

Beyond Religious Freedom: Psychedelics and Cognitive Liberty

Charlotte Walsh

Introduction

Many of the chapters in this collection detail the cultural practices of people using psychedelics as sacraments, along with their struggles to have these rituals recognized as religious in their nations' courts in a bid to be exempted from prohibitive drug laws. This paper takes the argument further, proposing that such absolution should also apply to those who have more loosely spiritual experiences on psychedelics, unbounded by any established matrix, especially given the lack of crystalline division between religion and spirituality. Logic drives this contention onwards, leading to the proposal for a right to ingest psychedelics in the broad interests of freedom of thought and of cognitive liberty. Such proposals are potentially given substance through a liberal and evolutive reading of Article 9 of the European Convention on Human Rights (ECHR): the right to freedom of thought, conscience and religion. Finally, the possibility of pursuing this line of reasoning to its zenith is introduced, supporting the notion of creating a distinct right to use psychedelics.

It will be noted that the discussion here is limited to psychedelics, an overarching term for a range of substances—both naturally occurring and synthesized—that alter human, and other animal, consciousness when ingested. The more commonly used psychedelics include LSD; DMT; psilocybin, found in a variety of mushrooms; and mescaline, found in a number of cacti. Humans take psychedelics—and are known to have done so over wide spans of historical time and geographical space—for a multitudinous medley of reasons, encompassing religious, spiritual, therapeutic, and recreational motivations; not necessarily entirely separable or distinct from one another. The focus on this particular group of molecules reflects the author's special area of interest and should not be taken as indicating that other drugs are exempt from potentially falling within the parameters of the arguments

C. Walsh (✉)

School of Law, University of Leicester, England, 83 Regent Road, Leicester LE1 6YG, UK
e-mail: ckw2@leicester.ac.uk

put forth here. However, it is submitted that, due to their largely non-addictive, non-toxic nature, psychedelics are less likely to fall afoul of the harm principle—the necessary precursor to criminalization, from a liberal perspective, discussed in detail below—than a number of other substances.

Religious and Spiritual Use of Psychedelics

A more expansive view of religion will acknowledge alternate ideologies to those belief systems that are steeped, to greater or lesser degrees, in dogma. The great philosopher William James defined religion as “the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine” (James 1961, p. 31). Thus, religion, in its broadest sense, encompasses one’s understanding of the world, of one’s part in it; as such, everyone has their own “religion” and the individual in question can be the only true arbiter of what “counts” in this respect. Psychedelics may, or may not, play a part in this existential quest. Eminent religious studies scholar Huston Smith describes his motivation for taking such substances thusly: “I wanted to know the final nature of things: reality’s deepest structure and what follows from that structure for maximizing the human potential” (Smith 2000, p. 3). Smith talks poetically of “chemicals replacing angels as divine intermediaries” (Smith 2000, p. 15), instrumental in precipitating “psychedelic theophanies” (Smith 2000, p. 33).

Psychedelics can induce an experience of unified transcendence evoking the *philosophia perennis* Aldous Huxley viewed as being at the heart of all religious and mystical experiences (Huxley 2004b). Often anchoring one firmly in the present, these substances can help with penetrating through to the shifting, vibratory, quantum nature of existence, generating an appreciation that “all forms of life and being are simply variations on a single theme” (Fadiman 2011, p. 42). Huxley himself avidly believed psychedelics to be an indispensable technology in accessing the mystical realm through their function of temporarily partially disabling what he metaphorically described as the brain’s reducing valve:

Each one of us is potentially Mind at Large. But in so far as we are animals, our business is at all costs to survive. To make biological survival possible, Mind at Large has to be funneled through the reducing valve of the brain and nervous system. What comes out at the other end is a measly trickle of the kind of consciousness which will help us to stay alive on the surface of this particular planet. (Huxley 2004a, p. 10)

Recent neuroscience research into the effects of psychedelics on the brain supports Huxley’s intuitive trope of the reducing valve, albeit via an unexpected (and somewhat circuitous) route, with fMRI scans strongly suggesting “that the subjective effects of psychedelic drugs are caused by decreased activity and connectivity in the brain’s key connector hubs, enabling a state of unconstrained cognition” (Carhart-Harris et al. 2012a, p. 2138). As the influence of the connector

hubs that underpin the well-worn *samskaras*—the yogic grooves—of thinking is dampened down, something akin to the reducing valve being loosened a turn or two takes place. (For further information on recent scientific research into psychedelics, see Feilding, this volume.)

In spite of this potential for psychedelics to stimulate spiritual occurrences, there is a resistance to their usage that theologian Alan Watts noted as arising both from the secular and non-secular values of the Occident:

Western culture has, historically, a particular fascination with the value and virtue of man as an individual, self-determining, responsible ego, controlling himself and his world by the power of conscious effort and will. Nothing, then, could be more repugnant to this cultural tradition than the notion of spiritual or psychological growth through the use of drugs. (Watts 1968)

Further, the traditional monotheistic religions of the Western Hemisphere reject the more pantheistic spirituality that such experiences can often elicit. Despite this spurning, there is a distinct possibility that many, arguably even all, spiritual experiences are drug-induced at root, with perhaps the only difference being that some involve exogenous, others endogenous, chemicals. This is not to belittle the significance of either such occurrence—which is as important as the experienter believes it to be—but rather a statement of the fact that, to the best of current scientific knowledge, *everything* in the universe is chemically based. Whether the visions of Saint Teresa of Avila, for instance, have supernatural explanations or entirely natural ones, such as enhanced sensitivity in the temporal lobes, is both unresolved and somewhat beside the point: It is the subjective value with which such epiphanies are laden that is most significant (see also James 2012).

For many, there is a tendency to package up and label their spiritual experiences, with the added advantage that neatly defined denominations can often afford rights and privileges that would not otherwise be available; for others, this drive is less apparent. The heart of the issue is whether it is justifiable that designated religious experiences involving psychedelics might be protected, while other such drug-induced unveilings—potentially of equal import to the individual involved—leave them open to criminal prosecution. Consider the following description of his first magic mushroom trip by psychedelic evangelist, Dr. Timothy Leary (for more information on Leary, see Lander, this volume):

During the next five hours, I was whirled through an experience which could be described in many extravagant metaphors but which was, above all and without question, the deepest religious experience of my life . . . The discovery that the human brain possesses an infinity of potentialities and can operate at unexpected space-time dimensions left me feeling exhilarated, awed, and quite convinced that I had awakened from a long ontological sleep. (Leary 1980, pp. 13–14)

Despite its obvious spiritual momentousness to Leary himself, this experience would only “count” as religious by adopting a broad perspective on this term, along with overlooking the prevailing inclination to denigrate drug-precipitated epiphanies. In actuality, such observances may be all the more powerful for occurring outside the potentially constrictive confines of often-desiccated religions:

Our mystic experience is like a volcanic eruption. Fire, heat, light gush forth from our innermost depth. But the hot lava flows down the side of the mountain and cools off. The farther we are in space and time from the fiery eruption, the more this glowing magma turns into cold rock. Our task is to push through the “isms” of our particular religion as through thick layers of volcanic rock and to catch fire from the original fire. After all, that is what all the great masters and saints have done. If you stand in an ancient tradition . . . there is work to be done . . . The truly religious people . . . are to be found outside as well as inside any religious institution.” (Forte 1997, p. 21)

Regardless, spiritual exemptions from prohibition for psychedelic sacraments are extremely rare. Indeed, it has been (somewhat acerbically) remarked upon that, in order to qualify: “The drug must be not only religiously important to its user but also an essential part of a traditional rite of communal significance . . . It is as though mountain climbing were regarded as generally so dangerous and useless that climbers would be fined and jailed unless they could prove they were making a pilgrimage to a holy site on the peak certified by an established church” (Bakalar and Grinspoon 1984, p. 32). This, paradoxically, in spite of the fact that an offshoot of ingesting these molecules is often a questioning of orthodoxies: “The psychedelics are a red-hot, social/ethical issue precisely because they are de-conditioning agents. They will raise doubts in you if you are a Hassidic rabbi, a Marxist anthropologist, or an altar boy because their business is to dissolve belief systems” (Forte 1997, p. 61).

