IN THE HOUSE OF LORDS

ON APPEAL FROM
HER MAJESTY'S
COURT OF APPEAL
CRIMINAL DIVISION

Court of Appeal Ref: CAO 200502696 C4

BETWEEN:

Regina
Respondent

V

Casey William HARDISON
Petitioner

CERTIORARI PETITION
PRAYING FOR LEAVE TO APPEAL TO
THE RIGHT HONOURABLE THE HOUSE OF LORDS

He who is subject to English law is entitled to its protection.
– *Sommersett's Case* (1772) 20 St. Tr. 1

Sometimes a law is just on its face and unjust in its application.
– Martin Luther King Jr, *Letter from a Birmingham Jail*, 1963

Prepared By

Casey William HARDISON

August 8th 2006

THE HUMBLE PETITON OF: CASEY WILLIAM HARDISON – POWd (Civ)
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Praying For *Certiorari* pursuant to s33(2) Criminal Appeal Act 1968

I. Brief overview:

1. Casey William HARDISON, a self-litigating US citizen, makes this submission under Section 7(1)(b) of the Human Rights Act 1998 which gives effect in domestic law to the rights and freedoms guaranteed under the European Convention on Human Rights. He was convicted of 6x Misuse of Drugs Act 1971 offences and sentenced to 20 years imprisonment.

2. Mr. Hardison asserts that in the instant case the sentence of 20 years imprisonment is disproportionately severe to the gravity of the acts committed and constitutes inhumane punishment and degrading treatment founded upon an Act apparently neutral on its face but discriminatory and prejudicial as applied.

3. Whilst generally where the trial Judge has passed a sentence within his discretion no point of law of general public importance can arise,[1] under the Human Rights Act 1998 a sentence disproportionately severe could constitute "inhumane punishment"[2] *especially* conjunct a discriminatory application of purportedly neutral legislation.

4. Please consider: HM Government upholds the right of persons to consume, possess, supply, and produce harmful drugs valued by the majority, i.e. alcohol and tobacco; but, denies persons equal rights vis-à-vis equally or less harmful drugs valued by minorities, such as the psychotropic drugs of the instant case. This inequity is achieved by Government excluding harmful drugs valued by the majority from the Misuse of Drugs Act 1971 without explanation and using the same Act to proscribe drugs valued by minorities without considering less restrictive options, such as licensed regulation. But, because this discrimination is not based on harmfulness – as a preponderance of evidence demonstrates that illicit drugs are no more harmful than licit drugs – the discrimination itself does not have a public health or public safety justification, the legitimate aim of drug proscription. Is the disparate treatment of persons concerned with drugs valued by minorities objective, reasonable and proportionate given the legitimate aim sought to be realised by the 1971 Act?

5. And although Hardison advanced, among other Convention rights, this equal rights argument at trial and on Appeal, Mr. Justice Keith stated, "…we do not regard it as necessary to address his argument in any detail. If there is any Convention right which is properly engaged by this argument it is that which guarantees the right to respect for one's private life…", however, as *R v Taylor* held, the prohibitions of the 1971 Act "did not amount to an unwarranted interference" with Hardison's rights.[3]

6. But *Taylor* does not bind this case because Hardison has invoked Article 14 protection *and* it falls within the *ambit* of a Convention right thus requiring this Court to strictly scrutinise 'his argument' and to interpret and apply the Convention to it "in a manner which renders its rights practical and effective, not theoretical and illusory. [The] failure by [the prior] Court to maintain a dynamic and evolutive approach [has risked] rendering it a bar to reform or improvement"[4] and exacerbated the inhumane punishment impugned thus leaving itself amenable to an Article 6 attack.

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[1] *R v. Ashdown* (1974) 58 Cr. App. R. 239
[2] *Weeks v. United Kingdom* [1987] 10 EHRR 293 para 47; see also *Hussain v. United Kingdom* [1996] 22 EHRR 1 para 53.
[3] *R v Hardison* [2006] EWCA Crim 1502 para 10; and see *R v Taylor* [2001] EWCA Crim 2263 paras 14 and 31
[4] *Stafford v United Kingdom* [2002] 35 EHRR 32 para 68

7. Thus, this *Certiorari petition* presents five deep questions:

   i. ***R v Taylor* – a Question of Necessity.** In *R v Taylor*,[5] a religious Cannabis user attempted to rely on Articles 8 and 9 of the Convention. But, at the Crown's urging, this Court, relied on 'inferences' drawn from the United Kingdom's subscription to the UN drug Conventions as 'evidence of the necessity of any interference' with Taylor's rights, in pursuit of the Government's 'legitimate aims'. Can 'inferences' drawn from the UN drug Conventions – which are not explicitly enabled by an Act of Parliament and which themselves explicitly allow non-compliance on human rights grounds – demonstrate a 'pressing social need' justifying interference with Hardison's Convention[6] rights?

   ii. **Article 14 – a Question of *ambit*.** In demonstrating that he has been the victim of discrimination, Mr. Hardison does *not* need to show that another Convention right has been breached. Such a restrictive approach would give no independent scope for the right under Article 14 itself. Instead, the Strasbourg Court has held that discrimination can arise whenever the complaint falls within the *ambit* of another Convention right.[7] Was Mr. Justice Keith right to place the instant case within the *ambit* of Article 8?

   iii. **Misuse of Drugs Act 1971 – neutral in principle?** The Misuse of Drugs Act 1971 was designed "to make it possible to control particular drugs according to their comparative harmfulness either to individuals or society at large when they were misused".[8] Thus, the Act draws a bright line between the inclusive 'drugs' in Section 1(2) and the exclusive 'controlled drug' in Section 2(1)(a). Is the Act neutral in principle and therefore of general applicability?

   iv. **Discrimination.** The guiding principle of Article 14 is that people in similar circumstances should not be treated differently without an objective and reasonable justification for that differential treatment. Yet, Mr. Hardison has been severely punished for being concerned with harmful drugs *valued by minorities* while those concerned with comparably harmful drugs *valued by the majority* are preferentially entitled to privacy, consumer choice, public protection and freedom of contract[9] through suitable regulation and/or the free market. Is there an objective and reasonable justification for this disparity of treatment and denial of equal rights and protection?

   v. **Inhumane Punishment.** Previously, where the trial Judge has passed a sentence within his discretion generally no point of law of general public importance can arise,[10] but, under the Human Rights Act 1998 a sentence disproportionately severe could constitute "inhumane punishment"[11] *especially* conjunct discriminatory and prejudicial administration of an ostensibly neutral Act. Is Mr. Hardison's sentence of 20 years imprisonment proportionate to the gravity of the acts committed? And, if not, should the sentence be varied?

8. Each of these deep issues will be dealt with substantively herein, but it is respectfully urged at the outset that this Court certify these points of law as matters of public importance and grant Leave to Appeal to the Right Honourable the House of Lords.

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[5] *R v Taylor* [2001] EWCA Crim 2263 paras 14 and 31
[6] *The European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) Cmd. 8969 www.echr.coe.int
[7] *Inze v Austria* [1987] 10 EHRR 394 para 36; *Rasmussen v Denmark* [1984] 7 EHRR 371 para 29
[8] HC 1031 (2006) *Drug classification: making a hash of it?*, Science & Technology Committee, July 31st 2006, Fifth Report of Session 2005-2006: Ev 53, Memoranda from the Government, para 1.6
[9] E.g. Sale of Goods Act 1979, Trade Descriptions Act 1968, and Consumer Protection Act 1987, etc.
[10] *R v. Ashdown* (1974) 58 Cr. App. R. 339
[11] *Weeks v. United Kingdom* [1987] 10 EHRR 293 para 47; see also *Hussain v. United Kingdom* [1996] 22 EHRR 1 para 53.

II. Circumstances of the instant case.

9. Mr. Hardison is a partly self-educated medical anthropologist. He has studied consciousness via the complex interrelationship between humans and entheogenic and/or entactogenic drugs,[12] primarily indolalkylamine and phenalkylamine neurotransmitters and their substantially similar analogues,[13] since 1993. He was found in possession of a chemical research laboratory within his domicile.

10. Hardison was arrested February 11th 2004 *on suspicion of being concerned* in the manufacture of controlled – Class A – substances and stood trial before His Honour Judge Niblett at Lewes Crown Court. Mr. Hardison carried out his own advocacy.

11. The Trial began on January 5th 2005 with a hearing of Hardison's submission that the application of the Misuse of Drugs Act 1971 to him in this case contravenes his Human Rights under Articles 3, 6, 8, 9, 10, 14 and 17 of the Human Rights Act 1998.

12. In essence, Mr. Hardison submitted: "he was aware that his conduct was in breach of the criminal law, and thus continuously and directly affected by the legislation". As such, Hardison "has been the victim of an interference with freedom from inhuman and degrading treatment, his right to respect for his private life, his freedom of thought *and* his freedom of religion, his freedom to receive ideas, and freedom from discrimination"… and that the totality of the 'War on Drugs' is aimed at the destruction of Convention rights for an entire class of 'drug users' whose preferences or tendencies are other than alcohol and tobacco.

13. There was considerable confusion, however, about the mode of hearing Hardison's Human Rights arguments, as the hearing occurred after HHJ Niblett had declared the start of trial and before a Jury was sworn. Still, the hearing was to determine if Mr. Hardison was entitled to rely on the Human Rights Act to stay the proceedings and challenge the compatibility, as applied, of the Misuse of Drugs Act 1971 before his Convention rights were violated any further.[14]

14. HHJ Niblett ruled against his attempt to rely on s7(1)b of the HRA 1998 constellating his reasoning around *R v Taylor*,[15] a similar but narrower argument. HHJ Niblett's contention was that "Hardison's arguments are misconceived" and that his only remedy lay at a Higher Court.

15. Thus, Hardison moved for Interlocutory Appeal to a competent Court, assuming any hearing after Trial had started *and* before a Jury was sworn, was indeed a Preparatory Hearing under s7(1)(a) of the Criminal Justice Act 1987. This created immense confusion, called into doubt the Custody Time Limits, made a Bail application immanent and called the fundamental declaration as to the start of trial into question. But, craftily, the Judge ruled that his declaration stood and that the Trial had indeed started, and, that the hearing was not a preparatory hearing even though the Jury had not been sworn. Thus, Hardison lost any opportunity of an Interlocutory Appeal *whilst* the QBD ruled that HHJ Niblett had no power to declare the start of a trial.[16]

16. During Trial, Hardison admitted to researching, producing, supplying, possessing, and consuming some proscribed molecules; but, asserted that those acts were "intrinsically innocent, though forbidden by the government" via a "discriminatory, debasing, degrading, and demeaning" policy.

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[12] **entheogenic** *nov. verb* – literally: becoming divine within; **entactogenic** *nov. verb* – literally: becoming touched within; Ruck, C. A. P., et. al. (1979) Entheogens, *Journal of Psychedelic Drugs* 11: 145-146; Nichols, D. E. (2004) Hallucinogens, *Pharmacology & Therapeutics* 101: 131-181; see also: www.erowid.org and www.maps.org.

[13]. Shulgin, A.& Shulgin, A. (1991) PiHKAL: *A Chemical Love Story*, (1997) TiHKAL: *The Continuation*, Transform Press

[14] Transcript of Judge's Reasons for Ruling on abuse of Process/Human Rights Arguments at p3G

[15] *Ibid.* at p13D; *R v Taylor* [2002] 1 Cr. App. R. 37, [2001] EWCA Crim 2263, para 14 and 31

[16] Transcript of Judge's Ruling Re: Custody Time Limits *and* Queen's Bench Divisional Court CO/356/2005

17. Having pled his case on the fundamental philosophical and political level of what it means to be truly free, Hardison asked the Jury to acquit him; but, to no avail. He was convicted March 18th 2005 on 6x Misuse of Drugs Act 1971 offences:

Count 1 **2C-B**; Production, 20 years
Contrary to s4(2) MDA 1971
Count 3 **DMT**; Production, 20 years
Contrary to s4(2) MDA 1971
Count 4 **LSD**; Production, 20 years
Contrary to s4(2) MDA 1971
Count 6 **LSD**; Possession/intent, 15 years
Contrary to s5(3) MDA 1971
Count 7 **5-MeO-DMT**; Possession, 1 year
Contrary to s5(2) MDA 1971
Count 8 **MDMA**; Exportation, 7 years
Contrary to s170(2)(b) CEMA 1979

18. On Appeal Hardison again submitted that the application of the Misuse of Drugs Act 1971 in this case contravenes his Human Rights under Articles 3, 6, 8, 9, 10 and 14 of the HRA 1998. These detailed arguments were set out in Appendix A.

19. The skeleton arguments in Appendix A also demonstrated why the reasoning in *R v Taylor* was erroneous and why it should not be applied to dismiss the Appeal or the Renewed Application without strict scrutiny. Again, to no avail.

20. And though the Conviction and Sentencing Appeals are separate arguments, one squarely rests on the other; if there had been a declaration of incompatibility on Human Rights grounds there would be very deep issues to consider vis-à-vis proportionate sentencing. In particular, see paragraph 56 of Appendix A, Hardison asserted the sentence of 20 years imprisonment was disproportionate to the gravity of the acts committed and constitutes inhumane punishment and degrading treatment founded upon debasing discrimination.

21. Mr. Rudi Fortson, counsel *only* for Hardison's Sentencing Appeal, in his Advice/ Skeleton Argument in Support of an Appeal against Sentence, also drew attention, in paragraphs 16 and 17, to the disproportionate sentence in relation to the acts Hardison performed. However, Mr. Fortson did not raise this issue in oral arguments though instructed to do so.

22. Consequently, the Court upheld Hardison's 20 years sentence of imprisonment:

    i. without the Court requiring the Government to demonstrate in concrete terms the 'pressing social need' for such a severe deprivation of liberty and the necessity to treat persons concerned with *some but not all* drugs so disproportionately; and
    ii. without requiring the Government to provide scientific evidence that the *non-narcotic* psychotropic substances of this case *in fact* present greater risks or harm to himself or others than do alcohol or tobacco;[17] but most importantly
    iii. without *any* evidence that *he* has actually *in fact* risked causing himself, individuals or society any significant harm greater than alcohol and tobacco.

23. Therefore, Mr. Hardison contends that his 20 years imprisonment is *arbitrary* and based merely on *assertion* that the molecules concerned herein are 'not harmless' or 'not without risk', an *irrational* and *disproportionate* standard violating the Rule of Law. Any elective behaviour could be proscribed and severely punished upon this standard especially an elective behaviour which 'offends, shocks, or disturbs' the majority in any way.[18] Could you imagine a 20 year sentence for production of alcohol or tobacco? No, well how about a peerage or a Queen's award for industry?

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[17] HC 1031 (2006) *Drug classification: making a hash of it?*, Science and Technology Committee, Fifth Report of Session 2005-2006, July 31st 2006, Ev 1-17, incorporating HC-900-ii, Q 222–230 & 250–256; *Cf.* Appendix 14. Ev 110-117, particularly Table 3, and *'The Evidence Base for the Classification of Drugs'*, Rand Europe (2006) Technical Report, www.rand.org/pubs/technical/TR362/

[18] *Handyside v. United Kingdom* [1979-80] 1 EHRR 737 para 48

III. Inferences drawn from UN drug Conventions cannot demonstrate a 'pressing social need' nor justify interference with Hardison's rights and freedoms?

