

Cornell Law Student Papers

Cornell Law School Graduate Student Papers

Cornell Law Library

Year 2009

The Use of Entheogen Drugs in the
United Kingdom: A Misuse of Drugs or a
Lawful Expression of the Right to
Religion?

Patrick R. Goold
Cornell Law School, patrickgoold@hotmail.co.uk

**“The Use of Entheogen Drugs in the United Kingdom: A Misuse of
Drugs or a Lawful Expression of the Right to Religion?”**

By Patrick Russell Goold*

* Patrick Russell Goold, LL.B. (Newcastle), LL.M. (Cornell)

Abstract

The paper discusses the legality of ayahuasca, amanita muscaria and salvia divinorum. These are each forms of plants or fungi which have been used for centuries in religious rituals. Their use is becoming more prevalent in the United Kingdom. At the time of writing the drugs are still legal in the UK. After a brief background on the drugs themselves, this paper raises and examines two questions in relations to each of them, namely, whether they should be regulated under the Misuse of Drugs Act 1971, and whether their use in religious contexts can be justified by the European Convention on Human Right's protection of the right to religion?

Introduction

"The druggist, as if in sympathy with the rainy Sunday, looked dull and stupid, just as any mortal druggist might be expected to look on a rainy London Sunday; and when I asked for the tincture of opium, he gave it too me as any other man might do; and, furthermore out of my shilling returned to me what seemed to be a real copper halfpence."¹

Many people would believe that situations like the one above (described by De Quincey in his classic self confession, "Confessions of an English Opium Eater") do not any longer occur in the UK. Substances that can be used as recreational drugs, whether narcotics, depressants, stimulants, psychedelics or otherwise, are believed to be illegal with a caveat for tobacco and alcohol. However, over the last ten to twenty years a growth industry has been established whereby a range of different recreational drugs are sold to the general public. As a broad term these substances are labeled "legal highs" and include a wide spectrum of factory produced synthetic drugs and naturally occurring plants and seeds. These legal highs are sold on the high street from "head shops" or "smart shops" or from a group of online retailers including such websites as <<www.everyonedoesit.com>> or <<www.headshop.co.uk>>. This business

¹ Thomas De Quincey, "Confessions of an English Opium-Eater", Wordsworths Editions Limited, 1994, p.141

has become very successful. A representative from everyonedoesit.com, speaking in a 2006 news report said that their website had a 2 million pound turnover per year² and estimated the worth of the UK industry as 10 million pounds per year³. Similarly, *New Scientist* magazine described it as a “lucrative business” with an annual turnover of \$16 million (US dollars) due to the “proliferation of online and high-street retailers”⁴. One article from 2006 contends that there were 200 head shops in the UK⁵. Some believe that it was the sale of “magic mushrooms that kick-started the industry”⁶. Men and women interested in experiencing a new recreational drug suddenly realized that they were one step ahead of the law because the sale of fresh psychedelic mushrooms was still a legal activity. Eventually magic mushrooms were outlawed in 2005 by the UK government when the sale of fresh mushrooms containing the hallucinogens psilocybin and psilocin became a criminal offense. However, people came to realize that the Misuse of Drugs Act 1971 contained many other loopholes. Many drugs were not regulated and there was a “rush to fill the void”⁷ left after the criminalization of so called “magic mushrooms”. Some of these legal substances such as GBL and BZP have been criminalized since⁸ and a range of the products have suddenly come under media and governmental scrutiny⁹. However, one sub-division of the legal high market is a group of

² David McCandless, “*Exotic, legal highs become business as ‘headshops’ boom*”, Monday 9 January 2006, <<http://www.guardian.co.uk/society/2006/jan/09/drugsandalcohol.drugs>>

³ McCandless, see note 2 above.

⁴ Gaia Vince, “*Mind-altering drugs: does legal mean safe?*”, *New Scientist* magazine issue 2571, 29 September 2006,

⁵ McCandless, see note 2 above

⁶ McCandless, see note 2 above

⁷ Vince, see note 4 above.

⁸ BBC news, “*Move to Outlaw two Party Drugs*”, 21 May 2009, <<http://news.bbc.co.uk/2/hi/uk_news/8061693.stm>>

⁹ Reed, “*Government to ban legal highs*”, BBC news, Tuesday 9th June 2009, at <<http://news.bbc.co.uk/newsbeat/hi/health/newsid_8090000/8090025.stm>>

substances labeled “entheogeons”. These drugs in particular pose unique questions for the government on the issue of potential criminalization.

The word entheogen is believed to translate into the phrase “God inside us”¹⁰. In the literal sense this word refers to plants, shrubs, fungi and seeds used for centuries in religious or shamanic rituals for the purpose of obtaining revelations, spiritual enlightenment, or healing illnesses. Some of these substances include, Ayahuasca, Amanitas Muscaria, Blue Lotus, Hawaiian Baby Woodrose and Morning Glory Seeds, Salvia Divinorum, Khat, Kanna, San Pedro Cacti, Kratom, Henbane, Yopo and Mandrake. There are many more, some of which are illegal (such as DMT, Kava Kava, Cannabis and Psilocybin Mushrooms) but many are legal still in the UK. This paper is going to examine three of these legal entheogens namely, ayahuasca, amanitas muscaria, and salvia divinorum.

