

The Denunciatory Element

An Interdisciplinary Comparison of Japanese and English Narcotics Control Policies

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Abstract: *This thesis is a comparative analysis of the reasons for the differences in success of the drug prohibition policies of Japan, and England and Wales. These countries are both large, highly developed island nations with histories of overseas colonial expansion, parliamentary liberal-democracies, constitutional monarchies and ministerial civil services. Their drug policies, while using very similar laws, are vastly different in outcome. I will attempt to explain the differences in the extent of drug use in terms of Situational Action Theory (temptation, deterrence, and law-relevant morality), adapted to a national scale. This is achieved through a historical institutionalist analysis, supported by a comprehensive survey of the available nationwide statistical indicators, creating a thick description of the policy environment affecting each variable.*

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Introduction

1: Two Philosophies of Prohibition

Broadly speaking, there are two major philosophies of drug control today. The conservative view sees drug taking as morally wrong, and seeks to suppress it by reinforcing social norms against it, through education and legal deterrence¹. The liberal approach considers criminal punishment to be a harm and, whether because of the belief that drug taking is a personal choice, or as a result of a weighing of perceived harms, encourages the use of non-coercive means to counter the harms of drug use².

While some strategies of each approach can work together, the use of many key harm reduction policies for minimising the secondary harms may facilitate the spread of drug abuse, while many deterrence strategies for deterring usage may exacerbate secondary harms like disease. The perennial call to “evidence-based” policy is not value-free – which trade-offs are worth making is a matter of moral perspective. The law and morality are coextensive, and to a greater or lesser extent, the one reflects and influences the other. As John Braithwaite famously argued, the law does not function without its “denunciatory element”³. By compromising on the moral vision which underpins the prohibition of drugs, and by weakening the deterrent function of the law, many Western nations have weakened their capacity to prohibit illegal drugs. There are countries in the far East, however, without this characteristic.

2: Research Question

Why are some countries, given similar governing capacities, more successful at drug prohibition than others?

This paper compares England and Wales to Japan. They have very similar laws on the books regarding illegal drugs, but a reputation for vastly different outcomes: Japan has much lower rates of drug abuse. I treat drug abuse, quite simply, as a crime, which it is in both countries. According to Situational Action Theory, the causes of crime are a matter of several variables, of which three – *temptation* (the desire or availability of opportunity to commit a

¹ Euchner et al, 2013; Omori, 2013; Vaughn et al, 1995

² Global Commission on Drug Policy, 2017; Csete et al, 2016; Cohen, 1994

³ Braithwaite, 1989: 143

certain offense), *deterrents* (coercive disincentives to commit a certain offense), and *law-relevant morality* (belief that it is morally wrong to commit a certain offense) – are measurable at a national scale, and are affected by the state.

Because most statistical indicators have come under individual scrutiny, I will be using a comprehensive survey of the publicly available cognate nationwide statistical indicators to establish the degree to which drug abuse is present in society, and the extent of the independent variables indicated by Situational Action Theory. These include arrest and prosecution rates, public surveys on usage, morality and availability, drug seizure volumes, HIV infection rates, hospitalisation rates and overdose deaths. Combined with a qualitative analysis of national institutions, this theoretical framework and body of evidence is employed to determine the reasons for the differences in outcome between Japan and England and Wales.

3: Academic and Social Relevance

I have identified several gaps in the literature on drug policy. Firstly, there are few extant comparisons of East and West. The literature is dominated by Western countries, and often compares small nation-states to the highly pluralistic, continent-sized federal entity of the United States. The drug prohibition policies of East Asia are under-studied in general, and the North-East Asian democracies in particular (Japan; South Korea; Taiwan), which present unique cases of strict adherence to the spirit of the 1961 Single Convention on Narcotic Drugs.

While the far East remains strict, governing bodies within the pluralist, liberal West have deviated from the spirit of the prohibitionist convention. In many countries, even United States, with its reputation for excessive punishment, the law is enforced asymmetrically across and within jurisdictions, creating a conflict of lenient and punitive strategies, leading to paradoxical outcomes. This difference, between the laws on the books and the law on the street, is not always addressed. This has contributed to a popular narrative that the “war on drugs” has been strictly and seriously enforced, but has failed because of some inherent feature of human nature.

However in the West, selective enforcement of the law, and *de facto* legalisation at the State- or nation-level has been policy for more than a generation⁴. While no state so far has entirely legalised narcotics from lab to lip, Portugal has decriminalised possession of all drugs. This, while hailed as revolutionary, is in fact a codification of its longstanding prior *de facto*

⁴ Boekhout van Solinge, 1999.

policy⁵, a strategy partially adopted by the Netherlands until 1995⁶. The United Kingdom adjusted its sentencing recommendations to de-penalise possession in 1971. Ignorance of these developments has allowed those who advocate for full legalization to claim that prohibition cannot work. The absence of comparisons with the far East may well contribute to this narrative.

