Evidence Based Policymaking as Depoliticized Governance Strategy: The Case of European Drug Policy

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Abstract

Academic approaches to Evidence Based Policy (EBP) have focused largely on attempting to understand the extent to which policy is informed by scientific evidence/research or to find solutions as to how either policymakers or experts might bridge the gap. This paper moves beyond these instrumental rational debates to provide a constructivist institutional account of how EBP is strategically chosen and promoted by political actors as a mode of governance, maintaining ‘the shadow of hierarchy’ in complex, networked policy areas. Evidence, rather than being the objective and neutral product claimed by idealized accounts of EBP, is instead understood as a process to generate socially constructed knowledge, which is partial (in both senses of the word) and value-laden, in order to constrain political choice and agency. Specifically, EBP can be considered a form of depoliticized statecraft in which policy options are diminished through the delegitimization of alternatives, exclusive and exclusionary knowledge claims and denials of political agency.

The case study, involving the analysis of policy documents and interviews, will analyse EU governance in drug policy, specifically the creation of the European Monitoring Centre for Drug and Drug Addiction (EMCDDA) to produce and analyse drug related data. Not only does the EU heavily promote the use of EBP in drug policy but it plays a significant role in the production of such evidence. In doing so the legitimacy of certain experts and certain knowledge claims, principally those in the area of public health, is given primacy over competing sources of knowledge. The move towards an evidence based drug policy, which balances health and harm reduction with penalization, is seen as definitive of the ‘European approach’ yet the depoliticization of drug policy remains value-laden and, paradoxically, highly political.
Introduction

Over the past 30 years the drug policy debate in Europe has shifted greatly, from an initial position in which drug policy was largely seen as falling within the exclusive realm of law enforcement and criminal justice to one in which health, human rights and harm reduction have becoming increasingly prominent. The idea of 'evidence based drug policy' has gained strong purchase with both politicians who are seeking greater legitimacy for their decisions as well as from scholars and advocates for drug policy change who see the greater utilization of science and research evidence in decision-making as a means of challenging what is argued to be policy failures arising from the ‘war on drugs’. Despite the development of a large body of literature dedicated to realising the goal of evidence based drug policy the extent to which European drug policies can truly be described as ‘evidence-based’ remains strongly contested (Stevens, 2007; Lancaster, 2014). This paper argues, however, that much of the criticism of the extent to which research evidence is utilized in decision-making is based on a material, instrumental rational understanding of the concept of evidence and evidence utilization within public policy. The focus on the materiality of evidence neglects the important discursive role of evidence and the ‘evidence based policymaking (EBP) paradigm, not just in framing perceptions and understandings of policy problems but in legitimizing and delegitimizing particular actors, institutions and forms of knowledge. EBP, understood in this way, constitutes a form of depoliticized governance strategy in which the political nature of drug policy is denied or obscured to be replaced with a scientific or technocratic rationality which constrains political choice and agency.

Depoliticization offers a particularly interesting analytical lens through which to examine recent developments in drug policy. A growing literature in this area has sought to understand the strategies by which issues a policy areas are denied their political character – commonly understood as a denial of the contingent nature of the political sphere – and the variety of governmental tactics and tools through which this is achieved (Flinders & Wood, 2014; Wood, 2015). Perhaps the most visible of these has been the increased delegation of decision-making or policy producing powers to arms-length public bodies populated by experts or technicians (Burnham, 2001; Flinders & Buller, 2006; Vibert, 2007). Equally important, and we would argue, strongly linked to this, is the discursive strategies employed by political actors who
seek to shape the preferences or expectations of other actors, especially publics (Hay & Rosamond, 2002). This discourse seeks to delegitimize policy alternatives by denying contingency or by constructing imperatives for a specific form of action, the most classic case being the discourse of ‘there is no alternative’ (TINA) which has regained popularity in the responses to the recent financial crisis.

While rarely espousing such vehement rhetorical strategies, the EBP movement in drug policy has been vocally critical and antagonistic towards what are perceived to be moral, ideological or even communal and social concerns in response to the illicit drug phenomenon. The evidence, it is argued, points to the failure of the politicized drug policy and its replacement with a depoliticised alternative which focuses on the health of the individual (Ritter, 2015). One point which is consistently emphasised in the depoliticization literature, and which is strongly argued here, is that depoliticisation, in whatever form, does not remove the politics of an issue but is instead part of a (usually heavily political) strategy to deny the political character of an issue with the aim of privileging specific actors, institutions or policies (Flinders & Wood, 2014). What makes the area of drug policy particularly interesting from a depoliticization perspective is that while typically these strategies have been understood as form of statecraft at the national level, drug policy has seen pressure for depoliticization coming from both non-state actors (experts) and from the supranational level (the EU).

