

Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use

Beatriz Caiuby Labate • Clancy Cavnar
Editors

Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use

 Springer

Editors

Beatriz Caiuby Labate
Center for Economic Research
and Education (CIDE)
Aguascalientes, AGS
Mexico

Clancy Cavnar
Nucleus for Interdisciplinary Studies
of Psychoactives (NEIP)
San Francisco, CA
USA

ISBN 978-3-642-40956-1

ISBN 978-3-642-40957-8 (eBook)

DOI 10.1007/978-3-642-40957-8

Springer Heidelberg New York Dordrecht London

Library of Congress Control Number: 2013956612

© Springer-Verlag Berlin Heidelberg 2014

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed. Exempted from this legal reservation are brief excerpts in connection with reviews or scholarly analysis or material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. Duplication of this publication or parts thereof is permitted only under the provisions of the Copyright Law of the Publisher's location, in its current version, and permission for use must always be obtained from Springer. Permissions for use may be obtained through RightsLink at the Copyright Clearance Center. Violations are liable to prosecution under the respective Copyright Law.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

While the advice and information in this book are believed to be true and accurate at the date of publication, neither the authors nor the editors nor the publisher can accept any legal responsibility for any errors or omissions that may be made. The publisher makes no warranty, express or implied, with respect to the material contained herein.

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Foreword: Drug Use and Prohibition: Three Reform Traditions

The word “prohibition” connotes statutory bans on illicit services and products, especially drugs. Those caught making, transporting, selling, or using prohibited drugs are in legal jeopardy. Often, they are in serious jeopardy. Singapore’s immigration forms warn, in red capital letters, that drug traffickers face the death penalty. The threat is not an idle one.

Drug prohibition, though, has never been absolute. The 1961, 1971, and 1988 United Nations drug conventions permitted medical usage, as did their predecessor treaties. The first of these, the 1912 International Opium Convention, pledged its signatories to “control” narcotic manufacturing, distribution, and sale, not to forbid it. Then, as now, all parties understood control to exempt medical uses and research consistent with Western scientific norms.

These treaties, and the laws that gave them force, were fruits of the transnational progressive movement that shaped the regulatory state in the late nineteenth and early twentieth centuries. Reformers sought to “hold certain elements out of the market’s processes, indeed to roll back those parts of the market whose social costs had proved too high” (Rodgers 1998, p. 30). Progressivism boiled down to selective de-commodification. In some cases, such as children toiling in factories and mines, the ban was to be absolute. But blanket prohibition would not do for medically useful drugs, alcohol included. Instead, progressives sought a system of limited manufacture and prescription control.

These same reformers had little sympathy for native use of indigenous plant drugs like peyote, khat, or coca. They seemed vestiges of heathenism, barriers to civilized progress, and burdens on personal and racial health. Of course, the reformers felt the same way about non-indigenous drugs, particularly Indian opium, massive amounts of which had been illegally imported to China, whose exploitation became the great mobilizing issue of the antinarcotic campaign. However paternalistic their rhetoric may now seem, progressive reformers were at least consistent. They regarded nonmedical drug use as a threat to everyone. They wanted it curtailed, with as few exemptions as possible. And they were willing to battle mercantile, corporate, and imperial interests to achieve their humanitarian ends. They despised, in Axel Klein’s phrase, “the rapacious character of empire.”

The ideological starting point for the essays in this book is the second-generation progressivism—in American parlance, “liberalism”—that became a political force in the mid-twentieth century. More secular, utilitarian, and culturally relativist than first-generation progressives, liberals sought de-commodification without the evils of the black market or infringements of human rights. Their goal was to fine-tune drug policy by liberalizing it. That meant increasing the number of exemptions, medical as well as cultural.

Medical exemptions, particularly those involving the maintenance of narcotic addicts, had top priority. In the 1960s and early 1970s, liberals and their public health allies managed to establish, with an unexpected assist from the Nixon administration, methadone programs in the United States. Though methadone maintenance never fully escaped controversy and stigma, the innovation spread. By 2008, 55 nations had endorsed it (Schwartz 2008). Many of these same countries permitted buprenorphine prescription for medically assisted recovery, the provision of sterile needles and syringes to narcotic users, injection rooms, and other harm-reduction measures.

Liberals also wanted to relax prohibitions against traditional drug use, which they viewed as minimally harmful—perhaps even beneficial—within its cultural context. The principal examples covered in this volume are coca chewing in Andean regions; the ritual use of peyote, ayahuasca, and *Salvia divinorum* in the Americas; khat chewing in the Arabian Peninsula and the Horn of Africa; and cannabis smoking by Rastafarians. Though advocates have had some success in protecting the ceremonial use of peyote and other native hallucinogens—drugs with unpleasant side effects and no mass market—they have not yet achieved any reform on the scale of the methadone breakthrough. Opposition remains formidable, especially with regard to coca and cannabis, drugs that have very large mass markets indeed. To the extent that cannabis reform has advanced, it has done so under the banner of medical marijuana or decriminalization, rather than the protection of religious rituals and other traditional practices.

This raises an interesting question: Given the growing sensitivity to the cultural patrimonies and rights of indigenous peoples, why, during the last half century, have liberals been more successful in expanding medical exemptions to drug prohibition than cultural ones? One answer is that medical liberalization has a concrete security and health rationale. Maintenance can be shown to reduce crime and overdose deaths. Sterile needles and syringes can be shown to reduce HIV and other infections. Cultural exemptions offer less tangible gains. Daily ganja smoking may bring Rastafarians closer to Jah. A dose of *S. divinorum* may bring memorable visions. “I thought I was made out of Legos,” reported one man. That’s interesting, but hard to translate into the language of public health.

