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Do Psychedelic Drug Laws Violate Human Rights?

The prohibition of MDMA and hallucinogenic mushrooms restricts "cognitive liberty," according to some activists.



Ecstasy pills, which contain MDMA as their main chemical

Reuters

ROC MORIN

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By the time drug-policy lawyer Charlotte Walsh took to the stage on the final day of the recent [Horizons Psychedelic Conference](#), we had already heard several persuasive talks on the benefits of psychedelic substances. Rick Doblin had spoken about the successful treatment of [PTSD](#) with MDMA, Draulio Barros de Araujo described his work combatting [depression](#) with ayahuasca, and Stephen Ross discussed his study administering psilocybin to cancer patients.

I had met Ross two years prior, while covering his psychedelic [research](#). The psychiatrist had spent years and a small fortune obtaining the government's permission to run an extremely limited study. The stakes were high. Without exemptions from the DEA and other agencies, Ross and his NYU team could have faced punishments as severe as life imprisonment. But the risk was worth it: The researchers were able to critically reduce end-of-life anxiety in the vast majority of their patients with targeted therapy aided by a single dose of psilocybin.

These clinical gains run counter to increasingly prohibitive trends exemplified by Holland's 2008 ban on hallucinogenic mushrooms and the U.K.'s [Psychoactive Substances Act of 2016](#). This recent law automatically renders illegal all substances capable of altering emotions or mental functioning unless specifically exempted.

According to Charlotte Walsh of the anti-prohibitionist [Ayahuasca Defense Fund](#), that kind of blanket drug prohibition is a violation of international human-rights law. Walsh sees parallels between the drug war and the legal battles for racial equality, as well as gay and reproductive rights. She and her colleagues across Europe and North America hope to use the U.S. Bill of Rights and the European Charter on Human Rights to build a cognitive-liberty-based case against drug prohibition.

I spoke with Walsh recently about her current efforts and the prospects for success at home and abroad.

Morin: What would a human-rights-based drug defense look like?

Walsh: Generally, when people are prosecuted for psychedelic use, the defense focuses on technicalities rather than challenging the prohibitive framework itself. On the rare occasions when they do challenge prohibition, they tend to employ a rights-based framework—namely, arguing that their client’s human rights have been infringed by psychedelic drug prohibition. Rights-based defenses have historically been either pleas for therapeutic or religious exemptions from prohibition.

Morin: What is the legal basis for drug prohibition?

Walsh: Within the parameters of the U.K. Misuse of Drugs Act [equivalent to the U.S. Controlled Substances Act] the issue is ostensibly based around the idea of harm. We have an Advisory Council on the Misuse of Drugs, which is a group of scientists in different realms that the government consults when a drug is going to be scheduled or reclassified. The council then carries out a wholesale review of the substance and makes a recommendation for or against prohibition or reclassification. There has been a trend though where the government will ask the Advisory Council to carry out such a review and then just completely ignore their results and do what they want to do. As a stark example, when MDMA was being reevaluated for reclassification, before the results were even in, they issued a public statement saying, effectively, “Don't worry, whatever they find, we're not going to change anything.”

An alcohol user can alter their consciousness freely despite the proven risks while a psychedelic user faces heavy punishment.

Morin: What results have they been ignoring?

Walsh: There was an extensive [U.K. government study](#) carried out in 2010 by a team under David Nutt that measured various substances in terms of harms to society and the individual. That study showed that alcohol is the overall forerunner in terms of harm, and tobacco comes close after that. A lot of the Class A drugs [equivalent to Schedule I in the US] and psychedelic drugs in particular were at the opposite end of that scale showing very low risk of harm.

Morin: Did the government refute the study or did they ignore it?

Walsh: They basically ignored it. In relation to the alcohol and tobacco findings, obviously nobody has called for their prohibition. An alcohol user can alter their consciousness freely despite the proven risks while a psychedelic user faces heavy punishment. It's arbitrary discrimination. The government's response to the Nutt study has been that drug policy isn't based solely on science, it's also based on cultural and historical precedent.

Morin: Is that an admission that the harm-based justification for prohibition no longer applies?

Walsh: It's certainly evidence that it's applied inconsistently and arbitrarily. From a human-rights-based perspective, everybody's rights should be protected equally unless there's a good reason why you're treating a group differently. I don't think that saying "culturally and historically this is what we've always done" is legitimate. You can't say that about racial discrimination, for instance.

Morin: So, the current argument is that illegal drugs are bad because they're illegal?

Walsh: Basically, and it goes beyond that. We have a recently elected Conservative government in the U.K., and they've produced something called the Psychoactive Substances Act. It's a piece of legislation that renders it unlawful to trade in any substance capable of producing a psychoactive effect of any kind regardless of harm or benefit. If you read the text of the Act, it's extraordinary, most notably its lack of any reference to the concept of harm.

Morin: How do they define "psychoactive" exactly?

Walsh: Any substance that alters your emotional state or mental functioning. It openly states that we [the government] think we have the right to stop you from altering your psychological state. It's strange that's something they believe they should have the power to do.

Morin: I assume there are exemptions for alcohol, tobacco, and caffeine.

Walsh: Yes, for culturally accepted substances. This legislation is potentially so broad that prior to its enactment the government felt compelled to write to bishops to reassure them that the incense used in church services would not become illegal, despite its being mildly psychoactive.

Morin: What does that kind of blanket ban indicate to you in terms of legislative intent?

