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Article

The Cactus and the Anthropologist: The Evolution of Cultural Expertise on the Entheogenic Use of Peyote in the United States

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Abstract: This paper explores the complex evolution of the role anthropologists have played as cultural experts in the regulation of the entheogenic use of the peyote cactus throughout the 20th century. As experts of the “peyote cult”, anthropologists provided testimonies and cultural expertise in the regulatory debates in American legislative and judiciary arenas in order to counterbalance the demonization and prohibition of the medicinal and sacramental use of peyote by Native Americans through state and federal legislations. In the meantime, anthropologists have encouraged Peyotists to form a pan-tribal religious institution as a way to secure legal protection of their practice; in 1918, the Native American Church (NAC) was incorporated in Oklahoma, with its articles explicitly referring to the sacramental use of peyote. Operating as cultural experts, anthropologists have therefore assisted jurists in their understanding of the cultural and religious significance of peyote, and have at the same time counseled Native Americans in their interaction with the legal system and in the formatting of their claims in appropriate legal terms. This complex legal controversy therefore provides ample material for a general exploration of the use, evolution, and impact of cultural expertise in the American legal system, and of the various forms this expertise can take, thereby contributing to the contemporary efforts at surveying and theorizing cultural expertise. Through an historical and descriptive approach, the analysis notably demonstrates that the role of anthropologists as cultural experts has been marked by a practical and substantive evolution throughout the 20th century, and should therefore not be restrictively understood in relation to expert witnessing before courts. Rather, this paper underlines the transformative and multifaceted nature of cultural expertise, and highlights the problematic duality of the position that the two “generations” of anthropologists involved in this controversy have experienced, navigating between a supposedly impartial position as experts, and an arguably biased engagement as advocates for Native American religious rights.

Keywords: cultural expertise; expert testimony; applied anthropology; controlled substances; peyote; entheogens; strategic litigation; indigenous rights; law and culture

1. Introduction

Since the earliest recognition of its use on Native American reservations in the late 1880s, peyote has laid at the heart of a series of legal battles over religious rights and indigenous self-determination in the United States (Stewart 1993; Maroukis 2012; Dawson 2018). Yet, in spite of the persistent assaults by the Bureau of Indian Affairs, Christian groups, physicians, and prohibitionist organizations in order to control, and ultimately eliminate, the psychoactive cactus in the interest of cultural assimilation, moral rectitude, religious purity, and public health, the entheogenic use of peyote has been able to survive both the prohibition and the war on drugs eras. Resulting from the confrontation of two radically different rationalities where the small hallucinogenic cactus constitutes either a narcotic or a sacred medicine, this long-standing and complex conflict finds its origin in the history of colonial

Mexico, and eventually became a reference point in the legal debate over nonrecreational use of psychoactive substances.

Drawing upon a socio-historical inquiry into this legal controversy, the article proposes a critical exploration of the evolution of the instrumental role that two generations of American anthropologists have played in this conflict as cultural experts (Grillo 2016; Holden 2011, 2019a, 2019b; Rodriguez 2018). Far from limiting themselves to expert witnessing, anthropologists have indeed proved strategic allies for Native Americans, counseling them in their interactions with the American legal system in order to protect their entheogenic practice from prohibition. This complex legal controversy, whose origins will be examined in Part 2, hence provides ample material for a general exploration of the use, forms, and impact of cultural expertise. Part 3 considers the role of anthropologists in assisting Native Americans in the defense of their entheogenic practice against early 20th century prohibition efforts. Led by James Mooney, anthropologists testified before lawmakers at several occasions, and later encouraged the movement's leaders to organize into an established church. Finally, Part 4 explores the reconfiguration of cultural expertise in the peyote controversy, as the proliferation of court cases after the Second World War led a new generation of anthropologists to provide strategic expert witnessing in defense of the peyote movement.

2. The Origins of the Peyote Controversy

Peyote (*Lophophora williamsii*) is a small and spineless cactus with psychoactive properties, which grows in a limited area situated at the junction of southern Texas and northern Mexico. It is light green and segmented, approximately one to two inches across, and grows singly or in clusters close to the ground from a long taproot. The plant is harvested by cutting off the exposed tops of the plant, leaving the root to produce more “buttons”—as the tops are usually called—which are then traditionally dried before being eaten. Despite its bitter taste, which usually causes unpleasant bodily symptoms—including nausea, dizziness, and vomiting—peyote is reported to produce a warm and delightful euphoria, relaxation, colorful visual distortions, stimulated imagination, and a sense of timelessness. The effects, caused primarily by the presence of mescaline—whose structure is partially homologous to LSD—peaks two to four hours after consumption, and declines over the next 8 h (Anderson 1996; Rojas-Aréchiga and Flores 2016).

The Aztec origin of the word “peyote” suggests that, for thousands of years before the “discovery” of America, populations living in the area of peyote growth along the lower Rio Grande and south into Mexico as far as Querétaro, were familiar with the plant and its psychoactive properties; recent archeological studies indicate that peyote is likely to have been known and used by native North Americans since at 5700 years ago (El-Seedi et al. 2005; Terry et al. 2006). It can thus be assumed that the peyote cactus has been used for millennia as an entheogen¹ by American indigenous peoples and cherished for its curative properties, where it has been employed to treat such varied ailments as toothache, labor and breast pain, fever, skin diseases, rheumatism, diabetes, colds, and blindness (Schultes 1938). Although peyote has for a time been depicted by medical research as a dangerous drug in an effort to diabolize its use and justify prohibitionist efforts, it is nowadays generally recognized that the cactus is neither habit-forming nor harmful when used in the controlled ambience of a peyote ceremony (Halpern et al. 2005).

Although the use of peyote had been historically limited to indigenous peoples located in the territory of Mexico, prompting attempts by the Inquisition in New Spain to prohibit its use (Section 2.1),

¹ The neologism “entheogen” (“generating the divine within”) refers to any psychoactive substance when used for its religious or spiritual effects, whether or not in a formal religious or traditional structure. This neologism, coined in the late 1970s by a group of ethnobotanists and religious scholars, including Richard Evans Schultes and Robert Gordon Wasson (Godlaski 2011), is often chosen to contrast with recreational use of the same substances. Entheogens have been used in a ritualized context for thousands of years and their religious significance is well established with anthropological and academic literature. Examples of traditional entheogens include psilocybin mushrooms, ayahuasca, iboga, salvia, and cannabis (Cavnar and Labate 2016).

the dynamics of colonial expansion in North America have resulted in the progressive diffusion of these entheogenic practices outside their traditional territory, all the way from Western Central Mexico to the Canadian province of Alberta (Section 2.2). This geographical expansion of peyote use, which led to the structuration of a vast religious movement in the United States, quickly became an object of interests for late 19th century anthropologists, and most notably for James Mooney, who played a crucial role as cultural expert in the defense of peyotism during the early 20th century (Section 2.3).

2.1. The Mexican Precedent

The Spanish, through the intermediary of missionary Bernardino de Sahagún, encountered peyote a couple of decades after their conquest of the Aztecs (León-Portilla 2002; Stewart 1993). To a large extent, they vigorously opposed the practice; not so much on account of its physiological effects, but because of its perceived religious significance for populations they were aiming at converting. Eating the peyote was declared by the padres to be almost as grave a sin as eating human flesh. The Inquisition in New Spain, established in 1571, consequently issued an edict of faith banning the use of peyote in June 1620 (Chuchiak 2012).

Following the publication of the edict, prosecution of cases related to the use of peyote ensued for much of the next two centuries, with a peak of repression from 1620 to 1650. Although the exact number of prosecutions related to peyote remains debated among scholars (Aguirre Beltrán 1963; Dawson 2016; Taylor 1996), the full force of the Inquisition's prohibition was to be felt on non-indigenous populations, firstly because of the controversial question of the Inquisition's jurisdiction over indigenous peoples (Greenleaf 1965), but also because the risk of "contagion" was considered a more important issue than the continuation of heretical beliefs among the Natives (Quezada 1991). In any case, New Spain's colonial authorities did not succeed in eradicating entheogenic uses of peyote. After Spain lost control to Mexico in 1821, numerous evidence indeed indicate that peyote use was continued among tribes who lived in remote areas and where able to maintain their identities and traditions—most notably the Huichol, the Cora, and the Tarahumara, who continue until today to conduct elaborate pilgrimages to peyote fields (Lumholtz 1902; Benciolini and del Ángel 2016).