There is, however, another argument for cultural exemptions that is both easy to express and intuitively powerful. For centuries, Europeans and their descendants ran roughshod over native peoples. They seized their lands, looted their burial sites, desecrated their temples, burned their codices, and enslaved or killed captives with impunity. Revulsion against such maltreatment, fostered by the ongoing humanitarian and rights revolutions, has fostered a sympathetic regard for foundational

native practices. “The least we can do,” as Mark Brown puts it, “is to allow Indians to practice their religions.”

Stated that way, cultural exemptions seem like compensatory justice. The rub is that, in a globalized world, native drug use has a way of spreading beyond its original cultural context. If ethno-religious groups enjoy privileged legal access, outsiders will attempt to join them for any number of reasons, from spiritual enlightenment with new drugs to immunity for using prohibited ones. Alternatively, they will, like Timothy Leary, establish their own religious groups and seek legal protection for what would otherwise be illegal activities. (The United States, a country with strong constitutional guarantees of religious freedom, has had a similar problem with neo-Nazis and religious sects. Instead of drugs in the church basement, officials worry about guns and hate pamphlets.) Even if no outsiders join the protected groups, their members may spread drug-taking practices through example, amplified by digital media. YouTube demonstrations of peyote preparation and rituals have become commonplace. So have editorials of the “Peyote: I Wish We All Could Be Members of the Native American Church” variety (NeuroSoup 2011).

The attentive reader will detect in these essays notes of impatience and frustration as well as hope and progress. Ethno-religious drug use remains stuck in a diplomatic and legal quagmire. Some of the issues—who is an indigene, what counts as religion, how long does it take to establish a tradition, what happens when newcomers borrow traditions or emigrants take them abroad—are probably unresolvable. At some point the legal controversy begins to assume the aspect of *Jarndyce v. Jarndyce*, the interminable Chancery case in Dickens’s *Bleak House* that became so tangled as to be beyond the ken of anyone.

Shunning legalistic gradualism, some reformers have rejected drug prohibition *tout court*. Rather than regarding it as a flawed but amendable charter of humanitarian reform, they see it as a barrier to human freedom. If, as Charlotte Walsh puts it, you live in a “psychopharmacological North Korea,” you don’t want to reason with the regime. You want to get rid of it. Several contributors offer variations on this theme. They believe that the benefits of nonmedical drug use have been ignored. The risks have been created, not by drugs, but by prejudice, maltreatment, and by the law itself. They want an end to drug prohibition, not only to narrowly protect religious freedom, but also to broadly expand cognitive liberty and human rights.

Any good anthology offers a variety of perspectives, and this one is no exception. The essays fall along a continuum that ranges from cultural-exemption liberalism to full-throated libertarianism. Readers will judge for themselves which position is most persuasive, but the lack of agreement, even within the reform camp, should not come as a surprise. Of all progressive measures, drug control has spawned the most varied dissents. People may disagree over how often meat-packing plants should be inspected, but not on the desirability of getting tainted meat off the market. They may disagree over the legal age for factory work, but not that young children should be spared such labors. Progressive de-commodification has an assumed quality: Yes, by God, some things *should* be

held out of the market. Yet it is otherwise with psychoactive drugs, where fundamental questions of morality, fact, and policy divide old-school progressives who favor prohibition or strict regulation; liberals who favor accommodation or medicalization; and libertarians who favor the government keeping its hands off your stash. Complex and impassioned, the debate continues to draw strong interest from social scientists, legal scholars, and activists like those whose essays fill this fascinating book.

Jacksonville, Florida
March 15, 2013

David T. Courtwright

References

- NeuroSoup. (2011). *Peyote: I wish we could all be members of the Native American Church*. Retrieved March 15 from http://www.youtube.com/watch?v=_uKUIJUKQaY.
- Rodgers, D. T. (1998). *Atlantic crossings: Social politics in a progressive age*. Cambridge, MA: Harvard University Press.
- Schwartz, M. (2008, July 22). Russia scorns methadone for heroin addiction. *New York Times*. Retrieved March 15 from <http://www.nytimes.com/2008/07/22/health/22meth.html>.

Controversies on the Regulation of Traditional Drug Use

Beatriz Caiuby Labate and Clancy Cavnar

This collection of texts arrives at a time when the wisdom of the so-called War on Drugs, and its accompanying policies and philosophies, is increasingly being questioned. The book contributes to this growing debate by addressing how the traditional uses of plants such as peyote, ayahuasca, coca leaf, cannabis, khat, and *Salvia divinorum* have been progressively incorporated and regulated in developed Western societies by both national legislation and the United Nations (UN) Drug Conventions. The drugs included are representative, but not inclusive, of a set of traditional substances whose cultural migrations were caught in regulatory limbo; unaddressed here are other psychoactive plants such as iboga, opium, betel nut, jurema, hallucinogenic mushrooms, and kava kava. The volume gives special attention to the disputes about the religious use of psychoactive substances—resting on finely drawn legal definitions of “religion”—which have arisen in court cases around the world. It further touches upon larger issues of human rights and cognitive liberty as they relate to the consumption of drugs. By contemplating conflicts between different legislations, such as those pertaining to drug regulation and religious freedom, the following chapters reflect on notions such as origin, place, authenticity, and tradition, thereby engaging drug policy with broader social science debates.

Within the 12 chapters of this collection, a wide range of disciplines is represented: anthropology, law, sociology, criminology, history, and international relations; with contributors hailing from the United States, Brazil, the UK, and the Netherlands. Despite the diversity of approaches and perspectives, all authors seem to share a common set of principles and references. First, they agree on the need to defend the right to indigenous and traditional use of certain psychoactive substances. These uses can often be found at the intersection of various areas of life, including politics, medicine, shamanism, religion, aesthetics, knowledge transmission, socialization, and celebration. Protecting these cultural practices is, in itself, an important stance, as such practices are both foundational and central to these societies. Second, the authors reflect on how Western societies have frequently considered all drug use as problematic and homogenous, failing to understand the nature of these medical and nonmedical uses of drugs. They point to challenges

Western nations face incorporating these substances into their biomedical drug categories and regulatory schemes.