These drugs have grown in popularity with many people. The internet has become a source of communication between members of an ill-defined subculture. Online websites such as www.drugs-forum.com or www.erowid.com host forums on these entheogens in which amateur spiritualists, shamans and “psychonauts” pose questions and discuss their usage. They disseminate knowledge on the science behind the drugs, the best methods of ingesting the drugs, the short and long term dangers and of course, detailed explanations on experiences with the drugs (also known as “trip reports”). www.youtube.com has also become an online video database of peoples’ experiences of taking the substances and www.facebook.com has numerous “groups” dedicated to their use.

¹⁰ Fericgla, “*Alucinógenos ou adaptógenos inespecíficos. In-Plantas, Chamanismo y Estados de Consciencia*”, ed., Barcelona, La Liébre de Marzo S.L., Barcelona, pp. 231-252, (1994)

What is interesting is how these drugs have also gained a huge amount of anthropological and media attention. Yet, despite this public and academic interest in the subject there has been hardly any legal analysis of the question. The issue to be addressed is whether the law has previously overlooked these substances and whether they should be criminalized to prevent further damage? There have already been questions raised over the logic underlying the Misuse of Drugs Act 1971 (MDA). The House of Commons Science and Technology Committee 2005 paper, "Drug Classification: Making a Hash of it?"¹¹, recommended a wide-ranging reform of the Misuse of Drugs Act. According to the report, the current classification of drugs based on levels of harm "is not fit for purpose and should be replaced with a more scientifically based scale of harm"¹². Perhaps the legal status of many entheogens is another example of legislative inertia and a defect in the law? Are these drugs harmful enough to warrant criminalization? Or, alternatively, are these drugs, with their connection to peoples' spiritual beliefs, to be protected under article 9 of the European Convention on Human Rights as an expression of people's religion? Hopefully, this paper can look to answer some of these questions.

The Substances

Ayahuasca

¹¹ House of Commons Science and Technology Committee Report, "*Drug Classification: Making a Hash of it?*", Fifth Report of the 2005-06 Session, <<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>>

¹² Science and Technology Committee Report, see note 10 above, at p.3

Ayahuasca (translated into "Vine of the Souls" from the Quechuan language) is a tea made from the infusions of the Banisteropsis Caapi vine and N,N-dimethyltryptamine-containing shrub, Psychotria Viridis. Its use was first documented by Schultes in the 1950s where he found it being employed for divinatory purposes by Shamans in Amazonian Colombia¹³. However, its use has been documented in Peru, Brazil and Ecuador as well¹⁴. The product also goes by other names including "Hoasca", "Daime", "Yage" and "Natem". The resulting tea contains the strong hallucinogenic alkaloid, N,N-dimethyltryptamine (DMT), and MAO inhibiting harmala alkaloids, which are necessary to make the DMT orally active.

The resulting brew was traditionally used as part of shamanistic rituals. [Www.ayahuasca-info.com](http://www.ayahuasca-info.com) is a website dedicated to the information sharing on the topic of ayahuasca. This website describes the traditional ritual used by the indigenous *curanderous* (healers) in the Amazonian contexts. The healing sessions are typically held at night and there will be a small number of "patients" present. The rituals begin with the Shaman and the patients drinking the tea whilst singing *icaros* or 'power songs' to invite good spirits to perform healing. Sometimes patients are invited to sit with the shaman, who will then sing softly especially for each one of them. The whole process lasts around 7 hours and is designed to heal the patients of the illnesses that they had presented with¹⁵. Other research into iconographic depictions on ceramics and other artifacts from Ecuador have provided evidence that practices such as this date back

¹³ Schultes "The identity of the Malpighiaceae narcotics of South America". Harvard Botanical Museum Leaflets 18:1-56, (1957)

¹⁴ Metzner (Ed.), "Ayahuasca: Hallucinogens, consciousness, and the spirit of nature", New York: Thunder's Mouth Press, p.1-45, (1999)

¹⁵ At <<http://www.ayahuasca-info.com/ritual/>>

to at least 2000.B.C.¹⁶. Reports of this healing process have occurred in a number of studies¹⁷. The tea has also been associated with Amazonian myths such as “The Tukano Story” told by the Tukano people of the Vaupes region in Colombia (in which a mythical character, “Father Sun”, had promised the Tukano people a magical drink that would connect them with the powers of heaven)¹⁸. The effects of the tea’s ingestion have been described to include vomiting and dizziness in the early stages followed by powerful visual hallucinations which often appear in the form of animals or spirits¹⁹.

The discovery of the drug led to a new phenomenon of “ayahuasca tourism” in which citizens of western countries would travel to southern America to experience the indigenous ritual. An article in *The Sunday Times* documented how people from the UK have also been amongst the many travelers seeking such Amazonian shamanic healing²⁰. There have also been calls to gather in Southern America to try the experience, such as “Convergence Gathering” whereby people from around the world were called to attend an “ayahuasca Shamanism Seminar, Retreat and Visionary

¹⁶ Naranjo, “*El ayahuasca in la arqueolog’a ecuatoriana*”. *America Indigena* 46: p.117-128, (1986)

¹⁷ See e.g. de Rios, M. Dobkin “*Visionary vine: Psychedelic healing in the Peruvian Amazon*”. *International Journal of Social Psychiatry* 17: p.256-269, (1972); and de Rios, M. Dobkin, “*Curing with ayahuasca in an urban slum*”. In Harner, M. (ed.) “*Hallucinogens and Shamanism*”. Oxford University Press (1973)

¹⁸ <<http://www.ayahuasca-info.com/myths/>>

¹⁹ See e.g. Narby, “*The Cosmic Serpent, DNA and the Origin of Knowledge*”, Penguin Putnam Inc, (1998)

²⁰ Clover Stroud, “*Jungle Fever: The Chattering Classes are heading to the Amazon in search of Esoteric highs. Are Shamans the new Shrinks?*”, September 9, 2007, *The Sunday Times*, <http://women.timesonline.co.uk/tol/life_and_style/women/the_way_we_live/article2388177.ec> e>

Gathering” in Peru in July 2008²¹. Such allure and popularity has led to the introduction of the drug to the western world.

