

2009

Justification of Legalized Peyote

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Recommended Citation

Roncoroni, Faith, "Justification of Legalized Peyote" (2009). *Volume 17 - 2009*. Paper 8.
<http://preserve.lehigh.edu/cas-lehighreview-vol-17/8>

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PEYOTE

The Legalization of

An eight year old girl respectfully bows her head before she reaches up for the chalice; the red wine delicately moistens her lips and fills her mouth; experiencing the religious rite of communion brings her closer to God. Meanwhile a forty-five year old man cleanses his body with sage in preparation of receiving two Peyote buttons; this ritual of ingestion brings him closer to the Great One by bestowing protective and curative powers upon him. In Christianity it's normal for children to drink wine for ceremonial purposes; in Peyotism it's normal for practitioners to use Peyote for ceremonial purposes. In mainstream society it is against the law for minors under the age of 21 to drink wine and illegal for anyone to use Peyote. Why is it socially acceptable for Christians to illegally consume, while the same society continually questions the legality of allowing Peyotists to use Peyote? Is it because Christianity is the most widespread religion in the United States? Is it because hallucinogenic drugs are an unfamiliar, feared, underground substance? Does society have a double standard for the majority religious practitioners versus the minority practitioners?

In *Multicultural Citizenship*, William Kymlicka confronts the increasingly controversial but also increasingly modern issue of recognizing the identity of minority groups and making accommodations for the cultural differences of those minority groups within dominant culture. He shows how minority groups can be integrated into political communities in several ways, ranging from individual or familial voluntary immigration to colonization through conquest of entire communities. Not surprisingly, the way in which a minority group is incorporated into a larger political community affects the group's nature as well as the type of relationship that the minority group wants to enter into with the larger society. Kymlicka focuses on what he believes are the two major patterns of cultural diversity. The first case of cultural diversity involves the incorporation of formerly independent, "self-governing, territorially concentrated cultures into a larger state" (Kymlicka 10). These minority groups are referred to as "national minorities," and they want to remain alongside the larger society and majority culture by maintaining their own distinct society through cultural practices

and beliefs. In order to ensure the survival of the national minorities' distinct culture and society, they demand various self-government and autonomous rights. Kymlicka's second pattern of cultural diversity consists of familial and individual immigration where immigrants commonly band together in "ethnic groups." Unlike national minorities who wish to be a self-governing nation remaining separate from the larger society, ethnic groups want to integrate into the main stream society by being recognized as fully accepted members. Often times, ethnic minorities seek more recognition of their distinct identity through the accommodation of their cultural differences by revising and changing the current laws and institutions of the larger society (Kymlicka 11-2).

In this paper I examine whether or not Native Americans should be allowed to use drugs, such as peyote, in their religious ceremonies, while non-Native American citizens would face prosecution for its use; I focus on Kymlicka's first pattern of cultural diversity, which involves national minorities, to support the legalization of peyote use for religious purposes. While some believe that the

United States should place the use of peyote under the control of narcotics laws as an illegal, habit-forming, recreational drug, others argue that the consumption of the peyote plant is essential to religious ceremonies and culture; the banning of this drug will negatively impact the religion, culture, and identity of Native Americans who partake and believe in the Peyote Religion.

Native Americans want to be placed alongside the main stream society while maintaining their cultural distinctions, such as their religious practices; William Kymlicka defends similar aims of national minorities by examining the group's rights. He argues that national minorities do deserve group differentiated rights which he subdivides into self-government, polyethnic, and special representation. Kymlicka's examination of self government and polyethnic rights are relevant in the issue of whether Native American religious ceremonies should be permitted to use drugs that are deemed illegal for non Native American citizens of the United States; according to Kymlicka's theory of multicultural liberalism, it is unjust for the use of peyote in Native Americans' religious ceremonies and practices to be prohibited and deemed illegal. I will argue that, first, Native Americans have justly been given self-government rights and as a result should be able to establish their own laws and rules of prosecution, laws which legalize the use of peyote in native religious ceremonies. Secondly, national minorities, such as Native Americans, should be granted polyethnic rights; these rights would allow exemptions from regulations and laws which would negatively impact them because of their religious practices.

