Psychedelics and the Law

A Prelude in Question Marks

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Im Innern ist ein Universum auch.
Goethe

. . . & every Word & every Character
Was Human according to the Expansion or Contraction,
the Translucence or
Opakeness of Nervous fibres: such was the variation of
Time & Space
Which vary according as the Organs of Perception vary.
William Blake, *Jerusalem*

No individual can keep these Laws, for they are death
To every energy of man and forbid the springs of life.
William Blake, *The Devil's Party and the Part of Angels* (Jesus answering Los from the fire.)

When Kaga no Chiyo, the poetess who lived toward the end of the Tokugawa regime, wrote her famous haiku (*Asagao ya*!) in humble homage to the morning-glory, she had no premonition that the seeds of this twining plant might contain a hallucinogenic substance and alarm legislators, governmental agencies, and law enforcement officers. Yet on August 1, 1963, Senator Vance Hartke, Democrat of Indiana, urged the Senate Commerce Committee to investigate whether the sale of morning-glory seeds should not be controlled to prevent harm to public health. Dr. Abram Hoffer, director of psychiatric research for the Province of Saskatchewan, Canada, contends that repeated or heavy ingestion of the seeds may cause ergot poisoning and thus gangrene. Following his lead, biochemists on the staff of the Food and Drug Administration are doing analyses. It is safe to presume that the police watch certain areas in Boston, New York, and San Francisco where young people, chiefly students, are suspected of buying the seeds "for kicks".

Whether or not Chiyo's plant, descendant of *Ipomoea nil* which grows in the Eastern Hemisphere, in fact shares the psychopharmacological qualities of *Rivea corymbosa,* or ololiuqui, a hallucinogenic morning-glory whose active components have been identified as similar

to LSD, is of some interest in view of the international traffic in drugs. An affirmative answer would place the seeds of the Japanese morning-glory in the same category as ololiuqui and possibly other psychedelics.

At present, a definition of psychedelics, acceptable to the majority of qualified experts, does not exist. No one has attempted a denotational or enumerative description of these substances; the class of psychedelics, though theoretically finite, has been explored only to a small extent and often with controversial results. There seems to be agreement about the "recognition" of LSD, mescaline and derivatives such as TMA, psilocybin (the chief active ingredient of the magic or sacred mushroom of Mexico) as well as psilocin, dimethyltryptamine (DMT), Ditran (or JB 329), Sernyl (or phencyclidine), DET, peyote buttons and morning-glory seeds. In the "doubtful" category are other substances and compounds, such as harmine, harmaline, adrenolutin, adrenochrome, carbon dioxide, nitrous oxide. And the oldest of all consciousness-alterating drugs, marihuana (hashish), is in the process of revaluation.

Nor has anyone offered a valid structural definition, which presupposes that the elements and relations constituting a psychedelic are known in full. Until that day, a number of criteria, tentatively selected and in part hypothetical rather than factual, must serve. The newly coined term "psychedelic" — "mind-manifesting" — itself remains vague and ambiguous.

Uncertainties are inherent in any novel experimentation. They are dramatically intensified when a venture of the intellect assumes the extraordinary forms of personal adventure and when research becomes a search for transcendental values. The adventurers are also members of a well-ordered society governed in minute detail by written state and federal constitutions, legal precedents, statutes, ordinances, rules and regulations. Thus it hardly comes as a surprise that almost everyone involved in psychedelics is grasping, like the proverbial drowning man, at a — law.

Radical innovations in the pursuit of ideas or the manufacture of products, perspectives never before seen by a judge, compel the lawyer to deviate from his usual method and dig deeper and wider into cross-disciplinary studies that will enable him to think in terms of laws *to be made* and clear the ground on which new laws can be built. He is confronted with such a task when entering the little-travelled land of psychedelics which has not as yet been surveyed by legal trigo-

nometry. Any move may lead to a pitfall. This is also true for the steps taken by officialdom. Their informative or warning instructions, though issued in good faith and a humane spirit, have not so far been tested in the high courts. Are they "according to law"?

