

Efforts of native Americans to make the consumption of peyote for religious purposes legal in the United States of America

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Introduction

The encounter of indigenous people of North America with the Europeans in the XV century had without any doubt a huge impact on their lives. This has led to large and very rapid changes with which Indians did not always cope initially. They had to develop a new way of living, often find new goals and values.

It seems that religion, which is called peyotism, has become one of the remedies for this situation. It is a combination of the Indian tradition and white Americans civilization. However, the natives had to fight for the possibility of its full and unfettered practice. This was due to the fact that the plant, which is the main component of this cult, began to be perceived by US authorities as a drug. American courts were faced with the task of deciding what is more important in this situation - the culture of specific community, or the uniformity of law and its effectiveness in the fight against drug market.

There is an additional aspect here which is the freedom of religion, one of the most basic human rights. However, in certain situations, there has to be impose legal restrictions on this right, which paradoxically allow the real existence of freedom of religion, especially in a country such as the United States, which seems to be one of the biggest cultural mosaic of the world. Without any intervention the complete freedom could be used by religious groups against one another. But the difficulties arise while determining where this limit should be impose. Lack of the cultural and religious uniformity in the United States makes the situation incredibly difficult.

This article is an attempt to show how the indigenous Americans defend their own tradition which has to change in some aspects to meet U.S. legal requirements and thus to strengthen its position.

Peyotism

Peyotism is a religious cult, especially widespread among North American Indians centered around peyote (botanical name - *Lophophora williamsii*), which is a plant from the cactus family. What is the most important about this cactus is the fact that it has hallucinogenic properties.

The origins and causes of the spread of that religion in North America are not easy to clearly determine what is caused mainly by the lack of information, especially about the centuries before the conquest. Most likely, the cult of the peyote appeared south of the Rio Grande, where cactus is still growing in large quantities⁷⁵. Then, at the end of the XIX century began to spread on North American lands to reach in the end the southern part of present Canada⁷⁶.

There are many reasons why this cult became so popular and successful. To present them, it is crucial to trace what was happening with the Indian society in the XIX century. Most of the tribes were forced to change their natural environment under the legal act, enacted in 1830, concerning resettlement of Indians to the reserves, where lands were mostly dry and barren, where the governmental control was stretched over them, where often previously hostile tribes were forced to live together⁷⁷. It was done under the slogans of alleged protection of their biological extinction⁷⁸. These displacements of Indian population have led to the collapse of traditional culture in which a clear sense of belonging to one group, and on the other hand a sense of separateness from others were present⁷⁹.

In the reserves every Indian family was given a piece of land as their own property which was something completely new to these people, who had previously always treated the land and any other thing as a common property of the whole tribe. This has for example contributed to the collapse of the authority of tribal elders. People who were used to living in a group with very strong relationships and dependencies were forced to the more individualistic way of living, which was the European value. Indians children were sent to boarding schools far from their families to separate them from their culture and tradition. What is more, bison, the main animal on which Natives were hunting, almost completely extinct.⁸⁰

Indians were deprived of their, once almost unlimited, freedom. Many of their values, ideals and goals lost their meaning after the Europeans dominated the continent. After 1890 the majority of

⁷⁵ La Barre, *The peyote cult*, Yale 1938, s.110; after: M. Posern-Zielińska, *Peyotyzm: Religia Indian Ameryki Północnej*, Wrocław, Warszawa, Kraków, Gdańsk 1972, pp. 85.

⁷⁶ P. Yuen, *The Peyote Religion Among The American Indians*, pp.1 [on-line:] <http://www.scribd.com/doc/3485672/The-Peyote-Religion-Among-the-American-Indians> [16.06.2012].

⁷⁷ M. Posern-Zielińska, *op.cit.*, pp.96-97.

⁷⁸ *Ibidem*.

⁷⁹ R. Shonle, *Peyote, the giver of visions*, "American Anthropologist", v. 27, 1925, pp. 57.

⁸⁰ M. Posern-Zielińska, *op.cit.*, pp.101.

the indigenous population was already closed in the reserves, where conditions were most often so outrageous that many Indians have died of starvation and epidemics. The white defender of this population compared them to prisons in the form of pens for cattle. From this hopelessness, the sense of unity and solidarity among the entire race, and not only within one tribe, began to slowly emerge.⁸¹

Peyotism was one of the responses to the culture shock, stress, problems in adjusting to a new situation and despair which gripped the indigenous people of North America in the XIXth century. Following the Swedish researcher Åke Hultkrantz, peyotism could be called the "crisis religion"⁸².

This religion supports pan-indian movement and shows the path which Indians should follow to survive and achieve happiness after death (so called The Peyote Path). It gives them a sense of self-worth by putting their culture at least on a par with the culture of the white man and often even above it. It filled the void left by the traditional indigenous cults that lost their importance due to the changing conditions of life. That is why peyotism was firstly adapted by the Indians from the Plains. They were nomadic hunters who had to become sedentary farmers and because of that they probably experienced the biggest shock⁸³.