Furthermore, morality is seldom mentioned, not just here, but across the social sciences⁷. Prevailing moral attitudes are not ancillary to social science, they are central. And as I hope to demonstrate, these faults are interrelated – moral attitudes not only affect individuals' likelihood of engaging in certain acts, but shape the social pressures which guide them.

The West has been debating drug policy for decades, and this debate has far-reaching consequences. Many powerful institutions today push for the legalisation of various narcotics, particularly cannabis, which is often treated as harmless, or even a panacea⁸. The harms of “hard drugs” are widely known. But while they are widely thought to carry fewer risks, the use of psychedelics or “soft drugs” is not without danger. Contrary to prevailing liberal attitudes, there is significant evidence that cannabis is indeed a “gateway drug”⁹, as well as a potential teratogen¹⁰, and risks causing permanent psychosis¹¹. These effects have long been dismissed as scare tactics, but the medical community is far from considering such drugs harmless. Taking these facts into account, the deficit in the academic literature deserves to be taken seriously. I believe that this small study, which addresses these aforementioned gaps, will be of some use to potential readers in introducing a side of the debate over national drug policy which has not been much heard in the past decade.

⁵ Laqueur, 2015

⁶ Marlatt, 1996; van Brussel & Buning, 1988

⁷ Hitlin & Vaisey, 2010

⁸ Bar-Lev Schleider & Abuhasira, 2018; Pisanti & Bifulco 2017; Kashyap & Kashyap, 2014

⁹ Fergusson et al, 2006; Secades-Villa et al, 2015; Hall & Lynskey, 2005

¹⁰ Orsolini, 2017; Ramirez, 2016; El Marroun et al, 2009; Reece, 2009; Kozler & Koren, 2001

¹¹ Semple et al, 2005; Moore et al, 2007; Smith et al, 2009; Large et al, 2011; Marconi et al, 2016

Literature Review

This paper falls under the remit of three overlapping areas of study; legal compliance, drug policy studies, and comparative policy analysis. Drug policy studies involve several institutions, and are influenced by everything from school curricula to global geopolitics, joined by a focus on the state's role in influencing a single set of human behaviours – the consumption of intoxicating substances. This breadth of focus requires covering the range of policy, methods of comparison and various empirical findings of causal relationships under separate headings. The research on legal and policy enforcement efficiency is a small and disaggregated one, dispersed across several topics and disciplines. Comparative policy analysis is a large field, and so I will be focusing mainly on that which pertains to drug prohibition policy.

1. Legal Compliance

Theorists

The literature on legal compliance is a small but thinly spread field, with a few researchers across jurisprudence, economics and criminology. Most relate to simple interventions, or to corporate regulations. From the economic perspective, the leading paper is from John Becker. He investigated the self-interested mechanisms by which effective pressure can be applied to corporations, and how to evaluate the cost/benefit ratio of enforcement¹². As Becker argues, all agents are assumed to have the same motivations; the only variants being the circumstances and means. Similar views are held by theorists of classic criminology, who see criminals as rational parties who weigh up the risks and rewards of an action before taking it¹³.

But the incentives of corporations are different from those of individuals. As Stigler and others show¹⁴, corporations do tend to behave in more or less strict profit-seeking fashion, and their members hold limited liability. Yet individuals can be motivated by immaterial or normative constraints, and do not act strictly in “rational self-interest”. However justifiable the economic approach may be in the abstract, it has serious limitations. Nagin and Telep found

¹² Becker, 1968

¹³ Vold & Bernard, 1986

¹⁴ Posner, 2014; Levitt, 1995; Stigler, 1970;

that perceptions of the legitimacy of police and justice-procedural institutions were strong determinants of legal compliance¹⁵. The work of Tom Tyler, a prolific scholar in this area, emphasises that people are far more concerned with either fairness in outcome (redistributive justice) or fairness in procedure (procedural justice), than they are with simply winning; the latter being the main proposition of Thibault and Walker's Instrumental Model, which posited that people favour institutions and procedures to the extent that they perceive that they have the ability to control them, and thus indirectly the chance that it allows them to "win"¹⁶. The evidence to the contrary seems to indicate that there is a moral dimension to institutional interactions which must be taken into account.

The tendency to obey the law as such, is tackled in the recent emergence of general theories of crime. The leading paper is Gottfredson and Hirschi's *A General Theory of Crime*. It reduces the overall causes of crime to a single variable, self-control¹⁷. This model has dominated research since 1990, and has attracted some not-inconsiderable criticism. Most, even its supporters, agree that there are other significant variables at play¹⁸, like that social order requires multiple forms of control¹⁹, and order rests on norms, sanctions and shared values²⁰. While consistency may be key to the success of enforcement, the use of pure coercion results in an increase in criminal intent; noncoercive social support is important to maintain order²¹.

