinal purposes, and so forth. Some identified the plant itself with their gods. Although the Catholic Church tried to stamp out the use of peyote, it continued.

The second stage began during the early nineteenth century, when peyote religion spread across the Rio Grande into the United States. It soon became very widespread among tribes of the Great Plains, especially in Oklahoma (which is where the federal government sent displaced tribes from the east). But these American Indian groups combined peyote religion with elements of the Christian religion (both moral precepts and theological ones such as belief in eternal salvation). Two major ceremonies evolved: the Big Moon (which evolved into the Cross Fire and eventually into a distinctive form of peyote religion) and the Half Moon; both emphasized the divine origin of peyote, the great medicine, and therefore its religious centrality. These tribes (unlike some others) had always focused heavily on vision quests, and they now used peyote as one way to induce those visions. According to one observer of the Kiowa, peyote religion involved song, prayer, contemplation, and priests called “roadmen.” This new religion helped Indians adapt to the larger American culture while preserving fundamental aspects of their own culture and even fostering an Indian identity that transcended tribal ones. Though clearly syncretistic, its rituals and doctrines were remarkably similar from one tribe to another.

The third stage began in 1918, when tribal leaders established the Native American Church in direct response to government prosecution of them for possessing, using, and distributing peyote. (Some tribes refused to join at first. The Navajo rejected peyote, for

instance, arguing that it was untraditional; they joined, however, in 1967. Other tribes established their own churches.)

Of great importance here is that membership in the Native American Church generally requires Indian blood, which it defines as anyone with at least 25% Indian blood (a definition that the federal government accepts). Other peyote churches, such as the Peyote Church of God, accept members with no Indian blood at all (a position that has legal consequences). With this in mind, consider the following legal cases,<sup>1</sup> which we have arranged chronologically.

**Native American Church v. Navajo Tribal Council, 272 F. 2d 131, 134-35, 10<sup>th</sup> Cir. (1959):** Navajo authorities raided a Native American Church and arrested three members for using peyote. The tribal court sentenced them to fines and time in jail. The prisoners complained to the United States District Court of New Mexico, which dismissed their cases. The Native American Church appealed, however to the United States Court of Appeals. But the latter found that nothing in the Constitution made the First Amendment applicable to Indians.

**State of Arizona v. Mary Attakai, No. 4098, Superior Court, Cococino County, 1960:** When Mary Attakai filed a complaint against her brother, he retaliated by telling the arresting officer that she had stashed peyote in her house. When the officer found it, he arrested her and sent her to jail. The judge, however, released her. Although the state continued to prohibit peyote, this ruling set a precedent for its religious use among Indians in Arizona.

**People v. Woody (61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P. 2d 813):** This was a landmark case of 1962. Three Navajos were arrested for using peyote during a Native American church service. After the District Court of Appeals in Los Angeles upheld their conviction, the Navajos took their case to the California Supreme Court, which reversed the convictions, ruling that freedom of religion for Indians took precedence over any compelling state interests in prohibiting peyote. In fact, the court ruled that peyote presented only a slight danger to the state and its drug laws. “We preserve a greater value than an ancient tradition,” wrote Justice J. Tobriner, “when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert Hogan near Needles, California.” He added that banning peyote would strike at the “theological heart of Peyotism.”<sup>2</sup>

**State of Arizona v. Janice and Fred Whittingham, Arizona, Super. Ct., Ct. App. Sup. Ct., U.S. Sup. Ct., 1973:** In 1968, Janice and Fred Whittingham had their marriage blessed at a Native American Church in Arizona; some participants were Indians and others not. The police disrupted this ceremony and arrested the

Whittinghams. The Superior Court of Coconino County then convicted them for possession of peyote.

