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Book Review [Drugs and the Public]

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BOOK REVIEWS

DRUGS AND THE PUBLIC, Norman E. Zinberg and John A. Robertson, Simon & Schuster: New York, 1972.

Professionals and layman alike will find *Drugs and the Public* an insightful analysis of the relationship between public attitudes and the law. The authors hypothesize that it is the combined effect of these two factors that has created the controversy over the use of drugs in the United States. They conclude that societal responses to the illicit use of psychoactives coupled with laws counterproductive to their desired goals have caused incomparably more harm to the individual user and society than the drugs themselves.

I. PUBLIC ATTITUDES

Conceptualizing adult America as a single entity with uniform attitudes toward drug abuse may be an oversimplification. Nonetheless, anyone who has discussed the issue of youthful drug use has encountered the genuinely concerned but deeply troubled "Mr. Fry" of Chapter Two, "Public Attitudes Toward Illegal Drug Use":

Mr. Fry describes himself as "damned worried" The flurry of conflicting reports on drug use confuses him, and he is in some doubt as to what attitudes he should adopt to help maintain the social institutions he values—the law, schools, the police, the medical profession. He is also guiltily aware of a parallel between smoking and marijuana use; however, he pushes back incipient doubts and accepts the position: drugs are a threat, and nonmedical users are bad; they must be controlled and shown the error of their ways, for his sake and theirs.¹

Zinberg and Robertson attribute such hyperemotional reactions to nonmedical drug use to three related attitudes: 1) all drugs are similar and equally dangerous, 2) drugs are extremely powerful, causing physical dependency which leads to crime, and 3) drug users are mentally ill. The authors coined the word "packaging" to describe the process by which the public reduces the complexities and ambiguities of the issue to such monolithic attitudes. Several theories are offered to explain the persistent motivation for "packaging" despite the influx of more accurate

1. N. ZINBERG AND J. ROBERTSON, DRUGS AND THE PUBLIC, 17-18 (1972).

information during the past decade. The authors attribute partial blame to media sensationalism and legal misclassification, and they also examine more fundamental causes of the problem. One view conceptualizes the dilemma as a time lag between the occurrence of new behaviors and a corresponding shift in public attitudes. A second view postulates that despite the growing reliance on scientific technology, the public still feels uncomfortable about the chemical control of moods. A third explanation is that use of drugs and drug laws have become intensely symbolic of other conflicts in society. Thus, drug laws are either a "confirmation of the hypocrisy and corruption of government" or one of the few remaining underpinnings of a "society . . . undergoing social change beyond control."²

Although the precise causes of "packaging" may never be ascertained, the phenomenon has intensified the controversy concerning unsanctioned drug use. More importantly, the authors argue that expression of these public attitudes has prompted legislators to create laws that sustain this monolithic approach and reinforce public confusion.

Using law for functions unrelated to public health is . . . costly enterprise and one that snares us in an insoluble dilemma. We are damned if we keep the present laws, yet their symbolic functions prevent us from taking steps in a new direction.³

Zinberg and Robertson argue that drug laws have been enacted and enforced for purposes other than the prevention and treatment of harmful use. In general, present laws make few distinctions between the various drugs, drug users, and types of use. While such distinctions would be essential for an honest attempt at prevention and treatment of misuse, they are not necessary for a sweeping moral condemnation of all nonmedical use. The authors point out a further inconsistency: society encourages risk-taking in sports, in leisure activities, and in the use of tobacco and alcohol, yet prohibits the nonmedical use of psychoactives because of the inherent risk to personal health. These subtle contradictions reinforce the public's confusion and encourage the "packaging" approach. Moreover, the law acts to reaffirm those values and norms of conduct currently attacked by the youth counter-culture and to "help people feel better by creating a safe harbor of stability against the gales of change."⁴ The authors conclude their analysis of drug laws with the pessimistic observation that it

2. *Id.* at 35.

3. *Id.* at 199.

4. *Id.* at 198.

is precisely this moral-emotional investment in the current laws that prevents desperately needed reform.

Although no reliable evidence exists that punitive laws actually deter nonmedical drug use, substantial evidence is offered to show that such laws are in reality counterproductive. The damage to the user (criminality, inadequate treatment and overdosing), the costs to the legal system (arbitrary enforcement, diverted resources, police corruption and lowered public respect for police), and the reduction of personal freedom (wire-tapping, "no-knock" statutes and mail searching) exacted by current drug laws are well documented in Chapter Seven, "The Costs of Drug Laws." The chapter also raises fundamental questions concerning the right of the government to regulate private drug use. As the authors note: "drug use . . . involves personal choices in the most basic and private area of one's existence—the mind and its contents."⁵ They suggest that statutory prohibition of drug use may be an unconstitutional denial of the basic right to unfettered control of one's mind.

II. THE AUTHORS' RECOMMENDATIONS

Are the limitations on liberty that present drug laws impose essential to an overriding social purpose? . . . We suggest that the law itself imposes social as well as legal costs much graver than those of the drug use it seeks to prevent.⁶

Having found current drug laws both inappropriate and counterproductive, the authors present guidelines for systematic modification of drug laws in their final chapter, "Alternatives for Drug Control." The basic postulate of any proposed plan must be to restore credibility to the legal system and incorporate periodic revision procedures. With the goal of relying more on informal social controls, they discuss several alternatives for legalizing marijuana. Legalization of both possession and sale are recommended, with a preference for licensing users rather than locations (the alcohol model) as a means of controlling distribution. Licensing would depend on a person's age, legal record, psychiatric history, and physical and psychological sensitivity to the drug. Various problems are anticipated—possible individual or public harm with increased use, the inevitable demand to overhaul laws on other drugs, the creation of an additional bureaucracy, and the enforcement of the new laws. Zinberg and Robertson hope that such reforms will not be interpreted by the public as one more concession to permissiveness and social anarchy.