24. At each stage Hardison has asserted his ability to rely on s7(1) of the Human Rights Act 1998 and at each stage his arguments have been dismissed – without strict scrutiny and without any demonstration by the Government objectively justifying its drug policy as proportionate and necessary – by Courts citing *R v* (Paul Simon) *Taylor*.

25. Paul Simon *Taylor*, a Rastafarian *Cannabis* user, attempted to rely on Articles 8 and 9 of the Convention; but at the urgings of the Crown, this Court, relied on inferences drawn from the United Kingdom's subscription to the 1961 and 1988 UN drug control Conventions as "evidence of the necessity of any interference" with Taylor's rights, in pursuit of the Government's legitimate aim … "to combat public health and public safety dangers arising from such drugs".[19]

26. But, *Taylor* was decided on two very narrow points: 1) entitlement of a defendant to stay proceedings in Crown Court with a religious defence, and 2) whether questions of proportionality and necessity were proper questions for consideration by a jury. So, this Court was wrong to rely on *Taylor* in the instant case because Hardison was *not* attempting to rely on a human rights defence in front of a Jury nor was he seeking to burden the Jury with a proportionality and necessity exercise.

27. Instead, Hardison was seeking to stay the Trial proceedings as a continuing violation of his rights and freedoms until compatibility with the HRA 1998 was determined by an empowered Court. And despite knowing that a declaration of incompatibility would *not* affect the validity of the Misuse of Drugs Act 1971, Hardison had faith that *if* the case was remanded to Crown Court no Jury aware of a declaration of human rights incompatibility would deliver a guilty verdict.

28. Thus, whilst *Taylor* may have controlled on the stay of process at the Crown Court, *Taylor* did not control on Appeal. And because Hardison continues to assert that the deprivation of his Liberty is a violation of his rights, Government must objectively justify the disparate treatment impugned and if they cannot the Act must be read and given effect in a way which is compatible with Hardison's rights and freedoms, otherwise a declaration of incompatibility under s4 of the HRA 1998 is manifest.

29. Therefore, Hardison's submissions require this Court to strictly scrutinise 'his argument' and to interpret and apply the Convention to it "in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by this Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement".[20]

30. Further, the employment of *Taylor* by the Court cannot itself survive strict scrutiny nor constitute 'evidence of the necessity of the interference' with Hardison's Convention rights as all of the UN Conventions explicitly allow exemption from enforcement on human rights and constitutional grounds preserving the "inherent dignity and the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world".[21]

31. Instead, the Court in *Taylor* and now *Hardison* should have relied on human rights instruments and argued that the Government has a paramount and vital constitutional interest in securing human rights to everyone in their jurisdiction, arguing that the UN Conventions and the UN *Charter* explicitly provide for this.[22]

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[19] *R v Taylor* [2001] EWCA Crim 2263 para 14
[20] *Stafford v United Kingdom* [2002] 35 EHRR 32 para 68
[21] *Preamble*, 1948 United Nations *Universal Declaration of Human Rights*
[22] Article 2(7) United Nations *Charter*; and, Article 1 *European Convention on Human Rights*

32. As noted in *Taylor*, Article 36(1)(a) of the Single Convention on Narcotic Drugs 1961 provides that the UN Conventions are 'subject to [the United Kingdom's] constitutional limitations'. This clause is repeated throughout the three relevant UN Conventions. And crucially, Article 14(2) of the 1988 UN Convention states:

> **'The measures adopted shall respect fundamental human rights…'**

33. Indeed, the Political Declaration of the 1998 United Nations General Assembly states that drug strategies require an:

> "integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms".[23]

34. The UN Universal Declaration on Human Rights (UDHR) Article 2 provides:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UDHR Article 7 provides:

> All are equal before the law and are entitled without any discrimination to equal protection of the law.

35. Measured against the UDHR, the UN Conventions are themselves a source legitimising the discrimination between harmful drugs valued by the Western majority, alcohol and tobacco, and equally or less harmful drugs valued by minorities. The former drugs are excluded from the UN drug Conventions without explanation while the latter are prohibited, without explanation, rather than regulated through licensing or other less restrictive, more suitable and proportionate means.

36. Thus, the UN drug Conventions are contrary to the "inherent dignity and the equal and inalienable rights of all members of the human family".

i. The legitimate aim of the UN Conventions is the protection of public health and safety, specifically the limitation of harmful non-medical use of *all* drugs, not merely the selective elimination of *all* non-medical use of certain drugs valued by minorities; and,
ii. The denial of the equal rights of consumer choice, protection and trade rights for drugs valued by minorities is contrary to UDHR Article 2; and, concomitantly denies equal protection from the harms of alcohol and tobacco contrary to UDHR Article 7.
iii. As such, the UN drug Conventions impart a discriminatory assessment – which has been adopted near-universally – of the 'fair balance' to be struck between rights of the community to public protection and the rights of the individual to private life, autonomy, self-determination[24] and free expression.

37. But as the Misuse of Drugs Act 1971 *does not* explicitly declare that its intent or purpose is to give further effect to *any* international treaty such as the three UN drug Conventions, this Court should heed Lord Templeman's dicta:

> A treaty to which Her Majesty's Government is a party does not alter the law of the United Kingdom. A treaty may be incorporated into and alter the laws of the United Kingdom by means of legislation. [25]

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[23] UN General Assembly A/RES/S-20/2, June 10th 1998, www.un.org/ga/20special/poldecla.htm
[24] *Pretty v United Kingdom* [2002] 12 BHRC 149 para 61
[25] *JH Rayner (Mincing Lane) Ltd v DTT* [1990] 2 AC 418 (HL) para 476

38. Thus, any concerns for breaches of the UN Conventions is a matter of the international community and not judicially enforceable or employable by a domestic Court. So, should the United Kingdom Executive breach its obligations under the UN drug Conventions, any claims could only be raised in accordance with international law. Further, it is not competent for Government to fetter its Executive action so that it may be prohibited from acting in future in the public interest.[26]

39. Accordingly, implementing an international treaty or convention, in itself, cannot constitute a 'legitimate aim' or a 'compelling state interest'.[27] In *Kokkinakis v Greece*[28] it was held that "merely reproducing the wording" of a statute did not constitute conclusive evidence of a 'pressing social need'.

40. The arguments made in *Taylor* and employed in *R v Hardison* show the depth to which this Court goes in determining the legitimate aim, or the compelling State interest, is paramount. This is perhaps best illustrated by an example:

> If a government seeks to prevent deaths caused by an outbreak of a deadly disease, then protecting the health and lives of the public should be its 'compelling state interest' or 'legitimate aim'. It may be that the State is trying to achieve this aim by placing an infected area under quarantine and shooting anyone who crosses an emergency cordon. Shooting people does not then automatically become the 'compelling state interest' or 'legitimate aim'; the aim would remain the protection of public health and life. It would seem foolish therefore for a Court to argue that shooting people is the legitimate aim in this case, unless it is 100% certain that it is the only realistic solution. If this policy continued for some time, it would seem ridiculous for the State to argue; 'granting individuals certain rights would interfere with our historic policy of shooting people!' One would expect the State to be able to prove that shooting people was still absolutely necessary to achieve its original stated goal of protecting the health of the people.

41. So, prohibition, of some but not all drugs, should not therefore be classed as an end in itself; it must be seen as a possible means to achieve an end. Prohibition may, on the evidence, be a failed solution; hence for Courts to argue that prohibition is a legitimate aim or compelling state interest is irrational. The aim of this Court should therefore be to determine a more fundamental interest that is at stake, such as "combating public health and public safety dangers arising from…drugs",[29] and evaluate if a selective, discriminatory, and prejudicial prohibition equates to this.

42. And because the Human Rights Act 1998 *does* explicitly grant this Court the power to hear and "give effect to the rights and freedoms guaranteed under the European Convention on Human Rights", it follows that a legal test[30] using proportionality should favour the protection of human dignity and fundamental rights over the speculative value of a discriminatory, prejudicial, and selective drug prohibition.

43. But, before we engage further, it is perhaps germane to this conversation to briefly represence the struggle for equal rights and equal protection with the words Martin Luther King Jr. wrote to his brethren from a Birmingham, Alabama jail cell in 1963:

> An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. That is sameness made legal.[31]

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[26] *Redereaktiebolaget Amphitrite v The King* (1921) 3 KB 500; *Cf.* Article 2(7), UN *Charter*
[27] *Cf. Gonzales et. al. v. Uniao Do Vegetal et al.* (2006) 546 U.S.__ (Slip Opinion) at p17 "the fact that [DMT – Count 3] is covered by the Convention, however, does not mean that the Government has demonstrated a compelling interest".
[28] *Kokkinakis v Greece* [1994] 17 EHRR 397 para 49
[29] *R v Taylor* [2001] EWCA Crim 2263 para 14
[30] *Cf. R (Daly) v Home Secretary* [2001] 2 AC 532 para 27; *Silver v United Kingdom* [1983] 5 EHRR 347 para 97
[31] Martin Luther King Jr., April 16, 1963, *Letter from a Birmingham Jail*

IV. Setting the Stage – Article 14 and the question of *ambit*.

44. Article 14 of the European Convention on Human Rights (ECHR) provides:

> 1) The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, *property*, birth or *other status*. [emphasis added]

45. In demonstrating that he has been the victim of discrimination in relation to a Convention right, Hardison does *not* need to show that another Convention right has been breached. Such a restrictive approach would give no independent scope for the right under Article 14 itself. Instead, the Strasbourg Court has taken the view that discrimination can arise whenever the complaint falls within the *ambit* of another Convention right.[32]

46. However, a law purporting general applicability, like the 1971 Act, will not be held to be unjustly discriminatory if in its impact on Convention rights Government pursues a legitimate aim prescribed by the Convention right corresponding to a pressing social need in an *objective*, *reasonable* and *proportionate* manner.[33]

47. Accordingly, this Court must reach and determine if the preferential treatment conferred on persons concerned with harmful drugs *valued by the majority*, i.e., alcohol and tobacco, vis-à-vis drugs valued by minorities is objective, reasonable and proportionate in light of the intent and purpose of the Misuse of Drugs Act 1971.

48. In his celebrated tome *American Constitutional Law*, Laurence Tribe, Harvard Professor and esteemed American Constitutional lawyer, described the impugned disparity of treatment caused by Government banning some drugs but not others:

> If in fact the state were to prohibit the use of all substances posing a given level of threat to the user, including, say, alcohol, caffeine, and nicotine – then the issue posed would be: to what degree can government veto the individual's choice to find expression through an activity entailing more than the customary degree of risk to the user? … But in fact Government enforces no such uniform prohibition, and tolerates widespread use of substances which are almost certain to cause more extensive harms than those associated with the substances the state chooses to ban.
>
> The reason for the disparity of treatment might be difficult to prove, but is not difficult to discern. Substances that have long appealed to the great majority, whose use might reasonably be thought to reinforce the existing order by inducing mental states of acceptance, lubricating social interaction, and ameliorating the tensions of contemporary life, understandably tend to become integrated into lawful practice. Thus smoking cigarettes, sipping coffee, and drinking alcohol, are all activities validated by law and custom. On the other hand, substances that have tended to appeal to less conventional groups – and particular to groups whose lifestyles have challenged conventional morality – are a source of anxiety to the majority and have been natural targets for criminalization, despite the enormous difficulty of enforcing the resulting laws evenhandedly without an inordinate and indeed quite unthinkable commitment of resources. [34]

49. Thus, having glimpsed the disparity, it is respectfully submitted at the outset that the Misuse of Drugs Act 1971 *prima facia* intrudes into the *ambit* of several Convention rights and that Article 14 confers equal protection. What follows in this section is a brief review of the key Convention rights in relation to Mr. Hardison's original Human Rights submissions at Crown Court and on Appeal.

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[32] *Inze v Austria* [1987] 10 EHRR 394 para 36; *Rasmussen v Denmark* [1984] 7 EHRR 371 para 29

[33] *Pretty v United Kingdom*, [2002] 35 EHRR 1; *McShane v United Kingdom* [2002] 35 EHRR 23

[34] Tribe, Laurence H. (1988) American Constitutional Law, 2nd Ed., Foundation Press, §15-7 page 1325-6

50. ECHR Article 8 provides:

> 1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others.

51. US Supreme Court Justice Louis Brandeis defined the right of privacy as "the right to be let alone – the most comprehensive of rights and the right most valued by civilized men."[35] This eloquent formulation reveals the animating paradox of the right to privacy: it is revered by those who live within civil society as a means of repudiating the claims society would make of them.

52. As with several Articles of the Convention, the rights contained in 8(1) are subject to limitations set out in 8(2). In some cases, the interference may be justifiable. When a person's behaviour *does directly affect* other people, it is, by its very nature, social conduct and thus may become amenable to reasonable social and government control. But so long as a person's decision and subsequent conduct do not threaten others with harm, a person's actions lie within a protected sphere of human liberty.

53. Liberty's submission to the 2002 Home Affairs Committee, HC-318, *'The Government's Drug Policy: is it working?'* embodied this philosophical and practical reasoning:

> …as part of a free, democratic society individuals should be able to make and carry out informed decisions as to their conduct, free of state interference, or in particular criminal law, unless there are pressing social reasons otherwise. Liberty is of the view that the decision by an individual to take drugs is such a decision and comes within the ambit of personal autonomy and private life. John Stuart Mill argued that the state has no right to intervene to prevent individuals from harming themselves, if no harm was thereby done to the rest of society. Such fundamental rights are recognised by government, both allowing individuals to partake of certain dangerous activities, for example drinking, extreme sports, and also international treaties.[36]

54. Encompassed within *J.S. Mill's* sovereign realm of liberty is:

> the inward domain of consciousness, in the most comprehensive sense; *liberty of thought* and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological. . . 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.[37] (Emphasis added)

55. According to the Case Summary by Richard Barton, the Crown Prosecutor in this case, Hardison "had been for a number of years a committed advocate of the legalisation and widespread use of [entheogenic[38] *&* entactogenic drugs]."[39] Spot on; Hardison has *consecrated* his life to the pursuit of *Cognitive Liberty* and the origins of religious *con-science*. As such, he has already dedicated a third of his life to the study of shamanism, entheology, entheopharmacognosy, and medical anthropology.

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[35] *Olmstead v United States* (1928) 277 U.S. 438, 478 (dissenting opinion).
[36] HC 318 (2002) Home Affairs Committee, *The Government's Drug Policy: Is it Working?*, HC 318-II, Ev 126-7
[37] Mill, John Stuart, "On Liberty" (1859) p13
[38] n12 *supra*, *Cf.* Ott, J. (1993) Pharmacotheon: *Entheogenic Drugs, their plant sources and history.* WA: Natural Products Co.
[39] Case summary *R v Hardison* (2004) Richard Barton, Crown Prosecution Service, p1

56. And, having dedicated his life to the conversations and peoples constellated around these alkaloids, it had not escaped Hardison's attention that the molecules of the instant case have immense therapeutic and spiritual value. Indeed, tens of thousands of man-hours have been invested in their research before (and after) their proscription. As such, alchemy *&* chemistry – enabling self-discovery – was a natural addition to his field work and explorations with various shamanic peoples.

57. It was this field work and an associated conference on *Eboga*, a sacred African rainforest shrub, which brought him to England. Though, the Crown mantra was that Hardison came to England, 'out of greed, to deliberately set up a market for these molecules' – as if one did not already exist – and to escape the United States because it was 'getting too hot'. Nothing could be further from the truth. Hardison had come to England to attend the conference facilitated by England's finest rose: Ms. Hattie Wells, an ethnobotanist. The research laboratory became a way to 'be fully self-supporting, declining outside contributions' *and* stay in England with Hattie.

