Introduction

Brandi McGhee had a profound dream one night, that, as she interpreted it, called her to drink ayahuasca, a psychoactive “tea” long consumed by Indigenous people in the Amazon (Beyer 2009; Fotiou 2010; Labate & Jungaberle 2011). This tea is banned in the United States because it contains N,N-Trimethyltryptamine (DMT), a substance classified as an illegal drug under the federal Controlled Substances Act (CSA), so Brandi followed this calling to a retreat center in Costa Rica, where she participated in her first ayahuasca ceremony. Like many others who consumed ayahuasca before her, she felt differently after the ceremony. Her mental health improved, she reevaluated her relationships, and she felt a deeper connection with her evolving spirituality. She also felt called to continue to work with ayahuasca, a calling that cost her friends and even her spouse. As Brandi described it, “You know, my entire life literally burned down and fell away so that this new life could be born.”

Part of that new life included creating a new community in the United States centered on the ritual or sacramental consumption of ayahuasca. To create this community, Brandi consulted multiple attorneys, including Greg Lake and Ian Benouis, who provide legal counsel to help people form religious communities centered on the ritualistic consumption of psychoactive substances that in the United States are classified as illegal drugs. Under their advice, Brandi submitted paperwork with the state of Washington to create the New Birth Church, where Brandi and members of her congregation sacramentally consume ayahuasca.

Brandi’s church is but one of the hundreds of communities in the United States today, where people gather to consume psychoactive substances like ayahuasca, psilocybin (“magic”) mushrooms, peyote, and other substances that are commonly called “psychedelic drugs” (Lattin 2023). To distinguish themselves from people who consume these substances recreationally and to highlight the religious or spiritual aspects of their ceremonies and beliefs, they increasingly refer to their sacraments as “entheogens” instead of “psychedelics” or “drugs.” Carl Ruck, a professor of classical studies at Boston University and advocate of psychedelic religion, coined this term in 1978 specifically to highlight the distinction between the recreational and the religious use of psychoactive substances (Wasson et al. 1978). The term has its share of critics

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1 Personal interview, conducted November 2021. At the request of the interviewee, “Brandi McGhee” is a pseudonym. She uses her real name on all her church’s social media accounts, but she requested I create a pseudonym for her name and for her community.
(see Pollan 2018a), but it has not stopped tens of thousands of people from embracing the term to highlight their religiosity.²

Many entheogenic communities operate in private, as they attempt to avoid calling attention to themselves and risking arrest and even imprisonment. Communities like Brandi’s, however, are hiding in plain sight. They file the paperwork to incorporate as churches, they have websites and social media pages, and they meet to consume psychoactive substances that are otherwise deemed illegal drugs under United States law. They tend to understand that they operate in legal gray areas of sorts, but based on interviews and casual conversations that I have conducted with dozens of people who formed these communities, they largely operate without fear of arrest and imprisonment.³

Brandi herself is not concerned about legal action because her attorneys informed her of several cases where the courts have granted to entheogenic communities exemptions from the generally applicable prohibition on psychoactive substances like ayahuasca. Her lawyers contend that in these cases, the courts have identified the criteria they will likely use to adjudicate similar exemptions in the future. By replicating these criteria and by staying within the boundaries of existing law, Brandi’s lawyers contend that she is more likely to achieve favorable results if she is arrested or ends up in court.

In short, Brandi’s lawyers maintain that these precedents bolster their client’s legal legitimacy. These precedents however, also restrict Brandi’s beliefs and practices, as she feels confined to imitate instead of innovate. As discussed in detail later in this Element, these precedents are outlined – at least according to entheogenic attorneys – in court cases like United States v. Meyers (1995), where a district court described common elements of religion, including various

