

Regina -v- Casey William Hardison

CAO 200504343 C4

Appendix A

**Skeleton
Defence Arguments
Pursuant to
European Convention for Human Rights
Articles 3, 6, 8, 9, 10 & 14**

If a law be bad, it is one thing to oppose the practice of it, but it is quite a different thing to expose its errors, to reason on its defects, and to show cause why it should be repealed, or why another ought to be substituted in its place. –Thomas Paine, *Rights of Man*, 1792

Prepared By

Casey William Hardison

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Skeleton Defence Arguments
R v Casey HARDISON
2004-2005

Freedom Evolves—Daniel C. Dennett

In law context is everything—Lord Steyn

Context:

- 1) Mr. Hardison's position: *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.
- 2) For many thousands of years people and cultures have worked with psychoactive substances to activate psychic capabilities.¹ These sacred archaic traditions have consistently utilized psychoactive compounds for the diagnosis and treatment of illness, prediction of future events, clairvoyance, and communication with 'other' intelligences. The use of psychoactives plants and compounds predates 1189 CE and was *common* in Europe and the UK prior to the *Magna Carta* and other legislating instruments.
- 3) Today, as ever, the people who lead us are fuelled by the archetype of power, an aspect of the human psyche which drives to structure, control, and formulate rules and systems. This power drive shapes our world, and without it, mankind would have perished long ago. When kept in balance with its several complementary energies, it gives us form; it builds civilizations; and it created the European Court of Human Rights. But when the precarious balance is shifted, and too much energy flows from this archetype, structure becomes constriction, control becomes dictatorship, teaching degenerates into admonition and threat, and caution devolves into paranoia. Communication with the loving and nurturing energy within us becomes lost, and with it an ability to choose wisely, either for ourselves individually or for our species.
- 4) Priests and kings, emperors and rulers, presidents, prime ministers and all those who find comfort and safety within the structures maintained by the powerful, tend to be angered and disturbed by individuals who insist on striking off in new directions, ignoring the guidance of appointed leaders. To those who assume authority, there appears an unconscious threat of chaos, the shattering of what is known, familiar, and safe. The response to this threat can take many forms, from killing the offender (as with Christ) to—at the very least—warning him to keep his knowledge and opinions to himself (as with Galileo), lest they provoke the self-protecting anger of the established order and of those who maintain power.
- 5) The Age of Reason and Enlightenment witnessed the genesis of a 'new secular order' in which neither King nor Pope could control knowledge or its dissemination. Peoples everywhere became aware of a new found freedom which fomented (r)evolutions, overthrew tyrannies, and coalesced in democratic principles, founded upon the inalienable 'Rights of Man.' In the words of Thomas Paine, rights of this kind 'are all the intellectual rights, or rights of the mind, and also all of those rights of acting as an individual, for his own comfort and happiness, which are not injurious to the natural rights of others.'

- 6) In 1945, world super-powers, the United States, China, Soviet Union, France, United Kingdom and 46 others States created the United Nations embodying the principle of respect for human rights and dignity in international law. In Article 1(2) of the United Nations Charter the founders said they were determined to develop ‘friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.’
- 7) In 1948 the United Nations adopted ‘The Universal Declaration of Human Rights,’ proclaiming a ‘common standard of achievement,’ an extensive list of human rights, which is an authoritative guide to the interpretation of the UN Charter. The preamble to the Universal Declaration states, ‘Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’
- 8) The immediate post-war period in Europe saw the establishment of the Council of Europe by governments of Western Europe with the intention of creating an international barrier to ‘State tyranny’ as had existed on the Continent for many years previous. The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950 by the Member States of the Council of Europe. The United Kingdom was the first Party to ratify it, in 1951.
- 9) In 1961, the UN Single Convention on Narcotic Drugs was ostensibly created by parties “*Concerned* with the health and welfare of mankind’ under the belief “that addiction to narcotic drugs constitutes a serious evil” and “*Conscious* of their duty to prevent and combat this evil” assumed “the competence of the United Nations in the field of narcotics control.”²
- 10) Article 4 of the 1961 UN Convention laid out the ‘General Obligations’ of contracting Parties;

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.

Any use not ‘scientific’³ or ‘medical’⁴ was defined as ‘abuse’ and the person so using defined an ‘addict.’⁵ With this, the ‘Therapeutic Penological State’ immediately acquired another implement in its arsenal for moral code enforcement. Those who strayed outside this conceptual straightjacket were put in one: criminalized, stigmatized and scapegoated as an *evil* to be exorcised.⁶

- 11) By the 1988 UN Convention, world leaders were, “*Deeply concerned* by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances” and “*Recognizing* the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States” and “*Aware* that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels” decided, contrary to common sense and still proclaiming competence, ‘to get tougher in the War on Drugs.’
- 12) And in 1998, at the 20th UNGASS, proclaiming “A Drug Free World, We Can Do it”⁷ a target date of 2008 was set to: “eliminate or reduce significantly the illicit cultivation, manufacture, sale, demand, trafficking and distribution of narcotic drugs and psychotropic substances.” This was all obfuscated in the smoke and mirrors of political rhetoric and technical discourse ignoring calls for empiricism, rationality and harm minimisation policies.

- 13) On the occasion of the 20th UNGASS, in the *New York Times*, a ‘Public Letter to Kofi Annan’ called for a transparent debate and levelled major criticism of international drugs policy:

UN agencies estimate the annual revenue generated by the illegal drug industry at \$400 billion, or the equivalent of roughly eight percent of total international trade. This industry has empowered organized criminals, corrupted governments at all levels, eroded international security, stimulated violence, and distorted both economic markets and moral values. These are the consequences not of drug use per se, but of decades of failed and futile drug war policies.

In many parts of the world, drug war politics impede public health efforts to stem the spread of HIV, hepatitis and other infectious disease. Human rights are violated, environmental assaults perpetrated and prisons inundated with hundreds and thousands of drug law violators. Scarce resources better expended on health, education and economic development are squandered on even more expensive interdiction efforts. Realistic proposals to reduce drug-related crime, disease and death are abandoned in favour of rhetorical proposals to create drug-free societies.⁸

- 14) It would appear those at the helm of the United Nations, dominated by a cadre of *unelected* white Anglo-Saxons,⁹ with vast stable end markets for these valuable commodities in their States, desire to eliminate what *they see* as an ‘evil’ threat to morality and security: drugs and their users. Unfortunately they are turning a blind eye to human nature, history and the failure of Alcohol Prohibition, and are not willing to accept *publicly* that the control measures *themselves* exacerbate the problem.¹⁰ The evidence is in; the experiment is costly and has not produced results; no rational human being, not even the Prime Minister, believes they’re winning the ‘War on Drugs.’¹¹
- 15) Today as ever, *people want psychoactives*, and are willing to go the extra lengths to get them, trade them and use them.¹² States desiring to utilize the profits from these *natural* resources are prohibited from doing so and illicit networks have arisen with accompanying political corruption and violence. The poor peasant farmers had *learned from us* centuries ago the value of these ‘drug’ crops which far outweigh any crop replacement scheme, acre by acre, year on year.¹³
- 16) And, since the 1990s and the UN’s ‘Decade of the Brain,’ exponential advances in neurosciences and related technologies have opened a floodgate of interest in possible enhancement of cognitive capabilities as well as increasing debate over the ethical, legal, and social viability of interventions in human cognition. While the application of some of these advancements may still be decades away, authors of a 2004 Nature Reviews Neuroscience article acknowledge enhancement of neurocognitive function with drugs “is already a fact of life for many people” as psychopharmacology is increasingly used for improving the psychological function of individuals who are not ill.¹⁴ Most bio- and neuro- ethicists, physicians, and government scientists accept, “the line between therapeutic and enhancement interventions in physical traits or cognitive abilities is blurry at best.”¹⁵ The ethical concerns raised by a ‘cosmetic neurology’ are serious. The “hand-wringing” of clergy, ethicists, futurists, journalists, judges, politicians, and scientists is unlikely to have much of a restraining effect.¹⁶
- 17) The World Health Organization (WHO) defines *health* as, “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” This WHO definition has not been amended since 1948, and its crafters could hardly have imagined the extent to which medical science is increasingly involved in the non-therapeutic enablement, enhancement, or improvement of human physical and mental capacities. Basic neuroscience research has transformed our understanding of human nature and with it freedom’s contours.