However, the use of ayahuasca is not confined to the depths of Southern America. In two articles, Tupper describes the “globalization” of ayahuasca for religious purposes²² and its spread into western culture. The drug’s component parts are readily findable in head shops on the UK high street or from the plethora of online retailers. For example, Head Shop.com sells both Banisteropsis Caapi²³ and Psychotria Viridis²⁴ with the ominous warning that these are “not to be messed around with—Shamans Only—In the wrong hands You can die”. This ready availability does lend itself to the hands of individuals who are interested in experiencing the ceremony in their own privacy, at home and in the UK.

Amanita Muscaria

The Amanita Muscaria is a hallucinogenic basidiomycete fungus. It commonly goes by the name “Fly Agaric”. Interestingly, this is one of the substances that this paper discusses that many people may have at least some background knowledge on because of its connection with British culture. It is believed by some that this toadstool, with its classic red colour and white spots, was the inspiration behind Lewis Carroll’s

²¹ See <<http://www.amazonconvergence.com/index.php>>

²² Tupper, “*The globalization of ayahuasca: Harm reduction or benefit maximization?*”, *International Journal of Drug Policy*, 19(4), p.297-303, (2008); and Tupper, “*Ayahuasca healing beyond the Amazon: The globalization of a traditional indigenous entheogenic practice*”, *Global Networks: A Journal of Transnational Affairs*, 9(1),p.117-136, (2009)

²³ <http://www.headshop.co.uk/acatalog/info_SSOURINHOS.html>

²⁴ <http://www.headshop.co.uk/acatalog/info_SSCHACRUNA.html>

“Alice’s Adventures in Wonderland” where the character Alice eats a similar mushroom to become bigger and smaller²⁵. The drug has also been linked with history of the myth of Santa Clause. The ethnobotanist Jonathan Ott has suggested that the red and white colours of Santa Clause come from the *amanita muscaria*’s traditional appearance and that hanging stockings over the fire place is similar to how the fresh mushroom used to be dried out in preparation for eating²⁶.

The active agents that produce the hallucinogenic effects are muscimol (3-hydroxy-5-aminomethyl-1-isoxazole, an unsaturated cyclic hydroxamic acid) and ibotenic acid²⁷. After ingestion, the ibotenic acid is metabolized to muscimol which causes the hallucinogenic experience as it affects the brain’s neurotransmitters²⁸.

Like ayahuasca these hallucinogenic experiences have been the basis of shamanistic rituals for centuries. In the late 60s the American ethnobotanist, Gordon Wasson espoused the belief that the Fly Agaric was the “Soma” referred to in ancient sacred Indian and Hindu religious texts such as the Rig Veda²⁹ (roughly believed to have been written between 1700 and 1100 B.C.). This text refers to a ritual drink which was prepared by extracting the juice from a certain plant and was said to personify divinity³⁰. However, the drug has been linked with many other religions and spiritual practices. Shamanism in Siberia has been linked with the ingestion of the drug as a

²⁵ Letcher, “*Shroom: A Cultural history of the magic mushroom*”, London: Faber and Faber. p.126, (2006)

²⁶ Ott, “*Hallucinogenic Plants of North America*”. Berkeley, CA: Wingbow Press, (1976)

²⁷ Dennis, “*Mushrooms: poisons and panaceas—a handbook for naturalists, mycologists and physicians*”, New York: WH Freeman and Company, p.306-7, (1995);and, Bowden, Drysdale, and Mogy, “*Constituents of Amanita muscaria*”. *Nature* 206, at p.1359–60, (June 1965)

²⁸ Michelot and Melendez-Howell, “*Amanita muscaria: chemistry, biology, toxicology, and ethnomycology*”. *Mycological Research* 107, part 2, p.131–46, (2003)

²⁹ Wasson, “*Soma: Divine Mushroom of Immortality*”, Harcourt Brace Jovanovick, p.10, (1968)

³⁰ See e.g. Griffith (translator), “*The Rig Veda*”, Evinity Publishing, (2009), Hyme 8.48.3: “We have drunk Soma and become immortal; we have attained the light, the Gods discovered.”

sacrament³¹. Once again, its use was linked to mythology. The Koryak people of eastern Siberia had a fable that the fly agaric enabled a raven to carry a whale to its home³².

Today this drug seems to be becoming more and more prevalent in the UK. According to the European Monitoring Centre for Drugs and Drug Addiction “the recent prohibition of psilocybin and psilocin containing fungi in the UK appears to have provoked an emerging interest in retailers in legal, types of hallucinogenic mushrooms such as *Amanita Muscaria*”³³. Once again, a quick search of online retailers and high street head shops will provide a demonstration of the availability of these drugs in the UK.