All of Kymlicka's group differentiated rights can be used in providing minorities with external protection from the economic and political power of main stream society by reducing their vulnerability of decisions made by larger society, but each set of rights responds differently to external pressures. Self-government rights transfer power to the smaller, minority political groups, so that

minorities are not overpowered on issues which are particularly important for their culture, such as language, immigration, resource development, family law, and education (Kymlicka 37-8). These smaller minority groups or "individual nations," which comprise the larger multinational state, want to act on behalf of the interests of their people and ensure that their people's culture can fully and freely develop. Therefore, these nations are liable to demand rights involving territorial jurisdiction or political autonomy, but if they believe that they cannot achieve their self determination within the larger multinational state, than they may want to separate themselves from it (Kymlicka 27). National minorities demand self government rights and claim that these rights were not surrendered or abandoned during their involuntary incorporation. In the United States, national minorities are more vulnerable because their self-government powers do not receive the same constitutional protection as the states' rights, but this lack of constitutional protection provides national minorities with more flexibility when redefining their powers to suit the interests and needs of individual minorities (Kymlicka 29).

In 1930, the United States Bureau of Indian Affairs revised and authorized the creation of tribal governments in an effort to give Native American tribes self-government rights ("Plateau Indian"). Since national minorities have a better understanding of cultural practices and will not be over ruled or vetoed due to lack of numbers, they will be better at establishing just and unjust legislation concerning their cultural practices and beliefs. By providing Native American tribes with self-government rights, issues such as ceremonial peyote ingestion will not be construed or subject to the same laws as the misuse of peyote.

Native American tribes that practice the peyote ritual believe that peyote buttons have strong protective and curative powers, but they claim that they do not worship the peyote plant itself. The peyote is merely a medium that the believer travels through to reach communion with God. A Kiowa-Apache claimed that he

was healed by peyote tea after contracting the influenza epidemic during World War I, while a Cheyenne peyote participant relates his experience of giving up on white doctors after being told that he had tuberculosis. He was initially skeptical when offered peyote and told that the buttons would heal him. After a while of attending meetings and eating peyote buttons he was cured, testifying to others that the peyote does have the power to heal and cure (Brant 219).

When the United States courts examine peyotism, they have difficulty distinguishing the religious use from the misuse of peyote as seen in the 1990 court case of *Employment Division of Oregon v. Smith*. The Oregon Supreme Court claimed that religious peyote use violated the state's drug laws, but the free exercise clause made the prohibition invalid. Scalia from the Supreme Court held that (1) the ceremonial use of peyote was not exempt from the Oregon state drug laws due to the free exercise clause and (2) while remaining consistent with the exercise clause, the state could deny unemployment compensation to Native Americans on the basis of misconduct for using peyote. Four years after this case, Congress prohibited states from penalizing Native Americans who used peyote in their religious ceremonies by passing the American Indian Religious Freedom Act Amendments ("Federal Indian Law Outline"). In this Act, Congress recognized that Native American tribal councils better understand the cultural practices and beliefs of their people and as a result will be more accepting of customs and better judges of just and unjust actions within their tribal context. In reference to peyotism, self-government rights would allow Native Americans to ingest peyote in ceremonial practices because they witness and experience the importance and necessity of expressing this religious belief.

Polyethnic rights protect the cultural and religious practices of minorities which receive insufficient support through funding, such as arts or language programs, or protect religious groups from existing legislation which may

unintentionally disadvantage them, such as conflicting dress codes and religious beliefs (Kymlicka 37-8). Kymlicka claims that within the last thirty years minority groups have challenged the notion of conformity, which assumes that minorities must adopt the cultural customs and norms of main stream society and abandon their own heritage. Initially, minority groups demanded rights which allowed them to be able to freely express their cultural beliefs without fear of retaliation from the larger society, through discrimination or prejudice (Kymlicka 30). The demands of minority groups have expanded in an effort to eliminate bias and bigotry, especially in instances involving “visible minorities,” while other minorities have demanded public funding of and for their cultural practices, such as magazines, festivals, etc. Many liberal

the military dress code so that they could wear the yarmulke during their military service (Kymlicka 31). The intention of these group specific rights, which Kymlicka refers to as “polyethnic rights,” is to help minority groups in their expression of cultural individuality and pride without being disadvantaged by the larger society’s economic and political institutions. Similar to self-government rights, polyethnic rights protect cultural differences, are not viewed as temporary, and are intended to promote, to a certain degree, integration into main stream society.

While government funding of Native American religions can be disputed, the existing legislation which unintentionally disadvantages minorities due to their religious beliefs is more prevalent in regards to the legalization of peyote. While peyotism is a religion with

anthropologist who studied peyotism, found no evidence that the opponents of peyote tried to interfere with the Native American tribes’ religious practices (Brant 220). While the verbal dissention of the use of peyote was not alarming, the American Medical Association began to carry out investigations of peyote, causing the Native American tribes to fear that peyote would be classified as a habit forming drug, subjecting it to the control of narcotics laws. Narcotics are characterized as drugs which are controlled by the government because they produce pain relief, addiction, a state of stupor, and may even result in a feeling of euphoria. Since narcotics are responsible for relieving pain, they also reduce the side effects associated with extreme pain such as fear, suffering, panic, or worry (“Narcotic”). When people are caught with illegal narcotics, such as peyote, they are

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states fund museums and arts in an effort to preserve cultural diversity and richness, but they fail in providing funds for areas in studies and associations.