As the emphasis in drug policy interventions has moved from detection, prosecution and punishment towards treatment and management there has also been a shift in power relations between different actors in the drug policy field. Whereas previously experts in law enforcement held privileged, even exclusive, knowledge claims the area of drug policy is now heavily populated with experts from public health, epidemiology, psychology and social care (Ritter, 2015). These changes have coincided with the means and methods by which evidence is produced becoming increasingly formalised and institutionalised, both at the domestic and European Union level. This paper will focus on the nature of those changes particularly within the EU where the principle of EBP in drug policy has becoming increasingly prominent. It is now an establish feature of both the European Drug Strategy and Action Plan, as well as being a defining feature of the EU’s Agency work in the drug field. The role of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is to collect and publish reliable and comparable data on the drug phenomenon in Europe but in doing so it fulfils a dual
role – firstly in promoting the legitimacy of EBP and secondly in coordinating the type or nature of evidence produced.

In the first section of this paper we examine the nature of the current debate on depoliticization and in particular how the concept can help us understand recent trends in drug policy and how it can be linked to the EBP movement. To do this we will pay particular attention to the way in which neoliberal logics of rationality and depoliticization are used to remove ambiguity and contingency within public policy. This will lead in to the second section of the paper which will examine how EBP, understood as a form of instrumental rationality, is often neglectful of the discursive role evidence plays in reconstituting power relations between political actors and institutions. While proponents of EBP call for the greater integration of evidence in policy making, the distinction between the scientific, see as objective and value free, and the political, seen as ideological and value-laden, is fiercely defended. The final two sections will examine specifically the case of drug policy, firstly looking at the contested nature of drug policy, both in terms of knowledge claims as well as in power relations between groups active in the field. Here we will also briefly touch on the historical context of drug policy development, paying particular attention to the HIV/AIDS crisis of the late 1980s which marked a turning point in drug policy. The final section will discuss the development of a specifically ‘European approach to drugs’ which is, in the words of the EU itself characterised as one in which ‘evidence takes priority over ideology’ (EMCDDA, 2010, 13). In addition to critically analysing this claim we will examine the ways in which European governance in drugs has constructed identities, shifted power relations among national and transnational experts and constrained domestic political action. We conclude by bringing our arguments together before highlighting further avenues for research.

**Depoliticisation and neoliberal governance**

There appears to be a paradox at the heart of the political systems of contemporary western democracies – while the political, or specifically governmental arena, has seen its range of competencies grow to include more complex and interdependent areas of social, economic and cultural life, we have also seen what Peter Mair has described as ‘the retreat of political elites’ (Mair, 2013). Political actors, and especially
elected politicians, are increasingly insulated from direct decision making through a range of institutional and discursive strategies which sees power delegated to ‘arms-length’ bodies (Vibert, 2007), the adoption of binding rules which ‘tie their hands’ (Giavazzi & Pagano, 1988) and the deployment of preference shaping discourses in which their room for manoeuvre is claimed to be constrained by exogenous imperatives (Hay & Rosamond, 2002; ; for a more detailed analysis of the tactics and tools involved see Flinders & Buller, 2006). A growing literature on depoliticisation has sought to better understand the impact of these strategies, depoliticisation being famously defined by Peter Burnham as, ‘the process of placing at one remove the political character of decision-making’ (Burnham, 2001, 128).

The early literature on depoliticisation has received some criticism for what has been perceived as an overly narrow conception of politics or the political, as a conception which is invariably tied to statist and governmental forms of statecraft (see especially Wood & Flinders, 2014) to the neglect of other forms or arenas in which politics occurs. Colin Hay presents a more expansive view of the arenas of depoliticisation, taking it beyond the governmental, to include processes by which policies and issues may move between the private, public and governmental spheres (Hay, 2007, 97-118). Hay’s contribution to the depoliticisation literature has been especially important, particularly in seeking to provide an account of what constitutes politics and the political in a way which allows subsequent scholars a means of moving beyond ‘top down’ governmentality. Politics, as understood by Hay, is not merely the preserve of political elites but is rather a space in which the provision of social or common goods is subjected to deliberation, contestation, choice and contingency (Hay, 2007, 65-70). Strategies which seek to deny any or all of these factors should be considered depoliticising. This is a theme taken up in the work of Laura Jenkins who, building on the work of Hay, defines depoliticisation as, ‘[entailing] forming necessities, permanence, immobility, closure and fatalism and concealing/negating or removing contingency’ (Jenkins, 2011, 160).

Two of Jenkins’ most distinctive interventions in the debate, both of importance to our later discussion, are her emphasis on the political nature of depoliticisation and the relevance of values to politics/depoliticisation. As Jenkin states, ‘to engage in a strategy of depoliticisation is to also engage in a political act’ (ibid), albeit one which seeks to constrain the options and agency of others. Most scholars agree that
depoliticisation does not remove an issue from the political sphere, and the extent to which such a goal is even possible remains contentious, but is rather a deliberate strategy of denial (Flinders & Wood 2014, 136). This strategy has been typically understood as a form of blame avoidance in which elected politicians seek to avoid the potentially negative consequences of policies which may prove unpopular or which occur in areas of uncertainty and ambiguity and therefore risk policy failure (Burnham, 2001; Flinders & Wood, 2014; Wood, 2015). More recent work has also suggested that strategies of depoliticization plays an important role in constituting and reconstituting subjectivities, identities and power relations between state and non-state actors (Burnham, 2016).