- 18) *Freedom evolves*; from *Magna Carta* to the Human Rights Act 1998. This is true in organic evolution, science, law and matters of self-determination.¹⁷
- 19) *Freedom evolves with technology*.¹⁸ Reproductive freedom, i.e., the right of a woman to choose and utilize *molecular* birth control technologies is a *MAJOR*, but generally invisible, *drug legalisation victory*. Birth control *drugs* were illegal until the United States Supreme Court ruled that women had a fundamental right to use them, Griswold v. Connecticut [1965] 381 U.S. 479. Today, countries which do not respect reproductive freedom are not considered ‘civilized.’
- 20) Mr. Hardison submits: Humanity’s ability to alter its own brain function might well shape history as powerfully as the development of metallurgy in the Iron Age, mechanisation in the Industrial Revolution or genetics in the 20th century. Indeed, the now illicit drugs DMT, Mescaline, LSD, 2C-B, MDMA, and their ‘substantially similar’ chemical cousins have *already* catalyzed such an (r)evolutionary transformation; unauthorised research and utilization of *psychedelics, entactogens, and nootropics* have pre-empted this argument by at minimum 50 years.

The present case:

- 21) Mr. Hardison, a consciousness researcher, was convicted of 6x drug charges. All of the molecules: 5-MeO-DMT, DMT, LSD, 2C-B, and MDMA; are either refined alkaloid psychotropics found in indigenous plants or animals, *including man*, or ‘substantially similar’ molecules designed by him. They are considered physiologically safe and produce neither dependence nor addiction.¹⁹
- 22) Mr. Hardison submits: all molecules that he 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.
- 23) Mr. Hardison submits: he was aware his explorative facilitations were in breach of the criminal law and as such he was continuously and directly affected by the legislation.
- 24) Mr. Hardison submits: his rights have been and are continuing to be violated in his investigation, arrest, trial and continuing detainment, Norris v. Ireland, [1991] 13 EHRR 186.
- 25) Mr. Hardison submits: he has been the victim of an interference with freedom from degrading treatment and punishment, the right to a fair trial with full disclosure, the right to respect for his private life and communications, his physical and mental integrity, his freedom of thought *and* his freedom of belief system, his freedom of expression *and* his freedom to receive and impart ideas, and freedom from discrimination *and* assaults on his dignity. These rights are clearly embodied in English Common Law and prescribed explicitly in the UN Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 26) Mr. Hardison submits: the United Kingdom was signatory to the European Convention of Human Rights before the 1961 UN Single Convention on Narcotic Drugs, the 1971 UN Convention on Psychotropic Substances, the Misuse of Drugs Act 1971, or the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances were drafted or ratified.
- 27) Mr. Hardison submits: the United Kingdom has an obligation to draft new legislation consistent with the ECHR. However, the drafters of the MDA 1971 *may* not have been aware of the fundamental human rights the legislation contravenes; by interfering with matters of the mind and dictating the permissible interior conditions of its citizenry this government has *grossly* exceeded its legitimate power

- 28) Mr. Hardison submits: whilst ‘Parliament is not free to bind its successors,’ until the United Kingdom denounces the ECHR according to Article 58 and denounces Article 5 of the EC Treaty and repeals the European Communities Act of 1972, ‘the law of the community is supreme.’
- 29) Lord Bridge, in R. v. Secretary of State for Transport, ex parte Factortame Ltd [1991] 1 AC 603, pointed out the ‘principle of supremacy’ in Community law was inherent in the European Community Treaty and was ‘well established in the jurisprudence of the Court long before the United Kingdom joined the Community. Thus whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act was entirely voluntary.’
- 30) This principle of supremacy of Community law applies not only to internal domestic laws, but also to obligations undertaken by States toward third countries. [1971] ECR 263, [1971] CMLR 335.
- 31) Mr. Hardison submits: in R. v. Taylor [2002] 1 Cr. App. R. 37 the principle of ‘supremacy’ was not appreciated fully. Clearly in Article 36(1)(a) of the Single Convention on Narcotic Drugs 1961 are the words ‘subject to its constitutional limitations,’ which are expounded upon in 36(4):
- Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of the party.
- This clause is repeated throughout the three relevant UN Conventions.
- 32) Section 6(1) of the Human Rights Act 1998, the domestic law *affirming* community law, states: ‘it is unlawful for a public authority to act in a way which is inconsistent with a Convention right.’
- 33) Mr. Hardison submits: the Crown’s reliance on Britain’s ‘obligation’ to the relevant UN Conventions in Taylor was misleading and disingenuous as the relevant UN Conventions have no power to disapply the Human Rights Act 1998; for there is no peg in the Human Rights Act 1998 or the European Convention of Human Rights and Fundamental Freedoms upon which the three UN Conventions may hang their hat.
- 34) Further, Article 32(4) of the UN Convention on Psychotropic Substances 1971 states:
- A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at any time of signature, ratification or accession, make reservations concerning these plants, in respect of the provision of Article 7, except for the provisions relating to international trade.
- 35) This concept was condensed and restated in Article 14(2) of the 1988 UN Convention as such:
- The measures adopted *shall respect fundamental human rights* and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment. (Emphasis added)
- 36) Mr. Hardison submits: all use of psychoactives was traditional and licit before 20th century attempts at control. From the Orient to Africa, Siberia to India, *Amanita*, *Cannabis*, *Catha*, *Datura*, *Eboga*, Opium and *Psilocybe*, have been used socially, medicinally and/or ritually for thousands of years. In the Americas, the use of snuffs, resins, brews or whole plants containing *cocaine*, *DMT*, *mescaline*, *Lysergic Acid Amide*, and *psilocybin* have been taken for divination, endurance, health and social cohesion since before written word or temple inscription.
- 37) Mr. Hardison submits: in former times, Kings, Popes, and power groups thought heretical beliefs came from being exposed to harmful ideas in writing, speaking, or other forms of communication. They censored books. In our enlightened times, it is recognized heretical ideas may also come via direct experience; so our governments *attempt to* censor unorthodox experience.