While this collection emphasizes the ritual, traditional, medical, and religious uses of psychoactive substances in different cultures and historical periods, it is also useful to contemplate the consumption of drugs in contemporary societies. In fact, the chapters problematize the strict distinction between the traditional and nontraditional. They demonstrate that some of these substances have migrated to varied transnational contexts and that contemporary practices around them frequently involve spiritual and therapeutic aspects in dialogue with traditional contexts. They also shed light on the blurred distinctions between natural and artificial substances, thus rupturing dichotomies of little use in reflections about “drugs.” As we will see, there are continuities and discontinuities between various modes of usage, from religious to profane, traditional to modern, and medical to aesthetic.

When viewed comparatively, the chapters present a fascinating scenario of hybrid modalities of drug use. They reflect on the Brazilian ayahuasca religions of Santo Daime and União do Vegetal (UDV), present in the United States and Europe; khat-using migrants in the United Kingdom; the pan-indigenous, partly Christian, and multi-ethnic Native American Church (NAC); Rastafarians in different countries; traditional and neo-traditional coca uses in South America; therapeutic and religious claims to the use of substances such as LSD and marijuana in the United States; recreational use of the Mazatec-based substance *S. divinorum*, and more. The contributions discuss the limitations of narrow legalism based on the UN Drug Conventions to deal with this multiplicity. As one chapter points out, the very concept of “culture” behind the Conventions is problematic: It seems to imply that culture is static and fixed, and not dynamic and transformative.

While the book focuses mainly on the challenges of regulating certain uses of psychoactive substances, it is also about placing drug use in general within a larger cultural and historical framework. Beyond the discourse of harm reduction, substance use is considered a phenomenon with cultural legitimacy in itself. As various chapters demonstrate, there are integrated, positive, and functional uses of a number of substances existing both within indigenous communities and outside of this context.

The chapters also challenge the biomedical reductionism that currently dominates the academic and public debate on drugs. We hope that this book adds to the discussion about the need for, and right to, scientific research with scheduled substances and for continued exploration of the therapeutic potentials of substances such as marijuana and the psychedelics. There seems to be a perverse circularity regarding the legality of some of these substances. The prohibition of many psychoactive substances was initially based on scant evidence and anecdotal reports, but the placement of certain substances into categories signifying “high potentials for harm” has made it difficult for researchers to obtain permission for scientific research in order to produce “objective,” as opposed to “political,” knowledge of the effects and health consequences of many of these substances.

Without more research, the uninformed scheduling of substances is likely to continue.

Re-thinking the current dominant drug policies and suggesting that reforms are urgent and necessary does not mean that new drug control mechanisms would automatically solve all problems connected to drug use. With a single exception, the chapters do not really delve into what a post-prohibitionist world would be like; this remains a significant challenge. The authors suggest that localized and ad hoc solutions provide important potential alternatives to the external, uniform, and universal rule of prohibition worldwide. They also suggest that strengthening cultural and informal controls is fundamental in the context of the current prohibitionist policies, which are linked to the spread of illicit and violent markets. In fact, prohibition tends to weaken local and informal means of controls.

The first chapter, by Boiteux, Chernicharo, and Alves, provides an excellent introduction to the key debates in the book. It offers an overview of the creation of the United Nations Declaration of Human Rights and the Drug Conventions. It presents the conflicts and inconsistencies that exist between the two of them, pointing out that the UN drug control bodies seem to be isolated from the rest of the UN. By analyzing the text of the Conventions and using empirical examples, the chapter discusses the lengths governments will go to when they put suppression of drug use and traffic above basic principles of human rights. Boiteux et al. point out the hazards to the health of those who live in countries where drug laws create barriers for the sick, who cannot access necessary pain medications, and where problematic drug users are rounded up, incarcerated, and beaten for their “crime,” not to mention nations where the penalty for drug possession is death. The authors specify one important exception provided by the Charter for Human Rights, which they read as the right to personal possession of a drug for one’s own use; a perspective that, although not new, has certainly been neglected in the debate. In the final section of the chapter, the laws preventing consumption of coca leaf are presented as clear examples of violations of cultural and human rights. The struggle over coca regulation can be seen as a paradigm of the need to balance out universal rights and multicultural perspectives. This chapter sends a strong message that human rights treaties should prevail over the drug convention rules that violate the UN’s own standards.

Pien Metaal further explores the status of the coca leaf in chapter “Coca in Debate: The Contradiction and Conflict Between the UN Drug Conventions and the Real World.” In keeping with the spirit of the previous contribution, she argues that the fight against traditional use of this plant has become one of the strongest illustrations of the inflexibility of the Conventions. Her chapter offers an historical panorama of the attempt to banish coca leaf chewing, beginning in 1961, and followed by the limited and abstruse exemption included in the 1988 UN Convention: “where historical evidence exists.” She explores the social and cultural values that informed the legal discussion and public debate during these periods, such as the notions that the use of coca leaf use represents backwardness and is the cause of racial decadence. The stated intent to abolish traditional use of coca within 25 years of the adoption of the 1961 Convention was a clear indication that such customs

were not considered a significant part of cultural heritage, even when used for healing, ritual, or other purposes, such as to provide energy for work or for alleviation of altitude sickness. Metaal further discusses how different South American countries acknowledge and regulate their use of coca leaf, and the contradictions their national legislations pose in relationship to international treaty. The chapter also provides a vivid description of contemporary uses of coca leaf, in contrast to the stereotypes normally associated with cocaine users. These include uses by a population more urban and interested in the natural health benefits of moderate consumption, the plant's potentials for treating the problematic use of cocaine, its use as an extract in wines, as grist for flours, and as an alternative to the mild stimulation found in coffee or tea; substances that we do not normally see as "drugs."