2 New Religious Movements

³ The degree of fear is influenced by several factors, with race being perhaps the most significant factor. There is a large movement for BIPOC inclusivity in the broader entheogenic ecosystem, and BIPOC entheogenic users and their supporters are quick to highlight the racist history and aspects of the broader war on drugs. When BIPOC individuals create formal entheogenic communities, they are aware that in the event of any legal action initiated against them, the issue of race will be ubiquitous in any resulting proceedings. As I will discuss later in this Element, the issue of race and the racist aspects of the criminal justice system motivate some members of the BIPOC community to operate in the underground where they draw less attention than people who create formal and public-facing churches. When they do form public-facing churches, they are keenly aware that their race could result in additional burdens that white people will not necessarily face.
“accoutrements” of religion. By replicating religion as outlined in cases like Meyers, Brandi’s lawyers contend that she will create “religion” in a manner already recognizable by courts.

In other words, Brandi and other entheogenic leaders today find themselves simultaneously empowered and constricted in a nation long known for religious innovation (Moore 1987). The tension between empowerment and innovation is the focus of this Element. Methodologically, this Element draws insights from scholars who have highlighted the various ways American laws create, define, and influence the production of religiosity in the United States (Jakobsen & Pelligrini 2003; Sullivan 2009; Sullivan 2014; Sullivan et al. 2015; Curtis 2016; Shakman Hurd & Sullivan 2021). Entheogenic communities like Brandi’s exemplify this idea as these communities strive to exist within the boundaries of American law, even as they simultaneously push or test these boundaries.

This Element highlights the legal environment that simultaneously empowers and constricts entheogenic communities who strive for lawful legitimacy. I should state up front that this Element does not attempt to interpret the United States Constitution and related laws. Instead, it highlights and summarizes the history of the association of psychoactive substances and religiosity; it demonstrates how this association has always had legal, political, and sociocultural implications; it summarizes the evolving American legal environment related to the association of religiosity and illegal psychoactive substances; it analyzes interpretations of the Constitution and relevant legislation; and it explores the impact of court decisions on entheogenic communities.

Drawing from what is increasingly termed “critical religion,” this Element begins with the assumption that dominant definitions of religion are new, historically contingent, and socially constructed (Martin 2014). Instead of normalizing sui generis religion, following the work of scholar Mitsutoshi Horii (Horii 2020), this Element examines the function of the category of religion within the broader intersections of American law and the resurging interest in psychedelics that has been termed the Psychedelic Renaissance (PR). We are often told that courts and state government protect religious freedom. This Element breaks with this assumption and instead explores how courts and governments regulate and quite literally produce religion.

To explore these dynamics, this Element briefly explores the changing associations of religiosity and psychoactive substances prior to the period of colonialism. It then summarizes various Christian responses to these associations within the broader context of colonialism. This history suggests, first, that Christian colonizers and their descendants have quite consistently leveraged to their benefit rhetorical and political arguments related to associations of religion and psychoactive substances. This history also demonstrates that these
arguments are inherently political arguments with real-world implications. The overtly political implications of this history continue to be the focus of this Element as the discussion shifts to its primary focus, which is the work of attorneys Greg Lake and Ian Benouis.

Lake and Benouis are legal partners who have emerged as two of the most vocal and influential attorneys in the growing field of entheogenic law. They have helped many people create legal churches; they have spoken at psychedelic conferences across the United States; individually and together, they have appeared on numerous podcasts; and they have consulted untold numbers of Americans who are in various stages of forming entheogenic communities. In a rather short period of time, they have emerged as leaders of the legal vanguard related to entheogenic communities. In this otherwise influential duo, however, Lake is particularly important, as he has published multiple books that address entheogens and the law (Lake 2021, 2022). This Element closely examines these books, as they summarize the ideas that underlie the legal advice and counsel that Lake and Benouis have provided to hundreds if not thousands of Americans.

Scholar of religion Winnifred Fallers Sullivan wrote that “New forms of religion require new forms of law” (Sullivan 2009, 18). Contemporary entheogenic communities are increasingly recognized as new religions, and American courts are responding with new laws or with reinterpretations of existing laws and statutes. In this developing legal climate, attorneys like Lake and Benouis interpret these new legal decisions. By focusing on their activism, we learn, first, about the protean nature of religious freedom laws; second, about the reciprocal dialogue between the courts and entheogenic communities; third, about the dynamic limits of religious freedom; and finally, about the legal structures that sanction, discipline, and produce American religion.

