
Rastafari and Cannabis: Framing a Criminal Law Exemption

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Rastafari cannabis use presents a challenge in reconciling the doctrines of freedom of religion and the criminal law. Hitherto, the domestic courts have not resolved this clash in favour of religion, displaying reluctance to explore the doctrinal limits of religious freedom. This has occurred at a time of increasing Rastafari numbers across the United Kingdom, forcing some followers to choose between adherence to either their religion or generally applicable criminal laws. Such ‘choice’ inhibits the development of domestic religious freedoms where they conflict with criminal laws protecting wider societal and communitarian interests. This dilemma could be addressed through a statutory exemption in England and Wales from domestic anti-drugs legislation for purposes of religious manifestation. This paper examines the difficult balance between the criminal law and Rastafari cannabis claims in the relevant jurisprudence. A comparative analysis highlights that treatment of religious freedom in Rastafari cannabis case law outlines not only doctrinal scope for a domestic religious drug-use exemption, but also some ways in which regulation could be practically framed. Other jurisdictions’ attitudes to non-religious recreational drug use are also instructive in this task.¹

INTRODUCTION

The right to religious freedom is a long-standing guarantee and at a theoretical level is based on a range of complex justifications supporting the legal protection of religions. It is not within this paper’s ambit to explore why particular religions justify such protection although in the case of Rastafari² some of these reasons³ are alluded to throughout this piece.

1 This article is based upon a paper presented to the Law and Religion Scholars Network: Doctoral Students Conference at Oxford Brookes University on 30 June 2009. My thanks to Professor Dominic McGoldrick, Professor Michael Dougan and Mr Kiron Reid of the University of Liverpool, Professor Peter Edge of Oxford Brookes University and the anonymous reviewers for their helpful comments on earlier drafts. The usual proviso applies.

2 The recognised collective term ‘Rastafar’ is used to refer to Rastafarian followers throughout this paper.

3 For some analysis of the Rastafarian faith, its religious practices and suggested reasons for their recognition and protection see: S Poulter, *Ethnicity, Law and Human Rights* (Oxford, 1999), ch 9; D O’Brien and V Carter, ‘Chant Down Babylon: freedom of religion and the Rastafarian challenge to majoritarianism’, (2002) 18 *Journal of Law and Religion* 219; and MO Mhango, ‘The Constitutional Protection of Minority Religious Rights in Malawi: the case of Rastafari students’, (2008) 52(2) *Journal of African Law* 218.

On 26 January 2009, cannabis was upgraded⁴ from class C to class B across the United Kingdom (UK) by the UK government. Its decision was based on evidence from the Advisory Council on the Misuse of Drugs (ACMD)⁵ concerning adverse health effects of using cannabis, together with anxiety over stronger cannabis strains now more widely available.⁶ The upgrade was controversial given ACMD advice⁷ that health risks associated with cannabis use did not warrant reclassification.⁸ Such reclassification will likely have more of a punitive and stigmatic impact on those who use the drug for religious reasons due to stricter policing and sentencing.⁹ A Rastafari cannabis-dealing trial in April 2008, which collapsed on a procedural matter,¹⁰ highlights the continuing clash between anti-drug laws and drug use as a religious manifestation. Elsewhere, the Italian Supreme Court has declared that Rastafari cannabis use may prevail over Italian anti-drugs provisions,¹¹ marking a watershed in recognition of such claims. The issue of religious drug use has recently come before the European Court of Human Rights:¹² it concerns the rights of Cantheists to smoke cannabis for religiously deemed purposes. Whilst this is the first time this topic has been presented at Strasbourg, the case was reported inadmissible in January 2010. Part of the domestic media has also renewed its call for the worldwide legalisation of all drugs,¹³ whilst religious exemptions themselves remain a live issue having recently been highlighted by the courts in relation to anti-discrimination matters.¹⁴ This paper considers how much legal and

- 4 For details of the announcement on 7 May 2008, see: <<http://drugs.homeoffice.gov.uk/publication-search/cannabis/acmd-cannabisreclassification2835.pdf?view=Binary>>, accessed 8 January 2010.
- 5 ACMD, *Cannabis: Classification and Public Health* (2008): <<http://drugs.homeoffice.gov.uk/publication-search/acmd/acmd-cannabis-report-20082835.pdf?view=Binary>>, accessed 8 January 2010.
- 6 House of Commons Hansard Debates for 7 May 2008: <www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080507/debtext/80507-0004.htm#08050765000005>, accessed 8 January 2010.
- 7 ACMD, *Cannabis: Classification and Public Health*, at para 13.4.1, p 33.
- 8 See also an open letter written to the Guardian, 25 November 2008, detailing the opposition of some scientists and politicians to the government's position: 'Lords Must Stop Plan to Reclassify Cannabis'. Viewed at <www.guardian.co.uk/society/2008/nov/25/drugs-alcohol-cannabis>, accessed 8 January 2010.
- 9 This may exacerbate various moral questions. How far, if at all, are those who break the criminal law culpable when adhering to a recognised religion? Is criminal law sanction appropriate in such circumstances? Does punishment for such criminal liability match culpability? Is it in the public interest to criminalise and label those who break the criminal law in these circumstances?
- 10 'Rastafarian Temple Drugs Trial Collapse', Guardian, 8 April 2008: <www.guardian.co.uk/uk/2008/apr/08/law.drugsandalcohol>, accessed 8 January 2010.
- 11 Judgment no 28720 of 03 June 2008, lodged on 10 July 2008 with the Italian Supreme Court of Cassation (Criminal Division).
- 12 *Farnhill v United Kingdom* Appl No 35853/07. See the Cannabis Assembly: <www.cannabisassembly.org>, accessed 8 January 2010.
- 13 'How To Stop The Drugs Wars', The Economist, 5 March 2009: <www.economist.com/printedition/displayStory.cfm?story_id=13237193>, accessed 8 January 2010.
- 14 See *R (E) v Governing Body of JFS* [2009] UKSC 15 per Baroness Hale at paras 69–70, and *Ladele v Islington London Borough Council* [2009] EWCA Civ 1357 per Lord Neuberger MR at paras 72–73.

practical scope theoretically exists to frame a cannabis exemption for Rastafarianism¹⁵ in England and Wales¹⁶ against a backdrop of mainstream political aversion towards the drug.

