PEYOTE & THE NATIVE AMERICAN CHURCH: AN ETHNOBOTANICAL STUDY AT THE INTERSECTION OF RELIGION, MEDICINE, MARKET EXCHANGE, AND LAW

By

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To the Faculty of Washington State University:

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Abstract

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Peyote, a psychoactive cactus native to parts of Texas and Mexico, has been used in human rituals in North America for several thousand years. During the Spanish Conquest the first law prohibiting peyote's ceremonial use was introduced. Conflicts between colonial powers and indigenous peoples over the use of peyote have continued into the present; with peyote access and possession strictly regulated in the United States. While exemptions have been established for the religious use of peyote by Native Americans, U.S. laws on peyote remain clouded by misunderstanding and stark divides in notions of sacrament, religious practice, addiction, medicine, and general differences in worldview. Peyotism, the religious use of peyote, emerged among the Plains tribes during the mid to late-1800s and spread rapidly on the reservations where peyote came to be revered as a holy medicine, a symbol of resistance, and also helped to rebuild communities broken by ethnocide. Peyote continues to play an important role within various tribes as a religious sacrament, a medicinal treatment for addiction, spiritual maladies, and historical trauma, and as a source of indigenous confidence and pride. The legal status of

peyote is a precarious one, one that is exacerbated by diminishing supplies of the cactus in the United States and by the appropriation and exploitation of Native American religious practices by non-Natives seeking legal protection to both use and profit from peyote. The relationship between people and peyote is complex and multifaceted, and this study attempts to examine the major cultural threads at the heart of this relationship, particularly the sacramental and medical use of peyote by Native Americans, its market exchange, and the various legal controls imposed on peyote, and tie them together in a comprehensive and pertinent manner.

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CHAPTER ONE

INTRODUCTION

Peyote (*Lophophora williamsii* (Lem.) Coult.), a psychoactive cactus native to parts of Texas and Mexico, has been used in human rituals in North America for several thousand years (El-Seedi *et al*. 2005; Terry *et al*. 2006). Peyotism, the religious use of peyote, emerged among the Plains tribes during the mid to late-1800s and spread rapidly on U.S. reservations where peyote came to be revered as a holy medicine, a symbol of resistance, and also helped to rebuild communities devastated by ethnocide. The Native American peyote religion was formally incorporated in 1918 as the Native American Church (NAC), and now claims over 250,000 adherents (Long 2000). Peyote continues to play an important role within various U.S. tribes as a religious sacrament, a medicinal treatment for addiction, spiritual maladies, and historical trauma, as well as a source of indigenous confidence and pride. This vital human-plant relationship was formed under the shadow of colonialism and continues to be shaped and influenced by the policies of a largely Euro-centric legal system. The continuing vitality of the NAC, including its protective and empowering impacts on Native communities, is closely tied to these policies. John Van Willigen (2002: 10) defines "applied anthropology" as the employment of anthropological methods and perspectives with the primary goal of producing "change or stability in specific cultural systems through provision of data, initiation of direct action, and/or the formation of policy." This dissertation is thus definitional of that pursuit. Throughout this dissertation I *apply anthropology to identify and evaluate the impacts of government regulations on the unique ethnobotanical relationship at the heart of the NAC, and advocate for the preservation of this*

relationship, as well as the societal benefits it provides to Native communities.

The first law prohibiting peyote's ceremonial use was introduced in Mexico in 1620 as part of the Spanish Inquisition (Leonard 1942). Conflicts between colonial powers and indigenous peoples over the use of peyote have continued into the present; with peyote access and possession strictly regulated in the U.S. While exemptions have been established for its religious use by Native Americans, U.S. laws concerning peyote remain clouded by misunderstanding and stark cultural divides regarding notions of sacrament, religious practice, addiction, medicine, as well as general differences in worldview. For the NAC, the precariousness of their legal situation is felt strongly, a situation that is exacerbated by diminishing supplies of the cactus in the U.S. and by the appropriation and exploitation of Native American religious practices by non-Natives seeking legal protection to both use and profit from peyote.

The relationship between Native American peoples and peyote is multifaceted, and one that is complicated by conflicts with a Euro-centric legal system. This study examines the major cultural threads at the heart of this human-plant relationship by focusing on: peyote's sacramental and medicinal use; its regulated market exchange; and the various legal controls imposed on peyote, as well as the consequent effects these regulations have on NAC culture and the practice of peyotism.

Background

In the fall of 2004, as a third-year law student at University of Oregon, I enrolled in a course on Religion and the Constitution. The NAC was familiar to me at the time for its distinctive position as the only religious group in the United States afforded an exception to the U.S. Controlled

Substances Act (CSA 1970), a fact that piqued my curiosity as a law student. While the CSA has always carried heavy undertones of moralism, arising as it did out of the 1960s culture wars, its promulgation and advocacy has generally been embedded in notions of health, safety, and combatting criminality. The NAC exemption, however, seemed to expose the moralistic underbelly of the CSA by acknowledging that culture and context may shape the effects (positive or negative) that a particular substance has on society. For the NAC, the federal government *seemed* to accept that peyote was an important religious sacrament that was safe when used within a traditional context. The political situation, however, was far more complex than this, and the legality of peyote – particularly the context of its use – has continued to be a source of controversy in both state and federal courts. All the components of a fascinating research project were present in this unusual legal exemption, prompting my initial research into the NAC within a legal framework.

When researching particular angles for my term paper I discovered an intriguing custody dispute from a small family court in Michigan, between a Native American man and a White woman, where religious use of peyote had become a central issue. In the original custody hearing the father, Jonathan Scott Fowler, a member of the Grand Traverse Band of Ottawa and Chippewa Indians, was granted physical custody with a stipulation "strictly prohibiting [Fowler] from allowing the child [then two-years old] to be given peyote, under any and all circumstances (*Fowler v. Fowler* 2000: 32). As a law student, this case provided several fascinating angles: first, was the issue of religious freedom; the second, and perhaps more important issue, related to the fundamental right of parents to raise children and determine "matters of family life," including religious instruction (*Fowler v. Fowler* 2002: 2). Both issues presented by the case posed cultural challenges and complexities perhaps more befitting the inquiry of an

anthropologist than a law student, however, the case also stood out as an example of the cultural challenges presented to U.S. courts by an ethnically diverse society.

While cultural matters can be introduced and examined in court with the aid of expert witnesses, witness testimony may be insufficient to counteract biases of the judge and jury, or those inherent in the legal system itself. An array of witnesses appeared before the judge during the *Fowler* custody dispute, though no anthropologists were called to testify. Typically, witness expertise on a particular subject is established by the court prior to testimony, however, cultural testimony on the NAC was accepted from a character witness with no established expertise on the NAC or Native American cultures. Inexplicably, the court remarked that the witness "testified, and the court finds as true, that the use of peyote in religious services is a southwestern United States custom and not a custom of the Ottawa or Woodland people" (*Fowler v. Fowler* 2000: 20). Based on this witness's testimony the court went on to make this additional, and telling, declaration:

> It appears to the court that the use of peyote in Native American church services is something that has been imported and may well have been imported for the purpose of avoiding U.S. controlled substance laws rather than for purely religious purposes. (*Fowler v. Fowler* 2000: 2)

An anthropologically trained witness could have corrected erroneous statements about the origins and spread of the NAC and also dispelled dubious assertions regarding the purpose of the peyote exemption, though the bias demonstrated in the judge's eisegesis suggests this may have

been difficult. While uncritically accepting testimony from a non-expert, the same judge would later dismiss the medical testimony of psychiatrist John Halpern, who led an important research study on the effects of peyote on NAC member health (Halpern *et al*. 2005), for allowing his "sympathy and even love for Native Americans to cloud his testimony" (*Fowler v. Fowler* 2003: 15).

The most significant testimony, which came from an NAC Road Man (an individual who leads peyote ceremonies), was given some credence, though important elements were overlooked by the court. The Road Man, J. D. Gibson, Jr., testified that "the ingestion or consumption of the [peyote] tea and paste by children is guided and determined by the parents who carefully consider the desire, spirituality, and maturity of the child" (*Fowler v. Fowler* 2003: 4). Despite Gibson's testimony that the introduction of peyote to a child is a family decision made on an individual basis, and with consideration of the child's age and maturity, the court appeared to press the father to declare that he either would or would not give peyote to his child at a specific age. The father, who gave conflicting responses to the court, was found to be "insincere" in his desire to have his son partake of the peyote sacrament during religious ceremonies (*Fowler v. Fowler* 2003: page 21).

Ultimately, the court avoided setting a specific age when peyote could be introduced to the child, but suggested "he should be at least sixteen years of age before he partakes of peyote," and should only do so with the consent of both parents (*Fowler v. Fowler* 2003: 29). While custody disputes are inherently complex, particularly when parents of different cultural backgrounds are involved, the court approached this case with apparent misconceptions regarding peyote and its sacramental use by the NAC, and drew inappropriate parallels between peyote and drugs of abuse.

Cases like this compelled me to consider the ways in which the legal system, despite certain allowances like the peyote exemption, applies pressure on minority groups to conform to Euro-centric cultural norms, thereby marginalizing minority cultures and traditions. Regardless of the "neutrality" of laws such as the Controlled Substances Act (see *Employment Division v. Smith* 1990), many statutes and regulations have disparate impacts on communities with divergent worldviews and traditions. The coercive nature of law may force particular communities to either adapt or discontinue practices that put them in the crosshairs of the law, and thus may cause cultural changes that could have unforeseen consequences in the affected community.

My initial research on the NAC revealed a major nexus between law and culture. I became acutely interested in understanding the ways in which the law prompts cultural change, how affected communities respond to regulations at odds with their cultural traditions, and whether long-term positive or negative impacts in these communities could be connected to culturally coercive laws and regulations. My return to graduate school to study anthropology provided me the opportunity to tackle some of these questions, and to pursue my research on the NAC from a culture-oriented approach.

Dissertation Structure & Content

The three chapters that make up the core of this dissertation were written as individual publications, each addressing different aspects of the unique human-plant relationship at the center of the NAC. While there is some overlap in content, when taken together these chapters offer a complementary and wide-ranging exploration of the multifaceted, and often complex, relationship between peyote and NAC members. This investigation begins with an examination

of peyote's role as a holy medicine, then continues to an analysis of the legal confines of the current religious exemption and, finally, addresses the relationships and regulations that shape the long-standing trade in peyote between Hispanic and Native Americans in South Texas. A brief description of each chapter follows.

In Chapter 2, I address the esteemed position of peyote as a holy medicine within the NAC. For many Native Americans health and spirituality are decidedly related, and there is no sharp distinction between these two realms, as is often found in Western cultures. This relationship between health and spirituality is readily apparent in the use of peyote as medicine. Chapter 2 outlines a model of therapeutic action to explain how the symbolic, ritual, and community components of the peyote ceremony combine with peyote's distinctive pharmacological properties to produce a unique and efficacious healing experience. In doing so, Chapter 2 examines the mythic world that contextualizes the peyote ceremony as well as important structures and elements inherent in the ritual practice of peyotism. The chapter explores several testimonial accounts of healings, which are reviewed and explained within the framework of the proposed therapeutic model. This chapter's investigation of peyote's therapeutic value helps to highlight the significance of peyote's religious use, as well as to contextualize the cultural implications of legal restrictions and market scarcity, which are discussed in the chapters that follow.

Chapter 3 offers an analysis of the legal issues confronting the NAC, and demonstrates how the law has encouraged self-policing of NAC membership, thus contributing to significant tensions and divisions within the NAC regarding race, tribal enrollment, as well as religious participation. Specifically, the federal peyote exemption is examined in light of the special *Trust* relationship between Native American tribes and the federal government, with a specific

emphasis on racial implications arising out of the exemption – an exemption frequently interpreted as applying only to members of federally recognized tribes with a twenty-five percent "Indian" blood quantum. The chapter concludes with an exploration of the potential impacts of government imposed restrictions (both federal and tribal) on the future of the NAC, and includes several recommendations for tailoring the peyote exemption in a manner that rationally and reasonably furthers the federal government's *Trust*-based goal of cultural preservation without dividing the NAC along narrow tribal and ethnic lines.

Chapter 4 examines the peyote trade, which has been regulated by the federal government and the state of Texas since the 1960s, as well as the relationship between NAC members and Hispanic peyote distributors. The chapter applies Access Mapping and Access Analysis to the peyote supply network in order to identify weaknesses that might explain declines in market participation and sales that have occurred in the regulated trade during the last 40 years. A map of the peyote supply network is constructed based on interviews with current and former peyote distributors, peyote pickers, landowners, and NAC members. Avenues for rectifying access deficiencies in the peyote supply network are considered, including amendment of distributor licensing fees, and peyote cultivation, which is explored as a potential extra-market access point for the NAC.

These individual chapters bring together diverse threads of inquiry, including threads of religion, medicine, market exchange and law, to demonstrate the complex ethnobotanical relationship at the heart of the NAC, and hopefully provide some insight into the power and cultural significance of this enduring association.

A Note on Nomenclature

Native American and *American Indian* are both terms that are used in the following pages to refer to the various peoples native to territories that now constitute the continental United States. The term *Native American* has been widely adopted within academia, and within the field of anthropology more specifically, as a term that is more politically correct and one that eliminates the historical error of equating indigenous Americans with peoples from the Indian sub-continent. However, *Native American* is a term that is rejected by a number of indigenous Americans as another label imposed by White academics, and other cultural outsiders, and which is seen as diminishing the power of indigenous peoples to self-identify (Blackhorse 2015; Native Sun News 2015). Not surprisingly, many indigenous Americans prefer to identify themselves by their specific tribe, though many will also use terms such as "Indian" or "Native," depending on personal preference.

Rather than adopting a new term, such as Indigenous American, I have chosen to adhere to the conventional terms *Native American* and *American Indian*, and to refer to specific tribal identities when I discuss specific groups. As my legal education preceded my anthropological studies, I was trained to use the terms *Indian* and *American Indian*, the terms generally used in federal statutes, regulations, and treaties. I was later disabused of the use of these terms by several editors and peer reviewers, and so have adopted the term *Native American* unless the topic of the paper is such that use of *American Indian* is more appropriate. Here, *American Indian* is used as the term of choice in Chapter 3, which includes in-depth discussions of Constitutional, statutory, and case law, while *Native American* is used in the remaining chapters. I raise the issue of terminology here, not only to clarify my use of these terms in the following chapters, but also to highlight that both of these *conventional* terms remain problematic.

CHAPTER TWO

PEYOTE AS MEDICINE: AN EXAMINATION OF THERAPEUTIC FACTORS THAT CONTRIBUTE TO HEALING

Curare, Peyote as Medicine: An Examination of Therapeutic Factors that Contribute to Healing, Vol. 37(3), 2014, pp. 195-211, Kevin Michael Feeney
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The therapeutic value of particular "hallucinogenic" plants is recognized by various cultures throughout the globe, with evidence suggesting that the medical and ritual use of these plants may date back several millennia in some instances (Schultes & Hofmann 1992). Peyote (*Lophophora williamsii* (Lem.) Coult.), a psychoactive cactus occurring only in the United States and Mexico, is just one example of such a plant. Archaeological evidence indicates that the unique properties of peyote have been recognized and revered by indigenous Americans for thousands of years (El-Seedi *et al*. 2005; Terry *et al*. 2006), and modern peoples continue to use the cactus as a religious sacrament, including the Huichol, Tarahumara, and members of the Native American Church (NAC). Among Native American peyotists (adherents of the peyote religion) peyote is considered a sacrament and a deity, and is highly regarded as both a physical and spiritual medicine.

Belief in peyote's healing properties is emphasized by the prevalence of terms used for peyote, found among the numerous different languages spoken by peyotists, which roughly translate as "medicine."[1] Perhaps the most well-known therapeutic application of peyote is in the treatment of alcoholism (Albaugh & Anderson 1974; Garrity 2000; Hill 2013; Kunitz & Levy

1994; Pascarosa & Futterman 1976), for which it has developed a substantial reputation among Native Americans. Interestingly, use of peyote on the Navajo Reservation for the treatment of alcoholism is recognized and sanctioned by Indian Health Services, a division of the U.S. Department of Health and Human Services (Kunitz & Levy 1994: 202), despite being listed in the United States as a Schedule I controlled substance – a categorization signifying drugs with no medical value and a high potential for abuse (Controlled Substances Act 1970).

The notion that hallucinogenic compounds may have therapeutic applications is a foreign concept for most in the West; however, it is a notion that is increasingly supported by current scientific research (Grob *et al*. 2011; Hendricks *et al*. 2014; Moreno & Delgado 1997; Morris 2008; Sewell *et al*. 2006; Winkelman & Roberts 2007). For peyotists, the health benefits of peyote when used in ceremony are above all psycho-spiritual and primarily used to address issues of an emotional, psychological, or behavioral nature (Calabrese 2007; Hill 1990), though peyote may also be used to treat a variety of physical ailments, including: bruises, burns, snakebites, fever, pneumonia, tuberculosis, rheumatism, and venereal disease (La Barre 1947; Schultes 1938). While a precise understanding of the mechanisms that contribute to peyote's therapeutic efficacy has not been conclusively outlined,[2] studies so far support the purported benefits of peyote, when used within a traditional ceremonial context (Albaugh & Anderson 1974; Calabrese 2013; Garrity 2000; Kunitz & Levy 1994; Pascarosa & Futterman 1976).

Despite the heavy focus of Western biomedicine on pharmacology, the therapeutic value of peyote must be understood in holistic terms; accounting not only for pharmacology, but also examining context and meaning in the healing process. It is my aim to outline a model of therapeutic action that accounts for both pharmacological and extra-pharmacological factors in order to explain the efficaciousness of peyote ceremonies in treating alcoholism, as well as other

afflictions of both a physical and psycho-spiritual nature. Before delineating this model, however, it is necessary to provide a context for understanding health and wellness in a manner that goes beyond the narrow parameters typically employed by Western biomedical models.

Understanding Health & Wellness

Over the past century Western medicine has come to be dominated by an almost singular focus on drug treatment as a medical model. While there is still space for psychotherapy, medical conditions like depression, which have traditionally been relegated to the realm of talk therapy, are increasingly being treated with psychiatric medications. Although pharmacologically active substances can act as powerful medicines, the overwhelming import on drugs comes at great cost to relational interaction, emotional involvement, individual responsibility, and personal meaning in the healing process. Even though the biomedical model, with its Cartesian Dualism, is distinctive among the world's medical systems, it is one that is firmly entrenched in the West, and one that is also encroaching upon other, more holistic, ethnomedical models. With the increasing infringement and pressure on traditional ethnomedicines it is necessary to understand where the biomedical model falls short, and to understand how and why some ethnomedical models succeed in areas where the biomedical model breaks down.

Typically, explanations for compromised health in the biomedical model are sought in the physical and biological realms. For example, one may be diagnosed as having a virus, a broken bone, or a bacterial infection. Cross-culturally, however, the experiences of health and its absence are more complex. People may suffer depression, anxiety, or other symptoms and disabilities that defy explanation in the biomedical approach, but which are nevertheless experienced by the individual as very real and potentially disabling ailments. In light of this

reality, we can separate our understanding of compromised health into two closely interrelated concepts: disease and illness. Disease is the more "objective" or "specific" of the two concepts, and can be defined as "an alteration in biological structure or functioning" leading to compromised health (Kleinman 1988: 5). Disease is typically the focus of the biomedical model, but does not encompass all states of compromised health. Illness, in contrast to disease, refers more generally to the subjective "experience of symptoms and suffering" (Kleinman 1988: 3). Disease and illness are often experienced simultaneously, but not under all circumstances.

Illness is problematic for the biomedical model because its origins and causes are often non-specific, symptoms may be indefinite, and the course and progression of an illness may be affected by cultural and personal belief systems, as opposed to clear measurable biological processes (Helman 2007; Kleinman 1988; Moerman 2002). To the biomedical professional illness may be perceived as imaginary, a diagnosis that is sure to break trust with patients, and which also ignores very real experiences of suffering. Perhaps the best illustrations of illness can be found in what are known as culture bound syndromes (CBS), or culture bound disorders. CBS conditions are those that occur only in specific cultures, and which "often condense wider social and cultural concerns into a single diagnostic image or metaphor" (Helman 2007: 267). One example would be *Susto*, or *Fright*, a condition common in Latin America with symptoms similar to PTSD, which is believed to be caused by the soul, or part of the soul, being frightened out of the body (Rubel, O'Nell & Collado-Ardon 1991). *Anorexia nervosa* and *bulimia*, eating disorders associated with self-esteem and body image, could be considered Western examples of CBS conditions as they are typically found in Western countries and tend to involve culturally specific understandings of the body. These disorders can help to illustrate how illness can lead to

disease. For instance, frequent vomiting associated with *bulimia* may lead to dental decay or to throat or mouth cancers – clear "alterations" in biological integrity.

The concepts of disease and illness are meant to illustrate the different ways that states of compromised health can be understood, and also to illustrate that health is affected not only by specific physical changes in the body, but also by non-specific mechanisms that may arise from a particular worldview, cultural beliefs, values, or other systems of meaning. More important is the relationship between the two concepts, and the reality that disease may lead to specific expressions of illness, and likewise, that illness may also lead to disease. The close relationship between these two states of being unwell requires an approach to health and healing that addresses both expressions of infirmity simultaneously.