Article 9 and Religious and Spiritual Freedom

Taking psychedelics may catalyze a spiritual experience; then again, it may not. Not everyone finds (themselves to be) God in a sugar-cube. These substances are best understood as non-specific amplifiers, with their effects largely determined by who is ingesting them, with what mindset, and in which environment. Additionally, what does it even mean to describe an experience as “non-spiritual”? As the Tantrics, among countless others, have long since recognized, there is no clear division between the “sacred” and the “profane”; adding psychedelics into the mix can fudge the interface yet further, with the relayed narratives of many users exposing the inadequacy of any such binary distinctions. A sense of awe in the face of the beauty, magnitude, and fundamental inter-connectedness of the universe, and of the elegance of the laws of physics may not be so very different from a belief in God. When even the leader of a formalized and established religion such as the Church of England, (now former) Archbishop of Canterbury Rowan Williams, esoterically described his vision of God as “a combination of love and mathematics,” it is apparent that we are dealing with slippery concepts (Williams and Dawkins 2012). Complicating the issue even more, visionary experiences can creep in unbidden, as described here by psychiatrist Stanislav Grof:

I was able to see the irony and paradox of the situation. The divine manifested itself and took me over in a modern scientific laboratory in the middle of a scientific experiment

conducted in a Communist country with a substance produced in the test tube of a twentieth-century chemist. (Fadiman 2011, p. 52)

Even were there such a thing as a categorically non-spiritual experience on psychedelics, does it follow that it should not deserve protection? It may still be of equal significance to the individual concerned; or, it may not. Should this even matter? Whether or not it is believed that individuals should have to “justify” their drug use on any grounds is bound up with one’s view of the proper relationship between the individual and the state. In his paper “What is so Special About Religion?” political philosopher Bedi addresses the question: “Why, at the most basic level, does a particular religious group even deserve a simple exemption from a facially neutral law but not a mere preference or a voluntary association?” (Bedi 2007, p. 235). His answer is that it does not, and that society should work towards maximizing *everyone’s* autonomy, rather than reifying religious or, indeed, spiritual practices. Accordingly, it should not be necessary to contort direct experiences into a shape that approximates those of established religions, nor to determine the almost impossible question of whether the episode was in any way spiritual, to be afforded human rights-based protections. And, happily, under the ECHR, it is not.

Article 9 of the European Convention provides that: “Everyone has the right to freedom of thought, conscience and religion; this right includes . . . freedom, either alone or in community with others and in public or private, to manifest this religion or belief, in worship, teaching, practice, and observance.” It is not requisite to prove that one’s beliefs are religious in the narrow, or, indeed, in any, sense in order to fall within the ambit of the religious element of this provision: this loose-limbed style allows the European Court—and, consequently, domestic courts—to sidestep questionable doctrinal attempts to delineate what does and does not constitute a religion, as happens in the United States, applying the framework laid down in *Meyers* (*Meyers* 1996). (For more information on the laws surrounding religious freedom in the United States see Brown, this volume.) Interpreting Article 9, the European Court of Human Rights has stated that “it is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their concept of life, but it is also a precious asset for atheists, agnostics, skeptics, and the unconcerned” (*Kokkinakis v Greece* 1994, para. 31). This pluralistic approach is to be commended, avoiding, as it does, discrimination against the irreligious:

This wide protection has enabled the Court to find no difficulty in holding the Article to be applicable not merely to traditional and long-established religions . . . but to other forms of religious movement, including druidism and the Church of Scientology, as well as to a wide range of philosophical beliefs, notably pacifism, atheism, and veganism.” (Bratza 2012, pp. 258–259)

In the most significant UK case regarding interpretation of freedom of religion under Article 9, *R (Williamson & Others) v Secretary of State for Education and Employment* (2005) UKHL 15, in which the appellants were arguing for their right to assault children in the name of discipline as a manifestation of religious belief, Lord Nichols echoed the sentiments of the European Court regarding the breadth of the term “religion” under Article 9, stating: “The atheist, the agnostic, and the

skeptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom.” Freedom of religion or belief is protected absolutely, on the grounds that individuals can believe what they like; however, as regards whether or not a *manifestation* of that belief is also safeguarded, prior to considering this, the courts apply minimal threshold requirements as regards the belief in question. In Lord Nichols’ words: “In particular, for its manifestation to be protected by Article 9, a non-religious belief must relate to an aspect of human life or behavior of comparable importance to that normally found with religious beliefs.”

Does a firmly held conviction regarding the value of the psychedelic experience amount to a “belief” under Article 9, the manifestation of which might thus be protected? Are the experiences of those who use these substances outside of a religious context as important to them as other people’s religious experiences with or without a psychedelic sacrament? As illustrated above, there is a strong argument that this is the case. If this hurdle is cleared and belief in the value of the psychedelic experience is acknowledged as coming within the auspices of Article 9, the second issue is whether the manifestation of this belief—namely, ingesting psychedelics—may thereby be protected. An early European case that dealt with the issue of what constitutes a manifestation of a religion or belief drew a distinction between acts that actually *express* such a belief, and those that are merely *motivated* by it, with only the former attracting protection (*Arrowsmith v United Kingdom* 1981, 3 EHRR 218). It is submitted that taking psychedelics is, or certainly can be, an indispensable manifestation of the belief that taking psychedelics is an invaluable practice.

Article 9 and Freedom of Thought

To date, no cases have cogently argued before the UK courts for the right to take psychedelic drugs as a manifestation of a heartfelt philosophy, rather than under the auspices of a religion, which may potentially protect this use under the religious freedom limb of Article 9. However, it will be remembered that the protections in Article 9 extend beyond even the expansively interpreted freedom of religion limb, with this provision also safeguarding freedom of thought; it has been legally argued in an English courtroom that disallowing access to psychedelics interferes directly with freedom of thought, with cognitive liberty, and is afforded absolute protection under this provision. This claim was made in the case of *Hardison* (Lewes Crown Court January 2005, unreported). This is a case that I have been involved with for a number of years, in my capacity as academic legal adviser. In 2004, following a tip-off, police discovered a laboratory at the home of underground psychedelic chemist, Casey Hardison. He was subsequently charged with eight counts under the Misuse of Drugs Act 1971 (MDA, the UK’s domestic drug prohibition law) including producing and supplying LSD, 2C-B, DMT, MDMA, and mescaline: all psychedelic Class A drugs.

Hardison's trial began with a 10-day human rights argument before the judge sitting alone in his capacity of determining which strands of the defense could be put before the jury. Hardison's contention was that his right to freedom of thought was infringed by the MDA. Thus he argued that this legislation should be read with a view to render the two instruments compatible; additionally, he submitted that, if the MDA could not be read in accordance with the ECHR, a Certificate of Incompatibility was called for. Hardison pointed out that the practice of using psychoactive substances for altering consciousness has existed from the dawn of history; consequently, all efforts to eradicate it are based on an incomplete understanding of human nature. He further emphasized the absolute protection of freedom of thought mandated by Article 9, contending that laws that proscribe psychedelic drugs offend against cognitive liberty, with his defense deeply influenced by the work of the Center for Cognitive Liberty and Ethics (<http://www.cognitiveliberty.org/>).

