International Journal of Drug Policy 55 (2018) 1–7

Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: www.elsevier.com/locate/drugpo

Research Paper

Improving drug policy: The potential of broader democratic participation

Alison Ritter[a,*], Kari Lancaster[a], Rosalyn Diprose[b]

[a] Drug Policy Modelling Program, National Drug and Alcohol Research Centre, UNSW, Australia
[b] School of Humanities & Languages, UNSW, Australia

ARTICLE INFO

Keywords:
Drug policy
Evidence-based policy
Democracy
Deliberative democracy
Participation

ABSTRACT

Policies concerned with illicit drugs vex governments. While the 'evidence-based policy' paradigm argues that governments should be informed by 'what works', in practice policy makers rarely operate this way. Moreover the evidence-based policy paradigm fails to account for democratic participatory processes, particularly how community members and people who use drugs might be included. The aim of this paper is to explore the political science thinking about democratic participation and the potential afforded in 'deliberative democracy' approaches, such as Citizens Juries and other mini-publics for improved drug policy processes. Deliberative democracy, through its focus on inclusion, equality and reasoned discussion, shows potential for drug policy reform and shifts the focus from reliance on and privileging of experts and scientific evidence. But the very nature of this kind of 'deliberation' may delimit participation, notably through its insistence on authorised modes of communication. Other forms of participation beyond reasoned deliberation aligned with the ontological view that participatory processes themselves are constitutive of subject positions and policy problems, may generate opportunities for considering how the deleterious effects of authorised modes of communication might be overcome.

Introduction

Drug policy is in a state of flux globally. Progressive policies are becoming more common, such as the legalisation of recreational cannabis in some US states and in Uruguay (Caulkins et al., 2015; NORML, 2016; Walsh & Ramsey, 2015). At the same time, more prohibitionist and strict regimes are evident, for example the influence of Russia and China in United Nations drug policy processes (Jelsma, 2016), and the extrajudicial killings of people who use drugs in the Philippines (Baldwin & Marshall, 2016).

Illicit drugs present democratic governments with a complex policy problem. It is complex for many reasons. First, it is multidimensional and spans multiple government portfolios, including Education, Health, Policing, and Attorney's General. There is no single Ministry or government department necessarily responsible, and the choice in departmental lead will often frame the government response (Ritter & Lancaster, 2013). Secondly the policy problem is jurisdictionally multi-level: nations are bound by international expectations and formal treaties (United Nations Office on Drugs & Crime, 2010); as well as by domestic national policies alongside sub-national (and local) policies. Australia, for example, is signatory to the UN Drug Conventions at the federal level, but it is the drug laws at the state level which specify prohibitions on personal use or possession of illicit drugs. Thirdly, it is a policy domain characterised by goal conflicts. For some government officials the appropriate drug policy goal is the protection of individuals who use drugs from harm; for others it is the reduction in the prevalence of use across the population; for others it is the protection of the community from consequences of drug use (eg crime); and for some it may be some balance between these three contrasting goals. A fourth challenge for governments is that often there are policy trade-offs. For example, legalisation of recreational cannabis removes the economic and social costs associated with a criminal justice response to drug use but raises the possibility of increased prevalence of use (Hasin et al., 2015).

The prevailing solution has been to argue for "evidence-based policy". Governments should implement policies with demonstrable scientific evidence of what policy works best to achieve a particular goal. Evidence-based policy in its pure form and derived from evidence-based medicine values a technical rationality (Lin, 2003) where expert knowledge is seen as the basis for policy decisions. The arguments for evidence-based policy include that it provides a rational basis for designing policy, and steps away from morality or ideology. It is seen as a rational and progressive response, that favours policies which have been demonstrated (through scientific inquiry) to "work".

Despite the apparent simplicity and appeal of evidence-based policy there are numerous problems and challenges. First, for a substantial

* Corresponding author.
E-mail addresses: Alison.ritter@unsw.edu.au (A. Ritter), k.lancaster@unsw.edu.au (K. Lancaster), r.diprose@unsw.edu.au (R. Diprose).

https://doi.org/10.1016/j.drugpo.2018.01.016
Received 16 August 2017; Received in revised form 8 January 2018; Accepted 17 January 2018

number of policies, there is simply no evidence one way or the other about impacts or effects. This includes examples such as street-level policing, taxation regimes for previously illicit drugs, and interdiction. Secondly, evidence-based policy is not necessarily free from ideology inasmuch as it is subject to its own underlying ideology encapsulated in the catch-phrase "what matters is what works" (Solesbury, 2001, p. 7). Evidence-based policy sees 'problems' as the assumed starting place for the generation of research evidence about 'what works'. In this way, evidence-based policy appears to bypass the discussion of goals completely. In skirting discussion of goals, evidence-based policy at best glosses over conflict and contestation and can either leave in place existing norms regarding the goals of drug policy or fail to gain traction due to goals which conflict. Evidence-based policies such as Needle Syringe Programs (NSP) (Laufer, 2001) and Opioid Substitution Treatment (OST) (Connock et al., 2007) have implicit goals (in these cases harm minimisation). The strong evidence base for both of these policies does not necessarily overcome goal conflicts, as evidenced by countries where they are not implemented, which includes Hong Kong, Turkey, Singapore, Pakistan and Russia (Stone, 2016).