Mark Brown's chapter addresses another well-known and controversial substance that is used traditionally and also has widespread nontraditional use: marijuana. The chapter follows the torturous legal trajectory of cannabis in the United States. Brown discusses legal definitions of religion and looks at a number of groups that have sought protection for their use of marijuana within a religious context. The chapter asks why marijuana fails to meet the legal standards for religious use, when peyote and ayahuasca, as discussed in the following chapters, are permitted within religious rites. The author notes that courts have repeatedly found that marijuana consumers are not sincere in their beliefs about their use; that there is a lack of a traditional basis; that the use is religious, but not essential to their practice; or that their practice poses too much of a problem for the authorities to control, as it would be very easy to divert the substance for recreational ends. Brown offers some hope for marijuana users wishing to claim First Amendment rights through an examination of two legal cases: one associated with a peyote church in Hawaii; and one involving Rastafarian claims of free religious exercise. Nevertheless, the chapter is not optimistic in its evaluation of the possibility that marijuana use will soon be permitted for religious rites, due both to its great popularity and to its relationship to the counter-culture and anti-war movements in the US. These aspects are discussed further in Landers' and Griffin's chapters.

The next chapter, by Kevin Feeney, provides a nice contrast with the previous one. The chapter is devoted to an historical and legal examination of the successful bid of the Native American Church to legally use peyote in its ceremonies. Such an exemption was obtained due to the "trust relationship" between Native Americans and the United States government; a relationship described as akin to that of "a guardian to his ward." Feeney reflects critically on the racial criteria underlying membership in the NAC, and the history of the debate regarding the use of "blood quantum" for establishing federally recognized tribal membership (in contrast to cultural membership). The author notes the paradoxes involved in the alleged preservation of the practice of peyote use within the context of a Native American religion, which in some cases relies on racial criteria that might actually weaken the peyote religion as a cultural institution, rather than protect it. As other authors in this collection have observed, permission for the NAC to use peyote has been the touchstone of several other groups' attempts to claim religious justification for their

use of illegal psychoactive substances. Feeney makes an interesting comparison to the efforts of the Brazilian ayahuasca religion, UDV, to seek permission to use hoasca (ayahuasca), and the case of a non-Indian leader of an “NAC” peyote church who claimed the right to use marijuana, under the protection of the NAC’s peyote exemption. He dismisses the commonsense claim that allowing only Indians to use peyote and forbidding non-Indians the use of these, or other similar substances, would be “racism.” This chapter is a good example of the fascinating and complex relationships that exist between law, ethnicity, identity, place, and culture when regulation of drug use is involved.

Moving on to a less conventional sacrament in the public’s eyes, Melissa Bone, like Mark Brown, focuses on cannabis. She provides a provocative reflection on the intersection between race, politics, religion, and culture in the Rastafarian movement. The chapter looks at how Rastafarians are treated in the courts of the United States, South Africa, England, Italy, and the Commonwealth Caribbean. Bone analyzes the struggle of this movement to be recognized as a legitimate religion. She shows how courts have depicted Rastafarian beliefs and practices in very discriminatory terms and argues that Rastafarian rejection of authority and colonialism, paired with their use of cannabis and custom of wearing dreadlocks, predispose courts to ignore the validity of their spiritual path. Because it is also a political and racial movement, Rastafarianism complicates matters when simple “sincerity of belief” is the qualification, as one may sincerely believe in Rastafarianism’s political or social agenda, while not being convinced of the religious aspect of the movement. Their loose organization makes accounting for sacramental use much more difficult; unlike the ayahuasca or peyote churches in which the sacrament is only consumed within the ritual, Rastafarians may keep cannabis with them at all times. Because of this, authorities claim it would be too complicated to survey and monitor their cannabis use and prevent its diversion to the black market. The chapter notes a progression in the way courts have classified Rastafarianism as seen in cases in South Africa and Italy; pertaining not only to the classification of distribution versus possession but also to its status as a bona fide religion.

The chapter by Feeney and Labate considers ayahuasca, which, like peyote, is classified internationally as an “hallucinogen.” The authors discuss the UN Convention criterion that, to be allowed to exist, a practice involving scheduled psychoactive substances must have “historical evidence” of its past use and be circumscribed to a certain geographic territory and identifiable cultural population. Nevertheless, the Brazilian ayahuasca religions of Santo Daime and the UDV have spread beyond their birthplace in the Amazon to more than 30 different countries. The chapter reflects upon the transnational character of this new religious movement and its cultural and material links to Brazil. The authors analyze ideas of tradition, place, and authenticity related to legal matters involving the control of the brew in various countries and legal contexts. This leads to a critical reflection on the assumptions behind the Drug Conventions, such as the notion that substances with a longer history of use are somehow more authentic and valid than those with a more recent history; that cultures are static and remain within one geographical area; that traditional cultures will shrink rather than expand; and, finally, that pharmaceutical

drugs are safer and more effective than natural remedies. Concluding, the chapter makes it clear that the original idea of the naïve architects of the Drug Conventions—that modern beliefs of the industrialized nations would overtake and eliminate the worldviews of the lesser-developed peoples—has been proven wrong.

Shifting to another pharmacological family and continent, Axel Klein's chapter is about khat. Khat chewing is a traditional custom found in Yemen and Somalia, among other places in the Mideast and Africa. Klein describes the way khat is viewed within its original territory in contrast to how it is perceived outside of it, especially in relation to the immigrants who use it in England, where it has become associated with xenophobic suspicions already in place regarding Africans. Khat, Klein believes, falls into a category of drugs that provides simple pleasures, such as caffeine and tobacco, which were integrated into Western culture centuries ago. But, being a recent import and having a reverse transit circuit—brought by immigrants for their own use, rather than by explorers and traders for the tastes of a public hungry for new spices and sensations—khat has not been absorbed and adapted to European tastes. The chapter describes the interplay of development issues with khat regulation in England and other countries, and the tug-of-war between economic, religious, and political interests in the sale and use of this substance. Khat has recently appeared on the radar of drug regulators and is currently being categorized as a “drug” in need of regulation in different locations. The author cleverly analyzes how the association of khat with the drugs discourse sets its own path: a process that begins with the assumption of harm and proceeds with attempts to control. Cropping up from this new fertilization, treatment for khat addiction is now being offered. Khat's benefits, such as combating fatigue, or its properties for social cohesion of specific communities, particularly those existing in situations of war or exile, are not fully considered. In an analysis typical of the scholarship in this volume, Klein provides a perceptive overview of the process by which cultural use of a substance is identified, medicalized, regulated, and banned, with little understanding of its real effects on the people who use it, and little care for the impact on the traditional social and economic structures that have supported its use for centuries.