Self-control is seen by some as being mediated by morality; that is, it shapes the decisions made by those with the capacity for self-control²². The study of morality has been a long-neglected subject in sociology, and has since the start of the post-war period until very recently been in dramatic decline²³. But there is renewed interest, and several authors argue that the incentives to comply come not just from law enforcement, but from social pressure²⁴, that is to say, morality. Morality forms a mediating variable in the effects of both self-control and

¹⁵ Nagin & Telep, 2017

¹⁶ Thibault & Walker, 1975

¹⁷ Gottfredson & Hirschi, 1990

¹⁸ Kerley, Xu, & Sirisunyaluck, 2008; Tittle & Botchkovar, 2005; Vazsonyi et al, 2004; Vazsonyi et al, 2001

¹⁹ Burkett & Ward, 1993; Ellis, 1971

²⁰ Blake and Davis 1964

²¹ Brauer et al, 2019

²² Piquero and Tebbets 1996; Shoepfer & Piquero, 2006.

²³ See Hitlin and Vaisey (eds) 2010 for a comprehensive treatment of the historic elision of morality from the humanities.

²⁴ Kube & Traxler, 2011; Traxler & Winter, 2012; Antonaccio & Tittle, 2008; Fehr, Fischbacher & Gächter, 2002; Posner, 2000

deterrence, and has been the focus of a number of researchers in the past decade or so²⁵. This has some precursors in the literature in the 20th century²⁶, but has received little wider attention until recently²⁷. What these theorists generally say, is that one's actions tend to reflect, to some extent, one's moral attitudes and the moral attitudes noticeable in the social environment. Perhaps the most thorough general theory of crime based on morality is that of Wikström and Treiber, Situational Action Theory, which focuses on individuals and their decisionmaking processes in criminogenic settings, expanded in the theory section²⁸.

John Braithwaite emphasises the social/psychological function that punishment plays, and envisions an ideal cycle of crime, shame, and reintegration into society, which relies on the denunciatory function of the punishment not only for the future compliance of the punished or the threat that it holds over potential offenders, but also for the role consistent public punishment plays in reinforcing moral standards in society by increasing confidence that they are upheld²⁹. Similarly, Paternoster theorises that the effectiveness of law lies in the managing of public perceptions of the likelihood and severity of punishment³⁰.

Empirical research

For most corporations, instilling an internal ethic of legal compliance is a matter of managing the risk of litigation or prosecution – a mercenary motivation. The majority of sexual harassment policy compliance procedures grew out of this litigation-avoidance strategy³¹. The successful enforcement strategies are those which are predictable, and costly enough that punitive damages cannot be treated as an ordinary cost of doing business. Looking at internal enforcement procedures, Treviño et al found that the specific details of ethics policies were of less consequence than ethical leadership and a sense of consistency and fairness. They found what hurt most was a culture of blind obedience to authority, or an emphasis on self-interest³².

²⁵ Piquero et al, 2016; Hirtenlehner & Kunz, 2016; Hirtenlehner & Hardie, 2016; Svensson, 2015; Pauwels et al, 2011; Gallupe & Baron, 2014; Kroneberg et al, 2010; Svensson & Pauwels, 2010; Wikström & Svensson, 2010; Antonaccio & Tittle, 2008; Tittle et al, 2010

²⁶ Bachman, Paternoster, & Ward, 1992; Burkett & Ward, 1993; Grasmick & Bursik, 1990; Grasmick & Green, 1981; Hindelang, 1974; Mears, Ploeger, & Warr, 1998; Paternoster & Simpson, 1996

²⁷ Hitlin & Vaisey, 2010; Rogers, Smoak, & Liu, 2006; Wikström, 2011

²⁸ Wikström, 2010, 2004, Wikström & Treiber, 2007

²⁹ Braithwaite, 1989

³⁰ Paternoster, 2018

³¹ Dobbin & Kelly, 2007

³² Treviño et al, 1999

Several high-profile studies show severity of punishment generally does not correlate well with compliance, while perceived certainty of punishment does³³. Confirmation comes from studies which show that increased general security measures related to terrorism reduce all forms of crime³⁴. But empirical studies into whether specific enforcement results in compliance with specific interventions is uncommon, and can be summarised fairly briefly. In general, punishment of transgression is important for achieving group cooperation³⁵. Regarding alcohol, the verdict is clear: whether relating to drunk driving³⁶ or underage purchase³⁷, stricter enforcement is positively correlated with compliance; the same applies to seatbelt-wearing while driving³⁸. But these are simple interventions. For national drug prohibition, which carries with it complex cultural and economic dynamics, these data points, even if the effect sizes were particularly large, would not be more than very small pieces of a very big puzzle.

