



# The Legal Landscape of the Psychedelic Ecosystem

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## I. The Approach: Psychedelics and the Law

At the beginning of the modern War on Drugs, conversations about psychedelic substances were banished to the underground. As researchers, practitioners, and advocates have worked toward bringing these powerful substances out into the light, they have had to increasingly reckon with the arcane infrastructure of the legal system. Yet as legal barriers to psychedelics are lowered, questions of accessibility, ethics, and accountability loom large. Decriminalizing, legalizing, or medicalizing may create access in certain cases, but they won't necessarily do so in a way that is equitable and devoid of externalities.

As the legal status of psychedelics changes, so too must the practice of law. To adapt to the new paradigms that are made available by psychedelic substances, and the framework we are building to safely and responsibly access them, lawyers working in the psychedelic ecosystem should consider how the practice of law itself enhances - or hinders - the world we are hoping to create.

While it is true that at the local, state, and federal level, law and policy is being changed to give people the opportunity to use psychedelic substances, there is a meaningful gap between having the right to do something, and being able to reasonably access that right.

For example, the landmark Supreme Court case *Roe v. Wade* established a constitutional right to abortion, and in theory a person can choose whether or not to exercise this right. However, the rhetoric of choice obscures the reality that many people face economic and institutional barriers that deny them, particularly if they are economically disadvantaged and/or people of color, the ability to freely make choices in the same way a consumer of any other good or service does.

Similarly, psychedelic legalization is at risk of replicating comparable dynamics, whereby the right to choose is curtailed by economic and institutional barriers to accessing that right, as well as by stigma and fear.

This is a meaningful distinction because when people throw around words like "access," it is important to unpack what they mean: do they mean geographical availability, financial accessibility, or cultural competency? Is it all of the above? Additionally, the inquiry around access is also a question of the actual settings that will permit the

use of psychedelics. For example, a law that establishes affordable psychedelic-assisted therapy, but does not allow for use outside of the medical paradigm, effectively prohibits access to psychedelics for people who do not have medically cognizable mental health conditions, but wish to use psychedelics for other purposes, like spiritual growth.

Lawyers, whose role is ostensibly to serve the needs of people, companies, and communities seeking to protect and utilize their rights, have a significant role to play - and a new generation of legal professionals are stepping up to think about the complexities of it all.

## II. The Landscape: The Legal Status of Psychedelics Today

There are a number of sources of information about the legal status of psychedelics, which is changing rapidly in some places (and not at all in others). At this time, the two most active conversations occurring at the federal level are based in the paradigms of religious use and of medicalization.

The U.S. Constitution guarantees the right to religious freedom in no uncertain terms, yet accessing that right with respect to use of psychedelics is a different and complex story. The Religious Freedom Restoration Act (RFRA), the subsequent cases of the last fifteen years (especially *Gonzales v. O centro Espirita Beneficente Uniao do Vegetal* in the US Supreme Court, and *Church of the Holy Light of the Queen vs. Mukasey* in the Ninth Circuit), and DEA's current policies have created a paradigm in which spiritual practitioners seeking clarity about their congregations don't have a clear path toward such protection.

Today, movement is happening on a number of fronts. There are several emerging religious and spiritual communities that have roots in shamanism and animistic Indigenous practices, but are practiced in the U.S. There are multiple ongoing cases, from litigation against the Drug Enforcement Agency due to its speed of response (hint - it's a slow-moving agency) and efforts to assert religious rights against Customs and Border Patrol.

At the same time, the process to medicalize psychedelics through the FDA continues. For more information about where MAPS is with its clinical trials, read the update in this *Bulletin*. A number of new, mostly for-profit companies have emerged, meaning that there is more money in the space than ever before. In the last few months, the topic of how to navigate com-

plex questions of intellectual property and patents has come up; this *Bulletin* has a deeper dive into that topic too. Many - including MAPS - often cite the possibility of insurance coverage as a reason to continue ensuring that psychedelics are available through medical systems.

Inspired by Oregon, advocates and legislators from Hawaii to Florida, and a number of states in between, are moving forward to shift psychedelic policy. In the last *Bulletin*, the MAPS Policy team wrote about updates to state-level policy in Oregon, observing that while there are requirements to meet in order to become a facilitator, they are not onerous, and will not facilitate a system in which only western medical professionals are able to administer psilocybin. Many have drawn attention to the harms inherent in approaches that would hoard power for professionals who fit into a narrow medical narrative that revolves around profit maximization and elitism. This practice, for which there is historical precedent, robs communities of the traditional practices that are their birthright, and dispossesses healers of their livelihood and life's work.

For example, African-American midwifery practices survived the horrors of slavery, but were nearly eviscerated by the propaganda of an organized group of professionals who didn't want these women cutting into their profit margins. Southern African-American communities had a lineage of respected community midwives, frequently the core health care providers of

their familial and social networks. With the wave of medical professionalization in the mid-19th century, physicians began to challenge these women, viewing them rival practitioners. The American Medical Association advocated solving "The Midwife Problem" with legal measures designed to dismantle midwifery practice, disproportionately impacting African-American and foreign-born midwives.

This should serve as a cautionary tale to the psychedelic industry. Like birth, the use of psychedelics can be done safely when supported by the right

care. We all want competent facilitators, appropriate screening, preparation and integration for participants, and safe, quality supply. However, we cannot allow the private sector to convince us or the government that we are not capable of making our own decisions when it comes to our health and our consciousness. This risk is particularly critical to mitigate when the private sector actors are solely animated by their fiduciary duty to shareholders. Lawyers in the psychedelic space are grappling with how to balance critical legal concerns around risk man-

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agement and liability with the importance of honoring people's desire to access psychedelics in a way that feels meaningful, authentic, and generative at the individual and collective levels.