- 38) Mr. Hardison submits: by prohibiting access to certain modes of thought or consciousness via drug laws, the Government is censoring cognitive processes, ideations, and information which reside, occur, or are accessible in these states. *Therefore*, the legislation pertaining to and making criminal what for many millions of persons is a biological drive to modulate consciousness, through use of molecular media, is unlawful, contravenes a plethora of Human Rights, and has indeed created more harm than the Misuse of Drugs Act 1971 was designed *and* intended to alleviate.
- 39) Mr. Hardison submits: *no* 'pressing social need' has *ever* been *demonstrated* to deal with drugs or specifically treat drug-users in this criminal manner; and, not one of the express limitations is tenable when the full weight of evidence is brought to bear upon them.
- 40) Mr. Hardison submits: the European Convention is a living instrument and is first and foremost a system for the protection of Human Rights. This court must have regard to the changing conditions in Contracting States and respond to any emerging consensus²⁰ as to the standards to be achieved. Therefore, it is of crucial importance that the Convention is interpreted and applied 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.' Stafford v. United Kingdom, [2002] 35 EHRR 32 at 68.
- 41) Mr. Hardison is seeking a declaration of incompatibility, to have his convictions quashed and to be granted interim relief including amnesty for all adult prisoners of the 'War on Drugs' across the EU that are incarcerated for nothing other than violations of the Misuse of Drugs Act 1971 and related drugs legislation or regulations, i.e. non-violent, no crimes against the person, and no theft or other such offences.
- 42) Mr. Hardison submits: we can no longer turn a blind eye to the fact that a significant portion of our society are not deterred in any way from using declared 'illicit' drugs. Competent adults *must* be allowed to make choices concerning their use of, or abstention from, drugs and other mind technologies.
- 43) Mr. Hardison submits: the role of a secular State should not be to determine what is or isn't 'moral' or what are or are not acceptable personal risks. Public policy for psychotropic drugs and/or brain technologies should stem from a democratic government's responsibility for preserving individual autonomy and choice to the maximum extent possible.
- 44) Mr. Hardison submits: it is time to develop a jurisprudence of the mind, accounting for the latest understandings of the brain, the advancing powers of psychopharmacology, and situating these within our traditions of embracing individual freedom, self-determination, and limited government. Decisions concerning whether or how to change a person's thought processes *must* remain the province of the individual as opposed to the government.
- 45) Mr. Hardison submits: *Cognitive Liberty* must guarantee the right of each individual to think independently and autonomously, to access and use the full spectrum of his or her mind, and to willfully engage in multiple modes of thought.
- 46) Mr. Hardison submits: the right of a person to liberty, autonomy, and privacy over his or her own consciousness 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.
- 47) Mr. Hardison submits: ***Self-determination over one's own cognition is central to free will.***

48) Mr. Hardison submits these fundamental Human Rights upon which his defence rests:

a) ECHR Article 3

- 1) No one shall be subject to torture or to inhumane or degrading treatment or punishment.

b) ECHR Article 5

- 1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (sections omitted)
- 4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

c) ECHR Article 6

- 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice.
- 2) Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.
- 3) Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

d) ECHR Article 8

- 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 in 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.

e) ECHR Article 9

- 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.

f) ECHR Article 10

- 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.

g) ECHR Article 14

- 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.

h) ECHR Article 17

- 1) Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any rights and freedoms set forth herein.

i) ECHR Article 18

- 1) The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

j) Article II-61, Article 1 'Charter of Fundamental Rights' (proposed EU Constitution, 2005)

- 1) Human dignity is inviolable. It must be respected and protected.

k) Article II-63, Article 3 'Charter of Fundamental Rights' (proposed EU Constitution, 2005)

- 1) Everyone has a right to respect for his or her physical and mental integrity.

l) Article II-73, Article 13 'Charter of Fundamental Rights' (proposed EU Constitution, 2005)

- 1) The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

49) Amendments of the Constitution for the United States for context and reference:

(a) First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(b) Forth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 3

- 50) Article 3 is the only Article of the Convention in which there are no qualifications or exceptions, and no restrictions to the rights guaranteed. The prohibition is absolute. The fundamental character of Article 3 is shown also by the fact that, in common with Articles 2, 4(1), and 7, no derogation may be made from its provisions under Article 15 even in time of war or public emergency.
- 51) Article 3 prohibits in absolute terms torture or inhumane or *degrading treatment* or *punishment*, *irrespective of the victim's conduct*. Chahal v. UK [1997] 23 EHRR 413 at 80.
- 52) Mr. Hardison submits: his conduct and subsequent treatment as alleged in this instance would fall into the nexus of the *italicised* wordings *supra*.
- 53) Mr. Hardison submits: we live in a society in which drug users are perceived as social deviants or scapegoats that must be purged to make the social body healthy; within this percept hides an etymological connection between our word *pharmacy* and the Greek words *pharmakos* and *pharmakon*.²¹ While the Greeks used the word *pharmakon* to designate both healing and toxic drugs, at its origin it appears to have referred primarily to purgative medicaments. This is discernable because of the survival of the related word *pharmakos* as 'scapegoat' or the one who *must be purged* to make the social body healthy.
- 54) Mr. Hardison submits: there is a fundamental similarity between the former persecution of individuals who engaged in consenting homosexual activity in private and those who ingest, inject, or smoke various substances that affect their feelings or thoughts — and the traditional persecution of men for their religion, as Jews, or for their skin-colour, as Negroes. What all these persecutions have in common, the victims are harassed by the majority not because they engage in overtly aggressive or destructive acts, like theft or murder, but because their conduct or appearance offends a group intolerant to and threatened by human differences.
- 55) In Smith and Grady v. UK [2000] 29 EHRR 493 at 120 et seq., this 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 fall within the scope of Article 3. This could be extended to include all 'non-socially sanctioned' drug users who analogous to the homosexual in Dudgeon v. UK [1982] 4 EHRR 149 at 41, "either they respect the law and refrain from engaging...in prohibited...acts to which they are disposed by reason of their...tendencies, or they commit such acts and thereby become liable to criminal prosecution." *mutatis mutandis*
- 56) Mr. Hardison submits: this court has held a sentence may violate Article 3 if it is wholly unjustified or disproportionate to the gravity of the crime committed. Soering v. UK, [1989] 11 EHRR 439 at 89 et. seq. Mr. Hardison was sentenced to 20 years imprisonment the same week the terrorist Kamel Bourgass was sentenced to 17 years for conspiring to commit a public nuisance by the use of the poison, the chemical weapon *ricin*, with *intent* to endanger life. This demonstrates the 'moral panic' around drugs and is disproportionate, debasing, degrading, demeaning, and demoralizing. R-v-Bourgass [2005] EWCA Crim 1943.
- 57) Mr. Hardison submits: the very existence of criminal drug prohibition is an affront to human dignity and the debasing, degrading, demeaning, and demonizing treatment accompanying it causes suffering, destroys families, leaves people in fear, and furthers psychological distress, and is an unfounded, unjustified, untenable, unwarranted condemnation by society at large.