2. Essential Concepts in Macro Drug Policy

Drug prohibition, at least formally, is universal. All states have laws on the books prohibiting consumption, possession, trade or manufacture of several categories of intoxicating substances. The 1961 Single Convention, reiterated in the UN General Assembly Special Session (UNGASS) in 1998, sought to attain a “drug free world”, largely under pressure from the United States³⁹. However, legislators in both political entities recognise that this is not *absolutely* achievable; the aim is to reduce drug consumption to a practical minimum⁴⁰. The current treaties do not mandate a specific policy, except that sanctions of some kind must be placed on the possession of drugs⁴¹, and the UN currently prescribes abandoning criminal penalties for possession⁴². This allows a lot of leeway for signatories, and the degree and manner of enforcement can vary considerably⁴³. The retreat of the United States as an agenda setting power in this policy area has opened the way for a liberal turn driven by Western Europe

³³ Nagin, 2018; Chalfin & McCrary, 2017; Klepper & Nagin, 1989; Grasmick & Bryjak, 1980

³⁴ Klick & Tabarrok, 2005

³⁵ Albrecht, Kube & Traxler, 2017

³⁶ Mann et al, 2001; Homel, 1994; Jones, 1988

³⁷ Scribner & Cohen, 2001; Wagenaar & Wolfson, 1994

³⁸ Lee et al, 2015; Bhat et al, 2012; Rivara et al, 1999

³⁹ Levine, 2002

⁴⁰ Caulkins et al, 2005

⁴¹ INCB, 2019.

⁴² UNCEBC, 2019

⁴³ Bewley-Taylor, 2003; Levine, 2002; Nadelmann, 1990;

and the Global Commission on Drug Policy in 2011; different global regions have objected to this shift strongly, notably China, the Middle East and the ASEAN nations⁴⁴.

Baleckova et al conceptualise drug policies as existing on a spectrum, from decriminalised to “punitive”⁴⁵. But policies do not vary in a single dimension, which makes this a rather vague characterisation. Alternatively, one may organise policy according to the moral beliefs of their proponents. Under this view, there are two broad moral philosophies, each with varying practical approaches. The liberal view sees drug taking as a personal choice, and therefore considers criminal punishment to be a harm⁴⁶. The conservative view sees drug taking as morally wrong⁴⁷.

The traditional policy areas are enforcement (the justice and security systems), treatment (healthcare) and prevention (education), but they each rely on each other to be successful. Common terminology for legal approaches includes criminalisation, decriminalisation, and legalisation. These neologisms refer respectively to policies imposing legal penalties, policies not imposing legal penalties, and legal taxation and regulation, but the specific referents of the terms are not universally agreed upon. Stevens et al refer to three alternatives to criminalising possession: depenalisation, diversion, and decriminalisation. Depenalisation is the reduction of the use of existing sanctions: a choice not to enforce existing law. Diversion refers to policies which direct drug users to health or reform programmes. Decriminalisation is the removal of criminal sanctions from the statute books⁴⁸. Babor et al refer to different tools of policymakers; preventive education, services for users (injection rooms, needle exchanges, etc.), supply control (combating manufacture and organisation), laws and regulations, and punitive sanctions⁴⁹.

Several authors⁵⁰ emphasise the difference between “laws on the books” and “law in practice”, first defined by the Hulsman commission of the Netherlands in 1971⁵¹. This is key to understanding the range of drug policy – while many countries are judged on the strength of their penal code, this has limited relevance. Baleckova et al⁵² found that laws in practice varied

⁴⁴ Klein & Stothard, 2018; Bewley-Taylor & Jelsma, 2012

⁴⁵ Baleckova et al, 2017

⁴⁶ Global Commission on Drug Policy, 2017; Csete et al, 2016; Cohen, 1994

⁴⁷ Euchner et al, 2013; Omori, 2013; Vaughn et al, 1995

⁴⁸ Stevens et al, 2019

⁴⁹ Babor et al, 2010: 101

⁵⁰ Baleckova et al, 2017; Laqueur, 2015

⁵¹ Cohen, 1994

⁵² Baleckova et al, 2017

considerably over time, while the laws on the books were largely static. Glossing over policy aspects not codified in law can result in a great deal of confusion over policies, as well as public misconceptions; Portugal for example, barely enforced its drug laws at all from 1975-2000, but gained a reputation for a successful liberalisation policy for merely formally changing its books to reflect the streets⁵³. Wide variation in enforcement strategy within countries has been noticed by several authors⁵⁴, and is considered an important complicating factor by many who study the United States. Policymakers over politically pluralised polities such as the United States, India, the European Union and Australia have to contend with local variations in policymaking which complicate national generalisations. Even within small countries like the Netherlands, local regions buck the trends set by central government⁵⁵.