Taking the particular issues of human rights, bureaucracy, and the free market as specific examples, Jenkins argues that the partisan and partial nature of politics is, within a strategy of depoliticisation, value-laden, imbued with self-interest and as such viewed negatively, ‘politics is not valued, in contrast to neutrality, impartiality and ‘fairness’ which are perceived positively’ (Jenkins, 2011, 160). Tactics which seek to impose or construct neutrality and objectivity on issues while negating their subjective, ambiguous or contingent nature should, therefore be seen as fundamental tools of depoliticisation. Jenkins argues strongly that a reassertion of the emancipatory potential of the conditional and contingent nature of politics is an important for marginalised groups and communities whose views and preferences are excluded by existing depoliticised discourses and institutional arrangement. While this perspective is critical in expanding political agency beyond political elites it neglects equally strong pressures for depoliticisation emanating from equally marginalised groups who see the removal (denial) of value-laden politics as a strategy to effect change. Such sentiments are frequently to be found in contemporary debates on drug policy in which the dominant punitive paradigm is equally presented as ‘politicised’, as subject to political considerations rather than based on ‘objective evidence’ or ‘the best possible science’ (Nutt, 2010). Drug policy, in this perspective, is seen to be inhabited by groups whose interests are strongly embedded in both national and international frameworks of prohibition, which will be discussed in more detail in the following sections. In order to disembody or delegitimise these groups and existing interventions alternatives must be found which challenge the exclusive knowledge claims, allowing alternative frames, meanings and actors to take their place. One tactic with particularly
high potential for this is the promotion and implementation of EBP, whose logic relies heavily on providing value-free, objective and exclusionary knowledge claims which are more difficult for actors outside of the scientific community to challenge. Jenkins’ analysis also provides a means by which actors may ‘escape’ existing constraints of the political system which they inhabit, either from below – through pressure groups or advocacy or discourse coalitions – or else from above – through interaction with international or supranational bodies – playing a two-level game.

The strategy of depoliticisation is far from a new phenomenon, the British Royal Commissions of the nineteenth century have been cited, amongst others, as early examples of the delegation of decision-making powers to experts (Fawcett & Marsh, 2014). Rancière called depoliticisation, ‘the oldest task of politics’ (1995, 19) and Carl Schmidt wrote in detail about how dominant logics of the day, from the theology of the seventeenth century to the technological age of the twentieth century, sought to neutralise the social conflicts which are inherent in the political (Schmitt, 2007; for a more detailed discussion on the topic of Schmitt and depoliticization see Flinders & Wood, 2014).

The current practice of depoliticisation, however, has been strongly linked with the prevalence of neoliberal logics among both political elites and publics (Hay, 2007; Wood, 2015). The importance of neoliberal logics on processes of depoliticization comes from the macro-level cultural and social changes they inspire. Will Davies and Wendy Brown have both written recently on the way in which neoliberal logic shifts social and political practices from deliberation, reason and argumentation towards rational conduct (Brown, 2015, 118):

> Political rationality could be said to signify the becoming actual of a specific normative form of reason; it designates such a form as both a historical force generating and relating specific kinds of subject, society, and state and as establishing an order of truth by which conduct is both governed and measured.

The ‘truth’ which neoliberal logics seeks to establish is one heavily reliant on a positivist or technocratic understanding of how social order is, and importantly should, be governed. Political rationality is understood as a neutral and objective counterpoint to prerational or nonrational forms of social knowledge such as tradition, ideology or
values and permeates through all social levels into politics and the social sciences (Brown, 2015, 119-120). In more concrete terms it, ‘seeks to replace critique with technique, judgement with measurement’, and, ‘moral rules with scientific rules’ (Davies, 2014; Boltanski & Thévenot, 2006, 28-31), thus, in the words of Davies, citing Weber, contributing to the ‘disenchantment of politics’ which in turn involves a ‘deconstruction of the language of the ‘common good’ or the ‘public’, which is accused of potentially dangerous mysticism’ (Davies, 2014). According to these logics, alternatives which are based on measures other than the purely positivist or rational are to be denied. As Wood states, “neoliberal policies, discourses and institutions tend (intentionally or unintentionally) to hide or cloak the contestable or contingent nature of the ideas they institute” (Wood, 2015, 7).

The shift from government to governance, what Brown describes as ‘the primary administrative form’ of neoliberalism (Brown, 2015, 122) has replaced ideas of the ‘common good’ and the ‘public’ with an emphasis on ‘accountability’ and ‘efficiency’. However, this is a particular type of accountability and efficiency heavily centred on instrumental rationality and practical legitimacy, depoliticised and stripped of deliberation, values and ideology. These governance practices have been particularly noted at the European level (Majone, 1996) whereby networking and practical legitimacy have taken precedence over hierarchical or moral legitimacy (Scharpf, 1999). More emphasis has been placed, recently, on understanding governance within drug policy and particularly what constitutes ‘good governance’. The complex nature of drug policy, it has been argued, makes networking, stakeholder engagement and the better utilization of evidence in policymaking essential to better governance practice (Singleton & Rubin, 2014; McGregor et al, 2014). Other authors, however, have been more critical of the extent to which governance, as an administrative practice, has the capacity to broaden participation in the policy process and instead have pointed to the potential of governance practices to prioritise or even embed particular forms of knowledge and preferences within institutionalised practices (Davies, 2011). The hierarchies which network governance seek to replace to not disappear but are merely obscured and rather than encouraging policy alternatives and contestation, networks may instead serve to exclude actors with dissenting views and therefore result in the further depoliticisation of policy areas.
The instrumental rationality of EBP