Founder of the aforementioned center, lawyer Richard Glen Boire, one of cognitive liberty's greatest proponents, has described this concept and its importance thusly:

The right to control one's own consciousness is the quintessence of freedom. If freedom is to mean anything, it must mean that each person has an inviolable right to think for him or herself. It must mean, at a minimum, that each person is free to direct one's own consciousness; one's own underlying mental processes, and one's beliefs, opinions, and worldview. This is self-evident and axiomatic. (Boire 1999/2000).

Cognitive liberty underpins many other freedoms. For instance, any interference with freedom of thought in turn disrupts freedom of expression, protected under Article 10, as the words to express the different aspects of oneself simply cannot be formulated if the thoughts that lie behind them are literally unthinkable. Certain notions become inconceivable through the prohibition of psychedelics, with these substances being the necessary precursors to particular styles of thinking:

Whatever may be at the roots of human consciousness, there is no debate that what, and how, a person thinks is deeply intertwined with his or her functional neurochemistry. Simply put, controlling what chemicals can or cannot reach a person's brain synapses, directly affects how that person thinks. (Center for Cognitive Liberty and Ethics 2004, p. 36)

Drug prohibitions "manipulate consciousness at its very roots," (Boire 2000, Free Thought and the First Amendment section, para. 7) with Boire likening them to book censorship, seeing both as driven by the same intention: "Efforts to prohibit heterodox texts, and to make criminals out of those who 'manufactured' such texts, were not so much interested in controlling ink patterns on paper as in controlling the ideas encoded in printed words" (Boire 2000, An Introductory Note on Banned Books and Other Controlled Substances section, para. 3). The potential importance of these banished states of consciousness should not be underestimated. In the oft-quoted words of William James:

Our normal waking consciousness, rational consciousness as we call it, is but one special type of consciousness, whilst all about it, parted from it by the filmiest of screens, there lie

potential forms of consciousness entirely different. We may go through life without suspecting their existence; but apply the requisite stimulus, and at a touch they are there in all their completeness, definite types of mentality which probably somewhere have their field of application and adaptation. No account of the universe in its totality can be final which leaves these other forms of consciousness quite disregarded. (James 1961, p. 305)

In his seminal paper, “Academic and Religious Freedom in the Study of the Mind,” Thomas Roberts describes how the cognitive sciences, multistate psychology, religion, mystical experiences, and personal freedom all fall victim to the current drug laws and their curtailment of cognitive liberty:

From an information-processing perspective, a mindbody state is analogous to a software program. By increasing the number of programs we use in a computer, we expand our productive use of the computer: By increasing the number of mindbody states we use, we increase the productivity of our minds. If we are to develop the most complete knowledge of human memory, perception and thinking that we can, then we must explore these processes in as many states as we can. By needlessly restricting the accessibility of drug produced states, current laws limit what we can know about our minds and how we can use them . . . our overall map of the human mind is incomplete when some mental lands are ‘off limits’ to exploration. This is reminiscent of the fifteenth century fear of sailing out into the ocean because you might fall off. (Forte 1997, pp. 139–140)

The situation is approximate to potentially having the totality of human knowledge at your fingertips via the Internet, yet with the state applying a filter, inducing a kind of psychopharmacological North Korea.

That the UK Government, like most others, has effectively criminalized unorthodox mindstates is deeply problematic in terms of the appropriate relationship between the individual and the state: “In a free democracy, the government has no authority to dictate the content or form of our brain functions” (Ruiz-Sierra 2003, p. 56). However, as Lenson describes it: “What crosses the blood–brain barrier is now open to the same surveillance as what crosses international borders. There is a customs in the cranium, a Checkpoint Consciousness” (Lenson 1995, pp. 190–191). This seems wholly inappropriate:

From the skin inward is my jurisdiction, is it not? I choose what may or may not cross that border. Here I am the Customs Agent. I am the Coast Guard. I am the sole legal and spiritual Government of this territory, and only the laws I choose to enact within myself are applicable . . . What I think? Where I focus my awareness? What biochemical reactions I choose to cause within the territorial boundaries of my own skin are not subject to the beliefs, morals, laws or preferences of any other person! I am a sovereign state, and I feel that my borders are more sacred than the politically drawn boundaries of any country. (Shulgin and Shulgin 1991, pp. 449–450)

Such reasoning, the backbone of Hardison’s defense, held little weight in the courts; rather, he was barred from even articulating his human rights-based arguments in front of the jury. The presiding judge, Judge Niblett—while commenting upon the sincerity with which it was apparent that Hardison held his views—nonetheless rejected his logic, finding that the MDA did not infringe on human rights. Specifically, he dismissed Hardison’s Article 9 claim on the grounds that he viewed the court as bound by *R v Taylor* (Taylor 2001) (discussed in detail in Bone’s chapter in this volume), a case involving intent to supply cannabis in the

context of Rastafarian worship. In *Taylor*, the courts afforded the prohibitions in the MDA superiority over those protections in the ECHR relating to freedom of religion, relying heavily on the existence of a system of international global prohibition in justifying this.

It is worth taking a small diversion here to consider whether the UN drug conventions really do present insurmountable barriers to successfully arguing that the MDA conflicts with Article 9 of the ECHR. (The issue of the relationship between the drug conventions and human rights instruments, such as the ECHR, is discussed in greater detail in the chapter by Boiteux et al. this volume.) Ironically, it has been suggested that adherence to the conventions has itself become a sort of religion:

Whatever the origin of the UN Drug Treaties, and whatever the official rhetoric about their functions, the best way to look at them now is as religious texts. They have acquired a patina of intrinsic and unquestioned value and they have attracted a clique of true believers and proselytes to promote them. They pursue a version of Humankind for whom abstinence from certain drugs is dogma in the same way as other religious texts might prohibit certain foods or activities. The UN drug treaties thus form the basis of the international Drug Prohibition Church. Belonging to the Church has become an independent source of security, and fighting the Church's enemies has become an automatic source of virtue. (Cohen 2003, p. 213)

In a similar vein, Husak pithily remarks, “for reasons that are deep and mysterious, this topic is among a small handful of issues that seem almost immune to rational debate. One might as well attempt to shake the confidence of a fundamentalist about the existence of God” (Husak 1992, p. 7).

Despite the quasi-religiosity of global prohibitionists, the UN drug conventions are not inscribed on tablets of stone. The Beckley Foundation, an independent drug research and policy institution, is currently involved in breaking the taboo of never questioning these instruments, convening expert drug policy analysts to consider ways in which they might be rewritten, and moving from a rigid prohibitionist approach towards greater freedom for nation states. (For more information, see the chapter by the Beckley Foundation's founder, Feilding, this volume.) Even in the current reality, with the drug conventions firmly *in situ*, it is important to remember that, unlike the ECHR, they have not been incorporated into UK domestic law; thus, the provisions in the latter should legally take precedence. Further, there is clear scope for exemptions embedded within them: Article 36(1)(a) of the Single Convention on Narcotic Drugs 1961 contains the words “subject to its constitutional limitations,” to be utilized when prohibitions unduly conflict with issues of domestic importance, such as, feasibly, protection of Article 9 rights to religious freedom under the ECHR, as was sought in *Taylor*.

