

Manufacturing the Entheogenic Underground

Brad Stoddard

ABSTRACT:

Ethnographic research suggests that people across the United States are increasingly gathering to commune with their creators, to interact with their ancestors, to enter the spirit world, to gain supernatural insights, and to engage in what they otherwise describe as religious or spiritual experiences. In this regard, their actions are not particularly revolutionary or novel. What distinguishes these people is not their desire to have religious or spiritual experiences. Instead, it is the means they employ to occasion these experiences that set them apart,¹ as their rituals and ceremonies involve the consumption of illegal drugs, specifically psychedelics and cannabis, substances they frequently term entheogens.² The United States government has granted select groups an exemption from drug prohibition, thereby allowing them to legally consume what are otherwise illegal substances.³ The vast majority of these practitioners, however, operate without this exemption, thereby confining them to what scholars often term the underground, or the sociocultural, political, or economic spaces thought to operate outside the influence or purview of the state.⁴ This alleged “absence” of

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¹ People who consume psychoactive substances in conjunction with their religiosity or spirituality are typically prone to argue that the substance doesn’t *induce* a religious experience; rather, it *occasions* one. This is an important taxonomic distinction intended to highlight that the supernatural is the cause but that the substance assists in the person’s interaction with the supernatural. For an academic expression of this idea, see Griffiths et al., “Psilocybin can occasion mystical-type experiences having substantial and sustained personal meaning and spiritual significance,” *Psychopharmacology* vol. 187,3 (2006): 268-83.

² In 1978, Carl Ruck, Classics professor at Boston University, coined the term “entheogen” to distinguish the religious from the recreational consumption of psychoactive substances like psychedelics. The term has since grown to become the dominant term referencing the religious use of what are typically illegal psychoactive substances. Wasson et al., *The Road to Eleusis: Unveiling the Secret of the Mysteries* (Harcourt, Brace, Jovanovich, 1978).

³ An act of Congress granted Native Americans the right to consume, within the context of religious ceremonies, a psychoactive cactus called peyote; U.S. courts have ruled that two churches can legally import and consume a psychoactive drink called ayahuasca, the New Hampshire Supreme Court ruled that one church in N.H. can legally consume psilocybin (aka “magic”) mushrooms, and the Church of the Eagle and the Condor reached an agreement with the DEA and other branches of the government allowing them to import and consume ayahuasca. To my knowledge, these communities and their affiliates are the only communities that are legally importing or consuming otherwise illegal “drugs.”

⁴ Among others, see: Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* (W. W. Norton & Company, 1999); Anne Applebaum, *Iron Curtain: The Crushing of Eastern Europe, 1944-1956* (Doubleday, 2012); and Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (The Free Press, 1963).

the government is the topic of this paper, which argues that the state is both the primary curator of the so-called underground and that the state's influence pervades these "underground" communities. To demonstrate this, this essay will discuss the legal structures and case law impacting entheogenic churches in the United States, paying particular attention to the attorneys who advise these churches.

Community Formation and Regulation

We begin by recognizing that entheogenic practitioners commonly form or join groups of like-minded people who practice their religions in group settings and that these communities have different organizational and administrative structures.⁵ Some communities are more informal or loosely organized, having a rotating slate of attendees who gather to consume any number of substances under the guidance of contract facilitators,⁶ who, in exchange for compensation, administer various psychoactive substances (legal or otherwise) without any expectation of a returning clientele. In contrast, some entheogenic communities have a comparably stronger sense of community as they form stable groups that meet regularly or semi-regularly to consume particular or multiple entheogens.

Further, some communities file paperwork with the state to create formal institutional churches premised on the consumption of illegal entheogens. While some communities complete and file this paperwork independently, others hire attorneys who specialize in entheogenic law. George Lake and Ian Benouis are two such attorneys. Both have appeared on various psychedelic podcasts, started their own entheogenic church, and advised their clients to help form over 70 additional entheogenic churches. Lake also wrote two books on the topic, *The Law of Entheogenic Churches*, volumes one and two,⁷ where he described the principles and thought processes that guide his legal counsel.