Article 6

- 58) Article 6 is a pithy epitome of what constitutes a fair administration of justice. The rights protected by Article 6 occupy a central place in the convention system. A fair trial, in civil and criminal cases alike, is a basic element of the notion of the rule of law and part of the common heritage of the Contracting States.
- 59) Article 6(1) guarantees the right to a fair trial before ‘an independent and impartial tribunal established by law’. There cannot be a fair criminal or civil trial before a court which is, or appears to be, biased against the defendant or litigant. This Court is concerned with the subjective and objective elements of independence and impartiality.
- 60) Mr. Hardison asserts: after decades of a ‘War on Drugs’ and ‘the people who use them’ an impartial tribunal or jury is impossible; for in any war it is necessary to demonize the enemy; and the more the enemy is demonized, the more likely people are to reject and condemn him or it without examining the evidence. The more an enemy is demonized, the more we fear him or it, and the more likely we are to ask others to protect us. Obviously, the most traditional way of controlling people in any society is to frighten them.²²
- 61) Mr. Hardison submits: the ‘War on Drugs’ is a perfect example of the manufacturing of cultural consent through a prefatory demonization in the media; and the drug issue usually attracts our attention through media presentations which seek to reduce the drug issue to a single, instantly comprehensible message, summed up neatly in Nancy Reagan’s ‘Just Say No,’ but in the process an inaccurate and largely false impression is created in the cultural mindset. The standard line taken by the majority of people in the media, and therefore in political rhetoric, hinges around notions of the ‘helpless addict’ who has no power over his behaviour together with the ‘evil pusher’ lurking on the street corner attempting to ‘ensnare’ our nation’s youth.
- 62) Mr. Hardison submits: people may latch on to a particular issue or problem, in this case ‘drugs’ and all the pejorative associations, because it is an acceptable way of attacking a perceived threat that cannot be addressed openly; thus a ‘moral panic’ might conceal tensions over, age, race, gender, ethnicity or other such demographics now protected by Article 14. In addition ‘moral panics’ might be exploited by bureaucratic agencies and politicians that stand to gain votes or new resources on the strength of public fears. Moral panics are socially damaging because they divert resources from more serious matters, such as poverty, health, psychological wellbeing, social exclusion, human rights and also because they can result in over-sweeping draconian laws which threaten to ruin the countless lives of otherwise harmless law-abiding human beings.
- 63) Article 3(3) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances gave explicit approval for the elimination of the *mens rea* element in the common law definition of crime, stating: ‘knowledge, intent or purpose required as an element of an offence set forth in paragraph [3(1)] of this article may be inferred from objective factual circumstances.’
- 64) Mr. Hardison Submits: the abrogation of *mens rea* in and of itself may be ECHR compatible, however when conjunct an *ex parte* Public Interest Immunity application and the requirement for an impartial tribunal the presumption of innocence is not protected. This teeters dangerously upon the precipice of abuse of power. If an act is ‘truly criminal’ as the sentences in the instant case imply, then, the presumption of law that *mens rea* is required, including *ulterior intent*, is particularly strong.²³ Gammon (Hong Kong) Ltd v. Att.-Gen. of Hong Kong [1985] A.C. 1, PC

Article 8

- 65) The legal concept of privacy has developed in fits and starts and previously in union with technological developments.²⁴ In the Harvard L.R., 4 (1890), Warren and Brandeis articulated: *privacy includes the right to psychological integrity.*²⁵ And, “Advances in the psychic and related sciences,” conjectured Justice Brandeis 77 years ago, “may bring means of exploring unexpressed beliefs, thoughts and emotions.” Olmstead v. United States, (1928) 277 U.S. 438, 474 (Brandeis, J., dissenting opinion).
- 66) New neurotechnologies, already in use and undergoing further development, such as brain fingerprinting, neuromarketing, memory management and pharmacotherapy drugs, psychopharmaceuticals, neurocognitive enhancers, and hypersonic sound, all with powerful and evocative effects on the brain, cognition, and consciousness are here to stay. In one way or another all of these technologies make it possible to monitor, modulate, interrupt, and direct *thinking*.
- 67) In writing *On Drugs*, David Lenson stated:
- Private* life finds itself caught in an ever narrowing net; the home-as-castle has become the locked bedroom door, up against parabolic microphones, heat sensors, and databases; this door cannot stand on its jamb much longer. The implications of the, so-called, ‘War on Drugs’ for traditional relationships of corporation, State and individual in the West are far-reaching. The State has invaded the *sovereign territory* of the human mind and body as never before. What crosses the blood-brain barrier has become subject to the same surveillance as what crosses international borders. *Now, there is a customs in the cranium, a Checkpoint Consciousness.*²⁶ (Original Emphasis)
- 68) While consciousness may forever remain a mystery, it is undisputed; the functional neurochemistry of the brain plays a major role in how a person thinks. *Cognitive Liberty* recognizes a modern legal protection for ‘freedom of thought’ *cannot* ignore the brain nor *should* the brain simply be treated under existing jurisprudence defining rights associated with the body.
- 69) Mr Hardison submits: drug prohibition laws, which outlaw all use of certain plants and psychoactive chemicals, trespass upon the zone of privacy that protects an adult’s right to make decisions about how to govern his or her own consciousness. The very existence of a so-called ‘War on Drugs’ and the criminal drug legislation that accompanies it continuously and directly affects man’s private life; the ‘user’ finds himself in an analogous position of the homosexual in Dudgeon, “either he respects the law and refrains from engaging” in his *choice*²⁷ of most *intimate* pleasures, pursuits and/or religious acts, “to which he is disposed by reason of his...tendencies, or he commits such acts and thereby becomes liable to criminal prosecution.”
- 70) Mr. Hardison submits: the concept of privacy, encompassing physical and mental integrity, embodies the fact that a person belongs to himself and not society as a whole. Certainly, a person’s thoughts and thought processes belong to himself, and are a most ‘intimate part of an individual’s private life’; as noted in Smith and Grady, “particularly serious reasons would be required before such interferences would fall within the limitations in Article 8(2).”
- 71) Mr. Hardison submits: a right to privacy entails the right to be let alone, and centres on the interior and intimate aspect of a person’s life. *Cognitive Liberty*, a.k.a. *freedom of thought*, should be a central touchstone for how this Court conceives of and applies a modern right to privacy. There is nothing more *intimate*, *private*, and *central* to individual autonomy than one’s consciousness.
- 72) Mr. Hardison asserts: ***Without independent consciousness, no sovereign sense of self is possible.***

Article 9

- 73) Freedom of thought, conscience, and religion is absolute and protected by Article 9(1).²⁸
- 74) Freedom of thought, conscience, and religion is the foundation of a ‘democratic society’ within the meaning of the Convention; the pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. Kokkinakis v. Greece [1994] 17 EHRR 397 at 31.
- 75) Mr. Hardison submits: 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 the interests of public safety, for the protection of public order, health or morals, or for the protections of the rights and freedoms of others’.
- 76) Mr. Hardison asserts: nowhere is there intended in the European Convention for a State to have *any* form of control over, influence, or interference in an individual’s thoughts or thought processes. **Article 9(2) does not prescribe any interference in freedom of thought.** This is explicitly supported by Article 17 and 18 of the ECHR.
- 77) Mr. Hardison submits: criminal drug prohibition and the so-called ‘War on Drugs’ that accompanies it is an extremely pernicious form of censorship—a *ensorship of consciousness itself*—and by punishing individuals for no other crime than choosing to experience, enhance or enable particular states of mind the State has trespassed upon ‘*freedom of thought*’.
- 78) Mr. Hardison submits: ‘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.²⁹
- 79) Freedom of thought, while not expressly guaranteed by the U.S. First Amendment is one of those fundamental rights necessary to make the express guarantees meaningful. As Justice Benjamin Cardozo extolled, “freedom of thought...is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal.” Palko v. Connecticut, (1937) 302 U.S. 319, 326-27.
- 80) In Stanley v. Georgia, (1969) 394 U.S. 557, the Court struck down a Georgia law banning the private possession of obscene material, finding the law “wholly inconsistent with the First Amendment.” *Id.* At 565-66. “Our whole constitutional heritage,” explained the Court, “rebels at the thought of giving government the power to control men’s minds.” *Id.* At 565.
- 81) And in Jones v. Opelika, (1942) 316 U.S. 584, 618, the Court opined “[f]reedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind.”
- 82) Justice Harlan, in United States v. Reidel, (1971) 402 U.S. 351, characterized the Constitutional right as “the First Amendment right of the individual to be free from governmental programs of thought control, however such programs might be justified in terms of permissible state objectives,” and the “freedom from governmental manipulation of the contents of a man’s mind.”
- 83) The permissible grounds for limitation under Article 9(2) apply *only* to the freedom to “manifest” one’s religion or belief. This term “manifest” refers to ***public*** “worship, teaching, practice and observance.” Arrowsmith v. United Kingdom, [1981] 3 EHRR 218, See: §16-115 Archbold 2005.
- 84) Mr. Hardison asserts: **Medical Freedom, i.e., Freedom of therapeutic choice is encompassed within and protected by Article 9;** conjunct Article 8, *medical freedom is inviolable.* This is a matter of Human Dignity, Physical and Mental Integrity, and Conscience.³⁰

