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Stephanie Beran

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Native Americans in Prison: The Struggle for Religious Freedom

Stephanie Beran

Abstract: Native peoples account for a disproportionate number of inmates in the current American prison population. Due to differences in the character of practice between Native and Judeo-Christian religions, it has been suggested that Native inmates face challenges that other prisoners do not because their religious needs are poorly understood. In the course of this paper I will discuss the disparities in the religious accommodation of Native inmates, explore how the religious rights of imprisoned Natives have been violated, and present arguments concerning the validity of spirituality as a means of inmate therapy and rehabilitation.

Introduction

In the current American correctional system, Native people account for a significant sector of the total inmate population for most states (Grobsmith 1994: 152; Grobsmith 1989). For example, American Indians comprise only one percent of Nebraska's Native population but make up four percent of the state's prison population (Grobsmith 1994: 35). It has even been estimated that more Native Americans are in prison relative to population size than any other ethnic or cultural group in the United States.

Native inmates are incarcerated for various reasons, and each inmate encounters different problems in the prison system. At the forefront of concerns for many prisoners is the matter of religious freedom and the right to practice cultural traditions while incarcerated. Surviving in the prison system can be a difficult task in itself, but the struggle is compounded when one is denied personal freedoms, such as the right to religious practice and to access counsel from spiritual leaders. This is the quandary faced by many Native American inmates who wish to either continue or begin practicing certain traditions of their indigenous belief systems in prison.

The freedom to believe in and observe the religion of one's choice is the inherent right of all Americans, as detailed in the First

Amendment of the Constitution, and this right extends to those Americans serving time in correctional institutions (Solove 1996). Indeed, Christian, Jewish, and Muslim inmates in most facilities are permitted to observe religious holidays and practices. Furthermore, they have access to the counsel of religious leaders of their particular belief system. However, for many American Indian prisoners, the matter of religious practice is not as simple. The difficulty likely originates from the fact that indigenous religions have always been poorly understood by the dominant American culture. For centuries in this country Native peoples have experienced internal colonialism, or a combination of forced assimilation, exploitation, discrimination, dependence, and cultural degradation, and colonizers have rarely been willing to embrace the beliefs of the people they oppress. One of the foundations of indigenous religious systems that is often misunderstood by mainstream Americans is the concept that spirituality is essential for health and well-being in many Native cultures and no separation exists between the religious and secular realms of life (Weaver 2001: 179). As a result, many Native prisoners encounter the significant problem of being unable to satisfy their religious and cultural needs in prison because these needs are either misinterpreted or disregarded.

The Distinctiveness of Native Religions

Despite centuries of assimilationist efforts, systematic attempts at cultural extermination, and unrelenting Christian missionary influence, many American Indians have retained elements of their indigenous religions and spiritual belief systems (Michaelsen 1983). In fact, "Today only 10 to 25 percent of the nation's approximately two million Natives identify themselves as Christians" (Weaver 2001: 238). Contrary to the notions of popular culture, there exists no single indigenous religion that encompasses all Native people. In reality it is quite the opposite; Native religious systems are highly diverse and vary in a multitude of elements from one Nation to the next (Weaver 2001: 32). Additionally, many Native peoples practice various traditions from indigenous belief systems with aspects of Christianity intermingled, such as in the Native American Church (Grobsmith 1994: 48; Weaver 2001: 278).

Native religions are distinct from the Western religions practiced by the dominant American culture. In particular, Native religions revolve around the practice of specific rituals, rather than texts, doctrines, and theology (Weaver 2001: 179). For many American Indians, religion is a fundamental part of life that cannot be separated from one's daily activities and spirituality is integrated as a part of

existence itself. Because of these characteristics, indigenous ritualistic religions are poorly understood and ill-protected under the First Amendment of the Constitution because practices, unlike beliefs, can be governmentally regulated (Deloria and Lytle 1983: 131; Weaver 2001: 180).

In general, Native individuals who enter the correctional system wish to continue religious practice while in prison. For instance, many inmates would like to participate in sacred pipe and sweat lodge ceremonies, use medicine and prayer bundles, and sing traditional songs, but such a personalized approach to religious practice can seem a daunting task for prison officials (Solove 1996). Due to the distinctiveness of Native spirituality and religious practices, Waldram has commented, "Many Native offenders have special social, cultural and spiritual needs" (1994: 199). One area of concern is the desire for counsel with Elders, medicine men, or other religious specialists who are capable not only of leading religious observances, but who are also valuable healers and mental health counselors. In the world view of many Native Americans, religion and spirituality are inextricably linked with health and medicine, and religious observance can play a powerful role in the healing of social ills, including crime.