2.2. The Diffusion of Peyotism² in the United States

Although the use of peyote had been for a long time limited to populations located in the territory of what is now northern Mexico, the dynamics of colonial expansion in North America prompted the diffusion of these entheogenic practices outside of its traditional territory—to such extent that it would eventually become the first pan-tribal religion in the United States. Paradoxically, the federal policy of removing Native American tribes from their ancestral lands to newly created reservations in the 19th century played a critical role in the introduction of peyote in the country (Jahoda 1995). The situation of closeness induced by the massive relocation of these tribes, together with a shared condition of cultural disintegration, logically prompted exchanges among them, including the use of peyote in or near the newly established "Indian Territory"—which comprised present-day Oklahoma and parts of Arkansas.

The scale of the diffusion of peyote among fundamentally diverse Native American groups can therefore not be understood outside of this historical context. As the U.S. government was trying hard to suppress "backward cultures" through aggressive assimilationist policies—among which the Indian Religious Crimes Code, promulgated in 1883 (Irwin 1997)—new religious and spiritual movements emerged among native populations in order to find answers to this critical crisis of identity: these include the Ghost Dance movement and peyotism. Authors (Petrullo 1934;

² "Peyotism" generally refers to the entheogenic use of peyote as practiced by Native Americans; by extension, "peyotists" refers to the practitioners of the faith. The term was framed by Vincenzo Petrullo in his 1934 doctoral dissertation (Petrullo 1934).

La Barre 1938; Schultes 1938; Stewart 1993) have put forward other concurring factors in the further diffusion of peyote use: one of them is the role of the Carlisle Indian School, founded in Pennsylvania in 1879, and which remained the flagship Indian boarding school in the U.S. until 1918 (Adams 1997). Considering that over 10,000 Native American children from 140 tribes attended the school—many of whom became influential in tribal affairs when returning to the reservation—it is reasonable to assume that it helped the propagation of peyote use throughout the U.S. territory.

2.3. James Mooney (1861–1921) and the Early Ethnography of Peyotism

From the 1880s onward, with the availability of peyote, the development of railroads and the stability of life on the newly established reservations (Morgan and Stewart 1984), peyotism started to spread steadily beyond Oklahoma, thanks notably to the work of avowed missionaries such as that of Comanche Chief Quanah Parker (c. 1845–1911), who played a crucial role in the early structuration of the cult (Hagan 1993). The first description of a peyote ceremony was carried out by James Mooney in 1891, a few years after he was hired as an ethnologist by the Bureau of American Ethnology of the Smithsonian Institute (Colby 1978; Moses 2002). In 1890 and 1891, he traveled to Oklahoma in order to study the emerging Ghost Dance movement. He soon discovered that another religious movement was taking place in Indian Territory: the peyote religion—or, as he initially called it, the “mescal cult.” Mooney managed to participate in several all-night peyote rituals; his notes and photographs are the first detailed description of the peyote ceremony in the United States. He wrote a number of related articles over the next decade, describing in detail the ritual and theology of the emerging religious movement (e.g., Mooney 1891, 1892, 1896).

The more Mooney studied the rite that had over time become a religion, the more he came to believe that the opposition to peyote by missionaries, Indian Service agents, and eventually reformers among Native Americans themselves was misdirected zeal. For the rest of his life, Mooney was much involved in studying the spiritual and medicinal rationale behind the peyote cult. Convinced that peyotism was uniquely able to provide a source of unity and cultural integrity to the multitude of Native American tribes uprooted from their traditional territories and thrown together on reservations, he came to play a precursing and instrumental role as cultural expert in the legal defense of the entheogenic practice.

3. The Role of Anthropologists in the Legislative Battle Against Prohibition (1915–1937)

Peyotism thus gained progressive importance among Native American tribes throughout the end of the 19th and the early 20th century. However, in a context where psychoactive substances were becoming the targets of an emerging prohibitionist movement (Musto 1999), it was not long before missionaries and Indian Service agents became aware of the use of peyote, and tried by different legal means to stamp it out. Although Native Americans were for a time able to defeat repressive attempts on their own (Section 3.1), they soon realized that they would need the help of benevolent allies in order to prevent their opponents from passing prohibition statutes. Led by James Mooney, a first generation of anthropologists brought their help to Peyotists, providing testimonies before legislative bodies (Section 3.2), and later encouraged the movement’s leaders to consolidate peyote use into an established religion whose practice would be protected by law (Section 3.3). The different modes of anthropologists’ intervention during this first period of the controversy indicate that, beyond their role as cultural experts—which technically imply a neutral position—these scholars also became decisive advocates of this indigenous movement.

3.1. Early Regulatory Efforts

Closely connected with a passion to assimilate Native Americans, initial attempts to prohibit the use of peyote at the level of newly established reservations (Section 3.1.1) and Indian Territory (Section 3.1.2) did little to impede the spread of the movement. Peyote leaders even proved successful

at defeating the passing of a state law in 1908, and skillfully argued the few cases that their devoted opponents were able to bring to court during this period (Section 3.1.3).

3.1.1. The Failure of Prohibiting Orders on Reservations

The first published reference to the use of peyote by Native Americans in the U.S. is credited to J. Lee Hall, agent of the Kiowa-Comanche Agency in the Indian Territory. In his 1886 annual report, he reported that “the Comanches and a few of the Kiowa secure the tops of a kind of cactus that comes from Mexico, which they eat, and it produces the same effect as opium. [. . .] suggest that the same should be made contraband” (Stewart 1993). This alert prompted initial regulatory responses by the Bureau of Indian Affairs (BIA) in the form of local executive orders aiming at prohibiting the practice at the level of reservations (Jackson and Galli 1977).

The first such order was issued by Special agent E. E. White of the Kiowa-Comanche Agency, on June 6, 1888. White then transmitted the order to the BIA, advocating for his initiative to be replicated in reservations where peyote had taken hold. The action was received favorably, and instructions were given to investigate the issue to all agencies and to prosecute the use, sale, exchange, gift, or introduction of the “mescal bean” as a misdemeanor under the rules governing the recently created Courts of Indian Offenses. The strategy however proved rather ineffective, as peyotism continued to spread in spite of the numerous prohibiting orders (Mooney 1897). White himself, less than two months after he posted the order, reached an agreement with the skillful Quannah Parker by which he permitted the Cheyenne “to use their [peyote] one night at each full moon for three or four months [. . .] and that they would not eat any at any other time. They also agreed that when their present supply of [peyote] gave out, they would quit entirely” (Stewart 1993).

3.1.2. The Inapplicability of the Territorial Law

Acknowledging the shortcomings of prohibitive orders, the first statute to control the use of peyote was adopted in the Territory of Oklahoma in 1899. Declaring unlawful to introduce, possess, or sell any “mescal bean” on the Territory, the statute provided for a minimum punishment of twenty-five dollars and a prison sentence to a maximum of six months. Yet, reports by agents on reservation indicate that the law remained poorly enforced, as they were often confused and doubtful about how to do it (La Barre 1938). When it was finally tested in court in 1907, the statute was eventually astutely defeated by Peyotists thanks to the semantic confusion it carried.

Following a police raid of a peyote meeting on the information from a white farmer working with the Cheyenne and Arapaho, three Peyotists were arrested and charged for possession of “mescal beans.” They were convicted by a probate judge on the basis of the 1899 Territorial law, and consequently fined twenty-five dollars each, and sentenced to five days in the county jail. On appeal, the District Court for the Kingfisher County however dismissed the case, holding that the defendants were found in possession not of mescal beans (*Sophora secundiflora*), but of peyote (*Lophora williamsii*); that the two were not the same thing; and that there was no law prohibiting the possession and use of peyote. Although seemingly trivial, this semantic confusion rendered the first legislative effort against the use of peyote in the inoperative³.