The European Union, as we have mentioned above, often seen as a site lacking in what we might consider traditional, or democratic, modes of legitimacy and accountability. In the place of popular deliberation and contestation, either directly or through elected representatives, it has instead sought to gain legitimacy through the effectiveness and efficiency of its policies, in the terms of Scharpf (1999), replacing ‘input legitimacy’ with ‘output legitimacy’ (see also Crouch, 2004). As the competencies of the EU have grown beyond the more technical regulation of the single market into social policy areas which were once the exclusive preserve of the state so the criticisms of the EU’s ‘technocratic mode of governance’ have grown, concentrating particularly on the lack of deliberation, transparency and politics within European decision-making (Hix, 2008). The political nature of decision-making is too often neglected by the EBP movement and even, in many cases, seen as obstacle to be overcome rather than engaged with.

Technocratic theory came to prominence in the 1960s and 70s due to reforms made under President Johnson’s Great Society. Fischer defined the theory as such (1993, 22):

…a governance process dominated by technically trained knowledge elites. The function of the technocratic elite is to replace or control democratic deliberation and decision-making processes (based on conflicting interests) with a more technocratically informed discourse (based on scientific decision-making techniques). The result is the transformation of political issues into technically defined ends that can be pursued through administrative means.

Technocratic theory was roundly criticized from both the left and the right. Critics on the left, such as Gouldner and Chomsky, claimed that these new intellectuals and policy experts merely constituted a new ruling class seeking political power. It was a continuation of elite politics which sought to subvert the democratic politics from its true role which was as a site of conflict and competition between different social groups (Fischer, 1993, 26; see also Crick, 2013). Critics on the right, such as Irving Kristol and Edward Banfield, argued that, rather being independent and objective, the role of experts was instead to push a particular (in this case liberal) agenda. This was done
through the role that experts play in bringing certain issues on to the agenda, in identifying them as problems and in identifying the problems in a particular way (Fischer, 1993, 23). As such it was identified that experts, or more specifically politicians’ deferment to experts and expert knowledge, has a discursive as well as an instrumental role to play in the policy process.

One of the strengths of neoliberalism, frequently remarked upon, is the extent to which proponents are able to reflectively absorb critiques to produce more persistent and enduring logics (Crouch, 2011; Boltanski & Chaipello, 2011; Harvey, 2007). In this manner the EBP movement has been particularly successful in counteracting the critique of technocratic theory, and in particular the extent to which expert knowledge is seen to be both partial and unaccountable, by embracing more deeply a positivist, instrumental rational view of evidence utilization. Within this perspective the spheres of science and politics must remain distinct albeit with a one way transfer of impact and influence, from the former to the latter. The pressing concern of EBP, before even impact on policymaking is taken into account, is the protection of the objective and neutral form in which evidence must take (Davies, 2015). As Du Gay argues (2000), value-neutrality becomes an ethos in its own right but one which is more often than not left implicit.

Much of the space taken up with EBP literature directly tackles methodological concerns, which in themselves are attempts to remove the agent, and thus any possible hint of bias, from the process of evidence production (Pearce & Ramen, 2014; Deeming, 2014). This in turn leads to the construction of hierarchies of evidence, with that produced by randomised controlled trials and systematic reviews gaining legitimacy over alternate forms of evidence such as expert or practical experience – i.e. those in which agents are directly involved. The goal of positivist social science (or by extension EBP), and one which has clear depoliticising potential, is the removal of ambiguity and contingency from the identification of social problems and the development of interventions (Sanderson, 2002; Forrester, 1993). In order to achieve this goal, proponents of EBP must also have an idealised view of the policy process itself, in which actors consistently seek ‘what works’ (Cairney, 2015) because acknowledging the ‘messiness’ of policymaking would severely challenge the EBP project (Williams, 2010, 197; Davies, 2014).
Constructivist approaches to the philosophy of science and the production of knowledge cast doubts on the very possibility that human agents, and therefore values, ideals and subjectivities, can be removed from scientific processes. The endeavour of scientific work, as Knorr-Cetina stresses, is one which is inextricable from the social contexts (of collaboration or competition) in which they are produced (1981). The work of Majone makes this point particularly well in relation to evidence and the policy process – the construction of evidence should be considered discretely from that of data collection and the refinement of data into information, but all three are the product of decisions made by ‘analysts as craftsmen’ (1989, 42-68).