5. *Id.* at 239.

6. *Id.* at 241.

They conclude that these changes will benefit the common good and that "society must learn to tolerate a reasonable amount of drug use by those members willing and able to make that decision."⁷

III. CRITICISMS

Although the authors state that they "do not want to convince, but rather to stimulate new thinking," one looks for a more detailed description of the research that provided much of the data for their observation.⁸ Over a six-year period, 945 subjects (525 classified as drug users, 420 as non-users) in the United States and 216 subjects in Britain were interviewed. The authors describe neither the selection process nor the interview setting for their sample. The interview included questions on the subject's emotional relationships with family and friends, psychiatric history, and previous drug use. Since the authors contend that most subjects were unaware until the end of the interview that drug use was the investigational goal, one wonders if people felt sufficiently trusting to answer honestly. The only reassurance offered is that "in the opinion of the interviewer, all the material presented was offered freely and seemed reliable."⁹

Even with its shortcomings, *Drugs and the Public* is a valuable speculative if not analytical work. Most readers will enjoy the book if only because they will feel that someone has finally understood their feelings about the "drug problem." At the same time, the authors successfully point out that the public's attitudes and the law have only confused the issues and added to the private and public costs of drug misuse.

*D.R. Jones**

7. *Id.* at 259.

8. *Id.* at 26.

9. *Id.* at 25.

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THE LAWYER, THE PUBLIC AND PROFESSIONAL RESPONSIBILITY by Marks, Leswing and Fortinsky. American Bar Foundation, 1972.

The drastic cutback in funding for community programs such as the Office of Economic Opportunity's Community Legal Services has created an uncertain future for publicly funded legal aid. Indigents and other disadvantaged groups have only recently gained access to legal services, and may find these services sharply curtailed as a result of the present cutbacks in funding. The effect of the present situation may be to preclude these groups from obtaining legal services unless the private bar begins to shoulder the responsibility of providing low cost or pro bono services. Justice Tobriner, prior to the present withdrawal of funds for Community Legal Services, acknowledged the expanding availability of legal services concomitant with the evolving concept of the bar's public responsibility, writing,

For all too long, legal principles of theoretically general application have in practice been reserved only to those whose wealth, or political power, or acumen, secured effective legal representation. Today, with the emergence of local legal aid and public defender offices, and various public interest law firms, to represent both distinct minority groups and the public interest, those legal principles are fortunately becoming available for the first time to large segments of our people.¹

The bar's response to public interests is examined in *The Lawyer, the Public and Professional Responsibility*, a study sponsored by the American Bar Foundation and funded by the Ford Foundation. The thrust of the study is the manner in which both establishment law firms and public interest law firms in metropolitan centers have accepted the private bar's responsibility for public service legal work in two areas. One area is concerned with the provision of legal services to that portion of the population which traditionally has been precluded from access to the legal system. The other area involves investigation and policy-making designed to identify societal injuries and abuses.

The varied responses of the bar to the demands of public service range from the tolerant attitude of large private firms toward the pro bono work done by their younger associates to the operation of law firms devoted entirely to public interest work. The authors discuss and analyze several factors which affect attorneys' acceptance of public service work either favorably or ad-

1. 47 CALIF. STATE BAR J. 295, 296 (1972).

versely. A favorable factor has been the increasing pressure by young graduates upon law firms to encourage public service work. Complicating this, however, is the concern of young lawyers regarding their training and advancement within the firm and the varied effects their performance of public service work might have upon their upward mobility. Additional factors discussed include the access to those who need public services and the economics of public service practice. A very real problem arises in determining who pays or should pay for the services.

Although in the past private law firms have not regarded public service as one of their responsibilities, a "modicum of energy" has recently been expended in the area of public services by the firms interviewed by the authors. By expending only a minimal amount of energy in this area, these firms are unlikely to become viable institutions for the advancement of public services. The role of the public interest firm in this area is less problematic than that of the private firm, yet it is beset with economic obstacles restricting its effectiveness and potentially impeding its ability to survive.

The authors are skeptical about the ability of the present legal structure to ascertain the nature of professional responsibility toward public service and to adequately fulfill that responsibility without radical institutional change. They recommend such change as they note,

The possibility must be entertained from the outset that a more radical change in professional institutions may be necessary even to sustain present levels of effort. Redefinition of role and responsibility may be involved.

Here I must part company with the authors. While I concede that voluntary efforts alone are insufficient to effectuate the ideal of equal access to the courts by all, I question the efficacy and desirability of radical changes within the professional organization to accommodate a class of litigants constituting only a minority of productive society. As a lawyer and a judge in Santa Clara County, I have witnessed the growth of a vigorous public defender's office as well as that of other community legal services organizations within the county. These organizations, coupled with increased voluntary efforts by members of the private bar offer a viable and propitious means of providing equal access to the courts without effecting drastic changes in the professional structure.

Although I must therefore disagree with one conclusion of this book, I nevertheless recommend it highly. As a result of numerous interviews and careful analysis, the authors present is-

sues of significant import to professionals concerned with their own societal responsibilities as well as with the present structure of their organization. The book makes no pretense of being a great literary work, yet its immediate social value is enhanced by its clarity and timeliness.

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