However, it is clear that Hardison aimed to go much further than this. To argue for a right to psychedelic drugs as a component of freedom of thought is to do more than to ask for limited religious exemptions: It threatens the very existence of the structure of global prohibition. Accordingly, Judge Niblett saw the issues raised in Hardison's defense as being political matters, outside the legitimate province of the court:

I am the judge of the law. It is no part of my function, or any court's function, to engage in philosophical or political debate, or to make decisions based upon arguments relating to the efficacy, or otherwise, of any particular enactment of the legislature. Nor is it my function to make moral judgments one way or the other. (*R v Hardison*, Lewes Crown Court, January 2005, unreported)

It is certainly true that for the court to have stayed proceedings against an underground chemist on the basis that he had a right to synthesize psychedelics in the name of cognitive liberty would have been stretching its powers somewhat, potentially conflicting with the principle of parliamentary sovereignty. Such claims stand a greater, though still outside, chance where it is simple possession that is at issue, with *Hardison's* case—which involved production and supply—perhaps being most useful symbolically as a showcase to highlight the injustices of drug policy. It is a brave defendant who makes such a stand, given that guilty plea mitigation is lost in the process. In the words of Martin Luther King:

An individual who breaks a law that conscience tells him is unjust and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law. (King 1963)

Following conviction by a jury, Judge Niblett sentenced *Hardison* to 20 years' imprisonment. It is submitted that the absence of any proportional relationship between the activities engaged in and the manifestly excessive sentence handed down is so acute here as to potentially engage Article 3 of the ECHR, entering into the realm of inhuman or degrading treatment, especially given that "no laws enforced by such harsh punishments rest on a more flimsy rationale than those prohibiting . . . drugs" (Husak 1992, p. 2). It is revealing to contrast this sentence with the 15 years that can be expected for an "average" murder (Criminal Justice Act 2003), the 5 years that can be anticipated for a rape where there are no aggravating factors (Sentencing Guidelines Council 2007), and the fact that *Hardison* received his 20 year term in the same week in which Kamel Bourgass was given a lesser 17 year sentence for planning a bioterrorist assault on the London Underground, involving the substance ricin, a poisonous toxin deliberately extracted with a view to endangering human life, yet seemingly not viewed by the courts to be as much of a threat as psychedelics (*Hardison* 2005). Indeed, upon hearing his sentence, *Hardison* said to the judge, "Thank you for your love and compassion. You would think I was a terrorist" (personal communication). In the words of Szasz: "Clearly we regard drug heresy as a graver threat to our society than violent crime. This may seem like madness, but there is method in it. The method . . . lies in the threat autonomy poses to authority" (Szasz 2003, pp. 188–189).

It is interesting to consider in greater depth how such a sentence was seen as warranted by the courts: The discourse used and the "justificatory" narrative is crucial. When delivering *Hardison's* 20 year sentence, Judge Niblett remarked: "The most serious element of this case is that you were not doing this for your own consumption or the good of mankind but for greed, a human emotion that goes back to the dawn of time" (*Hardison* 2005, Lewes Crown Court, unreported). Similarly,

when refusing Hardison leave to appeal, dismissing his human rights arguments as a “portmanteau” defense, Justice Keith said:

He claimed to regard the bond between man and plants as a sacred one, although the prosecution was to say that his assertions about the benefits which he claims the use of such drugs generate was just an excuse for his commercial production of hard drugs on a large scale. (Hardison 2007a)

Indeed, while attempting to appeal his conviction, Hardison remarked upon the terminology that had been applied to him throughout his journey through the criminal justice system, observing that he had been subjected to a barrage of slanderous allegations by various judges and prosecutors, having been described, among other things, as “dangerous,” “greedy,” and even “evil” (personal communication).

In contrast, Hardison himself imputes the following as motivating his decision to create psychedelics:

So, why did I do it? There is no single pat answer. The simplest: my love of learning. The veiled: for my ego, for the attention, to feel special, to be loved, etc. The flippant: because I could. With hindsight: civil disobedience, academic and religious freedom in the study of the mind, and an expression of equal rights. The most accurate: my desire to share entheogenesis with others, to wake humanity up from the penumbral dream-world of materialist delusion, to help end the blatant injustice and rape of human dignity that occurs within the context of a “War on (some people who use some) Drugs,” to seize the world stage and help create a forum for the cooperative and conscious stewardship of Mother Earth and all her relations. (Hardison 2007b, p. 31)

On Cognitive Liberty

Given that embracing the concept of cognitive liberty ultimately has the potential to undermine the drug laws, it is salient to subject it to analysis from the perspective of political philosophy. Cognitive liberty can be seen as a natural extension of the classic liberalism espoused by John Stuart Mill, a doctrine that can itself be used to critique both the incursions into cognitive liberty that arise out of psychedelic drug prohibition and this regime more broadly. Applying the work of Mill to such issues leads to a perhaps surprisingly natural fit:

Written in the midst of the growing political power of Christian temperance groups pushing for alcohol prohibition and speaking directly to the issue of the rights of individuals and the limits of authoritarian control, *On Liberty* is a seminal antiprohibition text. (Boire 2003, p. 15)

Mill’s inspiring paean to individuality is concerned with “the nature and limits of the power which can be legitimately exercised by society over the individual” (Mill 1982, p. 59). His famous “harm principle” warrants quoting at length:

That principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own

good, either physical or moral, is not a sufficient warrant . . . The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. (Mill 1982, p. 68–69)

Mill continues:

This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling . . . Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong. (Mill 1982, p. 71)

Thus, liberty comprises freedom to choose, including the freedom to make what others might consider to be bad choices. How could it be otherwise? Who but themselves should decide what is of value to individuals? It is through such choices—including those regarding which substances to ingest, or not—that people engage in self-creation, in autopoiesis: “Embedded in our choice of highs is the question of our aspirations, fears, and identity” (Lenson 1995, p. 64). When the law limits such choices, it curtails who people can become.

Mill famously advocated “experiments in living” (Mill 1982, p. 147) in accordance with this view, individuals should be free to carry out chemical experiments in the living laboratory of their own bodies. While not without its risks, such bioassays can lead to progress, both individual and societal:

This argument reminds us of the theory of evolution. Progress is best served by an infinite variety of blind mutations. Apart from many failures, this process produces time and again surprisingly viable species that would not even have been considered had the process been a regulated one. He who believes himself to serve progress by limiting diversity makes therefore a tragic mistake. (van Ree 1999, p. 94)

In his book *Sex, Drugs, Death and the Law: An Essay on Over-Criminalization*, legal academic David Richards applies deontological, rights-based theory to the drug laws *in toto*, seeing this as necessary because “the extension of the criminal law beyond the confines of the harm principle, properly understood, creates a tyranny of majoritarian convention which, if left without any moral constraint, erodes the foundations of autonomous personhood” (Richards 1986, Chapter One, The Harm Principle Reinterpreted section, para. 7). Richards concludes that the drug prohibitions do exactly that, as prime examples of “a radically inappropriate form of paternalistic interference . . . grounded in the substitution of the interferer’s own personal ends for the ends of the agent” (Richards 1986, Chapter Four, Paternalistic Arguments Against Drug Use section, para. 2).