As a result of this analysis, this Element demonstrates that the category of “new religious movements,” a category long associated with what scholars (and society more broadly) consider new, emerging, or marginalized religious communities, is itself a political and legal category. Groups that invoke the rhetoric of religiosity in new or innovative ways seek validation, recognition, and the legal and political protections and privileges that accompany the state’s validation of the group’s religiosity. This validation requires groups to either conform to existing court-sanctioned models of religiosity or to challenge the courts to acknowledge novel forms of religiosity. This Element uses the example of

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4 Scholars who study new religious movements have long debated both the alleged object of study and the appropriate terms for the groups they study. This Element will not attempt to address this debate; rather, this analysis highlights how the categories themselves are constructed and arbitrary.
entheogenic communities to explore these dynamics, although this analysis is applicable to any group that scholars (and practitioners themselves) commonly label as new or emerging religions.

1 Origins Reconsidered: Rethinking the History of “Religion” and “Drugs”

As journalist Michael Pollan (2018a) noted in his bestselling book *How to Change Your Mind: What the New Science of Psychedelics Teaches Us About Consciousness, Dying, Addiction, Depression, and Transcendence*, psychedelic drugs are back and perhaps bigger than ever. Perhaps when most Americans think of psychedelic drugs, they think of the “psychedelic ’60s”; the hippie movement or counterculture; and the saying “sex, drugs, and rock ’n’ roll.” In other words, many (possibly most) Americans associate psychedelic drugs with party culture and youthful rebellion. These associations are not entirely inaccurate, but as Pollan and others have documented, they are only part of the history of psychedelics in the United States.

As I will discuss in greater detail shortly, the history of psychedelics in North America predates colonialism, as some Native Americans consumed various psychoactive substances like peyote, a cactus that contains a psychoactive alkaloid called mescaline (Maroukis 2010), and psilocybin mushrooms (Jay 2019). It is particularly important to note that Native Americans consumed these substances, among other reasons, to interact with ancestors and with other supernatural entities. Native Americans did not, however, traditionally associate their activities with evolving notions of religion or religiosity, as (like all Indigenous peoples) they lacked a native term that corresponds to dominant definitions or notions of religion today. They also did not consume these substances in institutional churches, as the church model of social organization was similarly absent in precolonial societies and well into the colonial era. That began to change in the late 1800s. As white Americans decried the use of peyote and attempted to punish or persecute people who consumed peyote, Native Americans were increasingly exposed to white American culture, concepts, and models of social organization (Adams 1995). In the process, Native Americans began to adopt white Americans’ terms like “religion” and “sacrament.” They also considered the possibility of creating a formal church. In the process, Native Americans started to forge a new link between notions of religiosity and what are today called psychedelics.

The rhetoric of religiosity and its association with so-called psychedelic drugs expanded in the mid 1900s, when scholars and researchers explored both the religious aspects and the potential mental health benefits of LSD,
mescaline, and psilocybin. These individuals were largely white Americans who, at least in the eyes of other white Americans, possessed more cultural capital than Native Americans. As a result, their invocations, associations, and interests carried more intellectual and cultural weight in the broader white American culture.

To understand this evolution, consider that in the 1950s and 1960s, many respected psychologists, psychiatrists, and public intellectuals like Huston Smith, Richard Alpert, and Aldous Huxley embraced psychedelics for their potential medical benefits, benefits primarily related to addiction, recovery, and mental health issues (Lattin 2017; Pollan 2018a). Psychologist and psychedelic activist Bill Richards described the optimistic spirit that surrounded psychedelic research in the 1960s when he said, “We thought [psychedelic research] was the most incredible frontier in psychiatry” (cited in Pollan 2018a, 58). This statement captures the enthusiasm that many researchers brought to the study of psychedelics before the war on drugs effectively ended psychedelic research, with Richards himself administering the last government-approved dose of psilocybin mushrooms in 1977 (Richards 2016, 4).