A Brief History of the Religious Rights of Inmates

Since the establishment of the United States government, Native American affairs have fallen into and out of favor with lawmakers and the American public (Weaver 2001: 176). Sometimes Native rights are popular among the dominant culture; more often they are virtually ignored. The history of Native American rights, legislation, and legal affairs has been a long and confusing one, wrought with inequity, contradictions, and misinterpretations. The issue of Native religious rights, and especially those of prisoners, is no exception.

To begin, it must be highlighted that Native tribes in the U.S. are considered "domestic dependent nations" and have a unique relationship with the federal government (Michaelsen 1983: 112). This relationship can be described as that of a "ward and guardian" under the guise of sovereignty (112). Due to this complex connection, American Indians and tribal governments have essentially little or no control in terms of their own religious matters.

For most of U.S. history, Native peoples in this country were not accorded the formal freedom of religious exercise, a right included in the First Amendment. The Free Exercise Clause finally came to include Native Americans in 1968 with the Indian Civil Rights Act

(Michaelsen 1983). This inclusion, though, has not been as positive as expected. Due to the dissimilarities between Native and Western religions, the Indian Civil Rights Act only addresses the issue of religious freedom for Native peoples to a limited degree. The act basically serves to restrain the powers of tribal government in terms of prohibiting religious exercise among tribal members. In 1978 Congress established the American Indian Religious Freedom Act, or AIRFA, in order to formally extend the Free Exercise Clause to indigenous American religions (Michaelsen 1983; Weaver 2001: 175). Despite Congress' attempt to assist Native peoples in preserving and protecting their traditional religious beliefs, AIRFA was not especially effective in addressing the free exercise claims of Native Americans, nor did it have significant impact in the courts (Michaelsen 1983). In 1993 several new AIRFA provisions were considered by Congress, one of which concerned Native inmates' right to religious freedom (Weaver 2001: 175). Most of these proposals ultimately failed in Congress, but the amendment known as the Religious Freedom Restoration Act (RFRA) managed to succeed (176).

Congress passed RFRA essentially to increase protections for the free exercise claims of inmates, including Native Americans, by scrutinizing state interests (Solove 1996). Nevertheless, like many of the acts before it, RFRA did not result in uniform or consistent decision-making because courts were unable to balance the free exercise interests of prisoners with the interests of correctional institutions. Additionally, misunderstandings, narrow perspectives of religion, and decisions based on "intuition and conjecture" frequently occurred in court (460). In reference to these problems, Solove has commented:

Religion has been particularly difficult to place on the scale, for courts must evaluate religious practices without becoming entangled in theological issues. Balancing religion is particularly complicated in the prison environment. Engulfed in problems—prison gangs, overcrowding, violence, and riots—and exacerbated by limited finances, outdated facilities, and a soaring inmate population, prisons must accommodate the demands of a panoply of faiths (Solove 1996: 462).

The U.S. Supreme Court overturned RFRA in 1997, deeming the law unconstitutional and effectively putting an end to the compelling state interest test in cases of religious encroachment (Weaver 2001: 176-177). Then, in 2000, the Religious Land Use and Institutionalized Persons Act was established, part of which reinstated the interest test for the religious claims of inmates in state prisons

(178). Nevertheless, this act has the potential to also be ruled unconstitutional if the issue ever reaches the Supreme Court.

In the view of many Native Americans, religious satisfaction in legal terms has yet to be achieved. Despite the long list of congressional acts and resolutions, Native religious rights and freedoms continue to be ignored, overlooked, denied, and violated in several contexts, including the prison system. In the words of Michaelsen, "It is an understatement to say that the constitutional protection of religious freedom has not been adequately extended to the practice of traditional religions by Native Americans" (1983: 111).

Violations of Inmates' Religious Rights

The religious and spiritual requirements of incarcerated Native Americans are clearly not being met to a satisfactory degree in most prison systems. Even in those facilities where opportunities for religious practice and activities are available, prisoners often experience discrimination and religious ethnocentrism in the prison environment because of their distinctive cultural needs (Grobsmith 1989). For some prison officials, the religious requests of Native inmates are foreign because religion to most Americans involves weekly observance in a designated place of worship (Waldram 1994). Therefore, the religious needs of Native prisoners are often disregarded. Waldram has described the same situation in Canada despite the legal acknowledgment of Native religions: "Aboriginal spirituality has continued to have problems being recognized as equivalent to other religions" (1994: 199).