The literature of the subject often mentions two other cults who were supposed to facilitate the assimilation of peyotism on the lands of the United States. The first one occurred on the Plains and was called the cult of the "mescal bean"⁸⁴. The so-called bean contains a toxic substance which has hallucinogenic properties and its intake can lead to nausea, convulsions, and even death⁸⁵. It is believed that the familiarity with the "mescal bean" could accelerate the spread of the cult of peyote because the effects that it induces were not unknown to the population of those areas⁸⁶. The probable reasons of why *Lophophora williamsii* eliminated the "mescal bean" is that narcotic substance contained in the second plant is five times stronger and because this cult was closed so only few people could participate in it. While peyotism is open to almost all with few exceptions concerning participation of women in the most important parts of the peyote ceremony⁸⁷.

The second cult was a religious movement called "Dance of the Spirits" which appeared in California in the 70s of the XIX century⁸⁸. It was a millenarianism movement which preached the

⁸¹ Ibidem, pp.99.

⁸² Å. Hultkrantz, *The Attraction of Peyote. An Inquiry into the Basic Conditions for the Diffusion of the Peyote Religion in North America*, Acta Universitatis Stockholmiensis, Stockholm studies in comparative religion, Stockholm 1997, pp.84, [on-line:] <http://www.scribd.com/doc/4809735/15/The-Peyote-Religion-as-a-Crisis-Religion> [30.05.2015].

⁸³ M. Posern-Zielińska, *op.cit.*, pp.96-97.

⁸⁴ J. H. Howard, *The Mescal Bean Cult of the Central and Southern Plains: An Ancestor of the Peyote Cult?*, "American Anthropologist", v.59, 1957, pp.75-76.

⁸⁵ Ibidem.

⁸⁶ M. Posern-Zielińska, *op.cit.*, pp.69.

⁸⁷ Å. Hultkrantz, *op.cit.*, pp.113.

⁸⁸ E. Nowicka, I. Rusinowa, *Wigwamy, rezerwaty, slumsy: z dziejów Indian w Stanach Zjednoczonych*, Warszawa 1988, pp. 232.

imminent cosmic catastrophe which could be accelerated by the dance from which the movement took its name⁸⁹. Some similarities to the Christian religion may be noticed here (for example the vision of a happy land to which Indians would go after the disaster is very similar to the Christian vision of heaven) which should not surprise considering the fact that the initiator of this cult Wovoka, who later became one of the main authorities of peyotism⁹⁰, grew up in a family of the colonizers where the Bible was always read out loud⁹¹. The idea of pan-indianism is also present here, as well as the postulate of not harming others and peaceful settlement of conflicts (also with white people)⁹². They even organized events which were supposed to unite Indians from different tribes in one dance and around common ideas⁹³.

This cult began to lose its significance when the end of the world did not occur in the alleged dates to finally incur a defeat in 1891. In this year the massacre at Wounded Knee took place where many of the Sioux lost their lives despite wearing their "holy ghost shirt" that supposed to bounce the bullets. That was the last armed resistance of the Native Americans. Henceforth, Indians adopted an entirely passive attitude and the peyote hallucinations became a form of escape of the surrounding reality.⁹⁴

Peyotism is a monotheistic religion with a strong syncretic nature where the elements of North American indigenous cults are intertwined with some ideas from Christianity and also some components from the original peyote complex⁹⁵ still possible to observe in Huichol tribe living in Mexico in the mountains Sierra Madre. Huichols at least once a year set off on a hunting for peyote to find it in the sacred land of Wirikuta and to go on a spiritual path to the country of their predecessors⁹⁶. Elements of Christianity appeared when the cult began to be popular north from the Rio Grande river⁹⁷. What is the easiest to notice is the identification of the traditional Great Spirit with the God, protective spirits with angels and peyote with Jesus, the Holy Spirit or the sacramental bread⁹⁸. Jesus is also sometimes identified with the Peyote Woman⁹⁹ (in traditional myths quite often she is the one who first had found the cactus and brought it to Indians). When it comes to traditional beliefs of Indians the most popular was shamanism and the faith in all kinds of guardian spirits¹⁰⁰.

⁸⁹ Ibidem.

⁹⁰ E. Nowicka, *Bunt i ucieczka: zderzenie kultur i ruchy społeczne*, Warszawa 1972, pp. 116.

⁹¹ M. Posern-Zielińska, op. cit., pp. 137-139.

⁹² Ibidem, pp. 140-143.

⁹³ E. Nowicka, I. Rusinowa, *Wigwamy, rezerwaty...*, op. cit., pp.233.

⁹⁴ M. Posern-Zielińska, op.cit., pp.144-148.

⁹⁵ Ibidem, pp.93-94.

⁹⁶ B. G. Myerhoff, *Pejotlowe Łowy: Sakralna podróż Indian Huicholi*, Kraków 1997, pp.19.

⁹⁷ Å. Hultkrantz, op.cit., pp.40.

⁹⁸ E. Nowicka, *Bunt i ucieczka...*, op. cit., pp.91.

⁹⁹ Ibidem.