Lake and Benouis believe that entheogens should be legal and available for anyone who wants to consume them medicinally or sacramentally. They recognize that entheogens are still illegal but emphasize that in several instances, the courts have concluded that specific churches can legally import and/or consume otherwise illegal drugs. Lake contends that these cases provide precedent for all entheogenic communities to consume their sacraments legally, so long as entheogenic entrepreneurs and communities replicate the models of religiosity previously approved in these cases.⁸

Making a Case

The first and most important of these cases is *O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*. This case involved the União do Vegetal (UDV) church's use of ayahuasca (or hoasca, as the UDV refers to it), a drink that is illegal because it contains N,N-Dimethyltryptamine, or DMT, a Schedule I drug under the Controlled Substances Act (CSA). Members of the UDV consume ayahuasca as a sacrament, premised on the idea that it occasions religious experience.⁹ Since ayahuasca is illegal, the UDV sued the government for the ability to legally consume it. In the resulting case, the U.S. District Court for the District of New Mexico

⁵ Don Lattin, *God on Psychedelics: Tripping Across the Rubble of Old-Time Religion* (Apocryphile Press, 2023); Mike Marinacci, *Psychedelic Cults and Outlaw Churches: LSD, Cannabis, and Spiritual Sacraments in Underground America* (Park Street Press, 2023).

⁶ Brad Stoddard, *The Production of Entheogenic Communities in the United States* (Cambridge University Press, 2024), 29-32.

⁷ George G. Lake, *The Law of Entheogenic Churches in the United States. Volume 1* (Self-published, 2021); George G. Lake, *The Law of Entheogenic Churches in the United States. Volume 2* (Self-published, 2022).

⁸ Lake, *The Law of Entheogenic Churches in the United States. Volume 1*.

⁹ Stephen V. Beyer, *Singing to the Plants: A Guide to Mestizo Shamanism in the Upper Amazon* (University of New Mexico Press, 2010).

concluded that the UDV should receive an exemption from the CSA to allow them to legally import and consume their sacrament.

In the public hearing and subsequent decision, neither the government nor the justices indicated that they doubted the religious sincerity of the UDV. This is important because religious freedom laws are predicated on the sincerity of adherents' religiosity. Instead, as articulated in the court's opinion, the government was concerned with three primary issues. In one of his books, Lake summarizes these concerns as "(1) protection of the health and safety of União do Vegetal members; (2) potential for diversion of hoasca from the church to recreational users; and (3) compliance with the 1971 United Nations Convention on Psychotropic Substances."¹⁰ The court rejected the government's arguments related to these three topics, and, citing the Religious Freedom Restoration Act (RFRA), concluded that the UDV is exempt from the generally applicable prohibition on importing and consuming ayahuasca. In 2006, the U.S. Supreme Court reviewed this case and sided unanimously with the UDV.¹¹

Based on the verdict in this case, Jonathan Goldman and his Santo Daime church (another church that sacramentally consumes ayahuasca) filed their own lawsuit, *Church of the Holy Light of the Queen v. Mukasey*.¹² Judge Panner heard the case in the state of Oregon and concluded that Santo Daime deserved an exemption so they, too, could legally import and consume their sacrament.

Creating a Precedent

Lake addresses these cases in his books and contends that they provide the clearest legal precedent for additional communities to receive similar exemptions. He does, however, acknowledge limitations with this approach. As he sees it, the problem is that the courts, in these cases, accepted *prima facie* the churches' religiosity. By instead focusing on the ancillary issues discussed above, the courts left unaddressed how religiosity, and specifically sincere religious beliefs, will be adjudicated. Lake believes that these cases give clues to help his clients demonstrate religious sincerity, but Lake wants more than clues—he wants clear legal precedent. He contends that he finds this precedent in several court decisions that address the legal definition of religion.

The most recent is *U.S. v. Meyers*, a 1995 case from the U.S. District Court for the District of Wyoming. As Lake describes, the district court listed several factors that help determine religiosity. These include ultimate ideas, metaphysical beliefs, a moral or ethical system, comprehensiveness of beliefs, and the accoutrements of religions.¹³ Lake quoted the district court, which wrote, "no one of these factors is dispositive, and that the factors should be seen as criteria that, if minimally satisfied, counsel the inclusion of beliefs within the term 'religion.'" ¹⁴

¹⁰ Lake, *The Law of Entheogenic Churches in the United States. Volume 1*, 27.

¹¹ The case appeared in lower courts under the case name *O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*. When the Supreme Court heard this case, the name changed to *Gonzales v. O Centro Espirita Beneficente União do Vegetal*.