Pragmatically speaking, law is a system of principles, doctrines, and precepts of social control, the basis of a prediction of what an institutional power — the government, a court, an administrative agency, a district attorney, a policeman ("the Law"!) — will do in a given situation. The factors that enter into the prediction are innumerable and by no means embodied in the messages and threats of the system alone. Decision-making does not operate in the rarefied sphere of deductive logic. It is influenced by political, ethical, sociological, economic, and a host of other considerations; by the latitude of words and phrases seldom precise enough to exclude divergent meanings; by idiosyncrasies and frequently unconscious moods of the moment; by the variant vistas of the facts themselves which are to be subsumed under the rules. These vistas change with the biases prevailing in each of the cultural orbits of mankind. We know, for example, that the East looks at phenomena such as observed in the study of psychedelics quite differently from the West; its law, whatever it may be, is not ours. Without world law as a basis, prediction must rest on sources of national laws, one by one, as well as relevant international treaties and agreements. Federal law frames the standards within which the states may constitutionally enact food and drug laws of their own.

Legal prediction sinks to the level of stock-market or horse-race forecasts where existing law is relied upon to deal with newly created types of human enterprise, and its chance of being right becomes infinitesimal where a scheme that breaks with all tradition in purpose, outlook, and method is put to the test and spawns unheard-of situations and relationships. Here the problem of the unprovided case presents itself, so embarrassingly that officials tend to close their eyes before it. They are apt to maintain that the existing law covers the "novel imposition"; that the law is complete and self-contained because of the rational web of its rules; and that the rule to apply in any particular case, however outlandish in aspects, can be deduced from known principles or found by analogy with precedents and the wider or stricter interpretation of terms. In short, they hold that tomorrow is today and today is yesterday. Unfortunately, the doctrine of logical completeness of the law, which flourished unassailed until about the turn of the

century, still dominates the American scene of justice and is not without followers in Europe. Everywhere, though, the legal *avant-garde* recognizes "gaps" due to technological progress and cultural mutation, and bridges them with timber from the behavioral and other sciences or vaults over them, as it were, with a pole of humane values derived from natural law.

The existence of such gaps in the international arena is generally acknowledged. Everyone concedes, for instance, that outer space is legally as empty as it is to naive realism.

Not a mere gap, but a legal wasteland, is left by the "Copernican revolution" fomented by applying physical substances, psychedelics, to a goal-directed inquiry into the inner space of private experiences. Scientific means and methods are being turned from objective phenomena, coolly observed, tested, and evaluated, to experiments with individuals which not only engage the experimenter himself as a person but are aimed at discovering new dimensions of consciousness and making them fruitful for society and, perhaps, the metabiological or psychometabolic development of the human species. The wasteland is a call to battle. On this battle-ground the laws of psychedelics will be clarified, if not decided with finality. It will be a global war, and a long one, fought with patient endurance by those who will not yield to any authority until they have exhausted all ways of persuasion, review, appeal, revision on the local, state, national, and international level, and have created a climate of opinion in which "each individual is entitled to effective legal protection of fundamental and inalienable human rights without distinction of race, religion, or belief."*

The main issue is not drug law but individual human rights. Some of the secondary problems can be solved from precedents. Some are smoothed away by canons of ethics and other standards of various professions. To indicate the range of legal research needed it might be helpful to list the players who appear on the stage of psychedelics and illuminate a few selected scenes of potential conflict and confusion.

Physician (psychiatrist, medical practitioner), treating a patient. Pharmacologist experimenting with a new drug. Psychologist. Psychoanalyst. Psychotherapist. Biochemist. Philosopher. Theologian.

*Declaration of General Principles For a World Rule of Law. Adopted at the First World Conference on World Peace Through the Rule of Law. Athens, Greece, July 6, 1963.