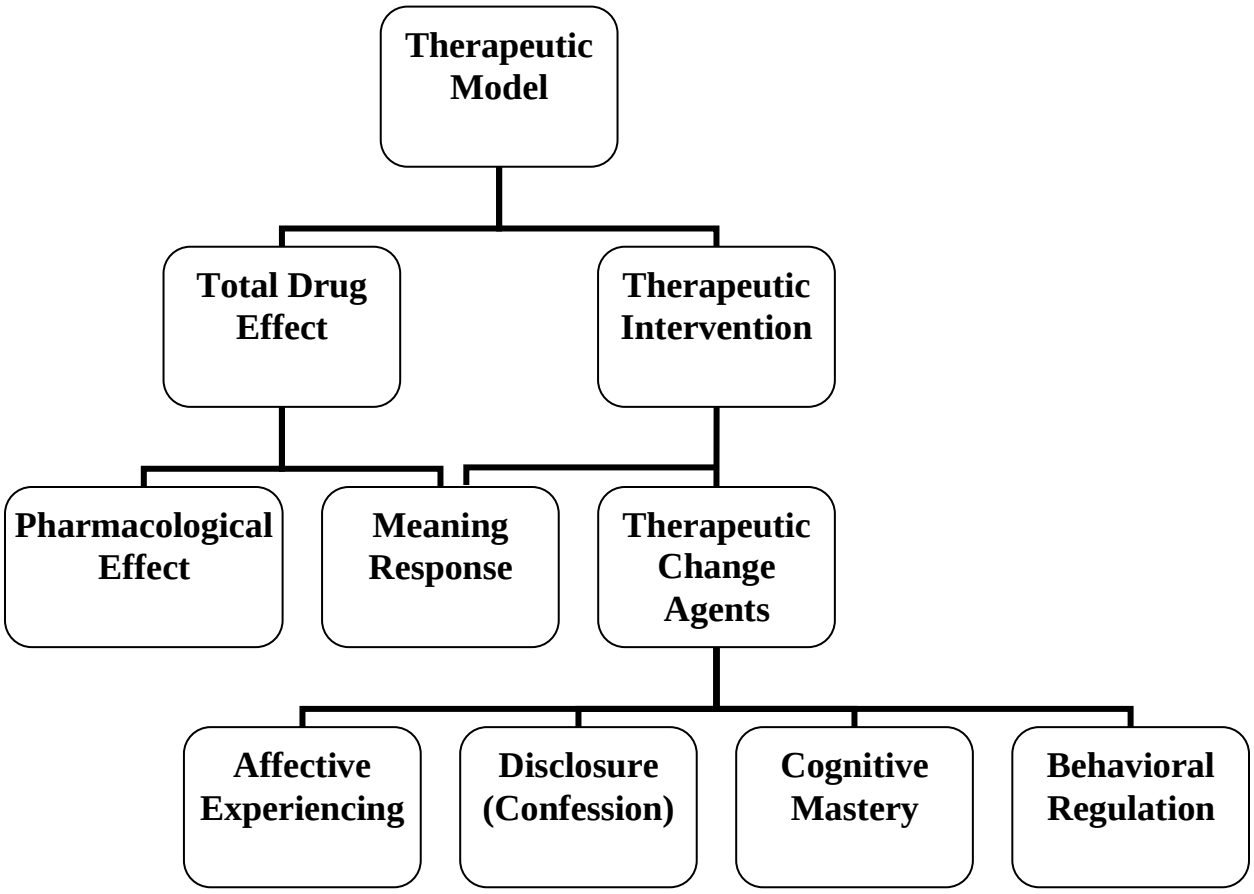
When it comes to treating disease and illness there are three general processes at play that impact health outcomes (Moerman 2002). First is the body's natural immunological response to states of disequilibrium in the body. These immunological processes are always at work, regardless of any specific treatments that are administered, and ultimately must share responsibility for any gains in health. Second, are specific biological and physiological responses to medical treatments, such as physical manipulation (ie: surgery) and drug administration or prescription. Third, are meaning responses that may be stimulated by personal interactions with a doctor or healer, by the context within which healing takes place, or by other symbolic factors. Recognizing that all three of these processes contribute to healing, it can be surmised that medical treatments that adopt and incorporate each of these processes (the first being a given) are likely to achieve higher success rates in restoring health than methods that focus on the second approach alone.

The peyote ceremony of the NAC can be seen as a therapeutic practice that effectively elicits both physiological and meaning responses in its participants. Below I will outline a model of therapeutic action to explain the structure of the NAC peyote ceremony,[3] as well as the various elements of the ritual, and illustrate how these elements ultimately combine to produce positive therapeutic outcomes for ceremony participants.

Proposed Model of Therapeutic Action

The proposed model begins by branching into two separate modes of treatment (Figure 2.1), both present in the NAC peyote ceremony. The first mode, here referred to as the *Total Drug Effect*, elicits both physiological and meaning responses, a fact often overlooked by medical professionals when administering or prescribing drugs. The second mode, *Therapeutic Intervention*, includes several techniques for actively involving patients in the healing process in ways that are both meaningful and empowering. Meaning, or what is described as the *Meaning Response* in the proposed model, is an essential component in both of these modes of treatment.

Figure 2.1. Proposed Model of Therapeutic Action.



The *Total Drug Effect*, first proposed by Gordon Claridge in 1970, encompasses the gamut of therapeutic outcomes that are associated with any given drug or medication, only a part of which can be attributed to pharmacological activity. Clinical studies have shown that many drugs exhibit extra-pharmacological therapeutic effects, effects which cannot be attributed to the individual pharmacology of the drug in question. These effects have generally been explained in terms of the "placebo effect," however, use of the term "placebo" is misleading as it implies that a substance is pharmacologically inert, whereas the phrase "placebo effect" actually implies the opposite, that placebos (inert substances) impact therapeutic outcomes.

In reviews of the "placebo effect," Beecher (1955) concluded that 35% of drug effectiveness could be attributed to the placebo phenomenon. Others have concluded that this effect may be much higher, accounting for 30 to 60% of a particular medication's effectiveness (Frank 1975). In order to clarify the significance of this effect, Moerman (1979: 62) explained that "if a placebo is 60% as effective as the active medication with which it is compared, then 60% of the effectiveness of a dose of the drug is due not to the active ingredients, but to the act of medication itself." But what is it about the mere act of medication that could explain the enhanced efficacy of a particular drug? Moerman and Jonas (2002) suggest that patients are responding to particular cues during the medication process that convey particular meanings, or messages, about the healing process. For these reasons Moerman and Jonas have adopted the phrase *Meaning Response* to describe this extra-pharmacological phenomenon, the significance of which is considerable. Following their lead, I employ the concept of *Meaning Response* as opposed to "placebo effect" in the proposed model; however, it remains necessary to use the phrase "placebo effect" in reference to much of the literature.

By combining the work of Claridge with Moerman and Jonas we are provided with the concept of the *Total Drug Effect*, which can be separated into the specific pharmacological activity of the drug in question and the *Meaning Response*, which is elicited by a number of significant contextual factors present during the administration and or prescription of the drug. While the term *Meaning Response* comes from Moerman and Jonas (2002), Claridge (1970) succinctly identified four contextual factors that influence how a patient responds to any particular medication. These factors include: (1) the individual *attributes of the drug*, including: taste, color, shape, and name; (2) *attributes of the recipient* (patient), including: age, personality, experience, and expectation; (3) *attributes of the healer* (physician), including: attitudes, status, authority, and personality; and (4) the physical *setting* or micro-context, where the drug is administered (ie: doctor's office, lab, home, party, etc.). To this Cecil Helman (2001) has subsequently proposed including a fifth factor, the *macro-context*, which refers to the moral and cultural values attributed to a particular drug, and the more general cultural milieu within which the drug is taken. Within these factors one can find elements of Timothy Leary's principles of "Set and Setting" (Leary 1966; Leary, Litwin & Metzner 1963; Leary, Metzner &Alpert 2000), however, the factors identified above (Figure 2.2) are used here for the higher level of precision and clarity they provide in understanding how context elicits meaning in the patient, thereby influencing the ultimate effects of the drug administered.

Figure 2.2.

Five elements of the *Meaning Response*.
1. Drug Attributes 2. Patient Attributes 3. Doctor (*Healer*) Attributes 4. Setting (*Micro-context*) 5. Macro-Context

The first factor, *drug attributes*, refers generally to "the form of medicines, their color, shape, and amount" (Moerman 2002: 47). Each of these attributes has the potential to convey particular meanings to the consumer, meanings which may influence how the consumer experiences the effect of the drug. In a study by Blackwell, Bloomfield, and Buncher (1972), the researchers found that study participants taking two placebo pills reported a higher degree of therapeutic effect than participants receiving only one pill. This suggests a possible unconscious expectation among participants that two pills will be twice as effective as one. Similarly, subjects receiving placebo injections reported higher therapeutic responses than those receiving placebo pills, perhaps indicating a cultural perception that injected drugs are stronger than those administered orally.

Another interesting finding by Blackwell *et al*. (1972) was that the color of placebo pills had an effect on how participants perceived and experienced a "drug's" physiological action. Participants receiving red placebo pills tended to report stimulating effects, while participants receiving blue placebo pills were more likely to report a sedative response. Additional studies have also found a correlation between hot colors and the experience of stimulation, as well as correlations between cool colored pills and sedative/hypnotic effects (De Craen *et al*. 1996). But, it is not only physical attributes of a drug that have an impact on experienced effects. In another study, Shiv, Carmon and Ariely (2005: 384) found that "features that are not inherent to a product, such as its price, can also trigger a placebo effect." Here we might speculate that subjects have unconsciously made a correlation between price and the quality of the product consumed. While more studies are necessary, it appears clear that particular attributes of drugs convey certain meanings to their consumers, and that these meanings contribute to how a drug is ultimately experienced.

The second factor, *attributes of the recipient/consumer*, generally refers to the individual's attitudes towards and knowledge of the drug in question, and his/her expectations about the drug experience. At one time it was believed that "placebo-reactors," individuals with a propensity to respond to placebo treatments, could be identified based on particular personality or psychological characteristics, however, attempts to identify such characteristics have been unsuccessful (Gryll & Katahn 1978; Moerman 2009; Shapiro 1971; Shapiro *et al*. 1968). Instead, it is the individual's knowledge and expectation that are of primary importance in this factor. In a study by Amanzio *et al*. (2001), it was found that secret administration of a painkiller via injection was less effective than when administered with the patient's knowledge, suggesting that the patient's awareness of the treatment was significant in shaping expectations and influencing the effectiveness of the treatment.

The third factor, *attributes of the healer/physician*, refers generally to the attitudes, status, authority, and personality of the healer. To test the effect of the *healer* on therapeutic outcomes Gracely *et al*. (1985) constructed a double-blind study on the pain-killing properties of placebos (see also Moerman 2009). The study involved dental patients receiving extractions of molars. These patients were split into two groups. Each group of patients was informed that they would receive one of three possible treatments; they would either receive (1) a placebo (saline); (2) a narcotic analgesic (fentanyl); or (3) a narcotic antagonist (naloxone). The clinicians administering the treatment, however, were informed that only the second group had the potential to receive fentanyl. Knowing that fentanyl *might* be provided to the second group, the clinicians were more enthusiastic about the potential effectiveness of treatment. Patients receiving the placebo in this group responded significantly better to treatment than patients

receiving placebo in the first group, leading to the conclusion that the character and behavior of the *healer* contributed significantly to patient responses to placebo treatment.

A further illustration of the power of the *healer* concerns a study on LSD conducted in the 1960s, in which a psychiatrist informed one test subject that he would likely have an unpleasant experience (Krippner 1970). As the effects of LSD began to manifest the psychiatrist began to probe the subject for information on how much anxiety he was experiencing. The subject subsequently entered a state of panic and ultimately had a "terrible" experience, as predicted by the researcher. Had the psychiatrist behaved differently, the experience of the subject might have been drastically different, regardless of any personal characteristics of the individual subject. These two examples show how the *healer* can potentially have both positive and negative impacts on therapeutic outcomes.

The fourth factor, *setting*, refers to the physical and social environment in which the treatment or drug administration takes place. The basic premise behind *setting* is that the manner in which a patient (drug-recipient) responds to a drug will vary depending on the *setting* in which the drug is administered and/or experienced. A home environment may put an otherwise anxious patient at ease whereas a hospital environment may provide a particular treatment with an extra air of authority that may be helpful in treating cynical patients. Within these various environments different objects, props, and symbols may also be found, objects which contribute to the character of the *setting* and how it is experienced by the patient. Symbols can be used not only to "create an appropriate ambience" but also "to transmit important information to [patients]…about the healer, the techniques [to be used]… and cultural sources of the healing power" (Helman 2001: 6). For example, the doctor's white coat and stethoscope may be

symbolic of his medical training and expertise and may help instill faith and trust in his patients (Helman 2001).

Another important component of setting is the social atmosphere, or the presence of people. In a study by Leary, Litwin, and Metzner (1963), it was observed that the presence of other individuals during drug treatment appeared to influence participant responses to the administered substance (in this case psilocybin). Two factors that stood out about the social component of a particular *setting* were the size of the group, and also the degree of familiarity between the participant (*patient*) and those present. Additional environmental features that might contribute to a patient's experience include visual, auditory, olfactory, and tactile stimuli (Benedetti 2002).

The fifth factor, *macro-context*, "refers to the wider social, cultural and economic milieu in which prescribing, and ingestion, take place" (Helman 2001: 5). This *macro-context* includes broad cultural understandings of health, causes of disease and illness, and beliefs about how health is restored. More specifically, Helman posits that, within a particular *macro-context*, the patient, the healer, the patient's family members, and the broader community will tend to share common understandings about health and the efficacy of particular drugs and medical practices. This creates a community of belief, which may minimize doubt in the patient and may also help to create an optimistic support network among friends and family.

The cultural beliefs and values that underlie the use of a particular substance are also important. Whether a drug is stigmatized, like pain-killers and anti-depressants in the West, or perceived as being on the cutting edge of medicine, widespread cultural attitudes about specific drugs provide a backdrop against which the patient experiences drug therapy, and may influence how a patient ultimately responds to treatment. Each of the above five factors contribute to the

Meaning Response in patients, potentially influencing a substances perceived efficacy as well as therapeutic outcomes. The function of the *Meaning Response* is essential to understanding the *Total Drug Effect*, and when understood and applied appropriately can be used to enhance the effectiveness of particular medications.

The second branch of the proposed therapeutic model (Figure 2.1) is *Therapeutic Intervention*. In the Western medical context drug administration and therapeutic intervention have been separated into distinct professions, with drugs being in the province of medical doctors and psychiatrists, while therapeutic intervention is relegated to the professional realm of psychologists and talk therapists. This is a peculiarity of the Western biomedical system, and tends to be the exception rather than the rule when considering the spectrum of global ethnomedicines (Erickson 2008). The concept of the *Meaning Response*, discussed above, is also a significant factor when considering the effectiveness of therapeutic intervention. *Attributes of the recipient* and the *healer*, and the *micro-* and *macro-contexts* within which a therapeutic intervention take place remain highly relevant to treatment outcomes regardless of whether pharmacological agents are administered. The focus here, however, is on the particular methods employed in therapeutic interventions.

What I mean by *Therapeutic Intervention* requires fleshing out. Here I refer to the work of Karasu (1986), who has identified three non-specific agents of therapeutic change common to most modern varieties of psychotherapy. The first therapeutic change agent Karasu identified is that of *Affective Experiencing*. *Affective Experiencing* is the stimulation of emotional arousal in the patient, creating a state in which the patient has an increased receptivity to suggestion and heightened levels of acceptance. The benefit here is that patients' defenses are lowered and the individual becomes more receptive to reflection and new cognitive input. Generally, states of

high emotional arousal are difficult to sustain, and lasting therapeutic benefit requires repeated interventions at this level. According to Karasu, therapy involving the use of *Affective Experiencing* is most effective when combined with *Cognitive Mastery*, the second agent of therapeutic change in his model.

Cognitive Mastery involves the "acquisition and integration of new perceptions, thinking patterns, and/or self-awareness" (Karasu 1986: 691). This requires working within a patient's worldview in order to help patients understand their behavior and attitudes and how these factors affect themselves and the people around them. This worldview may also be a "mythic world," and through the manipulation of concepts and symbols a therapist (*healer*) can assist a patient to re-organize thoughts and attitudes through a process known as "symbolic healing" (Dow 1986). Symbolic healing, as elaborated by Helman (2001; 2007), provides a succinct and practical framework for exploring the function of *Cognitive Mastery* in the therapeutic process, and will be used as a model for exploring this important step.

Central to the process of symbolic healing is the need for a shared mythic world between the patient and healer. With this mythic world as a foundation, the healer seeks to convince the patient that his or her ailment can be explained in terms of this shared mythic world. This process is described in the literature as activating the "symbolic bridge" (Helman 2001; 2007; Kleinman 1988) because it allows the healer to bridge, or connect, cultural meanings and symbols with the patient's physiological processes and personal experiences. However, for therapeutic change to occur the patient must become personally and emotionally invested in the symbols of the healer.

Once the mythic world is established between patient and healer, and after the patient has become invested in a set of symbols chosen by the healer, the symbols can then be manipulated in order to affect personal transformations in the patient. If therapy is effective, the "healed

patient acquires a new way of conceptualizing their experience in symbolic terms" (Helman 2007: 275), and the patient emerges with a new narrative for understanding his or her experiences with sickness and recovery.

A similar, but slightly different approach to *Cognitive Mastery* can be found in a process referred to as "narrative" or "therapeutic emplotment." Therapeutic emplotment has been described as "the interpretive activity, present in clinical encounters, through which clinicians and patients create and negotiate 'a plot structure within clinical time, one which places particular therapeutic actions within a larger therapeutic story'" (Good *et al*. 1994: 855, *citing* Mattingly 1994). Therapeutic emplotment does not necessarily require a shared symbolic world, or involve the manipulation of symbols, however, in a similar manner it requires the healer "to set a story in motion which is meaningful to the patient" (Mattingly 1994: 814). Thus, both approaches rely on the process of narrative development, a process in which patients engage in developing a new understanding of their illness experience, and which enables patients to re-organize thoughts and attitudes in order to develop a healthier outlook and to focus on positive behavior change. This brings us to the final therapeutic change agent in Karasu's model, *Behavior Regulation*.

The goal of *Behavior Regulation* is to change negative and maladaptive behaviors and to maintain the resulting positive behavior changes. Tools for regulating behavior are acquired and practiced within a supportive therapeutic context, and patients are challenged not only to learn positive behavior habits, but also to identify and learn to self-regulate maladaptive and self-destructive behavior patterns. *Behavior Regulation* is commonly a key component in psychotherapy, but often plays a broader role in the treatment of substance dependence and other compulsive behaviors.

While Karasu's non-specific therapeutic change agents are fairly comprehensive, based as they are on a broad review of different psychotherapy schools, he omitted an important feature common to all talk therapies: *Disclosure*. It is easy to see how something as basic to psychotherapy as disclosure could be overlooked, however, the role of disclosure in the therapeutic process cannot be overstated and should not be ignored. At the most basic level disclosure is speaking; the act of articulating thoughts and emotions. The articulation of one's inner world requires the construction of a narrative around these inner experiences so that they may be conveyed to, and understood by, others. As a result of this narrative process, disclosure may help patient's integrate traumatic events into "existing mental schemes, and thereby enable(d) some assimilation [of the traumatic event] to take place" (Lutgendorf & Antoni 1999: 435). Studies on the health benefits of disclosure have shown a connection between disclosure and improvements in physical and mental health (Kelley, Lumley & Leisen 1997; Lutgendorf & Antoni 1999; Pennebaker & Seagal 1999), and have also shown improvement in immune functioning (Pennebaker *et al*. 1988; Pennebaker & Seagal 1999).

A particular type of disclosure also merits mention: *Confession*. While disclosure may or may not involve the divulging of highly emotional events, personal shame, or transgressions against others, confession is typically characterized by these types of admissions. Murray-Swank *et al*. (2007) have identified four features of spiritual confession which, they argue, help explain the health benefits of this practice. First, they propose that the act of confession reduces guilt and shame surrounding past transgressions or personal failures. Second, that it builds social connections with those present during the confession. Third, that it helps the confessor to establish meaning and coherence out of his or her transgressions. Fourth, and finally, they propose that confession functions as a type of "Impression Management," meaning that through

the act of confession that confessors have the opportunity to positively re-shape the impressions others hold of them in their community. Although Murray-Swank *et al*. focus on "spiritual" confession, when comparing the impacts of written confession on religiously affiliated subjects and on secular subjects they found that "across all participants, psychological distress and guilt decreased over time" (2007: 287), suggesting that *Confession* produces therapeutic results regardless of an individual's spiritual or religious orientation.

Whether *Disclosure* is simply the sharing of internal thoughts and feelings, or whether it involves *Confession* of social transgressions or personal failures, the act of giving voice to and creating a narrative around one's inner experience appears to lead to positive therapeutic outcomes. In the proposed model I have placed *Disclosure* between *Affective Experiencing* and *Cognitive Mastery*. The reason for this placement is twofold: First, the act of disclosure, in the form of confession at least, appears to contribute to emotional arousal which is central to *Affective Experiencing*; and second, and more importantly, disclosure provides the material essential for *Cognitive Mastery* to take place.

Once one recognizes that healing is more complex than merely identifying physical abnormalities and manipulating the body by pharmacological and surgical methods to correct them, it becomes important to understand the role of context, relationships, and the ways in which meaning can be created and manipulated in order to affect therapeutic outcomes. The proposed model, by recognizing extra-pharmacological phenomena and the role of meaning in the healing process, seeks to move beyond the reductionist biomedical model in order to understand the various mechanisms employed to restore health in ethnomedical systems around the world. Before describing how the proposed model can be mapped onto the peyote ceremony

of the Native American Church (NAC), however, a brief description of the ceremony and the mythic world in which it is embedded is necessary.