³ Another ceremony was raided in April of the same year in Custer County, Oklahoma, resulting on the arrest of nine Cheyenne and Arapaho Peyotists, and seven Native American “witnesses”. The case was brought to trial at Arapaho in July, and a similar “semantic” defense was raised. Again, the court dismissed the charges, founding that mescal was not to be confused with peyote, and that the latter was not covered by the Territorial statute. Stewart reports that this semantic confusion dated back to the late 19th century, when the use of peyote was first observed by American authorities and confused with that of mescal (Stewart 1993).

3.1.3. An Attempt at Passing a State Law

At the turn of 1908, as Oklahoma was preparing to apply for statehood, local Indian Service agents who had been leading the charge on peyotism wanted to be ready for an anti-peyote state law, with the objective of setting a precedent to be replicated by other states where the religious movement was disseminating. As the time for the Constitutional Convention approached, promoters for the law sent support letters to members of the legislature and some even went to Guthrie to lobby members of the convention. Yet, Native Americans proved just as proactive in defending their interests. At the thirty-sixth day of the first Oklahoma legislature, over a hundred prominent representatives of the Comanche, Kiowa, Cheyenne, Osage, Ponca, Arapaho, Iowa, Sac, and Fox tribes filled the legislative hall. On four occasions, twice during the constitutional convention and twice at the first Oklahoma legislature six months later, Indian leaders assertively voiced their concerns about laws that restricted their rights to practice their medicine and religion (Wiedman 2012). On December 17, 1906, Quanah Parker was invited to speak before the Oklahoma constitutional convention, where he insisted on the medicinal value of peyote use:

Gentlemen, I am glad to meet you all this morning. My name is Quanah Parker. [. . .] I am an Indian myself; I am half white. My mother was a white woman; I attend to the government business for a good many years. [. . .] My Indians use what they call peotus; some call it mescal; all my Indian people use that for medicine. That is a good medicine and when my people are sick they use it. It is no poison and we want to keep that medicine. I use that and I use the white doctor's medicine, and my people use it too. I want to keep this medicine. I said while ago, my ways in time will wear out, and in time this medicine will wear out too. My people are citizens of the United States, and my people keep the right way; they go to school and teach school; I wish you delegates will look after my people—look after my Indians. (Oklahoma, Constitutional Convention 1907)

A month after his address, Parker returned from Guthrie with the assurance from President Murray and other delegates to the Constitutional Convention that no provision of the Oklahoma constitution will prevent the sale and eating of mescal beans (Wiedman 2012). The state law was thus eventually defeated, thanks to the ingenious adaptation of Native American leaders to the “white man’s ways.” However, prohibitionists did not disarm, and as efforts to ban peyote were gaining intensity with arrests, confiscation of property and verbal abuses on nearly every reservation (Dawson 2018), the need for new allies became urgent: hence emerged the first generation of anthropologists who, at various degrees, devoted themselves to the legal defense of peyotism.

3.2. *The Increasing Involvement of Anthropologists in the Legislative Arena*

By the end of the 1910s, peyotism had taken roots in at least eleven states beyond Oklahoma (La Barre 1938). This situation comforted opponents to peyote in the idea that comprehensive and concerted action was needed: they thus started to campaign actively for the adoption of a Federal law. Eleven bills were introduced in Congress between 1916 and 1937. All failed, however, thanks to the vigilance of Peyotists and the contribution of supportive anthropologists, who appeared several times before legislative bodies in order to testify as to the cultural significance of the practice for Native Americans. This was notably the case in 1915 before the Board of Indian Commissioners (Section 3.2.1) and during the pivotal 1918 House hearings (Section 3.2.2), providing early examples of the use of anthropological knowledge in Native American rights claims in the United States—three decades after the pioneer Choctaw Nation v. United States case (Gormley 1955). The same year, the intensification of prohibitionists’ efforts led anthropologist James Mooney to encourage the movement’s leaders to strategically incorporate into an establish church—a decision that would prove decisive in the evolution of the controversy.

3.2.1. Getting Prepared for the Federal Battle

In 1912, while the BIA sent out to all reservations Circular 598, which asked for information regarding diffusion of the practice, past court cases, and the “moral, mental, and physical effects” produced by the use of peyote, the Board of Indian Commissioners joined the lobbying efforts towards prohibition ([Department of the Interior 1912](#)). In February 1915, the Board called a session on the issue of peyote during its annual meeting, inviting interesting parties to testify as to the nature (and dangers) of the peyote cult. Alongside tribal leaders Otto Wells (Comanche), Arthur Bonnicastle (Osage) and tribal attorney Thomas L. Sloan (Osage), three anthropologists, members of the Bureau of American Ethnology, testified before the Board in defense of peyotism: James Mooney, Francis La Flesche⁴, and Truman Michelson⁵. As opponents to peyote failed to attend the Board’s hearing, the chairman of the meeting, Oklahoma Representative Charles D. Carter, was forced to admit that: “practically everything that had been said there by [anthropologists and Native Americans]—who were fine physical and mental specimens, to all appearances—[. . .] had been in favor of this religion and in favor of the plant itself, as the Indians use it”. The board, however, issued a formal vote by which they opposed to the use of peyote in any of its forms, and in favor of legislation which will prevent Native Americans from obtaining it ([U.S. Congress, House, and Committee on Indian Affairs 1918](#)).

After a first attempt at amending the Indian Prohibition Law of 1897 by adding a mention to peyote was made in 1913—and eventually rejected by the Senate—similar propositions were made for three consecutive years; but never again did they pass neither the House nor the Senate ([Maroukis 2012](#)). Anti-Peyotists finally succeeded in introducing bills explicitly prohibiting the importation, transportation and sale of peyote before the U.S. Congress in 1916. The first bill (S. 3526) was however quickly defeated in Senate thanks to the commitment of Senator Robert L. Owen of Oklahoma, who responded to pressure from his Native American constituency. The next year, opposition to the Gandy Bill (H.R. 10669) was carried in person to Washington by a delegation of Native American Peyotists, who obtained a hearing on April 1916. Thanks to these concerted lobbying efforts, and because of the lack of scientific evidence backing anti-Peyotist arguments, the bill again failed to pass the House ([Stewart 1993](#)).

3.2.2. The Hayden Bill and the 1918 Congressional Hearings

Acknowledging the repeated shortcomings of the previous attempts, BIA requested in April 1917 Representative Carl Hayden of Arizona to introduce a new bill (H.R. 2614). This peyote prohibition bill, proposing punishments that would include a maximum of one year in jail and a \$500 fine, constituted a pivotal moment in the peyote controversy, as both sides threw all their forces into the legislative battle. Extensive hearings were convened before a subcommittee of the House; taking place over six days and gathering no less than twenty-six testimonies, this moment thus provided one of the most dramatic examples of clashing political interests over the expression of Native American culture during the first part of the 20th century ([U.S. Congress, House, and Committee on Indian Affairs 1918](#)).

Missionaries and reformers led the opposition to peyote, substantiating the argumentation of the BIA—and trying to compensate for the rather inconclusive scientific evidence presented at the hearings. All of them denounced the dreadful and deleterious effects of peyote, and urged for its absolute prohibition, hoping that their call would resonate in Washington, where just months earlier the Senate had passed the Eighteenth Amendment. Zitkála-Šá, a member of the Yankton Dakota Sioux Tribe educated at Carlisle also known as Gertrude Bonnin and a fierce opponent to Peyotism

⁴ La Flesche (1857–1932) was born on the Omaha reservation in Nebraska, and became the first professional Native American anthropologist. He joined the Bureau of American Ethnology in 1910, and remained until his death. He investigated the practice of peyote use among the Ponca and the Osage, although he did not published significant work about peyotism ([Mark 1982](#)).

⁵ Michelson (1879–1938) a distinguished linguist, was not as experienced as Mooney and La Flesche in relation with peyote, but had the occasion to observe ceremonies among the Northern Arapaho in Wyoming ([Boas 1938](#)).