Today in California, advocates are working to decriminalize multiple psychedelic substances, focusing their efforts on SB519, a bill that would fully decriminalize possession and use, create safe harbor for people non-commercially sharing substances with their friends and community, and expunge the records of people with criminal histories related to psychedelic substances. It also creates a commission that will explore paradigms for future regulated use, from therapeutic to spiritual and beyond. Decriminalizing drugs could slowly but surely change attitudes and the understanding of substances generally, reducing stigma, is a major barrier to effective care and accurate education.

Much has been said about the municipal path to de-prioritize enforcement of psychedelics at the municipal level, as seen by SPORE in Colorado, or Decriminalize Nature in Oakland and Santa Cruz, or Initiative 81 in Washington DC, but these efforts do not legally protect those at highest risk, including and especially formerly incarcerated people, undocumented people, parents, and others. These efforts have nonetheless opened up space for community to form, and that room for discussion is priceless.

Understanding how to safely navigate this multi-layered legal environment is complicated, to say the least!

### III. The Ecosystem: The Possibility of New Patterns

Once legal, the contours of the environment that delivers psychedelics and their associated services is upstream of who can and will access them. Given the early stage of this new paradigm, lawyers have a tremendous opportunity to shape it. The law, like psychedelics, is a tool that can be used responsibly or coercively, to help or to harm. Lawyers can enforce and protect the calcified way resources are allocated, or we can create paths to re-route them.

Bringing underground practice into the light brings more complexity, which can increase barriers to entry and thus reduce opportunity for less politically sophisticated or under-funded actors to participate in a system. Yet this visibility also creates opportunities for accountability - something that is sorely needed but usually impossible without any sort of oversight. Part of the value of bringing regulation to any system is a chance to provide people who have been harmed with a formalized pathway to justice and healing.

The prospect of being allowed to seek legal recourse as a means of accountability reminds us that the law relies in part of the coercive power of the state to effectuate its goals. Any move toward regulation must be done with an awareness that the current systems that attempt to create accountability do

so through violence and incarceration. So in the same way that organizations trying to create access through medical means ought to also push to make healthcare more accessible, lawyers that create and maintain systems that use such methods to effectuate behavior ought to also fight to make the criminal legal system more just. This can be done by being in solidarity with, and materially and politically supporting, movements to reallocate state funding away from law enforcement and toward wrap-around social services, restorative justice, and community reinvestment for business, culture, and the arts.

The criminal legal system is not the only one that lawyers need to consider. As the field has entered the mainstream, money has started to flow, impacting the incentives of people participating. This money is overwhelmingly coming from philanthropy and venture capital, but lawyers have an opportunity to help balance creation of value with the incentives of the current economic structure. The question is how to move those resources within the system in a way that brings the maximum benefit to as many beneficiaries as possible.

Some of these decisions happen at the root of organizations, in the decisions made about corporate structure and governance. Others happen at the level of strategy about business and growth. Exploring cooperative ownership, financial structures that share prosperity, solidarity economics, re-establishing commons, and the purpose economy theory, could all allow businesses to unlearn the scarcity complex and reimagine relational networks that allow value to be exchanged in more horizontal ways. Perhaps in the longer term we can truly transform existing structures that prioritize shareholders at the expense of all else, and instead create cultural grooves that lead us to novel structures which account for the interests of all stakeholders.

As governments and businesses start to come to terms with the invisible costs of the status quo of scaling and of accountability, so too must lawyers consider and be present to the externalities of their own rationales. Thankfully, people within the legal practice are indeed stepping up to engage with these complicated questions. The authors of this article, though writing in their personal capacities, are both on the founding Board of Directors for the brand-new Psychedelic Bar Association, which intends to create opportunities for attorneys in the space to connect, learn, and grow, with the specific intention of navigating these complicated questions.

The changing social mores regarding drug use and toward economic systems offer opportunities to break out of the paradigms we have all been conditioned to consider normal. Visionary thinkers, like Dr. Carl Hart, offer a different perspective toward drug use and liberty, while Bennet Zelner offers a blueprint for how legal systems can encourage, rather than undermine, community-based containers.

## IV. Conclusion

It is imperative that all sectors of this emerging industry have appropriate safeguards. As a result of negligence or outright malevolence, serious harms can occur without the presence of guardrails. However, we must implement strategies and procedures for harm reduction in a way that is dignified, inclusive, and does not reify the same norms and systems from which so many of us are trying to heal.

A lack of attention towards access will necessarily create a bottleneck effect, where the distribution of psychedelics are only available to the wealthy (who, by the way, are already not being prosecuted for their use). Between the reality of cultural elitism and the ongoing stigma from the war on drugs, people without financial means are still not being reached by the current infrastructure, no matter how visionary it might feel. We have to work together to fix this structural problem.

It would be much easier to throw in the towel now that the tides are turning in the fight for expanded rights. It may be tempting to sit back and let multinational corporations and entrenched government power dictate the parameters of our soon to be quasi-legal relationship with drugs. By contrast, truly equitable access requires questioning our default economic and legal structures, and then rewiring that circuitry to build something more sustainable, beautiful and fair.

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Ismail is licensed to practice law in the state of California, and is a founding board member of the Psychedelic Bar Association. He also currently serves on the board of the Sage Institute, contributes to Chacruna Institute's Council for the Protection of Sacred Plants, and participates on the advisory council for the Ayahuasca Defense Fund. He has also previously served as Chair of the Students for Sensible Drug Policy Board of Directors. Ismail is passionate about setting sustainable groundwork for a just, equitable, and generative post-prohibition world.

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