58. Hardison had purchased all property necessary for his research laboratory including equipment, precursors, solvents and reagents under his US and UK business names: Atha Research Foundation and Atha Research Limited, respectively. He worked from his domiciles but also had a small permanent office in Hove, BN3 3RU. As stated on the UK letterhead Atha Research Limited was involved in 'Custom Organic Synthesis and Phytochemical Discovery'.

59. Hardison researched a diversity of alkaloid psychotropics found in indigenous plants or animals, *including man*, and substantially similar molecules designed by him; very few of the alkaloids were proscribed. But*,* with the few that were proscribed, y*es* Mr. Hardison 'deliberately flouted the law' as an act of civil disobedience – indeed a declaration of academic and religious freedom – thus expressing *equal rights* with persons concerned with harmful drugs valued by the majority, alcohol and tobacco.

60. Recalling the words of Martin Luther King Jr., "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."[40] Accordingly, the very existence of the impugned legislation continuously and directly affects Hardison's private life and his freedom of contract; he could either give up his life's work or continue to follow his *conscience* knowing full well, one day he, like King, may have to face imprisonment "to arouse the conscience of the community" over a deeply misanthropic policy.

61. And even if this Court may 'think [Hardison's] conduct foolish, perverse or wrong', was his pursuit in fact within the realm, the *ambit* of private life? Was he merely 'framing the plan of [his] life to suit [his] own character'?

62. Strasbourg Court precedence emphatically says, *yes!*

> There appears…to be no reason of principle why [an] understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature …This view is supported by the fact that, as was rightly pointed out by the Commission, it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not. Thus, especially in the case of a person exercising a *liberal* profession, his work in that context may form part and parcel of his life to such a degree that it becomes impossible to know what capacity he is acting at a given moment. [41] (Emphasis added)

[40] Martin Luther King Jr., April 16, 1963, *Letter from a Birmingham Jail*

[41] *Niemetz v Germany* [1992] 16 EHRR 97 para 29-30; *Cf. Pretty v United Kingdom* [2002] 12 BHRC 149 para 62

63. ECHR Article 9 provides:

> 1) Every one has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2) Freedom to manifest one's religion shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health and morals, or for the protection of the rights and freedoms of others.

64. Freedom of thought, conscience, and religion within the meaning of the Convention is the foundation of a 'democratic society'; the pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.[42]

65. Article 9(1) is generally interpreted in light of 'religion and belief' with *only* the accompanying freedom to *manifest* that belief in public limited where necessary in a democratic society' in pursuit of a legitimate aim.[43]

66. Nowhere is there intended in the Convention for a State to have *any* form of control over, influence upon, or interference in an individual's thoughts or thought processes.

Article 9(2) does <u>not</u> prescribe <u>any</u> interference in freedom of thought.

67. Because what we experience as thought, consciousness, or perception has its physical basis in electrochemical phenomena in the cerebral cortex, psychotropic drugs are a very direct and intimate means of modifying thought.

68. Psychotropic drugs mediate or alter, through excitement, inhibition, or mimicry, the primary chemical messengers or neurotransmitters of the brain; it is these *endo*genous molecules that have the responsibility of conveying information, or mediating, between the cells. Therefore, psychotropic drugs are identical or substantially similar *exo*genous ***molecular media*** which intercalate or mediate in the body's internal communications systems affecting the psychic communications of the individual's brain and thereby transforming thoughts and perception.[44]

69. As such, psychotropic drugs are important mind-body psycho-technologies. Laws that proscribe psychotropic drugs offend *Cognitive Liberty*, shackle academic freedom, and stifle the advancement of scientific thought.[45]

70. Thus, according to Richard Glen Boire, *Juris Doctor* and director of the Center for Cognitive Liberty and Ethics, 'freedom of thought' must mean, at minimum, that each person is free to direct one's own consciousness and is the legal right of individuals to autonomous self-determination over their own neurochemistry.[46]

71. Indeed, the right of a person to liberty, autonomy, and privacy over his or her own consciousness or psyche is situated at the core of what it means to be a free person. Nothing is more private, more intimate, more properly within the sphere of each individual's sovereignty than the interior environment of his or her own cranium.

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[42] *Kokkinakis v. Greece* [1994] 17 EHRR 397 para 31

[43] *Arrowsmith v. United Kingdom* [1981] 3 EHRR 218; see Archbald 2006 §16-115

[44] *Black's Law Dictionary* 8th ed: **drug**, *n*, **2**. a natural or synthetic substance that alters one's perception or consciousness.

[45] *Cf.* Articles 13, EU *Charter of Fundamental Rights* 2000; Roberts, T. B. (1997) Academic and Religious Freedom in the Study of the Mind, In *Entheogens and the Future of Religion*, Forte, R., (Ed.), SF, CA: Council on Spiritual Practices.

[46] Boire, Richard G. (1999) On Cognitive Liberty, *Journal of Cognitive Liberties*, v1n1: 7-13 www.cognitiveliberty.org

72. ECHR Article 10 provides:

> 1) Every one has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises.
>
> 2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the preventions of disorder or crime, for the protection of health or morals, for the protection of the reputation and rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

73. The right to freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also that *offend, shock or disturb* the State or *any* sector of the population. All forms of expression are included, through *any* medium; and with *any* content….Such are the demands of that pluralism, tolerance, and broadmindedness without which there is no 'democratic society.' "[47] (Emphasis added)

74. Despite the fact that it may require 'broadmindedness' and 'tolerance' on the part of this Court to include information and ideas communicated via ingested *biochemical messengers* or *drugs* found in fungi, plants and animals or in the flask of a chemist, Article 10 makes it clear; its scope is to *include* all forms of information 'regardless of frontiers,' whether international boundaries or the blood brain barrier of human primates.

75. And because the human mind is *the* primary research instrument, evidence about the nature and functions of the human mind is the most significant data possible; for all information is coloured by it. ***Knowledge is power***; and knowledge of non-neurotypical states of consciousness epitomizes the capacity of the human brain for transformation.

> **As the magnifying power of the microscope made modern biology and medicine possible, so too the magnifying power of psychotropic drugs offers to advance epistemological paradigms into hitherto undreamt of realms.**

76. So, as the central organ concerned with human decision-making, the brain and its higher cognitive processes demand unique legal consideration in light of a growing body of information about brain function, and in anticipation of ever greater precision in understanding and manipulating higher cognitive processes. It is therefore incumbent upon this Court to anticipate individual rights *and* responsibilities in relation to these evolutive developments.

77. Mr. Hardison asserts that the right and freedom to sovereignty and control over one's own consciousness and electrochemical thought processes is the necessary substrate, 'the matrix' for virtually every other human freedom. What goes on inside a person's body and cranium is entitled to autonomy, privacy and self-determination.

78. Further, the oblique legislative proscription of 'unorthodox' experience of non-ordinary states of consciousness, occasioned particularly by the psychotropic molecules of this case, impinges Mr. Hardison's ability to "receive information" about his own brain, mind, and/or consciousness.

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[47] *Handyside v. United Kingdom* [1979-80] 1 EHRR 737 para 48

79. ECHR Protocol 1, Article 1 provides:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

80. Mr. Hardison's domicile, equipment, precursors, solvents, reagents and psychotropic molecules are possessions he was peacefully enjoying to 'push back the frontiers'[48] in this realm and are entitled to *all* historic liberties conferred on private property.

81. In the English speaking world, especially since the seventeenth century, the word *freedom* has meant the inalienable right to life, liberty and property, the first two elements resting squarely on the last. The quintessential feature of capitalism as a political economic system is the security of private property and a free market, that is, the right of every competent adult to trade in goods and services, subject only to reasonable and proportionate "restrictions upon freedom of contract as are necessary" in the eyes of the legislature.[49]

82. Consider slavery: the legality of slavery firmly rested on the definition of the Negro as property, a definition that could not be challenged within the slave system. When the judicial system of the United States finally *allowed* it to be challenged, in the celebrated *Dred Scott*[50] case, the formal articulation of the controversy signalled the end for slavery. Supreme Court Justice Taney, in his judgment, specifically cited the fact that Negroes were bought and sold like property as proof that they were property.

83. The point: less than a century after the abolition of slavery and the legal declaration of some human beings as property, drug prohibition legally declared *some* drugs and paraphernalia as *not* property. From the fiction that Negroes were *not* their own property, allowing whites to enslave blacks, to the fiction that *some* drugs have the power to enslave and therefore must be outlawed, private property rights have been usurped by policies *unconsciously* motivated by prejudice and ideology.[51]

84. Today harmful drugs valued by the majority of Western peoples retain their status as property by being declared *not* drugs as a 'ban would likely be "dangerous"',[52] whilst special draconian schemes have been created to permanently deprive persons – concerned with harmful drugs valued by minorities – of their property.

85. But as "Government is instituted to protect property of every sort",[53] the interference with Mr. Hardison's property must be justified by the State. Accordingly, the State must demonstrate that a 'fair balance' has been kept between community interests and the rights of the person entitled to enjoyment.[54]

86. Mr. Hardison asserts that with the class of property valued by minorities – denoted as 'controlled drugs' – this fair balance has not been struck, certainly not in equity with the drugs alcohol and tobacco.

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[48] Case summary: *R v Hardison* (2004) Richard Barton, Crown Prosecution Service
[49] *National Westminster Bank plc v Morgan* [1985] A.C. 686 at 708
[50] *Dred Scott v. Sandford* (1857) 60 U.S (19 How.) 393
[51] Szasz, T. (1992) *Our Right to Drugs: The Case for a Free Market*. NY: Syracuse University Press.
[52] *Cf. FDA v. Brown & Williamson Tobacco Corp* (2000) 529 U.S. __ tobacco 'safer' when 'not prohibited'
[53] Madison, James (1792) 'Property', *National Gazzette*, March 29, 1972
[54] *Stran Greek Refineries & Stratis Andreadis v Greece* [1994] 19 EHRR 293 para 169; *Fredin v Sweden (No 1)* [1991] 13 EHRR 784 para 51; *Sporrong & Lönnroth v Sweden* [1982] 5 EHRR 35 para 69

87. ECHR Article 6 provides:

> 1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

88. A guiding principle of Article 6 is that there cannot be a fair civil or criminal trial before a court which is, or appears to be, biased against the defendant or litigant, such as the Court in *Dred Scott*. Thus, this Court must be concerned with both the subjective and objective elements of independence and impartiality.

89. Today, the near-universal discrimination and employment of pejorative language against minorities who value *different* drugs than the majority produces prejudicial affects and has precluded, thus far, a fair determination by an impartial tribunal of the *rights* and *responsibilities* enjoyed by those concerned with drugs valued by minorities. Our legal system cannot remain unaffected by these prejudices.[55]

90. And so, with deep wisdom, the Strasbourg Court has recognised that discrimination can occur when a general policy or practice has a disproportionate, prejudicial effect or disparate impact on a particular group, even if such an effect was not intended.[56]

91. Indirect discrimination leads to social exclusion, political marginalisation, and personal humiliation of minorities and is related to systemic discrimination in which "discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief … that the exclusion is the result of 'natural' forces, for example, that women 'just can't do the job"'.[57] Or, as in this case any person concerned with drugs valued by minorities is 'deviant',[58] 'evil',[59] 'sick',[60] even sub-human and therefore less worthy of the full protection of the law.

92. When those concerned with prohibited drugs are perceived to be immoral, weak, and prey to an inescapably dangerous 'drug evil', the public perceives itself as needing to be protected from it and, all too often, from those who are concerned with it. In such a setting, prohibition, abstinence and mandatory treatment or incarceration are perceived as being necessary. Thus it is believed that those concerned with some drugs need to be controlled, isolated, or confined, either by social-exclusion, self-isolation, or imprisonment. These beliefs lead easily to the passage and persistence of laws that reinforce these views until such time as the become norms. As Aldous Huxley wrote in his *Brave New World* – "62,400 repetitions make one truth."

93. The determinations to self-medicate, self-enable, self-enhance and/or self-explore by self-administration, "involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the [Human Rights Act 1998]. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."[61]

94. Accordingly, it is respectfully urged that this Court *affirms* that this case engages at minimum the *ambit* of private life and the protections which emanate from it.

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[55] *Cf.* www.judgesagainstthedrugwar.org; www.leap.cc

[56] *McShane v United Kingdom* [2002] 35 EHRR 23 para 135, *Hugh Jordan v United Kingdom* [2001] App. No. 24746/95, Judgment of 4 May 2001, para 154

[57] *CNR v Canada* (Human Rights Commission) [1987] 1 SCR 1114 para 34

[58] www.unodc.org/youthnet/youthnet_youth_drugs.html 'bio-chemical processes that are deviant'

[59] *Cf. Preamble*, UN *Single Convention on Narcotic Drugs* 1961

[60] Drugs Bill 2005 Part 3; *Cf.* www.publications.parliament.gov.uk/pa/jt200405/jtselect/jtrights/47/4706 para 3.22

[61] *Planned Parenthood of Southeastern Pa. v. Casey* (1992) 505 U.S. 833, 852. *Mutatis mutandis*

V. The Misuse of Drugs Act 1971 – generally applicable? [62]

95. The preamble to the Misuse of Drugs Act 1971 (MDA) reads as follows: "An Act to make provision with respect to dangerous or otherwise harmful drugs."

96. The primary legitimate aim of the Act is the reduction of risks to the public, namely the protection of public health, safety and order, specifically the limitation, reduction, prevention and possible elimination of *harmful* non-medical consumption of *all drugs*.

97. Section 1 of the Act creates the Advisory Council on the Misuse of Drugs (ACMD), and charges them with a duty to keep under review the situation in the United Kingdom with respect to drugs: 1) which are being misused; 2) appear likely to be misused; and 3) the misuse of which is having "harmful effects" or appears "capable of having harmful effects sufficient to constitute a social problem"; and notably to "advise the government on measures (whether or not involving changes in the law) which in the opinion of the Council ought to be taken for preventing the misuse of such drugs or dealing with the social problems connected with their misuse". In particular the ACMD must develop measures for:

    i. restricting the availability or supervising the arrangements for the production and supply of dangerous or otherwise harmful drugs;
    ii. facilitating advice and treatment for persons affected by the misuse of such drugs;
    iii. promoting cooperation between various professional and community services which have a part to play in dealing with social problems related to the misuse of such drugs;
    iv. undertaking research designed to promoting a deeper understanding of problem drug use and the social problems connected with the misuse of such drugs;
    v. educating the public about the dangers of misusing such drugs and promoting efforts to give publicity to such dangers and thereby minimise drug consumption risks and harms.

98. The use of the inclusive 'drugs' in Section 1(2) juxtaposed the exclusive 'controlled drug' in Section 2(1)(a) suggests that no drug whatsoever is or could be immune from the Act; thus, the Act appears neutral and of general applicability.

99. Section 37(2) of the Act, 'Interpretation', states "References in this Act to misusing a drug are references to misusing it by taking it". 'Misuse' itself is undefined. And, although the Act does not mention 'non-medical use', it is widely accepted amongst professional bodies that 'misuse' means use for "other than medicinal purposes".[63] As such, possession, supply, production, import and export are *not* forms of 'misuse'.