(Lewandowski 2016), gave a perfect summary of the prohibitionists' rationales, reciting the evils of peyote:

Believing that peyote is the comforter sent by God, they reject the teachings of the Church. Believing that peyote reveals the secret thoughts of man and gives super human knowledge of the contents of books, they deprecate the necessity of schools. Believing peyote a cure-all for every human ailment, they ignore the advice and aid of physicians. Attending the weekly peyote meetings, they waste time, strength, and money, consequently neglecting their homes and farms. (U.S. Congress, House, and Committee on Indian Affairs 1918 [emphasis added])

In defense of their entheogenic practice, ten Native American representatives provided statements at the hearings, trying to convince the subcommittee of the innocuousness and the religious sincerity of their use of peyote. Beside them, the three anthropologists who already testified at the 1915 session—as well as the already prominent ethnobotanist William Safford—provided a rich expertise in support of the movement. Leading the way, James Mooney intervened at length during the hearings. He gave a detailed history of Peyotism and the reason for its rapid and steady spread beyond traditional tribal barriers, and provided a handful of arguments to counteract prohibitionists' alarming statements—pointing notably at the poor quality of the available scientific data on peyote and on its effects. Michelson's and La Flesche's testimonies were relatively less substantive, as they had considerably less experience and knowledge about Peyotism. However, based on their observations among the Arapaho for the former, and the Ponca and Osage for the latter, they affirmed that they were thoroughly convinced by the religious sincerity of those who participated in the cult, and insisted on the grave consequences that its suppression would induce. This mode of legislative intervention was evidently crucial, allowing cultural experts to document and demonstrate the cultural depth of Peyotists' entheogenic practice before federal lawmakers.

Mooney however received a particularly hostile reception. His lengthy defense of the medicinal and religious significance of peyote was repeatedly met with hostility—if not disdain—by members of the subcommittee. General Richard H. Pratt went even further, challenging the impartiality of the anthropologists' statements: accusing them of encouraging Native Americans to maintain “old, unhealthy, and uncivilized customs” so they could continue writing exotic books, and thus exploit Native Americans while doing nothing to help them become civilized; the former head of the Carlisle Indian School directly questioned Mooney's probity and made several insinuations about the role of anthropologists in the spread of Peyotism:

My experience is that the Bureau of Ethnology has never been helpful to the Indians in any respect [. . .] the ethnologists always lead the Indian's mind back into the past. [. . .] You ethnologists egg on, frequent, illustrate, and exaggerate at the public expense, and so give the Indian race and their civilization a black eye in the public esteem. It was well established at the time of the ghost-dance craze among the Indians that white men were its promoters if not its originators. That this peyote craze is under the same impulse is evident from what appears in this evidence. (U.S. Congress, House, and Committee on Indian Affairs 1918)

Beyond the caricature nature of General Pratt's attacks, the general dismissal of Mooney's argumentation at the hearings heuristically underlines the problematic duality of the anthropologists' position in this legal controversy, navigating between a supposedly impartial position as cultural experts, and an arguably biased engagement as advocates for Peyotists' religious rights. It should be further noted that Pratt's assertions resonate to a certain extent with the critics against anthropology's tendency for paternalist primitivism that emerged from within the discipline since the 1960s (e.g., Foster 1969; Lewis 1973; Memmi and Greenfield 1967).

Mooney endeavored to respond to these accusations. He claimed—in a no less simplistic manner—“Now, in regard to an ethnologist never having helped the Indians. As a matter of fact, anybody who knows anything about ethnologists knows that is not true. The Indians look up on

ethnologists as their best friends.” In any case, Pratt’s rhetorical strategy undoubtedly suggests that anti-Peyotists had come to acknowledge the crucial role of anthropologists’ testimony for the legal defense of the entheogenic practice they were trying to stamp out. In its report in favor of prohibition submitted after the 1918 hearings, the House subcommittee hence made a particularly interesting claim on this matter, implicitly supporting Pratt’s attacks on Mooney as untrustworthy and self-interested:

The proof is clear that the physicians, the chemists, the missionaries, and many of those who are endeavoring to uplift the Indian, are convinced of the harmful effects of peyote and desire to see its use discontinued. [. . .] The writer of this report heard many Indians testify on behalf of the drug, and gave due weight to their testimony, but certainly they are to some extent interested, while the bulk of those advocating the passage of the bill are disinterested. (U.S. Congress, House, and Committee on Indian Affairs 1918 [emphasis added])

This was however not enough to secure the adoption of prohibitory legislation. The bill passed the House on October 3, 1919, but was rejected in the Senate, thanks again to the efforts of Oklahoma Senator Robert L. Owen (Owen claimed Cherokee ancestry and had been a teacher and Indian Agent among the Cherokee earlier in his career); arguing that the ban represented a violation of Native American First Amendment rights and managed to quash the bill (Belcher 1953); thus ending the most serious attempt to pass a federal law: explicitly prohibiting the use of peyote.

3.3. The Creation of the Native American Church

The legislative battle of 1918 constituted a particularly tough fight, and Peyotists realized that they won a close victory. Aware that the battle was not over, James Mooney and several of the movement’s leaders understood that in order to prevail again, they would have to find a way to consolidate the legality of peyote use. Hence emerged the idea to make Peyotism conform to other religious institutions, and to equate the ceremonial use of peyote to the sacramental use of wine by Catholics and Jews—which had just received constitutional protection in the context of the prohibition (Newsom 2005). But to be recognized as a religious organization, Peyotists needed more than their personal belief: they needed a name, a set of rules, officers, and stated responsibilities. They needed to be “incorporated.” With several state bans already in place (see *infra* Section 4.1.1) and a national ban narrowly avoided, the leading Oklahoma Peyotists therefore gathered in the end of the summer of 1918 in El Reno to draw up a charter and establish a peyote church.

3.3.1. A Preventive Legal Strategy

Assembling the representatives of most Native American tribes in Oklahoma, for whom the 1918 hearings had become a springboard to action, the group did not equivocate about the use of the word peyote, realizing that this was the issue and that it had to be openly acknowledged. The Article 2 of the Native American Church (NAC) Certificate of Incorporation, signed on October 10, 1918, thus read,

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. (Stewart 1993 [emphasis added])

The decision to incorporate a peyote church, whose name emphasized both the Christian and indigenous roots of the church, as well as its pan-tribal nature, would soon prove instrumental in preventing a total federal ban on peyote. Not only did it place Peyotists within the established legal architecture, thereby allowing them a floor from which to debate, but it also gave them strength in numbers⁶.

⁶ The NAC nowadays claims close to 300,000 members and hundreds of local chapters, with members belonging to more than seventy Native American tribes. The church has retained a complex and loosely organized structure, divided between four

The incorporation of the church was vigorously and consistently denounced by opponents to peyote as an opportunistic strategy (e.g. [Bureau of Indian Affairs 1922](#)). Yet, the sincerity of the religious dimension of the ceremony for Native American users of peyote was never seriously challenged in court or before legislative and administrative authorities. This strategy of preventive legal action therefore constitutes a remarkable case of cultural adaptation of Native Americans to the “colonizers’ mentality”: it demonstrates a profound understanding of the role of legal institutions in the U.S. and of how Native Americans could adapt to the political system that was being imposed upon them in order to effectively safeguard their ritual practice against relentless opponents. Only a few decades after the end of the Indian Wars, this episode indicates that the “civilization of the Indian” had yielded unforeseen results.

3.3.2. The Role of Anthropologists in the Creation of the NAC

The implication of James Mooney in the incorporation of the NAC certainly constitutes a unique example of anthropologists’ involvement in indigenous rights controversies, particularly with respect to the modality of its intervention as cultural expert ([Holden 2019b](#)). In this instance, Mooney’s role has indeed not consisted in delivering expert testimonies for the use of courts or legislative bodies, i.e., in translating in legally legible terms an exotic culture in the context of legal proceedings, but rather in assisting an indigenous community in its strategic adaptation to, and recapture of the cultural patterns of the majority group. Although we lack precise information, several sources suggest that Mooney, alongside tribal lawyers, played an instrumental role in the Peyotists’ decision of establishing the NAC, recognizing that making explicit the sacramental nature of the peyote ceremony in the articles of incorporation would help consolidate the religious character of the movement, and thereby significantly complicate the legal crusade of anti-Peyotists.