Salvia Divinorum

Salvia Divinorum is another product of the Americas and is a psychoactive herb which is part of the mint family. The name translates into “diviner’s sage” or “seer’s sage” because of its traditional use. That use was first documented by Johnson in 1939 in a study of Mazatec Shamanism from the Oaxaca region of Mexico³⁴. This work was substantially expanded upon by the likes of Gordon Wasson³⁵ and Epling and Jativa³⁶.

³¹ Wasson, as note 29 above, at p.161; or Nyberg, “*Religious use of hallucinogenic fungi: A comparison between Siberian and Mesoamerican Cultures*”. *Karstenia* 32, p.71-80, (1992)

³² Ramsbottom, “*Mushrooms & Toadstools*”, Collins, p.45, (1953)

³³ European Monitoring Centre for Drugs and Drug Addiction, “*Hallucinogenic Mushrooms: An Emerging Trend Case Study*”, EMCDDA Thematic Papers, p.17, (2006)

³⁴ Robin Marushia, “*Salvia divinorum: The Botany, Ethnobotany, Biochemistry and Future of a Mexican Mint*”, *Ethnobotany*, June 2003, at p.2

³⁵ Gordon Wasson, “*A New Mexican Psychotropic Drug from the Mint Family*”, *Botanical Museum Leaflets, Harvard University*, December 28 (1962), Vol 20 no 3,

<<http://www.sagewisdom.org/wasson1.html>>

Wasson explained that this plant was also referred to as *hojas de la Pastora* ("leaves of the Shepherdess") and, *hojas de María Pastora* ("leaves of Mary the Shepherdess"). Shamans would traditionally chew the leaves as a method of ingestion for its divination properties, or to induce visions of the Virgin Mary (the plant's patron saint) and its healing ability³⁷. However, its use in religious contexts may go back as far as the Aztecs. Gordon Wasson speculated that the plant could be the *pipiltzintzintli* ("the Nobel Prize") used by the Aztec Codices as a psychotropic³⁸.

Today the drug's use has clearly passed into western circles. One empirical analysis of US college students reported that 4.4% of the sample (of 1516 students) had used salvia at least once within the past 12 months with subpopulations such as white males or heavy drinkers using the drug even more frequently³⁹. The study believed that the drug is indeed becoming a significant member of the list of drugs frequently used. In the UK, the *BBC* have reported on this legal "potent hallucinogenic"⁴⁰ and commented on how "UK teenagers smoke (*Salvia Divinorum*), video their experience and post the

³⁶ Carl Epling, and Carlos D. Jativa M, "A New Species of *Salvia* From Mexico" *Botanical Museum Leaflets, Harvard University*, December 28 (1962), Vol 20 no 3, <<http://www.sagewisdom.org/epling&jativa.html>>

³⁷ Valdés, Díaz, and Paul, (May 1983), "*Ethnopharmacology of the María Pastora (Salvia divinorum, Epling and Jativa-M)*", *Journal of Ethnopharmacology* 7(3), p.287, (1983); and, Imanshahidi, Hosseinzadeh, Hossein (April 2006), "*The Pharmacological Effects of Salvia species on the Central Nervous System*", *Phytotherapy Research* 20:427–437 at p.430

³⁸ Wasson, "*Notes on the Present Status of Ololiuhqui and the Other Hallucinogens of Mexico*", *Botanical Museum Leaflets, Harvard University* 20 (6): 161–212, (November 1963)

³⁹ Lange, Reed, Croff and Clapp, "*College Student Use of Salvia Divorum*", *Drug and Alcohol Dependence*, Volume 94, April 2008, p.263-266

⁴⁰ Bingham, "South West: Hallucinogenic drugs", *Sunday*, 29th January 2006, <http://news.bbc.co.uk/2/hi/programmes/politics_show/4651036.stm>

results on youtube"⁴¹. The US has seen more media activity on the plant. One news report believed that the media was creating an hysteria in order to fuel anger against the next drug menace⁴². Many news reports have analogized the plant's effects with that of LSD⁴³.

Those effects are caused by a trans-neoclerodane diterpenoid known as Salvinornin A (chemical formula $C_{23}H_{28}O_8$)⁴⁴. After ingestion the onset of the effects are almost immediate. If smoked the onset will be between 20 and 60 seconds⁴⁵. The total duration lasts between 20 minutes and 45 minutes⁴⁶. The effects are variable but include powerful open and closed eye visuals, altered perceptions, change in body temperature, sensation of pressure, a dreamlike state and inability to control muscles and maintain balance⁴⁷.

The Misuse of Drugs Act 1971

⁴¹ Finlo Rohrer, "The Mystery Sage", BBC News Magazine, <http://news.bbc.co.uk/2/hi/uk_news/magazine/7071010.stm>

⁴² Shafer, "Salvia Divinorum Hysteria, The Press helps fuel the next drug menace", May 6th 2008, <http://www.slate.com/id/2190781/pagenum/all/#page_start>

⁴³ See e.g. Chris Martell, "Bill would ban the sale of hallucinogenic Salvia divinorum", Monday June 18th 2007, Wisconsin State Journal, <<http://www.webcitation.org/5PgdpCc1H>>;

⁴⁴ Prisinzano, Thomas E., "Psychopharmacology of the hallucinogenic sage Salvia divinorum", Life Sciences **78**: 527 at 528, (2005)

⁴⁵ Erowid, Salvia Divinorum Effectst, <http://www.erowid.org/plants/salvia/salvia_effects.shtml>