One specific example of religious violation that persisted in correctional facilities for years was the forcible cutting of Native inmates' hair upon entering a prison (Grobsmith 1989; Michaelsen 1983; Montana 2000; Solove 1996). In many Native communities, long hair, often worn in braids, is an important symbol of spiritual observance and cultural identity. The requirement for hairstyle conformity was perceived as a considerable violation of religious and cultural expression for Native prisoners, but continued to occur in most correctional institutions.

In 1973, Iowa penitentiary inmate Jerry Teterud filed a complaint against the prison upon denial of his request that all Native inmates be allowed to wear their hair long and in braids if so desired (Michaelsen 1983). In his complaint, Teterud argued that long hair was a religious requirement and to deny prisoners their choice of hairstyle was essentially a violation of their constitutional free exercise rights. Teterud prevailed in court when it was recognized that issues of

cultural significance and manners of lifestyle are indeed tied to Native religious practice. Similar suits appeared in prisons all over the country, and in most cases, courts ruled that the wearing of long hair was a legitimate expression of religious freedom.

Another issue that arises when discussing Native inmates' religious rights is that of peyote use. Peyote is a cactus that grows in the deserts of Mexico and has been used in the region for thousands of years as a means of stimulating visions (Michaelsen 1983). Peyote religions have become part of a "messianic movement" among many Native American communities, and nearly one quarter of all Native Americans describe themselves as practitioners of a peyote religion (Weaver 2001: 277-278). In the Native American Church, peyote is taken as a sacrament that forms the basis of Church services and ceremonies, and members are legally permitted to procure and use peyote in a religious context (Michaelsen 1983).

Although peyote is neither a narcotic nor habit forming, incarcerated members of the Native American Church are not permitted to use peyote because it is considered a potentially harmful substance that may jeopardize prison security (Grobsmith 1989). Several complaints have been filed by inmates who contend that peyote is an integral part of Church services and thus, the denial of its use is a denial of free exercise rights. However, it still remains a rule in all prisons that no inmate is permitted the use of peyote for any reason due to its drug status.

Native Religious Programs in Prisons: Two Examples

It is evident that the matter of religious and spiritual practice can be a significant concern for imprisoned Native individuals. Many Native inmates feel they are being denied cultural rights when they are not allowed to observe religious traditions as a part of everyday life, making the prison experience that much more difficult. Such is not the case in all correctional facilities, however. In recent years some prison systems have begun to experiment with various Native spirituality programs, some of which have proven to be viable methods of inmate therapy and rehabilitation.

Waldram has conducted research in a Canadian correctional service psychiatric center where Native inmates may participate in traditional spiritual treatments (1994). At the request of Native prisoners, such programs have been available in Canada's correctional system since the 1980s. Native Elders provide spiritual services to inmates that include guidance for fasting, the opportunity for sweat lodge and pipe ceremonies, and spiritual counseling. Furthermore,

Elders attend to requests for religious and cultural education by those inmates who have a desire to revitalize or to learn practices for the first time. According to Waldram, traditional treatments and spiritual guidance in conjunction with the standard psychological and biomedical treatment approaches have improved the lives of many Native inmates in this facility.

Unfortunately, the Canadian spirituality program is not without its problems. Prison officials do not understand that the practice of Native spirituality is unlike that of Christian inmates who are often able to fulfill their religious needs and obligations in a weekly service (Waldram 1994). Some facility staff members also view Native religious practice unfavorably and believe it to be frivolous, “absurd”, or a means of garnering special treatment and avoiding other prison programs (1994: 210). In addition, Waldram has noted that Elders are often harassed and their legitimacy questioned by prison staff:

The searching of bundles and sacred pipes continues to be an issue in many prisons. This is in contrast to the accepted practice of allowing priests, for instance, to enter prisons without being subjected to searches or having certain items, such as sacrificial wine, inspected” (1994: 200).

Despite such examples of intolerance and religious ethnocentrism, the spirituality program in the Canadian facility can perhaps serve as one model for introducing Native religions in other prison systems that currently have no options for Native prisoners. Waldram’s research indicates that the program has had significantly positive effects on the health and attitudes of inmates for several reasons (1994). First of all, spirituality can be a coping mechanism for prisoners and a means to reduce stress and conflict in the prison community. Inmates are also quite comfortable working with Elders and say they are better able to understand Native problems than non-Native psychologists and institution staff. Elders are highly respected and are trusted to provide appropriate treatments for diseases such as alcoholism and what Waldram has termed “culturally specific mental health problems” brought about by supernatural means (200). Finally, Elder therapy has been valuable to inmates who are unfamiliar with Native traditions and spiritual beliefs, but who would like to reconnect with their Native identity and heritage.