Usually, one of the minority groups’ most controversial demands involves being exempt from regulations and policies which would hinder them from their religious practices and beliefs. Kymlicka refers to the cases of exemption from animal slaughtering and Sunday closing for Muslims and Jews in Britain, as well as the Sikh men living in Canada who wanted exemption from the police force dress code and motorcycle helmet regulations so that they could wear their turbans. In France, Muslim girls wanted the right to wear the chador and so sought exemption from their school dress code, while within the United States, Orthodox Jews sought exemption from

devoted followers who attend meetings weekly to pray and sing for the health and strength of the tribe, there are many instances of people misusing the peyote, which makes the peyote religion vulnerable to attack. The Native American tribes cited two instances in which they believe peyote can and is misused: (1) that people use peyote while under the intoxication of alcohol and (2) at some meetings peyote is commercialized so that participants must pay for each peyote button consumed. Due to the misuse of peyote as a commercial, addictive, hallucinogenic drug, the Baptists in that region looked down upon the practices of peyote rites by referring to the effects of the peyote buttons as “distinctly deleterious, physically, mentally, and morally.” Although some religious groups, including the Baptists, publically spoke out against the use of peyote, Charles Brant, an

prosecuted. But if US law recognized polyethnic rights, the use of peyote in Native American religious ceremonies would be outside the jurisdiction of larger society because it is an important cultural practice.

It is important to examine why national minorities deserve these rights which appear to advantage them over the rest of society. Kymlicka raises similar questions after examining what group differentiated rights are and how they protect the culture, practices, and beliefs of national minorities. Providing minority groups with group differentiated rights and protecting their personal culture not only impacts the minorities, but places costs on other interests and other people, so it is necessary to determine if and when these trade-offs are justified. Kymlicka is useful in this regard as well. He responds to these issues

of justice with three points: equality, historical agreements, and diversity. His first two points are based upon the positive impact on national minorities while the last point shows how the larger society benefits from group differentiated rights. Since his last argument concentrates on the benefits provided to majority groups for minority rights, it does not directly focus on if and why these minority groups deserve separate and distinct rights to protect the culture of the minorities, which is the intention of this paper; the diversity argument is also problematic because it is advantage based and not morally based. Although Kymlicka does not expand upon the moral relevance of the diversity argument, it does allow for a greater scope for autonomy and provides more options for individuals to determine the best life for themselves.

(Kymlicka 109). Enacting these measures would impose restrictions on the majority, which could include giving minorities priority in using certain resources, forgoing specific rights when entering the minority's homeland, or paying more to move into the minority's territory. These restrictions placed upon the majority are a burden, but the sacrifice of the restrictions on the majority is much less in comparison to the sacrifices that the minorities would have to make if action is not taken. Without the restrictions to promote external protection, the minority may lose its culture, which is too great a cost to request of people.

Kymlicka's argument for equality endorses group differentiated rights only when the national minorities are truly disadvantaged and the special rights correct this disadvantage. When examining this notion in reference to the

peyote buttons, with the belief that these peyote buttons were given to them by the voice for physical and psychological healing (Brant 213-215). In order for Native Americans to have the freedom to choose which religion to practice and to be equal with the larger society by having the same religious freedom, ceremonial peyote use needs to be legalized. This ritual of ingesting drugs is not uncommon in religious beliefs; Christians consume blessed wine and unleavened bread, referred to as the Eucharist, which they believe is a gift from their God to remember and honor Jesus Christ. The religious ceremony of Christianity centers on receiving the Eucharist because it brings the followers closer to God; similarly the ingestion of peyote allows the Native Americans to reach a state of communion with the voice of the Great One. Since the United States allows other religions to

While peyotism is a religion with devoted followers who attend meetings weekly to pray and sing for the health and strength of the tribe, there are many instances of people misusing the peyote, which makes the peyote religion vulnerable to attack.