The idea that there is a role for evidence beyond the instrumental, as a form of argument or discourse, is very often acknowledged within the EBP literature but frequently seen as a point to be resisted. This is particularly clear in the case of drug policy in which politicians have been frequently accused of misrepresenting or ‘cherry-picking’ evidence to suit their pre-existing policy preferences (Stevens, 2007; Monaghan, 2011; Hughes, 2007; Bennet & Holloway, 2007). The argument is particularly well articulated by David Nutt (2010, 1154) when he says:

Science can, indeed, I would argue must, be the prime mediator of policy if we are to minimize the harms of drugs, both medical and social, but science cannot deliver policy because that is the realm of politics. What scientists can do—as I have done—is insist that where science is taken to support a political decision it must be the best science.

The problem that Nutt fails to tackle in this section, and which is regularly neglected by proponents of EBP, is who the mediators of ‘the best science’ are to be. One must assume given the context of the drug debate, and the frequent assertions that current policies are failing, that Nutt, and those who are supportive of his position, would see themselves as better arbiters of what should be considered adequate or acceptable evidence.

The question of who judges and mediates the adequacy of evidence is perhaps one of the most important, and most neglected aspects of the EBP literature. While the discursive role of evidence has started to receive some attention in recent years (Pearce et al, 2014; Wesselink et al, 2014; Wesselink & Hoppe, 2011) the focus has
largely rested on the way in which evidence constitutes meanings and frames policy problems. The extent to which evidence produces competing policy frames exists in a state of tension with the ideals of a positivist ideal of evidence production, in which evidence can and should be judged, sorted and ordered. It is difficult, if not impossible, to remove the selection of which policy frames have greater legitimacy from value-laden or ‘political’ considerations. In this case, however, the depoliticising strategy of EBP attempts to further narrow the options or alternatives by excluding particular actors or preferences which operate outside of its exclusive claims to knowledge. As we will see later, in the case of drug policy, politicians, law enforcement actors and other civil society groups are unlikely to be able to produce themselves evidence which meets the strict scientific requirements which the EBP movement give precedent, and so risk marginalisation.

A constructivist perspective on the use of evidence, therefore, ‘shifts our focus from the inherent value of ‘evidence’ for addressing ‘drug problems’ to the ways in which policy knowledge is made valid, by whom and in what contexts’ (Lancaster, 2014, 949). In the next sections we will look at how the specific nature of governance of drug policy in Europe, and in particular the EBP paradigm has contributed to changes in what is regarded as ‘policy-relevant knowledge’.

**Drug policy as a site of contested knowledge/expertise**

A number of recent changes across the globe have, once again, brought drug policy back in to the headlines. In 2001 Portugal became the first country to decriminalise possession for personal use all **all** drugs. This has been followed by the legalisation of cannabis in Uruguay (2014) and the US states of Colorado, Washington (both 2012), Alaska and Oregon (both 2014). These actions of individual states and territories have put pressure on the existing international prohibitionist framework which is institutionalised within three United Nations Conventions: the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances, and; the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Taken together, these three conventions provide the backbone for what has become widely known as ‘the war on drugs’. Each of these conventions obliges signatories to prohibit, by law, the production, possession and traffic of scheduled
drugs and chemicals used in their manufacture. Within these broad restrictions, however, states are given a great flexibility in the specific policies they follow, ranging from the severity of punishment applicable (if at all) to the extent to which health based treatments are made available.

The history and development of the prohibitionist framework of drug control can be traced back to concerns dating to the turn of the 20th century over rising levels of addiction, in Western developed countries, to what were then legally available substances such as cocaine and opiates (UNODC, 2009). Whereas previously problematic drug use had been limited to undeveloped and colonial territories, often purposely exacerbated by colonial economic policies, increased global trade as well as medical practices of the time resulted in rising drug use in the West. This situation was exacerbated by regular ‘moral panics’ over particular drugs which were demonised in the popular media (Goode & Ben-Yehuda, 2009) particularly in the US, whose influence within the UN allowed it to broker an international consensus around the necessity for global action (Bewley-Taylor, 2012). A number of different policy options were available for drug control at the time, including public health campaigns, education and even regulation, which were already entering force with alcohol and tobacco (Kleiman et al, 2011). The framing of drug use as a moral, rather than a health, issue and the subsequent development of prohibition and criminalisation as appropriate interventions has been attributed to the strong cultural and historical institutional factors prevalent in American forms of social control which came to dominate the global response (Levine, 2003).

As Levine argues (2003, 147), however, American hegemony was not, in itself sufficient in establishing a global consensus on drug prohibition, but rather governmental and law enforcement actors found strategic opportunities in framing drug problems in ways which increased their power and resources. ‘Top politicians and government officials in many countries may have believed deeply in the war on drugs and drug use. But other health-oriented causes could not have produced for them so much police, coast guard and military power’ (ibid). The UN conventions helped to establish a distinction, which persists to this day, between the realm of supply reduction - interventions designed to reduce the availability of illicit drugs amount of drugs produced or entering a territory – and demand reduction – interventions to reduce the desire of populations to use drugs, through prevention,
education and treatment. Supply reduction became the main focus of joint global efforts and was seen as the exclusive preserve of law enforcement and criminal justice experts whereas demand reduction, which heavily marginalised in terms of resources, was to be considered within the competencies of the individual states (UNODC, 2009; Kleiman et al, 2011). The opportunities for health interventions, expressed within the treaties, was extremely limited, as Resolution III of the 1961 Convention makes clear, ‘one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug free atmosphere’ (emphasis added), at this point health based alternatives to the drug problem were not considered a matter of priority.

