Native Americans and the First Amendment: Religion

Keywords

- Native American/American Indian
- Constitution
- First Amendment
- Supreme Court
- The Native American Church
- Peyote

Description

Native Americans’ First Amendment rights are constantly being trampled upon by the United States government. Their minority religion has been ruled inferior in case after case (even by the Supreme Court whose sole purpose is to vote on Constitutional matters) to issues that are more important to the government, businesses, and other institutions.
**Key Points**

- The Founding Fathers wrote the Constitution, including the Bill of Rights, for all American citizens but these Constitutional Rights do not equally apply to all people.
- Native Americans’ First Amendment rights are a source of constant struggle for them.
- Native Americans religious rights are constantly treated as inferior to other issues.
- The Supreme Court has overturned numerous lower court rulings that protect Native American First Amendment rights from government intrusion and degradation.
- Members of the Native American Church are allowed to use narcotics such as peyote for religious purposes but loopholes in the system allow these rights to be stripped from them.

**Issue Brief**

The words “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” unfortunately do not equally apply to all Americans. Native Americans are considered less than deserving of equal protection under Constitutional law, even though the words are the Founding Fathers were written to protect all of the nation’s people from the government.

For many people, including American Indians, religion is something that they hold very sacred and is a vital part of their lives. All Native American religions are deeply connected to nature and there is often no separation between the natural and supernatural. They are spiritually tied to animals, plants, mountains, rivers, the sun and moon, and every part of nature. Their spirituality and religion simply cannot be separated from the land. This is the major reason for many of the legal battles and Constitutional conflicts that they endure to protect their First Amendment religious rights.

The Native Americans have had religious traditions and sacred lands for centuries before the colonization and establishment of the United States. Even so, numerous courts have denied them with their First Amendment rights even though they are citizens and deserving of their rights under the Constitution. The Center for First Amendment Studies notes, “starting in 1977 with Rosebud Sioux Tribe v. Kneip, the Supreme Court has denied First Amendment protection to Native American religious practices established long before the colonization of the United States (Rasmussen). Other cases, such as Sequoyah v. Tennessee Valley Authority allowed for flooding of Cherokee holy lands and ancestral burial grounds on the basis that they didn’t own the property (Rasmussen). Many cases won on behalf of Native Americans are overturned by the Supreme Court. A decision not to build a road through the Six Rivers National Forest, which is used by many tribes for different religious purposes, was made by the District Court of Northern California and the Ninth Circuit (Rasmussen). The decision was made based on the Free Exercise Clause under the First Amendment, which says “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. After the case was overturned by the Supreme Court, Justice O’Connor said, “it is undisputed that the Indian
respondents' beliefs are sincere and that the Government's proposed actions will have severe adverse effects on the practice of their religion” but continued on to say, “however much we might wish that it were otherwise, government simply could not operate if it were required to satisfy every citizen's religious needs and desires” (Rasmussen). What that essentially means is that the government can use loopholes in the system in order to take away people’s First Amendment Rights almost whenever they see fit.

Even though Native Americans have won some cases regarding land used for their religious rites, the reasoning behind the federal government’s ability to rule against them in the cases that they have lost comes from the Constitution. Article IV, Section 3, Clause 2 says that Congress has the legal right to “make regulations governing the territory belonging to the United States” (lawbrain). This is main loophole that allows the government to intercede in Native American affairs.

Certain parts of Native American religious ceremonies may allow for the use of items that are normally considered illegal, such as narcotics like peyote. Peyote has been used in religious practices for centuries, in which the cactus is dried and eaten to induce spiritual visions. The use of peyote was banned in 1918 by the House of Representatives and federally prohibited by the Drug Abuse Control Amendments of 1965. Since there was no exemption for peyote use by members of the Native American Church in the Controlled Substances Act of 1970, the Bureau of Narcotics and Dangerous Drugs made an exemption that allowed for its use for religious purposes (neurosoup). Even though under 42 USC §1996a, which notes that "Traditional Indian religious use of the peyote sacrament" permits only Native Americans to use the narcotic, this was only a federal exemption that did not apply at the state level since states still have their own laws, and they could chose to ignore the federal exemption. In the State of Oregon v. Smith and Black, two Native American men were fired from their jobs for failing drug tests after using peyote for religious purposes and sued the state because they were “wrongfully terminated” and denied Unemployment benefits (neurosoup). Even though the federal exemption would have allowed the court to rule in favor of the men, it didn’t, and although wrong under the First Amendment, the decision was justified under this loophole of federal versus state laws. This is yet another loophole that allows for the erosion of Native American Constitutional religious rights.

Even though Native Americans are the smallest recognized “race” on the ethnoracial pentagon and represent less than 1% of the population, there are still more than 2.7 million American Indians. They represent over 500 federally recognized tribal governments and each person is an American citizen who should be equally important under the government. In 1831, the Supreme Court case of Cherokee Nation v. Georgia declared them declared these tribes “domestic dependent nations.” Many American Indians live on reservations and on their land they have their own laws, police, courts, and the jurisdiction between reservation territory and surrounding local authorities do not overlap. Native Americans tribes have tribal sovereignty under the government, which grants them legal right to govern themselves. Therefore, Native Americans are the only people that have the unique status as both American citizens and tribal members, are thereby supposed to be granted the rights of each. Unfortunately for them, because of loopholes in the system, it doesn’t always turn out that way.
Works Cited


Relevant Websites


Image References

- **Picture 2, “Indian Praying”**: http://www.sonofthesouth.net/american-indians/pictures/indian-praying-300.jpg
- **Picture 3, “First Amendment Rated E For Everyone”**: http://api.ning.com/files/tp6tvwiDGWOcrMoov4Mk8ZLsMD8Jf3MnZiiYzkFD8r9gKIGoteHECPdBdIlTaDfBnjDFzx9nVCKxAx1n7EEGnNAwUuZ-cSV1/FirstAmendmentE.jpg