

Dearly beloved,

In our last communion of early October I left you with a chronicle of gratuitous grace about the Fifth Report of the 2005-2006 Parliamentary House of Commons Science and Technology Select Committee, **HC 1031**, *Drug classification: making a hash of it?*¹ It had been released a week prior to the submission of my *Certiorari* Petition to ‘the Right Honourable the House of Lords’ on August 8th.

A *Certiorari* Petition is an application to an Appeal Court to have a legal controversy certified as being a matter of general public importance and therefore worthy of being considered by a higher Court. In the States, that higher Court would be the Supreme Court; in England, that Court is the House of Lords a supposedly independent judicial body embedded within the English Parliament or legislature, i.e., Lord Justices vote on Bills that may become Acts of Parliament which they then enforce.

Indeed, here in England the three organs of Statecraft are all combined in one body, the Parliament. Thus no checks and balances, Parliament can do as it wishes; only the Monarch can tell Parliament what to do, though she/he hasn’t for about a hundreds of years. These were the stark contrasts remedied by the U.S. Constitution. USan citizens have no human sovereign and the Legislature, Judiciary and the Executive powers are separate.

But regardless of the judicial structure, I believe systemic discrimination under draconian penalty against a substantial minority of the populous for commerce in, and/or use of, drugs other than those preferred by the majority is irrational to say the least and certainly worthy of consideration by the House of Lords; thus, my argument:

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.

So, what is in my assertion?² First, neutral Acts are supposed to apply to everyone. The Misuse of Drugs Act 1971 (MDA) means the misuse of all drugs... and thus all drugs are capable of being controlled by it. If alcohol and tobacco cause the most harm one would expect that they would be controlled equally with other harmful drugs, unless there is a rational justification such as public health, safety and order, otherwise, it is discrimination.

Second, it is a principle of ‘common law’ (abolished² in the US Federal system in 1937 and replaced with Uniform Code but still alive in England) that the penalty fits the crime. Thus, criminal penalties are meted out in proportion to the harm risked. But if as the Third Report of the 2002 Parliamentary House of Commons Home Affairs Committee, **HC 318**, *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...³

...can it be said that the penalties fit the crime, because alcohol and tobacco are not punished equally as one would expect from a neutral act which deals with “dangerous or otherwise harmful drugs”? Third, is it cruel and unusual to punish severely persons because they engage in a type of potentially harmful activity equivalent to a legal one?

Parliament can assign consequences to a violation of its criminal law, but, Article 14 of the UK Human Rights Act 1998 – which gives further effect in domestic UK law to *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, **Cmd 8969** (ECHR) – prohibits the Executive from singling out one class of citizens for punishment to the exclusion of everyone else potentially subject to a neutral Act without a reasonable and objective justification which secures a legitimate State aim prescribed by the ECHR.

¹ HC 1031 (2006) *Drug classification: making a hash of it?*, Science & Technology Committee, Fifth Report of Session 2005-2006, July 31st 2006, para 97 Available at: www.parliament.uk/s&tc.com

² *Erie Railroad Co. v. Thompkins* (1937) 304 U.S. 64

³ HC 318 (2002) *The Government’s Drug Policy: Is it Working?*, Parliamentary Home Affairs Committee, paras 9 & 10

So, now back to the 2006 House of Commons Science and Technology Select Committee report, HC 1031, which I told you about in the first episode of this saga. The *'Hash Report'* as I affectionately call it now severely chastised the Government and their quasi-independent Advisory Council on the Misuse of Drugs (ACMD) for failing in their statutory duties. The Committee asserted:

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.**

I also told you that the ACMD responded to this accusation of 'dereliction of duty' with conciliation in their September 14th 2006 report *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*:

At present, the legal framework for the regulation and control of drugs clearly distinguishes between drugs such as tobacco and alcohol and various other drugs which can be bought and sold legally (subject to various regulations), drugs which are covered by the Misuse of Drugs Act (1971) and drugs which are classed as medicines, some of which are also covered by the Act. **The insights summarized in this chapter indicate that these distinctions are based on historical and cultural factors and lack a consistent and objective basis.**⁴

The tide had turned! The genie was out of the bottle: "Phenomenal cosmic power, itty bitty living space"! I was as excited as one can get in this resigned and cynical gulag, as this was/is a firm concession by the ACMD of my drug discrimination argument.