At the European level, in this period, similar institutional arrangements can be seen in which law enforcement expertise was given precedent in policy development over health based expertise. Although the EEC had within its mandate competencies relating to public health these did not directly tackle the drug phenomenon as a health issue. European action in drugs initially took place through the Pompidou Group (emanating from the Council of Europe) with the European Commission later joining these meetings, before becoming an integral part of the TREVI network of law enforcement and customs officials (Elvins, 2003). The focus of these informal networks of national law enforcement networks was the sharing of intelligence, knowledge and best practice in a closed, non-binding and opaque matter. As Elvins states, the results of these meetings and the reports they produced were not for public consumption and therefore it is difficult to accurately assess their overall impact on European drug policy however specific concerns were aroused by the mid-1980s with the prospect of the Schengen Accord and the Single European Act (SEA) and the potential this posed for cross-border crime (Elvins, 2003, 171):

At this point, anti-drug trafficking policies became part of a broader normative policy framework based on the idea that ‘removing’ internal borders would increase crime and that the most effective way to address this was through ‘compensatory’ law enforcement measures.

Both the definition of the problem and the recommended solution was produced in an exclusionary manner in which law enforcement experts were seen to be arbiters of policy relevant knowledge. In this role these experts were said to fulfil the ‘uncertainty reducing role’ of an epistemic-community, joined by both shared professional expert
knowledge as well as shared causal understandings of the problem at hand (Elvins, 2003, 173). The informal and intergovernmental nature of these groups also allowed national governments to retain sovereignty over what was still considered to be a heavily politicised issue, albeit one with low political saliency (Radaelli, 1999).

Two events, one global in nature and exogenous to the project of European integration and one endogenous, were to markedly change the complexion of European action in drugs and would challenge the legitimacy of the exclusive knowledge claims of law enforcement actors and the existing paradigm of prohibition and criminalisation. The first of these was the growing global HIV/AIDS epidemic which was quickly to become associated with the sharing of contaminated needles, itself a result of the underground and marginalised nature of drug use (Edwards & Galla, 2014). It became increasingly recognised that the public health issues associated with drug use were not just being neglected by the current paradigm but were actually being acerbated by it and alternative interventions were needed. The development of alternatives was strongly influenced by the examples of the Netherlands, who had long taken a more pragmatic approach to drug use, and Switzerland who were pioneers in the integration of public health expertise in drug interventions (Csete, 2010). An initial step in this direction was taken by the European Parliament who commissioned a report on the drug situation in Europe, which was known as the Cooney Report. This report directly challenged the prohibitionist approach to drug control (cited in Boekhout, 2002, 27; see also Bewley-Taylor, 2012):

> Drug addiction and drug abuse should be treated primarily as a subject relating to health and welfare, and not as one of “police and justice”.
> The possession of small quantities of drugs for personal use should not be regarded as a criminal offence.

The second event had directly political implications – the impending enactment of the Treaty on European Union (TEU) would formalise, through the pillar system, the division between public health, in which the EU was to have *complementary competence*, residing in the 1st pillar, and justice and home affairs, which resided in the intergovernmental 3rd pillar. The wording of the treaty is of particular importance in challenging the existing discourse through the adoption of an evidence based approach (Article 152 (ex Article 159) (emphasis added):
“Community action shall be directed towards the prevention of diseases, in particular the major health scourges, including drug dependence, by promoting research into their causes and their transmission, as well as health information and education.”

EU action in drug policy since the enactment of the TEU shows a continued attempt to reconstruct both what constitutes policy relevant knowledge in the area of drugs as well as a realignment of power relations between expert groups and policy-makers. This is highlighted well by the introduction of regular EU Drug Strategies and Drug Action Plans which emphasise a balanced approach to drug control, giving equal space to supply reduction and demand reduction. Originally these documents presented rather vague, broad-brush, objectives, prioritising areas of joint action but in the more recent versions the stated goals have been translated into very specific points of actions which include timescales for completion and indicate the responsible parties.

Of fundamental importance in the promotion of evidence based drug policies in Europe is the creation of a European agency, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), dedicated to the collection and dissemination of drug related data. The impact of this agency, and European action in general, in creating a ‘European approach’ to drugs has been criticised, most notably by Chatwin who states, ‘Illicit drug policy can therefore be said to be too complex and too deeply entrenched in national policy making for traditional modes of European control’ (Chatwin, 2007, 498). The source of this criticism is the perceived lack of harmonisation across European drug policies. In making this point however, Chatwin focuses on the instrumental view of EBP rather than its discursive impact. This discussion will form the basis of our final section.