RASTAFARI AND CANNABIS USE

It is difficult to ascertain how many practising Rastafari currently live in the UK. Whilst the 2001 census found 5,000 respondents in England and Wales identified themselves as Rastafari,¹⁷ the religion has no central leadership or membership and it is difficult to explain its history, practices and beliefs effectively and consistently.¹⁸ Some have argued that Rastafari religious use of cannabis is authorised by the Bible.¹⁹ This adds scriptural force to Rastafari claims²⁰ that cannabis aids reflection, meditation, wisdom and spiritual insight. It is these religious reasons that distinguish Rastafari arguments from those of the general public, who often claim legalisation of cannabis for purely recreational or spurious purposes – for instance, claims relating to worship of cannabis.²¹ However, it is also claimed that not all Rastafari use cannabis.²² Despite such challenging matters of internal organisational it has been argued that lawmakers need to be less reticent and more willing to engage with such challenges so they can better address diffuse religious beliefs which may deserve protection through religious exemptions.²³

DOMESTIC EXEMPTION ISSUES

Rastafari cannabis claims within the UK have only arisen to date in England. In the post-Human Rights Act 1998 (HRA) era these cases have invoked the right to religious freedom under Article 9 of the European Convention for the Protection of Fundamental Rights and Freedoms 1950 (ECHR). This includes the right to manifest a religion balanced against the legitimate interference of the state

15 The term ‘Rastafarianism’ is used to distinguish the Rastafarian religion from Rastafari followers throughout this paper.

16 Applied *mutatis mutandis* in Scotland and Northern Ireland.

17 See <www.statistics.gov.uk/cci/nugget.asp?id=954>, accessed 5 January 2010.

18 Mhango, *The Constitutional Protection of Minority Religious Rights in Malawi*, p 220.

19 *Ibid.*, p 222.

20 Poulter, *Ethnicity, Law and Human Rights*, p 356. Poulter also cites other Biblical evidence: Genesis 1:29, (‘The Beginning’) and 3:18, (‘The Fall of Man’); Exodus 10:12, (‘The Plague of Locusts’); Psalm 104:14; Proverbs 15:17; Revelation 22:2, (‘The River of Life’).

21 United Nations (UN) Human Rights Committee (HRC) decision in *MAB, WAT and J-AYT v Canada* (CCPR/C/50/D/570/1993). Applying Article 18 of the UN International Covenant on Civil and Political Rights (ICCPR), it was said that ‘a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot conceivably be brought within the scope of Article 18 of the Convention (freedom of religion and conscience)’, at para 4.2.

22 M Smith, R Augier and R Nettlefold, *The Rastafari Movement in Kingston, Jamaica* (Kingston, 1960), pp 17–18.

23 PW Edge, ‘The Legal Challenges of Paganism and Other Diffuse Faiths’, (1996) 1 *Journal of Civil Liberties* 216, pp 221–222.

under Article 9(2). Relevant decisions exist in the case law of other jurisdictions, together with the decisions of regional and international human rights courts and tribunals: these also raise similar questions over religious drug-use protection. Such a wide body of jurisprudence contains various doctrinal issues that outline legal scope for a domestic Rastafari cannabis exemption. Despite prohibitions on religious or recreational cannabis use in many jurisdictions, such types of exemptions do successfully exist in some states. Other religiously motivated exemptions can be found elsewhere too. Such precedents also help frame certain practicalities of domestic exemption regulation.

These legal and practical factors are considered below and include discussion of an exemption's definition. An exemption should provide a defence to relevant parts of domestic anti-drugs legislation and be for the benefit of sincere Rastafari who claim that use of cannabis is a religious manifestation central to their faith. This could be extended to different religions or beliefs that otherwise satisfy such criteria in theory.²⁴

INITIAL SCOPE FOR AN EXEMPTION?

Religion

Rastafarianism is recognised as a religion in England and Wales, bringing it within the scope of Article 9. In *R v Taylor*²⁵ it was not necessary to investigate whether Rastafari was a religion as this was conceded by the prosecution.²⁶ The Court of Appeal accepted this concession. This was reinforced in *R v Andrews*²⁷ where the court proceeded on the basis that Rastafarianism was a religion. Whilst these acceptances are welcome, the lack of detailed domestic justification is regrettable.²⁸ Rastafarianism's domestic religious status is also supported by the registration of Rastafari charities.²⁹ Its legitimacy as a religion has also been matched in other jurisdictions such as South Africa. For example, in *Prince v President of the Law Society of the Cape of Good*,³⁰ a case concerning a Rastafari challenge to South African anti-drugs laws,³¹ a minority³² of the South African

24 See also 'Successful legal exemptions – England and Wales' below.

25 *R v Taylor* [2001] EWCA Crim 2263.

26 Per Rose LJ at paras 14 and 31.

27 *R v Andrew* [2004] EWCA Crim 947.

28 This lack of justification also operated pre-HRA where Rastafarianism was accepted as a religion: *R v Williams* [1979] 1 Cr App R (S) 5; *R v Daudi and Daniels* "1982" 4 Cr App R (S) 306; and *R v Dalloway* [1983] 148 JPN 31. For detailed discussion of these decisions, and *Taylor* and *Andrews*, see 'Location of an exemption in domestic criminal law' below.

29 For example, see the 'African Caribbean Self-Help Foundation' (registration number: 1047139), and the 'Rastafarian Advisory Service' (registration number: 295863), viewed on the Charity Register: <www.charitycommission.gov.uk> (accessed 8 January 2010).

30 (2002) (2) SA 794. For detailed discussion, see 'Interference – Justification of interference' below.

31 Drugs and Drug Trafficking Act 140, 1992, s 4(b); Medicines and Related Substances Control Act 101, 1965, s 22(a).

32 The case was decided by a bare majority of 5:4.

Supreme Court decided that the matter was ‘not in dispute’.³³ This was a point with which the majority agreed.³⁴

Race

Rastafari are not defined as a race under domestic law. In *Mandla v Dowell Lee*,³⁵ the House of Lords ruled that Sikhs were a race and outlined criteria³⁶ for determining a racial group. Under these criteria Rastafarians have been held not to constitute such a group.³⁷ This test affords a protection advantage to religious groups which also constitute a race, notably Sikhs and Jews,³⁸ compared to religious groups whose identity is not linked with race under the *Mandla* criteria. This advantage arose in *JFS*.³⁹ It has been argued that Rastafarianism is still viewed as marginal in judicial discourse,⁴⁰ suggesting that weakness of identity may lead to Rastafari religious liberty or discrimination claims not being entirely decided on their merits.

Religious manifestations and cannabis

Acts purporting to manifest a religion may enjoy protection under Article 9(1). In *R (Williamson) v Secretary of State for Education and Employment*,⁴¹ which concerned belief in corporal punishment by teachers and parents at independent UK Christian schools, Article 9(1) implicitly required that a belief must satisfy some modest, objective minimum requirements.⁴² However, ‘these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have’.⁴³ This recognises the conceptual flexibility of religious manifestation particularly with minority religions and is to be welcomed: any narrowness can limit religious liberty claims at the definitional stage rather than under the justification tests in Article 9(2).⁴⁴

33 Per Ngcobo J at para 40.

34 Per Chaskalson CJ, Ackerman and Kriekgler JJ at para 97.

35 [1983] 2 AC 548.