⁴⁶ See note 45 above

⁴⁷ See note 45 above

The Misuse of Drugs Act 1971 “was designed to make it possible to control particular drugs according to their comparative harmfulness either to individuals or to society at large when they were misused”⁴⁸. However, as mentioned in the introduction there has been questions raised over the classification it adopts. The legislation is based on a letter classification whereby categories A, B, and C are assigned to drugs that are to be criminalised. The category that a particular drug falls into depends on the harmful effects it will have on society. A represents those drugs presenting the greatest threats such as heroin whereas C represents the least dangerous drugs that are still worthy of criminalization such as ketamine. However, the House Committee mentioned earlier felt that there were “significant anomalies in the classification of individual drugs and a regrettable lack of consistency in the rationale used to make classification decisions”⁴⁹. Could the omission of ayahuasca, amanitas muscaria and salvia divinorum be an example of another such anomaly? Do they deserve to be criminalized under the act?

At the first stage it is important to point out that Ayahuasca is in a different position to the other substances to be discussed. That is because one of the active compounds within the brew is the chemical DMT. This is a class A substance according to the Misuse of Drugs Act. Yet, the DMT containing plant *Psychotria Viridis* used in making Ayahuasca is still being sold in the UK from online retailers. It is difficult to decipher whether this is simply a legislative omission, or whether, the plant (along with the other major component of Ayahuasca, *Banisteropsis Caapi*) is legal because it is not specifically outlawed by the law. The latter approach would seem to fall into line with the United Nations’ Convention on Psychotropic Substances, the commentary to

⁴⁸ House of Commons Science and Technology Committee Report, see note 11 above, at, Appendix 1, p53

⁴⁹ House of Commons Science and Technology Committee Report, see note 11 above, at p3

which notes that while many plant-derived chemicals are controlled in the treaty, the plants themselves are not⁵⁰. Hence, although DMT is a controlled substance, the plants that bear the drug are still legal to possess.

The question is whether there is enough scientific evidence to justify restrictions on Ayahuasca's use? This is arguably a decision for the Advisory Council on the Misuse of Drugs (ACMD) which was established pursuant to the Misuse of Drugs Act and is charged to "keep under review the situation in the UK with respect to drugs which are being or appear to them likely to be misused and of which the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem"⁵¹. Therefore, is there evidence leading to the suggestion that there could be a social problem?

Unfortunately, here this paper encounters a problem. Due to the fact that entheogens are a recent phenomenon in the UK there is an information gap. Not enough scientific research has been carried out to truly understand the effects of the drug on the long term or the short term health of an individual or its addictive qualities. However, what is clear from peoples' experiences with the drug is that there are potentially intense short term negative effects. One male's report of his experiences described nausea caused by the ayahuasca in the following terms:

"I ran/stumbled to the sink and vomited with such a force it felt like the stuff was coming from my feet. Also the volume of liquid I expelled seemed crazy

⁵⁰ UN Report, "Commentary on the Convention on Psychotropic Substances", New York, 1976 E/CN.7/589, p.385, at << http://www.maps.org/pipermail/maps_forum/2001-March/003376.html>>

⁵¹ Misuse of Drugs Act 1971, article 1(2)

*compared to what I had ingested, water included. It seemed like I was puking gallons of stuff out*⁵².

Most telling however, is some of the evidence that has come to light in legal cases in the United States over whether the religion “O Centro Espirita Beneficiente Uniao Do Vefetal” (UDV) could legally use the drug in religious ceremonies. One such case sat in New Mexico entitled *UDV v Ashcroft*⁵³ seemed to agree there was a potential threat to people’s health in taking the tea. In this case the US government presented evidence that Ayahuasca “poses a substantial health concern”⁵⁴. One of the government’s experts, Dr. Genser, stated that there was “potential negative physical and psychological effects”⁵⁵. The court acknowledged the adverse effects of other hallucinogenic drugs such as LSD⁵⁶ as well hearing evidence from the government that individuals on other medications will be at “increased risk of developing serotonin syndrome”⁵⁷ (a condition characterized by excessive levels of the neurotransmitter serotonin). Also important was data collected by and presented in the testimony of Dr. Brito. This demonstrated that there had been “psychological problems experienced by (the UDV) church members”⁵⁸. There had been “24 incidents of psychosis amongst users of hoasca in church ceremonies”⁵⁹, in one of which “the tea acted as a trigger with no

⁵² Erowid Report entitled “Word of Warning” at <http://www.erowid.org/experiences/exp.php?ID=68907>

⁵³ *O Centro Espirita Beneficiente Uniao Do Vefetal (UDV) v Ashcroft*, 282 F.Supp.2d 1236

⁵⁴ See note 53 above , at p.1256

⁵⁵ See note 53 above, at p.1257

⁵⁶ See note 53 above, at p.1257

⁵⁷ See note 53 above, at p.1259

⁵⁸ See note 53 above, at p.1260

⁵⁹ See note 53 above, at p.1260

prior occurrences”⁶⁰ of psychological issues. More evidence presented demonstrated that eight of fifteen ayahuasca users have presented with cardiac irregularities, and four of the eight had a slow heartbeat, or bradychardia (a condition sometimes associated with heart disease)⁶¹. Overall, the judge appeared to believe that a case had been made out that there were harmful effects to society presented by this drug. The judge said that:

“The Court has no doubt that in other contexts, the risks that the Government has identified would be sufficient to support a decision against allowing individuals to consume hoasca pending further study of the substance. Indeed, even the scientific experts testifying on behalf of the Plaintiffs appear to recognize the need for additional research into the health consequences of ceremonial hoasca use.”⁶²

However, the case was decided in the favor of the plaintiffs because the Religious Freedom Restoration Act⁶³ imposed a statutory burden on to the government to show there is a “compelling state interest” in preventing the use for religious purposes. This could not be satisfied because of the lack of more knowledge on the subject of the drugs long term health risks.