The Whittinghams appealed “primarily on the ground that at the time of their arrest they were engaged in a bona fide religious ceremony and that their activity was protected under the First Amendment ... which guaranteed religious freedom.”<sup>3</sup> The Arizona Court of Appeals overturned their conviction. It held that they were sincere participants in a legitimate religious ceremony and that the use of peyote was not dangerous to public health, safety, or morals. “Therefore, given this background, we must answer the appellee’s issue presented on appeal, namely, whether the use of peyote in the bona fide pursuit of religious faith was constitutionally protected by the First Amendment . . . It is the opinion of the Court that the question ... must be answered in the affirmative.”<sup>4</sup> Although Janice Whittingham claimed to be an Indian according to the church’s membership rules, this did not figure in the case, because “the Native American church has always been primarily an ‘Indian religion’ by reason of its origin and in the context that substantially all of its members are American Indians. However, membership to persons who are not members of Indian Tribes or do not have Indian heritage, is usually not refused.”<sup>5</sup> Thus, unlike other cases that exempt Indians from the narcotics law, this one relied on the principle of protecting the right of an established religion to religious freedom and exempted its members. “In analyzing the competing interests of the parties to this action we must emphasize that the record, and the trial court’s findings, made several determinations in which Peyotism was found to be an established religion of many centuries’ history. Suffice it to say, therefore, that Peyotism is not a twentieth century cult nor a fad subject to extinction at a whim.”<sup>6</sup>

**People v. Foster Alphonse Red Elk, Criminal Number 17157, Second Appellate District, California Court of Appeals, 1970:** A police officer in California arrested Red Elk, a Lakota Indian, for car theft and also found him in possession of peyote. Red Elk appealed his drug conviction along with the terms of his three-year probation, which required him to stay away from drugs, drug users, and drug dealers. He claimed that these terms would prevent him from practicing his religion and associating with his Indian co-religionists. The California Court of Appeals sided with him, ruling that the terms of his probation were illegal for preventing him from exercising his religious freedom as an Indian—but also that his religious freedom to use peyote would not apply until he became a bona fide member of the American Native Church.

**State of New Mexico v. Robert Dan Pedro, Case Number 660, State Court of Appeals, 1971:** Robert Dan Pedro, an Arapaho Indian, was carrying medicine that a medicine man had prescribed for him—not knowing that this medicine consisted mainly of peyote. The Chavez County Court convicted him for possession, but the New Mexico Court of Appeals overturned it, even though Pedro did not belong to

the Native American Church, ruling that it had no evidence of criminal intent and that he had accepted the peyote in good faith as medicine.

**Golden Eagle v. Deputy Sheriff Johnson, 493 F. 2d 1179, 1974:** Johnson, a police officer in California, stopped a car that lacked proper lights. Golden Eagle, a member of the Native American Church, was a passenger in the car. Johnson found peyote in the car and jailed Golden Eagle for possession. After three days, the court dismissed that charge. But Golden Eagle charged John for illegally detaining him and abusing him. The United States District Court dismissed that charge, but Golden Eagle filed an appeal. The United States Court of Appeals agreed with the lower court and dismissed the charge once more, however, concluding that members of the church should expect to be detained while police officers check the validity of their church membership.

**Whitehorn v. State of Oklahoma, 561 P. 2d 539 (1977):** The police stopped George L. Whitehorn for not having a safety-inspection sticker on his car and arrested him for not having a valid drivers' license. In addition, the officer found peyote and charged him for possession. Whitehorn claimed membership in the Native American Church and that his father had given him the peyote necklace as a sacred object. The Oklahoma Court of Criminal Appeals reversed the conviction after learning that Whitehorn was indeed a church member and that his use of peyote was not a public menace. In addition, the court ruled that proof of church membership was unnecessary in view of the fact that federal law prevents any state from requiring churches to provide membership rosters for any purpose.

**State of Washington v. Robin H. Gunshows, et al., Superior Court, County of Ferry, October 11, 1978:** A police officer stopped three American Indians for a traffic violation, found that they were carrying peyote, and arrested them. The judge released them, however, and even ordered the return of their peyote. Nonetheless, the state did not amend its drug law to include an exemption for religious purposes.