The equality argument is based upon the notion that group specific rights are necessary to ensure true equality for all citizens of ethnic and national minority groups. The opposition will respond that true equality for all can only be achieved by providing equal rights for individuals despite factors such as ethnicity or race, but Kymlicka argues that some of the minority rights "eliminate, rather than create, inequalities" (Kymlicka 109). For instance, political and economic decisions of the majority may undermine the societal culture of national minorities, making the minorities suffer injustice. To ameliorate this injustice the government needs to lessen and eliminate minority vulnerability of the majority's decisions through "territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights"

Native American religious use of peyote, other drug uses of peyote must also be considered, as well as the costs concurred to the national minorities and the larger society. Peyotism, the most widespread religion of North American Indians, is based upon the story of a mother and boy who are left alone and hungry after escaping an attack by another tribe of Native Americans ("Native American Church"). While they are trying to locate other displaced survivors their strength starts to fail, but the boy hears a voice instructing him to eat the peyote buttons of the cactus. The boy obeys, his hunger is satiated, and the voice then reunites him with survivors from his tribe. To honor the voice that saved them and to share the healing powers that they discovered with others, the boy began to hold peyote ceremonies. At these ceremonies the members would each consume

ingest drugs, such as alcohol, and promotes the notion of religious freedom, it should allow the legalization of ceremonial peyote ingestion, as defined by Kymlicka's equality argument.

Another argument in defense of legalizing peyote use involves historical agreements which focus solely on national minorities' rights. Kymlicka explains why ethnic groups are not considered, claiming that immigrants are not normally promised rights before entering into a new country. National minority rights were granted and necessary in the agreement of being federated through signed treaties. Previous generations signed these treaties undemocratically, under duress and/or ignorance while lacking equal negotiation power as their partners. These historical agreements define the terms under which the United States acquired authority over Native

Americans. Therefore, if the United States breaches its trust and does not abide by its treaty then the Native American communities' agreements to be part of the United States is void. There are two main costs associated with historical agreements: if these agreements are broken the trust between the minority citizens and the government will be breached and the respect of the self-determination of the society will be violated, neither of which are acceptable costs for a society. Since the costs of breaking a historical agreement are so high, these treaties must be examined for fairness on the basis of involuntary or voluntary federation. There are two questions vital in determining if national minorities entered voluntary federation through treaties or involuntary federation through colonization: what were the terms and conditions under which the two parties decided to become partners and what are the limits and restrictions on the state's right to govern its national minorities?

What are the historical agreements between the United States government and Native and Americans and what were the terms and conditions under which the Native American tribal groups agreed to enter into a partnership with the United States? Historical agreements, in the form of treaties between the United States government and Native Americans, were perpetually broken by the United States and recreated to the United States' advantage. For instance, the Second Treaty of Fort Laramie in 1868 gave the Western Sioux Indians the rights to their native hunting grounds and sacred territory in the Black Hills. But George Custer found gold in the Black Hills, causing thousands of miners to swarm the area. This unwanted influx and intrusion of whites into the sacred territory of the Western Sioux Indians led to war. Although the Native Americans won the Battle of Little Bighorn, they were forced to relinquish their treaty rights to the Black Hills, which contained the largest goldmine in the United States ("Black Hills"). Another instance of forcible removal was when 100,000 people from the Eastern Woodlands were forced to leave their homeland at gunpoint;

it is estimated that over 15,000 people died while traveling the Trail of Tears ("Southeast Indian"). Due to (1) the dishonesty of the United States by constantly entering and breaking treaties with Native American tribes and (2) the notion that the United States forced the national minorities into these agreements through violence and colonization, most of the historical agreements involving Native American tribes should be reevaluated. In regards to the promise of Native American self-government rights, the United States forced Native American tribes onto reservations and as a result their self-government rights are directly tied to tribal reservation lands where tribal councils are responsible for governing the reserve. The United States should keep their promises made to the Native American tribes by recognizing tribal councils as self-governing.

When people are caught with illegal narcotics, such as peyote, they are prosecuted. But if US law recognized polyethnic rights, the use of peyote in Native American religious ceremonies would be outside the jurisdiction of larger society because it is an important cultural practice.

While indigenous issues concerning health, criminal justice, resource development, family law, education, and policing have increased the Native Americans control over their lives, Native American tribes greatly differ in the types of powers that they want for their people. Their territorial locations within states also create problems because the Native Americans must co-ordinate their native self-government with the federal state agency. These claims of self-government transfer political power to the smaller subgroups under the control of the national minorities, which generally correspond to the national minority's historical territory or homeland (Kymlicka 29-30).

The value of cultural diversity, insofar as it pertains to the interests of the majority and adds richness to people's lives, makes national minority rights deserving of support.