- 85) Mr. Hardison submits: a Post-modern Medicine, relinquishing meta-narrative, informed by an interdisciplinary Medical Anthropology,³¹ scrutinizes the belief systems, cosmologies, explanatory models *or* religion of the individual, community *and* observer when determining therapeutic efficacy, allowing for a multiplicity of views of medicine as a ‘social practice’ and an “acceptance that monolithic cultural, disciplinary, or national histories do not tell the whole story.”³²
- 86) Mr. Hardison submits: in a modern secular *and* democratic society, we can no longer prejudice our belief systems, *or religious ideologies*, and practices to the preferred and familiar; we must embrace and tolerate that others may have different ideologies and practices which are equally intimate, valid and/or sacred and quite possibly more effective.³³
- 87) Mr. Hardison asserts: ***Secularism demands the complete separation of Church and State***. Yet, in projection of the State into the role of judging what is good medical care, who is competent to provide it, and how such competence is ascertained, the State becomes arbiter of what constitutes ‘scientific medicine,’ just as the medieval Church became arbiter of what constituted ‘true faith’.
- 88) Mr Hardison submits: it is an individual’s inherent and sovereign right to choose their belief systems and practices, *in private*, as they see fit *provided no harm to others results*. These beliefs include what is required or necessary for the individual to effect healing. A person’s religious *or* spiritual belief system, especially in unity *and* private, is a most ‘intimate part of an individual’s [spiritual] life’; particularly serious reasons are required before such interferences would fall within the limitations in Article 9(2). Smith and Grady, *mutatis mutandis*.
- 89) In Fijneman, District Court of Amsterdam, [2001] Case Number: 13/067455-99 in which a tea ‘Ayahuasca’, a brewed preparation of two plants, one containing Harmine and one containing DMT, was to be served as part of a spiritual ceremony. The expert toxicologist said ‘there were no scientific grounds for **DMT** to be considered a hard drug according to the Dutch Opium Law.’ *Indeed, DMT is found in mammalian breast milk and is naturally synthesized in the brain*. ‘There was *no* public health considerations involved in the Dutch scheduling, only international political reasoning. The substance is scheduled because it was mentioned in the 1971 UN Convention’ which was deemed to be *subsidiary* to the constitutional right to *freedom of religion*, as is stated in Article 22(5) of the 1971 instrument. The Court was of the opinion that the statutory prohibitions against possessing, supplying, and distributing DMT, which is based on the UN Conventions constitutes a serious infringement of the individuals religious freedom and that this infringement cannot be regarded as necessary in a democratic society.
- 90) In 2000, the Guam Supreme Court, Guam v. Guerrero, (2000) Guam 26, No. CRA99-025 dismissed criminal charges against a Rastafarian who claimed that he was importing *Cannabis* for religious use. In reaching its decision, the Court reasoned that the proper test under Guam’s free exercise protection is the strict scrutiny test³⁴ that the U.S. Supreme Court used prior to Employment Division Dept of Human Resources of Oregon *et.al.* v. Smith, (1990) 494 U.S. 872.
- 91) Reversing Smith *supra*, in 1993, the United States Congress enacted the *Religious Freedom Restoration Act* 42 U.S.C. 2000bb, PL 103-141, 107 Stat.1488 allowing ingestion of Peyote or *Lophophora williamsii*, a ***mescaline*** containing cacti. The RFRA states, ‘Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability’ unless it is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest.

Article 10

- 92) The right to freedom of expression set out in Article 10(1) “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.’ ” Handyside v. United Kingdom, [1979-80] 1 EHRR 737 at 48.
- 93) Mr. Hardison submits: what we experience as thought, consciousness, or perception has its physical basis in electrochemical quantum-mechanical phenomena and psychotropic drugs are a very direct and very intimate means of modifying these phenomena. Psychotropic drugs are technologies, biotechnologies, “wet” technologies, even communications technologies, i.e., *media*; perhaps, psychotropic drugs are those communications technologies that are the most tightly controlled; perhaps the only communication technologies controlled by international law.
- 94) Mr. Hardison submits: 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, however, the wording of Article 10 makes it clear; its scope is to *include* all forms of communication ‘regardless of frontiers,’ whether international boundaries or the blood brain barrier of human primates.
- 95) Mr. Hardison submits: Psychotropic molecules mediate or alter, through excitement, inhibition, or mimicry, the primary chemical messengers or neurotransmitters of the brain; it is these *endogenous* molecules or chemicals that generally have the responsibility of conveying information, or mediating, between the cells. Drugs are therefore identical or substantially similar *exogenous* chemical devices or *molecular media* which intercalate or intervene in the body’s internal communications systems affecting the psychic communications of the individual’s brain and thereby transforming thoughts and perception.
- 96) Mr. Hardison submits: the human mind is *the* primary research instrument; the mind is used in all creativity, scholarship, science and indeed every human endeavour, including law; and therefore evidence about the nature of the human mind is the most significant information possible; for all data is coloured by it. ***Knowledge is power***; and knowledge of non-neurotypical states of consciousness exemplifies 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 psychotropics offers to advance epistemological paradigms into undreamt of realms.
- 97) Mr. Hardison submits: 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 incumbent upon us as a society to anticipate individual rights in relation to these developments.
- 98) Mr. Hardison submits: psychoactive drugs are important mindbody psychotechnologies. Laws that restrict drug use offend *Cognitive Liberty*, shackle academic freedom, and stifle the advancement of scientific thought.³⁵ As long as an individual’s behaviour doesn’t endanger others, they should not be prohibited from, or criminalized for, using *any* mind-enhancing drugs or technology.³⁶ ***We should police dangerous conduct, not different thoughts.***