According to [Maroukis \(2012\)](#) and [Moses \(1978\)](#), Mooney returned to Oklahoma after the congressional hearings in early July 1918, fearing that the Hayden bill would eventually be adopted. He visited many of his Native American friends and informers, attended peyote services, and several elements suggest that he played a crucial role in the foundational meeting of El Reno. According to the testimony of Kiowa-Apache Jim Whitewolf, Mooney was present at the meeting, and even recommended the name “Native American Church,” despite the overwhelming presence of Oklahoma Peyotists. Slotkin similarly reported in its 1955 work on the sociology of the peyote movement that there was “reason to believe that it was on Mooney’s initiative that the Native American Church was incorporated in Oklahoma” ([Slotkin 1955](#)).

The implication of Mooney in the institutional consolidation of Native American Peyotism constitutes a remarkable illustration of anthropologists’ dilemma when, called upon to provide neutral and independent expertise for legal purposes, they sometimes find themselves invested in parallel advocacy practices in support of minority rights that tend to question their impartiality—or even their academic credibility. This debate over cultural experts’ neutrality, which later unfold primarily in relation to anthropologists’ expert witnessing per se ([Rosen 1977](#); [Lewis 1988](#); [Mertz 1994](#)), has proved a complex question in consideration of anthropologists’ frequent engagement towards the protection of subaltern and vulnerable groups, raising ethical and deontological issues beyond legal and political considerations. In the case of Mooney, whether or not he actually participated in the drafting of the NAC articles of incorporation, it remains that members of the Indian Service administration were convinced that he had counseled and supported the officers of the newly created church.

main branches—none of which having any direct theological or legal control over the others—: the NAC of Oklahoma, the NAC of North America, the Azee Bee Nahagha of Diné Nation, and the NAC of South Dakota ([Smith and Snake 1996](#); [Maroukis 2012](#)).

3.3.3. The Subsequent Retaliation against James Mooney

This suspicion had direct and dire consequences on the career of Mooney. His return to Oklahoma in July 1918, only a few months after the heated hearings before the House subcommittee, further aggravated the exasperation concerning its implication in defense of Peyotism. Informed of the situation by Agency officials and missionaries, Indian Commissioner Cato Sells requested the director of the Smithsonian Institution to take immediate action. He explained to Secretary Walcott: “I regard the situation [. . .] as a serious interference with our efforts to control and eventually entirely eliminate the use of peyote by Indians and feel that you will appreciate the advisability of the immediate recall of Mr. Mooney” (Moses 1978). The Bureau of American Ethnology endeavored to resist governmental pressure, putting forward Mooney’s reputation—notably in relation to his foundational work on the Ghost Dance movement (Mooney 2012). Yet, he was eventually recalled and never again allowed to return to Oklahoma to continue his study. By 1921, Mooney was severely ill, and his salary at the Bureau of American Ethnology slashed for “nonproduction.” In a letter he wrote to a colleague in Oklahoma just before he left the service that September, Mooney lamented that the government was looking for opportunities to “impede and suppress” his peyote investigations “altogether, to leave the way clear for hostile legislation” (Dawson 2018). James Mooney died a few weeks later of a heart attack.

This episode of institutional retaliation demonstrates the distress of prohibitionists, and dramatically speaks for the crucial role that James Mooney played throughout this period. At the end of the 1910s, Native American Peyotists, with the help of supportive anthropologists who both testified before legislative bodies and put their knowledge of the American legal system at the service of the movement, had won two crucial battles with the very weapons of their opponents.

4. The Role of Anthropologists in the Legal Defense of Peyotism before Courts (1956–1980)

The failure of the Hayden bill and the opportunistic incorporation of the Native American Church that followed led advocates of a federal prohibition to a deadlock. Anti-Peyotists continued to introduce new bills almost every year from 1919 to 1926—without success. They thus shifted their efforts to state legislatures, where they were able to secure the adoption of anti-peyote laws in two-dozen states (Section 4.1). Peyotists were consequently forced to adapt their legal strategy, and started to embrace a test case approach after the Second World War in order to challenge the constitutionality of these new laws before courts. They were helped in this by a new generation of anthropologists who further developed the academic understanding of the peyote movement beyond Mooney’s pioneer research and adopted a new mode of legal intervention: expert witnessing (Section 4.2).

However, this reconfiguration of the controversy, and the substance and modality of anthropologists’ involvement, allowed for an essentialist narrative of Peyotism to progressively consolidate. This evolution—conforming the entheogenic practice to a broadly conceived version of indigeneity and long-standing orientalist views of the “mystical Indian”—played a critical role in the protection of the use of peyote by Native Americans. The psychoactive cactus became an Indian thing, beyond the comprehension of the white man, something that could form the basis of a religion exclusive to indigenous peoples. This strategic essentialization of Peyotism, despite its ethnographic simplification, ultimately provided the basis for subsequent claims of legal exemptions, at a moment where the U.S. were preparing to embark on an all-encompassing policy of drug prohibition.

4.1. The Reconfiguration of the Peyote Controversy

4.1.1. The Multiplication of Anti-peyote State Laws; and Their Relative Efficiency

The national campaign against peyote, which proved eventually ineffective at the federal level, met with more success in state legislatures where Oklahoma Peyotists had limited—if any—lobbying capacity. A year before the 1918 hearings, prohibitionists were thus able to pass anti-peyote statutes in three states: Utah, Colorado, and Nevada. Many more were to follow.

In Utah, the legislative effort was driven by Gertrude Bonnin; already a veteran fighter against Peyotism, she was then living on the Ute reservation, where peyote had been introduced a few years earlier, and had already been adopted by nearly half of the reservation. Alarmed by the situation, she reached to the state Governor, calling for his help. She substantiated her request with the testimony of the reservation's physician, Dr. Henry Lloyd, who denounced the fatal consequences of peyote use and called its religious dimension "a travesty." His testimony perfectly exemplifies the rationale behind its profession's radical opposition to peyote, viewed as a dangerous concurrent to the White man's medicine (Welsh 1918). The first state law prohibiting the possession and use of peyote was thus prepared, and eventually adopted in February 1917⁷. Kansas became the fourth state to outlaw peyote in 1919, followed in 1923 by Arizona, Montana, and North and South Dakota. Iowa, New Mexico and Wyoming, and Idaho passed similar laws (in 1925, 1929, and 1933, respectively). Hence, at the notable exception of Oklahoma—where the cult emerged—and Texas—where peyote grew and was collected and shipped across the national territory—almost every Western States concerned with the use of peyote at that time had adopted prohibitive regulations by the early 1930s.

State laws however proved largely futile in impeding the spread of Peyotism. This was largely the consequence of the limited jurisdiction of state courts: as long as Native Americans practiced peyote on their reservations, and in the absence of federal or tribal law prohibiting it, they were free to do so. States could therefore only interfere with the interstate trade of peyote, although this was largely circumvented by Peyotists directly traveling to Oklahoma and Texas in order to bring back peyote themselves, and by the concrete difficulty of such a control (Stewart 1993). Furthermore, local Indian Service agencies and the BIA in general were significantly more concerned and invested in the rampant alcohol traffic and its devastating effects on Native American populations (Martin 2003; Antell and Holmes 2001).

4.1.2. Following the Trail of James Mooney

Meanwhile, a new generation of anthropologists born in the early 20th century progressively emerged to continue and broaden the seminal work of James Mooney—and, to a lesser extent, of Alfred Kroeber⁸. All of them carried out their fieldwork among different Native American tribes in the 1930s and early 1940s, and although most were interrupted by the Second World War, they all published influential works on Peyotism, providing a rich source of documentation and argumentation that allowed for the legal defense of the practice before courts (Section 4.2).