Kymlicka suggests that diversity is seen as valuable because it is aesthetically pleasing in its creation of a more interesting global society and it expands the options and choices of individuals; but Native American tribes want to retain their cultural practices and beliefs by remaining alongside the larger society. So by protecting these national minorities and granting them group differentiated rights, the larger society may actually be reducing diversity. The tribes would no longer have to assimilate into the larger society where their culture would be integrated, benefiting the majority through its aesthetic value. Another reason why cultural diversity may be seen as valuable is because other cultures have differing social and political organizations, which could be used as a reference when future problems arise, such as adopting aspects of the Native Americans'

traditional lifestyle that focuses on preserving the environment (Kymlicka 121).

All of Kymlicka's reasons supporting group differentiated rights on the basis of cultural diversity are centered upon the advantages received by protecting and preserving cultural diversity, not a morally based argument. Advantage based arguments are problematic because they do not produce consistent or morally right actions; the degree of the importance of the advantages may change or people may commit an unjust crime because it is advantageous for them to do so. For instance it would cost less to increase the immigration from various countries than to protect national minorities, but that advantage does not justify the mistreatment of Native Americans, just as the protection of Native American culture cannot be morally justified by this argument.

Even if the educational and aesthetic values of cultural diversity justify the costs associated with promoting and protecting the diversity of minority cultures, these values do not explain why the minority culture should not have to be burdened with extreme costs. If the benefits of the majority can justify restrictions on individual opportunities or liberties, why should it matter whether the restrictions are enforced on the minority or majority? This problem brings up another issue with the diversity argument; Kymlicka believes that it is just to protect national minorities through external restrictions, but since the value of cultural diversity argument appeals to the main stream society, it fails to explain whether or not the national minorities should be able to decide on their own if and how their culture should be maintained (Kymlicka 123).

Kymlicka believes that decisions about what specific aspects of culture should be maintained should be left up to the culture to decide because state intervention would unfairly penalize and/or discourage others' choices. He claims that people should be free to choose which type of life they believe is best; to come to this conclusion he examines why people should be given the option of determining what is the best life for them, even though some people make unwise decisions by wasting their effort and time on trivial or impossible pursuits (Kymlicka 80). Why should the government not force people into living a truly good life by intervening when people are making imprudent decisions and mistakes? The government may be untrustworthy, some people may have needs that a well intentioned government may fail to take into account, or civil strife could result if the government supports conceptions of the good which are controversial. Kymlicka also points out that individuals will be more likely to adopt and live by values which they endorse, as opposed to being forced into a lifestyle in accordance with principles that contradict or stray from their own profound ethical convictions (Kymlicka 81). Since people can choose to follow their conception of the good, people can choose to make mistakes. People

can be wrong in their belief of the conception of the good or about the value or importance of what they are doing, but no one wants to live a life that is based upon false beliefs or worth; therefore it is important that people are able to use new information and experiences to assess and revise their conceptions of the good.

According to Kymlicka's theory of multicultural liberalism, Native American tribes should be allowed to ingest peyote in religious ceremonies and this cultural practice should be protected by group differentiated rights: specifically self-government rights

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and polyethnic rights. Self-government rights would give tribal councils the power to establish and enforce laws and rules of prosecution that correlate with their cultural beliefs and practices. Polyethnic rights ensure that minorities are not disadvantaged because of their religious practices by granting these groups with exemptions from such laws and regulations; the ceremonial tribal ingestion of peyote would be allowed because it is the foundation of the most wide spread Native American religion and denying the right to use peyote is equivalent to denying them the right to practice the religion of their choice. This argument leads into why Native American tribes deserve group differentiated rights and whether the costs of the majority and minority are acceptable. Kymlicka argues for group differentiated rights on the grounds of equality, historical agreements, and the value of cultural diversity. To promote equality between the majority and minority, Native American tribes need to be given the same religious freedom and since the ingestion of peyote is the basis of a Native American religion, the use of peyote

cannot be prohibited. In regards to historical agreements it is necessary to determine whether the agreement was entered into voluntary or involuntary; Native American tribes were forced into accepting unfair terms and as a result these treaties need to be revised, but the United States must keep its promise by recognizing Native American tribes as self-governing. The argument of valuing cultural diversity fails because it is morally based, advantages the majority, and does not explain whether or not Native American tribes should be able to decide if and how their own culture is

maintained, but it can promote autonomy and protect other cultures that may have a different form of government, organization, or lifestyle, which may be helpful in the future. National minority groups of Native American tribes deserve self-government and polyethnic rights; these group differentiated rights underwrite the ceremonial ingestion of peyote for these tribal groups, but not for any non-religious use because these rights require costs to minority and majority groups that are acceptable.

by Faith Roncoroni