- 99) Mr. Hardison submits: the current fear and oblique legislative proscription of ‘unorthodox’ experience of non-ordinary states of consciousness, occasioned particularly by the molecules of this instant case, impinges upon my ability to “receive and impart information” about my own communications apparatus, my place in the cosmos, and my consciousness. The endeavour to “*Know Thyself*” is an inextricable part of life, my life, as a sentient spiritual being. Laws which trespass upon this sovereign zone of providence are unjustifiable and untenable.
- 100) Mr. Hardison submits: 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. Under a liberal democracy, we *must* recognize that what goes on inside a person’s head is entitled to autonomy, privacy and self-determination.
- 101) Mr. Hardison submits: drug laws preventing the *private* exploration and discovery of knowledge, about a person’s psyche, via the use of psychotropic drugs or molecular media violate Article 10’s freedom ‘to receive...information and ideas...regardless of frontiers.’ A person’s psyche, especially in unity, is *the* most ‘intimate part of an individual’s [psychological] life’; particularly serious reasons are required before such interferences fall within the limitations in Article 10(2). Smith and Grady, mutatis mutandis.
- 102) Mr. Hardison submits: only by protecting our very ability to think as individuals, can we hope to reconcile our widely diverse viewpoints and, through the democratic process, parse out the thorny ethics of a spectrum of social issues that will face us as we negotiate the future.³⁷
- 103) A century ago, William James stated our normal consciousness is just one special type of consciousness, while all around it, “parted from it by the filmiest of screens,” are other entirely different forms of consciousness, always available if the requisite stimulus is applied.³⁸ This raises the peculiar question of whether what James called “our normal rational consciousness” is necessarily the best state to understand the world.
- 104) Thirty-three years ago, the psychologist Charles Tart suggested the implementation of “state-specific sciences” so that we could understand the universe through different states of awareness, not just our neurotypical mental states.³⁹ If one’s world-view can change so radically with the aid of a simple molecule how can we be sure that our normal brain chemistry and therefore our “normal rational consciousness” is best suited for scientific and philosophical undertakings?
- 105) Mr. Hardison submits: Consciousness is our very mode of being and the source of the values by which we live our life. If we do not thoroughly investigate consciousness, we suffer from a basic blindness about our lives and values, a blindness that extracts a high penalty.
- 106) In Ashcroft v. Free Speech Coalition, (2002) 533 U.S. 234, the Court observed, “the right to think is the beginning of freedom...the guarantee of free expression is inextricably linked to the protection and preservation of open and unfettered mental activity.”
- 107) In Bee v. Greaves, (1984) 744 F.2d 1387 (10th Cir.), the Court observed, “In a society whose ‘whole constitutional heritage rebels at the thought of giving government the power to control men’s minds,’ the governing institutions, and especially the courts, must not only reject direct attempts to exercise forbidden domination over mental processes; they must strictly examine as well oblique intrusions likely to produce, or designed to produce the same result.” Quoting *supra*, Stanley v. Georgia at 565.

Article 14

- 108) 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 many national constitutions, for example in Article 3 of the German Basic Law, in the 'equal protection' clauses of the United States Constitution, and in the constitutions of many Commonwealth countries.
- 109) Mr. Hardison submits: there is a clear inequality of treatment of people who 'use' illicit drugs in the enjoyment of several of the convention rights 'grounded upon a predisposed bias' on the part of a majority which does not use 'illicit' drugs against a minority which does use 'illicit' drugs. This is an analogous situation to that of a heterosexual majority against a homosexual minority that this Court found discriminatory, *Smith and Grady, mutatis mutandis*.
- 110) Mr. Hardison submits: the debate on the 'drugs problem' at this moment echoes discussions of homosexuality twenty or thirty years ago, when it was argued that treating homosexuality as a disease was somehow kinder and gentler than criminalizing it.
- 111) Mr. Hardison submits: until 1973, "homosexuality" was listed as a psychiatric disorder in the American Psychiatry Association's *Diagnosics and Statistical Manual of Mental disorders* (DSM-III).⁴⁰ People who admitted being homosexual, or who were "accused" of being gay or lesbian, were subject to involuntary confinement under mental health laws, and subjected to "reparative therapy" or "conversion therapy" designed to convert them into heterosexuals.⁴¹ "Treatment," in addition to counselling, included penile plethysmograph (electroshock triggered by penile erection), drugging, and hypnosis. Even though homosexuality was deleted from the DSM-III in 1973, it was not until *Dudgeon* that this Court recognized the right of homosexuals to engage in their *choice* of acts to which they are disposed by their 'tendencies.'
- 112) Mr. Hardison submits: it cannot be overemphasised, the idea of a therapeutic penology, for drug users, hailed today as a fresh, humanitarian invention, attributable to the 'scientific discoveries' of a 'dynamic psychiatry', is neither novel nor psychiatric in origin. Instead, it is characteristic of the Inquisition, and of the religious ideas and zeal which animated it. In the words of Thomas Szasz writing in *The Manufacture of Madness*:
- Today, the psychiatrist knows that the alleged drug addict would prefer not to take drugs; that the homosexual would prefer to be heterosexual; and that the suicidal person would prefer to live. The upshot is the psychiatric discreditation of human experience and the therapeutic destruction of human differences.⁴²
- 113) Mr. Hardison submits: our nations continue to promulgate certain policies that, while cloaked in 'public health' or 'public safety' justifications, amount to an impermissible government action of moral and social control aimed with Orwellian precision at policing thought and interfering in the mental processes of citizens.
- 114) Again, Mr. Hardison submits: the very existence of criminal drug prohibition is an affront to human dignity and the *debasing*, degrading, demeaning, and demonizing treatment accompanying it causes suffering, destroys families, leaves people in fear, and furthers psychological distress, and is an unfounded, unjustified, untenable, unwarranted condemnation by an intolerant majority.

- 115) Mr. Hardison submits: our nations are not making war against drugs, as drugs are neither good nor bad, but, rather, our nations are making war against the people who use ‘non-socially sanctioned’ drugs. Perhaps it should be called the ‘*War on Drug Users*,’ not all drug users, but, specifically, those people who use drugs that our legislative spokesmen disapprove of; *Cui Bono?*
- 116) Mr. Hardison submits: in continuing this war, there is a rabid struggle for power and influence as each professional authority attempts to bring drugs, suppliers, users, enforcers and treatment providers into its exclusive jurisdiction. Cloaked within the smoke and mirrors of political rhetoric and technical discourse, what is really at stake is control of vast resources: funding for interdiction and ‘treatment,’ research grants, and potential profit from redrawing the line between prescription and street drugs. Beyond these immediate materialities, there is a scramble for less tangible forms of intellectual control: redefinitions of mind, soul, and body, sickness and health, madness and sanity, individual and community, freedom and restriction, responsibility and choice, free-will and determinism. At least partly because of a ‘War on Drug Users’ *consciousness itself has become a battlefield.*
- 117) Mr. Hardison submits: we must come to accept that *people have choice* and that they exercise this choice, regardless of the risk associated, in the use of drugs and/or psychotechnologies. The people who choose to use these technologies, illicit or otherwise, do so for a plethora of reasons: *ludibund* enhancement and *the pursuit of happiness*, medicine and the promotion of wellbeing, psychospiritual adventure, enablement and self-discovery, ritual and religion, *ad infinitum.*
- 118) Mr. Hardison submits: the spectre of Orwellian “mind police” is as universally chilling as the reality of a government employing mind-control or thought-manipulation technologies on its citizenry. It is, indeed, a conservative position to state that if freedom is to mean anything, it must mean that what goes on inside a person’s skull is a private sovereign matter and something which the person—not the government—has the right to control. The right of a person to liberty, autonomy, and privacy over his or her own consciousness is *the quintessence of freedom.*

Express Limitations: Common to Articles 8(2), 9(2), & 10(2)

- 119) The second paragraphs of Articles 8-11 allow for interference by the authorities with the protected rights under certain prescribed conditions. There are two basic principles concerning the restrictions on the rights guaranteed. The first principle is that only the restrictions expressly authorized by the convention are allowed. The second principle is expressly stated in Article 18.
- 120) Mr. Hardison submits: an interesting quandary arises when one is confronted with the UK Misuse of Drugs Act 1971, which, after thirty-four years, *is in no way securing* or *genuinely meeting* the “legitimate aim” the legislation was designed and intended to achieve. What then? In every category of express limitation it is quite easy to demonstrate the failure and futility of the ‘War on Drugs.’ The difficulty this Court now faces is determining whether the interference goes beyond what is necessary in a democratic society.
- 121) The Court adopts a three-part questioning where a State seeks to rely on a limitation in one of the Convention Articles. First, it determines whether the interference is in accordance with, or prescribed by, law, then it looks to see whether the aim of the limitation is legitimate in that it fits one of the expressed heads in the particular Article, and finally it asks whether the limitation is in all circumstances necessary in a democratic society.