The laws in many countries vary not only in how they punish, but in what they punish, and when. Different drugs tend to be classified on a schedule in order of perceived severity, in order to inform sentencing guidelines and prioritise prevention measures⁵⁶. Many make more than one category distinction, and some tailor their penal code to individual chemicals, but these are seldom constructed according to medical research, even today⁵⁷. The Hulsman Report, which created the first modern scheduling distinction, based its findings on no medical research whatsoever⁵⁸. Today, the hard/soft drug distinction is still made in many countries, though measuring the danger of any particular substance is disputed epistemic territory⁵⁹.

A Note on Alcohol and Tobacco

In discussing the enforcement of drug prohibition, alcohol and tobacco are relevant and important topics. While alcohol and tobacco have often (casually) been thought of as not being “drugs” because of their traditional legal status, alcohol has in the past (and in the present in some countries) been treated in the same way, and is widely recognised as one of the most harmful of intoxicants. The standard argument against prohibition⁶⁰ often generalises across categories of chemical dependency, and indeed there is support from the field of epidemiology

⁵³ Laqueur, 2015

⁵⁴ Pacula & Smart, 2017; Miron, 1999

⁵⁵ Van Ooyen-Houben et al, 2014: 39 E.g., Roosendal-Bergen op Zoom banned coffeeshops since 2008.

⁵⁶ Kalant, 2010

⁵⁷ Bewley-Taylor et al, 2014; Caulkins et al, 2011

⁵⁸ Cohen, 1994

⁵⁹ Bewley-Taylor et al, 2014

⁶⁰ Most cited examples of which include the Cato Institute (Thornton, 1991) and the Johns Hopkins-Lancet Commission on Drug Policy (Csete et al, 2016)

that the division between alcohol and tobacco, and other chemical dependencies, is an arbitrary one⁶¹. But considering that all other repressive policies (whether in the form of taxation, zoning, licensing hours or advertising bans) have generally shown to result in a reduction in the consumption of alcohol⁶² and tobacco⁶³ and their attendant harms, to point out continuity is to suggest an argument for suppression of addictive substances in general.

Historical analysis of the effects of the enforcement of alcohol prohibition, both in the United States and in Northern Europe, shows that it had the effect of significantly reducing consumption, though there is some dispute to what extent this is the result of enforcement or social pressure⁶⁴. In general, these researchers use data from liver cirrhosis patients, arrests and seizures as their main indicators. Such are not available for most of Russia's Soviet era, but its different periods of suppression through tax and prohibition showed a dramatic positive effect on alcohol mortality when employed. The Soviet regime, which soon found alcohol to be a rich source of state revenue, abandoning its early position of total prohibition gradually through the 20s, eventually introduced state-backed alcohol production. They subsequently suppressed figures on indicators of alcohol consumption until the 1980s⁶⁵.

Alcohol remains a particularly important discussion point in the discussion on drug prohibition. There appears, for many to be an arbitrariness of the licit/illicit drug distinction – countries which consider drug taking to be anathema to their moral constitution are often relatively comfortable with regular and widespread recreational abuse of alcohol, which is at least as hazardous to health as many other substances. Evidence suggests that many people will substitute drug consumption for alcohol consumption, though the fact that the heaviest drinkers are Northern Europeans⁶⁶ (with the Japanese at a similar level⁶⁷), appears to have more to do with drinking norms than some baseline human need for inebriation. This is especially plainly indicated by certain statistics from Sweden leading up to their strict rationing policy, which show that much of society went dry as social pressure built towards legislation⁶⁸. The importance of prevailing moral attitudes in this area, is thus of high significance.

⁶¹ Courtwright, 2005

⁶² Parry et al, 2011; Elder et al, 2010; Middleton et al, 2010; Paschall et al, 2009; Chaloupka et al, 2002

⁶³ Hoffman et al, 2015; Chaloupka et al 2011; Hopkins, 2010; Blecher, 2008; Levy et al, 2004

⁶⁴ Dills & Miron, 2004; Blocker, 2006; Hall, 2010

⁶⁵ Nemtsov, 2011; Stickley, 2009; White, 1996; Weissman, 1986

⁶⁶ World Health Organisation, 2019: 40

⁶⁷ Tsugane, 2012

⁶⁸ Nycander, 1998

3: Comparative Policy Analysis

In dealing with cross-cultural comparisons, divining the reasons for the lack of expected correlations requires moving beyond enigmatic images of ineffable cultural essences. This is particularly the case for Japan, which tends to attract a peculiar fascination, particularly in criminology. Japan bucked the expectation that rising affluence and urbanisation would result in rising rates of crime, achieving a fraction of the rate of criminal offenses of the United Kingdom, United States, or German Federation⁶⁹. But this is a trait shared by Switzerland⁷⁰, whom nobody would mistake for Asian. Whatever makes Japan different, it would be irresponsible to infer that it is an exclusively Eastern characteristic.