Liberalism rejects such paternalists; those that seek to compulsorily “protect” competent adults from the allegedly harmful consequences of freely initiated choices. How can being subjected to state punishment possibly be for one’s own good when the primary, and often solitary, harm being suffered is that inflicted on one high, rather than from having been high? With its implicit infantilization, paternalism is deeply problematic: It should remain up to the individual, not the

state, spuriously on their behalf, to prioritize whether or not they accord greater value to the possibility of, say, a mystical experience, versus an outside risk of either physical or psychological harm. As moral philosopher Feinberg (1986) comments, drug users “may have a well-thought-out philosophical hedonism as one of (their) profoundest convictions” (p. 133); thus:

To prohibit outright for everyone would be to tell the voluntary risk-taker that even his informed judgments of what is worthwhile are less reasonable than those of the state; and that therefore, he may not act on them. This is the purest hard paternalism . . . As a principle of public policy, it has an acrid moral flavor, and creates serious risks of governmental tyranny. (p. 134)

Balancing Freedoms

Thus, Mill advocates a negative liberty, the freedom to be left alone to do as one pleases. But what of the fact that—as the psychedelics often render vividly apparent—human beings are all inextricably interconnected with each other, along with the entirety of the biosphere and, indeed, the universe, given that everything is woven of the same molecular fabric? Does this fact not create societal obligations, meaning that judgments relating to whether someone may or may not freely ingest a psychedelic cannot be taken at an atomized, individualized level? It does, but, in line with the harm principle, incursions will only be valid where partaking of a drug would create real, measurable harms in society. Given that *all* actions affect others, the question is whether they set back others’ interests sufficiently to warrant criminalization. To give a concrete example, in the UK Coalition Government’s latest drug strategy, one of the reasons given for prohibition itself is that drug use leads to family breakdown (HM Government 2010). Even were this unsubstantiated claim true in the context of psychedelics, this is not the kind of harm that legitimately invites a criminal response, or else adultery and divorce would be illegal.

It is out of recognition that some actions can impact others to an extent that justifiably warrants state interference that there are qualifiers to the articles in the ECHR. Article 9(2) states that:

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Recall, however, that the right to freedom of thought and to cognitive liberty under Article 9 is absolute. Thus, if it is accepted that freedom of thought encompasses the *processes* of thinking, and that psychedelics can be an important facet of such, their usage should be afforded unqualified protection under this provision and Article 9(2) is incidental. If this proposition is not accepted—if psychedelic ingestion is instead seen as a *manifestation* of a belief system, engaging Article 9, yet subject to limitation—these qualifiers become relevant.

When considering Article 9(2) in greater depth, it is apparent that, in applying this provision, the courts need first to determine whether any purported interference with Article 9 is prescribed by law. As an important aside, prosecutions for activities involving many of the plant psychedelics in which only the constituent psychoactive ingredient, but not the actual plant itself, is scheduled under the MDA, can potentially be seen to fall foul of this preliminary test, mired as they are in legal uncertainty (see Walsh 2014).

The courts then consider whether the limitation is necessary in a democratic society. This requires balancing the severity of the restriction placed on the individual against the importance of public interest, with only the perceived minimum interference with the right permitted, viewed as necessary to secure society's legitimate aim. It is of crucial importance to emphasize that the lawful utilization of psychedelics is not merely restricted by the drug laws, but is, rather, entirely shut down by them. This is significant because, in a number of (non-drug-related) cases brought before the courts claiming infringement of Article 9 rights, these were defended on the basis that those concerned could manifest their beliefs elsewhere. For instance, in *Regina (SB) v Governors of Denbigh High School* (*Regina (SB) v Governors of Denbigh High School* 2006), the fact that one school prohibited a Muslim girl from wearing the full jilbab was seen as acceptable, given that she had the choice to attend another educational establishment. No such alternatives are offered to those who wish to take psychedelics legally, not even within the privacy of their own homes; thus their ability to manifest their belief becomes impossible without breaching the law.

Finally, in applying Article 9(2), the courts consider if the aim of the limitation is legitimate, and that it fits one of the expressed headings of that provision. At surface level, these qualifiers can be seen, on the whole, though certainly not exclusively, to arise from concerns about tangible harm to others, rendering them largely unproblematic from a liberal perspective. What is more contentious is the ease with which they can seemingly be engaged in practice in cases involving drugs, with supposed posited harms rarely empirically demonstrated in the courtroom, or with the existence of an international regime of global prohibition the only factor accorded any weight, as per *Taylor*. This is not to deny that these substances can lead to harm, with varied psychedelics associated with differing risks, but rather that such harm should be *proven*, rather than *assumed*. While the public, most certainly, has a right to be protected, the futuristic weaving of prospective worst-case-scenarios arising out of individuals' drug-taking that is used to justify engaging the qualifications fatally undermines the protection Article 9 ostensibly affords. Consequently, the qualifiers can be used by the courts to avoid protecting certain people's freedoms when to do so would be unpopular, either with politicians or the public. Thus, they have been described as amounting to "an invitation to the courts to make value judgments behind the veil of legal objectivity" (Beck 2008, p. 237).

To illustrate, the predominant harm to society that is normally cited in engaging the qualifiers to human rights protections (and, indeed, to justify the drug laws in general) is that drugs are criminogenic: This is not the case with the non-addictive psychedelics, a truism that the UK Government implicitly accepts through its policy

that, while under the Drugs Act 2005, Class A drugs are routinely tested for at various points in the criminal justice system in an attempt to identify (and to break) this posited drug-crime connection, psychedelics are excluded from such screenings. Considering harm to society more broadly, a group of scientists, led by David Nutt, have synthesized the available relevant literature and given a score to potential harms from different drugs, creating the most reliable such matrix to date (Nutt et al. 2010). Nutt's grid reveals the UK's drug classification system to be composed of pseudoscientific divisions not borne out by empirical evidence, with an almost perversely inverse correlation between risk of harm and positioning within the MDA. The clear front-runner in terms of harm, both personal and social, is the legally and culturally sanctioned substance alcohol, curiously exempt from the MDA, while the Class A psychedelic LSD is down at the bottom end of the scale, with harm to others deemed practically non-existent and harm to self, minimal.

These issues are taken up by Husak who contends that the average harm a drug user risks either to themselves (irrelevant from a liberal perspective) or others (relevant) is so slight as to be inconsequential: "Drug use per se is almost never harmful to others in the absence of further acts the drug user performs" (Husak 1992, p. 178). Where harm *is* demonstrated, the state can, of course, justifiably engage the qualifiers. In reality, "Many, if not most, recreational drug users are attentive parents, good neighbors, fine students, and reliable employees. Most will not resort to (further) crime. How, then, can their recreational use of drugs be condemned on the ground that it is harmful to others?" (Husak 1992, p. 181). This reasoning is amplified yet further due to the fact that "a subgroup of users creates virtually all of the harm"; as this is patently not psychedelic users, they effectively suffer "vicarious liability for the acts of others" (Husak 1992, pp. 188–189). Unless the state is dallying with paternalism, it is thereby punishing individuals for inchoate, victimless crimes, on the basis of a posited risk of harm to others: "The state should not be given unbridled authority to reach into someone's life and punish her for conduct that might eventually lead to harm, even though it is not harmful per se" (Husak 1992, pp. 182–183).

That the ECHR provides substantial, rather than merely rhetorical, protection of human rights is of great importance for minority groups; those that require shielding from the tendency of democracies without such safeguards to veer towards mob rule. "Rights by their nature are designed to trump consequentialist, utilitarian or majoritarian considerations" (Beck 2008, p. 224). Drug takers are not, of course, a minority group—that term aptly describes practically everyone on the planet—but psychedelic users are. Where human rights and freedoms are being restricted, the burden of proof as regards harm to others should be on the state, to avoid these ostensible protections being hollowed out. Much finer distinctions between the different types of controlled drugs and the ways in which they are taken need to be made when assessing whether or not they represent a threat to public safety. In short, a far more parsimonious and evidence-based approach is advocated. Importantly, any fair consideration of harms should include an assessment of those caused by prohibition itself: these fall outside the scope of this paper but have been

impressively documented elsewhere for the interested reader (see Transform <http://www.tdpf.org.uk/>).