36 Per Lord Fraser at p 562. This test was recently applied in *JFS*, see n 14 above, and *R (Watkins-Singh) v The Governing Body of Aberdare Girls’ High School* [2008] EWHC (Admin) 1865.

37 *Crown Suppliers (Property Services Agency) v Dawkins* [1993] ICR 517 CA.

38 *Seide v Gillette Industries Ltd* [1980] IRLR 427.

39 A majority of the UK Supreme Court found the school’s oversubscription admissions policy, based on preferred forms of matrilineal Jewish descent according to the Office of the Chief Rabbi, to be direct discrimination under the Race Relations Act 1976: see Baroness Hale, paras 65–71. However, the school claimed its policy was legitimately based on religion rather than race, a point with which Lord Brown in the minority agreed: see para 245.

40 O’Brien and Carter, ‘Chant Down Babylon: freedom of religion and the Rastafarian challenge to majoritarianism’, p 244.

41 *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15.

42 Per Lord Nicholls at para 23.

43 *Ibid.*

44 I Leigh, ‘Recent Developments in Religious Liberty’, (2009) 11 Ecc LJ 65, pp 65–66.

The domestic courts in the pre- and post-HRA eras have automatically assumed religious manifestation in Rastafari cannabis claims.⁴⁵ This does nothing to develop a detailed conceptual understanding of religious manifestation in relation to minority faiths and fails to demonstrate how and why recognition may be extended to controversial manifestations such as cannabis use. The matter received some attention in *Prince* where the majority⁴⁶ and minority⁴⁷ agreed that Rastafari cannabis use was a valid religious manifestation. Further guidance is available from the United States (US) which has considered the concepts of sincerity of belief⁴⁸ and centrality of manifestation in more detail than the South African or domestic jurisprudence.

Establishing Rastafari sincerity of belief has often proved difficult in the US courts due to their strict⁴⁹ approach. For example, in *Robinson v Foti*⁵⁰ the claimant was criticised for not showing general knowledge of the history, teaching or other practices of Rastafarianism.⁵¹ Indeed, this strictness was extended in *Reed v Faulkner*⁵² where it was ruled that '[e]ven where a claimant can demonstrate familiarity with the core tenets of Rastafarianism this may still not be enough to convince the court of his sincerity'.⁵³

A domestic Rastafari cannabis exemption incorporating a sincerity test would allow the rejection of claims unable to provide evidence of a link to the Rastafari faith. This would help ensure that those Rastafari who assert their religious rights do so in good faith and guard against those who might subvert an exemption for disingenuous purposes, allowing more informed conclusions as to sincerity credibility. Testing sincerity could include drugs consultation with the Rastafarian community, determining the adherent's place of intended 'worship' and details concerning their local Rastafarian community connections. Mhango has suggested that sincerity should protect Rastafari irrespective of whether religious, political or cultural factors dominate their claim, supporting 'the principle of equality'.⁵⁴ However, this conflicts with other views⁵⁵ arguing that sincerity of belief should only be found where solely religious factors motivate manifestation. Ahdar and Leigh argue that where a sincerity or 'verification'⁵⁶

45 See *Taylor*, n 25 above, per Rose LJ at para 14. The matter was also referred to briefly in *Andrews* in relation to cannabis use and centrality of belief. See n 27 above, per Laws LJ, para 21.

46 Per Chakalson CJ, Ackermann and Kriegler JJ at para 97.

47 Per Ngcobo and Sachs JJ at paras 42 and 147, respectively.

48 The validity of the test as a screening device was confirmed in *United States v Ballard* (1944) 322 US 78, at para 87.

49 O'Brien and Carter argue that the US courts have used this test to attack unpopular religions, p 237.

50 *Robinson v Foti* 527 F Supp 111 (ED La 1981).

51 *Ibid.*, at p 113.

52 *Reed v Faulkner* (1988) 842 F2d 960.

53 O'Brien and Carter, p 236.

54 Mhango, p 232.

55 O'Brien and Carter, pp 235–236.

56 R Ahdar and I Leigh, *Religious Freedom in the Liberal State* (Oxford, 2005), p 187.

claim relates to exemption from an act attracting criminal proscription, only a required religious *obligation*⁵⁷ is sufficient to justify exemption and the resultant undermining of a law's objectives. This is distinguished from conduct merely permitted or motivated by religious adherence.⁵⁸ Mhango's broader test is more likely to ensure greater respect for, and understanding of, minority religious rights. Nevertheless, as Rastafari cannabis exemption arguments appear based on biblical evidence⁵⁹ this would in any event constitute a dominant religious factor under any of these sincerity interpretations. However, given the diffuse nature of Rastafarianism and the fact that not all adherents religiously use cannabis, Ahdar and Leigh's 'obligation' requirement may better be addressed in this instance by assessing an additional factor: centrality.

Centrality of manifestation is a necessary screening device given that prohibitions on practices central to a religion effectively forbid free exercise of that religion.⁶⁰ In the case of Rastafari drug use, centrality is complicated by the fact that not all adherents use cannabis.⁶¹ Nevertheless, legitimate religious manifestations need not be central for all adherents of a faith. In *R (Begum) v Denbigh High School*,⁶² which concerned the effect of a religious clothing ban on a female Muslim school pupil, it was held that the wearing of a jilbab was a religious manifestation and that related intra-faith disagreement was irrelevant.⁶³ Similarly, in religious discrimination law an individual's religious manifestation need not be obligatory but merely an extremely important indication of faith⁶⁴ for the individual concerned.⁶⁵ It is submitted this is the correct approach to take towards centrality in order to account for differences which exist within minority religions and not subordinate the interests of an individual to that of a group. The appropriateness of this approach to Rastafari cannabis exemption claims was underlined in *Prince*: '[r]eligion is a matter of faith and belief . . . believers should not be put to the proof of their beliefs or faiths'.⁶⁶ Indeed, Edge considers that centrality is predicated not on utilitarianism but on recognition of individual worth, dignity or entitlement which avoids violation of beliefs by the law.⁶⁷ This is particularly significant for minority religions given the possibility of intra-faith differences.⁶⁸

57 Emphasis added.

58 Ahdar and Leigh, *Religious Freedom in the Liberal State*, p 188.

59 See n 20 above.

60 O'Brien and Carter, p 238.

61 *Ibid*, p 221.