Internationally there is limited suggestion that the drug should be criminalized. As of May 3rd 2005, France added Banisteriopsis Caapi and Psychoatria Viridis to the list of

⁶⁰ See note 53 above, at p.1260

⁶¹ See note 53 above, at p.1261

⁶² See note 53 above, at p.1261

⁶³ 42 U.S.C. § 2000bb

controlled substances after a court case in Paris deciding that ayahuasca was not covered by the existing law⁶⁴.

What about *Amanita Muscaria*? Is that a better candidate for regulation under the MDA? There has been some documented discussion about the toxicity of this fungi. The European Monitoring Centre for Drugs and Drug Addiction report mentioned earlier believed that the Fly Agaric were "highly toxic and could cause fatal poisoning"⁶⁵. Indeed eating the fresh version of the product (as opposed to the thoroughly dried) appears to have proved fatal in a number of documented reports⁶⁶. However, it is also believed that modern medical advances mean that fatalities should be extremely rare⁶⁷.

However, despite that general tone of optimism there are still documented cases of negative effects. One journal article documents how five people of 18-21 years took the dried mushroom. One of which lost consciousness and had to be admitted to hospital for four days of careful observation⁶⁸. Another article, on the

⁶⁴ Arrêté du 20 avril 2005 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants, at <<

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000239974&dateTexte=>>>

⁶⁵ European Monitoring Centre for Drugs and Drug Addiction, see note 33 above, at p. 8

⁶⁶ Buck, "Toxicity of *Amanita muscaria*". *JAMA*, (1963) 185: 663-4. ; and "Vecchi's Death Said to be Due with a Deliberate Experiment with Poisonous Mushrooms", *New York Times*, December 19th 1897, <<http://query.nytimes.com/mem/archive-ree/pdf?_r=1&res=9E0CEFD71630E132A2575AC1A9649D94669ED7CF..

⁶⁷ Tupalska-Wilczyńska, K.; Ignatowicz, R.; Poziemski, A.; Wójcik, H.; Wilczyński, G.; (1996).

"(Poisoning with spotted and red mushrooms--pathogenesis, symptoms, treatment)" (in Polish). *Wiad. Lek.* **49** (1-6): 66-71, at <<<http://www.ncbi.nlm.nih.gov/pubmed/9173659>>>

⁶⁸ Satora, Pach, Butryn, Hydziks, and Balicka-Ślusarczyk, "Fly agaric (*amanita muscaria*) poisoning, case report and review", *Toxicon*, Volume 45, Issue 7, (1st June 2005), p.941-3, at <[http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6TCS-4FY3NYN-1&_user=10&_coverDate=06%2F01%2F2005&_rdoc=15&_fmt=high&_orig=browse&_srch=doc-info\(%23toc%235178%232005%23999549992%23595962%23FLA%23display%23Volume\)&_cdi=5178&_sort=d&_docanchor=&view=c&_ct=17&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=8bd47398e9b9838673bd1d68500f7f6e>](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6TCS-4FY3NYN-1&_user=10&_coverDate=06%2F01%2F2005&_rdoc=15&_fmt=high&_orig=browse&_srch=doc-info(%23toc%235178%232005%23999549992%23595962%23FLA%23display%23Volume)&_cdi=5178&_sort=d&_docanchor=&view=c&_ct=17&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=8bd47398e9b9838673bd1d68500f7f6e>)

amanita pantherinas, (which is a fungi in the same genus as aminitas muscaria and also commercially available in the UK) documents how the use of the drug in one patient led to depression of the central nervous system, ataxia, hallucinations and hyperkinetic behavior and led to the eventual administration of “general symptomatic treatment”⁶⁹.

There are also documented reports written by people who have taken the fly agaric and felt its adverse effects. Of course, this evidence must be taken and examined with an element of caution. The reports that the author has found relate to so called “trip reports” that have been posted on the internet forum www.erowid.org. The reports are perhaps unreliable. However, for the purpose of this article the paper assumes the records to be a fairly accurate account. Largely this assumption has been made because the internet site claims to be dedicated to the documentation of the complex relationship between humans and psychoactives. If that principle is applied to the contributors of the site as well then it is logical to infer that the need for a detailed and reliable study would require truthful contributions from its patrons.

One such report mentions a dramatic night in a hospital after taking the drug⁷⁰. The patient describes “the most awful psychic agony (the patient) had ever experienced” and how he was “hooked to a heart monitor” and had the “distinct displeasure of seeing my (his) heart stop a couple of times”. The paramedics

⁶⁹ Satora and Pach, “Panther cap *amanita pantherina* poisoning case report and review” , Toxicon, Volume 47, Issue 5, (April 2006), p605-7, at <http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6TCS-4JJGB0Y-2&_user=10&_origUdi=B6TCS-4FY3NYN-1&_fmt=high&_coverDate=04%2F30%2F2006&_rdoc=1&_orig=article&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=469e229a225afdb77de0db774e766023>

⁷⁰ Erowid report entitled “Extreme Negative Psychic Effect”, at <<http://www.erowid.org/experiences/exp.php?ID=1755>>

administered drugs which returned him to normality after a previous “6 hours of mental torture”.

