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hesitancy; in this sense, *Ratzlaff* defies most precedent. But water pollution law is in a state of flux.⁵⁹ The courts and legislatures are necessarily becoming more sensitive to the issues involved. The legal boundaries defining the limits of this sort of recovery are ill-defined. As a result, whether or not *Ratzlaff* will be an aberration or a pacesetter may depend more upon the statutory scheme and judicial consciousness of the particular jurisdiction, rather than upon the prior case law.

JAMES E. CROWE, JR.

Book Review

Norman E. Zinberg and John A. Robertson: *Drugs and the Public*. New York, Simon and Schuster, 1972. Pp. 263 plus notes. \$2.95.

The major idea of Zinberg and Robertson's book is that legislation that undertakes to interdict non-medically prescribed drug use by identifying the non-prescriptive user as a criminal deviant and imposing criminal sanction does not work. To the contrary, such efforts have had a profound negative social effect by creating a black market in drugs; by promoting criminality on the part of drug users, who may turn to crime in order to finance the high cost of black market drugs; by goading police into infringing civil liberties in their attempts to enforce fundamentally unenforceable legislation; and by causing erosion of respect for law in general among the public. The authors suggest that a rational solution to the drug problem depends on adoption of a program that will, *inter alia*, eliminate the irrationalities and inequities of present legislation and provide accurate, impartial, and unprejudiced data gathering and analysis as a basis for conclusions about the social product of non-prescriptive drug use. The program should have the capacity to change rapidly. Moreover, it should provide medical care for the dependency-prone class of drug users. The authors emphasize, however, that they "do not want to convince, but rather to stimulate new thinking."¹ As to this objective, the book is an unqualified success.

A major strength of Zinberg and Robertson's approach to the drug problem is the meticulous care with which they have marshalled the facts, dissected the postulates of current legislation and social opinion, and exposed myths surrounding non-prescriptive drug use. They have concluded that American drug users fall into three principal classes:

1. The addicts—a relatively small group of dependency-prone persons who, because of psychological and personality problems,

59. See generally Annot. 32 A.L.R.3d 215 (1970).

1. N. ZINBERG & J. ROBERTSON, *DRUGS AND THE PUBLIC* 26.

have become immersed in drug use and who present society with a task of preventive medicine, rehabilitation, and comprehensive medical care.

2. The drug experimenters—a massive group made up predominantly of young people representative of that class of youth “who from time immemorial have indulged in some mild form of deviant activity to the horror of their outraged parents.”²

3. A small group of disturbed young people who manifest their problems by drug use and find their support in the drug subculture. Exaggerated reactions to their drug use may push these people into Class One, above; conversely, rational support may help them back into ordinary life.

As to all of these classes, Zinberg and Robertson observe that, in addition to the pharmacological properties of the drugs, the effect of drug use greatly depends upon set (the expectations and personality of the user) and setting (the environment of use).

Social attitudes toward drug use and, particularly, social response in the form of punitive legislation profoundly influence setting. The authors regard this as particularly significant with respect to the Class Two experimenters who, though society views them as deviants, are little different from non-users. They have no significant psychiatric problems except as a product of the social setting of their drug use.

Because the public creates the setting in which drug users operate, the authors have analyzed the determinant of public response to drug use, which they summarize as an attitude of disgust and condemnation that equates non-prescriptive drug use with moral corruption and decay. The authors believe that inadequate information, poor arguments, and “extraordinary examples,”³ atypical of the thousands of Class Two experimenters who represent the large majority of non-prescriptive drug users, form the basis of these attitudes. They note that the public fails to differentiate drugs in terms of their potential for harm; for example, the public tends to equate marijuana, the least noxious of forbidden drugs, with heroin. Further, people fail to recognize that the consequences of amphetamine and barbiturate abuse are among the most hazardous in the entire spectrum of drug problems. Zinberg and Robertson argue that the facts belie public beliefs that any drug use results in dependency, that drug use is, per se, physically destructive, and that drug use (as opposed to the setting that creates black marketing and high cost) causes crime. Such beliefs result, however, in a social attitude that non-prescriptive drug use represents an enormous, sinister social danger against which society must, without concession, deploy the full weight of the criminal law.

The authors carefully evaluate the British experience with drug abuse

2. *Id.* at 13.

3. *Id.* at 29.

and control as a means of comparing the success of a program built on a medical as opposed to a penal model. They also use the British experience to illustrate the effect of social fears generated by the so-called drug explosion on the legislative process and on the broader social concerns of erosion of civil liberties and diminished respect for both the law in general and the police in particular. The British have retained their dominantly medical approach throughout the vicissitudes of their recent and continuing drug experience; the authors conclude that it has worked better than the police model extant in the United States. In support of this, they point to the relatively small rise in British addiction and the absence of a British black market in heroin. Moreover, Britain has no significant drug-connected crime.

The authors view United States drug laws as a legislative attempt to enforce a moral judgment by overinclusive criminal sanction. Irrational punishments suffer the additional vice of failing to deter. Further, the laws have an emotional, rather than rational, basis for their creation, enforcement, and retention. The authors characterize the entire complex of United States drug laws as counterproductive and as imposing "social and legal costs much greater than those of the drug use it seeks to prevent."⁴ Zinberg and Robertson propose that the proper place to begin reform is the marijuana laws. They discuss the alternatives of doing nothing, of retaining the criminal features of legislation with reduced penalties, and of penalizing sale rather than possession. Their ultimate recommendation, based on the premises that society must learn to tolerate a reasonable amount of drug use and that there should be a careful and restrained availability of drugs, is a system of licensing users. They believe this to be an acceptable approach that would permit drug use but would not encourage it, would allow a reasonable degree of control, and would create a "social consensus" that would give validity in social terms to the proposed legislation.

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4. *Id.* at 241.

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