Among them was Weston La Barre (1911–1996). Born in Uniontown (PA), he studied at Princeton and Yale, and later taught at Rutgers, Wisconsin, and Duke Universities. "The Peyote Cult", La Barre's doctoral dissertation presented at Yale University in 1937, was the result of two summers of fieldwork he conducted in 1935 and 1936 among the Kiowa. The manuscript, based on a plethoric bibliography, was published in 1938, and immediately became the reference source on the peyote movement—notably as James Mooney was not able to carry such work (Moses 2002). Alongside La Barre was ethnobotanist Richard Evans Schultes (1915–2001), who accompanied him in his second fieldtrip while he was working on his undergraduate senior thesis in biology. Schultes later published "The Appeal of Peyote", a provocative article in which he claimed that the diffusion of peyote should

⁷ Gertrude Bonnin also participated in the legislative effort in Colorado and Nevada, where anti-peyote statutes were enacted simultaneously in February 1917. In the case of Nevada, it is interesting to note that the prohibition was adopted by the mid-1930s was organized on fourteen reservations and had well over ten-thousand members, decades before peyotism actually started to spread in the state (Stewart 1993).

⁸ Alfred L. Kroeber (1876–1960), a figure of American cultural anthropology, received his Ph.D. under the supervision of Franz Boas at Columbia University in 1901 (the first doctorate in anthropology awarded by the University). He then became the first professor appointed to the Department of Anthropology at Berkeley University. He observed and wrote about the use of peyote in the context of his doctoral research among the Arapaho (Kroeber 1902).

be understood in relation to the medicinal value that Native Americans attribute to it, rather than to its spiritual significance (Schultes 1938)⁹.

The first monograph on Peyotism was however published in 1934 by Vincenzo Petrullo (1906–1991): titled “The Diabolic Root: A Study of Peyotism, the New Religion Among the Delawares”, it was result of the Ph.D. in Anthropology he obtained at the University of Pennsylvania the same year (Petrullo 1934). The contribution of James Slotkin, although published later, also deserves to be evoked here. Receiving his Ph.D. in Anthropology from the University of Chicago in 1940, Slotkin (1913–1958) published in 1952 the results of his research on Menominee Peyotism with ethnomusicologist David P. McAllester (Slotkin and McAllester 1952). He also produced groundbreaking research on the historical origins of the movement (Slotkin 1951, 1955). Finally, he published the reference work on the early history of the Native American Church (Slotkin 1956). In 1954, he was nominated on the board of trustees of the NAC, and brought his help in furthering the organization of the Church; he notably introduced printed membership cards and certificates of group affiliation for members in order to strengthen legal protection. Working closely with NAC President Dale, Slotkin also offered to publish a quarterly newsletter for the NAC and to distribute and analyze a questionnaire to document the location and number of NAC members (Stewart 1993).

Last but not least was Omer C. Stewart (1908–1991). Trained in anthropology at the University of Utah and the University of California at Berkeley, where he carried out his fieldwork on southwestern tribes’ Peyotism and received a doctorate in 1939, Stewart published close to thirty articles and monographs on the topic (e.g., Stewart 1941, 1944, 1948; Aberle and Stewart 1957), together with a crucial book on the origin and spread of the peyote movement (Stewart 1993). In this connection, he was appointed as expert witness in eight court cases from 1960 to 1982, where he vehemently defended the right of Native Americans to use peyote as a sacrament. Just as James Mooney proved instrumental in the legal incorporation of the NAC and the correlated efforts to block the passing of federal laws against peyote during the early 20th century, Stewart was undoubtedly a fundamental asset in the legal strategy elaborated by the NAC to fight state prohibition laws.

4.1.3. The Evolution of the Federal Attitude Towards Peyote

However, before exploring this “second period” of anthropologists’ involvement with the legal defense of Peyotism, a few words should be said about the establishment of a tolerant federal attitude towards the movement. Indeed, in the midst of the Great Depression, the election of Franklin D. Roosevelt in 1932 not only brought a “New Deal” to the American people generally, but also prompted what was later framed as the “Indian New Deal,” which (notably with the Indian Reorganization Act of 1934) aimed at reversing the long-standing policy of cultural assimilation of Native Americans.

John Collier, a noted Native American rights advocate and former executive secretary of the American Indian Defense Association who in the early 1920s had the opportunity to witness in person the spread of the peyote religion among the Navajo, was sworn in as Indian Commissioner on April 1933. Together with Secretary of Interior Harold L. Ickes, he brought a new philosophy to the Bureau of Indian Affairs, with a radical departure from the idea that the purpose of the Bureau was to encourage Native Americans to forego everything Indian as soon as possible and strive to assimilate. Feeling that the very presence of Indian culture was a great asset to American society, he considered that “the government should reawaken in the soul of the Indian not only pride in being an Indian, but hope for the future as an Indian. It had the obligation to preserve the Indian’s love and ardor toward the rich values of Indian life as expressed in their arts, rituals, and cooperative institutions” (Philip 1977). This new philosophy of Indian affairs led to an evolution of the federal attitude toward the peyote issue, which was expressed in the Bureau Circular 2970 of 1934. Entitled Indian Religious freedom and Indian

⁹ Schultes’s argument was challenged by La Barre, who succeeded in imposing his view that the “religious appeal” of peyote was the crucial element behind peyotism’s rapid and vast expansion (La Barre 1939).

Culture, it stated that “no interference with Indian religious life or ceremonial expression will hereafter be tolerated” (Prucha 1990). This profound shift, reflecting Collier’s emphasis on Native American self-determination, constitutes the first policy statement specifically intended at protecting Native American religious rights, and allowed putting the entheogenic use of peyote out of prohibitionists’ reach at the federal level for several decades (O’Brien 1995).

Yet, this reorientation of the federal Indian policy also undeniably participated in the consolidation of an essentialist approach towards Native American cultural and religious expressions (Roseblatt 2018)—including de facto peyote use. This evolution, eventually reflected in the practical and substantive transformation of anthropologists’ involvement in the controversy during this period, found its first concrete illustration in 1937, after a new anti-peyote bill was introduced by Senator Dennis Chávez of New Mexico—the first to reach the floor of the Senate since 1919. In reaction, Collier endeavored to gather a wealth of expert opinion against the bill from several renowned anthropologists (notably Franz Boas and Alfred L. Kroeber), completed by the testimony of Vincenzo Petruccio, Weston La Barre, and Richard Schultes, who had just published their seminal works on the issue. All of these opinions, together with those of other scientists and Native American leaders, were assembled in a document named “Statement against the Chavez Senate Bill 1349” (Boas et al. 1937), which offered a powerful and overwhelming rebuttal of prohibitionists’ claims and contributed to the bill quietly disappearing before being examined by the Senate (Maroukis 2012).

From the late 1910s to the years preceding the Second World War, the peyote controversy was thus significantly reconfigured. During this period, Peyotism continued to spread across the United States territory and beyond, well over three hundred miles into Canada (Kahan 2016; Dick and Bradford 2012). The movement succeeded at the same time in securing the support—or, at least, the toleration—of federal authorities; support that will prove enduring, even when drug issues became a central political issue, leading notably to the adoption of the Controlled Substances Act of 1970 (e.g., Olson 1981). Meanwhile, the wave of adoption of anti-peyote state laws remained for a time out of the scope of Peyotists’ advocacy efforts, due to their relative inefficiency. The situation however changed after the War. Concerned that state prohibition laws may eventually endanger access to peyote, the NAC endeavored to challenge the constitutionality of these statutes in court and elaborated a new legal strategy in which the involvement of the “second generation” of peyote anthropologists would prove instrumental.

4.2. Cultural Expertise and Strategic Litigation

Between 1957 and 1969, inspired by the success of the civil rights movement, the NAC undertook to challenge anti-peyote legislations in several key states, including New Mexico, Arizona, California, Colorado, and Texas. The strategy developed by the church (Section 4.2.1), based primarily on test cases and occasionally supplemented by legislative lobbying, proved efficient in fighting state prohibition laws (Section 4.2.2). The conflict culminated in the Texas crisis, which threatened to close off access to peyote (Section 4.2.3). In all of these cases, anthropologists acting as expert witnesses—and most notably Omer Stewart—played a crucial role in supporting the legal struggle of the NAC (Section 4.2.4).