Hayden O. Griffin, III, deals with another substance on the edge of legality, *Salvia divinorum*. The chapter offers an important contribution to the debate on the so-called legal highs and the relationship between prohibitionist laws and the emergence of concentrated or synthetic variations of traditional plants. The author discusses the history of drug regulation in the United States, giving special attention to the Comprehensive Drug Abuse Prevention and Control Act of 1970. Griffin observes that hallucinogens are classified as Schedule I drugs, with no medical use and a high potential for abuse, despite the fact that these substances rarely result in overdose or abuse, and are not used by the population at large. According to Griffin, the scheduling of so many of the hallucinogens in the highest category is the result of the backlash against the counterculture movement of the 1960s. *S. divinorum*, a plant traditionally chewed by the Mazatec Indians in Mexico for diagnosis of illness and to locate lost objects, among other uses, has only mild hallucinogenic effects

when used in the traditional manner. It has become a small cultural phenomenon internationally in the form of smokable concentrates sold through the Internet, receiving increasing attention in the last two decades. The effects of this version of salvia are described as dissociative and intense, but short lasting. Griffin analyzes the attempts by different states in the United States to classify salvia as a dangerous drug, due to the fear associated with the label “hallucinogen,” and to sensational media coverage of a few incidents. The rush to schedule *S. divinorum* seems to ignore that salvia is relatively safe, and that one of its active constituents, Salvinorin A, is being investigated as a treatment for depression, pain, and some kidney ailments, and also shows potential for research on schizophrenia and Alzheimer’s disease.

Transitioning from the use of psychoactive plants in traditional settings, the chapter by Devin Lander addresses, with a pleasant literary style, the legal battles faced by Timothy Leary in the 1960s regarding his use of marijuana and LSD. This chapter is a good example of a larger set of initiatives in the sixties and seventies to create psychedelic churches with different “sacraments,” using substances such as DMT, DPT, and 5-MeO-DMT. The story of Leary’s passage from respected psychology professor to icon of the counterculture movement, and head of his own religion, is a fascinating reflection on how laws and public perceptions responded to psychedelics in that era. Lander’s chapter begins with a description of how Leary was apprehended entering Mexico at the border and how his daughter was subsequently found to be in possession of a small amount of marijuana: a crime for which he assumed responsibility. Lander tells of Leary’s decision to try to fight the charges based on a religious freedom defense, and his resulting conviction. We follow Leary’s next adventure, commencing with his announcement that he was starting his own religion, the League of Spiritual Discovery (LSD), in an effort to follow in the footsteps of the NAC; a route attempted by others, as previously noted. Expressing his philosophy in the mantra “turn on, tune in, drop out,” he advocated a retreat from secular life and encouraged seeking answers within, with the aid of psychedelics. Leary’s case advanced to the Supreme Court and, though it did not influence regulators to change restrictions on marijuana or LSD use, Lander indicates that it led to a clarification of the intent and means of prosecution of marijuana smokers. Leary’s character, as well as his influence on drug policy, has been highly debated and criticized. Independent of the sincerity of his religious claims, his decision to attempt a religious defense appeared to come from the belief in the natural right of man to control his own mind and body; values that are still strong and influential in the psychedelic movement and drug rights activism. The definition and limits of spirituality, as raised by this chapter, is a complex and ambiguous issue that deserves further investigation, as will be seen in Walsh’s following contribution.

Amanda Feilding advances the discussion on marijuana and psychedelics. Her chapter reflects on the harms that the UN Drug Conventions have caused, as well as their lack of success in curtailing the use and sale of drugs worldwide. These Conventions, as other authors have suggested, have diminished the ability of indigenous people to continue their traditions, made it difficult for people in pain

to gain access to pain medication, and restricted the development of research into psychoactive substances. Feilding remarks that only 1 to 1½ percent of all of the illicit drug use in the world is comprised of drugs other than marijuana, making the point that the Drug War is mainly a war on marijuana. She turns her attention to the case of psychedelics, overlooked because, as noted by Griffin, they are seldom a concern for authorities and, as such, rarely addressed in the discussions at the UN. Partially due to this, Feilding believes, they have retained their place in Schedule I. The author describes some research with psychoactive substances supported by the UK-based Beckley Foundation that provides valuable insight into brain function, addiction, and treatment of PTSD; research that has frequently been fraught with delays and other bureaucratic difficulties due to the fact that drugs like psilocybin, MDMA, and cannabis are involved. This chapter offers some concrete suggestions for reform of the current UN Conventions drug laws and looks into the possibilities of changing the Drug Conventions themselves: This may prove to be a challenging task. The ability of the Conventions to respond to local needs and customs is limited, as are opportunities to experiment with regulations that could be more effective locally. The chapter ends by remarking upon the steps some Latin American countries have taken to liberalize drug laws, including Bolivia's stand for coca leaf chewing, and movements in this direction by Guatemala, Uruguay, Colombia, and Mexico.