Walsh: The tradition in English law was always to intervene as little as possible. That concept has been dying in more recent years. This reverses that presumption, replacing it with an assumption that you can't do something unless the government explicitly says you can. This violates classic liberalism, where you have the concept of limitations of power, as most famously espoused by legal theorist John Stuart Mill. How much power can the state legitimately hold over the individual? Mill laid down the principle as prevention of harm to others. So, from that perspective, the kind of paternalism we're seeing, both in the operation of the Misuse of Drugs Act and the fundamental aims of this new piece of legislation is illegitimate.

Even if you could make a case for that kind of paternalism, how can imprisonment possibly be for our own good?

Morin: Paternalism in terms of protecting people from themselves?

Walsh: Exactly. It's inherently infantilizing. Even if you could make a case for that kind of paternalism, how can imprisonment possibly be for our own good? In the majority of cases, the primary and often only harm being suffered by the individual is due to the punishment imposed rather than from the substance use itself.

Morin: How do you intend to build a human-rights case against drug prohibition?

Walsh: There are different ways in which you can approach it. Article 8 [in the European Convention on Human Rights] guarantees the right to privacy. In

Mexico, there was a [Supreme Court ruling](#) that for individuals to grow and use cannabis was a human right connected to the right to privacy. Here in the U.K. recently, there was an [all-party parliamentary group](#) looking at drug-policy reform, and one of the things that they said is that drug-possession laws are potentially a breach of our Article 8 right to privacy. That's the first time I've ever seen an official source using that kind of human rights-based argument. I think that is a really promising development.

Morin: The suggestion is that drug use should be a private choice?

Walsh: It should be a private choice as long as it doesn't harm others. The vast majority of police stops and searches in our streets are for drugs rather than anything else, which is an obvious violation of privacy. Read more broadly, the right to privacy equates with our ability to become who we want to be. Mill, again, was a strong proponent of experiments in living as an important means for self-discovery. The question is, should we be entrusting the government to determine what's valuable to us? It's through our own choices, including whether or not to ingest substances, that we engage in a process of self-creation.

Morin: It seems like there are stronger laws in place to prevent a patient from being medicated against their will than there are permitting self-medication. How similar are those two concepts?

Walsh: It's based on the same argument—the freedom to control your own consciousness and the mechanisms of your thinking. With psychedelics, it's one of those areas where people who have experienced profound alterations of consciousness will often see merit in these arguments, and people who haven't are often not very open to them. I think you have to be very careful about how you construct your argument. It's about liberty. It's about an abuse of state powers. You want to get people on board who are aren't necessarily interested in altering their consciousness, but who are interested in curbing what the state can and can't do.

Morin: Medical arguments have broadly relaxed prohibition of marijuana in this country. Do you see that extending further?

Walsh: I do, but I also think that the medical model is problematic in its own right. I think we need more of a holistic definition of health. Right now, we're talking about simply the absence of illness—whether it's physical or mental. We should be talking about allowing individuals to flourish, to develop beyond basic well-being.

Morin: Besides the right to privacy, what other rights do you see influencing the legitimacy of prohibition?

Walsh: Article 9 guarantees religious freedom, so, basically, if you consider the drug you use to be a sacrament, then banning it is a form of religious persecution. In the States, you have a more doctrinal approach to what constitutes a religion. There's a test. Is there a holy book and a central belief system? There's a list of things you can work through. In Europe, we don't have that. We have this loose interpretation of what religious belief is. It can even cover atheism, for example. Indeed, any belief system of significance to you can potentially be covered. The court tends to accept that, but then they say that your ability to manifest that religious belief—for example by drinking ayahuasca—has to be balanced against the public interest in you not doing it. And so, in cases involving ayahuasca, they've said that its illegality is proof of its danger, which in and of itself proves that the public interest in your not taking it outweighs your interest in taking it. It's a circular argument that renders the whole process absolutely meaningless.

Morin: Taking your example, can you talk about why someone would want to use ayahuasca?

Walsh: There have been a lot of studies, and the overall conclusion seem to be that the long-term [psychological well-being](#) of people who use it is actually higher than control groups who have never used it. It has thousands of years of cultural history behind it. Then, of course you have the anecdotal evidence of many individuals saying that using ayahuasca has been a very beneficial and transformative experience.

Morin: A lot of people seem to think that the religious argument has the best chance of succeeding here in the U.S.

Walsh: Right. It has already been successful in the U.S. Courts have allowed exemptions in certain cases with ayahuasca, and with the [Native American Church](#) and peyote. There have been similar rulings in other countries—Holland and Chile, for example, but nothing like that here in the U.K. Interestingly, in the U.K., judges rejecting human-rights arguments have argued that they are bound by the international system of drug prohibition and therefore can't make exemptions. In U.S. courts though, that sort of argument has been discarded with barely a second glance. The prosecution has raised the fact that exemptions are against international law and the judiciary has said that it doesn't trump religious freedom.

Morin: If religious freedom is weaker in the U.K., is there a freedom of speech argument that could be made instead?

Walsh: More broadly under Article 9 is the right to freedom of thought, which is closely linked to freedom of speech, given that our thoughts precede our speech. From that perspective, the idea is that we should be allowed to think what we want—and it's not just the actual contents of thinking that are important here, but also the processes of thinking. If psychedelics and other drugs can allow you to access different mind states, by preventing access, we're interfering with true freedom of thought. These substances, as precursors, allow you to think in entirely different ways—which can be beneficial. The idea that psychedelics can actually improve an individual's life is rarely taken into account, and taking them because they give pleasure is not even considered—as if pleasure were something to be ashamed of. The individual shouldn't be required to prove that these substances are risk-free, because few things in life are—rather it should be up to the state to prove, with scientific evidence, that the risks justify the damage to our civil liberties. In the absence of that, it is impossible that say that this is truly a free society.

ABOUT THE AUTHOR



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