Artist. Volunteers: Everyman; groups (free, captive, regimented), such as alcoholics, and drug addicts, prisoners in jail, members of the armed forces, e.g., astronauts, hospitalized mental patients. Enter the Statesman, Law-giver, Judge, Governmental Administrator, Attorney, Law Enforcement Officer. The plot thickens around purchase, sale, storage, and distribution of psychedelics; personal qualifications and licensing; age and sex of participants; safety measures; place and time; negligence (what constitutes negligence?); release from liability; penal law; bill of rights. Chorus: diverse makers of public opinion. The authorities always refer to drug legislation as the *sedes materiae* in their dealings with psychedelics. For the sake of argument let us concede that drug law governs psychedelics *if* they are drugs. *Are psychedelics drugs?* The question is not rhetorical, the answer far from clear-cut. To illustrate the need for legal inquiry I move to analyze pertinent provisions of American drug laws, in preference to foreign ones which might serve as well, because of the discrepancy between the concern for psychedelic research in this country and the official resistance to permitting the researcher to carry it on. The Federal Food, Drug, and Cosmetic Act, as amended last in 1962, is the main source from which the restrictive policy against the use of psychedelics emanates and therefore of paramount importance for our subject. The Act, intended to prohibit the movement of impure or misbranded food, drugs, etc., in inter-state commerce, has been incorporated in many state laws. Tangential to our inquiry are the Harrison Narcotic Act, the Narcotic Drug Import and Export Act, and the Marihuana Tax Act — laws whose inclusion in the Internal Revenue Code indicates a budgetary motive beyond public health and welfare — as well as various other federal, state, and local laws for the control of narcotics.

The Act distinguishes between food and drugs and defines drugs by categories. Articles are "drugs" per se if listed as such in an official compendium or intended for specified purposes; they are "new drugs" according to certain criteria and qualifications.

"The term 'food' means: (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. The term 'drug,' without qualifier, means: (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treat-

ment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2), or (3). . . . The term 'new drug' means: (1) any drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a 'new drug' if at any time prior to the enactment of this Act it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions."

In Alice's legal wonderland, where chewing gum is food, scientific usage counts as little as Webster's definitions. It is irrelevant that specialists in science call psychedelics, whatever their origin, birthday, or job, "drugs" (and on occasion, somehow timidly, "psychedelic substances"). The official compendia fail to mention psilocybin, mescaline, LSD and, it would seem, any psychedelics, which, therefore, are not drugs per se under the Act though a very few must be so regarded under consitutionally dubious narcotic laws. *I submit that psychedelics are drugs only if and when used for therapeutic purposes, as medicine, and otherwise not!*

Our burden of persuasion is limited to clause (3) of the "drug" definition, for we admit that clause (2) applies to psychedelics instrumental in medical therapy. Since they alter so-called mental processes, such as perceiving, imagining, thinking, evaluating, they "affect" a "function in the body of man," and they are "intended" to do so. Read out of context, clause (3) would not snatch psychedelics in non-medical use from the jaws of the Act. But it is a rule of statutory construction that even plain and seemingly clear words must yield to the impact of provisions adjoining in print as well as others and must, moreover, be interpreted in the light of the statute as a whole, the legislative policy expressed in it, related laws, and precedents. There can hardly be a

doubt that clause (3) is but an extension of clauses (1) and (2); they all are linked by "and" and form an inseparable unit suffused with one principle of demarcation: purpose of use. The *raison d'être* of the compendia to which clause (1) refers is the practice of medicine; their keynote is the reliability of pharmacological substances prescribed by physicians. To be admitted to the United States Pharmacopoeia the product must conform to legal specifications of purity and be of recognized therapeutic value. Similar curative properties are required for listing in the two other official books.