**Native American Church of New York v. United States, 468 F. Supp. 1247 S.D.N.Y., 1979:** The Native American Church of New York (not the Native American Church) claimed that federal laws against psychedelic drugs discriminated against its white members—and most members were white—by allowing exemptions only for Indians. “The church sought to be allowed the sacramental use of psychedelic drugs it viewed as deities.”<sup>7</sup> The court ruled that state authorities may indeed exempt only Indians from drug laws but also that the church would have to prove its religious legitimacy to qualify even for that exemption.

**Peyote Way Church of God, Inc. v. Smith, 556 F. Supp. 632 (1983):** Immanuel Paradeahtan Trujillo filed a suit in Dallas in order to test the constitutionality of federal and state narcotics laws that exempt members of the Native American Church but only those with more than one-quarter degree of Indian blood. The court ruled that these racially oriented laws did not violate the Constitution. According to one explanation, the United States had a “special fiduciary responsibility to American Indians and had a duty to preserve Native American religion and culture.” The case was not about religion per se, in other words, but about American Indians per se.

**Indian Inmates of Nebraska Penitentiary v. Grammer, 649 F. Supp. 1374 (D. Neb. 1986):** Prisoners charged that the warden had refused to let them use peyote in religious services, thus violating both the First Amendment right to freedom of religion and the American Indian Religious Freedom Act of 1978. The court recognized peyote as a central feature of their religion but ruled that prison security trumped religious freedom in this case.

**Employment Division, Department of Human Resources of Oregon, et al. v. Smith et al., no. 88-1213:** The Douglas County Council on Alcohol and Drug Abuse Prevention and Treatment fired Alfred Smith and Galen Black for using peyote at religious ceremonies in their church—the Native American Church—and denied them unemployment compensation. Oregon’s Supreme Court held in 1990 that denying them compensation violated their First Amendment right to freedom of religion. But the United States Supreme Court disagreed, ruling that the First Amendment allows states to exempt peyote from drug laws but does not require them to do so. Oregon was within its rights, therefore, when it refused to exempt the Native American Church and therefore refused to exempt Smith and Black from drug charges.

**Peyote Way Church of God v. Richard Thornburgh 922 F.2d. 1210 (5<sup>th</sup> Cir. 1991):** Peyote Way Church of God (which includes white members) claimed that both federal and Texas laws were unconstitutional, because they exempt only members of the Native American Church (which includes only Indian members) from drug laws. Both the district court and the U.S. Court of Appeals rejected that claim. The latter held that the goal of exempting Indians from drug laws is to help them to preserve their ancient traditions—a factor that trumps not only drug laws but also freedom of religion for whites. It acknowledged the quasi-sovereignty of Indian tribes, therefore, but without violating the First Amendment by “establishing” peyote religion.

Court rulings have differed somewhat from one state to another, but there is a general pattern. With the one exception of Whittingham, Indian status has trumped all other

considerations, including religion (which is why white members of the Native American Church have not received exemptions, under freedom of religion, to the drug laws).

Now consider the general phenomenon of peyote religion in connection with the ten characteristic features of religion that we have outlined. We have relied primarily on the ethnographical summary of J.S. Slotkin<sup>8</sup> (who relied in turn on James Mooney's much earlier ethnography),<sup>9</sup> because Slotkin organized the material in ways that we found most useful for our purposes. Although some authors criticize Slotkin's political motivation—he belonged to the Native American Church—they do not criticize his ethnographical material. In addition, however, we consulted several other sources.<sup>10</sup>

Peyote religion is very syncretistic; it relies heavily on both indigenous and Christian elements. "Most Peyotists consider themselves to be Christians, for they conceive Peyotism to be the Indian version of Christianity."<sup>11</sup> Bear in mind that "peyote religion" or "Peyotism" refers here generally to this syncretistic worldview, not specifically to the contemporary Native American Church.

**(1) Religious worldviews presuppose either supernatural dimensions or ultimate experiences (or both) that transcend but also transform everyday life.**

Amerindians have always believed in spirits or other supernatural beings, and the peyote religion affirms that tradition in connection with both "white [Christian] spirits" and "Indian spirits" (which we discuss below). The spirits are immaterial and thus invisible supernatural forces. Peyote is the primary incarnation of spiritual power; to eat peyote is to absorb its power.