Culture is seen by some as a neglected variable in policy analysis⁷¹. But the problems with introducing “culture” into matters is that it is not a well-defined variable anywhere, and tends rely on essentialisms and ideal characterisation, relying on highly abstract theories. Aside from a special issue of the Journal of Comparative Policy Analysis from 2002, there has been very little interest in introducing cultural theory to specific policy analysis. The generalisations cultural theory makes about societies are at a level of abstraction far above the what is required to make serious arguments about government mechanisms. In explaining the Japanese political system, Curtis⁷² felt the need to dismiss the tendency to attribute differences to ineffable cultural essences:

Japan in this century has experienced militarism and pacifism, authoritarianism and democracy. There was a two-party system in the 1920s, a coalition government for ten years after the war, one-party dominance for nearly forty years, and coalition government again in the 1990s. There have been times in Japan’s modern political history marked by harmony and social peace, and periods where instability and conflict predominated. One of the standard Western-language works about Japanese politics in the 1930s was titled Government by Assassination. Although Japanese place a high value on consensus building, the “spirit of harmony” (wa no seishin), and the avoidance of overt conflict, modern Japanese history is replete with intrigue, violence, and radical change. Culture cannot explain these variations unless one so devalues the concept that it stands for nothing more than whatever surfaces as the dominant pattern of social interaction at any particular point in time.

⁶⁹ Hamai & Ellis, 2006: 157

⁷⁰ Miyazawa, 2012

⁷¹ Geva-May, 2002; Swedlow, 2002

⁷² Curtis, 1999: 11

Considering all of this, it seems wise to avoid abstract theoretical models of culture, and better to focus on tangible elements, e.g., the adversarial British Common Law system versus the semi-inquisitorial Japanese Civil Law system.

Methods of comparison

Many government agencies prefer to sort indicators of use and harm according to the departments which will be tasked with addressing their findings⁷³. The European Union uses “themes” to divide them into three areas, covering law enforcement, harm reduction, and systemic factors which facilitate the market⁷⁴. UK drug strategy has its own three goals: “reducing the demand for drugs, restricting supply, and supporting drug users towards recovery”⁷⁵. These resemble what Houberg et al call the “common model”⁷⁶, which sorts by impact measurements: supply reduction, demand reduction, and harm reduction, and Ritter et al’s “four pillars”: control, treatment, prevention and harm reduction⁷⁷. Several articles which tackle the issue of comparative methodology have been critical⁷⁸, and many have attempted to form a general theory for how to approach the subject⁷⁹. This has its pitfalls.

Drug policy programmes can be seen as complex interventions. Systematic means of understanding complex interventions are not common, and tend towards sweeping theoretical or ideological generalisations⁸⁰. Generally, it is thought by realist scholars of complex intervention analysis that they ought to be dealt with by a detailed description of their actual policy components, and that the evaluation of processes and outcomes need to be combined, rather than relying on monolithic theories. The standard-bearing paper on such methodology is that from the British Medical Research Council. In measuring outcomes, the literature prescribes long term repeated analysis, and a distinction between the single primary desired outcome, and secondary desirable outcomes⁸¹.

⁷³ Singleton et al, 2018

⁷⁴ EMCDDA, 2017

⁷⁵ Home Office, 2014: 1

⁷⁶ Houerg et al, 2018

⁷⁷ Ritter et al, 2016

⁷⁸ Houerg et al, 2018; Ritter et al. 2016; Burris 2017;

⁷⁹ Cacace, Ettelt, Mays, & Nolte, 2013; Schmitt, 2013; Marmor, Freeman, & Okma, 2005

⁸⁰ Clark, 2013

⁸¹ Medical Research Council, 2008; Petticrew, 2011; Clark, 2013

Accounting for context is necessary, and controlling for it is nearly impossible; keeping focus on the ideals of policymakers is crucial to measuring success⁸². But complex, contextualised models come with their own pitfalls. For example, the generalised RE-AIM (reach, effectiveness, adoption, implementation, maintenance) model attempts to evaluate policies in terms of the number of individuals incorporated or processed at various organisational levels. This model is, by the author's own admission, a model which has turned out to be too complex and subtle for most who employ it⁸³.

The biggest issue, however, is with differences in data collection. Metrics used by the major international drug monitors, like EMCDDA and UNODC have been criticised for failing to take into account market changes and cultural differences. Different countries have different methodologies, which are informed by different requirements⁸⁴, and some may exclude important data related to risks and harms associated with drug consumption (e.g., statistics on the role of drug consumption in homicide⁸⁵), or entire locations, or simply not have national-level data on the matter. While many comparisons involve complex statistical models, at the low sample sizes that international policy comparison allows for, attempts to demonstrate significant correlations can often amount to spurious rigour, giving the impression of a soundness and reliability that such tools cannot provide - the whole comparative literature on drug policy consists of small-n studies (a range of n=2, 66)⁸⁶.