That it is the medical purpose which transforms — one is tempted to say, transubstantiates — a substance into a "drug" is comprehensively spelled out in clause (2), which is needed to catch up with the volume of medicines not yet listed in the compendia. Clause (3) owes its existence to the same effort to make our world safe for medical therapy. It was not deemed sufficient to include unlisted "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" in the term "drug" — clause (2) — without clarifying, in clause (3), that this term also applies *if* the articles *used in the diagnosis, and so forth, of disease,* are "intended to affect the structure or any function of the body of man or other animals."

We are bound to conclude that clause (3) is inapplicable to psychedelics employed for non-medical purposes. Not being "drugs" they cannot be "new drugs" either.

The courts, from Maine to California, from Washington to Florida, hold without exception that any vegetable, animal or mineral substance is a potential drug, but an actual one only if the substance is used in the composition of medicine and its use bears a reasonable relation to the policy underlying the Act, i.e., the furtherance of public health, safety, and welfare. By this test, cigarettes which contained combustible tartaric acid and allegedly reduced weight while preventing respiratory diseases, were considered drugs; in one amusing case — whiskey! As a rule, alcoholic beverages and cigarettes share with non-medical psychedelics the negative feature of not being drugs, so the secondary question about the reasonable relation of the three groups to public health does not arise although it may be worth pondering in connection with the law of psychedelics for therapy.

As media in the treatment of a patient and therefore "drugs" governed by the Act, psychedelics fall under the recently amended provisions for "new drugs". They were never subject to the Food and

Drug Act of June 30, 1906, as amended; they are not generally recognized among qualified experts as both safe and effective; they have not been used to a material extent and for a material time in medical practice. It follows that they are controlled by the 1962 amendment, which imposes severe restraints on the drug industry — its primary target — on physicians, clinical investigators, and other experts. Just as the sulfanilamide disaster in the fall of 1937 quickened the passage (1938) of the Act itself, so the frenzied furor raised by thalidomide is echoed in the amendment, and the emotional aftereffects of this scare induced the authorities to wield their regulatory powers with redoubled caution.

Of particular interest for the law of psychedelics-as-medicine are the meaning of "effective" in the definition of "new drugs" and the franchise that may be granted to research. Before a "new drug" can be approved for marketing, the manufacturer must show that it will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. The evidence of effectiveness must be "substantial," that is, gathered by scientifically trained and experienced specialists, qualified to evaluate the effectiveness of the drug involved, in adequate and well-controlled basal *and clinical* investigations. If in the light of new evidence the drug does not measure up to standards, it will be ordered off the market. A short grace period for manufacturers of new drugs marketed prior to the 1962 amendment does not concern psychedelics, not yet, if ever, regular items of prescriptions. Psychiatrists may never be able to treat mental cases with LSD, etc., unless the discretion entrusted to the authorities in dealing with experimental drugs is most liberally exercised and research widely promoted. The law generally authorizes the Department of Health, Education and Welfare to exempt new drugs from certain encumbrances and allow their distribution for research on conditions related to the public health. It specifically authorizes the Secretary of the Department to prevent the testing of new drugs on human patients if detailed safety conditions are not met. It explicitly directs the Secretary to issue regulations conditioning the exemption of experimental drugs. A certification must be obtained by the drug manufacturers from the scientific investigators, stating that the latter will inform patients to whom the drug is to be administered, or their representatives, of the experimental nature of the drug and secure their consent except where the investi-

gator deems this not feasible or, in his professional judgment, contraindicated. Among other things, as a precondition for testing safety and effectiveness on human patients, the regulations may require: submission of reports of preclinical tests, including animal tests, adequate to justify the proposed clinical testing; obtainment, by the sponsor, of signed agreements from investigators that work will be done under their personal supervision and drugs used will not be supplied to others; keeping of records and making of reports for the benefit of scientists in the employ of the Federal Drug Administration who are called to evaluate the safety and effectiveness of the new drug when an application is filed. Be it noted in passing that the research provisions refer to human "patients", and not to human beings at large. This clinches our argument: the nonmedical use of psychedelics is not governed by the Act.