The next chapter is by Charlotte Walsh, a lawyer who has been involved in fighting legal cases defending the right to use drugs. Walsh's chapter also focuses on psychedelics but, unlike the majority of the other chapters, gets more into the moral and legal foundations and merits of prohibition. The chapter questions the strict distinction between religiosity and spirituality and argues that most private use of psychedelics outside of religious settings is highly spiritual in nature. Walsh proposes that the inner world of each person is her or his own religious sphere, and its exploration via psychedelics is tantamount to religious use of these drugs, even if no dogma or church is involved. She argues that, beyond indigenous or religious rights to access certain substances, there is the right of all people, everywhere, to alter or maintain their consciousness however they see fit. Taking the discussion of human rights raised by Boiteux et al. in the chapter "Human Rights and Drug Conventions: Searching for Humanitarian Reason in Drug Laws" to a further level, Walsh notes that Europe, unlike the United States, has a broad view of religious rights that covers a range of practices beyond traditional religions. She points specifically to the right to freedom of thought, conscience, and religion in Article 9 of the European Convention on Human Rights (ECHR). This right could also be named, broadly, "cognitive liberty." Walsh insists that it should be beyond the reach of the state to invade the corporeal and cognitive personal spheres by determining which drugs one is allowed to take. Blocking the freedom to take drugs, and punishing those who do, Walsh argues, interferes with personal autonomy and the pursuit of happiness. When freedom is to be restricted, the burden of proof ought to be on the restrictors to prove their case.

The final chapter is by Ross Coomber and Nigel South, whose previous work has inspired this book in many ways. This chapter contemplates how drug prohibition is

built on the idea that the consumption of drugs involves inherent objective pharmacological effects and harms. The authors analyze the category of “risk,” which is often taken for granted in drug policy debate, as risk does not convert immediately into harm. They argue that risk should not be assumed or attributed to substances outside of a consideration of the culture in which they are consumed. In other words, they claim that drug use and any attendant risks must be understood within the set and setting in which they occur. A carefully measured dose of pure heroin, administered through a clean syringe in a protected environment, poses far less risk than a bottle of rum consumed behind the wheel of an automobile, for example. The authors explore the fear and misunderstandings surrounding drug use and argue that this atmosphere has created greater risks and less safe environments for drug consumers. Fear of “others” (e.g., Blacks, Mexicans, Chinese) and their cultures becomes fear of the drugs they favor. The chapter points out that policies adopted on the basis of irrational fear in long developed nations can have unreasonable effects on those practicing non-problematic traditional drug use in far off lands, and may also come back to haunt us in the form of destroyed eco-systems, destruction of individual and social rights, and jails full of citizens who decided to risk their freedom in order to exercise their freedoms.

By bringing remote substances and the contexts of their use into play, and by charting the history of the use of certain drugs, this book invites readers to rethink modern categories and classifications of “drugs.” It also offers a gentle invitation to revisit our own relationship to certain psychoactive substances—be they tobacco, alcohol, coffee, tea, or something else. The distant, or sometimes not-so-distant, “others” discussed in this collection are a valuable reference in challenging our own pharmacological and cultural ethnocentrism. Finally, the varied uses of drugs portrayed present a rich opportunity to reflect upon the possibilities of alternate means and forms of drug control and regulation.

As has been convincingly argued in these chapters, the phenomenon of drug use is too complex to be addressed with mere pharmacological or punitive approaches; it is imperative to place drug debate in a broader sociological and ethical perspective. We present this book with the hope that it will help reclaim the role of social sciences in understanding drug use and call attention to the need for more reasoned, humane, and compassionate drug policies.

Contents

1. Human Rights and Drug Conventions: Searching for Humanitarian Reason in Drug Laws	1
Luciana Boiteux, Luciana Peluzio Chernicharo, and Camila Souza Alves	
2. Coca in Debate: The Contradiction and Conflict Between the UN Drug Conventions and the Real World	25
Pien Metaal	
3. Marijuana and Religious Freedom in the United States	45
Mark R. Brown	
4. Peyote, Race, and Equal Protection in the United States	65
Kevin Feeney	
5. From the Sacrilegious to the Sacramental: A Global Review of Rastafari Cannabis Case Law	89
Melissa Bone	
6. The Expansion of Brazilian Ayahuasca Religions: Law, Culture and Locality	111
Kevin Feeney and Beatriz Caiuby Labate	
7. Framing the Chew: Narratives of Development, Drugs and Danger with Regard to Khat (<i>Catha edulis</i>)	131
Axel Klein	
8. <i>Salvia divinorum</i>, Hallucinogens, and the Determination of Medical Utility	149
O. Hayden Griffin III	
9. “Legalize Spiritual Discovery”: The Trials of Dr. Timothy Leary . . .	165
Devin R. Lander	

10. Cannabis and the Psychedelics: Reviewing the UN Drug Conventions 189
Amanda Feilding

11. Beyond Religious Freedom: Psychedelics and Cognitive Liberty . . . 211
Charlotte Walsh

12. Fear and Loathing in Drugs Policy: Risk, Rights and Approaches to Drug Policy and Practice 235
Ross Coomber and Nigel South

Index 249

Author's Biographies

Camila Souza Alves is currently enrolled as a master's student of sociology and law at Fluminense Federal University, with an emphasis on human rights. She received her law degree from the Federal University of Rio de Janeiro, and she received her Bachelor of Arts degree, with emphasis on linguistics, from State University of Rio de Janeiro. She is a member of the Research Group on Drug Policy and Human Rights at the Federal University of Rio de Janeiro Human Rights Laboratory. Her research interests include political discourses, especially those related to punitive measures, and the role of intellectuals in politics.

Luciana Boiteux received her law degree from the State University of Rio de Janeiro, and her J.D. at the University of São Paulo, and is currently an associate professor in criminal law at the Federal University of Rio de Janeiro, Brazil, where she coordinates the Research Group on Drug Policy and Human Rights at the Human Rights Laboratory. Her research interests include drug policy and international human rights treaties, with a focus on the relation between drug laws, penitentiary systems, and sentencing in criminal cases involving illicit drugs. She is also a member of many advisory boards of NGOs and professional societies in Brazil.