100. Schedule 1 constitutes the ACMD to be interdisciplinary mandating the service of professionals having relevant and sufficient knowledge in the fields of chemistry, medicine, pharmacology, psychiatry, and the social services, showing *prima facie* that policy and classification was designed to evolve with new evidence.

101. And because a failure to maintain a dynamic and evolutive approach would seriously undermine the primary legitimate aim, evidence must include:

    a. Objective evidence of drug risks or harms distinct to the consumer and to society;
    b. Objective baseline for evaluation and feedback in meeting the legitimate aims; and
    c. Objective evidence of the suitability of regulatory options in achieving the primary legitimate aim of reducing risks or harm to the public when drugs are misused.

102. There is no *prima facie* indication that ACMD advice should exclude any drug or that their regulatory recommendations should be limited or *fettered* in any way.

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[62] Synthesised conjunct Fortson, R. (2006) Misuse of Drugs and Drug Trafficking Offences, 5th Ed. Sweet & Maxwell
[63] n8 *supra*, HC 1031 (2006) Appendix 14, Ev 110, ACMD

103. Although the SSHD is under no obligation to accept ACMD advice and regulatory recommendations for dealing with the harmful effects of *any* drug, the Act is maintained by the ACMD as it endures through time by virtue of requiring the Secretary of State to consult the Advisory Council before any draft Order is laid before Parliament, under s2(5), and before the making of any Designation Order, under s7(4), or any Regulation, as per s31(3).

104. Section 7 of the MDA 1971 allows for regulations to be made which authorise activities otherwise made illegal under the Act. The Regulations[64] identify who may legitimately handle particular drugs, describe the circumstances in which drugs may be handled and control the purposes for which a particular drug may be applied. They also regulate where a controlled drug may be produced or supplied.

105. Section 10 confers power on the SSHD to make regulations for preventing misuse of controlled drugs, including: recordkeeping, labelling, transporting, disposal, as well as regulating the methods, requirements, prohibitions, and information collection for controlled drug prescription to 'addicts' and non-addicts. Section 22 confers further power on the SSHD to make regulations for excluding the application of any provision of the Act which creates an offence.

106. A central feature of the MDA 1971 is the differentiation of 'controlled drugs' in Schedule 2 into three Classes. This is linked to maximum penalties in a descending order of severity, from A to C. Government has said: "The three-tier classification was designed to make it possible to control particular drugs according to their comparative harmfulness either to individuals or to society at large when they are misused".[65] And although there appears to be no explicit criterion for deciding which drugs are more harmful than others and should go into Class A rather that B or C, the Act did create the ACMD to keep the situation under review.

107. According to the 2006 Home Affairs Committee report, HC 1031, *Drug classification: making a hash of it?*, "the United Nations Single Convention on Narcotic Drugs 1961 and its attempts to establish a Convention on Psychotropic Substances (eventually ratified in 1971) formed an important backdrop to the United Kingdom's efforts to rationalise its legislation in this area. James Callahan, the then Home Secretary, told Parliament in 1970 that in developing the classification system the Government had used the UN Single Convention and guidance provided by the World Health Organisation to place drugs: "in the order in which we think they should be classified of harmfulness and danger"." [66] Mr. Callahan continued:

> The object here is to make, so far as possible, a more sensible differentiation between drugs. It will divide them according to their accepted dangers and harmfulness in the light of current knowledge and it will provide for changes to be made in the classification in the light of new scientific knowledge.[67]

108. Government has recently reiterated its commitment to a dynamic and evolutive drug policy and classification based on objective empirical evidence believing this to be necessary for credibility and compliance. Thus, on January 19th 2006, the then Home Secretary, Charles Clarke told the House of Commons that:

> "evidence must be the core of what we do in this area … we will continue to review the matter on the basis of evidence as it evolves over time … one needs to proceed on the basis of evidence … I want to emphasise to the House the importance of evidence and research on this subject".[68]

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[64] 2001 S.I. 3998, *Dangerous Drugs*, The Misuse of Drugs Regulations 2001
[65] n8 *supra*, HC 1031 (2006) Appendix 1, Ev 53, Memoranda from the Government, para 1.6
[66] n8 *supra*, HC 1031 (2006) para 6
[67] *Hansard*, House of Commons, Misuse of Drugs Bill 1970 (not passed), March 25th 1970, Vol. 798, col. 1453.
[68] www.publications.parliament.uk/pa/cm200506/cmhansard/vo190106/text/190106w20.htm

109. And rightly so, as the Classes of controlled drugs are directly related to the penalties set out for each MDA offence, it is essential that the Classes are kept *open* and *unfettered* and that alterations are based in sound empirical evidence, i.e., the regulation and penalty vis-à-vis a particular drug must be *proportionate* to the objective harms or type of risks involved.

110. Therefore, it is crucial that the Act is *flexible* and *certain*, because, from the moment of manufacture, until the moment of consumption, a drug will change hands countless times; different considerations will apply at different stages. When flexibility is not maintained, "so that drugs are classified in keeping with current social and scientific opinion … the Courts are placed at a considerable disadvantage, at least on the question of sentence, believing the drugs in question to be more or less harmful that they really are".[69]

111. Moreover, as the law presumably was not created to make criminals out of people unnecessarily, consideration must be had for the impact of changes in the law on innocent persons, including body corporate, which may suddenly face administrative inconvenience, loss of income, loss of intellectual property rights, and possibly be forced into costly and protracted legal action. Accordingly, the classification and regulation of drugs should *not* be *arbitrary* in any way. This is particularly important where drugs are controlled on the basis that their misuse *might* have harmful effects sufficient to constitute a social problem.

112. Furthermore, "it was presumably not the intention of Parliament to control drugs that demonstrably appeal to an eccentric few and were likely to remain so. In those circumstances, the use is contained, limited to isolated groups, and therefore *not* likely to constitute a social problem."[70] However, Parliament clearly intended to include drugs that were not only capable of causing physical or mental harm to the individual, but also drugs which are capable of producing harmful results, or consequences, amounting to a social problem.

113. It is axiomatic that *any* drug use which places significant demands on the resources of the medical, police and social professions creates a social problem. Thus, since scientific evidence recognises that alcohol and tobacco are drugs that have "harmful effects sufficient to constitute a social problem", an obvious question has long been: *why are alcohol and tobacco not equally controlled by the Misuse of Drugs Act 1971?*

114. Indeed, the Introduction to the Third Report of the 2002 Home Affairs Committee, *'The Government's Drug Policy: is it working?'* declared:

> **Legal drugs, such as tobacco and alcohol, are responsible for far greater damage both to individual health and to the social fabric in general than illegal ones.**

The Home Affairs Committee went on to state that:

> **Substance misuse is a continuum perhaps *artificially divided* into legal and illegal activity.** [71]

115. Mr. Hardison asserts this *artificial divide* which excludes two drugs far more harmful to individuals and society than illegal drugs, is not found within the legitimate aims of this neutral Act. "It is this omission from the classification system that, perhaps more than any other, truly lays bare its fundamental lack of consistency, reasoning or evidence base".[72] Separate and not equal, this *artificial division*, rooted in the semantics and ideology of the UN drug Conventions, demands substantive attention.

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[69] n61 *supra*, p31
[70] n61 *supra*, p29
[71] n36 *supra*, HC 318-I (2002) para 9 & 10
[72] n8 *supra*, HC 1031 (2006) Ev 64

VI. Because the emotive and pejorative language found throughout the UN drug Conventions sets the normative tone for the 'drug' control efforts undertaken by signatories, the UN Convention texts demand substantive attention as the backdrop of rationalisation and the *source of the impugned legislative inequity.*

116. Norms can be defined as 'shared expectations held by a community of actors about appropriate behaviour for actors with a given identity'; more generally, they are 'standards of how different actors "ought" to behave'.[73] Norms evolve, but at the international level norms typically manifest themselves as treaties and conventions.

117. Globalisation in the age of European empire and industrial revolution changed the circumstances and availability of psychoactive substances as well as the living conditions of many people. Distilled spirits transformed from medicine to being an article of daily consumption and other alcoholic beverages became industrial commodities no longer tied to seasonal crop surplus. Moreover, the availability of plant substances such as opium, *Coca*, *Cannabis*, tobacco, tea, *Coffee*, and pure alkaloids such as cocaine and morphine increased dramatically as global and imperial trade expanded. Habits of heavy 'non-medical use' which previously had been available only to the wealthy came within reach of all in the free market economy.

118. And so began, in the late colonial era, opposition to the exploitation often associated with the promotion and provision of psychoactive substances. This was expressed in temperance movements in Western metropolitan countries, particularly Britain and the United States, and, also via indigenous uprisings or revolts among colonized and slave peoples. Those seeking to control the exploitation of indigenous and slave peoples with psychoactive substances turned their attention to the long struggle over Britain foisting opium on Chinese markets.

119. Largely on the initiative of President Theodore Roosevelt, the International Opium Commission, composed of Governments having possessions in the Far East, met in Shanghai in 1909. The representatives of the participating countries were not empowered to draw up a convention but did adopt resolutions in which the gradual suppression of opium smoking was recommended and the 'danger' of 'addiction' to *manufactured drugs* was, for the first time, proclaimed by an international body.

120. The Shanghai Opium Conference of 1909 led to *The Hague Opium Convention* of 1912, adopted by the International Opium Conference on 23 January 1912, which is the foundation of the present exceptional system of international drug controls. *The Hague Opium Convention* accomplished the following:

    1) "It formulated basic principles for the international control of narcotic drugs, which may be summarized as follows: a) Limitation of the manufacture, sale and use of manufactured narcotic drugs to medical and legitimate needs; b) Control of production and distribution of raw opium; c) Gradual suppression of opium smoking;
    2) Raised the obligation to co-operate in the international campaign against the *drug evil* from a purely moral one to the level of a *duty* under *international law*;
    3) Passed from a merely regional to a universal approach to the problem by providing for participation of all European and American States, in addition to China, Japan, Siam, and Persia (Iran), *i.e.*, practically all countries which, in 1912, were considered to be capable of entering into international commitments.
    4) It provided for the performance of certain limited functions by the Dutch Government as an organ of the international society, and for the exchange of information (of a legal and statistical nature) among the contracting parties through this Government."[74]

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[73] Khagram, S, Riker, JV and Sikkink, K (2002) 'Restructuring World Politics – Transnational Social Movements, Networks and Norms', in *Social Movements, Protests and Contention*, Vol. 14, University of Minnesota Press

[74] UN Commission on Narcotic Drugs (1950) The Evolution of the International Control of Narcotic Drugs, in *The Bulletin on Narcotic Drugs*, Issue 1, p1 www.unodc.org/en/bulletin_on_narcotics.html (Emphasis in Original)

121. The emphasis of the *Hague Opium Convention* was on market controls. The user appears only in reference to 'abuse' in the prefatory clauses, which talk of a determination to bring about "the gradual suppression of the abuse of opium, morphine, and cocaine as also of the drugs prepared or derived from these substances, which give or might give rise to similar abuses", and in Article 17, in terms of "habit", which called for the parties agreeing "to restrict and control the habit of smoking opium" in Chinese territory they controlled.

122. But by the time of the 1961 UN *Single Convention on Narcotic Drugs*, 'habit' had disappeared from the official language of the conventions. Indeed, the *Preamble* to the 1961 *Single Convention* decreed "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind".

123. Thus, the central premise of international drug control efforts is the proscription of a number of substances with supposed effects on humans that are either intrinsically bad, deviant, *evil*, and fraught with peril or just intrinsically different from the effects of other substances, most notably alcohol and tobacco. This *artificial divide* between legal and illegal substances is then couched in terminology which appears objective, scientific and descriptive, but whose actual meaning is subjective and ideological.

124. The main 'evil' the 1961 *Single Convention* was designed to 'prevent and combat' are 'addiction to narcotic drugs' and 'abuse of narcotic drugs'. These prefatory considerations rationalising the exceptional intervention are followed by 'definitions' in Article 1 of terms used throughout the text. Although, 'addiction', 'abuse' and 'narcotic' do not appear, the important operative term 'drug' is defined:

- drug – any of the substances in Schedules I and II, whether natural or synthetic.

125. And, by the 1971 UN *Convention on Psychotropic Substances* the term 'addiction' had disappeared from the text, the term 'abuse' is *again* undefined, but a new operative category has been created for control:

- psychotropic substance – any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV.

126. Thus, by the 1988 UN *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, although the term 'abuse' is *still* not defined, we have :

- narcotic drug – any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961; and
- psychotropic substance – any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971.

127. Article 3 of the 1961 *Single Convention* provided for the proscription of substances and required the World Health Organisation (WHO) find that the substance "is liable to similar abuse and productive of similar ill effects" as other scheduled drugs which is not offset by "substantial therapeutic advantages".

128. So, upon critical examination, the semantic system of the UN authorities evinces a tautology that can be worded as follows: some substances are illegal because they are 'abused', this 'abuse' means 'non-medical use'; and non-medical use is *any unauthorised use* of *illegal* substances. This hermetic collective presents an arbitrary code of 'non-medical use' as a semantic key to the *artificial division* between so called 'drug evil' and the dominant *social* intoxicants of Western countries, alcohol and tobacco.[75]

[75] Arnao, Giancarlo (1990) *The Semantics of Prohibition*, International Anti-prohibition League, *Cf.* Room, R. (2004) *Addiction Concepts and International Control*, Centre for Social Research on Alcohol and Drugs, Stockholm University.

129. This semantic key – 'non-medical use' – fits the lock encoded in Article 4(c) of the 1961 *Single Convention* which laid out the 'General Obligations' of signatories as such:

> The parties shall take such legislative and administrative measures as may be necessary:
>
> a. To give effect to and carry out the provisions of this Convention within their own territories;
> b. To co-operate with other States in the execution of the provisions of this Convention; and
> c. Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

130. Problems arise immediately. What is or is not *bona fide* 'medical purposes' is neither defined by international treaties nor agreed upon across the interdisciplinary and globalising medical professions. In a few words the seeds were sown for the gradual destruction of millennia of perennial healing wisdom and the abrogation of mankind's *inalienable right* to care for, heal, and nurture his body as he sees fit.

131. Further, with the definition of 'drugs' inclusive to the Schedules *and* alcohol and tobacco excluded from them, Article 4 legitimates State diktats which render *any* cultural-alien *non-medical* and *non-scientific* drug *act* unauthorised and *any* person so acting a 'drug abuser' or 'offender' in need of 'treatment' and 'social reintegration'.[76]

132. Thus demanding global intervention, the reification of 'drug abuser' was a masterstroke, a strategic coup d'état creating at once an international federal police-power and ensconcing a monolithic Western-Biomedical *belief system* and its requisite 'doctor' into *international law*. As a former UN Secretary-General had stated:

> This international control and the treaties on which it is based have, however, a wider significance than the limited field of narcotic drugs. If the principles on which these treaties and this control rest could he applied with equal success to wider fields of human endeavour, *to other kinds of dangerous weapons*, peace would be within our reach.[77] (Emphasis added)

133. But, from a strictly logical point of view, the word 'abuse' and its cognate 'misuse' have a relative meaning, insofar as it is related to the concept 'use', i.e. 'misuse' is defined as a type of 'use' that has negative effects. The UN/WHO had other ideas:

1) In their 1969 16th Report, the WHO Expert Committee on Drug Dependence adopted a definition of 'drug abuse' as "persistent or sporadic excessive drug use, inconsistent with or unrelated to acceptable medical practice".[78] This definition therefore declares *any* kind of 'non-medical use' to be 'drug abuse'.