¹⁰⁰ M. Eliade, *Szamanizm i archaiczne techniki ekstazy*, Warszawa 1994, pp. 297.

Shaman was the only person capable of entering the supernatural world sufficiently deep during his ecstatic journeys, however the achievement of visions was possible for every member of the tribe¹⁰¹. Shaman possess healing powers especially when it came to the so-called "diseases of the soul" which could be healed only during special sessions in which shaman goes to the world of visions¹⁰². It is clear that the desire to experience hallucinations remained in peyotism with this change that here everyone has the opportunity to achieve a deeper understanding. It seems that the important position of the drum in peyote rituals and the fact that these ceremonies take place at night are also what is left of the old tribal religions. The drum has a major role in shamanic rituals because it allows him to float in the air to call the spirits and to focus due to its sound¹⁰³. The therapeutic shamanic session takes place at night accompanied by chants and ritual smoking of the pipe¹⁰⁴. Those elements take also place during the meetings of the peyotism followers.

Code of ethics (called The Path of Peyote) is a blend of Christian values and the needs of Indian society. The desirable qualities are honesty, charity, gentleness, self-control, diligence, thriftiness. What is encouraged is the care for the family, loyalty, and above all total prohibition on drinking alcohol (which most likely is the result of extraordinary vulnerability of the Indian population to the alcohol). The goal of this religion is to increase the self-esteem of Indians so shaken after their encounter with Europeans. White people are criticized for their greed, materialism and their desire to dominate Native Americans¹⁰⁵.

Initially this religion was very poorly organized, developing mainly on a local scale and consisted primarily of volunteers¹⁰⁶. However, it was very quickly noted that in the current reality the religious activity, for its effective development, has to be based on an institutionalized system that could be legalized by the American authorities¹⁰⁷. Christianity served as a model. They began to build churches, which firstly were covering only small areas, until the 10th of October 1918 when the Native American Church was constituted in El Reno, Oklahoma which main aim was to integrate all members, regardless of their tribe¹⁰⁸. Subsequently an international union was created under the name Native American Church of North America which aim is to gather all the peyote churches (including those present in Canada)¹⁰⁹. The number of people belonging to the church is estimated at 250,000

¹⁰¹ Ibidem.

¹⁰² Ibidem.

¹⁰³ Ibidem, pp.174-175.

¹⁰⁴ Ibidem, pp.301-304.

¹⁰⁵ D. F. Aberle, *Peyote religion among the Navaho*, Viking Fund Publication in Anthropology, n. 42, New York 1966, pp.181; after: E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp.98.

¹⁰⁶ Ibidem, pp. 123.

¹⁰⁷ M. Posern-Zielińska, *op.cit.*, pp.213.

¹⁰⁸ La Barre, *The peyote cult*, Yale 1938, pp.170; after: Ibidem, pp. 218.

¹⁰⁹ J. S. Slotkin, *The Peyote way*, in: *Reader In comparative religions*, New York 1962, pp. 483; after: Ibidem.

which is about half of the Indian population in the United States¹¹⁰. However, these data are from the book published in 1972 and unfortunately I could not find more recent estimation.

When it comes to rituals associated with this religion the most important is the ceremony which takes place every Saturday after sunset and lasts for the entire night¹¹¹. Those meetings are mostly held in tents but may also occur in other places, even on the open air¹¹². The Leader takes care of the preparation for the ceremony by bringing required items (drums, feather fan, rattle, stick of the Leader, whistle¹¹³) and by building the altar which is a mound of earth in the shape of crescent¹¹⁴. Participants of the ceremony enter the tent in a specified order. First one is the Leader, then Main Drummer, then the Guardian of the Cedar Incense¹¹⁵. After them the men can enter, later women and children and the last one is the Guardian of the Fire who is responsible for the fire to burn during the whole ceremony¹¹⁶. On entering the faithful move along the walls according to the clockwise direction and occupy places indicated by the Leader. Then the Leader puts on the altar the peyote and furrow a shallow groove in the ground, which is a symbol of the peyote path through which the God sends visions to people and people send their requests to God¹¹⁷. At the beginning the Leader preaches and later everyone smoke a ritual tobacco¹¹⁸. After that there comes a time for the first intake of the peyote (occurs several times during the night) which is happening in a complete silence and concentration¹¹⁹. Then they begin to sing at a constant accompaniment of a drum which along with other ritual objects wanders between the believers¹²⁰. At midnight a woman initiates the "ceremony of water" and everyone is drinking water from one vessel¹²¹. The consumption of water is a symbol of unity and solidarity of all the believers and what is more water is supposed to have extraordinary power for example to cure a disease¹²². Prayers are mostly individual and improvised¹²³. Participants under the influence of peyote are falling into a state of contemplation, spiritual elation and sometimes are experiencing some visions¹²⁴. In the morning women are responsible for preparing breakfast for all believers¹²⁵. Most often they all stay together, relaxing and talking, until Sunday evening¹²⁶.

¹¹⁰ M. Posern-Zielińska, *op.cit.*, pp.220.

¹¹¹ E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp. 100.