**(2) Religious worldviews help people live with fundamental paradoxes of the human condition and respond to existential questions that emerge from it.**

Among the most obvious and enduring of all oppositions for adherents of peyote religion is the one between aboriginals and whites. Somehow, they must be part of both worlds—that is, they must not try to embrace one and reject the other. Peyote religion allows them to do both. In fact, it has absorbed the features of Christianity, especially of Protestantism, that are most likely to foster integration within American society. "For the traditional value system based upon an ethic whose goals and means of achieving them were now unattainable (revolving around warfare, hunting, and raiding), the religion substituted a value system based upon an ethic adopted from White mores, but compatible with the Indian culture pattern. Thus the religion provided a code whose goals and means of achieving them were attainable in the dominant White society, and in the process of achieving them the Peyotist won White approval by overtly conforming to White mores."<sup>12</sup>

**(3) Religious worldviews rely on symbol systems that give coherence to both personal and communal life; apart from doing anything else, religion provides the symbolic glue that holds communities together.** Peyote religion integrates Christian symbolism (such as altars, crosses, and rosaries) with indigenous ones

(crescent moons, cedar incense, feathered fans, sprigs of sage, gourd rattles, waterdrums, and so on).<sup>13</sup> To make matters more complicated, some symbols have both aboriginal and Christian origins; others have Christian origins but both aboriginal and Christian meanings.<sup>14</sup>

**(4) Religious worldviews presuppose both sacred time (as distinct from profane, not secular, time) and sacred space (as distinct from profane, not secular, space).** The peyote ritual allows worshippers to commune with the spirits and thus to experience “spiritual sublimity.”<sup>15</sup> The latter, which refers to an experience of the sacred and is therefore beyond the dimensions of profane time and space, is the sine qua non of peyote religion. Slotkin says that “the rite is held in a Plains type cloth tipi temporarily erected for the occasion, usually with an east entrance. The tipi is an Indian kind of house of worship ... The rite, called a ‘meeting,’ is an all-night ceremony, usually lasting from about 8:00 p.m. on Saturday to 8:00 a.m. on Sunday.”<sup>16</sup>

**(5) Religious worldviews find primary expression in forms such as myth, scripture, hagiography (sacred biographies), and ritual.** Traditionally, Amerindians have described the world in mythical terms about spirits that can help or hinder human activities. Among these is a myth about the origin of peyote.<sup>17</sup>

Adherents of peyote religion participate in these myths, moreover, through ritual. The peyote ritual consists of “singing, prayer and quiet contemplation, centered on Peyote both as a symbol of the spirits being worshipped and as a sacrament.”<sup>18</sup> In addition to the peyote ritual, however, are Christian rituals that vary from one tribe to another. These might include written liturgies, scriptural readings, hymns, sermons, confessions, testimonials, rites of passage (birth, baptism, weddings, and funerals), and so forth.<sup>19</sup>

**(6) Religious worldviews find secondary expression in their interpretations and applications of primary ones; these secondary expressions include kinship, taboo, theology, philosophy, morality, law, the arts, and so on.** Peyote theology refers to both “white [Christian] spirits” and “Indian spirits.” White spirits include God (the Great Spirit who controls everything and might be the creator as well), Jesus (who might be a “culture hero” who gave Christianity to the whites and peyote to the Indians, a guardian spirit who protects the Indians, or an intercessor with God), and the vaguer Holy Spirit (an immaterial and thus invisible supernatural power). Other “white spirits,” minor ones, include devils (malevolent spirits but not, as they are for Christians, incarnations of temptation that are part of all “flesh”) and angels (which appear as natural forces, guardians, intercessors, or cosmic messengers). Indian spirits include Waterbird or Thunderbird (who brings rain, carries prayers to God, and might represent the Holy Spirit in connection with peace and love), the Peyote Spirit (who is as compassionate and benevolent as Jesus but also, in some tribes, a cosmic messenger), local tribal spirits (although

