

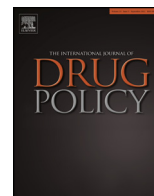


ELSEVIER

Contents lists available at ScienceDirect

International Journal of Drug Policy

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



Research paper

The addict as victim: Producing the ‘problem’ of addiction in Australian victims of crime compensation laws

Kate Seear*, Suzanne Fraser

National Drug Research Institute, Faculty of Health Sciences, Curtin University, Suite 6, 19-35 Gertrude Street, Fitzroy, Victoria 3065, Australia

ARTICLE INFO

Article history:

Received 19 December 2013

Received in revised form 19 February 2014

Accepted 25 February 2014

Keywords:

Addiction

Law

Crimes compensation

Australia

Problematisation

Carol Bacchi

ABSTRACT

Background: Much academic scholarship has explored drug use and ‘addiction’ in the criminal justice system.

Methods: This paper explores what happens when ‘addicts’ are victims, through an analysis of victims of crime compensation case law within the state of Victoria, Australia.

Results: We argue that the law enacts a set of unexamined assumptions about the ‘problem’ of addiction, including the assumption that it is incompatible to be both addict and victim. However, courts reconcile this ‘dilemma’ by explaining addiction as an ‘effect’ of trauma, violence or abuse, a seemingly sympathetic rendering of addiction. Although this appears to represent a less stigmatising approach than found in the criminal law, we argue that these processes actually produce new challenges for people who use drugs and ‘addicts’, and that these may be counter to the stated aims and objectives of crimes compensation law. We argue that even legal systems with an explicitly remedial rationale have the potential to generate harms, creating those who use drugs and ‘addicts’ as pathological in certain ways and thereby undermining their claims to citizenship. Our analysis is underpinned by a critical approach to the constitution of social problems based on the work of Carol Bacchi.

Conclusion: Although the focus is on Australian law, the arguments we develop in this paper are likely to resonate beyond the specific jurisdiction reviewed here, and raise questions about the mutually interdependent role of law and policy in compounding the stigmatisation and marginalisation of people who use drugs and drug ‘addicts’.

Crown Copyright © 2014 Published by Elsevier B.V. All rights reserved.

Introduction

People whose drug consumption is understood to be problematic feature prominently in the criminal justice system as offenders – charged with crimes relating to the use, possession and/or trafficking of drugs, public conduct offences while under the influence of alcohol or other drugs, or other criminal offences (such as robbery and burglary) that are sometimes understood to be linked in important ways to their drug use or ‘addiction’. A large body of academic scholarship has explored the intersections between problematic substance use or ‘addiction’ and the criminal justice system. This work has examined topics including, for example, the nature of the relationship between ‘addiction’, drugs, alcohol and criminal offending (Hammersley, 2008; Seddon, 2000; Stevens, 2007), the development and practices of specialist drug courts (Burns & Peyrot, 2003; Murphy, 2012, 2011; Vrecko, 2009) and the

expansion and application of alternative models of sentencing and rehabilitation, such as those associated with therapeutic jurisprudence models (Clancey & Howard, 2006; Fitzgerald, 2008; Gowan & Whetstone, 2012). Within sociology and criminology researchers have also examined understandings and experiences of the ‘addict’ in criminal justice systems. This work looks at the way individual ‘addicts’ are configured in the criminal justice system in general, and mandatory treatment regimens in particular (Lyons, 2013; Seddon, 2011a, 2011b; Vrecko, 2009) and how they experience the court system and treatment. Although it seems an obvious point, people who are characterised as experiencing either problematic substance use or an ‘addiction’ also appear in criminal justice systems in other capacities, including as the victims of crime. They may be the victims of crime where the criminal act is related to their drug consumption or ‘addiction’ (where violence occurs as part of a drug deal, for instance), but also where there is no obvious link with their consumption of drugs (where they are the victims of a random assault, rape or robbery). In this respect, individuals ordinarily understood as transgressive citizens on the ‘wrong side of the law’ may find themselves in an unusual position, seeking redress from the state as the victims of crime.

* Corresponding author. Tel.: +61 3 9079 2005.

E-mail address: Kate.Seear@curtin.edu.au (K. Seear).

<http://dx.doi.org/10.1016/j.drugpo.2014.02.016>

0955-3959/Crown Copyright © 2014 Published by Elsevier B.V. All rights reserved.

The phenomenon of the addict-as-victim raises a number of important questions. How, for instance, does the law assess the significance, if any, of a victim of violent crime also being a drug user and/or addict? How, for what reasons and in what ways might drug 'addiction' be considered as relevant to one's status as victim? Does drug use and/or addiction impact in any way on conceptualisations of victims of crime as innocent and/or deserving of care and support, whether from the community or the state? How does the criminal justice system understand the subject position of the 'addict-as-victim'? Where these two subject positions (of 'addict' and 'victim') are understood to be at odds, how does the criminal justice system reconcile them, if at all? And what are the implications of these judicial formulations and processes for contemporary understandings of both addiction and victimhood? Similar questions have been asked before, especially by researchers with an interest in victimology. We already know, for example, that questions about the 'character' and 'conduct' of victims figure centrally in the criminal justice system. Scrutiny of a victim's past experiences, past conduct and present conduct often occurs as part of prosecution deliberations about whether or not to lay charges against an offender – as in, for instance, rape cases where the victim consumed alcohol or illicit drugs before an assault (Beichner & Spohn, 2012). Questions about the conduct and character of the victim also emerge in criminal trials themselves, where narratives about the attitude, attributes and conduct of the victim are raised, whether to advance doubt about the offender's guilt, as a partial defence to crimes such as murder, or in mitigation of sentence (Grubb & Turner, 2012; Tyson, 2013). This paper is not concerned with how 'addiction' figures in either of these senses, however. Instead, it is concerned with the more specific question of how drug use and/or 'addiction' are conceptualised when judges are enjoined to make decisions about compensation for people adjudged to be victims of crime. There has been little critical work which explores how the law pertaining to victims of crime compensation understands drug use and/or 'addiction' in such circumstances, nor how judicial figures shape awards of compensation to 'addicted' victims.