¹¹² M. Posern-Zielińska, *op.cit.*, pp. 185-187.

¹¹³ E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp. 100-101.

¹¹⁴ M. Posern-Zielińska, *op.cit.*, pp. 187-188.

¹¹⁵ E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp. 101.

¹¹⁶ *Ibidem*.

¹¹⁷ M. Posern-Zielińska, *op.cit.*, pp.190.

¹¹⁸ E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp.101-102.

¹¹⁹ M. Posern-Zielińska, *op.cit.*, pp.191-192.

¹²⁰ *Ibidem*, pp.192-193.

¹²¹ *Ibidem*, pp.193.

¹²² E. Nowicka, *Bunt i ucieczka...*, *op.cit.*, pp.104.

¹²³ *Ibidem*, pp.106.

¹²⁴ M. Posern-Zielińska, *op.cit.*, pp. 195.

¹²⁵ *Ibidem*, pp.198.

Properties of peyote

Peyote is a small cactus which after ingestion causes many colorful hallucinations¹²⁷. Bernardino de Sahagun (Spanish chronicler and priest) was writing about this plant in 1560 while he was describing Aztecs¹²⁸. Without any doubt, one can therefore conclude that the history and tradition of the use of peyote dates back to the times before the arrival of the Spaniards on the newly discovered continent. The origins of this phenomenon should be then seek on the lands of today's Mexico.

The effects caused by the consumption of this plant can be divided into two phases. The first one is a bit unpleasant because there are such ailments as headaches, nausea and salivation¹²⁹. During the second phase, which occurs after a few hours, there appears an arousal of the body, impaired perception and what is the most important - the colorful visions¹³⁰. What is special about this plant is that under its influence the person does not lose the sense of awareness or control over its body, mind and behavior¹³¹. In the literature of the subject appears also different descriptions of the phases. For example Ruth Shonle wrote that initially revival and joy appear and later visions and lethargy¹³².

Hallucinogenic properties of peyote are caused by the presence of 14 classified alkaloids (there can be more) in its chemical composition¹³³. Some of them can stimulate, others soothe while the basic of them - mescaline - is attacking the parts of the brain responsible for vision causes hallucinations¹³⁴.

In science, there are two main views on the question - why peyote was so attractive to the indigenous population of the United States? The first emphasizes the hallucinogenic properties that without any doubt always play an important part of Indian culture in North America and on the Plains became virtually irreplaceable¹³⁵. Indians were trying to achieve visions on every possible occasion such as bereavement, war and initiation which led sometimes to the complete elimination of the Shamans¹³⁶. The only exception is the culture of Indians Pueblo where this form of experience has

¹²⁶ Ibidem.

¹²⁷ R. Shonle, *op.cit.*, pp. 53.

¹²⁸ W.E. Safford, *Narcotic Plants and Stimulants of the Ancient Americans*, Annual Report of the Smithsonian Institute 1916, pp. 404-405; after: *Ibidem*, pp. 70.

¹²⁹ M. Posern-Zielińska, *op.cit.*, pp. 41.

¹³⁰ Ibidem, pp. 42.

¹³¹ R. E. Schultes, *The appeal of peyote (Lophophora williamsii) as a medicine*, "American Anthropologist", v.40, 1938, pp. 702.

¹³² R. Shonle, *op.cit.*, pp.73.

¹³³ M. Posern-Zielińska, *op.cit.*, pp.47.

¹³⁴ Ibidem, pp.47-49.

¹³⁵ R. Shonle, *op.cit.*, pp. 59.

¹³⁶ Ibidem.

never been popular¹³⁷. Hallucinations allowed to obtain personal guardian spirit which gave its worshiper grace and power¹³⁸. This led to a situation in which people even mutilated themselves to induce visions¹³⁹. The emergence of *Lophophora williamsii* made it easier to obtain the desired visual hallucinations without using drastic measures which contributed to such a huge interest in peyote among Indians¹⁴⁰. The indigenous people of these land has always ascribed supernatural origins to the hallucinations so the cactus became in their eyes a plant with a special powers which led to its recognition as sacred¹⁴¹.

The second position emphasizes the therapeutic and healing effects of peyote as a fundamental for its popularity¹⁴². Indians believe that there is virtually no disease that this plant could not heal and it does not matter whether it is a disease of the body or of the soul¹⁴³. It is believed that medicinal plants are related to the supernatural powers, they are filled with them, which makes them sacred plants¹⁴⁴. The therapeutic effects of peyote has not been proved and probably Indians assign it such properties because they experience a relief during the ecstatic states caused by the intake of the cactus¹⁴⁵. Probably there were situations when the belief in a supernatural ability of *Lophophora williamsii* was so strong that it resulted in the so-called placebo effect and thereby affirmed Indians in their conviction about the healing properties of it. To summarize, it is difficult to separate from each other these two uses (medicinal and hallucinatory) of peyote because very often they occur together - to cure the disease by causes well-being which is associated with the emergence of visions¹⁴⁶.