Peyotism and the Peyote Ceremony

History & Context

The spread of peyotism through the United States is a fairly recent phenomenon and one that is intrinsically linked to the cultural genocide perpetrated against Native Americans during the 19th century (Calabrese 2013; Long 2000; Petrullo 1934; Slotkin 1956). The rapid expansion of peyotism was in large part due to the nature of the reservations established in Oklahoma. Tribes from across the country were forced off their lands onto small reservations, which they often shared with tribes who spoke different languages, had different cultures, and came from very different parts of the United States. While peyotism was unknown to most tribal groups in the early part of the 19th century, the removal of so many disparate tribes to isolated reservations produced circumstances in which numerous tribal groups rapidly accessed, shared and dispersed once remote practices and traditions. At this critical juncture, when many tribes were facing the loss of land, traditions, and way of life, peyotism surfaced as a way to create social and tribal solidarity among the diverse tribes that had been forced together, and at the same time preserve aspects of Native cultures (Long 2000).

While most tribes would never be able to regain lost lifeways, the peyote religion provided an opportunity for Native Americans to re-define themselves in a way that remained distinctly Native. The peyote religion helped establish bonds between different tribal groups and provided Native Americans with something external that provided consistency and continuity in their lives. While some peyotists adopted and adapted elements of Christianity into their peyote

rituals (Petrullo 1934; Steinmetz 1998), the resistance to fully adopting a European religious model of worship allowed Native Americans to maintain a sense of autonomy, and preserve pride by maintaining a more familiar and culturally suitable model of worship and prayer.

The origins of peyotism as a pan-Indian religious movement had the Ghost Dance as its contemporary. Both were viewed as subversive movements by the government, but while the Ghost Dance was aggressive and combative, the peyote movement was pacifist, focused on healing and building unity between tribes (Long 2000; Slotkin 1956). As a pan-Indian movement, with various tribes adopting the practice at different times, there are various stories explaining the origins of the peyote religion – although they all share certain similarities. The origin story is essential to understanding the mythic world surrounding peyotism. James Mooney (1897) collected the following Kiowa peyote origin myth:

> Two young men had gone upon a war expedition to the far south. They did not return at the expected time, and after long waiting their sister, according to Indian custom, retired alone to the hills to bewail their death. Worn out with grief and weeping, as night came on she was unable to get back to the camp and lay down where she was. In her dreams the peyote spirit came to her and said: "You wail for your brothers, but they still live. In the morning look, and where your head now rests, you will find that which will restore them to you." The spirit then gave her farther instruction and was gone. With daylight she arose, and on looking where she had slept found peyote, which she dug up and took back with her to camp.

> Here she summoned the priests of the tribe, to whom she told her vision and delivered the instructions which she had received from the spirit. Under her direction the sacred tipi was set up with its crescent mound, and the old men entered and said the prayers and sang the songs and ate the peyote – which seems to have been miraculously multiplied – until daylight, when they saw in their visions a picture of the two young warriors, wandering on foot and hungry in the far off passes of the Sierra Madre. A strong party was organized to penetrate the enemy's country, and after many days the young men were found and restored to their people. Since then the peyote is eaten by the Indians with song and prayer that they may see visions and know inspiration… (Slotkin 1956: 22-3, *citing* Mooney 1897: 330)

While the story is open for interpretation it is likely that the backdrop of cultural genocide plays an important role in this origin myth (Calabrese 2013). Although the story discusses war with a neighboring tribe in the Sierra Madre, likely referring to the Occidental or Oriental, symbolically the story can be seen as a reflection of the conflict between Native Americans and the federal government during the western expansion of the United States. Many young men died fighting to protect their people and their traditional territories, and many more children were forced to attend missionary run boarding schools. Those attending boarding schools were often "lost" in a cultural sense, and peyotism was used as a vehicle to retain and promote some semblance of traditional culture during a period when forced acculturation prevailed. Peyotism, through a

fusion of traditional beliefs and practices with elements of Christianity – note the oblique parallel to the miracle of loaves and fishes in the Bible – was used as a way to deal with the trauma caused by cultural genocide and to help establish and provide an identity for many of the youth who, through boarding school experiences, felt they did not belong to White or traditional cultures. In this story, peyote discovers the lost young men and through its teachings is able to reunite the tribe with its youth. Symbolically, this story might be seen as an example of cultural healing, of reintegrating "lost" youth into the life and customs of their people, a service that peyotism provided at the turn of the 20th century and which it continues to provide today (Calabrese 2013; Long 2000; Slotkin 1956).

The Ceremony

Peyote, as the sacrament of the NAC, is at the heart of their religious ceremonies. Peyote is not only considered a medicine but also an omniscient spiritual entity that acts as healer, guardian, and messenger between humans and the Creator (Calabrese 2013), and thus plays multiple roles in the ceremony. Peyote meetings are held for prayer, meditation, and healing, and generally follow one of two ritual formats: one is known as the Half-Moon ceremony or the Comanche Way; and the other is known as the Cross-Fire ceremony (La Barre 2011; Long 2000; Maroukis 2010). Below I will briefly discuss the Half-Moon ceremony, which must be initiated by presenting a Road Man[4] with sacred tobacco (Rhine *et al*. 1993; Smith & Snake 1996).

To prepare for the Half-Moon ceremony a tipi must be erected with great care and pride so that it is presentable to the Great Spirit. The tipi can be seen as a representation of the womb, within which a rebirth experience takes place as symbolized by the coming of the dawn and the emergence of participants from the "womb" at the end of the ceremony to greet the new day

(Calabrese 2013). Inside the tipi an altar of fresh earth is created in the shape of a crescent moon, abutting the fireplace. The crescent moon represents liminality and transition. The peyote road, traced across the top of the crescent altar, represents the road of life and guides participants simultaneously down a virtuous path and a path back to the earthly plane from the spirit world (Rhine *et al*. 1993; Smith & Snake 1996).

A large peyote button with thirteen ribs, generally referred to as the "Chief" or "Father" peyote, is placed upon the altar. During the ceremony the Road Man will direct the attention of participants towards the Chief Peyote, in order to maintain focus. Prayers may be directed towards the Chief Peyote, or may be directed towards the fire through use of a prayer fan. Smoke from the fire helps carry prayers through the tipi's smoke hole to the Creator. The sacred fire is also the means by which the Great Spirit communicates to the participants, and its flickering flames are considered by some to be the tongue of God (Rhine *et al*. 1993; Smith & Snake 1996).

The night-long ceremony consists of four parts: praying, singing, eating peyote, and quietly contemplating (Anderson 1996; Slotkin 1956). The meeting generally begins at twilight when all enter the tipi. The Road Man usually begins with a prayer before leading into the opening song. Each participant takes turns singing sets of four songs, while the others pray and contemplate. A drummer accompanies each singer. For some the drum is meant to emulate the sound of thunder, but for others the drumbeat represents the heartbeat of new life growing within the womb (Smith & Snake 1996: 90). Peyote is passed among the participants periodically throughout the night and may be consumed as tea, paste, or as fresh or dried buttons. At midnight the Road Man exits the tipi and blows a whistle, made from an eagle's wing bone, to the four directions. Participants are allowed a brief break, and then the ceremony continues until dawn.

During this time, participants have revelations in the form of visions and audible messages from the Great Spirit, or from peyote itself (Albaugh & Anderson 1974; Bittle 1960; Calabrese 2013).

When the sun rises it is time for the Morning Water Ceremony. At this point the Water Woman, who represents the Peyote Woman from the origin myth - as well as the giver of life - brings in a pail of water which is then passed around the circle. Following the Morning Water Ceremony, each participant takes part in the four sacred foods (corn, fruit, meat, and water) before the Quitting Song is sung, and the ceremony officially closes. Peyote, when used in this ceremonial context, is believed to heal spiritual and physical maladies (Anderson 1996; Calabrese 2013; Schultes 1938). Below, I will show how the healing outcomes of the peyote ceremony can be understood in the context of the proposed therapeutic model.

Total Drug Effect

Peyote Pharmacology

To begin our analysis of the therapeutic use of peyote, we start with the *Total Drug Effect*, which comprises the first branch of the proposed model. In order to understand the therapeutic role that peyote plays in the NAC ceremony it is necessary to first understand its unique pharmacology. While peyote has been shown to have some anti-biotic properties (Anderson 1996; Mccleary, Sypherd & Walkington 1960; Rao 1970), no specific medicinal properties have been identified that would account for its therapeutic use in healing ceremonies. Peyote, however, is no placebo and is known to contain over fifty-five different alkaloids (Anderson 1996: 139), the most notable being mescaline, a hallucinogenic compound. Although mescaline is not known to have any direct or specific medical action, the effects of this substance play an important role in the healing traditions of the NAC. Effects of mescaline include heightened emotional arousal,

heightened suggestibility - similar to that produced in hypnotic trance (Sjoberg & Hollister 1965) - and alterations in sensory perception and cognitive processing (Inaba & Cohen 2004). According to Calabrese (1994: 509), "Cognitive, emotional and therapeutic alterations are more valued than perceptual alterations" by the NAC, and it is these essential effects of peyote that enhance the receptivity of participants to the therapeutic structure and purpose of the peyote ceremony.

As peyote is a powerful psychoactive substance, it is worth considering whether its use may produce any negative consequences or reactions that would portend against peyote's therapeutic use. In this regard, three specific studies merit mentioning, two of which were conducted specifically among Navajo peyotists. In 1971, Dr. Robert Bergman published the results of a four-year study focused on adverse reactions to peyote among the Navajo. Bergman (1971: 698) reported finding "almost no acute or chronic emotional disturbance arising from Peyote use." Further, it was estimated that with around 30,000 peyotists on the Navajo Reservation at that time, reporting an average of two peyote ceremonies a month, that there would have been approximately 180,000 ingestions of peyote on the Navajo Reservation during the period of Bergman's study. Halpern *et al*. (2005: 630), in a separate study, conducted mental health evaluations and administered a number of neuropsychological tests to members of the NAC, and similarly concluded that religious peyote use "does not cause residual psychological or neuropsychological deficits." More recently, an analysis was conducted on a series of peyote exposures reported to California Poison Control between the years 1997 and 2008 (Carstairs & Cantrell 2010). Of the 31 cases reported, all were resolved without complications. The study concluded that "most peyote intoxications appear to be mild in nature and are unlikely to produce life-threatening symptoms" (Carstairs & Cantrell 2010: 353).

Peyote and the Meaning Response

Having briefly reviewed peyote's pharmacology we can now examine the role of the *Meaning Response* in shaping the individual's experience of peyote's effects. Of the five elements that contribute to the *Meaning Response* (Figure 2.2), the most important for traditional therapeutic uses of peyote are probably the *attributes of the healer* and the overall *macro-context* of the peyote ritual. The interplay of therapeutic intervention and meaning is also of significant import and, with the exception of *drug attributes*, the considerations for each element discussed below can be similarly applied to the context and function of therapeutic intervention. While some of the elements contributing to the *Meaning Response* are likely more significant than others, each component will be addressed briefly.

The first element of the *Meaning Response* concerns the *attributes of the drug* itself. Peyote is a bitter cactus that is consumed in several forms during peyote ceremonies, including fresh, dried, as a paste, and as a tea. Here, bitterness is probably the most important attribute. Bitterness is often an indicator of alkaloid content, and among many cultures the sensation of bitterness has become associated with healing plants (Brett 1998; Shepard 2004). For strands of peyotism that incorporate elements of Christianity, support for the sacramental use of peyote has been found in such Bible verses as the following: "And they shall eat the flesh in that night, roast with fire, and unleavened bread; and with *bitter herbs* they shall eat it" (Calabrese 2013: 104, *citing* Exodus 12:8; italics mine). The number of peyote buttons consumed may also have symbolic importance. In ceremonies using whole buttons, participants will often begin by consuming four buttons, four being a sacred number that represents the cardinal directions (Smith & Snake 1996). Peyote is also a natural substance believed to be put on earth

by the Creator, indeed as a gift from the Creator, as opposed to a man-made compound, a fact that imbues peyote with spiritual potency and distinguishes it from Western medicines.

The second factor, *attributes of the recipient*, will vary from individual to individual. Here the primary attributes will relate to the individual's faith in the peyote religion, and to his or her belief in the therapeutic power of the peyote cactus. Individuals who have been raised in the Church, or who have been witness to the healing or recovery of family or community members may have a stronger belief in the efficacy of peyote as medicine. Outsiders, such as anthropologists or others, may enter a ceremony (if invited) with doubts that are not held by Church members, doubts which may color their experience of the peyote ceremony and its therapeutic outcomes.

The third element addresses *attributes of the healer*. In the peyote ceremony, the role of *healer* would likely be attributed to the Road Man. The Road Man, generally a respected individual in the community, acts in a supportive role throughout the ceremony and "frequently offers reassurance, verbal suggestions and encouragement" to those in attendance (Pascarosa & Futterman 1976: 216). The Road Man also seeks to maintain each individual's participation in the ceremony's rituals, for example "If a participant begins to stare fixedly into the fire and seems unaware of the others, the road man will speak to him and, if necessary, go to him to pray with him" (Bergman 1971: 698). In addition to the Road Man's knowledge and experience, his role in guiding and supporting participants through the meeting clearly places him in the important role of *healer* in the proposed model.

The fourth element concerns the *setting* of the therapeutic activity. Peyote meetings are generally conducted in a tipi, with the ceremony taking place from dusk to dawn. The *setting* also contains spiritually significant symbols, including the crescent altar, the peyote road traced

across the crest of the altar, the tipi as womb, the Water Woman, and the sacred foods served at the closing of the ceremony. The group context of the meeting is also important, with the group generally comprised of friends, family, and community members and leaders. The group nature of the ceremony, and the supportive role that each member plays, is important for the purpose of spiritual communion and healing.

Finally, we must consider the role of the *macro-context*. The *macro-context* is comprised of the cultural beliefs and values that underlie the use of a particular substance. For example, a common experience of illicit marijuana users is one of paranoia (Inaba & Cohen 2004), an experience which is at least partially due to a cultural context where marijuana use is viewed as deviant, and where the consequences of its use might lead to arrest and incarceration (Erickson *et al*. 2013; Hamilton *et al*. 2013; Zimmer & Morgan 1997). In the context of the Native American Church, however, peyote is a religious sacrament. While rules surrounding peyote use outside of an explicitly ceremonial context vary from congregation to congregation, peyote's ceremonial use within the Church is seen as an ancient and sacred spiritual practice (Smith & Snake 1996). To the peyotist, peyote is not only a medicine, but an omniscient spiritual entity that watches over the people, listens to prayers, and provides guidance through messages and visions, and may act as an intermediary to the Creator (Calabrese 2013). This *macro-context* will clearly exert a very different influence on an individual's "drug" experience than a *macro-context* in which a drug is seen as deviant and dangerous.

While each of these factors will likely bear some influence on a substances perceived efficacy and the resulting therapeutic outcomes, little is known about which factors may weigh most heavily. Despite the influence of each of these factors, the *Meaning Response* can substantially be enhanced by some type of directed therapeutic intervention or process, which is

why I suggest that the *Meaning Response* is an inherent component of both the *Total Drug Effect* and of *Therapeutic Intervention*, and why it is given a central position in the proposed model.

Therapeutic Intervention

The proposed model includes four agents of therapeutic change, each of which can be identified, to varying degrees, within the ceremonial practices of the Native American Church. The first of these, *Affective Experiencing*, is based on the notion that an individual must be emotionally open in order for therapy to be effective. Generally, this emotional openness is produced by creating states of hyper emotional-arousal or emotional investment. While strategies for producing these states differ across particular psychotherapeutic philosophies, a common way to create this type of emotional openness, or vulnerability perhaps, is by inducing a state of exhaustion. Because it is difficult to sustain states of heightened emotional arousal and openness, types of therapy that rely on this method require repeated therapeutic interventions.

In peyote ceremonies the actual pharmacology of peyote contributes significantly to achieving states of emotional openness necessary for positive therapeutic outcomes. One of the primary properties of peyote is to produce states of hyper-emotional arousal, a state which continues for 8 to 12 hours, until the effects of peyote wear off (Inaba & Cohen 2000). Unlike other therapies that rely on emotional arousal for therapeutic work, the use of peyote can sustain states of heightened emotional arousal for long periods of time. In addition to the pharmacological effects of peyote is the context of the peyote ceremony, which is held as an all-night ceremony. Participants remain alert in an upright sitting position, taking turns singing throughout the course of the ceremony, which lasts from sun-down to sun-rise. This ceremonial structure requires a great deal of stamina from participants and also likely contributes to physical

exhaustion, which in turn increases an individual's emotional openness and receptiveness to the therapeutic process (Karasu 1986).

Confession, the second therapeutic change agent, is not a universal component of the peyote ceremony, but is documented among Iowa, Oto, and Winnebago congregations of the NAC (La Barre 2011). Paul Radin once described how Winnebago peyotists would rise from their seats around midnight and "deliver self-accusatory speeches, after which they go around shaking hands with everyone, asking for forgiveness" (Radin 1914: 3). Among Iowa peyotists the process is more formal, with all participants being called upon to confess their sins (La Barre 1996). The act of confession before one's community, before "Father Peyote", and before the Creator, contributes to emotional catharsis (or *Affective Experiencing*) necessary for the healing process (La Barre 1947), and also alleviates guilt and shame by allowing the individual to publicly take ownership of their shortcomings and receive forgiveness from the group. Expressions of resolve to change behavior in front of family, community members, and community leaders, may also help the individual to stick with their resolutions or to seek extra support in doing so (Hill 1990).

The four psychological functions of spiritual confession outlined by Murray-Swank *et al*. (2007): (1) reducing guilt and shame; (2) seeking social connection; (3) seeking meaning and coherence; and (4) impression management; can also be identified in the peyote ceremony and are aptly illustrated by the following statement shared by a recovering alcoholic during a peyote meeting:

> I want to thank you for inviting me and my dad to this meeting. I always enjoy coming over to your place, seeing your family, like

> that. Last year, or nearly two years now, I only came in here to say hello, and then I planned to leave. My dad asked me to bring him over here because he had heard you were having a meeting. Then, when we got here, everyone was in the tepee, and my dad asked me to come in and say something. I came in and sat down but never did say nothing until I drank some medicine. I was kinda scared since I was drinking that very day. And I know this peyote doesn't mix with alcohol. Boy, I started crying and talking about myself. Then I felt good. I have been coming to these meetings ever since then and only been drinking one time in over a year, or nearly two years. (Pascarosa *et al*. 1976: 523)

The speaker discusses his relief following his disclosures to the group, suggesting alleviation of guilt and shame. Although the speaker apparently had standing relationships with many of the individuals present his statement suggests that his bond to the group, and individuals in the group, has grown stronger as indicated by his greater ability to share personal feelings and experiences and by his increased attendance at meetings. His greater ability to share also suggests an enhanced ability to manage and maintain relationships with others. While "seeking meaning and coherence" is a little more difficult to identify in the above statement, the speaker nevertheless demonstrates how the process of opening up in a group environment can give way to emotional out-pouring, and contribute to the creation of a new life narrative and new behavior patterns. Although formal *Confession* is not a uniform component of the peyote meeting, most meetings provide participants with an opportunity to share, or make public prayers, which often

involves the act of *Disclosure*, and similarly contributes to *Affective Experiencing* as well as to developing a narrative foundation to which *Cognitive Mastery* can be applied.

Cognitive Mastery, the third therapeutic change agent, requires the acquisition of new levels of self-awareness as well as acquisition and integrations of new thinking patterns and a new model of the self. The process of *Cognitive Mastery* is supported by *Affective Experiencing*, which creates states of emotional openness, and suggestibility, and also by *Confession/Disclosure*, which provides the biographical content necessary for constructing a healing narrative. *Cognitive Mastery* requires a cognitive model or mythic world that is shared between the *healer* and patient. Within the NAC this model is provided by a shared religious belief system comprised of commonly understood symbols. Several important symbols to the peyote ceremony include the crescent shaped altar, as well as the symbol of the peyote road, typically traced across the top of the altar. As stated earlier, the crescent altar is a liminal symbol reflecting the transitional phase of the crescent moon. At the heart of this symbol is the concept of transformation, also symbolized by the tipi as womb, which can be seen as facilitating the process of re-birth during the night long ceremony. The idea of transformation is further illustrated by the symbol of the "peyote road," a symbol which reflects the path towards an honest and virtuous life. The following case report, collected by Bernard J. Albaugh and Philip O. Anderson (1974), helps provide an illustration of how these symbols can play an important role in creating self-awareness, and developing new thinking patterns:

> One member of the NAC related an event that had occurred during a peyote meeting several years before when he was attempting to resolve his long-time drinking problem. During the meeting, a tiny

> man appeared to walk out of the ceremonial fire and up the side of the low, crescent-shaped, earthen altar to the center of the "peyote road" that is drawn along the top of the altar. The tiny man paused for a long time as if he were trying to decide in which direction to walk. The tiny man finally took the path that led him to the way of the peyote religion rather than the path that led to a continuation of drinking. The patient interpreted this vision as an omen indicating that he should no longer continue drinking but should return to the peyote religion from which he had strayed. This was a turning point in his life. (Albaugh & Anderson 1974:1249)

A shared mythic world and common understanding of symbols allows both the healer and patient to use symbols in order to understand emotional and spiritual afflictions, and allows symbols to be manipulated in a way that permits patients to construct a therapeutic narrative, like the one cited above, that can be used to positively change and shape future behavior and attitudes.

