



Summer 6-1-1995

Good Sense and 21

Paul D. Carrington

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [Criminal Law Commons](#)

Recommended Citation

Paul D. Carrington, *Good Sense and 21*, 52 Wash. & Lee L. Rev. 987 (1995).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol52/iss3/16>

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Good Sense and 21

Paul D Carrington*

I am grateful to Professor Bowman for his spirited response to my Tucker Lecture and to the editors for affording me a moment of reply

Bowman and I agree that the use of mind-altering substances ought to be discouraged. We also agree, despite his extensive qualifications of my brief sketch of the history of mind alteration, that the practice has been around a long time and will not go away. Moreover, we agree that the "war" on drugs is a hysterical response to a real problem of substance abuse that has been demonized beyond recognition.

He takes some offense at my calling attention to the similarity of the war on drugs to the Inquisition. I have no doubt that a lot of good, well-intentioned persons participated in the Inquisition. But they were part of another hysterical response to a demonized problem that imposed great harm on many people. I stand by my undocumented assertion that this modern Inquisition is spoiling our institutions of law enforcement. Drug law enforcement does require invasions of privacy far beyond those generally associated with the enforcement of laws to protect life and property; it is easy to fabricate evidence, not only for the police but for private rivals in love, business, and war, and a lot of protection money is paid.

Professor Bowman seems to agree with me, and with many federal and state judges with whom I have conversed, that the penalties for drug law violations are excessive. We may disagree, however, on the relative culpability of buyers and sellers. He seems to share a widely held view that it is the sellers who should chiefly feel the lash of the law. Doubtless there are vicious sellers who exploit the vulnerabilities of children and who should be severely punished. But many sellers, perhaps most, are young people seizing the one career open to them that offers hope of advancement. More often than not, the primary moral responsibility for transactions lies with buyers who are exploiting the vulnerability of the poor to satisfy their appetites for mind alteration. We do not deal so harshly with substance consumers because they are our respectable friends, neighbors, and heroes.

* Chadwick Professor of Law, Duke University.

That is one reason that the present national policy is doomed to fail — the people don't really believe that adults altering their own minds are engaged in a serious crime. No law however fiercely enforced will change that reality

Professor Bowman and I have a disagreement on the effectiveness of the Harrison Act of 1914 in its first decade or so. I do not dispute his numbers, but believe they reflect the elimination of laudanum, the opiate that was replaced by smoking tobacco in the habits of American women. That was not a change for the better.

Professor Bowman does not think that my imagined policy for the state of Fremont will work. He is certainly right that it would require some federal support. And maybe, as I acknowledged, it would fail. My point was that it could scarcely work less well than the present national policy. Its possible strength is that it would effect a nonviolent attack on the outlaw industry whose existence is, in my view, a more serious harm to the public than substance abuse.

My imaginary Fremont policy also has the great virtue that if it did not work, it could be readily modified or abandoned. The beauty of the Twenty-First Solution is that it allows experimentation. It would accommodate change where change, almost any change, is a dire need.

NOTES