But this is necessitated by the complexity of the topic; unless a great number of variables can be excluded, and unless an inhuman quantity of detail is processed, it simply is not practical to analyse very large quantities of jurisdictions. This is especially true when there is no agreed-upon approach. While many scholars lament the dearth of objective standards by which to measure countries' performance⁸⁷, this does not stop the ubiquitous call (nor the obvious need) for evidence-based policy. This begs the question of what can be measured in the first place.

⁸² Marchal et al, 2013; Pawson & Tilly, 1997

⁸³ Kessler et al, 2013. If nobody else can understand your model, perhaps it might be worth a revision.

⁸⁴ Singleton et al, 2018

⁸⁵ De Bont et al, 2018

⁸⁶ Ritter et al, 2016 see table p42-44

⁸⁷ Ritter et al, 2016

5: Measuring Drug Use

Measuring what is happening in an element of society that by its very nature is covert is obviously challenging, and the illicit drugs market is no different⁸⁸. Most of these scholars must inevitably grapple with the same common problems. The most challenging is establishing the actual extent of drug use, ironically the most common variable of comparison⁸⁹. The United Kingdom has in the past used a highly complex multivariate index to compare the harms of various drugs and the policy's impact on them⁹⁰. But the UK has developed something of a reputation of cooking the books, specifically by using highly complex and opaque indexes to track policy – complex indices based on a large variety of flexible measurements leave plenty of room for manipulation, since bias can be introduced in the operationalisation of each variable, which produce a compound effect with each additional index component⁹¹.

The number of papers which attempt to systematically determine the actual extent of drug use is small in itself⁹². Survey data, while acknowledged to be imperfect, is widely used as an indicator, but the framing of questions matters. Differences and changes in policy in Western Europe have not been shown to contribute to statistically significant differences in indicators of use⁹³. Many, even senior researchers, prefer simple indicators. In a comparison of the Netherlands' policy with the USA, Australia and some West European neighbours, MacCoun & Reuter took the simple option of comparing survey data on lifetime and past-year cannabis use, and the use of other drugs across countries⁹⁴. Occasionally simple indicators can be innovative. Feng et al used the measure of drug seizures per capita as a supply-side indicator to compare Korea and Taiwan⁹⁵, and Feng et al may be the first to have used it. Others have measured drug metabolites in urban wastewater⁹⁶, or measuring the relative strength/purity of drugs (dealers will often cut their supply with a filler product to make up for supply shortfall)⁹⁷. But this is not performed regularly across jurisdictions, and operating such a research project across a large number of countries is expensive.

⁸⁸ Royuela et al, 2009; Topp et al, 2003

⁸⁹ Kilmer et al, 2015

⁹⁰ MacDonald, 2005

⁹¹ Patrick, 2011a; 2011b

⁹² Kilmer et al, 2015

⁹³ Reuband, 1995; Kilmer, 2002

⁹⁴ MacCoun & Reuter, 2001

⁹⁵ Feng et al, 2016

⁹⁶ Castiglioni et al, 2016

⁹⁷ Topp et al, 2003

Lifetime drug use prevalence is the most common indicator, but it can hide recent lulls in drug use. Past-year use is stronger, but the ideal measurement is the proportion of heavy users, which is unfortunately mostly unavailable. The quantity of drugs consumed in a country are difficult to ascertain, and while drug seizures can be seen as an indirect measure, the relation between drugs consumed, and quantities trafficked are nearly impossible to ascertain. Arguably the most reliable are healthcare indicators, which are less susceptible to the observer effect present in police statistics and public opinion surveys. Healthcare indicators include injection-transmissible diseases such as HIV or hepatitis, the number of emergency room visits, the number of mental ward admissions and the number of drug-related fatalities, though the latter can be difficult to measure at the best of times. Victims of drug-trade violence can end up as regular homicide statistics, and chronic hard drug users can be recorded as unqualified victims of organ failure. HIV tends to be more robust a measure, since across the world, tracking the spread of this disease is a serious priority, and tends to include the likely path of infection.