As has been well-documented, evidence-based policy also relies on a simplistic instrumental view of the relationship between evidence and policy, and cannot account for complex policy processes that lie between the generation of scientific evidence and policy reform (Hughes, Ritter, Lancaster, & Hoppe, 2017; Lancaster, Ritter, & Colebatch, 2014; MacGregor, 2013; Ritter & Bammer, 2010; Ritter & Lancaster, 2013). Finally, connected to the above challenges and the focus for this paper, is the privileging of scientific evidence and the stances of associated experts, over other kinds of knowledge and the views of affected publics (Lancaster, Treloar, & Ritter, 2017; Ritter, 2015). Evidence-based policy is not configured to integrate a diversity of voices and knowledges that arise from sources other than scientific evidence nor facilitate the required democratic dialogue about goals. Hence it appears to sit uncomfortably with democratic principles.

In so far as democratic government is understood to be "the voice of the people" or government "by the people for the people" (Abraham Lincoln) governments have three options, broadly speaking: to make decisions informed by experts (the so-called technocratic trend and aligned to the evidence-based policy paradigm); to listen to "the people" through some form of democratic participation; or to simply act (as the elected representatives of "the people"). There is a place for all three of these. In cannabis policy reform we have seen reform as a result of both independent government decision-making (Uruguay) and citizen-initiated ballots (USA) (Pardo, 2014). Yet these examples do not consider how research evidence may be integrated with wider participation in decision-making beyond ballot processes. By reviewing and analysing approaches to and theories of democratic deliberation and participation, this paper examines the options for greater democratic participation in drugs policy than allowed for in the current evidence-based policy paradigm. As noted by others, democratic participation and deliberative democracy is currently a popular and growing field (Ercan & Dryzek, 2015; Pateman, 2012) but analysis of the theories and approaches with reference to drugs policy has yet to be undertaken.

In a democracy, the legitimacy of a government and of particular pieces of legislation depends on the policies remaining under contestation from members of the public. Jasanoff has noted that in a democracy the public should be the "proving ground for competing knowledge claims" and the "theatre for establishing the credibility of state actions" (Jasanoff, 2005, p. 258). Governments and their institutions must be able to respond to the opinions and needs of constituents. To quote Arendt: "It is the people's support that lends power to the institutions of a country, and this support is but the continuation of the consent that brought the laws into existence to begin with […] All political institutions are manifestations and materializations of power; they petrify and decay as soon as the living power of the people ceases to uphold them" (Arendt, 1972, p. 140).

Before turning to theories of democratic participation and how they may be applied to drugs policy, it should be noted that this is a very challenging time to be both critical of 'science' and championing democratic participation. The current populist political movements around the world − Brexit and Trump, for example − have drawn into question democratic processes that express the people's will, bringing to the fore a counter-politics of expertise (Clarke & Newman, 2017) and an apparent political elitism suggesting that 'the public don't know what's good for them' (Saltelli, 2016). Equally, to be critical of evidence-based policy (and the role of science and expertise in liberal democracies) risks alignment with a spirit of "post-truth", "alternative facts" and "fake news", and attacks on science, and science funding. Our position is neither populist nor anti-science. While rejecting the perversion of democracy by "populism", we appreciate the limits of 'science' for solving complex social problems. As stated by Sarewitz (2016) "Science will have to […] abdicate its protected political status and embrace both its limits and its accountability to the rest of society". And these are not new dilemmas. In science and technology studies (STS) work, for example, Jasanoff in 2005 argued that the founding assumptions underpinning liberal democracy (that representative governments can discern citizen preferences; that institutions are knowledgeable enough to regulate science and technology wisely; and that citizens have meaningful opportunities to participate) are all questioned in an era where there are substantial, complex scientific and technological advances (Jasanoff, 2005). Moreover, as noted by Mansbridge et al. (2010), while the use of experts is a sensible division of labour, the problems associated with the delegation of policy to experts includes the iatrogenic promotion of citizen ignorance. Expert disrespect of citizen engagement with policy processes "provokes a reciprocal disdain of experts on the part of citizens" (p. 14). This self-perpetuating vicious cycle, and the exclusion of non-experts from policy deliberation, "threatens the foundation of democracy itself" (Mansbridge et al., 2010, p. 14). Similarly, Jasanoff argues that the moment that trust in people fails is the moment that democracy fails (Jasanoff, 2005, 2013).

Increasing democratic participation in public policy formation so that it is an expression of the "voice of the people" could just be a matter of a democratically elected government finding out what people want. The challenge here is knowing what people want. Public opinion surveys are often used as a source of such information. However 'raw' public opinion is problematic as the basis for understanding what people actually want (Fishkin, 2009). As Fishkin (2009) points out, it is liable to distortions, vulnerable to manipulation and capture by special interest groups, and is not necessarily considered or thoughtful. Even methodologically, the language used to ask public opinion survey questions, in this case about drug policy, elicits different levels of support (Hopwood, Brener, Frankland, & Treloar, 2010). In addition, a large number of people often do not hold any views on topics of public policy, including drugs policy. A study of Australian public opinion on three drug policy measures – needle syringe programs, regulated injecting rooms, and legalisation of heroin use (Lancaster, Ritter, & Stafford, 2013) – revealed a high 'don't know' response (up to 82% for opinions on the legalisation of heroin use). This shows that the public have not developed a considered view about a number of aspects of drug policy. This "raw" public opinion therefore may mislead governments about the preferred policy responses of the community. Furthermore, the general population is not necessarily those most directly affected by drug policies. The views of people who inject drugs stand in stark contrast to those of the general population (Lancaster et al., 2013). Deliberative democracy moves beyond raw public opinion and has as its goal to create an inclusive, democratic, deliberative and thoughtful process of political decision-making on drug policy in order to give voice to "the people". Deliberative democracy in drugs policy may potentially provide the opportunity for increased participation in deliberations about, for example, the laws regarding drug use and drug supply, the role of police in responding to drug use and drug supply, harm reduction strategies such as supervised injecting facilities, the availability of treatments, the extent to which coerced treatment is