these are survivals from the traditional religion and not integral part of peyote religion),<sup>20</sup> and so on. Peyote theology has an eschatological dimension, too, because of Christian influence. Those “who conform to the religion’s ethic in this world will be rewarded with eternal bliss in the next world, in the company of spirits and loved ones.”<sup>21</sup> Those who fail to conform, on the other hand, can expect to end up in hell (although peyote religion says much less about hell than about heaven.) As for ethics, peyote religion has adopted a Christian model that features honesty, monogamy, and altruism. At the very least, “all members should treat each other as brothers and sisters, and help one another. This results in mutual help between intratribal members, particularly in cases of economic need or sickness. Intertribal visiting at the rite is the rule, and such visits are accompanied by gift giving.”<sup>22</sup> Peyote religion promotes “an ethics by which the individual could reorganize his disorganized personality. To the traditional Indian life goals of long life, health, and grandchildren were added the White influenced goals of peacefulness, brotherly love, and self-support. These goals were to be achieved by a career which included both performance of the given ritual and abstinence from alcohol.”<sup>23</sup> This ethical system originated historically in a specific socio-political context, which made the earlier system (based on warfare and intense individualism) inoperable. Due to pressure from white society, peyote religion “provided a new set of social roles, achieved rather than ascribed. And the hierarchy of roles in the religion’s organization provided an attainable status system substituting for the unattainable traditional status system.”<sup>24</sup>

**(7) Considering the primary and secondary features of religious worldviews together, it becomes clear that they are comprehensive or nearly comprehensive ways of life.** Peyote religion originated partly in connection with medicine; converts relied on a single medicine, peyote, for all physical and spiritual diseases (although they now use peyote for physiological problems only as a last resort after other medical treatments have failed). Of particular importance were not only physiological problems such as tuberculosis and alcoholism but also spiritual (or psychological) ones such as the disintegration of identity on both the personal and collective levels. “One of the major group goals is reorganizing the disorganized personality of members. Thus an individual’s reorganization is achieved by collective action. The other members of the group cooperate to help him recognize himself. Meanwhile, the individual is not only trying to reorganize himself for his own sake. At the same time, since he is a member of a group with great solidarity, his esprit de corps and morale lead him to recognize this personality for the sake of the group as a whole, since this is also a group goal.”<sup>25</sup> (The problem of “disorganization” applies mainly to men, because pressure from white society has undermined their role, unlike that of women, radically.) Moreover, Peyote religion has affected both the social realm (tribal organization) and the political (relations between Indians and whites but also between Indian tribes). In the political realm, moreover, peyote religion has undermined the long

tradition of intertribal warfare by, among other things, fostering the development of intertribal councils.<sup>26</sup>

**(8) Religious worldviews sustain groups (defined by birth or choice), not merely isolated individuals; every community has a public dimension, in other words, which involves at least some face-to-face encounters.** Peyote religion has a strong communal element. Peyote ritual, for instance, “substituted participation in a collective rite [for isolated wandering] in order to have a vision, and through it the individual obtains socialized help and moral strength.”<sup>27</sup> The peyote ritual<sup>28</sup> produces a sense of “collective isolation”<sup>29</sup> (attracting many people, each of whom contemplates). It sustains communities; at the very least, peyote religion supports the collective identity of Indians by distinguishing it clearly from that of whites. Moreover, it is a collective activity (unlike the vision quest of traditional Indian religion) and has a therapeutic effect on the community by overcoming social disorganization that focuses on social solidarity.<sup>30</sup> In fact, peyote religion is nationalistic. It “is a religion for all Indians. Its nativistic character permits its adherents to take pride in an Indian trait complex which they believe equal or superior to that of Whites ... The religion is also a Pan-Indian social movement, both expressing and intensifying ethnic group identity and solidarity; intertribal solidarity with the religion is substituted for disorganized bands and tribes.”<sup>31</sup> Even so, peyote religion fosters individualism, partly due to earlier forms of tribal religion (which emphasized the personal quest for visions and personal heroism in battle) and partly due to the influence of Protestantism. At any rate, doctrinal legitimacy relies on personal religious experience instead of a group-oriented creed.<sup>32</sup>