62 *R (Begum) v Denbigh High School* [2006] UKHL 15.

63 Per Lord Hoffman at para 50.

64 Per Silber J at para 29 in *Watkins-Singh*.

65 See Leigh, 'Recent Developments in Religious Liberty', p 67.

66 Per Ngcobo J at para 42.

67 Edge, 'The Legal Challenges of Paganism and Other Diffuse Faiths', p 224.

68 *Ibid*.

Domestic Rastafari case law has hitherto failed to address centrality and cannabis use, instead assuming such centrality and consequently failing to provide explanation. Even where courts have addressed the concept, they have done so in a confusing manner. In *R v Andrews*, Laws LJ was regrettably vague as to centrality and whether it indicated a valid manifestation of religion.⁶⁹ Such an instance provided an opportunity to confirm centrality of cannabis use to individual Rastafari and affirm that it constituted a religious manifestation, interference with which required state justification. Curiously, the central relevance of cannabis to Rastafarianism was only doubted when considering Article 9(2) limitation arguments in relation to the UK government's justification of interference.⁷⁰ It is surely better argued as evidence for submitting that there is an issue of a religious manifestation under Article 9(1) which, if unsuccessful, would preclude any need to address Article 9(2). It also demonstrates a lack of clarity in analysing an Article 9 claim which is evidently unwelcome at any level, but particularly hazardous when dealing with claims by more vulnerable minority groups. The case highlights the domestic judiciary's problematic attitude towards engagement with, and protection of, minority religions.

INTERFERENCE

State interference with religious manifestations has received varying levels of judicial scrutiny. Controversially, this has sometimes resulted in states not being required to justify such interferences at all in religious drug use cases. This occurred in *Employment Division, Department of Human Resources of Oregon v Smith*,⁷¹ a US decision dealing with religious use of the hallucinogenic drug 'peyote' by members of the Native American Church. The majority⁷² contended that the prohibition of religious peyote use under Oregon law was constitutional.⁷³ Once satisfied that the law was 'facially neutral' no further investigation was necessary,⁷⁴ even though interference plainly existed on the facts. From a minority religious rights perspective it was an immensely unpopular judgment⁷⁵ that does little to aid scope for domestic Rastafari protection from anti-drugs laws.

Strasbourg and the UK courts post-HRA have taken a more flexible approach to assessing interference. However, both have determined that no state

69 Laws LJ did not decide whether the domestic legislation in question would prima facie violate a person's rights under Article 9. Rather, he progressed to an analysis of whether such legislation was justified under Article 9(2). See para 21.

70 Per Laws LJ at para 21.

71 110 SC 1595 (1990).

72 The minority in *Smith* found that interference had occurred and proceeded to assess whether this could be justified. For detailed discussion, see 'Justification of interference' below.

73 Per Scalia J at para 890.

74 Per Scalia J at paras 879–881.

75 P W Edge, *Religion and Law: an introduction* (Aldershot, 2006), p 83.

interference exists where it is possible to exercise a religious manifestation alternatively. This ‘non-interference’ principle constitutes an ‘impossibility’ test,⁷⁶ requiring that interference be found only where it becomes impossible for a right to be manifested in an alternative way. This imposes a low standard of religious freedom protection on states. A majority of the House of Lords followed this reasoning in *Begum* where it was commented that the applicant could have alternatively manifested her religion, such as by attending a school where religious dress was permitted as uniform.⁷⁷ This approach has been followed in other cases concerning the wearing of religious items as part of a school uniform,⁷⁸ indicating a high interference threshold. Alternative modes of Rastafari drug use are unlikely to be available given the prima facie illegality of such activity, presumably satisfying the impossibility threshold. This requires even more that the state be called upon to justify its interference.

In acknowledging the narrowness of interference in *Begum* it was said, obiter, that: “[i]mpossible” may be setting the test rather high’,⁷⁹ leaving the issue to be decided possibly on a case-by-case basis. The minority in *Begum* were eager to highlight that interference should be more easily found, with Baroness Hale declaring that she was ‘uneasy’⁸⁰ about the apparent ease with which the majority decided the impossibility test had not been met. This followed the House of Lords majority in the earlier decision of *Williamson* where the corporal punishment ban in schools under section 548(1) of the Education Act 1996 was an interference as alternatives, such as requiring parents to attend school to administer corporal punishment to their own children, would not be adequate.⁸¹ It is notable that interference was assumed in both the pre and post-HRA Rastafari cannabis case law. This is plainly unsatisfactory: it acknowledges that cannabis use constitutes a religious practice yet fails to clarify the basis for assumption of that interference. Better guidance can be obtained from *Prince* where both the majority⁸² and minority⁸³ agreed that the only legitimate option was to find that interference with religious liberty had taken place and that it was appropriate for the state to justify such interference. This indicates that the state should be required to justify interference when religious manifestations that break criminal laws render the ‘impossibility’ test redundant.

76 See *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v France* (2000) 9 BHRC 27.

77 Per Lords Bingham and Hoffman at paras 25 and 51, respectively.

78 See *R (X) v The Headteacher of Y School* [2007] EWHC 298 (Admin); and *R (Playfoot) v Governing Body of Millais School* [2007] EWHC 1698.

79 Per Lord Hoffman at para 52.

80 At para 92.

81 Per Lord Nicholls at para 41.

82 Per Chaskalson CJ, Ackerman and Kriekgler JJ at para 97.

83 Per Ngcobo J at para 44.

Justification of interference

Judicial analysis of interference and justification in Rastafari cannabis cases has developed at varying rates across different jurisdictions. South Africa provides useful guidance on how to expand minority religious toleration. Unfortunately, decisions in the US demonstrate less scope for this development, whilst decisions at the Strasbourg and domestic levels have minimised that scope to alarmingly restrictive degrees.