Out of the blue, the Advisory Council, an esteemed body of Academics, Scientists, Doctors and frontline Social Workers statutorily empowered by the 1971 Misuse of Drugs Act to advise Government on drug policy – including changes in the law – declared Government's drug policy distinctions "lack a consistent and objective basis".

What??? Pause ... Breathe... first principles...under Article 14, discrimination *is* lawful *if* it has an objective and reasonable basis meeting a legitimate or compelling state interest prescribed by the European Convention. And, **'historical and cultural factors'** are *not* found in the permitted State interests under the Convention!! Shazaaammm!

Dumbfounded; what catalysed this? Scratch chin! Hmmm...The first hints at the potential for the declaration made by the ACMD in *Pathways to Problems*' appeared in the 1997 UN World Drug Report in a chapter entitled 'The Regulation-Legalization Debate', it just received it in November, it reads:

The discussion of regulation has inevitably brought alcohol and tobacco into the heart of the debate and highlighted the apparent inconsistency whereby use of some dependence creating drugs is legal and of others is illegal. **The cultural and historical justifications offered for this separation may not be credible to the principle targets of today's anti-drug messages – the young.**⁵ (Emphasis added)

If the justifications are not credible for our young, will they respect the law? Well, because tobacco, alcohol and other drugs are most young person's first encounters with the law, the answer is: they don't and they won't. Nor can they be expected to.

Remember *Lawrence et. al. v Texas* (2003) 539 U.S. ___ "They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress". I am of that later generation and I see that the Misuse of Drugs Act and related legal instruments serve only to oppress.

⁴ Home Office/ ACMD (2006) *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*, para 1.13, September 14th 2006 – www.drugs.gov.uk

⁵ UNODC (1997) UN World Drug Report 1997, Chapter 5, p198, www.unodc.org/adhoc/world_drug_report_1997/
See also: Jelsma, M (2003) The Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs, *International Journal of Drug Policy* 14 (2003) April.

And⁶, I believe that when the 2005-2006 Science and Technology Committee Report, HC 1031, *Drug classification: making a hash of it?*, accused the ACMD of a “dereliction of duty”, listing a string of no less than 13 failures, the threat of legal action prompted the ACMD to become conscious of their objective duty to be independent of Government’s *arbitrary*, ‘historical and cultural’ mind-set. Indeed, with quickness previously unseen in drug policy the ACMD intrepidly ‘returned to first principles’:

As their actions are similar and their harmfulness to individuals and society is no less than that of other psychoactive drugs, tobacco and alcohol should be explicitly included within the terms of reference of the [ACMD].⁷ (Emphasis Added)

This is in serious contrast to what the ACMD had said in 2004 to palad.org.uk:

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.⁸** (Emphasis added)

And so, in their Introduction to *Pathways to Problems*’ the ACMD explained this change:

In its first 30 years, the ACMD has focused most of its attention on drugs that are subject to the controls and restrictions of the Misuse of Drugs Act (1971). Although its terms of reference do not prevent it from doing so, the ACMD has not considered alcohol and tobacco other than tangentially. **The scientific evidence is now clear that nicotine and alcohol have pharmacological actions similar to other psychoactive drugs.** Both cause serious health and social problems and there is growing evidence of very strong links between the use of tobacco, alcohol and other drugs. **For the ACMD to neglect two of the most harmful psychoactive drugs simply because they have a different legal status no longer seems appropriate.⁹** (Emphasis added)