While *Affective Experiencing* creates openness in patients to the therapeutic process and *Confession* combined with *Cognitive Mastery* can help patients find new ways of understanding their problems, the ultimate therapeutic goal is often behavior change, which requires some form of *Behavior Regulation*, the final therapeutic change agent. *Behavior Regulation* involves encouraging individuals to modify behavior in positive ways and teaching them techniques of self-regulation. Often these individual achievements are then reinforced through repetition, or by social support networks. Within the peyote ceremony self-regulation is important in the form of discipline and through following ritual protocols. It is generally believed among peyotists that

alcohol and peyote don't mix, and use of alcohol is forbidden in the day preceding the ceremony (Hill 1990). The ceremony requires participants to remain alert in a sitting position throughout the night, with one break at midnight for participants to stretch and relieve themselves (Smith & Snake 1996). Each individual also carries responsibilities as a participant, with each individual taking turns singing throughout the night. In this way, there is a degree of discipline that is demanded of the peyote ceremony, and discipline is fundamental to maintaining positive behavior changes.

More importantly, perhaps, is the social support network provided by regular participation in peyote meetings. *Cognitive Mastery* achieved by participants in peyote meetings and their subsequent *Behavior Change* goals are supported by the community in a number of ways. Among some congregations recovering alcoholics are known to convene for an informal drum tie between meetings, usually gathering at someone's home to drum and sing peyote songs. "It is at such gatherings that the resocialization of new members progresses under relaxed conditions. Recovered alcoholics talk openly about their problems and receive strong support from their new friends" (Pascarosa *et al*. 1976: 523). Another feature of social support for behavior change is the mentoring of young NAC members. Young participants who disclose problems during a meeting may be approached by an elder following the ceremony and invited to discuss the problem further in private. Such encounters often lead to a mentoring or counseling type of relationship that may last for years (Pascarosa & Futterman 1976).

The focus on discipline and ritual protocol provides participants with a particular ethic and structure that can be applied to their own lives, and which is reinforced through social ties with their religious community. Social support exists both within meetings, in the form of a supportive audience, and outside of meetings through mentorship or social support groups.

Peyote meetings are also held regularly, which may help to reinforce emotional, cognitive, and behavioral changes achieved by individual participants.

Conclusion

Peyote, and its ceremonial use, has long been misunderstood by outsiders, and there are still those who believe that "religion" is being used as a legal shield by peyotists to protect hedonistic drug use.[5] A further point of misunderstanding is the combination of medicine and spirituality within the Native American Church, areas of social life which are clearly separate in the minds of Westerners, who seek healthcare from physicians while seeking spiritual fulfillment in houses of worship. Unfortunately, these misunderstandings obscure valuable lessons about health and healing inherent in the peyote ceremony, including how the pharmacological properties of a peculiar cactus can be shaped and magnified through context, relational interaction, and symbolic manipulations. The effects of peyote are known to contribute to psycho-spiritual states that open the individual emotionally, lower an individual's defense mechanisms, and increase an individual's receptivity to new cognitive inputs. While these pharmacological properties are not necessarily therapeutic when viewed in isolation, the effects of peyote cannot properly be understood without taking into consideration the *Meaning Response* or the therapeutic methods inherent in the ceremonial structure of an NAC peyote meeting.

The *Meaning Respons*e accounts for a variety of factors that ultimately contribute to the therapeutic effects of peyote within the ceremonial context of the Native American Church, including the emotional state and expectations of the *participant*, the qualities and attitudes of the *healer*, or Road Man, the ceremonial *setting*, and the cultural *macro-context*. The role of therapeutic intervention is also fundamental to the efficaciousness of the peyote ceremony.

Therapeutic intervention speaks largely to the degree of involvement of the *participant*, and his/her relationship with the Road Man (*healer*) and other participants, in exploring and participating with the identified agents of therapeutic change: *Affective Experiencing*, *Confession*, *Cognitive Mastery*, and *Behavior Regulation*. Following the therapeutic model outlined in the preceding pages, we begin to see how peyote can act as an effective medicine when methodically applied in a ceremonial context where spiritual guidance is provided, community support is experienced, and culturally salient symbols can be manipulated to create meaningful narratives of healing.

Research into compounds similar to mescaline, the psychoactive agent in peyote, has recently begun to receive the support of governments around the world as well as the necessary authorizations to move forward (Winkelman & Roberts 2007). While this research is generally focused on potential therapeutic use of these substances to address issues like Post-Traumatic Stress Disorder, Obsessive Compulsive Disorder, Cluster Headaches, Existential Anxiety, and Depression, it must be acknowledged that the pharmacological properties of any individual drug only accounts for a portion of the *Total Drug Effect*. As research into the therapeutic value of psychedelic substances expands it is necessary to consider models of therapeutic applications of these substances, like the peyote ceremony, that have been successfully and safely applied for generations. Herein I have offered a model of therapeutic action to help outline and explain the factors that contribute to the therapeutic actions of peyote within a ceremonial context. By combining our understanding of pharmacology with the power of meaning, and with universal agents of therapeutic change we can begin to understand the power behind the traditional medical uses of this unique cactus, and hopefully learn how such substances might be safely and successfully applied in a modern medical context.

Notes

1. Native terms meaning "medicine" but also used to indicate peyote: *biisung* (Delaware), *walena* (Taos), *puakit* (Comanche), *makan* (Omaha), *naw-tai-no-nee* (Kickapoo), and *o-jay-bee-kee* (Shawnee), among others (Schultes 1938).
2. Notable models on peyote's therapeutic action have been offered by Calabrese (2013) and by Pascarosa & Futterman (1976), elements of which have been incorporated into the present proposed model.
3. The NAC can be broadly characterized as a confederation of churches, with over 180 individual chapters. Among the individual chapters there are a broad range of practices, beliefs, and rituals, although core principles and ritual structures tend to be consistent.
4. The term "Road Man" refers to the individual who leads peyote meetings.
5. In a recent custody dispute involving a member of the NAC, the court speculated that "use of peyote in Native American church services is something that has been imported and may well have been imported for the purpose of avoiding U.S. controlled substance laws rather than for purely religious purposes" (*Fowler v. Fowler* 2000: 20).

CHAPTER THREE

PEYOTE, RACE, AND EQUAL PROTECTION IN THE UNITED STATES

Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use, Peyote, Race, and Equal Protection in the United States, 2014, pp. 65-88, Kevin Michael Feeney
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Ever since American Indians first received a federal exemption for religious use of peyote in 1965, many groups seeking legal protection for the religious use of psychoactive substances have sought to capitalize on this exemption in the form of an Equal Protection challenge, arguing that their religious use of psychoactive plants is parallel to the American Indian use of peyote.[1] These efforts have repeatedly failed due to the special status of Indian tribes in the United States, and because of the unique relationship that tribes, as semi-sovereign entities, maintain with the federal government.

Challenges to the exemption are largely premised on the notion that "special" treatment of American Indians is based upon a fundamentally racial categorization, and is therefore constitutionally intolerable. While the federal government clearly has the power to both implement regulations and pass legislation singling out Indian tribes for differential treatment, the peyote exemption has generally been interpreted by the government as limited to members of federally recognized tribes with a 25% Indian blood quantum. Although the government's purported aim is to preserve and protect traditional Indian religious practices, these limitations on the exemption introduce several barriers to this goal. First, the limitation of the exemption to members of federally recognized tribes ignores the historical and cultural nature of the peyote

religion as a pan-Indian institution. Second, the limitation by blood quantum not only prevents Indians with strong cultural claims from legally participating in peyote ceremonies, it also asserts the dubious notion that biology and religious belief are related.

Despite these questionable criteria, courts have continued to uphold the peyote exemption as a permissible political classification, often based upon questionable findings regarding the ethnic composition of the Native American Church (NAC), the dominant peyote religion among American Indians. Serious questions regarding the government's asserted criteria remain, such as whether the exemption, premised upon the preservation of traditional Indian religions and culture, can properly exclude practitioners who embody the cultural beliefs, values, and rituals of the peyote religion, but who may not qualify for the exemption due to insufficient blood quantum.

The objective of this chapter is to explore and explain the legal contours of the peyote exemption in light of the special relationship between the Indian tribes and the federal government, to examine the racial implications arising out of the federal exemption, to address the conflicting findings regarding the ethnic composition of the NAC, and ultimately, to examine how government imposed restrictions, both federal and tribal, may impact the future of peyotism.[2] To conclude, recommendations will be made suggesting how the exemption can be tailored in a way that rationally and reasonably furthers the goal of cultural preservation without dividing the NAC along narrow tribal and ethnic lines, and without opening the door to a panoply of fraudulent cultural and religious claims.

In order to begin this examination, it is first necessary to provide the reader with some background regarding the origins of the NAC, the adoption of the peyote exemption, the Constitutional parameters of Equal Protection, and a basic understanding of the unique

relationship between the tribes and the federal government: a relationship that forms the foundation of the trust responsibility.

The Native American Church and the Peyote Exemption

The Native American Church (NAC) is a modern permutation of the sacramental and religious use of peyote in North America; a practice that archaeological evidence suggests is several thousand years old (Adovasio & Fry 1976; Bruhn *et al*. 1978; Terry *et al*. 2006). While evidence indicates that some American Indian groups have practiced a form of peyote religion, or peyotism, for several hundred years, the expansion of these religious practices across the United States did not take place until the late 19th century (Anderson 1996; La Barre 2011; Slotkin 1956; Stewart 1987). At this time peyotism emerged as a popular pan-Indian religious movement, one that allowed American Indians to maintain a sense of cultural heritage and identity while simultaneously adapting to an environment where their populations had been devastated, their tribal customs crippled, and one where many tribal groups had been removed to desolate reservations to face an unknown future.

The first modern account of the peyote ceremony was provided by the ethnologist James Mooney, who first observed the ritual among the Kiowa in 1891. Mooney described an all-night ceremony where "worshippers sit in a circle around the inside of the sacred tipi, with a fire blazing in the center," eat peyote, pray, and take turns singing and drumming (Mooney 1998: 32, *reprinting* Mooney 1896). Generally, the peyote ceremonies are held for prayer, meditation, and healing, and while varying from congregation to congregation, typically follow one of two ritual formats: One is known as the Half-Moon ceremony or the Comanche Way, and the other is known as the Cross-Fire ceremony (Long 2000; Maroukis 2010). In either format the night-long

ceremony is usually presided over by a roadman, who leads the ceremony. Other ritual roles are fulfilled by an official drummer, a cedarman, and a fireman, who tends the ceremonial fire (Slotkin 1956). Additional features of the American Indian peyote religion that should be mentioned include an emphasis on sobriety, reverence of peyote as a deity, and proscriptions on the use of peyote outside of ceremonial and healing contexts.

As peyotism spread rapidly among the tribes of the United States, missionaries reacted strongly, perceiving the popular indigenous religion as a threat to their work. As a result, the missionaries worked closely with the Bureau of Indian Affairs (BIA)[3] to eradicate Indian use of peyote (Long 2000; Stewart 1987). The first prohibition of peyote was implemented on the Kiowa-Comanche Reservation in 1888, and similar prohibitions were repeated on a number of other reservations (Stewart 1987: 128), but no significant federal efforts to prohibit peyote were taken up until 1918 when extensive hearings on the dangers of peyote were held before Congress. In response, a coalition of peyotists from among the Apache, Arapaho, Cheyenne, Comanche, Kiowa, Oto, and Ponca tribes came together to determine how best to protect their ceremonies against a potential federal prohibition (Long 2000; Maroukis 2010). James Mooney, who had worked among the Kiowa and Cherokee as an ethnologist, urged the coalition to incorporate as a "church" in order to situate the traditional use of peyote within a Western religious framework (Moses 2002; Stewart 1987).[4] The name "Native American Church" was finally settled upon in order to emphasize intertribal solidarity and the pan-Indian roots of peyotism, a point also addressed in the Articles of Incorporation:

> The purpose for which this corporation is formed is to foster and promote the religious belief of the several tribes of Indians in the

> state of Oklahoma, in the Christian religion with the practice of the Peyote Sacrament as commonly understood and used among the adherents of this religion… (Long 2000: 14)

Established in Oklahoma, this initial church is often referred to as the "Mother Church," and currently encompasses more than twenty churches or congregations within the state of Oklahoma (Long 2000; Maroukis 2010). The NAC of Oklahoma briefly became the NAC of the United States in 1944, but split in 1949 into two different organizations: the NAC of Oklahoma and the NAC of the United States. The NAC of the United States changed its name in 1955 to the NAC of North America (NACNA) in order to broadly represent both its U.S. and Canadian chapters. NACNA, which tends to be the most politically active of the major churches, currently has chapters in Canada, Mexico, and 24 states in the U.S.[5] The NAC has two other major epicenters: one is the Azee' Bee Nahaghá of Diné Nation (formerly the NAC of Navajoland), which encompasses around 92 chapters within the Navajo (Diné) Nation, and the other is the NAC of South Dakota, which contains several chapters within that state (Long 2000; Maroukis 2010). The NAC can be broadly characterized as a confederation of these four central churches, as well as the individual congregations and chapters that they encompass. As a result of this unique structure no centralized authority exists that can speak on behalf of the entire NAC, and among the individual congregations there are a broad range of practices, beliefs, and rituals, although core principles and ritual structures tend to be consistent.

Despite Congressional efforts to outlaw peyote in 1918 (the bill passed the House but faltered in the Senate), and repeated efforts to criminalize peyote in the following years, no federal prohibition would be adopted until 1965, with the passage of the Drug Abuse Control

Amendments (DACA). The peyote exemption, a key focus of this chapter, was originally promulgated by the Department of Health, Education and Welfare (HEW), shortly after passage of DACA, as a means to allow the religious use of peyote by American Indians to continue. Significantly, the language used in the exemption is broad and ambiguous, referring vaguely to *members* of the Native American Church, wording which would ultimately become a point of contention in subsequent legal disputes:

> 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. (DEA 1971)

In 1970, during hearings for what would become the Controlled Substances Act, a representative of the Bureau of Narcotics and Dangerous Drugs (later the Drug Enforcement Administration) was asked whether religious use of peyote by American Indians would continue to be exempt. The representative responded in the affirmative, declaring that:

> We consider the Native American Church to be sui generis. The history and tradition of the church is such that there is no question but that they regard peyote as a deity as it were, and we will continue the exemption. (DACA Hearings 1970)

This regulatory exemption, while not explicitly invoking the trust responsibility, demonstrates a clear intent on behalf of the federal government to preserve the cultural and religious practices of American Indians who practice peyotism. Although the language of the regulatory exemption refers broadly to "members of the Native American Church," the Department of Justice, specifically the Drug Enforcement Administration (DEA), has consistently interpreted the exemption as limited to members of federally recognized tribes who can claim a minimum of 25% Indian blood (*Peyote Way Church of God v. Smith* 1983; *Peyote Way Church of God v. Thornburgh* 1991; *United States v. Boyll* 1991; *United States v. Warner* 1984). This exemption remained the primary protection for Indian peyotists until 1994, and was the basis for a number of Equal Protection challenges.

Equal Protection and the Trust Responsibility

The principle of Equal Protection is found in two places in the Constitution. The phrase "equal protection" occurs explicitly only in the 14th Amendment, which applies specifically to the states, but in principle has been interpreted as also arising out of the 5th Amendment's guarantees of Due Process, which apply to the federal government. Essentially, Equal Protection stands for the principle that "all persons similarly situated should be treated alike" (*City of Cleburne v. Cleburne Living Center* 1985: 439, citing *Plyler v. Doe* 1982: 216). However, the government has flexibility to treat groups differently depending on the level of interest the government has in a particular law or regulation, and depending on what type of classification is employed to achieve those ends.

Under the Supreme Court's Equal Protection jurisprudence any law that sets apart different groups based on race,[6] national origin, or religion for separate treatment calls for strict

scrutiny analysis. Strict scrutiny is a legal test that requires the government to demonstrate that it has a *compelling* interest in treating two groups differently, and that the law in question has been *narrowly tailored* to meet the government's specific interest. There are two lower levels of analysis applied in Equal Protection cases involving other types of classifications: intermediate scrutiny and rational basis review. Intermediate scrutiny applies to classifications based on sex and child illegitimacy, and requires that the law in question bear a *substantial relationship* to an *important* government interest. All other classifications are subject to the lowest level of scrutiny, rational basis review, which requires that the law in question be *rationally related* to a *legitimate* government interest.

The Equal Protection challenges questioning the constitutionality of the peyote exemption are based on the idea that the challenging groups are "similarly situated" to members of the Native American Church, and that the peyote exemption constitutes unlawful racial discrimination. (Such an assertion, if valid, would require the federal government to defend the exemption against the standards of strict scrutiny.) At their foundation, these Equal Protection challenges can be seen as threatening the unique political status of American Indians, embodied in the trust responsibility, which provides the foundation for much of federal Indian law, including most of Title 25 of the United States Code.

The trust responsibility, as a legal doctrine, is generally traced back to two early Supreme Court cases, *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). In the first of these cases, Chief Justice John Marshall explained that the relationship of the tribes "to the United States resembles that of a ward to his guardian," and further characterized the Indian tribes as "domestic dependent nations" (*Cherokee Nation* 1831: 18). Because the tribes are legally viewed as dependent upon the United States, as a ward is to his guardian, the United

States is likewise seen as having a reciprocal guardian-ward obligation to protect the interests of Indian tribes. While the trust responsibility has been traditionally invoked to address issues of fiduciary duty or to promote tribal self-governance, the preservation of Indian cultures and religions has also been found to be "fundamental to the federal government's trust relationship with tribal Native Americans" (*Peyote Way Church of God v. Thornburgh* 1991: 1216; see also *Rupert v. Director, U.S. Fish and Wildlife Services* 1992). Much of federal Indian law is premised on the trust relationship, which is the foundation upon which distinctions are made between Indians and non-Indians for legal purposes.

The nature of this unique relationship was further clarified by the United States Supreme Court in the case of *Morton v. Mancari* (1974), where non-Indian employees of the Bureau of Indian Affairs (BIA) challenged a hiring preference for Indians as racially discriminatory. In addressing this issue the Supreme Court came up with a test for determining whether special treatment for Indians was based on invidious racial discrimination or whether it was premised on the federal government's trust responsibility. The test, which the Court elucidated, can be broken down into two parts: first, the goal behind the classification must be within the purview of Congress' trust responsibility; and second, the classification must be reasonable and rationally designed to further that goal. The court explained that classifications that pass this test would be considered political rather than racial classifications.

The employment preference at issue in *Morton* was found by the Supreme Court to fall within the purview of Congress' trust responsibility because the preference had the effect of furthering Indian self-government. The Court explained that the BIA only serves federally recognized tribes and that, because the employment preference is only provided to members of federally recognized tribes, the hiring preference specifically serves the government interest of

furthering Indian self-government. Had the classification been extended to Indians from non-recognized tribes who are not self-governed, the preference would have been overly broad and no longer *rationally* related to the goal of advancing Indian self-government. In other words, the classification would have been deemed racial rather than political in nature, and thus subject to strict scrutiny analysis. With this background, we can begin to examine one of the major Equal Protection cases challenging the scope of the federal peyote exemption.

Peyote Way Church of God v. Thornburgh

The most significant of the Equal Protection challenges invoking the peyote exemption was brought by a non-Indian peyotist church known as Peyote Way Church of God. The Peyote Way Church alleged that the federal regulation exempting use of peyote by the NAC was racially discriminatory, and asserted that their church's use of peyote should also be exempt. In *Peyote Way*, the 5th Circuit Court of Appeals looked to the Supreme Court's decision in *Morton v. Mancari* for guidance in determining whether the peyote exemption was premised upon a political or racial classification. The Fifth Circuit, however, seems to have misunderstood the ruling in *Morton*, believing the Supreme Court had "characterized the BIA employment preference as a political rather than racial classification because the BIA regulations implementing the preference limit eligibility to members of federally recognized tribes who have at least 25% Native American blood" (*Peyote Way v. Thornburgh*, 1991: 1215).

While the BIA policy in question specifically required that "an individual must be one-fourth or more degree Indian blood and be a member of a federally-recognized tribe" in order to be eligible for the employment preference, the Supreme Court never directly addressed the blood quantum requirement (*Morton* 1974: 554). In fact, the two times that blood quantum is

mentioned by the Court are when the federal policy is quoted in footnotes to the Court's opinion. Consequently, the Supreme Court never established membership in a federally recognized tribe, or 25% Indian blood quantum, as determinative factors in the second prong of their test; rather, the Court sought to determine whether these criteria satisfied the second prong of the test. To put it more plainly, tribal status and blood quantum were the parameters of the classification in *Morton* to be tested, not the test itself.

Nevertheless, the 5th Circuit reasoned that if the federal exemption could be read as limited to members of federally recognized tribes with a 25% Indian blood quantum, then the classification would pass the 2nd prong of the *Morton* test. So, while the federal exemption refers to "members of the Native American Church," the court determined, at the urging of the Department of Justice, that it "must look to the evidence to determine whether NAC membership presupposes tribal affiliation and Native American ancestry, and thus effects a political classification under *Morton*" (*Peyote Way* 1991: 1215).

The Court relied heavily on the testimony of Emerson Jackson, National Chairman of NACNA, who "repeatedly testified that tribal membership and 25% Native American ancestry are prerequisites to NAC membership" (*Peyote Way* 1991: 1215).[7] The Court was largely dismissive of evidence introduced to dispute Jackson's testimony, including an excerpt from the Articles of Incorporation for the NAC of Navajoland (now *Azee' Bee Nahaghá of Diné Nation*) which stipulated "that any non-Indian spouse of a member is eligible for membership" (*Peyote Way* 1991: 1215), finding instead that the Articles of Incorporation generally corroborated Jackson's testimony. Additional testimony that the NAC had been multi-ethnic prior to federal prohibition of peyote was also dismissed because it did not speak to the make-up and

membership practices of the NAC following prohibition and promulgation of the peyote exemption in 1965.