In the leading South African decision of *Prince* the majority felt that an interference with the right to religious freedom,⁸⁴ which includes protection for religious communities,⁸⁵ could be restricted under the general limitation clause contained in the South African Constitution, s 36 – particularly as the state's ability to enforce its drug legislation would be substantially impaired⁸⁶ due to enforcement, financial and administrative difficulties.⁸⁷ Consequently, South African anti-drug laws were sufficiently proportionate to act as legitimate limitations on Rastafari religious liberty.⁸⁸

These views contrast strikingly with the minority who emphasised that the facts only concerned possession of cannabis for personal religious use. The legislative provisions were therefore too extensive⁸⁹ and employed unreasonable and disproportionate means to achieve their goals.⁹⁰ The legislation was more than a minimal intrusion upon the right to religion freedom⁹¹ and the legitimate government purpose served by such a prohibition could be achieved by less restrictive means. The minority judgment highlights a broadening of perspective showing development in attitudes to cultural diversity and minority rights. It challenges the state's authority, focussing on its responsibilities in upholding its human rights obligations:

[T]he real difference between the ... judgment[s] ... relates to how much trouble each feels it is appropriate to expect the state to go to in order to accommodate the religious convictions and practices of ... a rather small ... religious community ... [T]he Constitution obliges the state to walk the extra mile.⁹²

This discussion represents an attempt to better minimise the impact of the criminal law on religious minorities, requiring greater state engagement with those

84 Constitution of South Africa, s 15.

85 Constitution of South Africa, s 31.

86 Per Chaskalson CJ, Ackermann and Kriegler JJ at para 132.

87 Ibid, at paras 111 and 134.

88 Prince appealed this decision to the African Commission on Human and Peoples' Rights in 2002 and the UN HRC in 2006 (Communication No 1474/2006). Both appeals were unsuccessful.

89 Per Ngcobo J at para 74.

90 Ibid, at para 81.

91 Ibid, at para 83.

92 Per Sachs J at para 149.

rights. On the definition of an exemption, including enforcement, administrative and financial implications, Ngcobo J commented that:

[t]here are a number of questions that will have to be answered in relation to . . . control and regulation . . . [T]hese include: . . . the quantity of cannabis that may be possessed by authorised persons; and the legal source of cannabis. In addition, the dispensing of cannabis to authorised persons for religious purposes must be subjected to strict control.⁹³

These are important regulatory matters which are considered under ‘Domestic Rastafari cannabis use and regulation’ below.

In the leading American decision of *Employment Division, Department of Human Resources of Oregon v Smith* the minority discussed potential religious drug exemptions. In analysing the ritual use and ceremonial contexts within which peyote was used by the Native American Church, Blackmun J concluded that the state’s reasons for an exemption refusal were entirely ‘speculative’.⁹⁴ There was not a compelling enough interest to warrant any limitation; indeed, some American states, such as Montana,⁹⁵ had already introduced legislative exemptions for peyote use.⁹⁶ There also existed instances of previous judge-made exemptions.⁹⁷ In response to *Smith* the Religious Freedom Restoration Act 1993 was enacted to protect the exercise of religion,⁹⁸ save where a limitation furthers a compelling government interest and is the least restrictive means of furthering that interest.⁹⁹ This legislation has since been used to uphold the rights of religious minorities to use drugs.¹⁰⁰

The minority in *Smith* stopped short of suggesting drug-use exemptions for Rastafari. Blackmun J argued that Native American Church peyote use was not analogous to Rastafari cannabis use and that to enact such an exemption would compromise law enforcement efforts¹⁰¹ particularly in illegal drug trafficking.¹⁰² Such remarks arguably further stereotype Rastafari: ‘[t]he reference

93 Per Ngcobo J at para 84.

94 Per Blackmun J at para 920.

95 Montana Statutes (1959) 94-35-123: ‘[T]he terms of this act shall not apply to transporting, possession or using said peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana’.

96 ‘The success of these exemptions suggests that the state’s fear is without foundation’. HP Breslin, ‘Statute Prohibiting Use of Peyote Unconstitutional as Applied to Religious Users’ (1965) 17 3 *Stanford Law Review* 494, p 497.

97 *People v Woody* (1964) 40 Cal Rptr 69.

98 S 3(a).

99 S 3(b).

100 *Gonzales, Attorney-General et al v O Centro Espirita Beneficente Uniao do Vegetal et al* (2006) 546 US 418. See also ‘Domestic Rastafari cannabis use and regulation – UK international obligations’.

101 Per Blackmun J at para 918.

102 Ibid.

to trafficking is ... at best misleading, and, at worst, blatantly discriminatory'.¹⁰³ The main relevance of the dissent lies in the various similarities present between Rastafarianism and the Native American Church. For example, the latter similarly has no official pre-requisites for membership, no written membership rolls, and no recorded theology.¹⁰⁴

The ECHR judicial organs have been slow to test state justification. Even if a religious belief is found to be central in religious exemption cases a wide margin of appreciation is frequently granted to member states in justifying limitations under Article 9(2). In *Chappell v United Kingdom*¹⁰⁵ the European Commission accepted at face value the state's assertion that it could not accommodate a druid peace festival at Stonehenge: '[t]he real basis for the ... decision appears ... to have been the unquestioning acceptance of the national authorities affirmation that "there was no way in which an orderly solstice event could be held without an alternative festival site"'.¹⁰⁶ This approach regrettably does little to advance minority religious rights or even consider ways to balance the interest of the state with the interest of the religion in question. It can be contrasted to instances of interference with religious rights from laws whose express aim is to regulate religious activity, where a much stricter review of the state's behaviour is undertaken. In such cases this has frequently led to findings of unjustifiable state interference.¹⁰⁷ Significantly, the Commission has never excluded the theoretical possibility that religious clashes with generally applicable laws could succeed under Article 9.¹⁰⁸ The problematic approach of Strasbourg to Article 9 is exacerbated by the fact that reference is made nowhere in Article 9 or the ECHR itself to minority religions, rendering uncertain the protection of religious practices by Strasbourg which, until recently, were largely alien to Europe.¹⁰⁹

UK government justifications under Article 9(2) have successfully prohibited Rastafari from using cannabis. The basis for this has usually been a discussion of the relevant criminal provisions precluding such drug use, specifically matters of possession and possession with intent to supply, and the extent to which these are necessary in a democratic society and pursue various legitimate aims. These decisions are reviewed under 'Domestic Rastafari cannabis use

103 O'Brien and Carter, p 243.

104 Poulter, p 371.

105 Appl No 12587/86.

106 S Stavros, 'Freedom of Religion and Claims for Exemption from Generally Applicable, Neutral Laws: lessons from across the pond?' (1997) 6 *EHLR* 607, at 620.

107 See *Kokkinakis v Greece* 14307/88; *Manoussakis v Greece* 18748/91.

108 Stavros, 'Freedom of Religion and Claims for Exemption from Generally Applicable, Neutral Laws: lessons from across the pond?', p 626.

109 D Harris, M O'Boyle, E Bates and C Buckley, *Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights* (second edition, Oxford, 2009), p 441.

and regulation' below given the clear relevance of such criminal provisions to the framing of a domestic Rastafari cannabis exemption.