2) And then in 1994, the WHO *Lexicon of Alcohol and Drug Terms* defined 'misuse' as: "the use of a substance for a purpose not consistent with legal or medical guidelines, as in the non-medical use of prescription medications. The term is preferred by some to abuse in the belief that it is less judgmental."[79] Again, *any* non-medical use equals misuse.

3) Now, according to the 2000 UNODCCP/WHO *Demand Reduction: A Glossary of Terms*, 'abuse' is defined as: "A term in wide use but of varying meaning. In the international drug control conventions *'abuse' refers to any consumption* of a controlled substance no matter how infrequent…The term 'abuse' is sometimes used disapprovingly to refer to any use at all, particularly of illicit drugs… 'Harmful' and 'hazardous use' are the equivalent terms in WHO usage, although they usually relate only to effects on health and not social consequences…The term 'drug abuse' has also been criticized as being circular when it is used without reference to specific problems arising from drug use.[80] (Emphasis added)

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[76] Art 36, UN *Single Convention on Narcotic Drugs* 1961; Art 20, UN *Convention on Psychotropic Substances* 1971
[77] UNCND (1949) Statement by the UN Secretary-General, *The Bulletin on Narcotic Drugs*, Issue 1, p3, www.unodc.org
[78] WHO (1969) Expert Committee on Drug Dependence, *16th Report*, Tech Rep Ser No 407, p6, WHO: Geneva
[79] WHO (1994) *Lexicon of Alcohol and Drug Terms,* WHO: Geneva
[80] www.unodc.org/pdf/report_2000-11-30_1.pdf

134. So, the semantic mind-set encoded in UN/WHO definitions appears to postulate *or* manufacture the equivalence between 'use' and 'misuse' of Scheduled or Controlled substances and inculcate the *belief* that the consequences of *any* unauthorised use of controlled substances is necessarily dangerous, deleterious, 'evil' and pathologic. Cunningly, 'abuse', and its English cognate 'misuse', "conveys the distinct impression that something quite measurable is being referred to, something very much like … a sickness in need of a cure. Thus, the term simultaneously serves two functions: it claims clinical objectivity and it discredits the phenomenon it categorizes".[81]

135. These ideological and morally subjective semantics also occur with the 'serious evil' of 'addiction' and 'dependence'. Originally, in 1957, the WHO Expert Committee classified two types of dependence: 1) 'addiction', which is qualified by physical dependence and tolerance; and 2) 'habituation', which is qualified by psychic dependence but no tolerance.[82] Thus, because the 1957 WHO Committee acknowledged alcohol and tobacco 'fell between' the distinctions 'addiction-producing' and 'habit-forming' they were excluded from international control.

136. But recognising that 'habituation' or 'addiction' had long since ceased to be defensible criteria, the 1964 WHO Expert Committee dropped the terms in favour of 'drug-dependence', a term "that could be applied to drug abuse generally".[83] Since the new term applied to substances outside as well as under international control, it was no longer in fact a distinguishing criterion for controlled substances under Article 3 of the 1961 Convention.

- drug dependence – "a state, psychic and sometime also physical, resulting from the interaction between living organism and a drug, characterised by behavioural and other responses that always include compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects and sometimes to avoid the discomfort of its absence. Tolerance may or may not be present. A person may or may be dependent on more than one drug."[84] – This general definition could be stretched *ad infinitum* and applies to sugar, caffeine, *Theobroma*, alcohol, nicotine, *Cannabis*, Prozac, etc.

137. Accordingly, the official Commentary on the 1971 *Convention on Psychotropic Substances* acknowledged that "alcohol appears to be covered" by the criterion in Article 2(4) as it has the "capacity to produce a state of dependence", but argued that "the public health and social problem which alcohol presents is not of such nature as to warrant it being placed under 'international control'." Moreover, the Commentary adds, "the 1971 Conference … did not intend to apply the Vienna Convention to alcohol".[85]

138. Then in 1975 WHO *finally* defined 'non-medical use' as: "the use of dependence-producing drugs…except when…medically indicated".[86] That is, two criteria define 'non-medical use': 1) the substance must be 'dependence-producing' and 2) it must be used other than 'medically indicated'. But because the 1964 WHO definition of 'drug-dependence' still had no objective meaning, we have another seemingly objective definition, 'non-medical use', referring to subjective criterion.

139. But definitions evolve with understanding, so in 1994 the WHO *Lexicon of Alcohol and Drug Terms* redefined 'dependence' and 'dependence syndrome': "as applied to alcohol *and* other drugs, a need for repeated doses of the drug to feel good or to avoid feeling bad". (Emphasis added) *But, alcohol and tobacco are still excluded.*

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[81] Goode, E. (1972) Drugs in American Society, Knopf: New York, p26
[82] WHO (1957) Expert Committee on Addiction-Producing Drugs, *7th Report*, Tech Rep Ser No 116, WHO: Geneva
[83] WHO (1964) Expert Committee on Addiction-Producing Drugs, *13th Report*, Tech Rep Ser No 273, WHO: Geneva
[84] *Ibid.*, p6
[85] United Nations (1976) *Commentary on the Convention on Psychotropic Substances, 1971*, New York: UN p48
[86] WHO (1975) A Manual on Drug Dependence, WHO: Geneva

140. In the current 'official reference point for drug-related terms', the 2000 UN/WHO *Demand Reduction: A Glossary of Terms*, the 1994 WHO *Lexicon* definition is repeated with: "The terms 'dependence' and 'dependence syndrome' have gained favour with WHO and in other circles as alternatives to addiction since the 1960s. Their use was recommended as an acknowledgment of new evidence that 'addiction' was not a discrete disease entity but could exist in degrees as indeed could its signs. For example, 'loss of control' over drug use was replaced with 'impaired control'."[87]

141. As illustrated, the context in which 'addiction' or 'dependence' appears in the UN drug Conventions is as an 'evil' and a 'danger' which serves as the moral rationalization for the ambitious regime of control and coercion, and as technical terms to be used in decisions concerning whether a substance should be controlled internationally via the Conventions. This function of the 'addiction' and 'dependence' concepts as conscious motivators for serious countermeasures can be seen in pure form in the *Preamble* to the *Single Convention*, where addiction is: "a serious evil for the individual and is fraught with social and economic danger to mankind". Such language alerts us that to speak of 'addiction' rather than 'habit' or 'use' is to invite the emotive pejorative mind-set of 'evil' and 'danger'. Vis-à-vis habit:

- an addiction is mysterious in its etiology, i.e., the 'addiction' concept exists precisely as an *apparent* explanation of an otherwise mysterious and inexplicable 'disease of the will'.
- an addiction represents an alienation from the *real* self. The drinker or drug user's conscious will has been mysteriously overmastered. Freed of the bonds of addiction, the user can resume his or her *real* self.
- an addiction is thus a kind of secular possession, *an enslavement*. The ancient idea of an evil spirit possessing the sufferer's body is replaced by a more modern, *apparently* medical and scientific etiologic of possession by an 'evil' substance, a tangible commodity from which the body can be separated to undergo 'treatment' and 'social-reintegration'.

142. So, an extensive reading of the last 50 years of UN, WHO, US and UK literature on the subject of drugs elucidates that Scheduled or Controlled substances are almost-always referred to in terms of 'abuse' or 'misuse' instead of 'use' and those using as 'drug addicts' or 'drug abusers' in need of 'incarceration' and 'rehabilitation'. Thus, within the international drug control mind-set and legal *acquis* the concepts of 'abuse' and 'misuse' are strictly related to the discrimination between 'medical use' and 'non-medical use' of proscribed drugs; for to apply the mind-set to the use of alcohol and tobacco would expose the *artifice* and shatter the illusion as there can be very few, *if any*, medical justifications for alcohol and tobacco ingestion.

143. Hence today, a 'modernised' HM Government continues to engage in what *may be unconsciously* an ideological protectionism designed to maintain its *artificial divide* between 'alcohol, tobacco and *other* drugs' by consistently conflating the words 'drug' and 'controlled drug' even though they are clearly distinguished in the 1971 Act by sections 1(2) & 2(1)(a) read together.

144. *The Government Reply to the Third Report From the Home Affairs Committee Session 2001-2002 HC 318* illustrates these conflations with a parenthetical crack in the edifice:

> Drug misuse does not occur in isolation. It is associated with the misuse of other substances (e.g., alcohol and tobacco) …The message is clear. All drugs are harmful and illegal…The Government will launch a campaign to educate young people and the public about reclassification, to ensure that the clear message that all drugs are illegal and harmful continues to be heard and heeded by all.[88]

[87] www.unodc.org/pdf/report_2000-11-30_1.pdf

[88] HM Government Report (2002) *The Government Reply to the Third Report From the Home Affairs Committee Session 2001-2003 HC 318*, 10 July 2002, The Stationary Office Ltd.

145. And because HM Government, the UN, and WHO all recognise *familiarity* may *bias* 'drug' definitions, even the HM Government's drug education website 'Talk to Frank' states:

> Alcohol can play a major part in many people's social lives. *That's why it is easy to forget that it's actually a very powerful drug* … Tobacco comes from the leaves of the tobacco plant. It *contains a drug* called nicotine which is highly addictive. [89] (Emphasis added)

146. *'the global youth network'*, a website of the UN Office of Drugs and Crime created for "the young and vulnerable", answers 'What are drugs?':

> Understanding what drugs are is fundamental to understanding their potential abuse. A psychoactive substance is something that people take to change the way they feel, think or behave. *Some of these substances are called drugs, and others, like alcohol and tobacco, are considered dangerous but are not called drugs.* The term drugs also covers a number of substances that must be used under medical supervision to treat illnesses. For our purposes then, we will talk about drugs as those man-made or naturally occurring substances used without medical supervision basically to change the way a person feels, *thinks* or behaves so that they "can have fun".[90] (Emphasis added)

147. The 'official reference point for drug-related terms', the 2000 UN/WHO '*Demand Reduction: A Glossary of Terms*' offers a more inclusive definition:

> Drug – A term of varied usage. In the various United Nations Conventions and in the Declaration on Drug Demand Reduction it refers to substances subject to international control. In medicine, it refers to any substance with the potential to prevent or cure disease or enhance physical and mental well-being. In pharmacology, the term drug refers to any chemical agent that alters the biochemical or physiological processes of tissues or organisms. In common usage, the term often refers specifically to psychoactive drugs, and often, even more specifically, to illicit drugs. However, caffeine, tobacco, alcohol, and other substances *in common non-medical use* are also drugs in the sense of being taken primarily for their psychoactive effects.[91] (Emphasis added)

148. But conclusively, the 8th Edition of Black's Law Dictionary[92] defines 'drug, *n.*':

> **1.** A substance intended for use in the diagnosis, cure, treatment, or prevention of disease. **2.** A natural or synthetic substance that alters one's perception or consciousness.

149. Today the statutory National Curriculum Science Order requires that all UK children are taught that *alcohol and tobacco are harmful drugs*. The Department for Education and Skills – *Drugs: Guidance for Schools* employs the UN *'the global youth network'* definition of 'drugs' as: any substance people take to change the way they feel, think, or behave; and, then states unequivocally:

> The term 'drugs' and 'drug education', unless otherwise stated, is used throughout the document to refer to all drugs:
>
> – all illegal drugs (those controlled by the Misuse of Drugs Act 1971)
> – all legal drugs, including alcohol, tobacco. [93]

150. So, as our children cognise the "enormous hypocrisy",[94] the social norm *artificially dividing* drugs significantly transforms and contempt for the law increases.

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[89] www.talktofrank.com
[90] www.unodc.org/youthnet/youthnet_youth_drugs.html
[91] www.unodc.org/pdf/report_2000-11-30_1.pdf
[92] Garner, B. ed. (2004) Black's Law Dictionary 8th ed, Thompson–West
[93] www.wiredforhealth.gov.uk/PDF/drugs_guidance_4.pdf
[94] www.publications.parliament.uk/pa/cm200102/cmhansrd/vo091101/debtext/11109-04.htm – Owen Jones MP

151. Thus having articulated the enormous hypocrisy evinced by an *artificial divide* between licit and illicit drugs at 'the outset', the 2002 Committee report *'The Government's Drug Policy: is it working?'* concluded with a most dynamic and evolutive recommendation:

> We recommend that the Government initiates a discussion with the Commission on Narcotic Drugs of alternative ways – including the possibility of legalisation and regulation – to tackle the global drugs dilemma.[95]

But, HM Government replied:

> Government does not accept this recommendation. We do not accept that legalisation and regulation is now, or will be in the future, an acceptable response to the presence of drugs…The Government regularly participates in debates in the Commission on Narcotic Drugs that explore a wide range of strategies for dealing with the global drugs dilemma. The positions the Government takes in these debates must be consistent with our domestic legislation and international obligations.[96]

152. And so it seems, the Executive has unlawfully fettered[97] its own discretion on drug policy and definition via contract to an unyielding 'command and control' scheme of international drug prohibition rooted in an ideology which proceeds from the fundamental moral premise that *non-medical use* of some drugs is 'evil' and those who use them are 'deviants' in need of 'imprisonment' and/or 'treatment'.

153. Yet, publicly the Government maintain that they are committed to basing their drug policy on empirical evidence and that it is the duty of the ACMD to provide them with a scientific and professional evaluation of the evidence base.

154. This may be why Bob Ainsworth MP, Parliamentary Under Secretary for Anti-Drugs Coordination, strongly rebuked the UN International Narcotics Control Board (INCB), the quasi-judicial independent 'guardian' of the implementation of the three UN drug Conventions, in his 26th March 2003 letter to them:

> I am writing on behalf of the United Kingdom Government to record its dismay at comments made in the International Narcotics Control Board annual report about the Government's decision to reclassify cannabis. In particular the alarmist language used, the absence of any reference-to the scientific evidence on which that decision was based, and the misleading way in which the decision was presented by the ICMB to the media.

155. But, HC 1031, *'Drug classification: making a hash of it?'* the 2006 Science and Technology Committee report, strongly criticised the Government's facilitation of the MDA:

> The Government's failure to ensure that sufficient resources are devoted to building the evidence base to underpin drugs policy is at odds with its commitment to adopt an evidence based approach.[98]

156. And in contrast to an unfettered independent 'evidence based approach', the ACMD have stated that they must be aware of "the Government's position" or "intention":

> Whilst it can be argued that the ACMD has remit to consider alcohol, tobacco and caffeine it has, to date, decline to do so. The ACMD consider that its resources are best served by focussing on controlled drugs or drugs likely to be controlled by the MDA 1971. Albeit independent, the ACMD as an advisory body has to be aware of the Government's position, which has not given any intention to consider the control of alcohol, tobacco and caffeine.[99]

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[95] n36 *supra,* HC 318-I (2002) para 267
[96] n87 *supra*, at para (tt)
[97] *Redereaktiebolaget Amphitrite v The King* (1921) 3 KB 500; *Cf.* Article 2(7), UN *Charter*
[98] n8 *supra*, HC 1031 (2006) para 87
[99] n8 *supra*, HC 1031 (2006) Ev 57, para 3.2

157. This resonates deeply with the fettered advisory relationship of the World Health Organisation to the UN Commission on Narcotic Drugs (CND):

> In 1995, the WHO stated in their *Cocaine Project Briefing Kit* that: "In all participating countries, health problems from use of legal substances, particularly alcohol and tobacco, are greater that health problems from cocaine use … There needs to be more assessment of the adverse effects of current policies and strategies and development of innovative approaches … *Current National and local approaches* which over-emphasize punitive drug control measures *may actually contribute* to the development of health-related problems".[100] Neil Boyer, the USA's representative to the 48th meeting of the World Health Assembly at Geneva in 1995, said that the WHO programme on substance abuse (PSA) was "headed in the wrong direction" and "undermined the efforts of the international community to stamp out illegal cultivation and production of [drugs]" He denounced "evidence of WHO's support for harm-reduction programmes and previous WHO associations with organizations that supported legalization of drugs." *Then the threat*: "If WHO activities relating to drugs fail to reinforce proven drug-control approaches, funds for the relevant programs should be curtailed."[101] (Emphasis added)

158. If WHO programmes, scientific advice, and policy suggestions must be consistent with the 'proven drug-control approaches' of the CND and *not* with their remit of global health concerns, and the ACMD's 'independent' advice must take account of the Government's 'position' or 'intention' which also 'must be consistent with [the United Kingdom's] international obligations' then UK drug policy is fettered[102] in all *fora* to an outmoded 'command and control' policy developed amid World Wars.

