Research Paper

Drug policy constellations: A Habermasian approach for understanding English drug policy

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A B S T R A C T

Background: It is increasingly accepted that a view of policy as a rational process of fitting evidence-based means to rationally justified ends is inadequate for understanding the actual processes of drug policy making. We aim to provide a better description and explanation of recent English drug policy decisions.
Method: We develop the policy constellation concept from the work of Habermas, in dialogue with data from two contemporary debates in English policy; on decriminalisation of drug possession and on recovery in drug treatment. We collect data on these debates through long-term participant observation, stakeholder interviews (n = 15) and documentary analysis.
Results: We show the importance of social asymmetries in power in enabling structurally advantaged groups to achieve the institutionalisation of their moral preferences as well as the reproduction of their social and economic power through the deployment of policies that reflect their material interests and normative beliefs. The most influential actors in English drug policy come together in a 'medico-penal constellation', in which the aims and practices of public health and social control overlap. Formal decriminalisation of possession has not occurred, despite the efforts of members of a challenging constellation which supports it. Recovery was put forward as the aim of drug treatment by members of a more powerfully connected constellation. It has been absorbed into the practice of 'recovery-oriented' drug treatment in a way that maintains the power of public health professionals to determine the form of treatment.
Conclusion: Actors who share interests and norms come together in policy constellations. Strategic action within and between constellations creates policies that may not take the form that was intended by any individual actor. These policies do not result from purely rational deliberation, but are produced through 'systematically distorted communication'. They enable the most structurally favoured actors to institutionalise their own normative preferences and structural positions.

Introduction: power, morality, complexity and policy constellations

To understand drug policy, we need to develop explanatory theories of how drug policy decisions are produced (Burris, 2017; Ritter, Livingston, Chalmers, Berends, & Reuter, 2016; Stevens, 2011a). The policy studies literature has moved beyond thinking about policy in terms of sequences of rationally developed 'stages' (Cairney, 2012; Hill, 2009; Ritter & Bammer, 2010). Several authors have explored the inadequacy of the concept of rationally justified, 'evidence-based policy' for explaining drug policy decisions (e.g. Lancaster, 2014; Maccoun, 2010; Monaghan, 2008; Stevens, 2011b; Valentine, 2009). They draw our attention to the influence of power on the use of reason and

evidence. The exercise of rational deliberation is also influenced by normative commitments to certain forms of morality (Haidt, 2012; Knill, 2014; Zampini, 2016).

The works of Jürgen Habermas relates directly to this interplay between rationality, normativity and power (Flynn, 2004; Habermas, 1984, 1986, 2006). This article uses his ideas to describe and explain particular decisions in English drug policy. In doing so, it introduces a new concept to the field of drug policy studies: the 'policy constellation'. This can take account of structurally distributed power differences and normative preferences in the production of continuity and change in English drug policy.

The concept of the policy constellation builds on Habermas' (1986, 241) idea that we can explain the outcome of legal processes 'in terms

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of interest and power constellations'. Habermas notes that public debates about legal provisions always rest on normative principles. Principles are multiple, and may come into conflict. As such, they undergo 'discursive testing' (1986, 227). On the basis of his theory of communicative action, Habermas (2002) proposes that rational communication is 'systematically distorted' by strategic, purposive action. In distorting such rational deliberation, structurally favoured social actors can deploy their 'social power' (Habermas, 2006, 418). So laws which reflect moral principles held by more powerful people will prevail, even if they would not be justified through purely deliberative, rational communication. He argues that 'the legitimacy of legality cannot be explained in terms of some independent rationality which, as it were, inhabits the form of law in a morally neutral manner' (Habermas, 1986, 228), as some advocates of rational, evidence-based policy would demand. Rather, he argues, 'in the clash of value preferences incapable of further rationalization, the strongest interest will happen to be the one actually implemented' (Habermas, 1986, 241). So values that reflect existing socio-economic and ideological power asymmetries and that coincide with dominant interests will heavily influence the development of laws and other forms of social regulation (e.g. drug policy).

For Habermas, such values do not flow through impersonal, all-pervasive discourses of power, as suggested by some Foucauldian analysts (Schmidt, 1996). Rather, they can be attributed to human actors who occupy specified positions in the social structure and who engage in strategic action in pursuit of their goals. In these terms, a policy constellation is a set of social actors (individuals within organisations) who come together in deploying various forms of socially structured power to pursue the institutionalisation in policy of shared moral preferences and material interests. Constellations are not stable groups with fixed rules or memberships. They are made up of fluid sets of actors who gravitate towards each other on the basis of shared interests and norms. Their actions are not necessarily directed or coordinated. Rather, actors in a constellation tend to align their actions through creating connections of mutual recognition and support. They do so in contest and collaboration with the members of other constellations, who have different interests and norms (although there may be overlap between the memberships, interests and norms of some policy constellations).