SUCCESSFUL LEGAL EXEMPTIONS

Italy

In July 2008 the first judicial challenge to national anti-drugs laws for religious reasons was made.¹¹⁰ The case concerned an Italian man who was sentenced to 16 months in prison and a €4,000 (£3,000) fine for possession of 97 grammes of cannabis. He claimed to be a Rastafari follower and that the cannabis was for religious use. Given the amount with which he was found, he was automatically charged with possession with intent to supply instead of mere possession. The Italian Supreme Court reversed his conviction arguing that lower decisions had neither given sufficient consideration to the applicant's conduct immediately prior to the arrest, nor his allegiance to a specific religious belief. They had not considered how subjection to Italian anti-drug legislation would interfere with the right to manifest his religious liberty. The judgment did not enquire as to the sincerity or centrality of the individual's claim, although it demonstrates awareness not only of religious human rights considerations, but also respect for, and protection of, religious minorities.

Netherlands and Belgium

Other European countries have adopted liberal attitudes towards non-religious cannabis possession. Such models are useful for the purposes of drafting a domestic religious exemption. For example, in the Netherlands possession of less than thirty grammes is generally never prosecuted for recreational use;¹¹¹ indeed, there are small number of licensed youth centres and coffee shops where up to five grammes of cannabis can be purchased by individuals over the age of eighteen for personal use.¹¹² The mere possession of cannabis is viewed as more permissible than related supply or trafficking. The Netherlands' experience is followed in other European states, for example Belgium, where the maximum amount allowed for personal use is three grammes,¹¹³ providing explicit guidance to cannabis users as to what quantity they may possess at any one time.

England and Wales

Under the Criminal Justice Act 1988, section 139 of which deals with offences of possessing articles with blades or points in public places, those who carry a blade

110 Judgment No. 28720 of 03/06/2008 of the Italian Supreme Court of Cassation (Criminal Division).

111 Poulter, p 369.

112 Ibid, p 370.

113 See table provided by the European Legal Database on Drugs at: <<http://eldd.emcdda.europa.eu/html.cfm/index5769EN.html>>, accessed 8 January 2010.

or point in a public place will be exempt from criminal law sanctions if such items are carried for, amongst others, religious reasons.¹¹⁴ This exemption was particularly drafted with the Sikh practice of carrying the kirpan in mind, although it does not prima facie discriminate in its religious ambit and allows any person to raise the religious or cultural defence.¹¹⁵ This arguably creates a precedent for domestic religiously-motivated exemptions.¹¹⁶ Such an exemption for Rastafari cannabis use would need to be similarly drafted so as to apply generally to all religions or beliefs.

LOCATION OF AN EXEMPTION IN DOMESTIC CRIMINAL LAW

The existence of domestic anti-drugs provisions means that: '[t]hose who act in conformity with their religious beliefs . . . will automatically be in breach of . . . legal provisions governing misuse of drugs'.¹¹⁷ The relevant domestic legislation is the Misuse of Drugs Act 1971. This prevents the use of controlled drugs by prohibiting possession under section 5(1) and possession with intent to supply under section 5(3). Meanwhile, section 170 of the Customs and Excise Management Act 1979 forbids importation of drugs. A domestic Rastafari cannabis exemption should define from which anti-drugs laws Rastafari are to be exempted: the pre- and post-Human Rights Act 1998 domestic Rastafari case law provides guidance in this task.

In *R v Williams*¹¹⁸ which, pre-HRA, concerned Rastafarian importation of cannabis from Jamaica with the intention of both religious use and sale to Rastafari, the court was prepared to impose a lenient sentence. There was no issue of commercial cannabis importation, it being accepted that the appellant was not a professional smuggler of drugs.¹¹⁹ Whilst the judgment accepted Rastafarianism as a religion, the defendant as a valid adherent and the centrality of cannabis use to the faith, the court bound a Rastafari ritual with criminal activity, notwithstanding its recognition of a lower degree of culpability in reducing the defendant's sentence. In *R v Daudi & Daniels*,¹²⁰ also pre-HRA, the distinction between sections 5(1) and 5(3) of the Misuse of Drugs Act 1971 first arose. Here, two Rastafari were found with cannabis in their possession and quickly admitted their intention to distribute it to fellow Rastafari. As a result, they were found guilty under section 5(3), although no commercial motive was identified. Despite the fact that

114 Criminal Justice Act 1988, s 139(5)(b).

115 S Knights, *Freedom of Religion, Minorities & the Law* (Oxford, 2007), p 189.

116 See also the Sikh exemption from criminal laws requiring the use of protective headwear when using a motor cycle: Road Traffic Act 1988, s 16(2).

117 Poulter, p 356.

118 (1979) 1 Cr App R (S) 5.

119 *Ibid.*

120 (1982) 4 Cr App R (S) 306.

Griffiths LJ was able to identify that both men charged were of good character¹²¹ and had undertaken activities in their local area for which society owed them a debt.¹²²

it would be a denial of justice to say that ‘because you are a Rastafarian you are entitled to be treated entirely differently . . . if you choose to break the law relating to the supply and distribution of cannabis’ . . . there are no grounds upon which it would be right or indeed fair to the community as a whole, to discriminate in their favour.¹²³

Again, the seriousness of the criminal activity for the court lay in the ultimate supply and distribution of the drug to others. Additionally, like *Williams*, the validity of Rastafarianism as a religion, the acceptance of the defendant as an adherent and the centrality of cannabis use to the faith, were seemingly assumed. However, unlike *Williams*, the appeals were dismissed and no sentencing leniency was afforded in relation to the appellants’ religious claims. This highlights the domestic case law’s lack of coherence in its analysis of both Rastafari cannabis use and degree of moral culpability present. It distances the law from any rights-based discourse which might illuminate arguments in favour of an exemption.¹²⁴ It begins to highlight the police and courts’ primary focus on section 5(3), as opposed to mere possession under section 5(1). This distinction was highlighted further in the first case concerning Rastafari to be heard post-HRA: *R v Taylor*.¹²⁵ The case of *Taylor* concerned a Rastafarian charged under section 5(3) of the Misuse of Drugs Act 1971. Significantly, the Court of Appeal upheld the trial judge’s decision that Article 9(2) was engaged, implying acceptance by both courts that Rastafarianism was a religion, the defendant was a sincere adherent and that cannabis use was a valid religious manifestation.¹²⁶ Nevertheless, the claim was unsuccessful: it was accepted that section 5(3) was a necessary interference in pursuit of the legitimate aims set out in Article 9(2).¹²⁷ These included combating public health dangers arising from such drugs, particularly in order to fulfil the UK’s international obligations under the UN Single Convention on Narcotic Drugs 1961,¹²⁸ as amended by the 1972 protocol, and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic

121 Per Griffiths LJ at para 4.

122 Ibid.

123 Ibid.

124 See also *R v Dalloway* (1983) 148 JPN 31. The defendant was charged under s5(3), the Misuse of Drugs Act 1971 despite his defence that the cannabis was not for sale but for fellow Rastafarians to use.