While the core of the Court's ruling was correct in finding that preservation of the "centuries-old tradition of peyote use" is "fundamental to the federal government's trust relationship with tribal Native Americans," thus satisfying the first prong of the *Morton* test, the Court's application of the second prong, premised upon a misunderstanding and misapplication of the Supreme Court's ruling, was seriously flawed (*Peyote Way* 1991: 1216). Because the 5th Circuit misinterpreted the second prong of the *Morton* test, it is necessary to re-examine whether the elements of the classification can reasonably be interpreted as rationally related to the government's goal of preserving Indian culture.

First is the requirement, asserted by the government, that to be eligible for the peyote exemption one must be a member of a federally recognized tribe. By limiting the exemption to members of federally recognized tribes, the exemption fails to recognize the pan-Indian nature of peyote religions such as the NAC, which are not tribally based or tribe-specific religions. Additionally, there are many tribes that never developed a government-to-government relationship with the United States, and so have never been federally recognized. Other tribes have had the misfortune to lose their federally recognized status due to the Allotment Act, passed in 1887, or to unilateral termination of federally recognized status by the federal government during the 1950s.[8] If members of federally recognized tribes were the only people who remained "cultural" Indians then such a limitation on eligibility might make sense. As it is, the limitation excludes many who remain "cultural" Indians, and who may have historical, cultural, or religious ties to the NAC.

Second is the additional limitation that NAC members be able to claim at least 25% Indian heritage. While blood quantum has been used as a factor in identifying Indians for treaty purposes for several hundred years, the federal government did not commonly use this as a criterion until the early 20th century. Prior to the use of blood quantum, it was customary to use more political and cultural criteria such as tracing someone's ancestry; either patrilineally or matrilineally, based on tribal kinship patterns. The introduction of "blood quantum" as a classificatory tool was foreign to Indian tribes, many of which were multi-ethnic and accepted outsiders into their ranks through marriage or adoption. The use of this measure tended to be subjective, and its application was often based on an evaluation of someone's physical appearance rather than on an examination of one's family tree or identifiable relations (Russell 2010; Spruhan 2006).

A true application of blood quantum would require DNA testing, a factor that makes it hard to argue that blood quantum is not a racial (biological) criterion that runs afoul of Equal Protection, but this is hardly the only problem with this criterion. First, it suggests that someone may be an enrolled member of a federally recognized tribe but might not actually be "culturally" Indian. If someone is raised within a tribal community, raised with tribal customs, values, and a tribal worldview, it is hard to see how they are not a true part of the culture based on the fact that they cannot claim a minimum blood quantum. This can only be true if culture and biology are inherently linked, a racist notion that has generally been discarded. Second, this requirement suggests that an "eligible" member of the NAC would not be allowed to share their faith and worship alongside a spouse if the spouse is non-Indian, or could not claim the requisite blood quantum. Lastly, the blood quantum requirement would also make it illegal for such a couple to raise their child within their faith if the child is unable to meet the 25% blood standard. These are

all problematic aspects of the government's position, and support the conclusion that this is a racial rather than political classification.

Unfortunately, the 5th Circuit case has been widely cited as affirming the legality of the DEA's position that the peyote exemption is limited to Indians with a 25% blood quantum and membership in a federally recognized tribe. Shortly after the decision in *Peyote Way*, however, Congress passed a statutory version of the peyote exemption, one which explicitly included membership in a federally recognized tribe as criterion for eligibility but notably made no mention of blood quantum.

The New Exemption

In 1994, Congress moved to codify the peyote exemption, through passage of the American Indian Religious Freedom Act Amendments (AIRFAA), in response to a Supreme Court case that ruled that religious use of peyote was not protected by the First Amendment (*Employment Division v. Smith* 1990).[9] In passing this legislation Congress acknowledged that "for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures" (AIRFAA 1994: [a][1]), and further recognized that "the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment" ([a][5]).

While the federal regulatory exemption specified that "members of the Native American Church" were exempt, under AIRFAA no specific reference is made regarding the Native American Church. Instead the law protects the use of peyote "by an Indian for bona fide

traditional ceremonial purposes in connection with the practice of a traditional Indian religion" (AIRFAA 1994: [b][1]). Although a seemingly innocuous semantic modification, two significant changes result. First, the legislation recognizes that there may be other peyotist traditions among American Indians other than the NAC. Second, the law specifies that only an Indian who is a member of a federally recognized tribe is exempt, whereas the regulatory exemption merely indicates membership in the NAC. While the eligibility criteria under the federal regulation had been ambiguous, despite the government's insistence as to its limitations, AIRFAA sought to put these disputes to rest.

To appreciate the scope of this exemption, we must understand who is considered an "Indian" under AIRFAA, and we must also know what constitutes an "Indian Religion." Under the exemption, an Indian is defined as a member of a tribe "which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (AIRFA 1994: [c][2]). This definition has two parts: (1) to qualify as an Indian under the exemption, one must be an enrolled member of a tribe, and (2) the tribe to which the individual belongs must be one that is recognized by the federal government (AIRFAA 1994). By choosing not to define the term "Indian" by blood quantum, the government left the extent of the protections offered by the new peyote exemption to be determined by individual tribes through tribal enrollment practices.

A tribe's right to define its own membership and enrollment criteria has been recognized by the Supreme Court as central to a tribe's "existence as an independent political community," and to the preservation of its traditions and culture (*Santa Clara Pueblo v. Martinez* 1978: 72). Some tribes choose to require a minimum blood quantum, while others will recognize multi-ethnic children of any blood quantum so long as they are a child of a tribal member. This

criterion provides tribes flexibility in determining who may, or may not, participate in the religious practices of the NAC, and avoids the odd result produced by the blood quantum requirement where some tribal members are exempt while others are not. However, while chapters of the NAC are often associated with particular tribes, the tribal leadership and church leadership are not equivalent, and each may espouse different membership requirements.

The second feature that necessitates comment is the limitation of the exemption to "traditional Indian religions." Under AIRFAA an Indian religion is defined as a religion "practiced by Indians… the origin and interpretation of which is from within a traditional Indian culture or community" (AIRFAA 1994: [c][3]). This characterization provides several specific benefits over the federal regulation exempting "members of the Native American Church." In addition to recognizing that religious use of peyote among American Indians took multiple forms, the law also provides courts with a tool for making a factual determination as to whether a particular religious group qualifies for the exemption. While this particular issue has not been litigated, its significance is highlighted by the case of *State of Utah v. Mooney*, which will be examined shortly. Although no Equal Protection challenges have been brought that specifically invoke AIRFAA, language in the new statutory exemption played an important role in an Equal Protection challenge brought by the União do Vegetal (UDV).

O Centro Espírita Beneficente União Do Vegetal (UDV) v. Ashcroft

The União do Vegetal (UDV), a religion that arose out of the Brazilian Amazon in the mid-20th century, combines elements of folk Catholicism, Afro-Brazilian religions, European esotericism, and indigenous shamanism, including the use of ayahuasca (Labate & MacRae 2010). Ayahuasca, a hallucinogenic brew that has been used shamanically by indigenous groups in

South America for hundreds if not thousands of years, is a sacrament that is central to the religious practices of the UDV. Despite its obscure origins, the UDV has developed a global presence, and has attracted the attention of legal authorities wherever it appears, including in the United States (Labate & Feeney 2012). After having several barrels of ayahuasca confiscated by United States Customs in 1999, the UDV brought suit against the United States government asserting violation of Equal Protection, among other asserted claims.

All previous parties who challenged the peyote exemption, asserting violations of Equal Protection based on racial discrimination, failed due to the unique status of Indian tribes as "domestic dependent nations." Cleverly, the UDV asserted that the Native American Church is a multi-ethnic church and that the exclusive peyote exemption, therefore, could not be justified under the trust responsibility. The UDV argued that if the classification used in the peyote exemption is not restricted to Indians, then it cannot be seen as a political classification justified by the trust responsibility; as a result, the classification must be seen as targeting religious groups for differential treatment.[10] Upon these grounds the UDV asserted that the UDV and NAC are similarly situated for purposes of Equal Protection analysis and that an exemption allowing one religion access to a controlled substance, but denying another, constituted discrimination on the basis of religious affiliation.

In making their argument the UDV relied heavily on the case of *United States v. Boyll* (1991), where a non-Indian member of the NAC was deemed protected by the federal regulation exempting "members of the NAC."[11] In the *Boyll* case, a man by the name of Lawrence Robert Boyll was arrested after mailing himself a package of peyote from Mexico. Boyll sought dismissal of the charges, asserting that he was a member of the NAC and was therefore exempt under the original regulatory peyote exemption. The government countered that the exemption

was limited to American Indians with at least 25% Indian ancestry, and to the spouses of such individuals. In order to clarify this point, the *Boyll* court held an evidentiary hearing in order to determine what, if any, membership restrictions were recognized by the NAC.

The court heard testimony from both Indian and non-Indian members of the NAC, as well as from Omer Stewart, a distinguished anthropologist and authority on the peyote religion. Jimmy Reyna, a member of Taos Pueblo and lifelong member of the NAC, testified that "Robert Boyll is known to me personally as a member of the Native American Church," and declared "from my own experience as a church member and a roadman, and from the accounts told to me by my father, Telles Goodmorning, and others, I am aware of the participation and membership of non-Indian people in the Native American Church from the earliest days of the church in Oklahoma" (Reyna 1990). Additionally, Alden Naranjo, a member of the Southern Ute Indian Tribe and member of the NAC of Colorado testified as follows:

> The chapter of the Native American Church to which I belong has no restrictions on membership by non-Indians. Although there is controversy in some parts of the country about Indian blood requirements for membership in chapters of the Native American Church, the majority of church members with whom I am acquainted do not support any attempt to restrict membership to those of Indian descent. (Naranjo 1990)

The *Boyll* Court acknowledged that "one branch of the Native American Church, the Native American Church of North America, is known to restrict membership to Native Americans," but

based upon the testimony presented the Court determined that "most other branches of the Native American Church do not" (*United States v. Boyll* 1991: 1336).

Further, the Court found the exemption to be "clear" and "unambiguous," declaring that "Nowhere is it even suggested that the exemption applies only to Indian members of the Native American Church. Had the intention been to exclude non-Indian members, as the United States argues, the language of the exemption would have so clearly provided" (*United States v. Boyll* 1991: 1338). As a result of this finding, the *Boyll* Court never had to address the question of Equal Protection, which had become a moot point.

The *Boyll* case was not the first time that membership requirements of the NAC were called into question. In 1984, John and Frances Warner were arrested and indicted for distribution of, and possession with intent to distribute, peyote (*United States v. Warner* 1984). The Warners, who claimed membership in the Tokio congregation of the NAC, brought an Equal Protection claim asserting that the peyote exemption, as interpreted by the federal government, was racially discriminatory. This claim was dismissed by the court, which cited the trust responsibility as giving the federal government the power to treat American Indians differently based upon a political classification. The outcome of the case, however, was ultimately decided upon two factual questions: First, whether the Warners used peyote in bona fide religious ceremonies; and second, whether they were members of the NAC. At trial, the jury found in favor of the Warners on both questions and charges were dismissed.

In a similar case, a non-Indian couple was charged with peyote possession for participating in an NAC ceremony in which their marriage was blessed (*State v. Whittingham* 1973). Despite extensive testimony at trial from NAC members attesting to the sincere participation of the Whittinghams, the couple was convicted. The couple later appealed and was

exonerated under the First Amendment's protections for religious freedom,[9] a determination based largely on the extensive testimony at trial as to the sincerity of their participation. While Equal Protection was not specifically at issue, the case further suggested that participation and membership in the NAC, in practice, is not exclusively tied to Indian ancestry or tribal enrollment.

The UDV relied upon the above cases as evidence of non-Indian membership in the NAC in arguing that the peyote exemption could not be based upon a political classification under the trust responsibility. Based on this showing, the UDV argued that their use of a scheduled psychoactive substance was parallel to the use of peyote by the NAC, and that the federal government was discriminating based on religious affiliation.

In response to the UDV's assertion that the NAC is multi-ethnic in nature, and therefore not entitled to an exemption based on political classification, a coalition made up of the NAC of Oklahoma, the NAC of North America, and the NAC of the Kiowa Tribe of Oklahoma (hereinafter, the Coalition), sought to file an *amicus curiae* ("Friend of the Court") brief countering the Equal Protection claims of the UDV. The Coalition, claiming to represent 35 chapters of the NAC, took issue with the UDV's characterization of the NAC as a multi-ethnic church and countered that "the NAC is overwhelmingly comprised of tribal Native Americans," and that it "is indigenous in its origins and practices" (NAC 2002: 5).

The NAC Coalition appealed to the court, explaining "This is but the most recent in a long line of efforts by various individuals or religious groups to make such an Equal Protection challenge… [We] sincerely hope that this court will, as numerous courts have in the past, lay to rest the false notion that groups such as the UDV are similarly situated with the NAC for purposes of Equal Protection analysis" (NAC 2002: 2).

The NAC Coalition was careful throughout their brief to avoid making absolute claims about the ethnic make-up of the NAC, but suggested that courts had often failed to make factual distinctions between participants and members of the NAC. The Coalition explained:

> It is one thing for a non-Indian to claim "membership" in the NAC; it is quite another to be regarded as a legitimate member by the community of Indian NAC members in a given locality. (NAC 2002: 12)

The Coalition cited *Whittingham* as an example, explaining:

> Whether the Indian roadman running the ceremony and other Indians present at the ceremony considered the Whittinghams members of that NAC chapter is a factual matter on which the court apparently had no record. (NAC 2002: 15)

While there appears to have been plenty of testimony at trial attesting to the "sincere participation" of the Whittinghams in NAC ceremonies, the Coalition stressed that participation in a religious ceremony and recognition as a member of a religious congregation are two distinctly different things, and pointed out that the Whittinghams are only ever mentioned as "participants."

Because the regulatory exemption, which has been the basis of most of the Equal Protection challenges, specifically refers to "members of the Native American Church," it

becomes important to distinguish between participants and members. If NAC members are overwhelmingly members of federally-recognized tribes with a minimum 25% Indian blood quantum, and if non-Indians are generally non-member participants, as is asserted by the Coalition, then the UDV's argument that the NAC is multi-ethnic is seriously diminished.

The Coalition also criticized the UDV's reliance on the *Boyll* decision, asserting that no factual record was developed as to Boyll's NAC membership. Here, however, the Coalition appears to be mistaken. As cited previously, testimony by Jimmy Reyna (1990), a roadman and NAC member, attested that "Robert Boyll, is known to me personally as a member of the Native American Church." Additional testimony was also offered that Boyll had "sponsored these [NAC] meetings or participated as a drummer, cedarman or fireman" (*Boyll* 1991: 1337), indicating a high level of participation in NAC ceremonies. Given this testimony, it is unclear on what basis the Coalition claims that no factual record as to Boyll's membership was ever established.

While the Coalition smartly asserts the importance of distinguishing between membership and participation, the Coalition never goes so far as to claim that there are no non-Indian members of the church. Instead, the Coalition works around this issue by making two important arguments. First, the Coalition argues that despite the participation of some non-Indians, "most NAC members are members of federally recognized tribes" and, "as such, they have a unique legal and political relationship with the United States" as enshrined in the trust doctrine (NAC 2002: 6). Second, the Coalition argues that the ethnic make-up of the NAC does not diminish the obligations of the federal government to preserve Indian culture under the requirements of the trust doctrine. In supporting this position the Coalition looked to a failed Equal Protection challenge by a Rastafarian, where the court declared that:

> (Re)gardless of the racial classification of its members, the NAC plays a central role in Native American culture. The state has chosen to protect that culture by allowing the NAC to use peyote in its religious ceremonies. The fact that non-Indians can become members does not change the *sui generis* and political status of the NAC. (NAC 2002: 6, citing *McBride v. Shawnee County* 1999: 1103)

Ultimately, the court in *UDV v. Ashcroft* refused the Coalition's motion seeking to submit an *amicus* brief due to lack of timeliness, and also sidestepped the factual question of NAC membership, stating that the Court was "reluctant to conduct the type of complex anthropological and theological inquiry that would be required to draw a definitive conclusion regarding whether non-Indians can truly be members of the NAC" (*UDV v. Ashcroft* 2002: 12).

The court recognized that different courts had come to different conclusions about the ethnic composition of the NAC, specifically citing the *Boyll* Court's finding that "(t)he vast majority of Native American Church congregations . . . maintains an 'open door' policy and does not exclude persons on the basis of their race" (*UDV v. Ashcroft* 2002: 11, citing *Boyll* 1991: 1336), as well as the *Peyote Way* Court which found "that the record conclusively demonstrates that NAC membership is limited to Native American members of federally recognized tribes who have at least 25% Native American ancestry" (*UDV v. Ashcroft* 2002: 11, citing *Peyote Way* 1991: 1216). The *UDV* Court noted, however, that both of these decisions came out before the passage of AIRFAA in 1994, which subsequently clarified that membership in the NAC is limited to members of federally recognized tribes. The Court additionally indicated that it had

"been unable to locate any federal court opinions decided *after* the enactment of AIRFAA which have found the federal peyote exemption to extend to non-Indians" (*UDV v. Ashcroft* 2002: 20). The Court concluded that the exemption was limited to Indians from federally recognized tribes, as outlined in AIRFAA, and that the exemption was based upon a permissible political classification under the trust doctrine.[12]

The decision in *UDV v. Ashcroft* affirmed the power of the federal government to single out Indian tribes for differential treatment, and also suggested that the passage of AIRFAA had rectified any potential problems with racial classification inherent in previous interpretations of the regulatory exemption. Additionally, the courts review of prior Equal Protection cases, in addition to the Coalition's motion, reveals that there is clear disagreement among different branches of the NAC regarding membership and ethnicity. While AIRFAA does not include any blood quantum requirements, it does require enrollment in a federally recognized tribe. Since tribes often use racial criteria in determining their membership, the AIRFAA requirement that NAC members be enrolled in federally recognized tribes ensures that the conflict over "race" and NAC membership will continue.

Despite the passage of AIRFAA, however, the DEA regulatory exemption remains on the books, and was adopted by several states in implementing individual state drug laws. As a result, the ambiguity of "membership in the Native American Church" continues to be a point of legal contention in some states, and in at least one legal case a purely semantic reading of the law resulted in an outcome that did not align with the apparent facts.

State of Utah v. Mooney

In 2004, in a case further complicating an accurate understanding of the history, culture, and composition of the NAC, the Utah State Supreme Court found that the state's peyote exemption was based on the federal regulatory exemption and therefore applied to all members of the Native American Church regardless of race (*State of Utah v. Mooney* 2004). As a result of this decision, James "Flaming Eagle" Mooney[13] and Linda Mooney, a non-Indian couple who incorporated the Oklevueha Earthwalks Native American Church of Utah, were acquitted of possession of peyote with intent to distribute. While the Utah Supreme Court's decision was based upon a fair reading of the law, ultimately coming to the same conclusion as the *Boyll* Court, there are specific questions of fact in this case that remain ambiguous. Significantly, the regulatory exemption at issue refers broadly to the Native American Church, an entity that is never clearly defined. With no clear guidance as to what constitutes a "Native American Church," anyone could incorporate a church under this name and become eligible for the exemption. Such a situation seems to go beyond the intent of the regulation that was meant to help preserve Indian culture and religious practices. However, this exact scenario seems to have manifested with the Mooneys, who founded their own church in 1997.

The Oklevueha NAC is unique in that it was founded by a non-Indian couple with no apparent personal connection to any tribal communities recognized or unrecognized by the federal government. At its root, the church appears to be an outgrowth of the Mooneys' personal interest in traditional Indian cultures. While James Mooney has claimed Native American descent, he was not a member of a federally recognized tribe at the time of trial, although it was later contended during a federal detention hearing that he had submitted fraudulent paperwork to the Cherokee Nation in order to obtain tribal enrollment papers (*United States v. Mooney* 2005:

39), suggesting, perhaps, that the Mooneys were grasping for a legal footing to protect their activities.

This case poses specific difficulties. Because the Native American Church is a loose confederation of churches with no centralized authority, different NAC chapters may have minimal contact with each other, and may espouse differing views on how the NAC does, or should, operate: a reality that is aptly illustrated by the controversy over blood quantum and membership. Despite some differences, however, NAC chapters are generally formed within or among tribal communities by members of those communities, and use of peyote within these communities not only has an historical basis but also, arguably, plays a role in perpetuating Indian tribes and cultures. An NAC chapter founded outside of this cultural context seems dubious at best, and while non-Indians may from time to time be invited to participate in NAC ceremonies, or even become recognized members of an NAC congregation, this is quite different from someone outside of this cultural context founding their own church and labeling it "Native American."

This problem appears to be addressed by AIRFAA, which provides an exemption limited to Indian peyote religions originating from "within a traditional Indian culture or community" (AIRFAA 1994: [c][3]), which would seemingly exclude the Mooneys' church. However, Utah state law was based on the regulatory exemption that permits use by "members of the Native American Church," an entity which is never clearly defined, and not based on the parameters set out in AIRFAA. The state of Utah subsequently revised the exemption, at the urging of NACNA, to bring state law in line with federal law (Maroukis 2010; Utah Controlled Substances Act 2012).

While Utah's exemption for religious peyote use was based upon the DEA's regulatory exemption and not upon AIRFAA, it is nevertheless puzzling why no factual record was established to determine what constitutes a "Native American Church," and whether the Oklevueha NAC, despite its semantic claims, was in fact such a church. Had a record been established at trial this case may have turned out differently. Characteristics that the court might have investigated include: where and how the church originated, the composition of its membership, the structure of its ceremonies, and the presence or absence of ties to tribal communities.