I believe it *is* this which forced the Government’s hand, because, on Friday, October 13th 2006, by Command of Her Majesty Queen Elizabeth II, around noon GMT, the Home Secretary presented the following declaration to Parliament buried in **Cm 6941**:

Government acknowledges that alcohol and tobacco account for more health problems and deaths than illicit drugs...¹⁰

Unless I am wrong this is the first time any ‘civilised democracy’ has made such a formal and authentic admission. ***This is new evidence!***

Time-shift ... this formal admission came on the first Friday after the Parliamentary (Court) summer recess had ended and everybody was too distracted to notice. I had just received on October 11th 2006 notification that the *Certiorari Petition* Hearing would take place Tuesday October 17th to decide whether it involved a point of law of general public importance.

On Friday, October 13th at around 8AM on the BBC Radio 4, I learned the Government was going to publish its reply to the recommendations of HC 1031 that afternoon. I was anxious. How the hell was Gov’t going to squirm out of the ACMD report and the accusations by a bunch of Parliamentary Ministers? Was it real? Were they really going to decide my petition two business days after the release of the Government response? Could I get this ‘new evidence’, these formal admissions, in front of the Court?

⁶ Lorenzo, I have discovered the power of beginning sentences with ‘And’. And, I do get carried away with them.

⁷ n4 *supra*, HO/ACMD (2006) para 1.14; Cf. *FDA v. Brown & Williamson Tobacco Corp* (2000) 529 U.S. ___

⁸ n1 *supra*, HC 1031 (2006) Ev 57, para 3.2

⁹ n4 *supra*, HO/ACMD (2006) page 14; Cf. 61 Federal Register 44619-45318 (1996)

¹⁰ HM Government (2006) The Government Reply to the Fifth Report from the House of Commons Science and Technology Committee Session 2005-06 HC 1031 *Drug classification: making a hash of it?* **Cm 6941**, page 24

The new evidence: Recommendation 50 of the 2006 Science and Technology Committee report, HC 1031, had said:

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.

The Government Reply to the Fifth Report from the House of Commons Science and Technology Committee Session 2005-06 HC 1031 Drug classification: making a hash of it? Cm 6941, rejected this recommendation but explained:

The Government fully agrees that the drug classification system under the Misuse of Drugs Act is not a suitable mechanism for regulating legal substances such as alcohol and tobacco. **The distinction between legal and illegal substances is not unequivocally based on pharmacology, economic or risk benefit analysis. It is also based in large part on historical and cultural precedents. A classification system that applies to legal as well as legal substances would be unacceptable to the vast majority of people who use, for example alcohol, responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that *alter mental functioning* (ranging from caffeine to alcohol and tobacco).** Legal substances are therefore regulated through other means.

However, the **Government acknowledges that alcohol and tobacco account for more health problems and deaths than illicit drugs** and this is why the Government intervenes in many ways to prevent, minimise and deal with the consequences of the harms caused by these substances through its dedicated Alcohol Harm Reduction Strategy and its smoking/tobacco programme. **At the core of this work, which is given considerable resources, is a series of education and communication measures aimed at achieving long term change in attitudes.** It is through this that the public continues to be informed in an effective and credible manner.¹¹

In a few sentences the Government laid bare in ‘all its dazzling quotidian humility’ the true reason behind drug discrimination: **the “vast majority” would find prohibition of their drugs of choice unacceptable**, i.e., Prohibition is a vote loser!