In a Zen monastery, perhaps, the contention that psychedelics are both drugs and no-drugs might lead to a "mondo", if not a spontaneous combustion of satori. In this country, the even more paradoxical fact that the authorities fail to notice the paradox and regulate beyond the pale of their jurisdiction can only lead to a day, a month, a year, a decade in court. Who are the complainants? All who have a stake (material, ideal, or personal) in these substances. Whether they know it or not, the drug manufacturer, the psychiatrist, the scientist and scholar, the theologian, the seeker after happiness . . . are indispensable parties and must join to reach a sound determination of the controversy. The Act provides for judicial review over the denial or withdrawal of a new drug from the district court to the United States courts of appeals. Apart from this special provision, administrative orders and regulations, though sometimes shielded against attack, are generally subject to a judge's supervision buoyed up by the federal Administrative Procedure Act of 1946 and corresponding state laws. "Discretion" does not mean arbitrariness, however well-intended, and the court will draw the boundary lines. Eventually, the statute itself, or portions thereof, may be found unconstitutional by the Supreme Court of the United States and set aside.

This may suffice to illustrate — not to examine in depth — at least one of the secondary moot points. The primary problem is human rights, and it ought to be seen under the perspective of mankind. Regrettably, here again we must confine ourselves to a few glimpses at the legal home front.

Psychedelics manifest and affect the "mind". Mind, then, is the object of psychedelic investigation but it is not a clear word. The French have no equivalent. Neither *esprit* nor *intelligence* fit the term, and *mémoire,* the nearest rendering of "mind," alludes to a psychological theory without indication that consciousness has a seat or subject, while *âme* implies a religious or metaphysical belief of which "mind" is free. German parallels French in this regard: *Geist, Seele, Gedächtnis, Bewusstsein* — never mind. . . . The courts, always anxious to explain difficult words by familiar ones — *definitio semper periculosa sed necessaria* — have wrestled with "mind," too. In U.S. v. Boylen, D.C. Or. 41 F. Supp. 724, 725 it "appeared" to the judge that "the word 'mind' is synonymous with the 'memory' as used in Blackstone and other ancient authorities." Similarly, in re Forman's Will, N.Y., 54 Barb. 274, 286, equates mind with memory. "The use of the word 'mind' and 'memory' as convertible terms is not so unphilosophical as might at first seem, for without memory a person would be the mere recipient of a succession of present sensations like the lowest type of animal life." A working definition of the term, be it ever so metaphorical, is basic for the law of psychedelics and will evolve at the proper time. It will not resemble any of the existing legal shards inscribed "sound and normal," "unsound and insane," "disposing and testamentary," but may borrow from topographies such as Dante's or Freud's, adding one or more dimensions. Meanwhile, before there can be a "meeting of minds" about "mind," we are to rely on the nonconceptual knowing that permits us to say *"sub specie aeternitatis"* or *"human rights"* and mean it. Where concepts fail, concerns may still prevail.

The amendments of the Federal Constitution do not contain a Universal Declaration of Human Rights, but they emphasize individual freedom — the lever that may dislodge the administrative weight on psychedelics. It has been done, ephemerally and sideways, on July 26, 1960, at 3 p.m. when the Honorable Yale McFate pronounced his decision in the case of the State of Arizona v. Mary Attakai. The defendant, a member of the Navajo Indian Tribe, was charged with the illegal possession of peyote, a crime under an Arizona statute. She admitted the possession but pleaded not guilty on the ground that the prayers, rites, and ceremonies of the Native American Church, to which she belonged, centered on the cult and use of peyote and that, therefore, the statute deprived her of the freedom of religious worship

guaranteed by the Fourteenth Amendment of the Federal Constitution, and the Arizona Constitution as well. The court found that under the circumstances the statute was unconstitutional, dismissed the complaint, and released the defendant. In the opinion of the court, the peyote plant, believed to be of divine origin, bears a similar relation to the largely illiterate Indians as does the Holy Bible to the white man. "It is conceived of as a sacrament, a means of communion with the Spirit of the Almighty." Nor does the practice of the church — first incorporated under the law of Oklahoma, October 10, 1918 — threaten the peace and safety of the public, for the hallucinogenic phenomena produced by peyote, the court averred, leave all the mental faculties unimpaired, and "there are no harmful aftereffects. . . . Peyote is not a narcotic. It is not habit-forming." The judge thought it "significant that many states which formerly outlawed the use of peyote have abolished or amended their laws to permit its use for religious purposes."