While the Mooneys were cleared under state law, the federal government was determined to pursue their own prosecution. Eventually, an agreement was made that the government would withdraw its charges so long as the Mooneys would discontinue their use of peyote until such time as they could prove membership in a federally recognized tribe. James Mooney later claimed Seminole ancestry, specifically claiming membership in the Oklevueha Band of Yamasee Seminoles; however, the tribe is not federally recognized and his membership was eventually revoked (Maroukis 2010). Regardless, the Oklevueha NAC has continued to conduct ceremonies and now offers, through its website, a Church membership card for $200 or an Independent Branch Church Packet, to help individuals set up their own branch of the Oklevueha NAC, for $2,495 (Oklevueha 2000-2012). The website proclaims that membership in the Oklevueha confers legal "protection to worship with any and all earth-based Sacraments 'especially Peyote'" (Oklevueha 2000-2012). The implication appears to be that one can purchase immunity from state and federal drug laws by becoming a member or starting a branch of the Oklevueha NAC; however, these claims are based on a misrepresentation of the Mooneys' victory in the Utah State Supreme Court, and also ignore subsequent changes to Utah state law.

Interestingly, the ambiguous reference to "all earth-based Sacraments" on the Oklevueha NAC website appears to stem from the apparent efforts by the church to expand their "exemption" to include all psychoactive plants, including marijuana, as sacraments. Currently, litigation is underway involving the Oklevueha NAC of Hawaii, which is asserting a religious right to use marijuana as a traditional NAC sacrament (*Oklevueha NAC of Hawaii v. Holder* 2012). Of course, there is no historical or anthropological evidence that marijuana has ever been used sacramentally by American Indians, or that it has ever been incorporated into the practices of peyotism. This appears to be peculiar to the Oklevueha NAC, further suggesting an attempt to benefit from the NAC's unique legal status by appropriating the title "Native American Church." While the nature of the Oklevueha NAC may have been ambiguous at the time of their original legal proceedings in Utah, it should now be clear that the NAC and the Oklevueha NAC are completely unrelated entities, sharing only a semantic connection.

Proposed Regulatory Changes

Following the arrest of the Mooneys, the DEA contacted tribal leaders from around the country to inform them of a possible change to the language of the federal regulatory exemption. In a letter, the agency explained that "since DEA's regulation specifically mentions the Native American Church, there has been some confusion and misunderstanding about the scope of the regulatory provision," and that the proposed rule change would clarify that the exemption is limited to members of federally recognized tribes (Nagel 2001). While the proposed change was straightforward and would have brought the federal regulation in line with AIRFAA, the proposal created cause for concern among some NAC members.

At the 2001 Annual Conference for the NAC of the State of Oklahoma, the church members voted to oppose the proposed change and to submit a formal letter to the DEA advocating for the retention of explicit references to the Native American Church (Maroukis 2010). Others, including Teresa Murray, secretary of the NAC for the State of Oklahoma, submitted their own letters to the DEA opposing the proposed rule change. In an interview with the *Native American Times*, Murray explained that her husband, a member of the NAC, is non-Indian, and that the rule change would prohibit him from legally participating in their religion. Additionally, she expressed concern that future generations of her family may not be able to meet the blood quantum requirements for tribal enrollment and could therefore be prevented from participating in the peyote religion (Murg 2002). A decrease in blood quantum among peyotist families could lead to the disappearance of the peyote religion if the exemption limits participation to those with a sufficient blood quantum to meet tribal enrollment standards.

The DEA held hearings on the proposed rule change in 2002, but the change was never implemented. The proposal has been introduced regularly over the last ten years as a "nonsignificant" priority item, and no action has been made to formally change the language of the regulatory exemption. It seems likely that the rule change has remained in limbo due to the opposition of NAC members like Murray, who see the change as a threat to religious liberty and to the viability and vitality of the peyote religion.

Race, Membership, and the Future of the Native American Church

While the federal government appears to be backing away from their prior insistence that NAC members have a minimum 25% Indian blood quantum, the maintenance of a tribal membership requirement continues to pose problems for peyotists. The parameters of any federal

classification of Indians pursuant to the trust responsibility must be rationally related to the government's underlying goal; in this case the preservation and protection of traditional Indian religions involving the use of peyote. Although rational basis review is not a difficult standard to satisfy, it is not a green light for arbitrary classifications (*Romer v. Evans* 1996). While it is reasonable for the government to seek to preserve the religious practices of Indians, there appears to be little rationale in excluding Indians who are not federally recognized when they share common religious and cultural traditions with members of recognized tribes. But this is hardly the only problem with the tribal enrollment restriction.

As mentioned previously, a tribe's right to define its own membership and enrollment criteria has been recognized by the Supreme Court as central to tribal autonomy and to the preservation of tribal traditions and culture (*Santa Clara Pueblo v. Martinez* 1978). However, one of the main membership criterion employed by tribes is the requirement of a minimum blood quantum. Of tribes that retain blood quantum eligibility rules, 25% blood is the most commonly required quantum, although requirements may range from as little as one-sixteenth to as much as five-eighths. The quantum may be a general Indian blood quantum, or it may be tribe specific. With tribe specific blood quanta, you could end up with an individual who can claim more than 50% Indian blood from an amalgam of tribes, but who may not be able to claim a minimum 25% blood quantum specific to a particular tribe. While there is controversy and debate within tribal governments over how best to determine tribal enrollment, the criteria are generally based on blood quantum, descent, or some combination of the two.

A demographic study for the Salish and Kootenai tribes of the Flathead Indian Reservation was produced in 2002 in order to determine the impacts of several different enrollment criteria on tribal population (Russell 2005, citing Walker 2002). The first category,

based on current enrollment criteria, required 25% of either Salish or Kootenai blood. Under this criterion, the study projected an 8% decrease in population (from 6,953 to 6,400) over a twenty-year period. The second category sought to establish how expanding the blood quantum to include descendants with a minimum 25% blood quantum from any recognized tribe would impact future tribal enrollment. Such a change would allow tribal members to marry members of other tribes but maintain tribal membership rights for their offspring. It was shown that this criterion would lead to an immediate spike in the number of individuals eligible to claim tribal membership; however, following the spike a steady decline in population was predicted. Finally, the third category investigated sought to establish how tribal rolls would be affected if all descendants of current tribal members were permitted tribal membership regardless of blood quantum. Under this model, it was shown that the number of individuals eligible for tribal membership would grow exponentially (Russell 2005, citing Walker 2002).

While the study shows that determining tribal membership based on descent will potentially preserve the numbers of tribal peoples, it does not indicate how many will choose tribal membership, nor whether descendants who move out of their communities will maintain the cultural beliefs, values, and customs of the tribe. Steve Russell (2005: 173) has made the argument that membership by descent maintains the racially problematic notion that "blood in any amount as an infallible proxy for culture." Can someone who has never lived in a tribal community, who has never maintained ties with, or participated in, traditional cultural activities, still be considered "culturally" Indian if they can claim an Indian ancestor five or six generations back? Under the descent criterion, such individuals would remain eligible to claim tribal membership and whatever accompanying benefits may arise from that status. Russell argues that this type of system fails to preserve tribal culture and he instead recommends that tribal

membership be based on whether someone is a genuine member of the tribal culture. Determining one's "cultural" status need not be based on a specified blood quantum, but might include descent in combination with criteria such as: self-identification as an Indian, being recognized as Indian by an Indian community, roots in an Indian community, participation in customary and cultural activities, involvement in tribal governance, and other similar indicators.

A similar proposition might be employed to determine who is a member of the NAC, one that would allow the peyote exemption to extend to all sincere members of the church. Restricting membership by blood quantum will lead to the steady decline and eventual disappearance of the peyote religion. Restricting membership to those enrolled in federally recognized tribes may fair no better, particularly since enrollment requirements often include racial criteria. Additionally, this restriction excludes members of tribes who have never been recognized by the federal government, as well as members of tribes who had their official status discontinued during the Termination Era of the 1950s. In any case, neither of these criteria serves the purpose of preserving the peyote religion as a cultural institution; therefore, a rational argument limiting the peyote exemption by these criteria cannot be maintained. However, the AIRFAA exemption may hold the seeds for a successful solution tailored to cultural preservation.

A cultural institution or religion cannot be preserved if one does not know what one is preserving. AIRFAA, by recognizing peyotism as a religious practice with its foundations in traditional Indian culture and communities provides a broad base for understanding what the NAC is: an inherently Indian religion. A cultural practice cannot be reinvented or synthesized outside of its original cultural context, as the Mooneys may have attempted; it arises from that context. This does not mean that a culture or religion doesn't change or evolve, but suggests

some parameters for determining whether an organization or particular religious practices are "Indian," and can therefore be singled out for special treatment under the trust responsibility. By recognizing the cultural roots of peyotism, as well as the nature and structure of the peyote religion, an exemption can be created that encompasses all participants and members of the Native American Church without excluding members based on antiquated notions of race or political restrictions, and that is also sufficiently tailored to prevent claims that attempt to fraudulently capitalize on the unique relationship between American Indians and the federal government.

While there continues to be problems with the scope of AIRFAA and the DEA's regulatory peyote exemption, there may be other avenues of protection for NAC members who fall outside of the exemptions as interpreted by the federal government. The Religious Freedom Restoration Act (RFRA), which was passed in 1993, provides statutory protection for the free exercise of religion.[9] The UDV, mentioned earlier, eventually succeeded in winning the right to use their sacrament, ayahuasca, by asserting religious rights under RFRA. Until racial criteria are fully eliminated from the peyote exemption, non-Indian spouses, multi-ethnic children, and other non-Indian members of the NAC might similarly rely upon RFRA to protect their religious practices.

Conclusion

The peyote exemption, in both its regulatory and statutory forms, was intended to help preserve and perpetuate Indian beliefs and customs. As applied, the exemption runs into the danger of eliminating rather than preserving peyotism by creating exempt classifications that are hampered by racial and political restrictions rather than being tailored to cultural preservation. While NAC

members are predominantly Indian, some congregations allow non-Indians to participate, and others embrace non-Indian spouses and other close friends and relations. As demonstrated, there is disagreement within the NAC as to who may and who may not be a member of the church, however, due to the loose structure of the NAC, it seems sensible that these decisions would be determined by the customs and practices of individual chapters. While some congregations may be multi-ethnic, or become multi-ethnic, the purpose of the peyote exemption is to preserve the traditional practices of the Indian peyote religion, not to preserve the purity of a particular "racial" group. The federal exemption, however, remains imperfect, and still implicitly raises questions of race, identity, and cultural authenticity. Eventually these questions will have to be answered, not only by the federal government, who must ultimately decide what the goal behind the peyote exemption is, but also by the individual tribes, who remain central to the question of who is, and who isn't, an "Indian."

While culture ultimately cannot be tied to race or to a particular political status, carefully considered criteria can be developed that allows the full participation of all members of the NAC, regardless of ethnicity or tribal affiliation, without opening the door to systematic abuses. Such criteria might include whether a particular congregation has roots in an Indian community, whether members of the church are regular participants in customary and cultural activities, whether the congregation is recognized by established epicenters of the church, and whether members recognize the core tenets of the peyote religion. The current parameters of the peyote exemption, however, are unlikely to change any time soon. Although the Justice Department has made a habit of prosecuting non-Indian members and /or participants of the NAC, there have been no cases where multi-ethnic American Indian families have been subjected to selective prosecution for participating in the peyote religion. While it seems unlikely that the government

would prosecute under such circumstances, alternative legal remedies are fortunately available for NAC members who are members of non-recognized tribes, or who are non-Indian members that have been welcomed into a particular congregation. Although constitutional protections for freedom of religion have been reduced, robust protections for religious freedom have been passed by Congress in the form of the Religious Freedom Restoration Act, the statute under which the UDV successfully fought for their right to use their religious sacrament, ayahuasca. So, while not all NAC members may fall within the purview of the peyote exemption for racial or political reasons, legal recourse for sincere members of the NAC may still be available regardless of blood quantum or tribal affiliation.

Notes

1. See Lander (2014) for a discussion of how the NAC came to be seen as a model for others, including Timothy Leary and the Neo-American Church, for establishing a religious right to protect controlled substance use.
2. *Peyotism* generally refers to the sacramental use of peyote as practiced among some American Indian groups. *Peyotist*, a variant of this term, refers to one who practices peyotism, or the peyote religion.
3. The agency title *Bureau of Indian Affairs* was only adopted in 1947, but the title is used here, for simplicity sake, to refer to all previous permutations of the agency, including the *Office of Indian Affairs* and *Indian Services*.
4. In retribution for his participation in the incorporation of the NAC, Mooney was subsequently banned from returning to the Kiowa Reservation by the BIA (Moses 2002).

5. Little has been written about the history or activities of the NAC in Canada or Mexico. References to the NAC in Mexico have been generally obscure, but for a brief history of the NAC in Canada, see Dyck and Bradford (2012).
6. While race continues to be used as a legal category, and has some significant applications in protecting traditionally marginalized groups, the concept of race continues to be problematic. Specifically, the concept of race tends to equate biology with behavior and culture. For purposes of this paper, I have attempted to restrict my use of "race" to contexts where it is used as a legal category or principle, and to use the term "ethnicity" in all other places. Ethnicity has the advantage of acknowledging traits shared within a group, such as language, custom, dress, religion, and cuisine, without implying a biological basis to these traits.
7. NACNA is known to be staunchly opposed to the participation of non-Indians, even to the extent of encouraging members to report non-Indian participants for potential prosecution (Maroukis 2010).
8. Termination was implemented as a policy in the 1950s, with the goal of eliminating tribal self-government and of integrating Indians into the general population. During this period, a series of acts were passed by Congress eliminating the governmental status and federal recognition of approximately 109 different tribes.
9. See Brown (2014) for a further discussion of the current statutory and constitutional bases for freedom of religion.
10. It is important to note that the UDV's argument is premised upon an understanding of political classifications under the trust responsibility as inherently race-based.
11. AIRFAA would not be passed for another 3 years (1994).

12. While the UDV lost their Equal Protection argument, they would go on to win the right to use their religious sacrament, ayahuasca, under the Religious Freedom Restoration Act of 1993 (*Gonzales v. UDV* 2006).
13. Interestingly, James "Flaming Eagle" Mooney reports that he is a descendant of the ethnologist James Mooney, discussed earlier in this chapter.

CHAPTER FOUR

PEYOTE AS COMMODITY: AN EXAMINATION OF MARKET ACTORS AND ACCESS MECHANISMS

Peyote (*Lophophora williamsii* (Lem.) Coult.), a psychoactive cactus native to Texas, has been a fundamental cultural and religious resource for members of the Native American Church (NAC) for over one hundred years (Stewart 1987). Native Americans may legally possess and use peyote, a federally controlled substance, as a religious sacrament (American Indian Religious Freedom Act Amendments [AIRFAA] 1994; Code of Federal Regulations [CFR] 1970), and trade in the cacti has been regulated by the federal government and state of Texas since 1969 (Texas Administrative Code [TAC] 2008; Tunnell 2000). Over the last forty years, the number of licensed peyote distributors, known as *peyoteros*, steadily declined from a high of twenty-seven in the mid-1970s to a current market low of three (Morgan 1976; Texas Department of Public Safety [TDPS] 2015b). Despite an estimated demand of between 5 and 10 million peyote buttons (cactus tops) a year for NAC ceremonies (Anderson 1995), there has also been a significant reduction of peyote harvested and sold annually, dropping from a high of 2.3 million buttons in 1997 to just over 1.1 million in 2014 (TDPS 2015b). The price of peyote also jumped, from $80 per thousand buttons in 1981 to $170 in 1995 (Anderson 1995), and then soared to $385 per thousand by 2014 (TDPS 2015b).

Applying supply and demand principles to the data above suggests a simple case of diminished supply (Besanko & Braeutigam 2010), however, supply shortages may occur because of impeded *access*, rather than from biological "scarcity" (Ribot & Peluso 2003; Sen 2010).

Impeded access results from certain actors in a supply network encountering barriers or difficulties that limit their ability to participate in the commodity market. This study of the supply side of the peyote market relies on interviews with current and former peyote distributors, peyote pickers, landowners, and NAC members, and applies Ribot and Peluso's (2003) Access Theory to (1) map the structures and mechanisms that facilitate NAC access to peyote; (2) to explore the peyote market's supply and demand dynamics; and (3) to elucidate the causes of distributor attrition.

By mapping the web of relations and processes that affect peyote access, this research will apprise licensed distributors, government regulators, and NAC congregations of the potentials and limits of the regulated peyote trade. After identifying network deficiencies, I consider avenues for bolstering access in the peyote supply network, including amending distributor licensing fees, and explore peyote cultivation as a potential extra-market access point for the NAC.

Peyote and the Peyote Trade

Peyote is a small, spineless cactus occurring along Texas's southwestern border in Jim Hogg, Starr, Webb, and Zapata Counties, and throughout parts of northeastern Mexico. Peyote can grow solitary, in small groups, or cespitose, though clumps and small clusters of peyote typically grow from a single rootstock (Anderson 1969). Human or animal activity may trigger clustering by damaging the crown (cactus top), which results in a hydra-like response producing new crowns through lateral branching from viable subterranean stem tissue (Terry & Mauseth 2006). This biological response lends itself to human management, where *infrequent* harvesting increases future yields of the plant.

Unfortunately for human harvesters, peyote is slow-growing, requiring some ten years to reach maturity from seed (Terry 2003). While restrained harvesting encourages growth through lateral branching, recovery and regrowth take time. A study is currently underway to determine the amount of time a peyote plant requires post-harvest before it recovers sufficient strength to endure another round of harvesting (Terry *et al*. 2011, 2014). So far, investigators have found that plants harvested at two-year intervals exhibit lower growth rates and higher mortality rates than unharvested individuals, and that plants require more than six years of regrowth to attain pre-harvest levels of crown biomass (Terry *et al*. 2014).

Re-harvesting peyote plants too frequently produces three important consequences: (1) the stress of re-harvesting can kill the plant; (2) re-growth has lower levels of mescaline, peyote's prized psychoactive compound (Kalam *et al*. 2013); and (3) insufficient recovery time before re-harvesting leads to the harvest and sale of smaller buttons. Because peyote sales are recorded by the button, and not by weight, it is difficult to compare sales from different time periods, however, one estimate suggests that peyote buttons sold today may be only one fifth of the size of buttons sold thirty years ago (Terry *et al*. 2011: 670). Others report that peyote buttons which once averaged two to three inches in diameter are now frequently one to two inches, with buttons as small as U.S. pennies reported in some NAC ceremonies (Williams 2012). In light of peyotes' diminishing size, the drop in sales from the mid-1990s to today is even more dramatic than it first appears.

While the amount of market-available peyote continues to diminish, the annual demand among NAC members has been estimated at between 5 and 10 million buttons (Anderson 1995). Such numbers, however, are hard to verify. Estimates on NAC membership also vary greatly, with estimates ranging from between 250,000 and 400,000 (Long 2000: 16) up to 600,000 (Prue

2014: 156). Determining actual NAC membership levels is difficult because the NAC is not a single organization, but rather a broad set of loosely related churches. Although exact membership numbers are hard to pinpoint, there is evidence that the NAC is continuing to grow (Prue 2014). Long-standing concern within the NAC, including planning efforts to maintain sufficient access to peyote (Anderson 1995; Arkinson 2012; For Indian Church 1995) also suggest that demand has not diminished, and supports the conclusion that the problem lies with overall supply. Such a conclusion, however, places an undue emphasis on supply and demand principles, and ignores a number of factors that affect individuals' ability to access resources.

Access Theory

Access Theory (Ribot & Peluso 2003) provides a paradigm for understanding (1) particular mechanisms that either facilitate or hinder an actor's resource access, and (2) the multiplicity of ways that individuals access and derive benefits from resources. Access depends upon individual "bundles and webs of powers that enable actors to gain, control, and maintain access" to resources (Ribot & Peluso 2003: 154-155). Ribot and Peluso specifically characterize "access" as a "bundle of powers," contrasting *access* from the typical characterization of "property" as a "bundle of rights" (Proudhon 2007). This distinction between "rights" and "powers" uncovers a crevice that Sikor and Lund (2009: 1) term the "grey zone," where one has "rights" to a resource but lacks the "power" to access it.

Access Analysis (application of Access Theory) begins by identifying the commodity of interest, here peyote, and then identifying the various actors in its "web of access" (*sensu* Ribot & Peluso 2003). The major actors in the peyote trade include landowners, pickers, distributors, and NAC members. Next, one identifies the commodity flow possibilities. Finally, Access

Analysis examines mechanisms allowing actors to gain, maintain, and/or control access to resources.

Ribot and Peluso (2003) identify two categories of access mechanisms: (1) Rights-based mechanisms, and (2) Structural and relational ones. Rights-based mechanisms refer to rights – sanctioned by law, custom, or convention – that facilitate an actor's resource access. These include rights conferred by permit or license, like the peyote distributors license (TAC 2008), or by social identity, such as the legal exemption for members of federally recognized tribes to use and possess peyote (AIRFAA 1994). Here, Sikor and Lund's (2009) concept of the "grey zone" – having rights but lacking access to a resource – becomes important because NAC members have a right to possess and use peyote, but they have no access guarantees. Rights, however, can be "characterised as legitimate claims that give rise to correlative obligations or duties" (Moser *et al*. 2001: 10). This definition suggests, despite the existence of a "grey zone," that government may have an obligation to facilitate an individual or group's ability to exercise their rights, or, at the very least, not to obstruct exercising of those rights. The federal government's Trust Responsibility, a legal obligation to protect the interests of recognized tribes in the manner that a *guardian* would protect the legal interests of his *ward* (see *Cherokee Nation v. Georgia* 1831 and *Worcester v. Georgia* 1832; see also *Peyote Way Church of God v. Thornburgh* 1995) supports this interpretation of rights in the context of this study. Due to the high degree of regulation in the peyote trade, the federal and Texas state governments play a large role in mediating market access. The possibility that regulations are inhibiting NAC access requires a rights-based approach to access, which questions regulatory actions that "knowingly put vulnerable people's rights at risk" (Mehta 2005: 1).