In fact, as evidenced by the sustained use of proscribed drugs by a great many citizens of all countries of the world, *most if not all people find prohibition of their drugs of choice unacceptable*. Many people feel deeply attracted to psychoactive drug experiences – illegal, endogenous or otherwise – and consider them as a valuable, essential, and for some, a sacred element of their lives.¹²

So, what we have here is an archetypical legal classification drawn for the purpose of disadvantaging the group burdened by the law; or to use Martin Luther King Jr’s words:

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.¹³

And do let us remember that I centred my Human Rights argument at ground-zero of the ‘War on Drugs’ – freedom of thought, i.e. *Cognitive Liberty*, the sacred inalienable right to control one’s own consciousness. On hearing this in the Crown Court in 2005, His Honourable Judge Niblett said he had come to the “clear and sure conclusion that Mr. Hardison’s arguments are misconceived”;¹⁴ yet, less than two years on, HM Government suddenly acknowledges in Cm6941 a “deeply embedded historical tradition and tolerance of consumption of a number of substances that *alter mental functioning*”.

¹¹ n10 *supra*, Cm 6941(2006) page 24 (Emphasis added)

¹² van Ree, Erik (1999) Drugs as a human right, *International Journal of Drug Policy* 10 (1999) 89 98

¹³ Martin Luther King Jr., April 16, 1963, *Letter from a Birmingham Jail*

¹⁴ Transcript of Judge’s Reasons for Ruling on abuse of Process/Human Rights Arguments at p9C

And so, adding insult to injury, the Court of Appeal, on October 17th 2006, in reaching their decision as to whether my petition raised a point of law of general public importance and should go to 'The Right Honourable the House of Lords', *the same three Justices* (bias?) who heard my original Appeal against Sentence *refused* to hear the new evidence. Unbefuckinlievable! If I had admitted my 'offences' two days before trial, you bet your sweet ass they would have heard the 'new evidence'. But nooooooooo...

I have since informed the European Court of Human Rights that the Courts here would not hear the Government 'confession' and provided them with the new evidence, but I am at least a year from there. *Perdurabo!*

So, now I must resubmit my Application for Leave Appeal against Conviction with the new evidence and plead they utilise their 'inherent power' to re-open it and ensure that no injustice has been done hoping that this time they listen past their prejudices.

Still, this admission by Queen and Government has signalled the end for drug discrimination and ripened this controversy for 'formal articulation'. Indeed, in the space of a Parliamentary recess the entire *substance* of the Government's stance on drugs has unravelled, impugned by a Parliamentary Committee and abandoned by their Advisory Council on the Misuse of Drugs.

And yet more new evidence will be forthcoming as the Government has not replied to the September 14th 2006 ACMD report *Pathways to Problems*' which left their drug policy up shit creek (crick)! The Advisory Council – accepting that its terms of reference had never prevented it from considering alcohol and tobacco – explained in *Pathways to Problems*' that their change of heart stemmed from *new evidence* suggesting no rational basis for the current discrimination/distinction between legal and illegal drugs:

- Legal and illegal drugs both act on the brain in the same way – “the scientific evidence is now clear that nicotine and alcohol have pharmacological actions similar to other psychoactive drugs” (p14) “[N]icotine, alcohol and most of the other psychoactive drugs in common use all act on the brain in similar ways”. (para 4.46)
- Legal and illegal drugs are both used for similar non-medical purposes – “The worldwide appeal of psychoactive drugs lies largely in the expectation that they will produce desirable effects: generating or enhancing feelings of pleasure or relaxation; diminishing pain, depression, sadness or fatigue; increasing energy or concentration; and facilitating socialisation”. (para 1.1)
- Legal and illegal drugs both have the same potential to cause harm – alcohol and tobacco’s “harmfulness to individuals and society is no less than that of other psychoactive drugs”. (para 1.4)
- Young people increasingly disregard the legal distinctions between “drugs in common use” – “While tobacco, alcohol and other drugs all have differing legal status, many young people do not appear to recognise these distinctions” – instead they exercise informed choice; “the stated aim of drugs education in England is to enable pupils to make healthy, informed choices”. (paras 4.46 & 5.19)

And, after decades of opaque and pejorative definitions – the ACMD comprehensively defined, at the outset, *all* of the key terms impugned in Section VI of my House of Lords Petition¹⁵ and elucidated their remit in four words:

Because our ***purpose is to prevent future harm***, [not eliminate all risk] we have focused on the development of **hazardous use**, that is use which has the potential to cause harm, and on the development of **problem drug use**. The ACMD has defined a problem drug user as “anyone who experiences social, physical, *legal* or psychological problems with one or more drugs”.¹⁶ (some emphasis added, some preserved)

Unfortunately, the ACMD continued to cling to the subjective definition of **drug misuse** or **substance misuse** as drug-taking which is judged to be *inappropriate* or dangerous. Judged inappropriate by whom and to what standard? Is getting stumbling drunk appropriate whilst lovemaking on 2C-B inappropriate and worthy of jail?

¹⁵ The ACMD have a copy of my *Certiorari Petition* and are getting Freedom of Information requests at least monthly.

¹⁶ n4 *supra*, Introduction, page 15

Ultimately, at paragraph 4.47 of *Pathways the Problems*, the ACMD acknowledged the blindingly obvious: **“greater integration of thinking in this field could result in more coherent and effective policies”**. Three integrable “Key points” found on page 18:

- Psychoactive drugs are used worldwide in the pursuit of pleasure, solace and acceptance. Young people may also be attracted to use them for other, sometimes contradictory reasons – curiosity, rebellion or a desire to belong or escape. **Psychoactive drugs all act on certain parts of the brain, altering normal neuro-chemical functions and hence the user’s experience.** The precise nature of the experience and other consequences will reflect the interaction of the particular drug with the individual’s physiology, psychology and current circumstances. (Emphasis added)
- The mechanisms of action of psychoactive drugs cannot in themselves explain the huge worldwide increase in their use over the past 40 years. Attitudinal, cultural and economic changes may provide at least a partial explanation.
- **The current system for classifying and controlling drugs in the UK has a number of shortcomings and should be reviewed.** (Emphasis added)

Yet, ‘in the end, after each having given just a little bit of their souls away’¹⁷, Government said, in Cm 6941, “it should not be imputed that Government takes the harms caused by [alcohol and tobacco] any less seriously” – except for the fact that you don’t get a twenty year sentence for their manufacture. And for good measure, “Government has decided not to pursue a review of the classification system at this time”.

So, the substantive reality as it stands: **Government’s discrimination in drug policy stems from and depends unfairly on the ‘historical and cultural precedents’ and ‘attitudes’ of a “vast majority”**, amid other vested interests, who consume, possess, supply, and produce the harmful drugs, alcohol and tobacco.

Is this what we didn’t know they didn’t know or did we know they knew this? Can Government maintain these arbitrary absurdities in their reply to the ACMD report: *Pathways to Problems*? Can the Government even pretend to defend itself after having been completely rubbished by the ‘experts’ statutorily empowered to call the kettle black? Will the Rule of Law prevail or will this tyranny over the mind of man continue?

Soon, I will have my new Application for Appeal with fresh evidence ready to submit to the Court; but, they won’t hear it for months and they may blank me again. I will specifically request it is heard by different Justices who *do not* smoke or drink or have ties to the industry in an effort to secure impartiality and drive home the point!

If I do not succeed at the Court of Appeal, then I have another opportunity to go to the House of Lords. If I do not succeed there, ‘at the end of the rainbow’ is the European Court of Human Rights with two Chambers, a regular with 7 Justices and a Grand with 17 Justices! So that’s two shots there if they allow the application.

It has been one year since I submitted my original Application to the European Court; I continue to keep them posted at every major juncture as per their request. In the meantime, I study International, Human Rights, Criminal and Civil Law principles and I keep studying as much as I can of the Government’s own guidance on Effectiveness, Regulatory review, Risk Management¹⁸ and Better Policy Making.¹⁹

I feel that the decision not to review the current classification of drugs is based on the Better Policy Making guidance and its five principles which by law²⁰ Government would have to apply to the classification of drugs: Proportionality, Accountability, Consistency, Transparency and Targeting.²¹ The current decision is amenable to Judicial Review (JR) and I have until January 13th 2007 to stake my claim on the irrationality and unreasonableness of Government’s decision not to review drug classification given their formal admissions. If they have not responded to *Pathways*’ by then I will file a JR.