4.2.1. Elaborating a Test Case Strategy

It is under the presidency of Frank Takes Gun (1956–1969) that the NAC started to embark on an offensive legal crusade against state anti-peyote laws. Inspired by the success of the National Association for the Advancement of Colored Peoples (NAACP) and the American Civil Liberties Union (ACLU), which culminated in the adoption of the Civil Rights Act in 1964, the NAC considered the opportunity of challenging the constitutionality of these statutes through individual cases, supplementing the strategy with the involvement of anthropologists acting as expert witnesses, a practice that had started to develop since the 1950s (Holden 2011, 2019b; Rodriguez 2018). Take Guns therefore established relationships with the ACLU, and was able to solicit their aid in representing Native American litigants in subsequent cases (Slotkin 1956).

The strategy was first tested in Arizona, where a bitter internal conflict was opposing Navajo on the use of peyote since the early 1940s after the Tribal council had adopted a resolution prohibiting the possession and use of peyote on the reservation ([Aberle 1966](#)); two decades of controversy ensued, marking a significant backlash to Commissioner Collier's policy ([Dawson 2018](#); [Stewart 1993](#)). Interestingly, the conflict prompted the intervention of anthropologists through national media: in July and November 1951, statements favorable to peyote written by Stewart, La Barre, Slotkin, McAllester, and others, were thus published by *Time* and *Science* magazines in reaction to an article particularly hostile to peyote and based on assertions from Dr. Clarence Salisbury, the medical missionary to the Navajo and head of the Navajo Presbyterian Mission ([Time 1951a, 1951b](#); [La Barre et al. 1951](#)). A few months after his election, Take Guns consequently took the opportunity of the arrest of Navajo Peyotist Mike Kiyaani to test the legal validity of the Tribal council resolution. A writ of habeas corpus was filed, and, at trial on February 1957, anthropologist James Slotkin was appointed as an expert witness for Kiyaani, supporting the lawyers' argument that the resolution was violating the Free Exercise Clause of the 1st Amendment. Although the case was lost, it convinced the NAC that this legal strategy could prove an efficient weapon against harassment and legal oppression¹⁰.

The first success for the NAC test case strategy occurred in 1960, when the church took the opportunity of the prosecution of Navajo Peyotist Mary Attakai to challenge the constitutionality of the state law prohibiting peyote in Arizona. At trial, anthropologist Omer Stewart testified at length about the peyote religion, alongside psychiatrist Bernard Gorton, who had studied the effects of mescaline at the New York Psychiatric Institute in the early 1950s and maintained that peyote was neither addictive nor harmful. Judge Yale McFate dismissed the charges against Mary Attakai, ruling that the Arizona statute was unconstitutional as applied to the acts of the defendant in the conduct and practice of her religious practice. He notably noted: "The use of peyote is essential to the existence of the peyote religion. Without it, the practice of the religion would be effectively prevented¹¹." On 25 April 1961, the Supreme Court of Arizona dismissed the appeal of the decision, marking the first judicial acknowledgement of the consolidation of peyote ceremonial use into a legitimate religious practice.

4.2.2. The Woody Decision (1964) and Subsequent Successes

The most resounding victory in the NAC test case strategy against state anti-peyote laws occurred only a few years later in California. In April 1962, three Navajo railroad workers were arrested after a peyote ceremony was raided in the desert near Needles, California. Jack Woody, Leon B. Anderson, and Dan Dee Nez were charged with illegal possession of peyote in violation of the California anti-peyote law, adopted in 1959 ([Stewart 1986](#)). As in the Attakai case, the NAC immediately joined the procedure and arranged for Omer Stewart to provide expert testimony during the trial before the Superior Court in November 1962—alongside Gordon A. Alles, professor of pharmacology at UCLA. The three defendants pleaded not guilty, claiming that their possession of peyote was incident to the observance of their faith and that the state could not constitutionally invoke the statute against them without abridging their right to the free exercise of their religion. The court nonetheless held the defendants guilty and imposed suspended sentences for terms of two to ten years in state prison. Interestingly, Judge Carl B. Hillard expressed reservations with the NAC litigation strategy, noting, "Any plea that might be advanced in behalf of less restrictive treatment of peyote should be addressed to a legislative rather than a judicial remedy." In response to the decision, a bill to accommodate the religious use of peyote was introduced in January 1963 by Nicholas C. Petris, a member of the California State Assembly. Although the bill was defeated in the Senate's Committee on Public Health

¹⁰ The peyote prohibition on the Navajo reservation was eventually lifted a decade later. It is now estimated that over half the Tribe's members have adopted peyotism, meaning that about one-fourth of the membership in the NAC is Navajo ([Stewart 1993](#)).

¹¹ Through the intermediary of Omer Stewart, the opinion was published in the *American Anthropologist* ([American Anthropologist 1961](#)).

and Safety, it contributed to the considerable media attention already received by the case at that stage ([New York Times 1962](#); [Weeks 1962](#)).

The Superior Court's decision was consequently appealed to the California Second District Court of Appeal in Los Angeles, which upheld the conviction. The case was further appealed to the Supreme Court of California in 1964, which, in an eloquent decision, eventually reversed the judgment against the three Navajo Peyotists. Relying on the Sherbert doctrine recently established by the U.S. Supreme Court, the court asserted that the state failed at demonstrating a compelling interest in the complete prohibition of peyote, founding that the sacramental use of the plant presented only slight danger to the state and to the enforcement of its law, while it constitutes "the sine qua non of defendant's faith" and "incorporates the essence of [their] religious expression." The 21-page decision, delivered on 24 August 1964, and making extensive use of the cultural evidence presented before the Superior Court by Omer Stewart, was written by Justice Matthew Tobriner and concurred in by five of the six other justices. It notably reads,

[The] right to free religious expression embodies a precious heritage of our history. In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert hogan near Needles, California.

Following this resounding legal victory in California, the NAC endeavored to challenge the 1917 anti-peyote law in Colorado, taking the opportunity of the arrest in 1966 of a NAC roadman, Immanuel Trujillo for possession of peyote. Again, Omer Stewart testified at trial, citing the ruling in Woody, and convinced the Colorado court to dismiss the charges against Trujillo and to declare the 1917 law unconstitutional as applied to NAC members.

4.2.3. The Texas Crisis (1967–1969)

The strategy was successfully used one last time, after the state of Texas endeavored to revise its tolerant policy towards peyote by passing the Texas Dangerous Drug Act of 1967, which made the possession of peyote illegal in the state, even for Native Americans. The decision, threatening to cut off the access to peyote, sparked intense and immediate concern throughout the reservations where Peyotism was flourishing. The NAC decided to react forthwith. A few months after the adoption of the statute, Frank Takes Gun directed a young Navajo, David S. Clark, to get deliberately arrested in possession of peyote; the arrest occurred in Laredo in March 1968.

Again, an anthropologist was appointed by the NAC to provide an expert testimony; this time, it was David Aberle, who had just published a monograph on Navajo peyotism ([Aberle 1966](#)). The case was handled by Judge E. James Kazen, who relied on the California Supreme Court decision in Woody and found that the Texas indiscriminate prohibition of peyote violated the defendant's right to the free exercise of religion; the charges against Clark were consequently dismissed ([Schaefer 2015](#)). The decision was a huge victory for the NAC, but a further effort was needed, as the court's decision had force only in his judicial district. A large delegation of NAC officials, with the help of anthropologist J. Gilbert McAllister from the University of Texas, eventually persuaded in 1969 the Texas legislature to amend its law by exempting members of the NAC from the prohibition ([Stewart 1993](#)).

This series of legal victories however tended to produce a judicial understanding of Peyotism attuned to the racial sensibilities of American law, consolidating a reductive narrative of peyote use as exclusively belonging to the indigenous realm ([Dawson 2018](#)). Attached to the protection of Native American rights, anthropologists intervening as expert witnesses in these litigations found themselves enrolled in this process of essentialization of Peyotism, and therefore departed from Mooney's wider opposition to the prohibition of peyote.