- 122) Mr. Hardison submits: establishing if the measure of interference or restriction is necessary in a democratic society involves demonstration that the action is in response to a pressing social need, and the interference with the rights protected is *no greater than is necessary* to address the pressing social need and *genuinely secure* the legitimate aim. This requires the Court to balance the severity of the restriction placed on the individual against the importance of public interest. Only the minimum interference with the right that *secures* the legitimate aim will be permitted.
- 123) The classic formulation of the test of proportionality is found in Silver v. United Kingdom, [1983] 5 EHRR 347 at 97:
- (a) the adjective ‘necessary’ is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘reasonable’, or ‘desirable’;
 - (b) the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention;
 - (c) the phrase ‘necessary in a democratic society’ means that, to be compatible with the Convention, the interference must, *inter alia*, correspond to a ‘pressing social need’ and be ‘proportionate to the legitimate aim pursued’;
 - (d) those paragraphs of the Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly construed.

In considering whether a State has gone beyond what the situation requires, “the Court’s supervisory functions oblige it to pay the utmost attention to the principles characterizing a ‘democratic society’.” Handyside, supra.

Although the Court has not discussed in any detail the qualities of a democratic society, it is clear this Court regards the qualities of pluralism, tolerance, broadmindedness, equality, liberty, self-determination, and encouraging self-fulfilment as important ingredients of any democracy. This leads to a search for balance between the competing interests presented in any case which reaches this stage of deliberation.

- 124) Mr. Hardison submits the drugs issue presents itself as unique for several reasons:
- (a) no law can legislate and control an innate human drive; the ‘War on Drugs’ has made millions of criminals out of otherwise law-abiding citizens;
 - (b) drugs were the first commodities to be controlled on an international basis and this was *entirely* for political reasons as there was *no* public health considerations involved. The concept of protecting public health came later to justify the legality of tax measures;
 - (c) the Misuse of Drug Act 1971 and all similar legislation is not meeting, *nor will it ever meet*, its purported aim of making a safer ‘drug-free’ society; indeed, the drug laws have accomplished with the grace of a consummate artist *exactly* the opposite, drugs are cheaper, more available, and even on the playground, i.e., ***the Drug War is causing more harm than drug misuse itself***;
 - (d) drug legislation, having arisen through the fog of political obfuscation and disinformation, causes societal myths to persist which unnecessarily endangers lives. This could be ameliorated with fair honest unbiased appraisal of the situation;
 - (e) the exorbitant amount of monies spent on interdiction efforts, the cost of drug related crime, to people and government, could be redirected to education, harm-reduction, prescription narcotics for addicts, more effective treatment for the willing, long term health and welfare programs and longitudinal studies could be conducted to assess the actual risk of drug use on a molecule by molecule basis.
- 125) Mr. Hardison submits: we have squandered decades of neurological, psychological, and consciousness research on a myopic ‘just say no’ drug policy which is stifling the evolution of democracy, health, human rights, liberty, peace, security, and good-relations in our world.

- 126) Mr. Hardison submits: ***This is an international humanitarian crisis in its own right.***⁴³ In the present case the deliberation is between the interests of tyrannical governmental despotisms and persons and people who never declared war against them. ***Civilized nations do not make war on its own citizens***, nor do they wish to fight its Drug War.
- 127) Mr. Hardison asserts: there is a *pressing social need*:
- (a) to eliminate ‘drug-related’ crime and *adulterant* deaths from our midst;
 - (b) to provide assistance and support for drug users who *voluntarily* request help;
 - (c) to address the spiral of social exclusion generated by making drug users a *scapegoat* in our societies;
 - (d) for accurate, empirical and reliable information about the relative benefits, risks and dangers of drug use, routes of administration and dosages, on a molecule by molecule basis;
 - (e) to eliminate the economic incentive for gangs, organised criminals, and terrorist groups;
 - (f) to eliminate the potential for corruption of government policy makers, intelligence agents, military officers, political officials, infantrymen and the police;
 - (g) to understand that ***the War on Drugs is a real war***, one in which neither side will ever bring the other to unconditional surrender; no lasting peace can ever come from the will of one side alone; and this war will end as all intractable wars do, when the parties are sick of bloodshed;
 - (h) *to find a truce, call a cease-fire, and conduct peace-talks*;
 - (i) to stop this insanity: ***we cannot as a society continue to do what we have done for the last 150 years and expect different results.***
- 128) Mr. Hardison submits: ***there must be formal peace talks. Let all the diplomatic rules apply, just as if the enemy were not ourselves.*** We must take a long hard look at the lack of progress of our current system of drug policy.⁴⁴ The silence wrought by the “Just Say No” campaign should be replaced with words, many, many words. And these words must come not only from politicians, police, doctors, sociologists, criminologists, and the usual so-called experts, but from gang members, drug users, drug abusers, psychonauts, dealers, and manufacturers *like myself*.
- 129) Mr. Hardison submits: the necessity for a criminal intent — in other words, for guilt — as a preliminary to conviction, makes it impossible that a man can be rightfully convicted for an act that is intrinsically innocent, though forbidden by the government; because guilt is an intrinsic quality of actions and motives, and not one that can be imparted to them by arbitrary legislation. All the efforts of the government, therefore, to “make offences by statute,” out of acts that are not criminal by nature, must necessarily be ineffectual, unless a jury will declare a man “guilty” for an act that is really innocent.
- 130) And Mr. Hardison rests this defence with the words as written by J. S. Mill in *On Liberty*(1859):
- The real advantage which truth has, consists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favourable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

Over himself, over his own body and mind, the individual is sovereign.

—*fiat lux, fiat justitia, ruat calum!*

Casey William Hardison POWD

A Call for a Drug War Truce with Peace Negotiations

Preamble: No civilized nation makes war on its own citizens. We, the people, did not declare war on our governments nor do we wish to fight its Drug War. Hence we now petition for a redress of grievances, as follows:

Whereas any just government derives its authority from a respect of the People's rights and powers; and

Whereas the government has resorted to unilateral military force in the Drug War without any good faith effort to negotiate a peace settlement;

Therefore, we hereby call for a Drug War Truce during which to engage our communities and governments in peace negotiations, under the following terms:

Article 1: All ECHR Contracting States shall withdraw from, repudiate, or amend all international treaties or agreements limiting its ability to alter domestic drug policy.

Article 2: No patient shall be prosecuted nor any health care professional penalized for possession or use of any mutually agreed upon medications.