Peyote is without a doubt the center and the holiest part of peyotism. It embodies the power of God, his will or spirit so the believers pray to this plant during ceremonies¹⁴⁷. It is also thought to be a teacher and tutor for Indians and a supernatural power and a cure for all problems and diseases¹⁴⁸. The followers of this religion believe that it is a gift from God. in which the God included some of his power, designated specially for Indians to save them from their suffering¹⁴⁹.

The opinions in science are divided as to whether the peyote can be considered a drug or not. Voices opposing used as the main argument the fact that *Lophophora williamsii* does not cause any

¹³⁷ Mirosława Posern-Zielińska, op.cit., pp. 66.

¹³⁸ Ibidem.

¹³⁹ R. E. Schultes, op.cit., pp. 703.

¹⁴⁰ M. Posern-Zielińska, op.cit., pp. 67.

¹⁴¹ Rochard Evans Schultes, op.cit., pp.703.

¹⁴² Ibidem, pp.704.

¹⁴³ Ibidem, s.706.

¹⁴⁴ M. Posern-Zielińska, op.cit., pp.72.

¹⁴⁵ Ibidem, pp.73.

¹⁴⁶ Rochard Evans Schultes, op.cit., pp.704.

¹⁴⁷ Åke Hultkrantz, op.cit., pp.60.

¹⁴⁸ Omer C. Stewart, *Washo – Northern Paiute peyotism, a study in acculturation*, Berkley, Los Angeles 1944, pp. 81; after: Ewa Nowicka, *Bunt i ucieczka...*, op.cit., pp. 92.

¹⁴⁹ E. Nowicka, *Bunt i ucieczka...*, op.cit., pp. 92-93.

addiction¹⁵⁰. However, there are definitions of the drug that do not recognize, as the most important criterion, the fact that the substance is causing addiction or not¹⁵¹. This could eliminate from the group of drugs cocaine because addiction often is determined here by the personality of a person not by the chemical composition¹⁵². Researchers representing the second position seem to doubt the addictive properties of peyote, however do not exclude that if it would be used in different circumstances (not controlled by the Native American Church) it could become a detrimental substance for humans and society¹⁵³. It seems that only on the legal level it is possible to clearly determine what is a drug and what is not by the creation of enumerative list of substances which are considered harmful to the human body¹⁵⁴.

Indian culture and tradition in the face of American Law

To begin the story about the conflict between the use of peyote and the U.S. law we have to go back to the 15th of December 1791 when the first amendment to the American Constitution came into force introducing the freedom of religion and a right to practice it¹⁵⁵. This law is one of the most important foundations of American democracy and one of the most important human rights.

The main reason for the reluctance towards peyotism was the fact of the consumption of peyote by Indians because this plant was identified by white Americans as a drug¹⁵⁶. It should be noted here that in the U.S.A. in the early twentieth century, after years of admiration for stimulants such as opium and cocaine, Americans began to associate drugs primarily with immigrants and their organized crimes. For this reason, many opponents of the peyotism religion, associated mostly with the Christian church or simply having a negative opinion about Indians, began to use the argument that peyote is detrimental to human health (although, there is no doubt that it was their secondary concern) and therefore its use should be prohibited¹⁵⁷. What is more, for many white Americans Indians form of religion in which they remain in the state of intoxication to receive visions was frightening and difficult to understand which resulted in their desire to suppress it¹⁵⁸. Bureau of Indian

¹⁵⁰ M. Posern-Zielińska, *op.cit.*, pp. 52.

¹⁵¹ Carrol G. Barber, *Peyote and the Definition of Narcotic*, "American Anthropologist", v.61, 1959, pp. 642-643.

¹⁵² *Ibidem*.

¹⁵³ *Ibidem*, pp.643.

¹⁵⁴ M. Posern-Zielińska, *op.cit.*, pp. 53.

¹⁵⁵ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. " *I Amendment to the Constitution of United States of America, 1791*, [on-line] https://www.law.cornell.edu/constitution/first_amendment [25.05.2015].

¹⁵⁶ M. Posern-Zielińska, *op.cit.*, pp. 53.

¹⁵⁷ *Ibidem*, pp. 53-59.

¹⁵⁸ Stewart Omer C., *Efforts to Pass a Federal Law, w: Peyote Religion: A history*, pp.213-239, [on:line] <http://nativeamericanchurches.org/peyote-religion-efforts-to-pass-a-federal-law/> [30.05.2015].

Affairs was also one of the opponents of this plant but they were in general against the whole Indian society which has changed in the 30s when John Collier became a commissioner. He believed that white people can learn a lot from Indians but that did not win him many friends¹⁵⁹.

Of course there were also defenders of this plant who do not necessarily have to be Indians. They focused primarily on a huge cultural and social significance of the cactus for the Indians, its rootedness in their tradition. They pointed out that its prohibition can lead to the collapse of the entire religion. They also stressed out its beneficial impact on the plague of alcoholism so devastating for indigenous Americans¹⁶⁰.