Evidence and the European approach to drug policy

It has become increasingly common to hear of a particular ‘European approach to drug policy’, which includes a balanced approach between supply and demand reduction, the adoption of pragmatic approaches to drug use which include harm reduction interventions and a particular attention to the interface between policy and evidence (Edwards & Galla, 2014; EMCDDA, 2009). The strategy of situating EU action in drugs primarily within the communitarian pillar had clear depoliticising potential, raising the
issue beyond that of domestic politics and allowing the construction of a distinct problem definition. This approach also served to marginalise law enforcement expertise which, until that point, had held almost exclusive claims on policy related knowledge. Within this process the paradigm of EBP served a dual role, both discursive and instrumental, in depoliticising drug policy by reducing questions of ambiguity and contingency and the EU’s drug agency, the EMCDDA, was functional in this.

The founding regulations of the EMCDDA, drawn up in 1991, which outlines its primary role and functions are imbued with an instrumental rational logic of evidence-based policymaking:

The Centre's objective is to provide [...] the Community and its Member States with objective, reliable and comparable information at European level concerning drugs and drug addiction and their consequences. The statistical, documentary and technical information processed or produced is intended to help provide the Community and the Member States with an overall view of the drug and drug addiction situation when, in their respective areas of competence, they take measures or decide on action.

A number of scholars have doubted the extent to which such a mandate, limited to data gathering and dissemination could have a material impact in promoting convergence or ‘Europeanisation’ of national drug policies (Chatwin, 2003) and a great deal of emphasis was placed on the objectivity and neutrality of the agency whose work was explicitly seen not to challenge the existing prohibitionist paradigm (Boekhout, 2002; Edwards & Galla, 2014). The absence of an explicit political mandate, however, does not remove the agency from politics. As Elvins states (2003, 11), the views of ‘knowledge brokers’ are also intrinsically political in the sense that they are referenced against an existing way of doing things politically.’

A better understanding of the agency as active brokers of knowledge rather than passive disseminators can be gathered from the following functions contained within in the founding regulations:

2. carry out surveys, preparatory studies and feasibility studies, together with any pilot projects necessary to accomplish its tasks;
organize meetings of experts and whenever necessary set up ad hoc working parties

5. facilitate exchanges of information between decision-makers, researchers, specialists and those involved in combating drugs in governmental and non-governmental organizations;

6. ensure improved comparability, objectivity and reliability of data at European level by establishing indicators and common criteria of a non-binding nature, compliance with which may be recommended by the Centre, with a view to greater uniformity of the measurement methods used by the Member States and the Community;

7. facilitate and structure exchange of information, in terms of both quality and quantity (databases);

12. [...] promote the incorporation of data on drugs and drug addiction gathered in the Member States or emanating from the Community into international monitoring and drug-control programmes [...]”

Functions 2, 6 and 7 would clearly constitute what Majone (1989) termed the ‘craft of analysis’ in which agency actors are expected exercise selectivity and subjectivity in the production of policy relevant data which will ultimately, ‘[foster] a culture of uniformity for which agreement on problem definition (and the types of data used to support this) has become a prerequisite’ (Elvins, 2003, 121).

The very nature of the data collected by the agency again presents a direct challenge to the existing privileged knowledge claims of law enforcement actors. The primary outputs of the EMCDDA are the annual report on the drug situation in Europe and the annual statistical bulletin. Both these publications are heavily based on five key epidemiological indicators which have been developed by the agency, in collaboration with national drug focal points. These indicators include: drug prevalence among population groups; high risk drug use (formally ‘problematic drug use’); treatment demand; drug related deaths, and; drug related infectious disease. Located directly in the sphere of public health, the methodological and scientific rigor
of these health based indicators not only helps to establish the practical legitimacy but serves to undermine alternative sources of policy relevant expertise.

While the mandate of the agency includes the gathering of supply reduction data there is a clear imbalance in both the level of resources and staffing dedicated to this, as Table 1 demonstrates, as well as the reliability and comparability of the data produced in this area.

**Table 1 – EMCDDA Scientific Staff**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Prevalence &amp; Data Management (EPI)</th>
<th>Consequences, Responses &amp; Best Practice (IBS)</th>
<th>Supply Reduction &amp; New Drugs (SAT)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scientific Analysts</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>10</td>
<td>15</td>
</tr>
</tbody>
</table>

The issue of supply reduction indicators has become of particular importance to the agency in recent years as national governments have felt increasingly constrained by the nature of the data produced by the agency and its utility in formulating their own evidence based policies. The role of the agency in promoting the EBP paradigm is outlined above in functions 5 and 12. The development of rigorous and comparable supply reduction indicators was a specific goal of the 2009-12 EU Action Plan (European Council, 2008) but the challenges of applying scientific methods to law enforcement data, as well as engaging in law enforcement actors in scientific tasks, remains problematic given that the purpose of law enforcement data collection remains unreconciled with that of scientific knowledge production (EMCDDA, 2010).

Through rigorous scientific research the agency has been able to produce detailed and respected studies on topics such as syringe exchange, opiate replacement therapy and the effectiveness of specific prevention campaigns. Across a number of health based and demand reduction themed interventions, the EMCDDA now offers best practice guidelines which have been developed through lengthy comparative analysis of existing programmes. The opportunity that an evidence based (or
depoliticised) drug policy offers to challenge the existing prohibitionist paradigm has seen an increasing number of civil society advocacy groups take up EBP as a demand in addition to regular calls for policy change (O’Gorman et al, 2014). In a departure from what is seen as a traditionally elite led strategy, there have been increasing ‘bottom up’ calls for the depoliticisation of drug policy from groups such as the Beckley Foundation, the Transnational Institute and the Open Society Foundation as well as from independent advocates and academics. The resituating of evidence production at the international or supranational level, therefore, can also be seen as a means by which civil society groups escape the constraints of domestic political institutions.