The second category of access mechanisms, structural and relational mechanisms, refer more broadly to the "means, processes, and relations" facilitating access (Ribot & Peluso 2003: 160), and include access to technology, capital, markets, labor, knowledge, authority, identities, and social relations (162). The geographic distance between reservations and South Texas remains a primary impediment to peyote access for Native Americans, one that requires sufficient *capital* to cover food, transportation, and other travel expenses. Similarly, *peyoteros* have their own access mechanisms to consider, including maintaining good social relations with landowners, another group of actors in the access web, in order to harvest peyote on private property (TAC 2008).

After mapping access mechanisms for each actor, we can evaluate these mechanisms for weaknesses that limit or inhibit specific actors' market participation. Remedies for access deficiencies can then be explored. Distributors appear to exist at a structurally dominant node in the peyote access web, making an understanding of their access mechanisms particularly important. Distributor decline poses challenges and questions regarding the resilience of the regulated market, and the ability of the NAC to access sufficient quantities of peyote for their ceremonies.

Methods

Fieldwork was conducted between 2012 and 2015 in Mirando City, Rio Grande City, and Roma in southern Texas, where the remaining *peyoteros* live and work. Data were collected through participant observation, and semi-structured in-depth interviews with current and former peyote distributors (n = 6), current and former peyote pickers (n = 15), and landowners (n = 3) with peyote habitat on their property. Semi-structured interviews were also conducted with NAC

members (n = 10). As this study population is difficult to access, participants were identified through a combination of purposive, chain, and opportunistic sampling methods. Field-notes and interview transcripts were managed and coded using MAXQDA software.

Records were obtained from TDPS (2013, 2015b), which has regulated and maintained records on the peyote trade for the last forty years. Other data from records includes gasoline prices from 1986 to 2012 (US Department of Energy 2015), distributor license fees from 1976 to 2014 (CFR 1971; Federal Register [FR] 1983, 1993, 2003, 2006, 2012), population growth from 1976 to 2012 for Jim Hogg, Starr, Webb, and Zapata Counties (Texas State Library and Archives Commission 2015). Gasoline prices, peyote prices, and licensing fees are adjusted for inflation based on 2014 values, using Westegg Inflation Calculator (Friedman 2016).

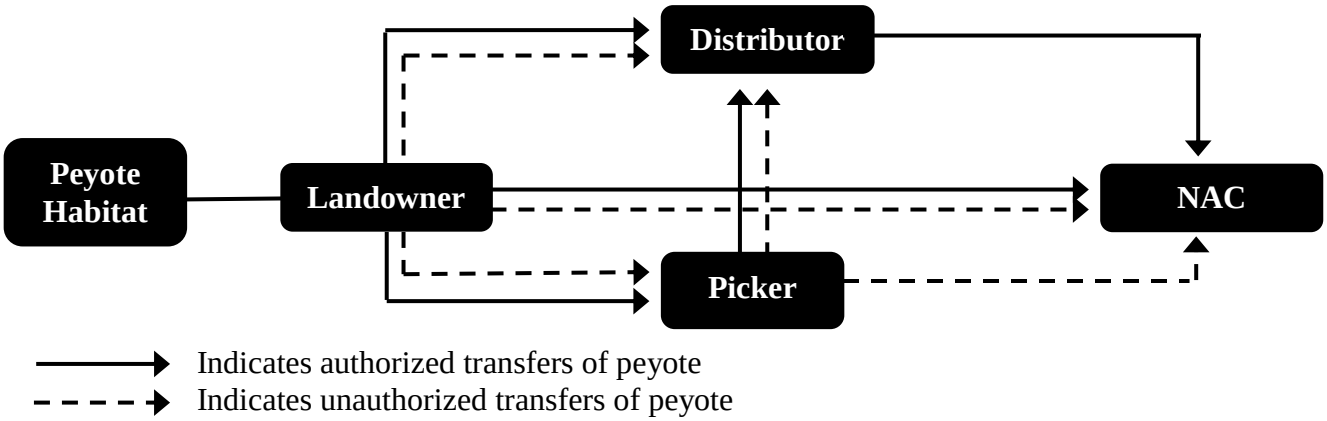
Quantifiable data were analyzed using STATA to determine the correlative strength between factors identified from the above research data with data demonstrating declines in distributors, declines in sales, and price increases occurring between the years of 1976 and 2014. The combination of qualitative and quantitative methods allows for the identification of weaknesses in the peyote access web, and provides a foundation to explore remedies for these deficiencies.

Market Actors and Access Mechanisms

Four primary actors are involved in the peyote trade: distributors, pickers, landowners, and NAC members. Of these, the distributor is the central actor in the peyote access web. Distributors establish and maintain relations and leases with landowners, manage employees (pickers), prepare peyote for sale, and maintain relationships with customers. The primary commodity chain involving the distributor follows peyote from the owner of the property where it grows, to

the picker who harvests under a lease, then to the distributor who prepares the peyote for sale to NAC members (Figure 4.1). Alternately, the distributor may harvest peyote himself, cutting out the picker. One path lets consumers bypass the distributor. This path requires NAC members to establish a relationship with a landowner and procure permission to harvest peyote independently on the landowner's property. Other paths involve some degree of unauthorized activity, usually involving trespass, picking without a license, or pickers bypassing distributors to sell directly to NAC members. Typically, unauthorized transfers occur within the peyote access web and return to authorized commodity flows.

Figure 4.1: Within the Peyote Access Web a number of potential pathways exist to convey peyote from the point of harvest to the end consumer. These can each be seen as individual commodity chains although they exist within a greater web of access potentialities.



Beyond the trade's structure, it is necessary to examine the varying determinants of market entry, and the mechanisms of access maintenance. Market entry is generally dependent on an actor's legal rights, or his ability to obtain them, but once the actor meets regulatory requirements, access primarily depends on structural and relational access mechanisms (Figure 4.2). A brief discussion of market actors and their access considerations follows.

Distributors

Distributors have primarily been Hispanic, and are often the head of a family, or part of a husband and wife business team. Traditionally, distributors rely on kids, grandkids, siblings, cousins, nieces, nephews, and neighbors to help collect peyote for sale. If a distributor dies or becomes disabled, the spouse, or another close relative, takes over the family business. While some distributors have worked in peyote full-time, many used peyote to supplement income from migrant work, work in the oil fields, or work as a ranch-hand. Migrant work was typically a family endeavor where nuclear, and sometimes extended, families would travel during the spring and summer months and work together as a single economic unit. After families completed seasonal work, they returned to their homes to work the fall and winter months in peyote. As South Texas's population has grown, and economic opportunities have expanded, the numbers participating in migrant work have diminished and no current distributors participate in migrant work. While distributors have been both men and women, the remaining distributors are all men, two in their sixties and one in his seventies.

Figure 4.2: Access Map (Mechanisms of Access)

Actors	**Rights-Based**	**Structural & Relational**

Landowners	Property Ownership	• Knowledge of peyote
		• Knowledge of law
		• Social ties with:
		  ○ Distributors/Pickers
		  ○ NAC Members

Pickers	License
	U.S. Citizenship
		• Access to Distributor (for labor opportunities)
		• Access to transportation
		  ○ Vehicle
		  ○ Gasoline Money
		• Physical stamina
		• Knowledge of peyote

Distributors	License
	Leases
		• Access to land
		  ○ Social or family ties with landowners
		• Clean Record (no criminal history)
		• Access to Labor
		• Access to Capital
		  ○ License Fee
		  ○ Leasing Fees
		  ○ Employee wages
		  ○ Gasoline
		• Reputation

NAC Member	Federal Exemption
	Travel Permit
		• Tribal membership
		• NAC membership
		• Access to capital
		  ○ Food
		  ○ Gasoline
		  ○ Peyote

The potential distributor has the most difficult path to enter the peyote market, having first to apply for and receive licenses from the Drug Enforcement Administration (DEA) and from TDPS, the two agencies that regulate the peyote market. The DEA screens new applicants for felony drug convictions and imposes an annual registration fee of $1,523 (FR 2012). TDPS requires that distributors annually submit a letter attesting to their moral character from a local judge, chief of police, or sheriff (TAC 2008 §13.43[5]), with a $25 processing fee (§13.27[a]). On state and federal applications, the distributor must also declare at least one property where peyote will be harvested and must list the names and contact information of the landowners. Finally, the applicant must provide a list of names and social security numbers of individuals who will harvest peyote on the distributor's behalf. Besides licensing requirements, additional expenses include land leases, which range from several hundred to several thousand dollars depending on lease terms, pay for pickers to stock peyote, and expenses for secure storage befitting a controlled substance.

Pickers

Pickers are also typically Hispanic and usually distributors' relatives, but are often neighbors, family friends, or individuals in need of extra income. As distributors retire, pickers may seek employment with another licensed distributor. Young family members often work in peyote for a few years to help the family and earn extra spending money, then typically find full-time employment elsewhere. Other pickers may have limited employment opportunities due to age, language barriers, legal problems or legal status, while others prefer the flexibility of peyote work and the benefit of same-day pay. In 2013 there were fifty-eight pickers registered with

TDPS, mostly men, and ranging in age from seventeen to seventy-one years old. The average age of pickers was forty-two (TDPS 2013).

Pickers must procure a license through a licensed distributor. Pickers do not need to pass criminal background checks, but must be U.S. citizens, which eliminates numerous potential workers in this Texas-Mexico border region. While distributors are not charged for picker's licenses, they don't hand out licenses freely. Trust is important in the picker-distributor relationship as well as the picker's reputation. Pickers who abuse property leases or trespass cause liability for the distributor, potentially risking the distributor's license or relationship with landowners.

In addition to a good reputation and distributor-rapport, a picker must be able-bodied, have transportation, and sometimes, have access to properties independent of the distributor. Picking peyote requires stamina and common sense. A picker may walk up to five miles in a day, and may harvest up to 100 lbs., which has to be hauled back to the road. Transportation needs require access to a vehicle and money for gasoline. Some drive in groups and others may pay someone with a vehicle for rides.

Landowners

Landowner identities vary regionally. Eighteenth century Spanish sub-divided the Lower Rio Grande Valley into *porciones* (4,428 acres), which were allotted to Spanish families and families of Hispanicized Indians (Morgan & Stewart 1984). *Porciones* became smaller generationally as multiple children inherited and divided the land. Many also traded land for tools or food. As a result, ranches along the Rio Grande are small, but generally remain held by Hispanic families.

The family nature of the southern ranches has helped distributors to access ranches through family, neighbors, and other community relationships.

Inland, in the Mirando Valley and elsewhere, land grants, intended for cattle grazing, were substantially larger than those allotted in the Lower Valley along the Rio Grande (Lang & Long 2010). These upper-class designated land grants, some as large as 600,000 acres, remain relatively large. The early 20th century discovery of oil in the Mirando Valley drove land values up and prevented land from being broken up and sold. Because of differing land allotments according to class, ranches in the northern part of peyote's range remain large and many have passed from Spanish to Anglo ranchers, limiting opportunities for distributors to access land through family relations. *Peyoteros* in the Mirando Valley generally rely on expensive leases to access land, though social connections are still vital. One northern *peyotero* explained that leasing opportunities were rare, but that he was able to pick on a property where his father worked as a ranch-hand.

Market entry for landowners depends on the presence of peyote on their property, and on social connections with either licensed pickers, distributors, or NAC members. There are no federal or state fees involved, though basing fees on quantities of peyote harvested is considered a sale, and prohibited without a license (TAC 2008: §13.55). There are no significant impediments for landowners' participation in the peyote market.

NAC Members

NAC members come from various Native American tribes, though a coalition of Apache, Arapaho, Cheyenne, Comanche, Kiowa, Oto, and Ponca peyotists originally incorporated the NAC in 1918 (Maroukis 2010). Since then, it has grown to be the largest pan-Indian religion in

the US. Currently, members of more than one-hundred tribes claim NAC membership, with representatives of seventy different tribes making purchases in the peyote market annually. There are approximately 200 different NAC chapters, some with multiple congregations, with a presence in twenty-nine states and Canada (TDPS 2013). While chapters are widespread, NAC activity is most concentrated in Arizona, New Mexico, and Oklahoma. Members from these states prefer traveling to Texas to purchase peyote and visit the revered "peyote gardens." Some have arrangements with landowners to harvest their own peyote, while others rely primarily on distributors. Members often characterize this journey as a religious pilgrimage. Members who live farther away more likely order peyote through the mail, and may never visit the peyote gardens, though they consider it a special privilege to do so.

NAC members have several rights-based access considerations. Federally recognized tribe members are exempt from the federal prohibition on peyote under AIRFAA (1994), while those with a one-quarter Native American blood quantum are exempt in Texas (TAC 2008). Additionally, Texas requires NAC members to carry travel permits printed on NAC stationary, signed by an NAC officer, and containing identifying information. Texas law also *recommends* that travel permits include information regarding how much peyote will be purchased and where. Different chapters may impose additional restrictions on travel permits, with some reportedly charging members for permits. Members must also have sufficient capital to cover travel expenses, including gasoline, food and lodging, in addition to their planned peyote purchases.

Access Control

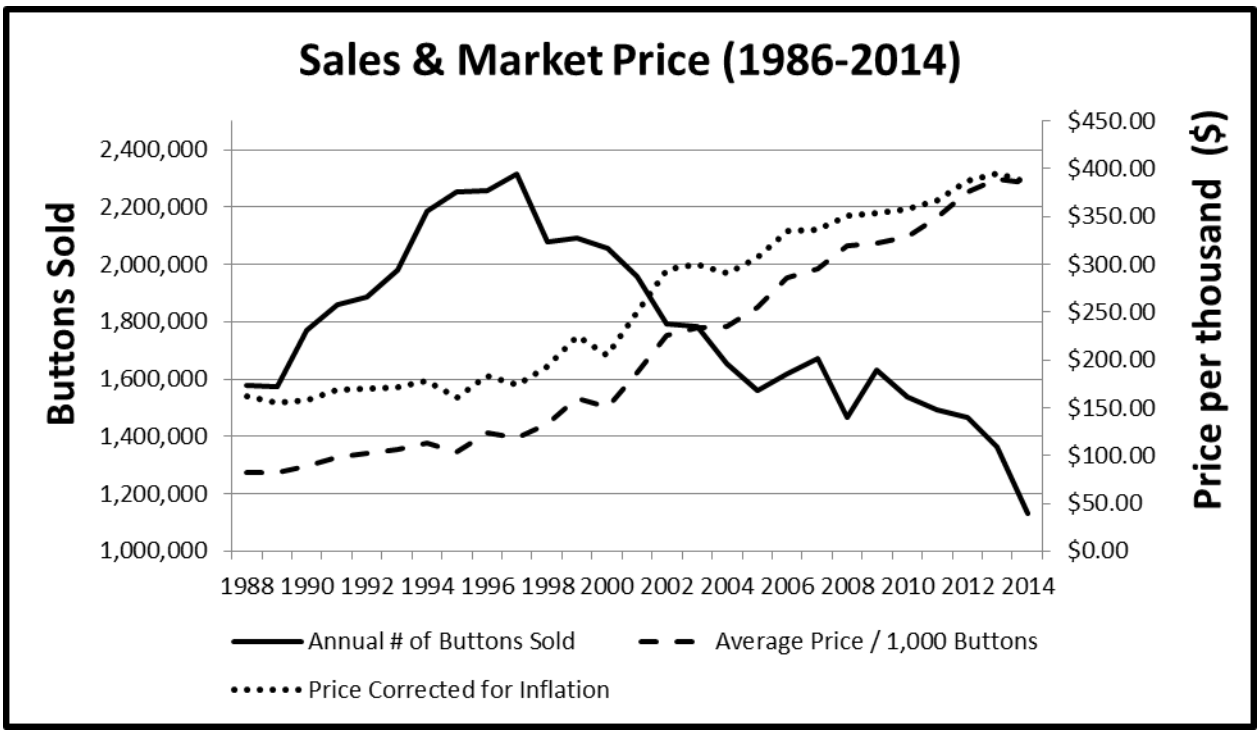
Another important consideration is Access Control. As a regulated market, Access Control lies predominantly with the regulatory agencies, here the DEA and TDPS. Background checks,

character references, annual audits, and licensing fees are all methods for controlling who can access the market as a distributor. Citizenship requirements also limit distributors or pickers who may enter the market. Any changes in policy or fee structure could have profound impacts on market access, particularly when the population of distributors and pickers is so low. State and federal laws, implemented by the above agencies, limit consumer access by stipulating who may legally purchase and possess peyote.

Peyote Supply and Demand

Peyote sales have been declining since 1997 (Figure 4.3). Interviews with distributors and pickers suggest that both declines in demand and increased difficulty in obtaining peyote have contributed to sales declines. Informants report that the number of annual customers has declined, and believe that rising gasoline prices have prevented many NAC members from traveling to purchase peyote. This perception is generally corroborated by NAC members who frequently mentioned (8/10 informants) travel expense as a primary barrier to accessing peyote. A correlation analysis to test the relationship between sales and gasoline prices between 1986 and 2012 demonstrated a significant negative relationship ($\underline{r}$ [25] = -0.69, $\underline{p} < .01$), suggesting many NAC members choose to stay home when gasoline prices are high. However, an examination of sales records for the period 2003 to 2012 shows an annual variation of between 650 and 800 individual sales with no clear trends up or down (TDPS 2013). This discrepancy partly results from an increased reliance on mail order purchases when gasoline prices are high ($\underline{r}$ [7] = 0.8352, $\underline{p} < .01$).

Figure 4.3


Sales & Market Price (1986-2014)
Buttons Sold
2,400,000
2,200,000
2,000,000
1,800,000
1,600,000
1,400,000
1,200,000
1,000,000
$450.00
$400.00
$350.00
$300.00
$250.00
$200.00
$150.00
$100.00
$50.00
$0.00
Price per thousand ($)
1988 1990 1992 1994 1996 1998 2000 2002 2004 2006 2008 2010 2012 2014
Annual # of Buttons Sold
Average Price / 1,000 Buttons
Price Corrected for Inflation

Most distributors decline to send fresh peyote by mail due to its substantial weight (1,000 fresh buttons weigh between 80 and 100 lbs.) and the associated shipping costs. One of the remaining distributors, however, does ship significant amounts of fresh peyote. Due to the weight, a single order may be split into two to four different shipments. Regulations require that a receipt be included in each individual package (TAC 2008: § 13.51a(3)[E]), so a single order may require several receipts. The result is that the number of individual recorded sales, which appears steady, is artificially high. This receipt inflation helps explain the discrepancy between distributor perceptions of a declining customer base and the number of recorded sales, which otherwise suggest steady business. In any case, mail order purchases haven't sufficiently increased when gasoline prices are high to offset sales declines.

As rising gasoline prices have tempered NAC purchasing practices, the increased cost of peyote itself has also likely led to more conservative NAC purchases. Distributor reports support the supposition that customers are making smaller purchases. A correlation analysis was run to test the strength of the relationship between sales (number of buttons sold) and peyote prices between the years 1986 and 2014 (Fig. 3.3). The results showed a significant negative relationship between sales and price ($\underline{r}$ [27] = -0.7195, $\underline{p} < .01$.), suggesting that increased prices may have led to decreased purchasing power among consumers. However, this correlation may simply reflect the principle of supply and demand, that prices increase under circumstances where supplies are diminished and demand remains steady.

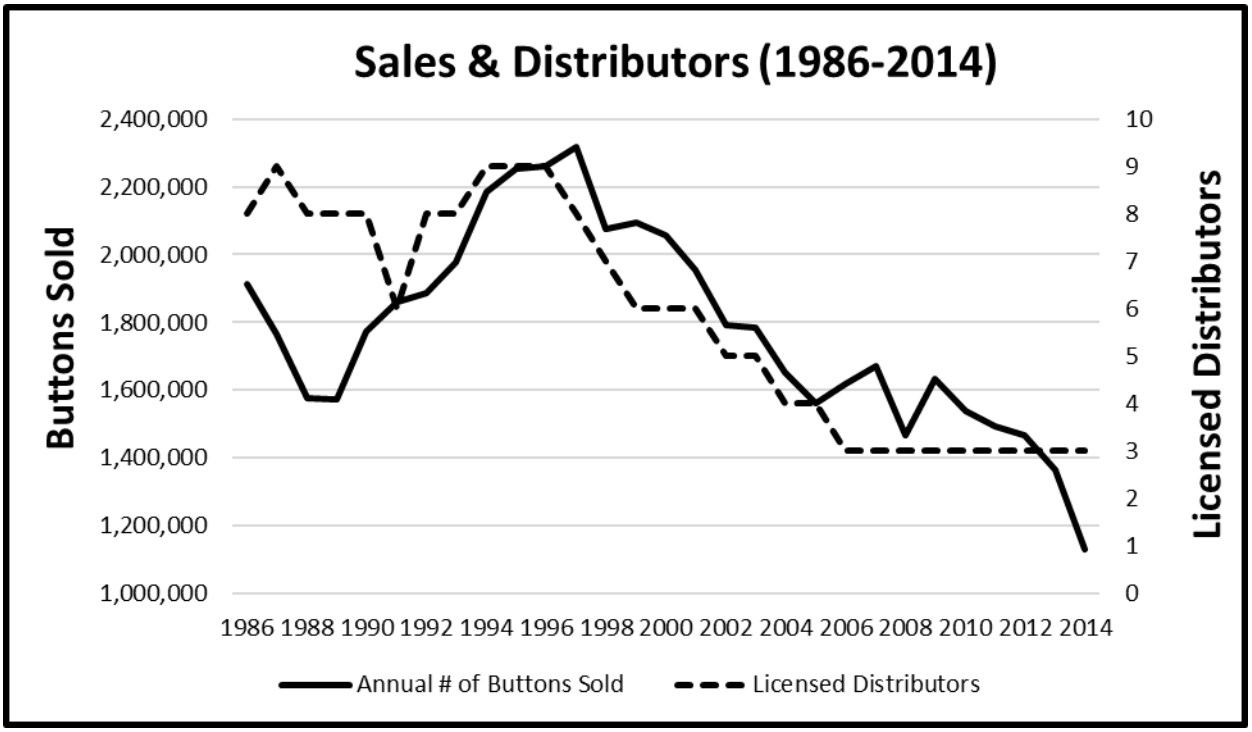
As peyote harvests have shrunk, distributors have raised prices to cover expenses. While declining access to land and attrition among pickers partially explain the diminished market supply, there is a general consensus among informants that peyote is increasingly scarce. Several pickers lamented that they are only able to pick half as much in a day as they were able to pick

just twenty years ago, while others explained that pickers have to drive and walk farther than before to find peyote. One picker stated "Now you got to go up ten, fifteen miles out, thirty miles out, fifty miles out, to go look for the [peyote]… you got to go out, out, way out." As gasoline expenses for pickers rise, so too do costs for distributors – costs which are inevitably passed on to the consumer. These circumstances result in a complex supply-demand relationship where diminished supplies lead to price increases necessary to cover distributor expenses, and then to decreased purchasing power among consumers, which then results in further drops in sales and revenue for distributors. This leaves distributors less able to pay pickers and maintain a minimum market supply of peyote.