Once again we draw attention to the crucial role the purpose of use plays in the law of psychedelics. One group of experimenters has been denigrated in the press as "cultists," and undeniably the scientific study of religion through LSD, etc., is embraced and supported by many more devotees of the spiritual life, among them artists and writers, and theologians from divinity schools or at large, than by medical men, some of whom, ignorant of their own legal advantages in collaboration, strive to pre-empt the entire field. It may seem farfetched but would be altogether in accord with the Constitution to organize this group as a church, with the prospect of privilege. There is another Navajo-peyote case on the books; it was decided on July 26, 1962, by the United States District Court of Appeals, District of Columbia Circuit, in favor of the appellee, Stewart Udall, individually and as Secretary of the Interior. The appellants, eight residents of the Navajo Indian Reservation, sued for a judgment to declare a section of the Code of Indian Tribal Offenses — "Peyote Violations" — "null and void, invalidly authorized and unconstitutional." In the construction of the court, the Navajo Tribe itself adopted, in 1959, the ban on peyote as tribal law, denouncing its use as not connected with the Navajo religious practice and foreign to the Navajo traditional way of life. The complaint was dismissed on evidence *in abstracto,* by a series of syllogisms. What moved the tribe to "adopt" and point the dagger of a criminal offense against themselves, only to be sorry about it shortly

after, is a puzzle for an anthropologist to unravel. As to their traditional religious practices, William Blake (b. 1757) is a witness. "I then asked Ezekiel why he eat dung, & lay so long on his right & left side? he answer'd, 'the desire of raising other men into a perception of the infinite; this the North American tribes practice.' " (*The Marriage of Heaven and Hell*). Judge McFate said of peyote: "It is actually unpleasant to take, having a very bitter taste."

Included in the circle of freedoms which may give constitutional protection to psychedelic enterprise are not only those named and famous, in particular, the freedoms of religion, of speech, and of assembly, but innominate ones, such as the right of the individual to acquire, expand, and spread knowledge, and the "inalienable" right to the pursuit of happiness. This utterly anti-puritanic right, though enunciated in the Declaration of Independence, is the fixed star relative to which the constitutional luminaries are to move in a society of free men and women. Their courses foretell a constellation adjusted to the dynamism and the potential of psychedelics to realize a right inalienable and absolute. Then an equipoise will be attained between the desiderata of science, the rational requirements of public health and safety, and the yearnings of the human heart. Surely, a body politic that allows a machine to kill, year by year, tens of thousands of people and maim or injure over a million; allows liquors to intoxicate and cigarettes to hurt the whole nation — cannot with reason forbid or sharply curtail far less, if at all, harmful and far less common psychedelic experiments and experiences and thus retard medical progress, block discoveries and potential insights, and dry up a source of joy and enchantment.

Freedoms, it is understood, have a pathology of their own. They can be revelled in unwisely; that's a private affair. They can be abused to the detriment of public safety; then the law must be on hand to curb them. But they ought not to be legislated away as if adults were children of an overanxious mother. Sir William Blackstone's paradox holds true: "The public good is in nothing more essentially interested than in the protection of every individual's private rights." To assume such a right is to assume a risk. And — *volenti non fit injuria.* The maxim, codified in a California statute and analyzed by the judicature of the states, is important for the law of psychedelics, especially in regard to group sessions and group therapy where an enthusiast or coryphaeus, proclaiming that there is no danger at all, may confound

the "free" volition of the participants. "Volenti" is not "scienti." While no legal wrong is done to him who, knowing and comprehending the risk, voluntarily exposes himself, without being negligent in so doing, the mere knowledge of the possible danger does not preclude him from the recovery of damages for injuries sustained. Even if he himself has no action whatsoever, the investigator or person administering a psychedelic could be liable to an outsider, e.g., when the patient or subject, still under the influence of the psychedelic, runs his car over a third party or damages his property. We mention this only to exemplify the fact that many legal problems will persist after the freedoms have been implemented.