159. However, on July 26th 2006, Prime Minister Tony Blair delivered a 'major' speech on *Healthy Living* as part of the *Our Nation's Future* series in which he said:

> We abandon explicitly the paternalistic State of the Post-War years, not because the state did not fulfil a worthwhile task, but simply because such a State no longer fits the times. The idea of the enabling State, whose job is to empower the individual, rather than command and control in the manner of 1945, has profound implications some of which we are only beginning to see. For a start, you get out of the bind of saying: 'how much Government?', and ask the more sensible question – 'Government for what purpose?'[103]

160. Further, on June 23rd 2006, Prime Minister Tony Blair eloquently nailed the crux in his speech on the *Criminal Justice System* as part of the *Our Nation's Future* series:

> I have come to the conclusion that part of the problem in the whole area has been the *words ... because of the emotions inevitably stirred*, the headlines that naturally scream, the multiplicity of the problems raised – desperately, urgently need a rational debate, *from first principles* and preferably unrelated to the immediate convulsion of the moment.[104]

161. Thus as a matter of *first principles*, Mr. Hardison asserts that:

1) Executive fettering is inconsistent with the United Kingdom's obligations to its populace and inconsistent with the primary aim of the 1971 Misuse of Drugs Act, specifically, the protection of public health and safety and specifically the limitation, reduction, prevention and possible elimination of *harmful* non-medical use of *all* drugs; further,
2) the primary legitimate aim is *fatally undermined* when the secondary aim expressed in Section 1 of the Act, that of creating a dynamic and evolutive drug policy consistent with empirical evidence, is *fettered* to a 'command and control' prohibition; therefore,
3) the intrinsic assumption of moral 'evil' that fuels prohibition has thus far prevented any discussion of, or transformation to, a system of 'rational debate' which proceeds from 'first-principles' and deals with the breakdowns in drug policy effectively and openly whilst at the same time treating all stakeholders equitably.

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[100] WHO/UNICRI *Cocaine Project*, 5 March 1995 (unpublished Briefing Kit) US response WHA48/1995/REC/3
[101] WHA48/1995/REC/3 Forty-Eighth World Health Assembly, *Summary Records and Reports Committee*, Geneva
[102] *Redereaktiebolaget Amphitrite v The King* (1921) 3 KB 500; *Cf.* Article 2(7), UN *Charter*
[103] www.number10.gov.uk/output/Page9921.asp
[104] www.number10.gov.uk/output/Page9737.asp (Emphasis Added)

162. Thankfully, Dr. Colin Blakemore, Chief Executive of the Medical Research Council, recognised a *starting point* when he described the drug classification system in 2005:

> It is antiquated and reflects the prejudice and misconceptions of an era in which drugs were placed in arbitrary categories with notable, often illogical, consequences. The continuous review of the evidence, and the inclusion of legal drugs in the same review, will allow a more sensible and rational classification .[105]

163. Possibly for this reason, on January 19th 2006, following his statement to the House on the classification of *Cannabis*, the then Home Secretary Charles Clark announced that he was initiating a review of the ABC classification system:

> The more I have considered these matters, the more concerned I have become about the limitations of our current system. […] I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system, on the basis of which I will make proposals in due course.[106]

164. Conscious of their duty, the 2006 Science and Technology Committee inquiry into the Government's handling of scientific advice, risk and evidence in policy making boldly "decided that, in addition to collecting evidence on the over-arching terms of reference, [they] would undertake three case studies to enable [them] to examine the Government's policy making processes in greater detail […]". As such, "[They] have looked at the relationship between scientific advice and evidence and the UK policy on the classification of illegal drugs".[107]

165. Their Fifth Report, HC 1031, issued on July 31st 2006: *'Drug classification: making a hash of it?'* substantiates Mr. Hardison's allegations that the application of the MDA 1971 is *arbitrary*, *irrational* and *disproportionate* and lends itself to inhumane treatment and degrading punishment:

> The classification system purports to rank drugs on the basis of harm associated with their misuse but we have found glaring anomalies in the classification system as it stands and a wide consensus that the current system is not fit for purpose. We are also concerned and disappointed by the attitudes of the ACMD and the police towards the classification system…we have identified a pressing need for greater transparency, both in terms of the ACMD and the role that scientific evidence plays in informing the Home Secretary's decisions about classification…The problems we have identified highlight that fact that the promised review of the classification system is much needed and we urge the Government to proceed with the consultation without further delay. We have proposed that the Government should develop a more *scientifically based* scale of harm, ***decoupled from penalties***". (Emphasis added)[108]

166. But for Mr. Hardison what is most unsettling is that *before* he was sentenced to 20 years imprisonment, the then Home Secretary Charles Clark knew that the classification system lacked objective and rational justification. Indeed, he was made aware that research conducted by Dr. David Nutt, the Chair of the ACMD Technical Committee, and Dr. Colin Blakemore, Chief Executive of the Medical Research Council, in which 20 common substances were analysed for their addictive qualities, social harm, and physical damage had produced strikingly different results from the Government's classification system. They had found that the legal drugs alcohol and tobacco are more harmful to the nation's health than the drugs of Counts 4, 6 and 8 of the instant case, i.e. LSD and Ecstasy.[109]

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[105] *A Scientifically Based Scale of Harm for all Social Drugs* in Beckley Foundation (2005) Society & Drugs: A Rational Perspective, p.80 Available at: www.internationaldrugpolicy.org
[106] *Hansard*, HC Deb, 19 Jan 2006, Col 983
[107] www.parliment.uk/parliamentary_committees/science_and_technology_committee/scitech091105.cfm
[108] n8 *supra*, HC 1031 (2006) para 107-8
[109] n8 *supra*, HC 1031 (2006) Appendix 14, Ev 110-117

167. The 2006 Science and Technology Committee, HC 1031, was surprised by this:

> 96. Furthermore, a paper authored by experts including Professor Nutt, chairman of the ACMD Technical Committee, which we have seen in draft form, found no statistically significant correlation between the Class of a drug and its harm score as calculated by leading experts using the so-called Delphi method. Astonishingly, despite that fact that Professor Nutt is the lead author, the paper asserted that "The current classification system has evolved in an unsystematic way from somewhat *arbitrary foundations* with seemingly little scientific basis". The paper also found that the boundaries between Classes were entirely *arbitrary* and the authors argued that the rigid nature of the classification system made it difficult to move substances between Classes as new evidence emerged. (Emphasis added)
>
> 97. Considering the fact that the Chair of the ACMD Technical Committee had started drafting the paper proposing an alternative to the ABC system of classification more than 18 months ago, we were very surprised to hear from the Chairman of the ACMD that the Council had "never formally discussed the case for reviewing the classification system". We are also taken aback by Sir Michael's [Chairman of the ACMD] assertion that the Council did not possess "the necessary expertise" to provide advice on alternative approaches to the classification of drugs. In addition, confidential information we have obtained makes us somewhat suspicious of the reasons behind the delay in submission of the paper authored by Professor Nutt and his colleges for publication. **We understand that the ACMD operates within the framework set by the Misuse of Drugs Act 1971 but, bearing in mind that the council is the sole scientific advisory body on drugs policy, we consider the Council's failure to alert the Home Secretary to the serious doubts about the basis and the effectiveness of the classification system at an earlier stage a dereliction of duty.**

168. But, the penultimate paragraph of the Fifth Report[110] of the 2006 Science and Technology Committee is perhaps the most astonishing:

> 106. One of the most striking findings highlighted in the paper drafted by Professor Nutt and his colleagues was the fact that, on the basis of their assessment of harm, tobacco and alcohol would be ranked as more harmful that LSD and ecstasy (both Class A drugs). The Runciman Report also stated that, on the basis of harm, "alcohol would be classed as B bordering on A, whilst cigarettes would probably be in the borderline between B and C". Various memoranda argued that the exclusion of tobacco and alcohol from the classification system was an anomaly. Transform Drug Policy Foundation told us: "It is this omission from the classification system that, perhaps more than any other, truly lays bare its fundamental lack of consistency, reasoning or evidence base" on the grounds that together tobacco and alcohol cause "approximately 40 times the total number of deaths from all illegal drugs combined". **In our view, it would be unfeasible to expect a penalty-linked classification system to include tobacco and alcohol but there would be merit in including them in a more scientific scale, decoupled from penalties, to give the public a better sense of the relative harms involved.**

169. Mr. Hardison asserts that whilst it might be quite reasonable, fair and feasible to forbid *all* persons to engage in *any* acts with *any* drug for 'non-medical' and/or 'non-scientific' purposes, it is entirely 'unfeasible' to inflict draconian penalty *only* on *some* persons concerned with *some* drugs for public protection purposes and award "a peerage or a Queen's award for industry"[111] to other persons concerned with the equally, or more, harmful drugs, alcohol and tobacco, especially without a compelling objective and reasonable justification. Accordingly, the *artificial divide* is untenable, since it prevents rational debate, fetters effective policy and promotes inequity.

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[110] HC 1031 (2006) *Drug classification: making a hash of it?*, Science & Technology Committee, Fifth Report of Session 2005-2006, July 31st 2006, Available at: www.parliament.uk/s&tcom

[111] www.publications.parliament.uk/pa/cm200102/cmhansrd/vo091101/debtext/11109-04.htm – Owen Jones MP

VII. Article 14 – the test for discrimination.

170. The enunciation of the principles of equality, human dignity, and the prohibition of discrimination, were considered so fundamental as to be placed at the beginning of the United Nations Universal Declaration of Human Rights, and the UN Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. These principles also have a prominent place in the 'equal protection' clauses of the United States Constitution, and in the constitutions of most Commonwealth countries.

171. The guiding principle of Article 14 is that people in similar circumstances should not be treated differently without an objective and reasonable justification for that differential treatment. As the Strasbourg Court stated in *Abdulaziz, Cabales and Balkandali v United Kingdom*, "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim'; or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'" [112]

172. The question thus boils down to whether persons in an analogous or substantially similar situation enjoy preferential treatment, without reasonable or objective justification, and whether and to what extent differences in otherwise similar situations might justify a different treatment in law.[113]

173. *Do the facts fall within the ambit of one or more of the Convention rights?*

1) Mr. Justice Keith placed the instant case within Article 8 in his dismissal of Mr. Hardison's human rights based Appeal against Conviction under the Misuse of Drugs Act 1971, as did the Court in *Taylor*.[114]

2) No known Government assessment of the compatibility of the MDA 1971 with the HRA 1998 exists. But, the Seventh Report of the Joint Committee on Human Rights into the Drugs Bill 2005 raised substantial concerns that measures to deal with illicit drugs potentially impact Articles 3, 6, and 8.[115]

3) Further, it is asserted by Mr. Hardison that:

   i. Protocol 1 Article 1 is engaged because both his body and drugs are property. Therefore, producing, trading in and using drugs are property rights, and drug prohibitions imposed only upon certain classes of 'harmful' drugs are unequal deprivations of basic property rights. Accordingly, a fair balance must be struck between the needs of the community and those of the individual.
   ii. Article 8 is engaged as the choice to consume, produce or trade in a drug, whilst a property right, is ultimately a private decision; and as Mr. Hardison's activities were confined to his domicile they should be respected in the same manner as an alcohol brewer or tobacco farmer would be, i.e., subject only to necessary, reasonable and proportionate restrictions that facilitate freedom of contract.
   iii. Article 9 is engaged as the proscription of the *psycho*-tropic molecules of the instant case and the active hunting and interdiction of persons concerned with them are attempts not unlike the book banning of ancient times – designed not to control inkblots on paper but to censor heretical ideas and 'unorthodox' thought processes.
   iv. Article 10 is engaged as the proscription of *psycho*-tropic molecules which mediate or alter neurotransmission impedes the free reception of information; this will become evermore important as neurotechnologies continue to develop at exponential pace.
   v. Article 6 is engaged as the active political marginalisation of persons concerned with 'stigmatised' drugs reinforces bias and denies the right to equal protection in law.[116]

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[112] [1985] 7 EHRR 471 para 72; *Pretty v United Kingdom*, [2002] 35 EHRR 1 para 87
[113] *Stubbings v United Kingdom* [1996] 23 EHRR 213 para 70; *A and Others v SSHD* [2004] UKHL 56 para 50
[114] *R v Taylor* [2001] EWCA Crim 2263 para 14
[115] www.publications.parliament.gov.uk/pa/jt200405/jtselect/jtrights/47/4706
[116] Home Office/ACMD (1998) *Drug Misuse and the Environment*, TSO Ltd. para 2.2

174. *Is the complainant a member of a definable group?* Yes, Mr. Hardison is knowingly concerned with a certain type of property – drugs valued by minorities. Such persons have distinct languages and culture, prefer, favour, or tend[117] to enjoy or value certain types of drug property versus others, and may even have a genetic predisposition to certain types of drug property.[118] According to the United Nations, 10.9% of UK voters[119] are concerned annually with drugs valued by minorities and are a group delineated by discriminatory applications of the Misuse of Drugs Act 1971 – which, curiously enough, Section 27 authorises the forfeiture of 'controlled drug' *property*.

More particularly, Mr. Hardison is a 'psychonaut'. Psychonauts are a diverse group from around the world who have consecrated their lives to the exploration of inner-space via psychotropic drugs and the mind-states they engender. They are consciousness researchers and/or 'drug-geeks'[120] with their own research institutes, libraries, journals, conferences, political organisations and information web-sites. They are of various phenotypes:

(a) *The Collector* – This is the individual who collects samples of as many different psychoactives as possible. They may not care if they have enough for a dose and they may not have any particular interest in ingesting the substances they collect. Their primary interest is in having a reference sample for their collection.

(b) *The Taster* – While the Collector collects property, the Taster collects experiences. Tasters are people who want to have tried everything. They pride themselves on trying as many substances as possible, seeking out and being the first to experience new substances, as well as trying uncommon and interesting combinations. Often the Tasters don't ingest any given substance very many times and have no intention of doing so. Instead, they are connoisseurs of variety.