Relatedly, the number of licensed distributors is another important factor when considering market supply. When asked about the importance of distributors in facilitating peyote access, NAC informants were nearly unanimous (9/10) that the distributors played a "very important" if not "essential" role in facilitating access. A significant majority (8/10) also reported that "most" or "all" of their chapter's peyote supply came from distributors. Nevertheless, only half (5/10) reported that they were able to acquire the desired amount of peyote from distributors, suggesting that the number of distributors licensed may impact overall market supply, and thus the degree to which NAC members are able to access peyote for ceremonies. To test the connection between NAC market access and number of distributors, a correlation analysis was run on the amounts sold and numbers of licensed distributors between the years 1986 and 2014 (Figure 4.4). The results showed a significant positive relationship between sales and distributors ($\underline{r}$ [27] = 0.7258, $\underline{p} < .01$.). If one assumes that demand for peyote has not declined, the analysis suggests that the number of distributors limits the amount of peyote that reaches the market. If this is correct, then determining why attrition is high among

distributors becomes a paramount consideration when determining how to address declining peyote access among NAC members.

Figure 4.4.


Sales & Distributors (1986-2014)
Buttons Sold
2,400,000
2,200,000
2,000,000
1,800,000
1,600,000
1,400,000
1,200,000
1,000,000
10
9
8
7
6
5
4
3
2
1
0
Licensed Distributors
1986 1988 1990 1992 1994 1996 1998 2000 2002 2004 2006 2008 2010 2012 2014
Annual # of Buttons Sold
Licensed Distributors

Distributor Decline

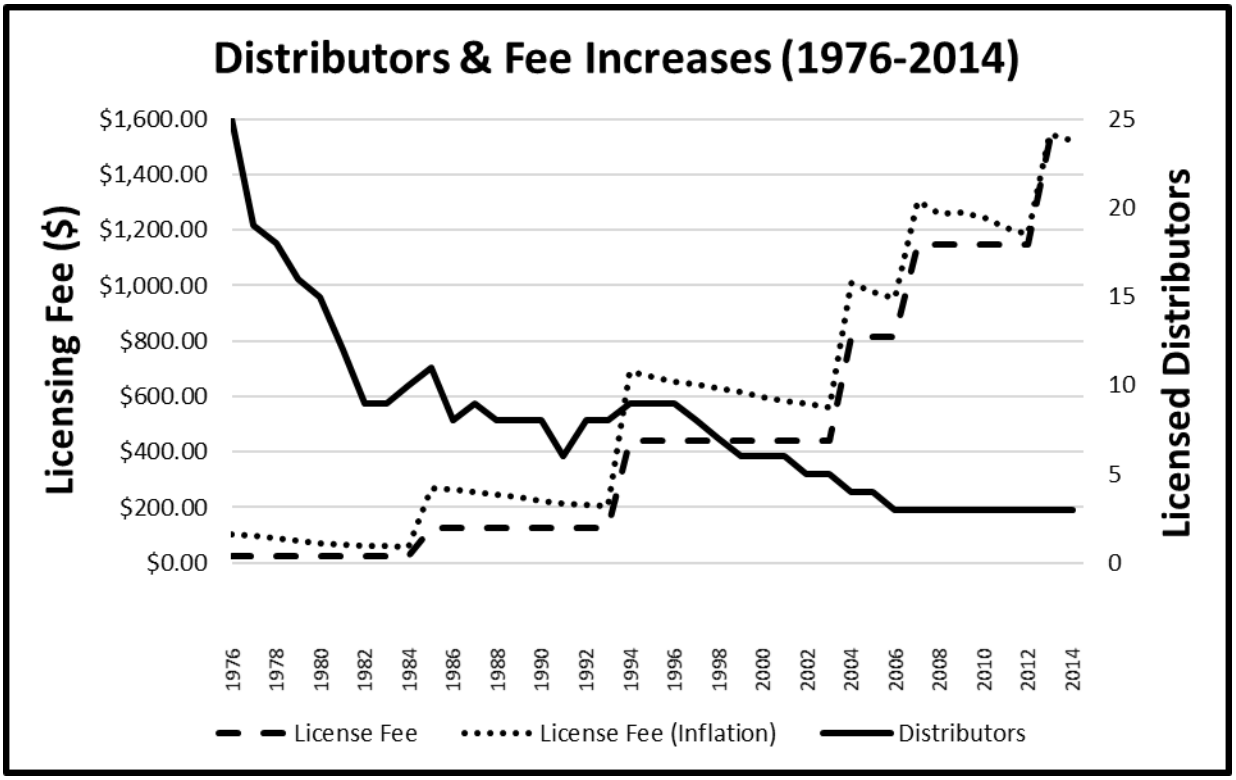
Informants frequently cited the following reasons for distributor decline: (1) insufficient income and capital; (2) insufficient land access; (3) insufficient labor access; and (4) peyote scarcity. These causes are interconnected, and it is likely that some combination of the above reasons has led to the dramatic decline in licensed distributors over the last forty years.

The potential distributor must have sufficient capital to pay licensing fees and cover start-up costs, while the working distributor must earn sufficient income to cover annual licensing fees as well as leases and other business expenses. While the TDPS fee is low at $25 (TAC 2008: §13.27[a]) the Controlled Substance registration fee through the DEA has risen precipitously over the last forty years, rising from $25 in 1976 to $1,523 by 2012 (FR 1983, 2012), an increase largely intended to capitalize on the burgeoning pocketbooks of pharmaceutical firms. Several informants indicated that increased licensing fees, along with other start-up costs, had become impediments for potential distributors. One picker decided against getting a license because "the license was going up" and because of associated expenses with creating a secure storage place. Another speculated that potential distributors "don't want to buy the license because they don't get enough ranches or places to go… They don't want to buy it for a thousand dollars," indicating that both land access and licensing fees are important considerations for potential distributors.

A correlation analysis was run to test the strength of the relationship between the number of licensed distributors and licensing fees between the years 1976 and 2014 (Figure 4.5). The results show a significant negative relationship between rising licensing fees and number of distributors ($\underline{r}$ [37] = -0.7295, $\underline{p} < .01$), suggesting that increased fees have increased difficulty

for existing distributors to maintain their licenses (particularly if they operate on a small-scale), and have prevented potential distributors from entering the market.

Figure 4.5.


Distributors & Fee Increases (1976-2014)
Licensing Fee ($)
$1,600.00
$1,400.00
$1,200.00
$1,000.00
$800.00
$600.00
$400.00
$200.00
$0.00
Licensed Distributors
25
20
15
10
5
0
1976
1978
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004
2006
2008
2010
2012
2014
License Fee
License Fee (Inflation)
Distributors

The remaining considerations, access to land and labor, and peyote scarcity, all link to local development and population growth. With population growth (the populations of both Starr and Webb Counties have doubled in the last thirty years), land values have increased and many local families have capitalized by selling land. Wind, oil, and natural gas companies have bought up major leases, while farmers have root-plowed other lands for cattle grazing. Urban growth combined with other development activities eliminated significant amounts of habitat, and made large tracts of land unavailable for harvest. A correlation analysis was run on the numbers of licensed distributors and population growth in Jim Hogg, Starr, Webb, and Zapata Counties between the years 1976 and 2012, and found a significant negative relationship between population growth and number of distributors ($\underline{r}$ [35] = -0.8449, $\underline{p} < .01$). These results support informants' reports that decreased access to land due to growth and development has made market participation increasingly difficult for distributors.

Similarly, economic growth in South Texas led to increased job opportunities and declines in migrant work and family organized labor. One informant, who noticed a decline in pickers, explained "Rio Grande [City] is kind of growing more. They got more stores, plazas. They got a movies now. And they got stuff like that. There's more… more, I mean [more] opportunity for people to find jobs." Another former picker discussed how he used to pick with two different crews, including a group of cousins, but explained how everyone had moved on: "well all my cousins are working and… the other crew, my other friends working in the school district, or they got their jobs and got settled down somewhere, or in prison, you know what I mean." When asked about the availability of pickers, Mauro Morales, one of the current distributors, explained how local growth has changed the job prospects for many would-be pickers:

> Now they got more jobs because there's a lot of stores, and things like that. But twenty years ago, like I said, this town [Rio Grande City] grew up, in twenty years grew up a lot. So there's jobs for the young guys now. Back then there wasn't no jobs. Only the fields, or up north and come back. And when they come back they would work on the medicine [peyote]. You know, like October, November, December, January. And then, like in March, April they went back. So that's the way it worked you know.

To test the connection between growth and picker decline, a correlation analysis was run on the numbers of licensed pickers and population in Jim Hogg, Starr, Webb, and Zapata Counties between the years 2003 and 2012. Results were not significant but indicated a negative relationship between population growth and number of pickers (r [8] = -0.4326, p > .01). Though more data is necessary, this relationship may suggest that as the population grows and economic opportunities increase, individuals are less likely to seek or continue employment as peyote pickers. The decline in pickers likely contributes to the significant relationship found between distributor decline and population growth (r [35] = -0.8449, p < .01).

Discussion

While development and harvesting pressures have impacted peyote market supplies, diminished supply also reflects changes to market actor's "bundles of powers." Some of these powers arise from particular "rights" of specific actors, other powers come from structural and relational access mechanisms. Market actor's rights have not changed significantly since the peyote market

became regulated, with the exception of the fees imposed upon distributors. Rising fees created barriers to market entry for potential distributors and have pushed small-scale and part-time distributors out of the market. Because distributors rely on personal networks to access land and build their labor force, the loss of a distributor also results in declines in both acres harvested and active pickers. Therefore, less peyote makes it to market, competition decreases, prices increase, and consumer choice declines.

Changes to structural and relational access mechanisms have also impacted market participation and peyote's overall market availability. The bundle of powers necessary for distributors to be successful – primarily access to land and labor – has weakened significantly with local growth and development. As cities such as Laredo, Rio Grande City, and McAllen have grown, so too have full-time job opportunities. Many former and would-be pickers have foregone the dangers of snake-bites, dehydration, heat-exhaustion and the inconsistent successes of picking peyote, for regular, steady work, while peyote's habitat continues to be developed for oil and wind farms, or for municipal expansion. Rising annual expenses including license fees, costs of worker retention, and land leases, mean that access to capital also has become increasingly important for distributors.

NAC rights-based access mechanisms haven't changed much over the last forty years, but their ability to exercise their right to pray with peyote has diminished significantly. As distributors have declined, so too have market supplies of peyote. Additionally, increasing gasoline and peyote prices have diminished NAC members' purchasing power, leading to more frugal purchases and less peyote available for religious services.

Declining peyote access poses a number of risks for the NAC, a considerable Native American cultural institution that has played an important role in strengthening Native

communities and in combatting historical trauma and related alcohol and drug addiction (Brave Heart 2003; Calabrese 2013; Feeney 2014; Hill 2013; Watts and Gutierres 1997). As peyote availability decreases, the frequency of ceremonies will likely decrease, fewer opportunities will be available for youth to become involved, and participation will stagnate. Peyote is central to the NAC: without it, the NAC, along with the community support it provides, will wane. NAC members will be stuck in Sikor and Lund's "grey zone", where they have protected rights that they cannot use.

While development marches on, some strategic regulatory changes could bolster individuals' ability to participate in the peyote market as distributors and increase levels of consumer access by increasing market supply, or could open new peyote access avenues for NAC members. Market regulations are intended to prevent diversion of peyote to the black market, but certain regulatory components merely hinder legal market participation and ultimately obstruct the ability of NAC members to exercise their rights. The rapidly rising licensing fees, for example, have little to do with the peyote market itself. Rather, the DEA applies a single fee to all distributors of controlled substances, regardless of the substance in question; the purpose of its use; the scope of licit and illicit markets; or the likelihood of abuse or diversion to the black market (FR 2003). Black market demand for peyote is negligible (a fact used by the DEA to explain why religious peyote use can be accommodated while religious marijuana use cannot: *Olsen v. DEA* 1989), with less than 2 lbs. confiscated by TDPS in 2014 (TDPS 2015a). With only three distributors and less than 800 individual sales per year, the peyote market is very small. Creating a separate licensing category with a reduced licensing fee, or providing some type of fee reduction could create greater access for prospective distributors

and may increase overall market supplies of peyote, while greater competition would deter price inflation for NAC congregants.

A different tack would be to allow chapters of the NAC to cultivate their own peyote. The passage of AIRFAA in 1994 not only codified the religious rights of Native Americans to use peyote, but also opened the door to regulated cultivation (§ b2). The DEA has not offered any specific regulations regarding the cultivation of peyote, so regulations would likely default to the rules and fees established for the manufacture of a controlled substance, the same fees that apply to the pharmaceutical industry. The current licensing fee for manufacturers is $3,047 (FR 2012), an exorbitant amount for a plant that may take ten years to reach maturity from seed (Terry 2003). Under such a system, any NAC chapter that undertook cultivation would spend over $30,000 before it reaped the rewards of its efforts. With peyote currently selling at $385/1,000 an individual chapter would need to plant and harvest over 78,000 peyotes to break even, without including any horticultural expenses. A separate, reduced-fee licensing system for Native American religious use would be necessary to make cultivation by NAC chapters feasible.

Alternatively, the US Department of Justice (DOJ) might adopt a hands-off approach to peyote cultivation on reservations similar to the one adopted regarding enforcement of marijuana laws on reservations (DOJ 2014). The DOJ has not legalized marijuana for tribes but limits its "investigative and prosecutorial resources" to prioritized areas (p. 2), e.g., black market diversion. Similarly, DOJ might adopt a policy limiting federal investigations to instances involving evidence of diversion outside of the NAC. This would further the government's goal of cultural and religious preservation under the Trust Responsibility, but would leave NAC rights in a grey area.

Ultimately, Federal regulations that obstruct the exercise of NAC rights and that put Native American cultural and religious practices at risk should be revised in keeping with federal duties to Native peoples. The best avenue for preserving NAC peyote access would include a fee reduction for distributors' licenses and clear regulations for cultivation by individual NAC chapters for a reasonable licensing fee. While a fee reduction for distributors may not reverse the twenty-year decline in the peyote market, it would deter further market erosion and foster a minimum market supply of peyote for the immediate future. Combined with licensing for cultivation, the distributor fee reduction provides NAC chapters with a buffer period for setting up peyote cultivation operations that could eventually meet most of the licensed chapter's needs. If the peyote market continues to decline despite changes to licensing fees, the above recommendations will ensure a degree of self-sufficiency and access for NAC chapters that choose to pursue cultivation, despite further market erosion.

Limitations

The present case study examines the supply side of the peyote market. Market demand comes from the NAC, a large religion with membership exceeding 250,000 individuals across the U.S. and Canada. Ten NAC congregants contributed to this research. While interviewees were drawn from a variety of tribes, an expansive demand-side investigation would determine how, and to what degree, declines in the peyote market adversely affect the NAC. Geographical and financial differences between tribes' likely influence the degree to which NAC chapters are affected, and an investigation across tribes and chapters would clarify how market declines affect the NAC, and whether particular groups are more vulnerable to market changes than others.

Conclusion

Over the last forty years, the number of licensed distributors steadily declined, a trend accompanied by rising prices and a diminishing market supply of peyote. While there are indicators that peyote's Texas habitat is shrinking from development, overharvesting, and other pressures, application of Access Theory and Access Analysis demonstrate that changes in market actors' "bundles of powers" precipitate dwindling market supplies. These bundles of powers consist of rights-based, structural, and relational mechanisms that facilitate an individual actor's market access. As demonstrated above, actors in the peyote market experiencing the most pronounced changes in market access are the distributors and NAC members.

The impact of growth and development on distributors' structural and relational access mechanisms may not be fully reversible, however, regulations that limit rights-based access mechanisms *are* subject to revision. Research results demonstrate that the number of licensed distributors affects NAC peyote access, and that the number of distributors declines with rising licensing fees. A downward adjustment of licensing fees, to reflect the uniqueness of the peyote market, could raise the financial feasibility for individuals seeking a distributor's license and prevent attrition among the remaining distributors. While such an action directly benefits the distributors, expanding the distributor base will expand the market supply of peyote and stabilize prices through increased market competition, results that ultimately benefit the NAC. The adoption of federal regulations for the cultivation of peyote by the NAC may be a necessary and complementary step to adjusting distributor fees to ensure continued NAC access to peyote, thereby upholding the government's duties under the Trust Responsibility.

CHAPTER FIVE

CONCLUSION

The ethnobotanical relationship at the heart of the NAC is complex and multifaceted. Several aspects of this relationship, including peyote's sacramental and therapeutic use, as well as its market exchange, have been explored in the preceding pages. Chapter 2 demonstrated how peyote's unique pharmacology, when combined with ritual, symbolic manipulation, relational interaction, disclosure, and a ceremonial context, can produce positive therapeutic outcomes. Chapter 3 described the historical context for the emergence of peyotism among Native American tribes and outlined the development of the NAC, as well as events that led to the federal adoption of a religious exemption for NAC members. Chapter 4 mapped the various commodity chains that peyote follows from the point of harvest to its ceremonial use, and also described the various actors involved in the peyote market, their roles, and their relationships to each other.

Legal and regulatory complications for the practice of peyotism were also examined here. Chapter 3 addressed restrictions in the peyote exemption that could exclude children and other family members who are ineligible for tribal enrollment, or whose blood quantum is insufficient, from participating in NAC ceremonies. And Chapter 4 explained how market regulations have contributed to declining market supplies of peyote, and decreased access to this sacred resource for members of the NAC.

The research presented here covers a broad range of themes inherent in this unique ethnobotanical relationship, but the potential threads of inquiry extend far beyond what could

possibly be presented in a single dissertation. Nevertheless, this study presents several important directions for new research. As noted in Chapter 2, studies have been conducted on the safety of peyote use and on its applications in addiction treatment, however, a number of potential research avenues remain. For example, comparative studies looking at differences in well-being, substance dependence, and suicide rates between NAC members and non-members in specific Native communities might shed some light on the value of peyote in treating historical trauma. The therapeutic model presented in Chapter 2 may also prove useful in structuring ongoing studies on the therapeutic potential of related psychedelic substances, such as psilocybin, MDMA, or lysergic acid diethylamide.

Another major area for investigation would be to examine the impacts of regulatory exclusion on multi-ethnic Native American families. While the constitutionality of having a racial or tribal litmus test for NAC membership is questionable, the threat of prosecution has caused conflicts within the NAC over issues of membership and identity. Because these politics play out differently in different communities and different tribes, it should be possible to construct a comparative study to examine the differences between NAC chapters that are inclusive and those that are exclusive, including comparisons in membership growth and retention, and in community cohesiveness.

Finally, because peyote is central to the religious practice of the NAC, its availability is paramount to the continuing viability of this unique American religion. As the peyote market declines, the NAC and its membership will have to make adjustments to their practices. There are a number of ways in which the NAC might respond, including finding an alternate source for peyote, adjusting consumptions levels, or decreasing the numbers of ceremonies held. As there are likely to be disparate impacts on NAC communities based on wealth and geographic distance

from the peyote gardens, a comparative study between different NAC chapters – based on these specific factors – might present a continuum of responses that could be instructive as to how communities will respond and how practices might change as peyote availability continues to decline.

The Native American Church is a uniquely American religious tradition, one that provides emotional, psychological, and community support to its members. It has played an instrumental role in various tribes in the Western United States for over 100 years, but its current vitality is threatened by regulations that divide religious communities along ethnic and tribal lines, and by regulations and economic changes in South Texas that have contributed to declines in peyote's market availability. Anthropology can, and should, play a role in addressing regulations that negatively impact traditional religious and cultural practices, like the NAC, that foster health, confidence, and self-determination in indigenous communities. Efforts to contextualize laws and regulations within an anthropological perspective might help shed light on the cultural impacts that seemingly innocuous regulations can have. Further, a more actively inclusive field of anthropology could embrace and empower Native Americans to employ anthropology to aid and protect their own Native traditions, like the NAC, for generations to come. For the moment, it is my hope that what I have presented here will prove useful to the NAC, and its various chapters, to the peyote distributors, and to policy makers in addressing regulatory challenges that constrain and hinder a religious practice that remains vital to many Native American communities.

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