At the beginning of the twentieth century occurred firsts arrests and court cases against holders of the cactus. They were based on the prohibition of spreading intoxicating liquors among the natives however, those cases were mostly won by Indians because of difficulties to include peyote under this ban. Those events led to many responses from the Indian tribes for example they sent a petition in 1915 to the Commissioner of Indian Affairs in which they were writing: *"It has been seven years since I joined them [the Peyote Society]. Since then I have spent no money for whiskey. I believe this Peyote is good. . . ."*, *"When we are in a meeting we eat peyote which gives us the spirit of comfort and we would sit there and pray to God and his son Jesus. It would make me think about God, Jesus. . . . Here I am I don't understand the Bible, still I believe in it."*¹⁶¹

Despite these initial successes the Indians began to realize that if they want their religion to be seen on a par with Catholicism or Protestantism they have to organize, establish rules and create a structure. They understand that their religion has to dress up in the American form in order to have better chances in defending its rights, traditions or to be able to fight for permitted consumption of peyote¹⁶². That is why Native American Church was established.

The emergence of the new Church does not silence the opponent of peyotism who were not able to prohibit completely the use of peyote on the federal law level however, they achieved it in some states such as Utah, Colorado, Nevada, Kansas (later in Arizona, Montana, North and South Dakota, Iowa, New Mexico, Idaho) which automatically resulted in the arrest of natives who did not comply with the new legal rules¹⁶³. However, from the practical point of view those prohibitions little have changed in peyote ceremonies which were held in the reserves where the state law had no jurisdiction, the state authorities could only have some impact on the transport of the plant¹⁶⁴. In

¹⁵⁹ Ibidem.

¹⁶⁰ Ibidem.

¹⁶¹ Ibidem.

¹⁶² Ibidem.

¹⁶³ Ibidem.

¹⁶⁴ Ibidem.

addition, adversity with which the Indians met led to the creation of more Churches in different states¹⁶⁵.

On the 26th of July 1960 in Flagstaff, Arizona took place a precedential case. It all began with the arrest of Mary Attakai (Indian) because of the suspicion that she was in possession of a prohibited cactus. The evidence gathered in this case were really impressive. Many experts were appointed (also the President of the Native American Church) and many photographs from the peyote ceremonies were presented during the case. The cultural aspect of this plant was really taken into account here. All the judicial experts recognized it as an inseparable part of peyotism. They were also against identifying peyote as a narcotic. Indian woman was freed from all charges and the judge upheld the opinion of the defense which appealed to the First Amendment guaranteeing the freedom of religion and raised the argument of the violation of the Fourteenth Amendment to the US Constitution which guarantees equal protection of rights for each staying in the United States and a prohibition to restrict the rights and freedoms of American citizens (since 1924 the Indians were considered to be US citizens). The justification of the judgment, drawn up by the judge Yale McFate, was extremely important. He considered peyotism as a fully-fledged religion and admitted Indians full and free right to profess it. Peyote has been considered by him as irreplaceable part of this religion (as important as Bible to Christians). In addition, the judge concluded that there are no grounds to consider this plant to be a drug because it does not cause any undesirable effects. The importance of this judgment is enormous, especially considering that American law is the law of precedents. It completely changed the direction of policy in Arizona and even the mindset of the people residing there. The consumption of peyote became legal in this state¹⁶⁶.

Another important case (*People vs. Woody*) took place in California in 1962 - 1964. In this state Indians from the Navaho tribe were meeting in the desert in order to celebrate a religious rite with the use of peyote. They were caught by the police and accused of violating the California Health and Safety Code which prohibits unregistered possessions of *Lophophora williamsii*. The defense in this case relied primarily on the fact that the prohibition of the religious consumption of peyote is a violation of the First Amendment to the Constitution because it strikes at those who want to follow the orders of peyotism. What is more, it was pointed out that it is the embodiment of the Holy Spirit, the object of worship, teacher, protector, the main element of this religion and that due to its consumption Indians can come into direct contact with God. It was emphasized that the nonreligious consumption is considered a sacrilege by Indians. However, the problem was in the fact that according to First Amendment prohibition against infringement of faith is absolute, but when it comes to practices

¹⁶⁵ Ibidem.

¹⁶⁶ M. Posern-Zielińska, op.cit., pp. 59-60.

related to religion it is less rigid. State law may limit it if in a given situation the interest of the state clearly exceeds the interest of followers or if the practices may cause any serious violations or danger. According to the State authorities the main reason for the prohibition of peyote is its detrimental effect on the entire Indian community. What is more, the permission of its legal use would hinder the fight against drugs since it would be difficult to determine the reasons for which the person possesses it. Moreover, it was believed that it threatens young children who may already become addicted at a young age. It was also feared that the use of peyote may trigger in the future the desire to try other, more powerful narcotics. To those arguments the defense replied that there is no evidence that the Indians who consume peyote were more likely to try stronger drugs than those who do not and that children never, and teenagers rarely, use peyote. What is more, the members of the Native American Church characterized by a higher moral level in oppose to those who are outside it. Eventually, the court agreed with the defendants arguing that the prohibition of consuming peyote violates the fundamental right to religion because the cactus is the essence of that religion. The interest of the state was declared to be weaker here especially as no one pointed out any particular threat to the effectiveness of the law of California. At the end it was stressed that in the mass society it is incredibly important to protect the right to self expression and that the protection of the religious right of Indian to intake peyote is the protection of higher value.¹⁶⁷

On the 11th of August 1978 the Congress passed the American Indian Religious Freedom Act which stated that the mission of the United States is to protect the inherent right of Indians to freedom of religion and its practice through various ceremonies and what is more, this act admits Indians the right to possess and use their sacred objects¹⁶⁸. It is not an ideal act because it does not point any practical ways to implement these rights. However, it is important because it affirms the religious rights of the Indians at the federal level.