The Native religious program implemented in the Nebraska State Penitentiary is another example of an accommodation effort that has had at least a degree of success. Nebraska’s correctional system was among the very first to introduce a sweat lodge in a prison as well

as opportunities for both Vision Quests and Sun Dance ceremonies off facility premises (Grobsmith 1989). Nevertheless, inmates still experienced negative attitudes within the prison community, often from the administration and officials who, for instance, questioned the validity of visiting medicine men. In response, a group of Native inmates brought a class action suit against Nebraska State prison officials in 1974, demanding free religious exercise and cultural expression for inmates. As a result, a federal consent decree was negotiated between the Department of Corrections and the inmate's lawyers to allow for greater expression of Native identity. This included the wearing of long hair styles, opportunities for counsel with medicine men, and Native American clubs. The decree allows inmates to bring about litigation if they feel their expression rights have been violated.

Native inmates currently in the Nebraska State Penitentiary are to be allowed access to medicine men and religious specialists, and can participate in sweat lodge and Sacred Pipe ceremonies, feasts, powwows, hand games, giveaways, Vision Quests, and an annual Sun Dance in South Dakota (Grobsmith 1989). However, the Native religion program is far from perfect. A number of inmate grievances have stemmed from the eligibility requirements of these activities and from the denial of requests for the participation of inmates' family members. The latest issue to arise in the Native inmate population at the Nebraska State Penitentiary was the claim that prison officials had not been allowing for sweat lodge access, had been intimidating medicine men by questioning their qualifications, and had discontinued the Native American Club because non-Native members were not being allowed to hold leadership positions (Abourezk 2004). A lawsuit was filed against the penitentiary based on the 1974 Consent Decree, and in response to a federal court action regarding this claim, prison officials have proposed to allow inmates two annual powwows, more religious ceremonies and education opportunities, access to medicine men and other religious specialists, and the restoration of the Native American Spiritual and Cultural Awareness Group (O'Hanlon 2004).

Aside from the various problems and difficulties, Grobsmith has indicated that spirituality and religious practice has had positive effects on prisoners (1994: 37). She has noted that, "The majority of Native American inmates depend on a variety of religious and spiritual activities to aid them in their struggle to conquer the problems which plagued their early lives and the incidents that resulted in their incarceration" (Grobsmith 1989: 144). Furthermore, inmates who have never experienced religious or cultural traditions before entering the prison are given the opportunity for cultural education.

Conclusion

It is likely that the Native American struggle for religious freedom will not be alleviated until the mainstream, dominant culture and legal system of this country make a concerted effort not only to recognize the legitimacy of Native religions but also to understand the interconnection between religion, culture, and everyday life for Native peoples. This will require a change in general attitudes as well as an acknowledgment that the denial of one group's rights will ultimately impact the freedom of everyone. Michaelsen put it well when he stated, "The free exercise of religion is a cardinal right of all Americans. Any abridgement of that right is a threat to the common well-being, any advancement of religious freedom enhances that well-being" (1982: 136).

One of the steps ultimately required to achieve religious equality for Native Americans will be the allowance and encouragement of Native religious practice and spiritual observance in prisons. It might be fair to say that Native people in prison, especially those who have resided on a reservation for most of their lives, experience a more profound sense of isolation and separation from their familiar way of life. They have essentially been removed not just from the larger society, but from a distinct cultural environment. Extended family and community support networks are fundamental in Native societies and when an individual enters the prison system, these support networks are severed. Furthermore, many Native inmates have been largely isolated from the dominant culture outside of the prison environment, making the incarceration experience that much more alien. Spiritual and religious programs may have the potential to ease this transition for Native inmates.

Michaelsen's study has suggested that religion can be therapeutic and rehabilitative for Native inmates, most of whom readily accept and embrace the opportunity to reconnect with their cultural heritage behind prison walls (1983). In addition, the work of both Michaelsen and Grobsmith have revealed that cultural education and revitalization are very positive influences in the lives of offenders, who generally claim to have gained a more positive outlook for the future (Michaelsen 1983; Grobsmith 1994, 1989). Perhaps cultural identity and spirituality serve as an outlet and alternative to violence, alcohol, and despair. With such high approval of spirituality programs by participants, there is no reason to deny Native inmates spiritual practice. Native Americans in prison should be free to exercise their religious beliefs, just as prisoners subscribing to prevailing western

belief systems are free to do, yet this remains a foreign concept in both the American correctional system and the popular imagination.

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