Furthermore, undertaking a proper balancing exercise when applying Article 9 (2) would involve weighing any potential harms against the benefits of psychedelics; the fact that these substances may advantage their users remains largely absent from both policy discussion and the language of the courts. The benefit of simple pleasure, ostensibly so central to the inherently hedonistic utilitarian calculus, is notable by its absence. That people should be allowed to take drugs because they enjoy them is rarely invoked in the courtroom, even on the part of defendants; as though pleasure were a dirty word, and there must be some higher motivation to get high. This is, doubtless, partially tactical, but it also renders defendants complicit in the implicit puritanism of accepted discourse: “To legislate against drugs of pleasure is like legislating against music, chess, golf, or any other form of play: It is arbitrary” (Lenson 1995, p. 74). Exceptionally, in 2008 the *International Journal of Drug Policy* dedicated an entire edition to the theme of pleasure, noting in the opening editorial that: “While there are many potential motivations for drug use, the failure to acknowledge pleasure contributes to the idea that those who continue using are irrational or unintelligible” (Holt and Treloar 2008, p. 349).

Fortunately, the traditional silencing of alternative perspectives to the dominant paradigm is becoming ever more untenable in this multi-mediated world (see Walsh 2011). As is being increasingly publicized, psychedelic drugs may lead to great benefits, both for individuals and, consequently, for society as a whole. Famous examples include Stewart Brand’s LSD-soaked vision of the need for a photograph of the whole earth, pivotal in the birth of the ecology movement, and the fact that two Nobel Prize winners have attributed their lauded breakthroughs to their usage of LSD (Fadiman 2011, p. 4). Many of the multiple ways in which psychedelic ingestion can lead to benefits are documented by the Multidisciplinary Association for Psychedelic Studies (MAPS), whose primary work is in spearheading the current renaissance of psychedelic psychotherapy, a practice used extensively and with great success in the 1950s and 1960s and ever since by underground networks, which was (officially) stymied by prohibition (<http://www.maps.org/>). For instance, the ongoing pilot studies into deploying MDMA in work with people with seemingly intransigent PTSD has yielded unprecedentedly positive results (Mithoefer et al. 2011). Again, novel neuroscience research gives us deeper insight into the mechanisms through which psychedelics can be a useful adjunct in psychotherapy:

Psychedelic drugs have a history of use in psychotherapy, linked to the hypothesis that they lower defenses to facilitate access to salient emotions and memories. The results of this study provide initial support for this idea and a potential neurobiological mechanism is proposed: decreased medial prefrontal cortex activity leading to disinhibited limbic and sensory activity. (Carhart-Harris et al. 2012b, p. 243; for further information, see Feilding, this volume)

MAPS also produces themed journals, gathering together experts in different fields to discuss the ways in which psychedelics have been useful to them. To offer just a few illustrative examples here, in the *Special Edition: Psychedelics, Death and Dying*, the editor discusses how, having experienced ego-death under the

influence of psychedelics, transition to the real thing (especially for those for whom this is a long, drawn out, and painful process, such as cancer sufferers) can be eased: “One of the most commonly reported experiences that people have with the classical psychedelics is a sense of boundary-dissolving unity, where one’s personal consciousness merges with a much larger transpersonal planetary or cosmic awareness” (MAPS 2010, p. 4). In the *Special Issue: Psychedelics and Ecology*, the aforementioned well-known influence of these substances in that movement is explored:

The link between psychedelics and ecology comes primarily from the long-term changes in attitudes and behaviors flowing from these mystical experiences . . . The essence of the mystical experience is a sense of unity woven within the multiplicity, forging a deeply felt and unforgettable common bond between humans, other life forms, nature and matter. This common bond can generate respect and appreciation for the environment, for caretaking and wonder. (MAPS 2009, p. 2)

Special Issue: Psychedelics and Technology reviews the many and varied ways in which these substances have impacted human tool development and use (MAPS 2008). The list goes on. Moreover, the impact of psychedelics ripples out into popular culture, reaching many more people than have personally ingested them.

Given the great benefits that so many claim from psychedelics—up to and including achieving enlightenment!—it should not be necessary for users to prove that these substances are risk-free in order to avoid the clutches of the qualifiers (for, like most things, they are not), but rather for the state to prove that the harms to society actually do outweigh the benefits. Of course, the notion of employing a coolly rational empirical calculation when deciding whether the qualifications should be engaged sounds more “objectively” clinical an exercise in theory than it could ever actually be in practice. Decisions regarding what is measured, what weight is accorded to any given harm or benefit, and so on, will be indelibly infused by value judgments. While this is unavoidable, a more valiant attempt at balance is certainly warranted. Without this, what we are really dealing with here is legal “moralism”: that notorious conclusion in search of an argument.

A Conclusion in Search of an Argument

It is important to acknowledge that the articulated aims in this sphere are often subservient to the silent true motivations, which reek of legal moralism. Indeed, protection of public morals is one of the recognized qualifiers under Article 9(2), a fact that is deeply troublesome from a liberal perspective. Legal moralism—the notion of a sort of “free-floating evil,” unrelated to measurable harm—is an entirely unacceptable, even immoral, basis for qualifying Article 9 rights, or indeed, for Prohibition itself (Feinberg 1990). Immoral, because the devastating power to impose punishment should be taken seriously by the state: The consequences of sanctions for the individual can persist long after any penalty has purportedly expired, with those convicted of drug offenses often existing thereafter as *de*

facto exiles within their own nation (see The Exile Nation Project <http://www.exilenation.org/>). While it can be difficult to understand why anyone would object to psychedelics, distinct from any verifiable harm they may precipitate, this appears to be the case. Perhaps deconstructing the moralistic approach might help with comprehending it?

Understanding this rationale is almost unavoidably based on supposition, as legal moralists rarely state their case in such terms, generally hiding behind a rather unconvincing mask of utilitarianism. It has been mooted that legal moralism is rooted in a belief that the mindstates catalyzed by ingesting psychedelics are “unnatural” and accordingly less valuable:

No argument supporting the moral condemnation of drug use has had a stronger and more pervasive hold . . . than the argument for protecting the perfectionist ideal of the person . . . It is as if the Augustinian concern to keep religious experience unpolluted by alien agents were generalized to subjective experience in general. (Richards 1986, Chapter Four, Drug Use and Degradation section, para. 6)

This viewpoint becomes ever more anachronistic in an increasingly secular, technological and augmented age: “The notion that an organic creature should be left alone merely to exist with all its inherent powers and limitations seems utterly quaint” (Lenson 1995, p. 188).

Regardless, such “perfectionism” is evident in the UK Coalition Government’s aforementioned drug strategy, displayed even in its subtitle, “Supporting People to Live a Drug Free Life” (HM Government 2010). The hypocrisy here is self-evident, given that practically nobody leads a drug free life, particularly in the context of the arbitrary social acceptability of alcohol. That alcohol is excluded from drug prohibition—though, interestingly, repeatedly acknowledged as being a key contributor to social harm in the drug strategy—is an important issue that, while left largely unexplored here, undermines the already shaky claims of legal moralists. Moreover, the fact that imbibers of alcohol can alter their consciousness freely, their Article 9 rights to cognitive liberty undisturbed by state sanction, while psychedelic users are persecuted, is legally questionable given the existence of Article 14 of the ECHR, a provision that ostensibly guards against arbitrary discrimination in the protection of rights: “The only acceptable answer to the ‘why his preference and not mine?’ question requires a principle that cites a morally relevant difference between the permissible and the prohibited” (Husak 1992, p. 94). (Parallel issues of differential treatment are discussed in the chapter by Feeney 2014, in the context of the protection of peyote use for only Native Americans in the United States.)