This paper explores these issues through an analysis of victims of crime compensation case law within the state of Victoria, Australia. In what follows, we examine how courts assess the relevance of addiction and drug use to victims of crime compensation applications, as well as how they perform victimhood, addiction and the agency of addicts. We argue, first, that drug use and addiction are constituted as both relevant to crimes compensation applications and as potential obstacles to the award of such. In producing drug use and addiction as relevant problems, courts generate questions about addiction (its 'nature', 'causes' and 'effects') for which solutions must be found. In this sense, crimes compensation law emerges as a key site in the production of meanings around drug use and addiction and for the construction of addiction as a significant social problem. The paper can also be situated within a longer tradition of critical legal scholarship exploring the law's capacity to reproduce and further entrench inequality and stigma, such as that for victims of domestic violence and rape (e.g. Koss, 2000; MacKinnon, 2005, 1987). We argue that crimes compensation ultimately produces and reproduces a set of problematic assumptions about addiction, which include the possibility that there is something inherently incompatible about being both an addict and a victim. However, courts frequently reconcile these seemingly incompatible subject positions by explaining addiction as an 'effect' of trauma, violence or abuse, thus rendering sympathetic the 'addict' in the eyes of the state. Although this appears, on the face of it, to represent a less stigmatising and marginalising approach to addiction than found in criminal law, we argue that these processes of reconciliation actually produce new challenges for people who use drugs and addiction, and that these may be counter to the stated aims and objectives of crimes

compensation law. In this respect, our analysis offers a critical challenge to the 'realist' approach to drugs and social problems, which suggests that drugs have particular (negative) effects, and that the origins of drug-related harms lie within the chemical properties of drugs themselves (see, for example, Demant, 2013; Duff, 2013; Dwyer & Moore, 2013; Fraser & Moore, 2011; Keane, 2002). Instead, we suggest that legal systems have the potential to generate their own harms, which includes legal realms with an explicitly remedial rationale. We also argue that crimes compensation courts produce a contradictory set of messages about responsibility for the 'problem' of addiction, insofar as addicts are positioned as simultaneously exempt from responsibility and accountable for their actions. Our research shows that a similar process is in operation even among legislative schemes with an explicitly remedial rationale: an issue that is rarely acknowledged and that researchers, governments and legal practitioners need to better understand. Our study raises serious questions about how individuals navigate these ostensibly incompatible messages, and the rights and responsibilities of people who consume drugs, as a result. Our analysis is underpinned by a critical approach to the constitution of social problems and in the next section we introduce key aspects of this method. Following this, we provide an overview of crimes compensation schemes in Australia and Victoria, before moving to an analysis of specific cases within which 'addiction' appears. We argue that although the focus is on Australian law and legal practice, the arguments we develop in this paper are likely to resonate well beyond the specific jurisdiction under review here, especially insofar as they demonstrate the law's capacity to constitute addiction and drug consumption as a particular kind of problem, and insofar as the law enacts a set of contradictory messages about the agency and volition of addicts, and the ontology of addiction.

The constitution of social problems

Our analysis is framed by Bacchi's (2009) recent methodological work on analysing policy. Bacchi's approach is based on Michel Foucault's work, in particular his insights on 'problematization' and his interest in 'thinking problematically' (1977, 185–186). According to Bacchi (2012) the term *problematization* has two meanings. First, quoting Deacon (2000, 127), she argues that *problematization* refers to the process of examining how a given issue is 'questioned, analysed, classified and regulated' at particular times and under particular conditions. Second, she says, *problematization* also means, as Foucault puts it (1985, 115), '[h]ow and why certain things (behaviour, phenomena, processes) become a problem' and how they are, in her own words, 'shaped as particular objects for thought' (2012, 1). This way of approaching problems has profound ontological and epistemological implications. Bacchi (2012) goes on to explain these implications, again quoting Foucault (1988, 257):

Problematization doesn't mean the representation of a pre-existing object, nor the creation through discourse of an object that doesn't exist. It is a set of discursive and non-discursive practices that makes something enter into the play of the true and the false and constitutes it as an object for thought (whether under the form of moral reflection, scientific knowledge, political analysis, etc.).

While Foucault focused on what he called 'crisis' points (such as sexuality, madness and so on), Bacchi expands the role of *problematization*, in particular via her interest in policy.

In her 2009 book *Analysing policy: What's the problem represented to be?* Bacchi argues that, policy does not simply 'address' social problems. Instead, policies actually 'shape' them (2009: x). Particular policies identify certain phenomena as problems, and in doing

Download English Version:

<https://daneshyari.com/en/article/7513686>

Download Persian Version:

<https://daneshyari.com/article/7513686>

[Daneshyari.com](https://daneshyari.com)