Melissa Bone [L.L.B. (Hons); M.Sc.; Ph.D. (pending)] is currently a Ph.D. student of law at the University of Manchester. Her thesis investigates whether there is a human right to consume legally restricted substances, how the UN drug conventions and provisions contained within the Misuse of Drugs Act 1971 could conflict with these rights, and how such conflicts could be resolved. She has helped found a drugs research group for academics within the law department at the University of Manchester and facilitates the group's collaborations. Her research interests include exploring the interplay between drug use and human rights and examining the effectiveness of drug treatment programs, as she worked with Leicestershire Probation's Criminal Justice Drugs team throughout her master's program.

Mark R. Brown was born in Louisville, Kentucky and graduated from the University of Louisville School of Law in 1984. He earned a B.S. from the University

of Dayton in 1981. Following graduation from the University of Louisville, Professor Brown earned his LL.M. at the University of Illinois in 1988. He clerked for the Honorable Harry W. Wellford, Judge of the United States Court of Appeals for the Sixth Circuit, from 1984 to 1985, and also served as a judicial fellow at the Supreme Court of the United States in the October Term of 1993 under the Chief Justice of the United States. Professor Brown currently holds the Newton D. Baker/Baker & Hostetler Chair at Capital University. He has also taught at Stetson University, University of Illinois, Ohio State University, and Florida State University.

Clancy Cavnar is currently completing her postdoctoral hours in clinical psychology at the Marin Treatment Center, a methadone clinic in San Rafael, California. In 2011 she received a doctorate in clinical psychology (PsyD) from John F. Kennedy University in Pleasant Hill, California, with a dissertation on gay and lesbian people's experiences with ayahuasca. She attended New College of the University of South Florida and completed an undergraduate degree in liberal arts in 1982. She attended the San Francisco Art Institute and graduated with a Master of Fine Art in painting in 1985. In 1993, she received a certificate in substance abuse counseling from the extension program of the University of California at Berkeley and, in 1997, she graduated with a master's in counseling from San Francisco State University. In that same year, she got in touch with the Santo Daime in the USA, and has traveled several times to Brazil since then. She is also co-editor, with Beatriz Caiuby Labate, of two books: *Ayahuasca Shamanism in the Amazon and Beyond* (Oxford University Press, in press), and *The Therapeutic Use of Ayahuasca* (Springer, 2014).

Luciana Peluzio Chernicharo received her law degree at the Universidade Federal do Rio de Janeiro (UFRJ), where she is currently a master's law student, with an emphasis on human rights. She is a member of the Research Group on Drug Policy and Human Rights at the Federal University of Rio de Janeiro Human Rights Laboratory. Her research interests include drug policy, with focus on drug trafficking and gender, and the cultural impact of the ban of substances used by indigenous peoples, such as the case of the coca leaf in Bolivia.

Ross Coomber, Ph.D., is professor of sociology and director of the Drug and Alcohol Research Unit at Plymouth University (UK). He has been involved in researching a wide range of issues relating to drug use, drug supply, and formal and informal interventions in many societies around the world. He also has a strong interest in innovative research methods, particularly those involving qualitative research. He has published extensively within the field. His current research interests include: the sociology of fear, social supply and minimally commercial supply, the new "legal highs," drug market "mapping," the use of informal control to reduce harmful behaviors in problem gamblers, and integrating qualitative research into systematic reviews.

David T. Courtwright received a B.A. in English from the University of Kansas and a Ph.D. in history from Rice University. He is Presidential Professor in the Department of History at the University of North Florida, where he offers courses in

political, medical, social, and legal history. He has authored books on drug use and drug policy in American and world history; the special problems of frontier environments; and, most recently, the culture-war clashes that have roiled American politics since the 1960s. He is currently researching a book about capitalism, pleasure, and addiction in the modern world.

Kevin Feeney, J.D., received his law degree from the University of Oregon in 2005, and is currently a student of anthropology at Washington State University (USA), where he is studying the religious use of peyote in American Indian traditions. Other research interests include examining legal and regulatory issues surrounding the religious and cultural use of psychoactive substances, with an emphasis on ayahuasca and peyote, and exploring modern and traditional uses of *Amanita muscaria*, with a specific focus on variations in harvest and preparation practices. He is co-author, with Richard Glen Boire, of *Medical Marijuana Law* (2007).

Amanda Feilding is the director of the Beckley Foundation, UK. She studied comparative religions and mysticism at Oxford and later did extensive research into psychology, physiology, and altered states of consciousness. In 1998, she founded the Beckley Foundation to do pioneering research in the fields of human consciousness and to bring about global drug policy reform by creating evidence-based, health-orientated policies which recognize human rights. The Foundation's Scientific Program investigates meditation and the neurophysiology and pharmacology of psychoactive substances in order to better understand how these compounds work and to identify their potential therapeutic applications. Her latest research on psilocybin was recently published in the *Proceedings of the National Academy of Sciences*, with breakthrough data on its effects on the brain and how this might help in the treatment of depression and cluster headaches, and as an aid in psychotherapy.

O. Hayden Griffin III is an assistant professor in the Department of Justice Sciences at the University of Alabama at Birmingham. He has a Ph.D. in criminology, law, and society from the University of Florida, and a J.D. from the T.C. Williams School of Law at the University of Richmond. His research interests include drug abuse liability assessment and the history of and motives for the passage of drug laws and scheduling decisions regarding drugs. His research has been published in *Journal of Drug Issues*, *Journal of Psychoactive Drugs*, and *Journal of Drug Education*.