Another such report expresses a similar experience in which a friend was found “convulsing on the floor”⁷¹. The patient had urinated upon himself and his eyes had rolled back into his head. The person who found the patient called for an ambulance. A similar report describes how a friend collapsed onto the floor and “appeared to (the author to be) in a coma, yet his eyes were wide open”⁷². The patient was also admitted to hospital. Such documented reports have led states in the USA to ban the drug (such as Louisiana⁷³). They are also illegal to possess or sell in some countries such as the Netherlands⁷⁴.

Salvia divinorum also appears to have attracted much attention and some criminalization. Some scientific reports suggest that its ingestion has “depressive-like

⁷¹ Erowid Report entitled “the Void, the Hospital, and the Cops”, at <<http://www.erowid.org/experiences/exp.php?ID=51941>>

⁷² Erowid Report entitled “Testament” at <<http://www.erowid.org/experiences/exp.php?ID=35743>>

⁷³ R.S. 40:989.1, at <<
<http://www.erowid.org/psychoactives/law/states/law_louisiana_plants_2005_05rs-52.pdf>>

⁷⁴ Erowid, Salvia Divinorum Legal Status and information, <<
<http://www.erowid.org/plants/salvia/salvia_law.shtml>>

effects” in rats⁷⁵. This is because it operates on the Kappa-opioid system which is known to cause dysphoria and psychotomimetic effects in humans⁷⁶.

Many states in the USA have outlawed the drug in a fit of legislative action commonly known as “Brett’s Laws”. The first of which occurred in Delaware where a teenager named Brett Chidester committed suicide on the 23rd of January 2006⁷⁷. The Chidester parents have campaigned for the regulation of Salvia Divinorum as they believe the drug’s use contributed heavily to the suicide of their son. This is partly based on the diary entries that were found post humus in which Brett described how salvia taught him how “earthly humans are nothing” and “our existence is pointless”⁷⁸. Of course, such a report does not prove causality. However, it has been presented in evidence across the US and has led to similar laws banning the sale of salvia divinorum in many states including Florida⁷⁹, Illinois⁸⁰ and Kansas⁸¹. Similarly, the drug is regulated

⁷⁵ Carlezon, Béguin, DiNieri, "Depressive-Like Effects of the κ -Opioid Receptor Agonist Salvinorin A on Behavior and Neurochemistry in Rats", *Journal of Pharmacology and Experimental Therapeutics*, 316 (1): 440–447,, (October 2005) at <<http://jpet.aspetjournals.org/cgi/content/abstract/316/1/440>>

⁷⁶ Gorelick, Heishman, Eichmiller, Norbeck and Liberto, "An open-label study of a functional opioid kappa antagonist in the treatment of opioid dependence", *National Institute on Drug Abuse, J Subst Abuse Treat*, (April 2000); 18(3):277-81, at <<http://opioids.com/kappa/index.html>>

⁷⁷ Senate Bill # 259 w/SA 1, An Act to Amend title 16 of the Delaware Code relating to the uniform Controlled Substances Act <<
<http://legis.delaware.gov/LIS/LIS143.NSF/vwLegislation/SB+259?Opendocument>>>

⁷⁸ See e.g. CNN.com, "The situation room", at <<http://edition.cnn.com/TRANSCRIPTS/0707/16/sitroom.03.html>>

⁷⁹ CS/HB 1363, <<
http://flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1363er.xml&DocumentType=Bill&BillNumber=1363&Session=2008>>

⁸⁰ (720) Illinois Controlled Substances Act, <<
<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1941&ChapAct=720&ChapterID=53&ChapterName=CRIMINAL+OFFENSES&ActName=Illinois+Controlled+Substances+Act>>>, and Illinois Public Act 095-0239, at <<<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0239>>>

⁸¹ K.S.A. 65-4105, << <http://www.kslegislature.org/bills/2008/481.pdf>>>

in many countries internationally including Australia⁸², Denmark⁸³, Finland⁸⁴, Germany⁸⁵, Lithuania⁸⁶, Russia⁸⁷, Spain⁸⁸ and Sweden⁸⁹.

Some other reports of people who have taken the drug would seem to confirm that the drug can have a lasting effect on mental health. One such report explains that the negative effects of taking the drug persisted with one man for months after⁹⁰. He describes how having previously been diagnosed as bi-polar, his effect with the drug contributed to later manic states and as a result “the next eight or nine months were a living hell”. A similar report came from a man who claimed that his experience with the drug caused him to suffer later from Hallucinogenic Persisting Perceptual Disorder (HPPD)⁹¹.

Other people have documented strange short term psychological changes that have occurred whilst taking the drug. One report explained how the person taking the drug began to “swear and say horrible things” whilst talking about killing the people around him⁹². Other people have described severe negative short term physical effects. One person explained the “excruciating pain” that coursed throughout his

⁸² See note 74 above

⁸³ See note 74 above

⁸⁴ See note 74 above

⁸⁵ See note 74 above

⁸⁶ See note 74 above

⁸⁷ See note 74 above

⁸⁸ See note 74 above

⁸⁹ See note 74 above

⁹⁰ Erowid Report entitled, “*Tipped Off my Bipolar State*”, at <<<http://www.erowid.org/experiences/exp.php?ID=44258>>>

⁹¹ Erowid Report entitled, “*Salvia Caused my HPPD*”, at <<<http://www.erowid.org/experiences/exp.php?ID=53946>>>

⁹² Erowid Report entitled, “*Madman*”, at <<<http://www.erowid.org/experiences/exp.php?ID=9153>>>

body whilst under the drug's influence⁹³. The pain was "perhaps the most complete pain (he) had ever felt".