The most important case in the fight for legal consumption of peyote for religious purposes is the case: *Employment Division, Department of Human Resources of Oregon Vs. Smith* which took place in 1990 before the Supreme Court of the United States. Two Indians, Alfred Smith and Galen Black, were fired from a private rehab clinic because they had consumed peyote (they did it during religious ceremony of Native American Church) which was prohibited by the laws of the Oregon¹⁶⁹. When they reported for the unemployment benefits they were denied it because state law does not

¹⁶⁷ *People v. Woody*, [on-line:] <http://law.justia.com/cases/california/cal2d/61/716.html> [25.05.2015].

¹⁶⁸ *American Indian Freedom Religious Act, 1978*, [on-line:] http://www.blm.gov/style/medialib/blm/wo/Planning_and_Renewable_Resources/coop_agencies/cr_publications.Par.77059.File.dat/78airfa.pdf [24.05.2015].

¹⁶⁹ *Employment Division, Department of Human Resources of Oregon v. Smith*, [on-line:] <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/empdiv.html> [24.05.2015].

grant benefits for those fired because of "misconduct"¹⁷⁰. The Supreme Court ruled that the State authorities were entitled to such a decision and did not violate First Amendment because the amendment prohibits the adoption of the law which would directly impact the freedom of religion and religious practices ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise religious ...¹⁷¹")¹⁷². In this situation the consumption of peyote was prohibited for every citizen and was not directed against any religion¹⁷³.

In other words, if the intake of this cactus was banned because it applies to religious practices or if its consumption occurred only for religious purposes and no one ever ate it outside religious rites then such a prohibition introduced by the State would be incompatible with First Amendment. The Supreme Court pointed out that no one can be above the law laid down for everyone because it would lead to a complete chaos and to deprivation of the state law from any real power¹⁷⁴. The individual faith cannot be an excuse for non-compliance with the prohibitions and injunctions imposed by the state authorities¹⁷⁵. In this case, the Supreme Court narrowed the understanding of the First Amendment, it did not even wondered whose interest is "heavier" in this situation and whether the consumption of peyote for religious purposes in any way threaten the efficiency of the state law.

This trend leading to a narrower understanding of the right to freedom of religion alarmed not only Congress but also public opinion. This resulted in the enactment of the Religious Freedom Restoration Act in 1993 which aim was to strengthen the protection of the freedom to practice religion. The idea was to to restore by this act the practice of testing in every case, even indirectly liable to undermine the freedom of religion, whose interest is more important in the case - interests of the state or of the followers of particular religion¹⁷⁶. In 1997 the Supreme Court ruled that this law is actually incompatible with the U.S. Constitution¹⁷⁷.

Another consequence of the judgment from the case *Employment Division vs. Smith* was the adoption in 1994 of the amendment to the American Indian Religious Freedom Act which directly refers to the case of peyote. It is stated there that the sacramental intake of this plant for many years

¹⁷⁰ *Ibidem*.

¹⁷¹ *I Amendment to the Constitution of United States of America op.cit.*

¹⁷² This amendment is used also to state law despite its literal meaning that it should be apply only to federal law. It is stated in the XIV amendment that the State cannot limit the rights and freedoms of th U.C. citizens. *Employment Division, Department of Human Resources of Oregon v. Smith, op.cit.*

¹⁷³ *Ibidem*.

¹⁷⁴ *Ibidem*.

¹⁷⁵ *Ibidem*.

¹⁷⁶ *Religious Freedom Restoration Act, 1993, [on:line] <https://www.law.cornell.edu/uscode/text/42/chapter-21B> [25.05.2015].*

¹⁷⁷ *Ibidem*.

was an integral part of Indian life¹⁷⁸ and that the latest judgment of the Supreme Court brought uncertainty about the legality and protection of the religious consumption of the peyote which increases the risk that the Indians will be the subjects of the discriminatory practices of the state authorities¹⁷⁹. This amendment provides that the use, possession or transportation of peyote by Indians - in good faith, for ceremonial purposes related to traditional Indian religion - is legal and should not be prohibited by the government of the United States or by any state government¹⁸⁰.

Currently, peyote is on the list of controlled substances by the U.S.A. (Controlled Substances Act) in Group I in which there are substances with a high potential of abuse and non-official medical recognition¹⁸¹. However, there is an exception that the use of peyote, in good faith, for the purposes of religious ceremonies is legal for the members of the Native American Church¹⁸². It could be noted in the end that this exception is not included in the Controlled Substances Act but in the Code of Federal Regulation Section 1307.31.