(c) *The Daredevil* – The Daredevil shares some characteristics with the Taster, but this type wants to push the limits of experience (and often of safety) by doing higher doses and having more mind-bending experiences than others. Some Daredevils don't qualify as Drug-Geeks at all and are simply thrill seekers, but there are those Daredevils who are actually looking to accumulate knowledge – part of the definition of a Drug-Geek – by their willingness to push the boundaries ever further. This type should not be confused with the Hard Head (who requires higher doses than others to reach comparable effects) although they do sometimes overlap.

(d) *The Plant Geek* – Plant Geeks are those who focus their attention on the plant kingdom. Some grow a wide variety of psychoactive plants, while others specialize in a particular genus, such as *Eboga,* or in those containing a specific substance, such as DMT. Plants may be chosen because of their academic, historical, cultural, or metaphysical significance, and again, may not be intended for ingestion. An earlier interest in ingesting psychoactives may have been transmuted into a longer-term interest in the botany, chemistry, and spirit of plants. The relationship between humans and power plants or plant allies is important and sacred to many Plant Geeks.

(e) *The Chemistry Geek* – A more prominent geek type is the Chemistry Geek. Anyone involved in studying psychoactives for long will eventually meet one. They range from the undergrad who dreams of mastering LSD synthesis to the professional PhD with 40 years of bench experience. They can often be identified by the bits of paper in their pockets covered with arachnoid scribblings of new molecules, analytical results, or synthesis steps. Or, in Mr. Hardison's case, the laboratory in his spare bedroom.

(f) *The Historian* – The Historian knows the origins of specific substances, which plants were traditionally used by which culture and in what manner, who first synthesized psilocybin and LSD and in what year and when mescaline was scheduled and what government organization was in charge of drug laws at the time.

(g) *The Generalist* – The Generalist is at heart interested in how psychoactives are (mis)used and (mis)understood by society, and who enjoys discovering and promulgating factual information and dispelling common myths.

The voluminous collection of chemicals, herbs, drugs and literature found at Mr. Hardison's domicile, indicates that he is visibly a 'drug-geek' of mixed phenotype.

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[117] *Dudgeon v United Kingdom* [1982] 4 EHRR 149 para 41 'acts to which they are disposed by reason of their tendencies'
[118] Home Office/ACMD (1998) *Drug Misuse and the Environment*, TSO Ltd. paras 1.16 & 3.55
[119] UNODC (2005) UN World Drug Report 2005, www.unodc.org/unodc/world_drug_report.html
[120] www.erowid.org/culture/references/other/2004_drug_geeks_erowid.html

175. *Is there a difference of treatment between the Claimant and those not members of the group?* Yes, Mr. Hardison and others like him are forbidden under severe penalty from possessing, consuming, supplying and producing drugs which they value while equally or more harmful drugs valued by the majority, alcohol and tobacco, are regulated by licensing or available on the free market thus providing their consumers with quality control, freedom of contract and consumer protections including safe places of consumption and supply.

1) The Misuse of Drugs Act 1971 is a species of neutral legislation of general application which has a disparate impact on those in Mr. Hardison's position, whereby they, as a class, are concerned with a forbidden type of property – drugs valued by minorities.

   (a) This disparate impact has stigmatised and demonised a large section of society which has lead to the widespread social exclusion and politically marginalisation of key stakeholders, thus the Act debases them in a systematic yet oblique manner.

      i. This disparate treatment is then reinforced by their very exclusion, because the exclusion process self-reinforces the belief that the exclusion is a result of natural forces. In this case, there is a persistent belief that any person concerned with drugs valued by minorities is 'deviant',[121] 'evil',[122] 'sick',[123] even sub-human and therefore less worthy of the full protection of law.
      ii. And since those concerned with forbidden drugs are professed to be immoral, weak, and prey to an inescapably dangerous 'drug evil', the public perceives itself as needing to be protected from *it* and, all too often, from those who are concerned with *it*. Such beliefs have lead to the passage and persistence of a self-reinforcing and pernicious Misuse of Drugs Act 1971.
      iii. Within this normative mind-set, prohibition, abstinence and mandatory treatment or incarceration of persons concerned with some drugs is perceived as being necessary. Thus, the group is singled-out, isolated and confined, either by social-exclusion, self-isolation, or imprisonment.

   (b) Restated, those concerned with drugs valued by minorities are perceived as *scapegoats* that must be purged to make the social body healthy. Within this percept hides an etymological connection between the word *pharmacy* and the Greek words *pharmakos* and *pharmakon*. While the Greeks used the word *pharmakon* to refer to both healing and toxic drugs, at its origin it appears to have referred primarily to purgative medicaments. This is discernable by the survival of the related word *pharmakos* as 'scapegoat' or the one who *must be purged* to make the social body healthy.[124]

176. *Are the two groups (comparators) in an analogous position?*

1) Yes, both groups consume, possess, supply, produce or are otherwise concerned with drugs for a myriad of non-medical and non-scientific purposes, i.e., for social or recreational purposes and/or for self-medication, self-enablement, self-enhancement, self-exploration or simply cognitive and emotive paradigm transformation, etc.

   (a) There are considerable arguments over what is or is not a legitimate scientific or medical purpose and what is or is not a legitimate use of any drug.

2) No, persons concerned with drugs valued by minorities are denied equal protection of a regulated market with quality control measures which promote consumer choice and personal responsibility combined with sensible health messages to minimise the possible harms from all drugs. But this needn't be so.

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[121] www.unodc.org/youthnet/youthnet_youth_drugs.html 'bio-chemical processes that are deviant'
[122] *Cf. Preamble* to the UN *Single Convention on Narcotic Drugs* 1961
[123] Drugs Bill 2005 Part 3; *Cf.* www.publications.parliament.gov.uk/pa/jt200405/jtselect/jtrights/47/4706 para 3.22
[124] Szasz, T. (1985) *Ceremonial Chemistry: Ritual Persecution of Drugs, Addicts and Pushers.* Florida: Learning Publications

177. *Is there an objective and reasonable justification for the difference in treatment?* No, the discrimination is not even acknowledged by HM Government so it cannot be justified; however, it is implied, in pejorative terms and with contradicting empirical evidence, that drugs valued by minorities are more harmful as evidenced by the present structure and function of the Misuse of Drugs Act 1971.

1) ACMD scientific advice and Government drug policy avoid the issue by referring to drugs valued by minorities pejoratively as 'drugs' whilst referring to drugs valued by the majority, alcohol and tobacco, by name.

2) The difference of treatment appears arbitrary. The Introduction to the Third Report of the 2002 Home Affairs Committee, *'The Government's Drug Policy: is it working?'* stated:

> **Substance misuse is a continuum perhaps *artificially divided* into legal and illegal activity.**[125]

It is argued that this *artificial division* cannot be the intention of Parliament when they created the MDA 1971 as it has allowed safer alternatives to alcohol and tobacco to be prohibited, an irrational and unfair outcome.

3) The difference of treatment does not pursue the legitimate aim of reducing the risks of harmful non-medical drug consumption. Indeed, the Introduction to the Third Report of the 2002 Home Affairs Committee, *'The Government's Drug Policy: is it working?'* stated:

> **Legal drugs, such as tobacco and alcohol, are responsible for far greater damage both to individual health and to the social fabric in general than illegal ones.** [126]

4) *Harmless drugs do not exist and to suggest otherwise is irrational, misleading, and unscientific.* Yet, the criteria of 'not harmless' has been used to justify the regulatory option of prohibition, contrary to the criteria specified in the Act, i.e. "harmful effects sufficient to cause a social problem".

   (a) In 2004, ACMD Chairman Sir Michael Rawlins stated in *The Times*[127], "The classification system for drugs does not mean that any of these substances are harmless. If they were, they would not be included in the Misuse of Drugs Act."

5) The classification of the molecules of the instant case is not evidence based, although, the "penalties associated with classification [do] have serious consequences for users in terms of sentencing".[128]

   (a) The ACMD and the Government cite no objective evidence for LSD, 2C-B, DMT, 5-MeO-DMT, or MDMA to be in Class A suggesting that their proscription is an arbitrary and historic knee-jerk scheduling of a political nature.[129] Indeed, the paper by Professor Nutt and his colleagues, appended to the 2006 Science and Technology Committee report, *Drug classification: making a hash of it?'* said:

> Our findings raise questions about the validity of the current MDAct classification, despite the fact that this is nominally based on an assessment of risks to users and society. This is especially true in relation to psychedelic type drugs. They also emphasise that the exclusion of alcohol and tobacco from the MDAct is, from a scientific perspective, *arbitrary*.[130] (Emphasis added)

6) Therefore, the difference of treatment is not based on "harmfulness either to individuals or to society at large when they are misused".[131]

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[125] n36 *supra*, HC 318-I (2002) para 10
[126] n36 *supra*, HC 318-I (2002) para 9
[127] *The Times* January 23, 2004
[128] n8 *supra*, HC 1031 (2006) para 80
[129] n8 *supra*, HC 1031 (2006) Ev 13-16, Q 222-230 & 250-256
[130] n8 *supra*, HC 1031 (2006) Appendix 14, Ev 116
[131] n8 *supra*, HC 1031 (2006) Appendix 1, Ev 53, Memoranda from the Government, para 1.6

178. *Is the difference in treatment reasonable and proportionate to the legitimate aim?* No, the difference in treatment does not have, nor is it proportionate to, any legitimate aim.

1) The restrictions are disproportionate to the genuine public health risks because drugs valued by the majority pose substantially similar if not greater threats to individuals and society. Thus, discrimination results in safer alternatives to legally available drugs being prohibited thereby shunting demanded illicit drugs to an unregulated and proscribed market which exacerbates the risks of social, physical and mental harm.

2) The legitimate aim is fatally undermined by the ACMD's 'dereliction of duty'[132] in pursuit of the secondary aim which ensures MDA drug regulations evolve with the evidence base, particularly evidence of the objective harm, effectiveness of the current policy in achieving the aim and evaluation of alternative means for minimising harm.

   (a) Changes in the evidence base have been extraordinary in the last few decades:

      i. The World Health Organisation's 1955 report *Physical & Mental Effects of Cannabis* stated: "under the influence of cannabis, the danger of committing unpremeditated murder is very great; it can happen in cold blood, without any reason or motive, unexpectedly, without any proceeding quarrel; often the murderer does not even know the victim, and simply kills for pleasure".[133]
      ii. WHO's 1995 report *Cannabis Use: A Comparative Appraisal of the Health and Psychological Consequences of Alcohol, Cannabis, Nicotine and Opiate Use* stated: "There is little to suggest [a] causal relationship of cannabis use to aggression or violence" and "cannabis appears to play little role in injuries caused by violence, as does alcohol".[134]

   (b) Evidence suggests that a selective prohibition is an ineffective method of achieving the legitimate aim:

      i. Professor Sir Michael Rawlins, the Chairman of ACMD, told the 2006 Science and Technology Committee, "What we have to do though, is realise that over the last 30 years the use of drugs has dramatically increased in this country, and that the criminal justice system has not prevented that in any way".[135]
      ii. Home Office minister Bob Ainsworth MP, when asked during a 2001 Commons debate "what evidence do the Government have to show that confiscation and the prosecution of drug suppliers have made any difference to the amount of drugs use in this country?", replied, "As the law to date has been so relatively ineffective, I doubt whether it has made much difference at all."[136]
      iii. Lord Mancroft put it to the House of Lords on March 2nd 2006: "The philosophy is simple: drugs do harm, so you ban them, so nobody can take them, so the harm you fear does not come about. Problem solved. The trouble is, it did not and does not work like that. It is not that prohibition is wrong but that it does not work. We cannot ban these drugs because people want them; if they want them, somebody will supply them, particularly as they make huge profit out of them…this is reputedly the second biggest industry in the world. Like all illegal industries, it feeds on a black market. The rise in crime in the western world during the course of my adult life is entirely down to drugs – nothing else.[137]
      iv. The 1998 ACMD report *Drug misuse and the environment* stated: "In light of the decisive role of friendship networks in disseminating drugs, it is difficult to conceive of any effective form of conventionally conceived drug enforcement policy to control access at this level – quite simply, how might one be expected to police friendship?" [138]

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[132] n8 *supra*, HC 1031 (2006) para 97
[133] WHO (1955) *Physical & Mental Effects of Cannabis*, WHO Library, WHO/APD/56 page 23, 17 March 1955
[134] WHO (1995) suppressed report see: WHO/MSA/PSA/97.4; and n8 *supra* HC 1031 (2006) Ev 92, n48
[135] n8 *supra*, HC 1031 (2006) Ev 7, Q166
[136] www.publications.parliament.uk/pa/cm200102/cmhansard/vo011109/debtext/11109-03.htm#11109-03_spnew2
[137] www.publications.parliament.uk/pa/hl200506/hlhansard/vo020306/text/020306.htm
[138] Home Office/ACMD (1998) *Drug Misuse and the Environment*, TSO Ltd. para 3.7

179. *Is there a less restrictive means for advancing a legitimate aim?* Yes, licensed regulation as applied to drugs valued by the majority, alcohol and tobacco, could be applied to drugs valued by minorities.

1) The licensed regulation of drugs valued by the majority provides public health protection through consumer protections (e.g. quantity and quality control, health warnings, limiting supply outlets, consumer age restrictions, consumer education, etc.) and ensures taxation of the trade to meet the cost of drug-related public services (e.g. licensing and trading standards, education, policing, health and emergency services).

   (a) This 'fair balance' between benefits to the community and costs to the individuals provided by licensing are clearly justified by Government in their alcohol and tobacco strategies, balancing the aim of protecting the public with the aim of upholding individual rights to informed choice.

      i. Tony Blair, in the forward to the 2004 *Alcohol Harm Reduction Strategy for England*, said, "it is vital that individuals can make informed and responsible decisions about their own levels of alcohol consumption".[139]
      ii. Government's 1998 *Smoking Kills* White paper stated: "Smoking kills more than 13 people an hour…We are not banning smoking…Government is determined not to infringe upon people's rights to make free and informed choices".[140]

   (b) The Government's portrayal of the 'fair balance' for drugs valued by minorities is very different; thus, the threats from them are exaggerated in comparison to the threat from drugs valued by the majority.

      i. Government's 2002 *Updated Drugs Strategy* stated: "All controlled drugs are dangerous and no one should take them".[141]
      ii. ACMD reclassified *Cannabis* from Class B to Class C based on a biased application of the principle of proportionality. Their report indicated that scientific evidence suggests *Cannabis* is less harmful that other Class B drugs, however, the report also indicated that *Cannabis* was equally or less harmful than alcohol or tobacco but did not consider recommending equal regulation.[142]
      iii. During the second reading of the Drugs Bill 2005 in the Commons, the then Secretary of State for the Home Office Charles Clark MP stated: "I want to make it unequivocally clear the Government's view that it is the drug abuser who threatens civil liberties of the law-abiding citizen, rather than the reverse, which is why we need to take legal powers to ensure that the state can prevent and inhibit drug abuse…No one has a right to abuse drugs … If the choice is between the civil rights of a drug abuser or of those who are abused by the drug abuser, I choose the civil rights of those who are abused by the drug abuser".[143]

2) Licensing and regulation[144] of drugs valued by minorities could address the legitimate public health and safety objective without infringing citizens' freedom of individual choice, balancing the rights and responsibilities of an individual's health and recreation choices. This would also enable additional taxation[145] to cover the cost of drug related public services such as education and harm-minimisation.