Relatedly, there is perhaps a concern on the part of legal moralists that psychedelic users are not playing by the rules of the game; indeed, these substances can be game changers. Maybe this unearths the deeper, underlying fear beneath the psychedelic prohibitions: the deconditioning effect ingesting these substances can have, undermining conformity of consciousness. All laws are social and cultural products; the MDA entombs a vestigial remembrance of the social upheavals of the era that birthed it, an epoch with which psychedelics are so closely entwined (see

Lee and Shlain 2001; Seddon 2009). Under the influence of these molecules, “ideas of order crumble in a sort of ontological slapstick” (Lenson 1995, p. 74); consequently, psychedelics may lead to a questioning of the political status quo. This raises

the very real possibility that the prohibition of drug use should not be understood in rational terms . . . that the war on drugs is largely symbolic, serving to express the anxiety that authorities with political power feel towards persons who are deviant and unconventional” (Husak 1992, p. 6).

The state is concerned with governing risk and users of psychedelics are often viewed, rightly or wrongly, as anarchic, wild, and unpredictable outliers.

Perhaps even more worryingly, psychedelics can engender a stepping back from the consumerist paradigm: “The contention that drugs are escapist may be accurate. And those who profit from consumer culture do not want anyone to escape it” (Lenson 1995, p. 28). This is how political writer Hakim Bey explains the paradox that, in spite of demand, psychedelic drugs remain (officially) uncommodified in an increasingly commodified world:

Global Capital and universal Image seem able to absorb almost any “outside” and transform it into an area of commodification and control. But somehow, for some strange reason, Capital appears unable or unwilling to absorb the entheogenic dimension. It persists in making war on mind-altering or transformative substance, rather than attempting to “co-opt” and hegemonize their power. In other words, it would seem that some sort of authentic power is at stake here. Global Capital reacts to this power with the same basic strategy as the Inquisition—by attempting to suppress it from the outside rather than control it from within. (Bey 1999/2000, para. 2)

In short, the War on (some people who use some) Drugs is a culture war, with psychedelics as ciphers for inchoate angst.

A Right to Psychedelics?

Through the looking glass from the legal moralists are those who argue for a moral right to drugs, such as libertarian political philosopher Szasz (1996). The notion of a right to drugs may seem radical, but Szasz’s key argument is that it only appears so because of societal conditioning. In his view, transcending this cultural soup would lead to the realization that it is actually the notion that the state has the right to tell individuals what they can and cannot ingest that is extreme. Husak makes a similar point in his insightful book dedicated to the issue of whether or not adults have a right to drugs:

Why are whatever rights may be involved in . . . drug use regarded as so insignificant? Sometimes a policy or practice is so familiar and widespread that it becomes all but impossible to return to a state of innocence and to imagine how strange and peculiar it would appear from the perspective of an outsider. Suppose that a person who did not have a particular issue in mind were asked to prepare a list of general rights that are most important or fundamental in a free society. General rights that could easily be interpreted to protect . . .

drugs would be prominent on this list. One such right is the right to determine what happens in and to one's body. Another such right is the right to regulate the ways in which the mind processes the sensory data it receives from the world. (Husak 1992, pp. 39–40)

van Ree suggests enshrining a right to drugs within a newly created Article 31 to the Universal Declaration of Human Rights for the following reasons:

Human rights concern forms of behavior which we regard as positive and enriching for our lives to such a degree that we experience it as a violation of our personal dignity when we are forced to give them up. Drug use belongs in that category. Instead of being included in the category of murder and rape, drugs should be appreciated as a cultural asset, similar to religion and art. Despite the possibility of abuse, drugs provide their users with access to a unique inner field of experience, that would remain closed forever without them. (van Ree 1999, p. 89)

While again it may seem outlandish to argue for a specific human right to drugs, van Ree contends that this is necessitated by their prohibition in a way that it would not otherwise be; just as if the state arbitrarily decided to ban the playing of all sports, the need for an explicit right to partake in these activities would also emerge. Further, the fact that many people may not take the argument for a right to drugs seriously is to be expected: “Before the recognition of a specific right is a fact, public opinion often considers it for a long time to be simply ridiculous, and its violation to be irrelevant” (p. 93). If one commences from this premise, that there is a right to psychedelics, then their usage could not be interfered with in such a perniciously casual fashion: Moreover, the problem that Article 9 rights are selectively implemented and their qualifiers too readily engaged would be circumvented.

Concluding Remarks

Given that the idealized scenario outlined above, wherein an explicit right to psychedelics is afforded seems unlikely, it is worth paying some attention to whether there are more realistic prospects of progress in this area before closing. To date, Casey Hardison's challenge to the MDA on the grounds that it conflicts with the freedom of thought limb of Article 9 stands alone in the UK courts. There have, however, been cases brought on the grounds that the freedom of religion element of Article 9 is transgressed by the MDA (*Taylor* 2002, as discussed above; Bone, this volume) and on the basis that being unable to lawfully self-medicate with controlled substances brings the MDA into conflict with the Article 8 right to privacy (*Quayle and others* 2005) and the Article 3 protection against inhuman or degrading treatment (*Altham* 2006). These cases reveal the tendency for drug users to claim the labels of either religious or therapeutic use when trying to exempt themselves from the prohibitive framework, both because this is a genuine description of their motivations, and because there is believed to be protective power attached to such categorizations. However, just as with Hardison's attempt, these cases were unsuccessful.

It has been argued here that we need to go beyond the claims of religious and, indeed, therapeutic freedom when disputing the prohibitive drug laws and their compatibility with human rights obligations. Given that Hardison was not permitted to have his cognitive liberty-based vindications tested before an open court, these arguments have not been judicially closed down in any legally binding sense. It is hoped, therefore, that similar challenges will be brought by defendants in the future, perhaps in less extreme circumstances than when they are involved in manufacture and supply; with possibly only possession at issue. This would have the benefit of arguably allowing for more fluidity in terms of avoiding criminalization without transgressing the UN Drug Conventions (for more detailed discussion of which, see the chapter by Boiteux et al. this volume). With luck, the courts will give such contentions a fair and balanced hearing, applying the qualifiers to Article 9 judiciously, within the true spirit of the ECHR and the principles of liberalism.