Constellations are not actors in themselves. Rather, the connections between actors that constitute the constellation serve to amplify the influence of each individual actor. The degree of amplification will depend on the power of other actors in the same constellation. Some constellations are made up of people who have relatively powerful positions in the social structure. In Gamson's (1975) terms, they are 'insiders'. They can use various mechanisms – including 'opportunity hoarding' and other strategies described by Tilly (1998) as creating 'durable inequalities' – to reproduce their own positions and power. These resources and mechanisms are not available to challenging 'outsiders' who 'lack the basic prerequisite of membership – routine access to decisions that affect them' (Gamson, 1975, 140).

This is an approach that enables understanding of the 'messy' business of policy-making by acknowledging the variety of axes along which social actors align or divide, including 'epistemological, disciplinary and political' boundaries (Smith & Joyce, 2012, 70) as well as professional, normative, economic and socio-demographic divisions in the 'complex world' of drug policy making (MacGregor, 2017, 12). In England, cleavages between insiders and outsiders often appear along lines of class, race, gender and age. The most powerful positions in state and other institutions are disproportionately held by privately educated, middle or upper class, middle-aged or older, white British men (Andrews & Ashworth, 2013; Kirby, 2016; Knights & Richards, 2003; Rampen, 2017; Sampson, 2005; Social Mobility Commission, 2017). Their power rests not only on their abilities in rational, deliberative communication, but on the resources of power, money and connections

that they have by virtue of their positions in the social structure. This is what Habermas (2006, 418) calls 'social power'. They engage in policy discussions that have the outward appearance of an 'ideal speech situation' (Habermas, 1984; Neale, Nettleton, & Pickering, 2011) in which consensus is reached through rational deliberation. But they are able to distort such deliberations through strategic action (Habermas, 2002; Stevens, 2011b) by deploying political, economic and media power (Habermas, 2006).

These privileged actors have heavy influence on what kinds of evidence will be produced, disseminated and given the status of authoritative, legitimate knowledge (Hall, 1993; Blomkamp, 2014; Elgert, 2014). They have the capacity to shape policies that reflect their interests and norms. But – as noted by both Gamson (1975) and Habermas (1986) – there is not a homogeneous 'ruling class' that can simply direct policy. There are multiple constellations of interest and power in and around the state. Actors with competing interests and preferences have a diverse range of structural positions. It is from communicative and strategic action between these individuals that constellations and then policy decisions emerge. Their actions are influenced by – and go on to influence in future – the structural positions that these actors hold (Colebatch, 2009; Giddens, 1984). Policy constellations operate in a complex policy system in which path dependency, feedback mechanisms and unintended outcomes are to be expected (Cairney, 2012). Focusing on how people work in policy constellations enables us to incorporate the roles of both agency and structure in describing and explaining the policy decisions that produce these outcomes.

We will fill out our description of English drug policy constellations – of their membership, beliefs, and their types of strategic action – in dialogue with empirical data. These data will come from close examination of two decisions in the English drug policy process: the non-implementation of formal decriminalisation of drug possession; and the turn to 'recovery' in drug treatment. In studying these debates, we observed the work of several organisations. As an aid to readers, we provide introductory information about these organisations in an appendix. In the text, these organisations are marked with an asterisk when they are first mentioned.

In both debates, we observe the substantial influence of social actors who share moral and policy preferences that have been characterised by Berridge (2013) as constituting a 'medico-penal framework'. She observes the development of this framework over the 20th century history of English drug policy. Through this framework, she describes the overlap of medical and penal professionals and ideas in creating English drug policy. Here, we suggest that there still is, at the core of English drug policy making, a 'medico-penal policy constellation'. Members of this constellation are able to assert their shared interests and preferences, despite continuing challenges from ideas and actors in other policy constellations.

Notes on method, data, ethics and terminology

We focus on England, rather than the UK more broadly. While the Misuse of Drugs Act 1971 applies across the UK, each of its four countries has its own drug strategy and treatment systems. These have diverged over time, especially since 2008 (Lloyd, 2009). The two chosen policy debates – on decriminalisation and recovery – have engaged the interest of a wide range of actors in the drug policy process. They offer good opportunities to observe how it works, especially as they provide a contrast in exemplifying continuity (the continued criminalisation of drug possession) and change (the shift to recovery in drug treatment).

Habermas' work on normativity has been criticised for focusing on procedures of normative contestation, rather than on the substantive content of normative preferences (Boudin, 2013; Sayer, 2011). To address this, we use the empirical work of Haidt and his colleagues, who have shown that people with conservative political orientations tend to