Article 3: Drug policy shall henceforth protect all fundamental rights, as described below:

1. Each person retains his inalienable Constitutional, and Human Rights, without exception. No drug regulation shall violate these rights.
2. The benefit of the doubt shall always be given to the accused and to any property or asset at risk. Courts shall allow the accused to present directly to a Jury a defence based on these Rights, and explanation of motive, or any mitigating circumstances, such as religion, culture, necessity or tendency, etc.
3. No victim; *no crime*. The burden of proof and corroboration in all proceedings shall lie with the government. Neither secret witness nor paid testimony shall be permitted in Court, including that of any government agent or informant who stands to materially gain through the disposition of a drug case or forfeited property. No civil asset forfeiture shall be levied against a family home or legitimate means of commercial livelihood.
4. Issues of entrapment, government motive, and official misconduct shall be heard by the Jury in any drug case, civil or criminal. *Government agents who violate the law are fully accountable and shall be prosecuted accordingly.*
5. Mandatory minimum sentences undermine our system of justice and the Jury shall be informed of all penalties attached to any offence before deliberating a verdict. Courts and Juries shall have the discretion to reduce penalties in the interest of Justice.

Article 4: We propose a Drug War Truce and call for the immediate release of all non-violent and, aside from drug charges involving adults only, law-abiding citizens.

Article 5: No non-violent drug charges involving adults only shall be enforced or prosecuted until all parties have agreed to, implemented, a drug policy based on full respect for fundamental Human Rights and personal responsibility.

Notes

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- ² United Nations (1972) Single Convention on Narcotic Drugs, 1961: as amended by the 1972 Protocol. www.unodc.org/pdf/convention_1961_en.pdf
- ³ “One aspect of scientism is the idea that any question can be answered at all can best be answered by science. This, in turn, is very often combined with a quite narrow conception of what it is for an answer, or a method of investigation, to be scientific. Specifically, it is supposed that canonical science must work by disclosing the physical or chemical mechanisms that generate phenomena. Together these ideas imply a narrow and homogeneous set of answers to the most diverse imaginable set of questions. Everywhere this implies a restriction of the powers of the human mind; but nowhere is this restriction more disastrous than in the mind’s attempts to answer questions about itself.”
In, Dupree, J. (2001) *Human Nature and the Limits of Science*. Clarendon Press.
- ⁴ “Unless we put medical freedom into the Constitution, the time will come when medicine will organize into an undercover dictatorship. To restrict the art of healing to one class of man and deny privileges to others will constitute the Bastille of medical science.” *Quote* by Benjamin Rush, co-signatory to the U.S. Declaration of Independence and George Washington’s personal physician.
- ⁵ Davies, J. B. (1997) *The Myth of Addiction*, London: Harwood Academic Publishers,
- ⁶ Musto, D. F. (1972/1999) *The American Disease: Origins of Narcotic Control*. New York: Oxford University Press.
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- ⁷ 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
- ⁸ 20th UNGASS: *Public Letter to Kofi Annan*, (June 1, 1998) *New York Times*. It was signed by over 100 scientists, civil rights workers, religious leaders and several Nobel Prize winners.
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- ⁹ Brunn, K, Pan, L, and Rexed, I. (1975) *The Gentlemen’s Club: International Control of Drugs and Alcohol*. Chicago: University of Chicago Press. *Cf.* ‘Dublin Group’
- ¹⁰ Boekhout van Solinge, T. (2002) *Drugs and Decision-making in the European Union*, Amsterdam: CEDRO/Mets en Schilt. *See*: www.cedro-uva.org/lib/boekhout.eu.html
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- ¹² UNODC (2005) UN World Drug Report 2005, www.unodc.org/unodc/world_drug_report.html
- ¹³ An acre of poppies returns 27 times more than an acre of wheat. UNODC 2005
- ¹⁴ Farah, M. J, J. Illes, R. Cook-Deegan, H. Gardner, E. Kandel, P. King, E. Parens, B. Sahakian and P. R. Wolpe. (2004) Neurocognitive Enhancement: What can we do and what should we do? *Nature Reviews Neuroscience* 5(5): 421-425.
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- ¹⁵ Sententia, W. (2005) Cognitive Enhancement and the Neuroethics of Memory Drugs. *Forthcoming*: Kluwer Press.
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- ¹⁶ Chatterjee, A. (2004) Cosmetic neurology: The controversy over enhancing movement, mentation, and mood. *Neurology* 63 (September): 968-974.
- ¹⁷ Dennett, D. C. (2003) *Freedom Evolves*. London: Allen Lane.
- ¹⁸ Clark, I. (2005) If we were to ban every technology capable of misuse we would be living in the Stone Age. www.freenet.org
- ¹⁹ Nichols, D. E. (2004) Hallucinogens, *Pharmacology and Therapeutics* 101: 131-181
- ²⁰ Bewley-Taylor, D. (2003) Emerging policy contradiction between the UNODC "universe" and the core values of the UN. In The Senlis Council, *Global Drug Policy: Building a new framework*.
- Not only has there been fragmentation of the international consensus at UN level, it is obvious from humanities continued intentional use of 'illicit' psychoactives that a *true* consensus has emerged. To grasp the full context of this consensus see: UN World Drug Report 2005, note 12.
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- ²² 'Naturally the common people don't want war, but...it is always a simple matter to drag the people along, whether it is a democracy, or a fascist dictatorship. Voice or no voice, the people can always be brought to the bidding of the leaders. All you have to do is tell them they are being attacked, and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same in every country.' – Herman Goering, Nuremburg War Crimes Trial, 1946.
- ²³ "Mens rea is a term which has no single meaning. Every crime has its own *mens rea* which can be ascertained only by reference to its statutory definition or the case law...The result is that the best we can do by way of a general definition of mens rea is as follows: 'Intention, knowledge or recklessness with respect to *all* the elements of the offence together with any *ulterior intent* which the definition of the crime requires' " – Smith and Hogan, Criminal Law, 9th ed., at 69.
- ²⁴ Boire, Richard G. (2001) On Cognitive Liberty (Part III), *Journal of Cognitive Liberties*, v2n1: 7-22 See www.cognitiveliberty.org
- ²⁵ Brandeis, L.D. and Warren, S. (1890) "The Right to Privacy: The Implicit Made Explicit," in *Harvard L.R.*, 4

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- ²⁶ Lenson, D. (1995) *On Drugs*. Minneapolis: University of Minnesota Press, p. 191
- ²⁷ **hereticus** *adj.* able to choose; **heretic** *n.* one who chooses opinions contrary to *orthodox faith*.
- ²⁸ Cf. United Nations Universal Declaration of Human Rights Article 18
- ²⁹ Boire, Richard G. (1999) On Cognitive Liberty, *Journal of Cognitive Liberties*, v1n1: 7-13.
- ³⁰ Medical freedom includes reproductive choice, IVF, genetic screening, euthanasia, and prosthetic enhancements. Cf. Netherlands v European Parliament and Council [2001] ECR 7079, at 70, 78-80
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- ³³ Jesse, R. (1997) Testimony of the Council on Spiritual Practices, In *Entheogens and the Future of Religion*, Forte, R., (Ed.), SF, CA: Council on Spiritual Practices, see: www.csp.org
- ³⁴ To survive strict scrutiny, a Compelling State Interest (CSI) must be advanced and “must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.” Elrod v. Burns, 427 U.S. 347, at 362 (1976).
- ³⁵ 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 for Spiritual Practices
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- ⁴⁴ Transnational Institute (1996-2005) Drugs and Democracy Programme: Drugs and Conflict, Debate Papers, TNI Briefing Series. See: www.tni.org/drugs