¹² Henrique Fernandes Antunes, "Church of the Holy Light of the Queen v. Mukasey: The Regulation of a Santo Daime Church in the State of Oregon," in *Religious Freedom and the Global Regulation of Ayahuasca*, eds. B. C. Labate and C. Clavar (Routledge, 2023), 38-50.

¹³ Accoutrements include having a founder, important writings, a gathering place, keepers of knowledge, ceremonies and rituals, structure or organization, holidays, a diet or fasting, appearance and clothing, and propagation.

¹⁴ *U.S. v. Meyers*, 906 F. Supp. at 1503 (1995).

Defining a Religion

In addition to the criteria outlined in the *Meyers* case, Lake also contends that the courts take a functional approach to defining religion.¹⁵ To identify this approach, Lake cites the 1965 case *United States v. Seeger*, where the Supreme Court analyzed “whether the beliefs professed...are sincerely held and whether they are in [a claimant’s] own scheme of things, religious.”¹⁶ “Religious beliefs,” the court continues, “are those that stem from a person’s ‘moral, ethical, or religious beliefs about what is right and wrong’ and are ‘held with the strength of traditional religious convictions.’” Lake concludes that this “functional approach” to defining religious sincerity “is more forgiving in the sense that what might not qualify as religious under the *Meyers* factors could qualify under the functional approach.”¹⁷ In other words, the functional approach allows the courts to recognize a wider range of beliefs and actions as “religious.”

In short, Lake contends that while the courts and the government more broadly have never provided a clear summary of the criteria they use to evaluate religious beliefs and the religious sincerity of entheogenic communities, the two ayahuasca cases combine with the factors outlined in the *Meyers* and *Seeger* cases provide a roadmap of sorts for entheogenic communities. Based on the information in these cases, Lake created what he called the “General Guide to Forming a Non-Profit Church.” In this guide, Lake discourages religious innovation as he instructs entheogenic leaders to replicate existing precedent.

To this end, he encourages his clients to form legal churches in the state where they will operate. He provides a rather detailed “how-to” guide, where he recognizes that each state is potentially unique but that states generally require the church to have a board of directors, a registered agent, and several other components.¹⁸ Lake also instructs his clients to create by-laws, and most importantly, he instructs his clients to create a statement of beliefs based on the information outlined in *Meyers*.

For many people, the decisions and criteria outlined in court decisions and summarized by Lake seem reasonable and even expected. However, these criteria reflect legal assumptions based on Christian organizational and metaphysical models that normalize, naturalize, legislate, and impose artificial or arbitrary organizational and ideological boundaries on groups and communities who, in their ideal worlds, would have substantively different models of organization and belief.¹⁹ The UDV and Santo Daime communities reflect this institutional model, influenced as they were by the churches’ Christian founders who integrated the consumption of ayahuasca into a church-based model of religiosity. Ethnographic research in Peru, however, reveals other models of ayahuasca consumption centered on individual *curanderas* or *curanderos* who administer ayahuasca outside the institutional model of religiosity and the accompanying “accoutrements” of religion identified by American courts.

¹⁵ Lake, *The Law of Entheogenic Churches in the United States. Volume 1*, 22.

¹⁶ *United States v. Seeger*, 380 U.S. 163, 185 (1965).

¹⁷ Lake, *The Law of Entheogenic Churches in the United States. Volume 1*, 23.

¹⁸ *Ibid.*, 65-76.

¹⁹ Admittedly, all boundaries are, from some position, arbitrary. The purpose of this essay is not to advocate for communities created outside the constraints of boundaries; rather, this essay identifies the boundaries that impact entheogenic communities that are often ignored or naturalized and considered inherent. Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Johns Hopkins University Press, 1993); Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton University Press, 2008); Winnifred F. Sullivan, *The Impossibility of Religious Freedom* (Princeton University Press, 2005).

Conclusion

In short, this brief analysis reveals that while entheogenic churches operate in the sociocultural and political spaces that are often termed the underground, the government is present in these spaces on multiple levels. Critically, it is the government that creates these spaces when it passes laws that criminalize the consumption of specific substances (i.e., “drugs”). The government is also present in the sense that many of these communities try to model themselves after the styles of religiosity the courts have previously endorsed as religiously sincere, as Lake’s work demonstrates. In other words, the underground is not a natural or neutral space. Instead, it is a space that the government literally creates, shapes, and, indeed, sustains.