It may seem too sanguine to expect a sweeping victory due to one of the sudden spurts which in the record of cultures appear with the abruptness of biological mutation. We can look forward, though, to a gradual change in freeing the study and the enjoyment of psychedelics. To be sure, there are troughs and crests in the policy of the Supreme Court in protecting the individual and his pursuits, even as against the state, but for a hundred years no trough ever declined to the low level of the preceding one, each crest surmounted the last. By its own momentum, acceleration of the progressive trend is inevitable.

Nowadays, with the concepts of "world law" and "mankind" emerging from a shrunken globe, the legal destiny of psychedelics will further depend on how they are assessed in foreign lands. The major part of law vital to the people grows, except under a dictatorship, from the bottom up, not from the top down. It roots in public opinion and collapses if no longer supported by it; the repeal of the Prohibition Amendment is a striking example. Public opinion denotes a cross-sectional mass judgment based on private attitudes. Therefore, in the last analysis, the private attitudes toward psychedelics abroad, which create public opinion, which in turn creates foreign law, are likely to radiate into American attitudes, American public opinion, and American law.

Brief notes on psychedelics abroad.

They meet with no governmental interference in the various parts of the world where untold millions of people chew or smoke cannabis as freely as we drink alcoholic beverages. The same appears to be true for a number of South American countries. West-German law permits the marketing of any pharmaceutical specialty if it has been registered

by the Federal Department of Health; a report on the nature and extent of the pharmacological and clinical trials and an evaluation of observed side-effects must be filed. Before granting the sale of new drugs, Canada demands a statement that their safety has been established by tests. In the United Kingdom, on the basis of a skimpy statute, as many as fifteen different organizations may examine a new drug and prevent marketing. Each canton of Switzerland has its own pharmaceutical legislation; an intercantonal office has controlled "medicaments" since 1954. Italian drug law is up for a probably thorough-going revision. Until 1941, drugs were not regulated in France; since 1959, the Ministry of Public Health issues or denies a sales permit according to safety, stability, conditions of use, and contraindications; the newness of the drug is immaterial.

A legal framework into which psychedelics can be smoothly fitted does not exist. Inner-space law today is in the stage of underdevelopment which outer-space law was in A.D. 1903 when the Brothers Wright launched their airplane at Kittyhawk or, perhaps, when the Brothers Montgolfier ascended in the first air balloon, a hundred years earlier. Until it has matured, scholars in search of external on behalf of internal freedom will feel frustrated. They may believe themselves to be fugitives from injustice but in truth are victims of legal confusion engendered by the reversal of the scientific object, from the universe without to the universe within. Until psychedelics have found *their* place in law, a good many concrete questions will not be answerable with confidence.

[*Editor's Note*: Since this article went to press, an extremely important decision has been handed down by the California Supreme Court. The following description is quoted from the *San Francisco Chronicle*, August 25, 1964: ". . . in a 6-to-1 decision, the court ruled that American Indians using the hallucinatory drug peyote in their religious rites are not in violation of the State's narcotic laws. The landmark decision, written by Justice Mathew O. Tobriner, said use of the non-habit forming drug in 'honest rites' is protected by the First Amendment which guarantees freedom of religious beliefs. . . . Justice Tobriner wrote that 'law officers and courts should have no trouble distinguishing between church members who use peyote in good faith and those who take it just for the sensation it produces.' In a companion case, the court ruled that anyone arrested for possession of the drug must prove to a court that he falls within the religious exemption."]