125 See n 25 above.

126 This interpretation has also received support from other commentators. For example: Edge, *Religion and Law: an introduction*, p 84.

127 Ibid.

128 See Article 36(1)(a).

Substances 1988¹²⁹ (the UN drugs conventions). However, the reasons for asserting that a complete cannabis-use ban was necessary in a democratic society were dealt with superficially by the court. Consequently, it remains unclear as to whether courts in future could permit an exemption to the offence of mere possession. Arguably, section 5(1) of the Misuse of Drugs Act 1971 is less morally pernicious than section 5(3); as such it is entirely appropriate that the former should attract a lower degree of culpability than the latter, and that this should be reflected at sentencing. For Rastafari defendants the lower degree of moral gravamen attached to section 5(1) and corresponding lower degree of culpability should arguably be fully extinguished where cannabis is possessed for intentional religious use.

From *Taylor* it may be speculated that arguments concerning public health, safety and morals represent enforced morality and legal paternalism: '[i]n human rights terms, a policy of legal prohibition on the use of cannabis by Rastafarians ... does not appear to be "necessary" in a democratic society'.¹³⁰ This was tacitly accepted by Rose LJ in *Taylor* when it was emphasised that the aim of the court was not to actively discriminate against religious practices but to enforce legislation which was of general application yet prohibits, for other reasons, conduct which happens to be encouraged or required by religious belief.¹³¹ It was noted that: '[e]ven if, which we doubt, but for present purposes it is unnecessary to decide, simple possession of cannabis by a Rastafarian, for religious purposes, in a private place, raises different considerations, that is not this case'.¹³² This statement is highly significant: by acknowledging the distinction a small, yet welcome, attempt is made to engage with accommodation of human rights standards in the criminal law. Further, by addressing this distinction it is implied that mere possession of cannabis by Rastafarians for religious purposes may constitute a circumstance in which a statutory exemption could be envisaged. Of course, this would need to be reconciled with the UK's obligations under the UN drugs conventions.

A successful state justification for interference with the rights of Rastafarian cannabis use was also upheld post-HRA by the Court of Appeal in *R v Andrews*, where sincerity of belief was assumed. Like *Williams*, the case concerned the importation of cannabis by a Rastafarian and, as such, there was no consideration of the Misuse of Drugs Act 1971 sections 5(1) and 5(3) distinction. In *R v Brown*¹³³ Gibson J commented that Rastafarians in future might seek a declaration of incompatibility between Article 9 and the 1971 Act, leading to

129 See Articles 3.1(a)(i) and 3.1(2).

130 Poulter, p 369.

131 Per Rose LJ at para 15.

132 *Ibid*, at para 17.

133 Unreported, although see the media, for example, 'Rasta Drug May Be a Human Right, Says Judge', *The Times*, 19 December 2000.

Parliament amending the legislation accordingly. This possibility has received support from others.¹³⁴ Clearly, the distinction constructed between sections 5(1) and 5(3) presents a useful solution to the question of where to locate a Rastafari cannabis exemption in domestic anti-drugs laws. Application of an exemption to section 5(1) requires not only a willingness to overcome matters of practical regulation, but also the acknowledgement of lower degrees of moral 'gravamen' and culpability for mere possession under section 5(1). In religious drug use cases, moral gravamen and culpability are further diluted by the minority religious rights imperative.

DOMESTIC RASTAFARI CANNABIS USE AND REGULATION

Function of a legal exemption

It would be necessary for Parliament to insert a defence into the Misuse of Drugs Act 1971 section 5(1) to operate once a prosecution established beyond reasonable doubt that a defendant was in possession of cannabis. A defence would succeed if the defendant could raise evidence that they were in possession of drugs for religious reasons. Clearly, any Rastafari defendants would have to establish that they were a sincere member of the Rastafari faith, that the possessed substance was cannabis and that it was in their possession or under their control for religious use and manifestation. This would be aided by adducing evidence that cannabis is frequently used in Rastafarian observance and that it was central to that defendant's religious observation. It would then be necessary to highlight this as a religious manifestation with which section 5(1) interfered. The advantages of such a legislative exemption over a judge-made exemption include enhanced certainty of law as opposed to haphazard and inconsistent developments possible at common law. Moreover, legislative provision would show that the exemption had the support of Parliament, adding further authority to minority religious claims. The legislative defence would provide a framework within which Rastafari cannabis claims could be located and argued. The model suggested here would balance the interests of the criminal law by upholding anti-drugs laws except where religious believers could establish an exemption.

Importantly, Rastafari and other exempted religious users would remain subject to both the offence of possession with intent to supply and importation in order to prevent illicit distribution of drugs. It should be made clear to Rastafari the ways in which supply may be performed in order to minimise the liability of inadvertent supply between Rastafari brethren, such as the passing or lending of cannabis.

134 I Loveland, 'Religious Drug Use as a Human Right?' (2001) 151 *New Law Journal* 41, p 42.

UK international obligations

In *Taylor* it was argued that the UK's membership of the UN drugs conventions supported justifying the state's interference with Rastafari drug use. Nevertheless, it seems possible to maintain relevant domestic drugs provisions giving accord to the UN drugs conventions whilst framing exemption from such provisions for certain groups. This follows from the result of the minority's preference in *Employment Division, Department of Human Resources of Oregon v Smith* to permit an exemption for religious peyote use. The issue was addressed more directly in *Gonzales, Attorney-General et al v O Centro Espirita Beneficente Uniao do Vegetal et al*¹³⁵ where the court expressed the view that adherence to the UN drugs conventions was not a compelling enough reason to not grant a religious exemption.¹³⁶ Significantly, the Netherlands remains a full party to the 1961 Single Convention, as does Italy after its Supreme Court's recent decision. This suggests that a domestic Rastafari cannabis exemption from section 5(1) of the Misuse of Drugs Act 1971 would not contravene the UK's membership of the UN drugs conventions given the full retention of legislation proscribing the possession of controlled drugs and the narrow scope of the exemption sought.