4.2.4. Anthropologists as Strategic Expert Witnesses

In each one of these legal victories against the state prohibition statutes that symbolized the reconfiguration of the peyote controversy after 1918, anthropologists were directly involved, intervening as crucial expert witnesses in court—and, even if to a lesser extent, by supporting correlated legislative lobbying efforts. Although the precise impact of this mediation role on the final ruling is difficult to assess, the recurrent presence of these scholars undoubtedly constituted a remarkable feature of the NAC strategy. It also arguably reveals how enduring prejudices against Native American rights' claims are, as Peyotists seem to have constantly felt the need to have a “legitimate” intermediary—at least in the eyes of the legal institutions—to give weight to the authenticity of their religious claims (Spivak 1988).

Omer Stewart has, in this respect, been a central element in the NAC strategic litigation approach. As said earlier, he appeared in eight court cases related to the Native American religious right to use peyote in ceremonial settings during that period. He was only replaced at two occasions, when the expertise of anthropologists James Slotkin and David Aberle was deemed more relevant in consideration of the litigants' tribal affiliation and cultural background. To a certain extent, Stewart's involvement in the controversy therefore echoes James Mooney's previous crucial engagement with the legal defense of Peyotism. The modality and the substance of his contribution are however distinguishable from Mooney's in two fundamental ways. Firstly, he substituted the legislative and regulatory mode of intervention of Mooney by a jurisdictional one: expert witnessing. To a large extent, it can be argued that this formal evolution of anthropologists' involvement in the peyote controversy relates both to the development of anthropological expert witnessing since the 1950s (Holden 2019b; Rodriguez 2018), and to the concomitant “juridification” (or “right-based” logic) of the life of the law in the United States (Teubner 1987). Secondly, Stewart—and the “second generation” in general—replaced Mooney's indiscriminate contestation of peyote prohibition by a narrower defense of Native American Peyotists' claim to a limited exemption based on cultural and religious grounds. However, it appears that this reconfiguration of the substance of anthropologists' involvement in the conflicts directly results from a larger movement of essentialization of Peyotism whose rationale has more complex ramifications (Stewart 1993; Dawson 2018). Finally, it should be added here that, contrary to Mooney, Stewart did not experience any form of governmental or academic retaliation as a consequence of his dual position as an expert of Peyotism and an advocate of the movement's religious freedom¹².

Interestingly, Stewart also intervened during this very period in the nascent academic debate over the involvement of anthropologists as expert witnesses in the U.S. He defended an active participation of cultural scholars in litigation processes, and directly opposed arguments identifying practical and ethical issues linked to the specificity of the field. The discussion was initiated by Lawrence Rosen in his seminal article “The Anthropologist as Expert Witness”, published in 1977 in *American Anthropologist* (Rosen 1977), where he notably questioned the adequacy of anthropological knowledge to adversary legal proceedings and the potential distorting influence of such involvement on anthropologists' writings—in anticipation of their potential legal significance. Rosen consequently proposed a set of recommended standards and reforms for anthropological expert witnessing in order to tackle the ethical and deontological issues he identified. Stewart published his response to Rosen's article less than two years after. Against the opinion that anthropologists' involvement in judicial proceedings might lead them to change their opinion or adversely influence their writing, he stated emphatically, “In 25 years as an expert witness I have never experienced any problems of a scholarly or ethical nature” (Stewart 1979)¹³.

¹² Stewart conserved the chair of the Department of Anthropology at the University of Colorado—which he funded in 1944—until his death in 1991.

¹³ Unconvinced by Stewart's arguments, Rosen published his final answer the same year (Rosen 1979). It should be noted here that this debate unfolded in the context of the Mashpee litigation, whose 41-day trial saw the confrontation of anthropologists' and historian's expertise, and was recorded by James Clifford (Clifford 1988).

Another of Stewart's implication in legal proceedings relative to Native American rights provides an interesting supplement to this discussion: Stewart indeed also acted as expert witness for the Indian Land Claims Commission. In this context, he repeatedly cross swords with anthropologist Julian H. Stewart (his former professor at the University of Utah), who assisted the U.S. government in a number of cases before the Commission and often denied sufficient social organization to Native American tribes claiming legitimate occupation of contested territories (Stewart 1979; Pinkoski 2008). This frontal opposition of expertise provides an illuminating demonstration of how anthropological knowledge can be employed to advance antagonist political positions in legal proceedings, thereby reviving the enduring debate over cultural expert witnesses' neutrality (Lewis 1988; Mertz 1994).

When he was awarded the Society for Applied Anthropology's Malinowski Award in 1983, Omer Stewart unequivocally noted in his address: "my most important contribution as an applied anthropologist has been to help Indians protect themselves from unjust state laws which outlawed peyote" (Stewart 1983). Native Americans certainly felt the same way; several renowned (and many anonymous) Peyotists indeed wrote vibrant tributes at Stewart's death on December 31, 1991 (Deseret News 1992).

5. Conclusions

This series of victories against the precarious legal barriers that anti-Peyotists had strived to erect against this thriving entheogenic movement did however not put an end to the controversy. The advent of the psychedelic revolution in the 1960s, together with the correlated intensification of the war on drugs indeed threatened the legal protection that Peyotists were able to secure after decades of struggle. Anthropologists continued to intervene in these disputes, although less frequently, as the conflict progressively settled down¹⁴. It should however be reminded here that the complex evolution of this controversy, which led to the eventual legal protection of Native American Peyotism through a process of essentialization, also resulted in the disqualification—and correlative prohibition—of other forms of peyote use, based on a tacit reenactment of racial categories that continues to pervade the regulation of psychoactive substances (Cavnar and Labate 2016; Dawson 2018).

The two periods considered in this paper constitute remarkable testimonies of the multifaceted and instrumental role that anthropologists have played in this controversy. Notably, the analysis demonstrates that the historical evolution of the conflict, which first played out in legislative arena before migrating to judicial settings, imposed a transformation and a diversification of cultural expertise. Accordingly, these two periods corresponded to two "generations" of peyote anthropologists, which each adopted a predominant mode of legal intervention in support of Peyotists' claims: expert testimonies before legislative bodies for the first generation and expert witnessing before courts for the second. Furthermore, this practical transformation of anthropologists' involvement in the controversy was accompanied by a reconfiguration of their argumentation: with the consolidation of Peyotism into an established religion, anthropologists indeed progressively abandoned the general contestation of the alleged danger of peyote to concentrate their claims on the central and distinctive importance of peyote use for Native Americans, substantiated by a wealth of ethnographic data accumulated during the 20th century. Although ultimately reductive and problematic—notably inasmuch as it fails to integrate the nonrecreational use of peyote by "non-Natives"—it appears that this evolution was made necessary by the way in which Western legal systems conceive indigeneity, and consequently by the nature of the judicial interpretation of cultural argumentation.

For all these reasons, the longstanding legal dispute over the entheogenic use of peyote in the United States holds immense heuristic value for the contemporary reflection on the role and impact of

¹⁴ See, for instance, the role of anthropologist Jay C. Fikes in the campaign for the adoption of the 1994 Amendments to the American Indian Religious Freedom Act, which followed the resounding Supreme Court's decision in *Smith* and allowed for the safeguarding of the exemption scheme and a relative stabilization of the controversy (Maroukis 2012).

cultural expertise in law, and of the various forms that this expertise can take, beyond the conventional focus on anthropological expert witnessing. In this respect, the contribution of James Mooney proved particularly instrumental, notably in regard of its implication in the establishment of the Native American Church, which paved the way for Native American Peyotists' eventual success in protecting their use of peyote. Furthermore, the analysis richly exemplifies the enduring and problematic dual position experienced by anthropologists involved in this type of controversy, navigating between a supposedly impartial position as experts, and an arguably biased engagement as advocates for Native American religious rights. This tension, which had dire professional consequences for Mooney, was arguably even aggravated by the strategic essentialization of Peyotism, leading the "second generation" to substantiate an essentialist narrative of the entheogenic use of peyote that has until now tended to simplify the complexity of the practice.

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