Conclusions

There are no doubts that the peyotism religion emerged from the crisis, the need of finding a new sense of life by the Indians who had been lost on their own land after the appearance of Europeans. From the proud people with unlimited freedom they became locked in reserves and considered as a second-class human beings. They had no real chance against Europeans which could only lead to a deep frustration, bitterness, hopelessness. From that kind of feelings developed religion which has achieved unparalleled success considering the fact that previously each tribe had its own beliefs. Of course there were similarities between them but there never was any systematized doctrine.

It should be noted that the formal establishment of peyote religion and its current structure resulted mainly from the legal requirements. The Native American Church was established to increase

¹⁷⁸ "1. for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures". *American Indian Religious Freedom Act Amendments of 1994*, [on:line] <https://www.law.cornell.edu/uscode/text/42/1996> [25.05.2015].

¹⁷⁹ "4. the Supreme Court of the United States, in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and 5. the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.". *Ibidem*.

¹⁸⁰ "Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.". *Ibidem*.

¹⁸¹ *Controlled Substances Act*, [on:line] <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm> [25.05.2015].

¹⁸² *Code of Federal Regulation - section. 1307.31*, [on:line] <http://www.gpo.gov/fdsys/pkg/CFR-2004-title21-vol19/pdf/CFR-2004-title21-vol19-sec1307-31.pdf> [25.05.2015].

the chances of Indians is their fights for their rights before the US courts. We might be even tempted to go a bit farther and say that the idea of pan-indianism would never emerged if not the actions of Europeans and later of US authorities. They did not notice the differences between the tribes and brought their existence into the same conditions. In the legislation all the tribes were always treated collectively and were described either with the words "Indian" or "indigenous people". By reducing their land and by the settling them all together the U.S. authorities led to the intensification of interactions between the tribes. On the example of the development of peyotism we can observe how the culture transforms, adapts to the new, imposed requirements and dresses up in a new form in order to survive.

Even more interesting is the struggle to make the consumption of peyote legal. It is an example of cultural defense which in the end resulted in the legalization of the use of cactus for the religious purposes. Those kind of issues are one of the most difficult to resolve. It is not easy to assess whether a specific group should be allowed to something only because of its culture/religion even though other citizens are not. The problem grows even stronger if the considered actions are contrary to the system of values of the dominant group. It seems to me that in the end this case was not that controversial as it can sometimes be in similar matters. At least some consensus has been achieved.

The right to freedom of religion seems to remains intact. The long-standing tradition and culture of Native Americans had gone through some changes but survived. The new thing is the requirement to formally belong to the Church to be able to freely use peyote. In addition, the cactus is still classified by U.S. law as a drug and it is strictly prohibited in other situations. Also people who supply the Native American Church have to annually register and meet other legal requirements. Because of that I would say that the effectiveness of the U.S. anti-drug legislation was not significantly affected.

O autorze

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Streszczenie

Artykuł jest poświęcony sytuacji, jaka wynikła z nagłego zetknięcia się ze sobą dwóch, całkowicie odmiennych, kultur - kultury rdzennych mieszkańców Ameryki Północnej oraz kultury przybyszów z Europy. Opisuje przede wszystkim przemiany, jakie zaszły w życiu Indian, problemy, z jakimi musieli się zmierzyć, oraz nową jakość, jaka wyłoniła się ze styku tych dwóch cywilizacji. Problem ten jest ukazany na przykładzie rozwoju nowej religii wśród tubylców, peyotyzmu, oraz wysiłków wyznawców starających się o pełną swobodę wyznawania, a głównie o możliwość spożywania przez nich peyotlu, który jest najważniejszym składnikiem tej religii. Roślina ta, przez swoje halucynogenne właściwości, wzbudziła wiele kontrowersji. Bardzo szybko zaczęto uważać ją za narkotyk, co skutkowało wprowadzeniem prawnych zakazów jej spożywania oraz posiadania. W konsekwencji doprowadziło to do wielu spraw sądowych w Stanach Zjednoczonych (których część jest w tej pracy omówiona), a ostatecznie do zalegalizowania użycia peyotlu w celach religijnych.

Summary

The article is focused on the situation which resulted from the sudden encounter of two completely different cultures – the culture of the native inhabitants of North America and the culture of the newcomers from Europe. It mainly describes the changes that occurred in the Indians' lives, problems they had to face and a new cultural quality which emerged from the junction of the two civilizations. As an example, the development of a new Indian religion - Peyotism is considered, along with the efforts of its adherents to achieve full religious freedom which meant among other things, being free to consume peyote, a main element of this religion. Because of its hallucinogenic properties, this plant has aroused many controversies. It quickly started to be seen as a narcotic which resulted in the introduction of legislative bans on its consumption and possession. In consequence, there were many lawsuits in the United States (some of which are described in this article) which finally led to the legalization of the use of peyote for religious purposes.