For several decades, interested parties shelved or suspended psychedelic research. That changed in the early 1990s, however, when psychiatrist Rick Strassman successfully petitioned the United States government to allow a researcher to resume psychedelic research (Strassman 2001). His research proved a harbinger of research to come, as government-approved psychedelic research has not only returned, but today is perhaps bigger than ever, as scholars in major universities have begun again to explore psychedelics’ potential medical and religiospiritual benefits (see Griffiths et al. 2006). Their encouraging findings have motivated privately held and publicly traded companies to invest millions of dollars into psychedelic research (Phelps et al. 2022). Concurrently, therapists, psychologists, and social workers have embraced psychedelics as valuable adjuncts to therapy (Scheidegger 2021). While these professionals across various fields are espousing the virtues of psychedelics, cultural influencers like athletes, actors and actresses, and popular podcasters like Joe Rogan routinely describe allegedly beneficial results that accompany psychedelic experiences (Alahmari 2022). In short, psychedelics are occupying more space in various corners of the United States, and as psychedelics return closer to the American mainstream (premised largely on their potential medical or medicinal value), allegations of religious, spiritual, or mystical experience accompany this reappearance at almost every step.

We should immediately note that those in the broader entheogenic ecosystem – like people more broadly – have various and even competing definitions of the words religion, spirituality, mysticism, and entheogens. This malleability
allows people to apply different labels to what appears to be similar rhetoric or descriptions of experiences, or conversely, to apply the same label to what appears to be a diversity of language and experience. Instead of endorsing any definition of these terms, this Element makes the competition over competing rhetoric and definitions an object of study.

While no one has conducted quantitative studies on what is commonly called psychedelic religion or entheogens in the United States, ethnographic research over the past three years suggests that more Americans are associating the consumption of “drugs” with religion or spirituality than at any point in US history. These consumers report religio-spiritual experiences in various settings – ranging from individual sessions where they consume substances by themselves, in group sessions at retreat centers both in the United States and abroad, in research facilities, in therapeutic settings, in informal “circles,” under the guidance of “tripsitters” and ceremony leaders, and in formal religious ceremonies held in entheogenic churches across the country (Lattin 2023). Regardless of the setting, people who consume psychoactive substances entheogenically often report that these substances engender or “occasion” mystical experiences, reveal metaphysical truths, connect the user with the supernatural, and allow users to interact directly with various entities or beings (Lutkajtis 2021; Shults 2022). Based on these experiences, Americans are increasingly linking psychoactive substances like psychedelics and cannabis to their religious and spiritual lives.

Collectively, the work of researchers, businesses, and entheogenic activists combined to create what psychedelic activists and practitioners often call the Psychedelic Renaissance (PR), that is, the increased interest in and subsequent mainstreaming of psychedelics and other psychoactive substances targeted by the war on drugs. As more people become interested in psychedelics today, they are reconsidering the history of psychedelics as well. To various degrees, these histories claim to document that the entheogenic use of psychedelics is ancient and near universal. Scholars and psychedelic activists have claimed to document entheogenic practices in ancient African religion (Duvall 2019), in

5 The distinction between “inducing” or “engendering” and “occasioning” religious experience is an important distinction for many entheogenic consumers. The former terms, these consumers often say, imply that the entheogenic substance is the causal agent. Instead, they commonly argue that the entheogenic substance allows or occasions an experience with “that which exists independently” of the substance. From this latter perspective, “that which exists independently” is the cause of the experience, an experience the entheogenic substance “helps” or “occasions.”

6 As I will discuss later, the war on drugs began in earnest in the early 1970s during the presidency of Richard Nixon. As scholars have documented, this “war” resulted in longer prison sentences for more actions the government considered “crimes” (Pfaff 2017), specifically crimes related to drugs. This also resulted in the militarization of the police (Parenti 1999) and in the disproportionate incarceration of black Americans (Alexander 2010).