**(9) Religious worldviews claim sources of authority for these ways of life and thus for belonging to the group.** Peyote religion acknowledges neither Christian intermediaries such as priests nor Indian intermediaries such as shamans (although it does make use of ritual functionaries such as “roadmen,” ritual functionaries). Peyote religion does acknowledge direct personal religious experience, by way of peyote, as the ultimate source of authority.<sup>33</sup> Either you have that experience, after all, or you do not.

**(10) Religious worldviews are successful enough to endure for a long time.** Although Peyote religion differs significantly from traditional aboriginal religions (which have relied heavily on shamanism and vision quests instead of peyote), it incorporates both aboriginal and Christian traditions that have long histories. Peyote religion did not emerge out of the blue, in short, but out of earlier religious traditions. Its long evolution and symbolic syncretism give peyote religion—including that of the Native American Church (even though it emerged very recently)—a culturally rich texture.

To conclude, peyote religion in general and the Native American Church in particular would score much higher than the Church of the Universe. It has incorporated all ten characteristic features of religious worldview.

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<sup>1</sup> For cases before 1992, see Arlene Hirschfelder and Paulette Molin, The Encyclopedia of Native American Religions: An Introduction (New York: Facts on File, 1992).

<sup>2</sup> Justice J. Robriner; cited in Hirschfelder and Molin 211.

<sup>3</sup> State v. Whittingham, 504 P.2<sup>nd</sup> 950 (Ariz. App. 1973), Lexis 431; 19 Ariz. App. 27; case summary, procedural posture.

<sup>4</sup> State v. Whittingham.

<sup>5</sup> State v. Whittingham, trial judge's memorandum opinion.

<sup>6</sup> State v. Whittingham, trial judge's memorandum opinion.

<sup>7</sup> Hirschfelder and Molin 194.

<sup>8</sup> J.S. Slotkin, The Peyote Religion: A Study in Indian-White Relations (New York: Octagon Books, 1975).

<sup>9</sup> J. Mooney, "The Mescal Plant and Ceremony," in Therapeutic Gazette (ser. 3) 12 (1896).

<sup>10</sup> See Edward F. Anderson, Peyote: The Divine Cactus (Tucson: University of Arizona Press, 1980); Weston La Barre, The Peyote Cult (North Haven, Conn.: Shoe String Press, 1964); and Omer C. Stewart, Peyote Religion: A History Norman: University of Oklahoma Press, 1987).

<sup>11</sup> Slotkin 68.

<sup>12</sup> Slotkin 41.

<sup>13</sup> For a detailed description of peyotist symbols, which are very complex due to the fact that some have both indigenous and Christian levels of meaning, see Slotkin 71-77).

<sup>14</sup> Slotkin 44-45.

<sup>15</sup> Slotkin 41.

<sup>16</sup> Slotkin 72.

<sup>17</sup> Slotkin 22-23.

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<sup>18</sup> Slotkin 23; the author includes Mooney's description of the ceremony (Mooney 7-11).

<sup>19</sup> See also Omer C. Stewart, "Peyotism in California, Journal of California and Great Basin Anthropology 8.7 (1986): 218.

<sup>20</sup> Slotkin 69-70.

<sup>21</sup> Slotkin 41.

<sup>22</sup> Slotkin 42.

<sup>23</sup> Slotkin 18.

<sup>24</sup> Slotkin 42.

<sup>25</sup> Slotkin 43.

<sup>26</sup> Slotkin 19.

<sup>27</sup> Slotkin 35.

<sup>28</sup> Slotkin 23-27.

<sup>29</sup> Slotkin 74.

<sup>30</sup> Slotkin 18.

<sup>31</sup> Slotkin 43.

<sup>32</sup> Slotkin 41.

<sup>33</sup> Slotkin 41.