As with many of the EU’s decentralised agencies, the EMCDDA is heavily reliant on engaging stakeholders to provide it with the data it needs to function. In the case of the EMCDDA this is in the form of National Drug Focal Points (NFP) who comprise the Reitox network. The institutional composition and location of each focal point within the member states varies on a country by country basis but, given the strong bias in the data collected towards the area of public health, these bodies are typically populated by actors with backgrounds in public health, psychiatry and sociology. The agency has made greater efforts, in recent years, to directly collaborate with law enforcement experts, particularly in the new series of joint EMCDDA/Europol drug market reports (EMCDDA, 2016) but this remains a small part of the overall output of the agency.

While this form of networked, interdependent and collaborative practice would seem to accord with the ideal of networked governance, the EMCDDA retains a strong role in coordinating both the goals and working practices of the network. Individual NFPs may approach the agency to highlight issues of particular concern, issues such as drug driving, polydrug use or cannabis cultivation but there must be seen to be strong community incentives and ‘added value’ for the agency to support research in these areas. With a broad European view and sitting above domestic political concerns, the agency has a privileged position to identify wider trends and bring issues to prominence from what is claimed to be a neutral and objective, or evidence-based, perspective.

The legitimacy of the EMCDDA and the data it produces is heavily reliant on the perception of its value-free evidence-based approach yet the success of the agency
has been to promote a highly political problem definition of the drug phenomenon in Europe while simultaneously eschewing ideological or moralistic (and even democratic) concerns. Perhaps the most contentious issue which the agency has taken on is the issue of harm reduction which has gained wide currency throughout Europe, ‘despite some persistent ideological differences, most interventions related to the concept of harm reduction have been implemented in most Member States’ (Edwards & Galla, 2014, 946). The contentiousness of the concept of harm reduction must be understood in relation to its implicit acknowledgement of a pragmatic approach to drug use which recognises the impossibility of a drug free society. The success of the harm reduction concept in reconfiguring and rephrasing the nature of the drug problem and the possibilities afforded in terms of appropriate interventions can be seen in the way in which the term has been reappropriated by groups it was designed to delegitimise and marginalise. Understood initially as a direct challenge to the prohibitionist (particularly with the goal of a ‘drug free society) paradigm, the term has become increasingly used in law enforcement discourses (Harfield, 2006; Elvins, 2008).

**Conclusion**

The extent to which European drug policies are evidence based has become, depending on the perspective, either a defining feature of a distinctive European approach or else a source of criticism over the impact of research evidence on policymaking. Both these perspectives, we would argue, miss the point somewhat, reliant as they are on a material, instrumental rational view of evidence and particularly the evidence based policymaking endeavour. In this paper we have adopted a constructivist institutional perspective of drug policy which moves beyond a material understanding of evidence to examine the discursive role evidence plays in reconstituting power relations between different groups in the policy making process, in legitimating and validating specific forms of policy relevant knowledge and thus empowering or delegitimising particular actors and policy frames. Evidence, within the EBP movement, is necessarily presented as a neutral and value free alternative to the political sphere which is imbued with irrational and prerational concerns.
Depoliticisation is a particularly useful analytical frame with which to analyse these processes. Understood as a political strategy to deny the political nature of an issue, thus removing contingency and political agency, depoliticisation is clearly a strong feature of the contemporary EBP movement. While critiques of technocratic theory point to the partial (in both senses of the word) nature of expert knowledge, the EBP movement maintains a strong distinction between the scientific and the political world – even if it advocates for a greater influence of the former on the latter. The neutrality and objectivity of science, and particularly social science, is however a convenient fiction. Evidence is always the product of social construction, context dependent and strategic selectivity, there are few more appropriate arenas with which to examine this than the area of drug policy.

Drug policy is an inherently political policy area which raises fundamental questions relating to, among other things, individual freedoms and social harms and the public good, normative moral questions which are not reducible to scientific or rational logics. In seeking to remove or reduce the ambiguity and contingency in the area of drug policy it can been to have depoliticising effects which, in addition to reframing the policy area in public health terms, also serves to marginalise actors and groups who do not subscribe to the same logics of evidence. This process is particularly apparent in the case of European drug policy in which an institutional framework has been developed designed both to promote the greater use of evidence in drug policy as well as circumscribing the very nature of that evidence. Values such as scientific rigor, value neutrality and comparability are given precedent in evidential terms which puts law enforcement experts at a disadvantage. This depoliticisation of drug policy cannot be seen as an entirely elite, or EU, led strategy as it has received endorsement from a wide range of civil society groups and advocates for drug policy change. In both cases, from the top down and the bottom up, actors seek to escape the constraints of national politics in what is considered to be an apolitical space, which again, we must stress, is a highly political strategy.

References


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