In the UK there has already been some discussion of Salvia's legality. One Early Day Motion has been lodged in the House of Commons calling for its ban in 2005⁹⁴. A second was later lodged in 2008⁹⁵. Although neither of these motions gained enough votes to be successful there are other indicators that the government is concerned with this drug's notoriety. The Home Secretary, Jacqui Smith, has written to the Advisory Council on the Misuse of Drugs, the independent body that advises government on drugs asking it to investigate⁹⁶. However, as of yet there has been no action taken.

Right to Religion

However, there is another wrinkle to the discussion. Under article 9 of the European Convention on Human Right (incorporated into UK law by the Human Rights Act section 13) people have the right to their religion. Of course, however, that right can be limited by law when it is "necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others"⁹⁷. The protection of public health has allowed the restriction of

⁹³ Erowid Report entitled, "*Falling Through Myself with a Rocketship*", at <<http://www.erowid.org/experiences/exp.php?ID=36352>>

⁹⁴ Early Day Motion 796, introduced by John Mann on 19th December 2005, found at <<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=29114&SESSION=875>>

⁹⁵ Early Day Motion 2235, introduced by John Mann on 14th December 2008, found at <<<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=36585&SESSION=891>>>

⁹⁶ Doward and Shah, "*There are many drugs that help people get out of their minds yet stay within the law—they're called 'legal highs'*", *The Observer*, Sunday 26th April 2009, at <<http://www.guardian.co.uk/politics/2009/apr/26/drugs-legal-substances-highs>>

⁹⁷European Convention on Human Rights, Article 9. Para 2

other entheogens. Particularly, restrictions on the Rastafarians' use of cannabis has been justified under this article⁹⁸.

It is clear that ayahuasca is being used in a sincere religious fashion. The use of ayahuasca has formed the basis of numerous churches including "Santo Daime", "PeDeva Church", "Irmandade Beneficente Natureza Divina", and "União do Vegetal". The right of these churches to use ayahuasca has not been disputed in the UK yet. However, it has been the subject of legal controversy in other countries. Most notably, the US Supreme Court upheld the UDV church's right to use the tea as a sacrament. In *Gonzales v UDV*⁹⁹ the court held that the US legislation, the Religious Freedom Restoration Act, clearly carved out an exception to the usual Controlled Substance Act. The court believed that the UDV religion was sincere and that there was no compelling state interest so strong as to justify the ban. A similar story is painted by a court case in the Netherlands. There the court held that the religious use of ayahuasca by the church of Santo Daime was not prohibited by the existing law. Furthermore, there was not enough evidence to convince the court that the article 9.2 limitation for public health was necessary¹⁰⁰. So far no such decisions have been made in the UK. However, the religious use of ayahuasca has been documented within the Kingdom¹⁰¹.

The religious use of the other entheogens has also been recorded. *Salvia divinorum* has fueled the religion of the "Church of the Divine Sage" in which the drug is

⁹⁸*R. v. Taylor* (2002) 1 Cr. App. R. 37

⁹⁹ *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006)

¹⁰⁰ District Court of Amsterdam, Case Number 13/067455-99, 21 May 2001

¹⁰¹ "Santo Daime: the Drug Fuelled Religion", April 7th 2008,

<<<http://women.timesonline.co.uk/tol/life_and_style/women/the_way_we_live/article3699397.ece>>>

a holy sacrament and can be a “catalyst for spiritual revelation”¹⁰². Similarly, people have recorded how religious experiences with the drug has lead to the healing of their physical ailments¹⁰³. The same can be said of amanitas muscaria where reports demonstrate how people are using the drug for religious experiences. For example, one report describes the drug’s effect in terms of being a way of achieving communion with God¹⁰⁴

Conclusion

In sum, there is a growing trend within the UK in which “legal highs” are sold to the general public. Within that group of legal highs this paper has identified three entheogens that are being used for religious use. However, there are questions to be asked over the safety of consumption. Although the evidence provided here is anything but conclusive on the dangers of these drugs they do raise the possibility that the Misuse of Drugs Act should be invoked to regulate their use. However, there is perhaps another avenue that should be explored first. The Advisory Council can impose measures for “promoting research into or otherwise obtaining information about, any matter which in the opinion of the Council is of relevance for the purpose of preventing the misuse of such drugs or dealing with any social problem connected with their

¹⁰² <<http://www.divinesage.org/>>

¹⁰³ See e.g. Erowid Report entitled “*First Healing*”, at <<http://www.erowid.org/experiences/exp.php?ID=28494>>

¹⁰⁴ Erowid Report entitled “*Dancing with God*”, at <<http://www.erowid.org/experiences/exp.php?ID=33297>>

misuse”¹⁰⁵. As an interim measure, this would seem to be an appropriate action. As a long term matter, the questions raised in this article, namely how the MDA and the ECHR should interact on this point would seem still very unclear.

¹⁰⁵ Misuse of Drugs Act 1971, article 1(2)(e).