   (a) In the 2004 Government White Paper, '*Choosing health: Making healthy choices easier*', the then Health Secretary John Reid said:

      > People make their own choices about health, but they have made it plain in our consultation that they want the information, advice and support in making their own choices so, we need to ensure that people have the information they require to make properly informed choices. [146]

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[139] image.guardian.co.uk/sys-files/documents/2004/03/15/alcoholstrategy.pdf
[140] www.archive.official-documents.co.uk/document/cm41/4177/contents.htm
[141] www.drugs.gov.uk/ReportsandPublications/NationalStrategy/1038840638/Updated_Drug_Strategy_2002.pdf
[142] Home Office/ACMD (2002) *The Classification of Cannabis under the Misuse of Drugs Act 1971*, TSO Ltd.
[143] www.publications.parliament.uk/pa/cm200405/cmhansard/vo050118/debtext/50118-05.htm
[144] Transform Drug Policy Foundation (2005) *After the War on Drug, Options for Control.* See: www.tdpf.org.uk
[145] Atha, M. (2004) *Taxing the UK Drug Market,* UK IDMU Report *available at:* www.idmu.co.uk/taxukdm.htm
[146] HM Government (2004) *Choosing health: Making healthy choices easier.* TSO Ltd.

180. *Does the restriction accord with the essence of the right?* No, here the majority has created a statute which by Executive discretion excludes alcohol and tobacco – the drugs *valued* by the majority – from the arbitrary prohibitions which the Misuse of Drugs Act 1971 imposes on those concerned with drugs valued by minorities. After all, there can hardly be more palpable discrimination against a class than making the conduct *and* property which defines that class criminal. So what we have here is a code that a majority group compels a minority group to obey but does not make binding on itself. This is Martin Luther King Jr's *'difference made legal'*.

181. But as an unintended consequence, the prohibitions imposed on the drugs valued by minorities undermine respect for the law by penalising conduct millions of people wilfully engage in. The 2006 Rand Europe Technical Report, prepared for the 2006 Science and Technical Select Committee, HC-900, *The Evidence Base for the Classification of Drugs*, noted the prevalence of 'drug' use in the UK:

> Around four million people use illegal drugs each year. Most of these people do not appear to experience harm from their drug use, nor do they cause harm to others as a result of their habit.[147]

The above figure is confirmed by Home Office, EMCDDA and UNODC annual prevalence of drug use statistics as approximately 10.9% of the UK populace, aged 16-59.[148] However, because Government so poorly enforces the law, with only about a 3% interdiction rate, the law serves more as a statement of dislike and moral disapproval against those engaged with such drugs than as a tool to protect public health, safety and order, and specifically limit, reduce, prevent or eliminate *harmful* non-medical consumption of *all drugs*.

182. But moral disapproval cannot in this case be a legitimate government interest because legal classification must not be drawn for the purpose of disadvantaging the group burdened by the law. The fact that the governing majority views the use and commerce in drugs valued by minorities as immoral is not a sufficient reason for upholding a law prohibiting the practice.

183. In the often quoted *Railway Express Agency, Inc v New York*,[149] U.S. Supreme Court Justice Jackson expressed it eloquently:

> The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.

184. So, let us put the merits of these arguments to one side for a moment and remind ourselves of what human rights instruments are meant to do. They are *not* designed to give legal force to cultural and religious traditions so as to restrict individual freedoms. On the contrary, human rights instruments are there to allow individuals to articulate their personal needs, based on their own diverse circumstances, in such a way that the law will respect their individuality – whatever view the majority in society may take of such needs.

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147 Rand Europe (2006) *'The Evidence Base for the Classification of Drugs'*, Technical Report, prepared for the 2006 House of Commons Science & Technology Committee, HC-900; www.rand.org/pubs/technical/TR362/index.html

148 According to the 2005 UN World Drug Report , annual non-compliance rate has reached approximately 10.9% of UK adults aged 16-59, or approximately 4.0 million persons , www.unodc.org/unodc/world_drug_report.html

149 *Railway Express Agency, Inc v New York* (1949) 336 U.S. 206, 112-113

VIII. The Belmarsh Detainees as analogous Article 14 comparators.

185. *A and Others v. Secretary of State for Home Department, House of Lords 16 December 2004*[150]

FACTS: The men whose appeals were being heard were foreign nationals who could not be deported as that would have resulted in a breach of Article 3 of ECHR. They were certified by the Secretary of State as suspected international terrorists, and detained without trial under the Anti-Terrorism, Crime and Security Act 2001. The legislation involved the UK derogating from its obligations under Article 5 of the ECHR.

PRINCIPLES RAISED: Discrimination and proportionality linked; The House of Lords formally declared that s23 of the Anti-Terrorism, Crime and Security Act was incompatible with the HRA as the detention provisions were disproportionate and discriminated on the grounds of nationality. The measures did not rationally address the threat to the security of the UK presented by Al Qaeda terrorists because they did not address the threat presented by terrorists who were UK nationals. The detention of some suspects and not others, defined by nationality and immigration status, violated Article 14 and could not be justified.

To comply with human rights principles, limits on human rights have to be proportionate. Limits on human rights cannot be proportionate if the means chosen do not achieve the stated legitimate end; the choice of an immigration measure to address a security problem had the inevitable result of failing adequately to address that problem. The detention powers were not 'strictly required' because, if they were, they would apply to UK nationals too who might also be suspected of international terrorism. The HRA applies equally to all, regardless of nationality or immigration status. Non-UK citizens suspected of terrorism were in an analogous situation to UK-citizen suspects so the Anti-Terrorism, Crime and Security Act discriminated on the grounds of nationality and breached Article 14.

186. Mr. Hardison's comparator interpretation of *A and Others*:

FACT: Mr. Hardison was knowingly concerned with psychotropic drugs valued by minorities.

The penal provisions of the Misuse of Drugs Act 1971 are disproportionate and discriminate on the grounds of 'custom, value, tendency or preference' in property. The measures do not rationally address the threat to public health and safety presented by all harmful drugs because they do not rationally address the threat presented by the equally or more harmful drug property valued by the majority, alcohol and tobacco. The detention of some persons concerned with harmful drugs and not others, defined by value, tendency, and preference in property violates Article 14 and can not be justified.

To comply with human rights principles, limits on human rights have to be proportionate. Limits on human rights cannot be proportionate if the means chosen do not (and cannot) *achieve* the stated legitimate end; the choice of penal measures to address the threat to public health and safety has had the inevitable result of failing adequately to address the problem. The penal powers are not 'strictly required' because, if they were, they would also apply to persons concerned with drugs valued by the majority, which threaten public health and safety, alcohol and tobacco. The Human Rights Act 1998 applies equally to all, no matter what the majority prefers or values. Persons concerned with harmful drugs valued by minorities are in an analogous situation to those concerned with harmful drugs valued by the majority so the Misuse of Drugs Act 1971 discriminates on the grounds of value, tendency, and preference in property and as a result breaches Article 14.

187. Again, Mr. Hardison acknowledges that it might be quite reasonable and fair to prohibit *all* use of *all* drugs for 'non-medical' and/or 'non-scientific' reasons, but it cannot be reasonable and fair to prohibit only some drugs for public protection reasons and not other equally, or more, harmful drugs without reason. The UN and UK may proclaim "A Drug Free World, We Can Do it",[151] but they do not mean it.

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[150] [2004] UKHL 56, synopsis from: Francesca Klug and Helen Wildbore (2006) *Equality, Dignity and Discrimination under Human Rights Law: Selected Cases*, Centre for the Study of Human Rights, LSE.

[151] Arlacchi, P. (1998) Closing statement to the 20th UN General Assembly Special Session, New York, June 10th, 1998 *see:* www.unodc.org/pdf/report_1999-01-01_1.pdf at p.39

IX. As such, the sentence of 20 years imprisonment is disproportionately severe to the gravity of the acts committed and constitutes 'inhumane punishment' and 'degrading treatment'.

188. Having demonstrated that the Misuse of Drugs Act 1971 is applied inequitably, Mr. Hardison's asserts the draconian sentence is inhuman and degrading.

189. ECHR Article 3 provides:

> No one shall be subject to torture or to inhumane or degrading treatment or punishment.

190. Article 3 is the only Article of the Convention in which there are no qualifications, exceptions or restrictions to the rights guaranteed.

191. Article 3 prohibits in absolute terms torture or *inhumane* or *degrading treatment* or *punishment*, *irrespective of the victim's conduct.*[152] So, Mr. Hardison's actions are irrelevant.

192. Discrimination has provided the grounds for a finding of degrading treatment. In *Abdulaziz, Cabales and Balkandali v United Kingdom*[153], the Strasbourg Commission confirmed its *East African Asians*[154] decision by stating "the state's discretion in immigration matters is not of an unfettered character, for a state may not implement policies of a purely racist nature, such as a policy of prohibiting the entry of any person of a particular skin colour".

193. The logic of the judgment in *East African Asians* and *Abdulaziz, Cabales and Balkandali* could be rewritten 'the state's discretion in drug matters is not of an unfettered character, for a state may not implement policies of a purely discriminatory nature, such as a policy of prohibiting the right of persons to consume, possess, supply, and produce equally, or less, harmful drugs valued by minorities as against upholding the right of persons to consume, possess, supply, and produce harmful drugs valued by the majority.'

194. And, in *Smith and Grady v. United Kingdom*[155], the Strasbourg Court noted it would not exclude the possibility that treatment "grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority" could, in principle, fall within the scope of Article 3.

195. *Smith and Grady's* logic could also be rewritten: 'treatment grounded upon a predisposed bias on the part of a *majority* – who consume, possess, supply, and produce drugs valued by them – against a *minority* – who consume, possess, supply, and produce drugs they value – could, in principle, fall within the scope of Article 3'.

196. As such, those, like Mr. Hardison, who engage in 'prohibited acts' with drugs valued by minorities are in an analogous position to the homosexual in *Dudgeon* "either they respect the law and refrain from engaging…in prohibited…acts [with property] to which they are disposed by reason of their…tendencies, or they commit such acts and thereby become liable to criminal prosecution" with draconian and debasing results. "[S]uch justifications as there are for retaining the law in force unamended are outweighed by the detrimental effects which the very existence of the legislative provisions in question can have on the life of a person" like Mr. Hardison.[156]

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[152] *Chahal v. United Kingdom* [1997] 23 EHRR 413 para 80
[153] *Abdulaziz, Cabales and Balkandali v United Kingdom* [1985] 7 EHRR 471 para 131
[154] *East African Asians* [1981] 3 EHRR 76; an application of discriminatory legislation that constituted an affront to dignity substantial enough to be considered degrading treatment.
[155] *Smith and Grady v. United Kingdom* [2000] 29 EHRR 493 para 121
[156] *Dudgeon v United Kingdom,* [1982] 4 EHRR 149 para 41 and 60, held violation Article 8, Article 14 not considered.

197. Because the term 'inhumane' when used in relation to 'punishment' has the same meaning as it does in connection with 'treatment', the Strasbourg Court has held a sentence may constitute "inhumane punishment if it is wholly unjustified or disproportionate to the gravity of the crime committed".[157]

198. Mr. Hardison was sentenced to 20 years imprisonment the same week a terrorist, Kamel Bourgass, was sentenced to 17 years at the Central Criminal Court for conspiring to commit a public nuisance by the use of a poison, the chemical weapon *ricin,* with *intent* to endanger life. It would appear this Court considers being concerned in production of drugs valued by minorities to be graver than terrorism.

199. Indeed, there is no objective scientific evidence that the molecules Mr. Hardison possessed, consumed, supplied and produced in fact posed significant harm to him or others. Yet, he has been punished more severely than a terrorist planning to inflict mass poisoning on the general public.

200. Thus, reasonable safe drugs when used in context of personal responsibility with full knowledge and assent cannot be of equivalent gravity to terrorism, rape, murder, robbery, violence, and other offences against the person or public.

201. And since punishment may also be degrading where it constitutes 'an assault on a person's dignity and physical integrity', the level of humiliation required for a breach of Article 3 to occur must be:

> Other than the usual element of humiliation… (…which follows from the very fact of being convicted and punished by a court). The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself. [158]

202. Mr. Hardison's has been subjected to a barrage of denigrating and slanderous remarks by various Judges and prosecutors; they have included words equating Mr. Hardison as most 'dangerous', 'greedy' and 'evil'. These statements have, at times, aroused in Mr. Hardison, *and* his family, feelings of fear, mental anguish and inner turmoil, and accompany a sentence *which appears designed* to break his physical and moral resistance to beliefs the trial Judge did not doubt were 'sincerely held'.[159]

203. Mr. Hardison expressed his conscious and sincerely held belief thusly:

> **The practice of using psychotropic substances for altering, enhancing, and enabling consciousness has existed from the dawn of time, and all efforts to eradicate it are based on an incomplete understanding of human nature.** It is an inherent evolutive tendency of humans to attune, modulate, and regulate consciousness; as there is nothing natural about static mentation. Awareness of the ebb and flow of perception is the quintessence of being sentient.

204. And stated his motivation in this manner:

> All molecules that I produced or possessed were constructed and/or utilized in the *intentional* pursuit of cognitive, intellectual, scientific, and/or spiritual: education, enablement, and exploration; and/or in therapy as emotional and psychological amelioratives.

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[157] *Soering v. United Kingdom* [1989] 11 EHRR 439 para 89; See also n2 *supra*
[158] *Tyrer v United Kingdom* [1978] 2 EHRR 1 para 30-33
[159] *R v Hardison* [2006] EWCA Crim 1502 para 30

205. But, upon conviction, showing utter contempt and lack of respect for Mr. Hardison's sincerely held belief and motivation, HHJ Niblett said that "[t]he 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".[160]

206. And, Mr. Justice Keith, in upholding his 20 year sentence, stated "he never displayed for one moment any regret or remorse for what he'd done". How could he? His acts were intrinsically innocent and equivalent to acts permitted the majority; not only that, he has deep pride in having 'pushed back the frontiers' of this research into psycho-integrating plants and drugs and being a committed stand for *Cognitive Liberty!*

207. The totality of this character vilification is best illustrated by the Sentencing remarks of HHJ Niblett who stated that "the operation was sophisticated…and emphasises how dangerous you are". Why? Because Mr. Hardison is a learned chemist who had intentionally chosen to engage in activities with molecules valued and sacred to minorities in a skilful and professional manner? Or because he believes that they have intrinsic value to humanity?

208. J Keith went on to state "that sentences totalling 20 years imprisonment must be reserved for cases of the utmost gravity." This was no such case. Mr. Hardison's action in producing less harmful drugs than alcohol and tobacco is in no way of equivalent criminality, or indeed more severe as the sentence indicates, than that of the acts of rapists, robbers, terrorists, paedophiles, etc.

209. Accordingly, the draconian sentence passed in the instant case is frankly cruel and unusual and amounts to inhuman punishment and degrading treatment constituted as an assault on Mr. Hardison's dignity and physical liberty.

X. *Certiorari petition*

210. Holding the rule of law in its highest regard and with full humility and wonder, I, Casey William HARDISON, the petitioner, beg that this esteemed body certify as matters of public importance the controversies raised within this petition and grant leave to appeal against a disproportionately severe depravation of *Liberty* thus allowing for the formal articulation of this controversy in the Right Honourable the House of Lords.

– *vitam impendre vero, fiat lux!*

Signed …….
Casey William HARDISON – POWd (Civ)

Dated …….

[160] Transcripts, Proceedings Following Verdicts, HHJ Niblett, 18th March 2005, p5 at 15