Axel Klein is a social anthropologist and has worked for both the charity sector (ISSD, DrugScope) and inter-governmental agencies (EC, UNODC) in different national and international settings. He has conducted fieldwork and evaluations in over 20 countries, including Afghanistan, China, Jamaica, and Nigeria. His interests include problematic and recreational substance use, the culture of consumption, drug policy, and criminal justice reform. He is currently developing a new model for the study of drug policy using systems analysis. This is an attempt to explain the continuous expansion of the drug control nexus in spite of perverse consequences

and poor outcome delivery. The approach seeks to identify the role of vested interests and the significance of cross-domain referencing. In addition to this, for the past five years, Dr. Klein has been looking at the production, distribution, and consumption of khat (*Catha edulis*), the latest psychoactive substance to become a globalized commodity. *Cannabis* production in the Caribbean and the convergence/divergence with cocaine trafficking are also interests of Dr. Klein.

Beatriz Caiuby Labate has a Ph.D. in Social Anthropology from the State University of Campinas (UNICAMP), Brazil. Her main areas of interest are the study of psychoactive substances, drug policy, shamanism, ritual, and religion. She is Visiting Professor at the Drug Policy Program of the Center for Economic Research and Education (CIDE) in Aguascalientes, Mexico. She is also Research Associate at the Institute of Medical Psychology, Heidelberg University, co-founder of the Nucleus for Interdisciplinary Studies of Psychoactives (NEIP), and editor of NEIP's website (<http://www.neip.info>). She is author, co-author, and co-editor of twelve books, one special-edition journal, and several peer-reviewed articles. For more information, see: <http://bialabate.net/>.

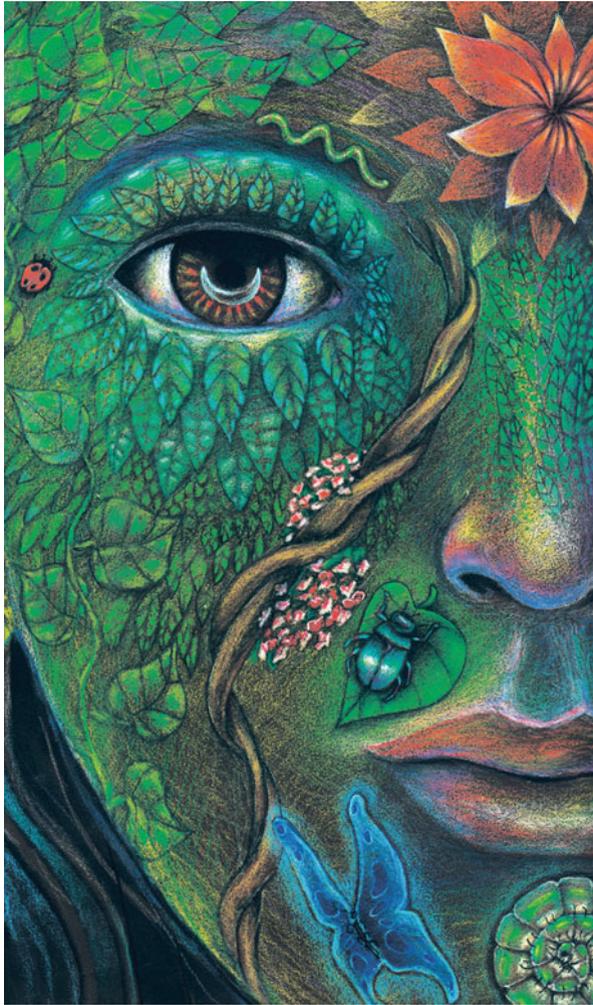
Devin R. Lander is an independent historian and author who specializes in post-World War II United States social, political, and cultural movements. He holds a B.A. in American history from the State University of New York at Plattsburgh and an M.A. in public history from the State University of New York at Albany. He currently works as deputy legislative and policy director and committee clerk for the New York State Assembly Committee on Governmental Operations. He is the author of "Start Your Own Religion: New York State's Acid Churches," published in the February 2011 edition of the journal *Nova Religion* and has consulted on the 2010 Timothy Leary biography *Lords of the Revolution: Dr. Timothy Leary* which aired on the VH1 network.

Pien Metaal has been a member of the staff of the NGO Transnational Institute (TNI) since 2002. TNI was established in 1974 in Amsterdam as an international network of scholar-activists committed to critical analyses of global problems, such as drug policies, environmental issues, military intervention, fair trade, and financial crises. Pien has studied political science, and in 1997 received a master's degree in international relations at the University of Amsterdam. She is an expert in the political economy of the drug market in Peru, Bolivia, and Colombia, and other parts of Latin America, focusing especially on the coca market. She is co-author, with Anthony Henman, of "Coca Myths" (TNI Series Drugs & Conflict Debate papers no. 17, 2009), and, with Martim Jelsma and Ricardo Soberon, of "Coca Yes, Cocaine No? Legal Options for the Coca Leaf" (TNI Series Drugs & Conflict Debate Papers no. 13, 2006), among other publications.

Nigel South [B.A., M.A. (Essex), Ph.D. (CNA)] is professor of sociology at the University of Essex. He has taught at various universities in London and New York and, between 1981 and 1990, worked as a research sociologist at the Institute for the Study of Drug Dependence (now Drugscope) in London. Research interests

include: drug use and related health and crime issues; environmental harms and crimes; and crime, inequalities, and citizenship.

Charlotte Walsh (L.L.B. [Hons]; MPhil) is a legal academic at the University of Leicester School of Law, where she runs an undergraduate course on criminology. Her main research focus is on the interface between psychedelics and the law, viewed from a liberal, human rights-based perspective. She believes that drug prohibition conflicts with our fundamental right to cognitive liberty. Her articles have appeared in the *British Journal of Criminology*, *Criminal Law Review*, *International Journal of Drug Policy*, *Journal of Psychoactive Drugs*, and *International Journal of Human Rights*. Charlotte is actively involved in advising individuals prosecuted for activities involving plant psychedelics. She has also been assisting Casey Hardison—whose case is discussed in detail in her chapter in this volume—with his legal arguments for a number of years.



Plant Life by Clancy Cavnar 2003. © Clancy Cavnar