References

- Altham. (2006). EWCA Crim 7.
- Bakalar, J., & Grinspoon, L. (1984). *Drug control in a free society*. Cambridge: Cambridge University Press.
- Beck, G. (2008). Human rights adjudication under the ECHR: Between value pluralism and essential contestability. *European Human Rights Law Review*, 2, 214–244.
- Bedi, S. (2007). What is so special about religion? The dilemma of the religious exemption. *Journal of Political Philosophy*, 15(2), 235–249.
- Bey, H. (1999/2000). Against legalization. *Journal of Cognitive Liberties*, 1(1), 34–38.
- Boire, R. G. (1999/2000). On cognitive liberty (part 1). *Journal of Cognitive Liberties*, 1(1), 7–13.
- Boire, R. G. (2000). On cognitive liberty (part 2). *Journal of Cognitive Liberties*, 2(1), 7–20.
- Boire, R. G. (2003). On cognitive liberty (part 4). *Journal of Cognitive Liberties*, 4(1), 15–24.
- Boiteux, L., Chernicharo, L. P., & Alves, C. S. (2014). Human rights and drug conventions: Searching for humanitarian reason in drug laws (this volume).
- Bone, M. (2014). From the sacrilegious to the sacramental: A global review of Rastafari cannabis case law (this volume).
- Bratza, N. (2012). The “precious asset”: Freedom of religion under the European Convention on Human Rights. *Ecclesiastical Law Journal*, 14(2), 256–271.
- Brown, M. R. (2014). Marijuana and religious freedom in the United States (this volume).
- Carhart-Harris, R. L., Erritzoe, D., Williams, T., Stone, J. M., Reed, L. J., Colasanti, A., et al. (2012a). Neural correlates of the psychedelic state as determined by fMRI studies with psilocybin. *Proceedings of the National Academy of Sciences United States of the America*, 109(6), 2138–2143.
- Carhart-Harris, R. L., Leech, R., Williams, T. M., Erritzoe, D., Abbasi, N., Bargiotas, T., et al. (2012b). Implications for psychedelic-assisted psychotherapy: Functional magnetic resonance imaging study with psilocybin. *British Journal of Psychiatry*, 200, 238–244.
- Center for Cognitive Liberty and Ethics. (2004). *Threats to cognitive liberty: Pharmacotherapy and the future of the drug war*. Davis, CA: Center for Cognitive Liberty and Ethics.
- Cohen, P. (2003). The drug prohibition church and the adventure of reformation. *International Journal of Drug Policy*, 14, 213–215.
- Criminal Justice Act 2003, Schedule 21.
- Fadiman, J. (2011). *The psychedelic explorer's guide: Safe, therapeutic and sacred journeys*. Rochester, VT: Park Street Press.

- Feilding, A. (2014). Cannabis and the psychedelics: Reviewing the UN Drug Conventions (this volume).
- Feinberg, J. (1986). *The moral limits of the criminal law, volume 3: Harm to self*. Oxford: Oxford University Press.
- Feinberg, J. (1990). *The moral limits of the criminal law, volume 4: Harmless wrongdoing*. Oxford: Oxford University Press.
- Feeney, K. (2014). Peyote, race, and equal protection in the United States (this volume).
- Forte, R. (Ed.). (1997). *Entheogens and the future of religion*. San Francisco: Council on Spiritual Practices.
- Hardison. (2005). EWCA Crim 1943.
- Hardison. (2007a). 1 Cr App R (S) 37.
- Hardison, C. (2007b). Brief history and motivation of an entheogenic chemist. *Drugs and Alcohol Today*, 7(2), 26–31.
- HM Government. (2010). *Drug strategy 2010 reducing demand, restricting supply, building recovery: Supporting people to live a drug free life*. London: HM Government.
- Holt, M., & Treloar, C. (2008). Pleasure and drugs. *International Journal of Drug Policy*, 19, 349–352.
- Husak, D. (1992). *Drugs and rights*. Cambridge: Cambridge University Press.
- Huxley, A. (2004a). *The Doors of perception and heaven and hell*. London: Vintage Books.
- Huxley, A. (2004b). *The perennial philosophy*. New York, NY: Harper Perennial Classics.
- James, W. (1961). *The varieties of religious experience*. New York, NY: Collier Books.
- James, A. (2012). Neurotheology and the scientific investigation into spirituality. *Erowid*. Retrieved March 11, 2013 from http://www.erowid.org/tech/neurotheology_article1.shtml.
- King, M. L. (1963). *Letter from Birmingham Jail*. African Studies Centre. Retrieved March 11, 2013 from http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.
- Kokkinakis v Greece*. (1994). 17 EHRR 397.
- Lander, D. R. (2014). Legalize spiritual discovery: The trials of Dr. Timothy Leary (this volume).
- Leary, T. (1980). *The politics of ecstasy*. Oakland, CA: Ronin Publishing.
- Lee, M., & Shlain, B. (2001). *Acid dreams: The complete social history of LSD*. London: Pan Books.
- Lenson, D. (1995). *On drugs*. Minneapolis: University of Minnesota Press.
- Meyers United States Court of Appeals for the Tenth Circuit, November 5, 1996, 95 F.3d 1475*.
- Mill, J. S. (1982). *On liberty*. London: Penguin English Library.
- Mithoefer, M., Wagner, M., Mithoefer, A., Jerome, L., & Doblin, R. (2011). The safety and efficacy of \pm 3,4-methylenedioxymethamphetamine-assisted psychotherapy in subjects with chronic, treatment-resistant posttraumatic stress disorder: The first randomized controlled pilot study. *Journal of Psychopharmacology*, 25(4), 439–452.
- Multidisciplinary Association for Psychedelic Studies (MAPS). (2008). Special edition: Technology and psychedelics. *MAPS Bulletin*, 17(1).
- Multidisciplinary Association for Psychedelic Studies (MAPS). (2009). Special edition: Psychedelics and ecology. *MAPS Bulletin*, 19(1).
- Multidisciplinary Association for Psychedelic Studies (MAPS). (2010). Special edition: Psychedelics death and dying. *MAPS Bulletin*, 20(1).
- Nutt, D. J., King, L. A., & Phillips, D. (2010). Drugs harms in the UK: A multicriteria decision analysis. *The Lancet*, 376(9752), 1558–1565.
- Quayle and others*. (2005). EWCA Crim 145.
- Regina (SB) v Governors of Denbigh High School*. (2006). UKHL 15.
- Richards, D. (1986). *Sex, drugs, death and the law: An essay on over-criminalization*. Lanham, MD: Rowman and Littlefield.
- Ruiz-Sierra, J. (2003). Is it time for a cognitive liberty social movement? *Journal of Cognitive Liberties*, 4(2), 53–62.
- Seddon, T. (2009). *A history of drugs: Drugs and freedom in a liberal age*. London: Routledge.

- Sentencing Guidelines Council. (2007). *Sexual Offences Act 2003: Definitive guideline*. London: Sentencing Guidelines Council.
- Shulgin, A., & Shulgin, A. (1991). *PIHKAL: A chemical love story*. Berkeley, CA: Transform Press.
- Smith, H. (2000). *Cleansing the doors of perception*. New York, NY: Jeremy Tarcher.
- Szasz, T. (1996). *Our right to drugs: The case for a free market*. Syracuse, NY: Syracuse University Press.
- Szasz, T. (2003). *Ceremonial chemistry: The ritual persecution of drugs, addicts and pushers*. Syracuse, NY: Syracuse University Press.
- Taylor*. (2001). 1 Cr App R 37.
- van Ree, E. (1999). Drugs as a human right. *International Journal of Drug Policy*, 10, 89–98.
- Walsh, C. (2011). Drugs, the Internet, and change. *Journal of Psychoactive Drugs*, 43(1), 55–63.
- Walsh, C. (2014). Plant psychedelics in the English courts: Legal uncertainty, guinea pigs and “dog law.” In D. Luke & A. Hope (Eds.), *Ecology, cosmos and consciousness: Essays from the edge of culture*. London: Strange Attractor Press (in press).
- Watts, A. (1968). Psychedelics and religious experience. *California Law Review*, 1, 74–85.
- Williams, R., & Dawkins, R. (2012, February). *Dialogue 23*. Oxford University. Video available via: <http://www.archbishopofcanterbury.org/articles.php/2371/dialogue-with-archbishop-rowan-williams-and-professor-richard-dawkins>.