Sanctioning acquisition and use of cannabis

The type of cannabis licensed for use would be an appropriate type based on relevant scientific and health evidence, and available in similar forms and quantities prescribed in other European states which allow the possession of cannabis without prosecution. As detailed in *Prince*, the source from which the cannabis may be obtained, together with the amount that can be kept in possession, should come under the control and regulation of government.¹³⁷ However, given the health affects of extensive cannabis use, the availability of the drug would be strictly restricted to particular licensed premises. Additionally, considering the difficulty in controlling numerous cannabis purchases from different licensed premises it may be safer to reduce the maximum amount allowed per purchase. This could be reduced to one gramme, the legal limit in Italy. Moreover, in order to minimise multiple purchases of cannabis, Rastafari users would be limited to one transaction per week per licensed premise. This could be implemented by the recording of such transactions in a database by the licensed premises themselves, who would also be required to provide written confirmation detailing how much a purchaser had obtained at any one time. This is a similar system to that used by cannabis-licensed coffee shops in the Netherlands.¹³⁸

135 (2006) 546 US 418.

136 Per Roberts CJ at pp 435–436.

137 Per Ngcobo J at para 64.

138 See <<http://eldd.emcdda.europa.eu/html.cfm/index5769EN.html>>, accessed 8 January 2010.

Purchase itself would be from government-licensed premises and undoubtedly require: 'registration with the relevant authorities; recording the amount purchased and date of such purchase; and . . . [the] revocation [of the permit] if the conditions of its use are violated'.¹³⁹ Such licensed outlets would also provide the user with a set of terms and conditions of purchase, as used in the coffee shops of the Netherlands.¹⁴⁰ This would reinforce to Rastafari users the requirements that the drug be used in private, for religious reasons, not distributed to others, that purchase from that outlet has been recorded and that no further cannabis will be sold to that user within a period of seven days. It may also be preferable that the outlet be only legally permitted to stock a maximum amount of cannabis at any one time. Once again, in the coffee shops of the Netherlands this is currently limited to a maximum of 500 grammes.¹⁴¹ Evidently, the amount of regulation which would be required to administer any exemption would likely reduce the scope for creating a workable exemption in practice, although Sachs J's observation in *Prince* that the state is 'obliged to walk the extra mile'¹⁴² indicates that scope for a domestic exemption is not necessarily countered by claims of enforcement and administrative unworkability.

A Rastafari exemption to section 5(1) of the Misuse of Drugs Act 1971 could permit the possession of cannabis in public for personal religious use in private. The use of any other drug by Rastafari would not be permitted in any way. The definition of 'personal religious use' should be left open in order to allow Rastafari to consume cannabis in the mode best suited to their religious practice. For logistical purposes, the amount purchased under an exemption could be possessed in public on proof of exemption status, although use itself would be confined to that in private. Consequently, those Rastafari consuming cannabis in public would still be liable for the offence of possession.

In order to make enforcement of the exemption as uncomplicated as possible, it is clear that use of cannabis by Rastafari must be restricted in terms of location. As highlighted by defence counsel during *Taylor*, the right to privacy may be relevant in such cases and use of this concept may be useful in determining the location where the exemption could be used. In *Taylor* the appellants relied on Article 8 ECHR to establish their right to privacy. Whilst this was ultimately unsuccessful due the public nature of their offence, it may be instructive in the framing of a Rastafari exemption in private as reinforced by the ICCPR which prohibits any such arbitrary state interference with privacy as underlined by Article 17(1). Use of cannabis by Rastafari in private

139 Per Ngcobo J at para 64 in *Prince*.

140 See <<http://eldd.emcdda.europa.eu/html.cfm/index5769EN.html>>, accessed 8 January 2010.

141 *Ibid*.

142 Per Sachs J at para 149.

would minimise disruption to the public and reduce the effects of the exemption. For these purposes, private could include a private dwelling house over which the public may not exercise any rights or access. Of course, there may be some difficulties where Rastafari prefer to consume cannabis with fellow users in Rastafarian temples, or where the public have access to private land by way of various land law provisions, and this definition would be open to debate when drafting the exemption. The main purpose of this factor is to demonstrate that use of cannabis by Rastafarians exclusively in private locations would be less likely to compromise general drug enforcement by the police in the public sphere.

CONCLUSION

Careful balancing of the criminal law with a closer analysis of minority religious rights doctrine outlines sufficient legal scope to frame a domestic Rastafari exemption from domestic anti-drugs legislation. A shift in balance highlights the moral impetus behind more constructive engagement with controversial forms of religious diversity and more robust and determined attempts to accommodate that diversity. This shift is particularly valuable where perceived imbalances exist between protection of mainstream and minority religions, with the former guaranteed far greater protection due to the latter's problems concerning identity and respect. To ignore such entrenched problems may exacerbate a continuation of attitudes whereby:

the court . . . view[s] established religions more sympathetically than manifestations of faith motivated by unfamiliar or secular beliefs . . . The problem is best exemplified in those cases where the religious inclinations of the majority of the population appear to conflict with the strongly held beliefs of the minority.¹⁴³

Plainly, in a multi-religious society it is unsatisfactory to proclaim protection of religious freedom whilst restricting this according to the majority's views which themselves may be based upon the thoughts, beliefs, or convictions of their own religious and moral orthodoxy.

The relevant Rastafari case law demonstrates that a framework exists for constructing a minority human rights-based exemption case for Rastafari. This framework incorporates concepts of religion, manifestation, interference and justification. Indeed, these aid justification and definition of such an exemption. At the level of practical regulation, factors present in the case law also aid

¹⁴³ J Cooper and M McLeish, 'Religious Freedom Under The Human Rights Act 1998', (1999) 3(4) *The Muslim Lawyer* 4, p 8.

definition, such as its discussion of the possession and possession with intent to supply distinction. Further, successful Rastafari cannabis exemptions in Italy, recreational cannabis toleration elsewhere in Europe and other religiously motivated exemptions to generally applicable laws also help inform the drafting of a domestic Rastafari cannabis exemption. However, other forms of regulation such as licensing of cannabis, amount to be licensed per use over a fixed period, type of cannabis licensed, acquisition of cannabis and location of religious cannabis use, require further attention in order to better define these important requirements. Evidently, the examples of regulation from other jurisdictions together with the use of legal concepts such as privacy provide initial guidance in the early stages of this debate.

Of course, there exist domestic political hurdles in proposing and formulating such an exemption. However, the range of legal and practical scope discussed highlights evidence to suggest that the religious drug use debate is set upon firmer foundations than perhaps previously considered. Outdated or traditional views as to what constitutes a valid religion for protection need to be challenged. They are not arguments against accommodating controversial religious diversity. For these reasons, and with religion and belief playing an increasingly significant role on the European political agenda, 'fresh imagination and boldness' may thus be required¹⁴⁴ in approaching careful and sensitive questions of religious exemption accommodation. It appears that the time may have come to re-assess how far the scope for a legal exemption can be formulated for UK Rastafari cannabis users in the names of religious diversity, toleration and plurality.

144 Harris et al, *Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights*, p 441.