

# Washington Law Review

---

Volume 48 | Number 2

---

2-1-1973

## Rationality and Drugs

P. G. Sherburne

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Digital Part of the [Criminal Law Commons](#)  
Commons

---

Network  
**Recommended Citation**  
Logo

P. G. Sherburne, Reviews, *Rationality and Drugs*, 48 Wash. L. Rev. 523 (1973).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol48/iss2/10>

This Reviews is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

## RATIONALITY AND DRUGS

P. G. Sherburne\*

DRUGS AND THE PUBLIC. By Norman E. Zinberg and John A. Robertson. New York: Simon & Schuster, 1972. Pp. 288. \$8.95.

Zinberg and Robertson have done us all a service by writing a book which avoids a polemical discussion of drugs and calls for a greater use of rationality in devising drug policies. The authors describe what they believe are the counterproductive effects of current drug policies and the irrational considerations on which they are based. They outline a set of standards for more rational drug policies and recommend a public system for licensing users of each drug which requires limitations on its use.

Two premises seem to underlie most of the authors' analysis. First is the acceptance of nonmedical or recreational use of drugs. The authors contend that throughout history cultural groups have had methods for their members to achieve "highs" and that drugs now serve this function for a growing part of our population. They imply that to deny a priori the validity of this recreational use of drugs is to doom the chances of a drug policy ever achieving a substantial degree of credibility. The second and related premise is that restrictions on the availability and use of a drug should only be applied to control specific and identifiable harms caused by the drug.

These two premises will cause considerable uneasiness among many. Recreational use of some drugs is currently accepted; alcohol, nicotine in cigarettes, caffeine and, to a lesser extent, amphetamines and barbiturates are accepted recreational drugs. However, there is not the same general acceptance of marijuana, the hallucinogens, or the opiates. Perhaps the difference in attitude is based on a perceived difference in the potential harm of the two groups of drugs. If so, and if that difference in harm can be substantiated, then implementation of the authors' second premise should respond to public concern about these drugs.

However, the authors believe that the difference in attitude toward

---

\* Director, City of Seattle Law and Justice Planning Office; B.A., University of Oregon, 1964; J.D., Harvard Law School, 1969.

these various drugs is not based on an actual assessment of their relative harms. They suggest that the divergent attitudes are based on irrational considerations and misinformation, laying partial blame at the door of the federal agencies that have propagandized against these drugs. In their zeal to discourage the acceptance of these drugs the agencies have distributed inaccurate information. But the more important reason for the attitudinal dichotomy is that alcohol, tobacco, coffee, amphetamines and barbiturates have been the drugs of the adults while the other drugs are associated primarily with the youth culture and the "deviants." Zinberg and Robertson consider the drug issue to be symbolic of the larger conflicts between members of the youth culture and the adult generation. Perhaps the problem is even more encompassing. The majority of the population may be insecure about the future of our society. There are continuous expressions of frustration at the absence of a positive direction or movement in the country. At best, drugs represent a mere diversion from the task of trying to find and pursue the means of achieving happier and more secure lives; at worst, drugs may be perceived as part of the problem—another of the negative forces at work in the society.

Zinberg and Robertson do not confront this position directly. Rather they argue that the costs of attempting to deny the use of recreational drugs exceed those of permitting their expanded legal use. Perhaps most important among the costs is the increased negativism and divisiveness in society resulting from the use of criminal sanctions. Obviously, the use of drugs is growing. Historically most cultures have had diverse methods for their members to achieve highs; the use of drugs has become the principal means employed by today's younger generation. The fact that our culture is so pill and drug oriented certainly makes the choice of drugs understandable. Since the persons choosing to use these drugs have found that much of the propaganda against drugs is wholly inaccurate, there is a dual credibility problem. The established standard is being ignored by an increasing number of people who believe the majority does not have the right to prevent their use of drugs and who believe the basis for the majority's position is in large part untrue. The majority worries more as their standards are ignored and the user population becomes more determined and cynical in the face of increasing majority opposition and redoubled propaganda efforts. As a result the existing divisions and negativism in our society are further aggravated.

The authors comment that because of widespread drug use in violation of the laws, the enforcement of the law—when it occurs—becomes arbitrary and increases hostility toward the police. Making the sale and possession of drugs illegal also (1) decreases the potential for providing medical treatment for drug problems or other problems of drug users, (2) increases the price of the drugs causing some users to steal to pay for the drugs, (3) creates a large criminal element trafficking in the drugs, and (4) drives the recreational drug user into association with the more serious criminal elements.

Zinberg and Robertson believe that this tragic situation could be avoided by honest and rational drug policies. They contend that if we accept recreational use of marijuana, hallucinogens and opiates as we have accepted other drugs and develop a system of regulations to protect against specific, objectively demonstrated dangers, we could eliminate many of our present problems. The policies could achieve a high degree of acceptance and, accordingly, a high degree of compliance.

The system recommended by the authors for regulating the distribution of drugs is a combination of establishing state stores and licensing purchasers. The advantage of this system is that it allows evaluation of each individual drug and each individual purchaser. Thus, if there need be limitations on the general availability of a drug, the distribution can be restricted through the state-controlled stores. However, if the drug is dangerous only for certain types of people, then licensing of the purchasers can be used to limit this danger. The issuance of a license for the purchase of each drug provides an opportunity for educating the potential user as to the drug's dangers and the proper method of use.

To make this system credible, the authors assert that decisions which limit use of a drug or limit the class of users must be based on honest research. Further, they believe continuous re-evaluations are necessary to identify any problems that may develop and to monitor the continued existence of problems previously thought to exist.

A problem which the authors do not adequately address is the difficulty in gaining a consensus on which harms are appropriate for the public to attempt to prevent. If a drug may cause direct harm only to the user, is the decision to accept that harm left to the user or made by public authorities? My suspicion is that the authors would conclude that drugs should be regulated principally to preclude harm to someone other than the user. The regulations might be extended to

preclude sale to persons unable to make a considered decision regarding the use of drugs and to require warnings on the merchandise of the specific dangers of the drug.

The authors could facilitate future consideration of the recommendations by describing what limitations on sale and purchase of the recreational drugs should apply based on existing research. Such a description may help to focus on the issues of what types of dangers the public should protect against and what additional research is required to resolve disputed dangers. Such a presentation would also make the proposed system specific and visible enough for public discussion.

It is important to make progress in developing more workable drug policies because current policies are both ineffective and probably counterproductive. There is widespread use of drugs, and they are not being used as intelligently as they might be under a system such as the authors describe. Since more law enforcement probably will not improve the situation and may worsen it, the recommendations of the authors are worthy of serious consideration. Their approach is an honest one which may permit divided groups to come closer together in trying to resolve one of the central issues of our time.