¹⁷ Primus (1988) Harold of the Rocks, *on Suck on This – Live at the Berkeley Square*, Berkeley, California

¹⁸ www.hm-treasury.gov.uk/media/C87/A1/risk_principles_180903.pdf

¹⁹ Cabinet Office/CMPS (2001) *Better Policy Making*, www.cmps.gov.uk

²⁰ Part II, s21 Legislative and Regulatory Reform Act 2006

²¹ Better Regulation Taskforce, *The Principles of Good Regulation*, www.brtf.gov.uk/taskforce;

Recap: 1) Two Parliamentary Select Committees in 4 years have lambasted current Government Drug Policy, HC 318 (2002), HC 1031 (2006); 2) the ACMD, statutorily empowered by the Misuse of Drugs Act 1971 has said that LSD and Ecstasy are safer than alcohol and tobacco and that the Government's drug policy justifications are bollocks – Queen's English for Bullshit! 3) the Government in Cm 6941 said 'yes, we know its bollocks but the large majority would 'get the hump' (aka be pissed off) if we prohibited their drugs. So we won't even consider reviewing the policy as we would have to prohibit alcohol and tobacco or legalise and regulate the lot!' However, my legal challenges continue; so they can 'hide their head in the sand' but resistance is futile.

Recently, I received in the mail a copy of Wikipedia's entry for 'discrimination'; after the usual references to age, gender, race, religion, appearance or 'lookism', sexual orientation...*drug!* I have been successful in the co-creation of a meme: drug discrimination. To the blessed soul who entered it and my case into Wikipedia, the world will never be the same, your contribution has made a difference and I am grateful! The newspapers are starting to pick it up here in England. Maybe they will do so elsewhere.

Imagine the kid researching Martin Luther King Jr. or the current hysterical racial profiling and finding 'drug discrimination'. Or even the Evangelical researching religious discrimination while drinking his wine having just cursed his daughter for smoking pot.

As they say in NA: As long as the ties that bind humanity together are stronger than those which tear us apart; all will be well! Indeed, there is hope for the flowers. Speaking of which, someone please put the meme 'species-ism' in the wiki along the lines of stewardship for a better planet, someone must 'speak for the trees'. If not the Lorax, 'I am responsible'.

In the next instalment I shall share some of the Semiotic fruits of My Sacred Tantra conjunct the 'Housian' I-5 Model²² of Entheogenesis.

Recommended Reading:

- * Richard Dawkins – The God Delusion
- * Mary Midgley – The Myths We Live By
- * Thomas L. Friedman – The Earth is Flat
- * Nicholas Hagger – The Syndicate: *The Story of the Coming World Government*
- * Daniel Dennet – Darwin's Dangerous Idea
- * Susan Blackmore – The Meme Machine
- * E.O. Wilson – Consilience: *The Unity of Knowledge*

Recommended Listening:

- * Espers – Espers II
- * Nouvelle Vague – Bande A Part
- * Roger Waters – Amused to Death
- * Michael Franti – Songs from the Front Porch
- * Shim Shai – I Sense Your Presence

Recommended Viewing:

- * David Attenborough – Planet Earth Series (DVD)
- * Richard Dawkins – The Root of All Evil (DVD)
- * One Giant Leap (DVD)

Thanks for reading and for being!

– fiat lux, fiat pax!

Casey William Freeblood Hardison – POWd (Civ)

²² House, S.G. (2005) Toward a Psychospiritual Understanding of Psychedelic Therapy, *Bulletin of the Multidisciplinary Association for Psychedelic Studies*, v15, n1, p30 www.maps.org/news-letters/v15n1/index.html