Several authors have remarked on the complexity of drug market prices as an outcomes indicator.⁹⁸ Freeborn found “a negative, significant relationship between dealer enforcement and pure-gram price and a positive, significant relationship between consumer enforcement and pure-gram price”, driven by dealers and users respectively accepting higher transaction costs to avoid risk of arrest⁹⁹. Plus, drug price estimates can vary for a number of reasons, so while high drug prices are often taken as a mark of success in suppression, it is seen by senior researchers as an extremely slippery metric¹⁰⁰. Estimating precise figures for illicit trade is extremely difficult. A closer look reveals dubious methods:

The UN figure is based on multiplying global quantity consumed by something approximating US levels for prices. The range for US heroin retail prices cited is \$70–\$900 per street gram, which would produce total global sales of \$50 billion to \$641 billion, given estimates of total production minus seizures. The UN analysts, after reporting the midpoint of this huge range (\$346 billion), then choose a lower price of \$150 per gram, reflecting data from Western Europe and Oceania (presumably mostly Australia), to produce an apparently conservative figure of \$107 billion for heroin.¹⁰¹

⁹⁸ Bright & Ritter, 2010

⁹⁹ Freeborn, 2009

¹⁰⁰ Caulkins and Reuter, 2010

¹⁰¹ Reuter & Greenfield, 2001: 160

In the particular case of Japan, there is little critical engagement with the reliability of their data sources (at least in English literature), and only one peer-reviewed paper regarding their utility for representing the state of drug abuse in the country¹⁰². David Brewster, an advocate for liberalisation, puts their statistics to a heavy grilling, pointing out several items mentioned elsewhere in this paper – that the Japanese police have in some prefectures been caught massaging crime statistics downward, and that the Japanese justice system is geared towards confession-based convictions. He criticises the Nationwide General Population Survey for its low sample size, which disqualifies any analysis which breaks down the sample by prefecture or age group. He recommends the use of drug seizures and hospital records as an indicator, though as we shall see, these are not favourable to his argument.

In reality, it may be impossible to know the actual extent of any of the phenomena we are measuring. But this is not unique to studying drug abuse; it applies to the whole of the social sciences, a notoriously woolly field of inquiry. Nevertheless, based on the opinions of senior professionals in this field, it appears that the more indicators used, the more multidimensional the picture, and thus the more reliable the general impression created. But as the adage goes, the facts do not speak for themselves – even given factual statistics, we must interpret them.

5: The Evidence

Biases

Currently and historically, there have been several systemic biases in research. Drug policy studies in the United States (which dominate English language literature) are predominantly state funded, and tend towards measuring macroscopic trends and addiction science. There is also an overwhelming focus on the United States, where police drug enforcement strategies have historically been “typically reactive, unfocused and generally failed to disrupt street-level drug market activity”¹⁰³. Aside from the United States, the only regular stand-in for strict conservative policy in the West is Sweden. Policy research today is overwhelmingly pro-liberalisation, due to the domination of research by liberal advocacy groups, and the official position of the UN and EU¹⁰⁴.

¹⁰² Brewster, 2018

¹⁰³ Mazzerolle et al, 2007

¹⁰⁴ O’Gormon et al, 2013

In the private sphere, the Robert Wood Johnson foundation was dominant until 2006, and currently the Liberal organizations, the Open Society Foundation and GCDP, lead research funding internationally¹⁰⁵. The vast majority of remaining drug research organisations actively aim for (and only publish research providing evidence in favour of) further liberalisation. But before the GCDP became the agenda-setter in the UN, research in the UN was dogmatic in the other direction, resisting any fundamental criticism of the extant prohibitionist position, praising the Swedish model¹⁰⁶.

In general, there has been little funding for research into law enforcement relative to treatment. For treatment, specific interventions are identified and tested, whereas law enforcement tends to be described in broad strokes with little granular focus¹⁰⁷. Papers by health professionals tend to promote increased liberalization and advocate a public health approach, with the common accompanying suggestion that police-based strategies are without merit, and that police require the oversight of other (usually medical) institutions in order to do their work¹⁰⁸. It is not hard to see why doctors are critical of law enforcement, when police work inevitably involves the use of violence against those they would see as patients.

Enforcement

The illegal drug trade involves a great deal of violence, and prohibition requires coercion. Prohibition enforcement is strongly connected to short term increases in homicide, due to increased competition caused by territorial and economic pressures on the traders of the substances¹⁰⁹. So far, there is only one long-term (1900-1995) study on the matter, which concludes that prohibition enforcement does significantly increase homicide amongst competing criminal organisations, but concedes that the temporal and jurisdictional variation in American enforcement policies cannot be accounted for in the study, and weaken the case for the conclusion¹¹⁰. Such studies also do not demonstrate a monotonic relationship between enforcement and violence, preserving the possibility that the rise in violence is a short-term consequence of crackdowns, rather than a phenomenon with a continuous causal correlation.

¹⁰⁵ Kilmer et al, 2012

¹⁰⁶ Thoumi, 2002

¹⁰⁷ Reuter, 2017

¹⁰⁸ Kerr et al, 2005; Csete et al, 2016

¹⁰⁹ Werb et al, 2011; Reuter, 2009

¹¹⁰ Miron, 1999: 80

Drug prices are strongly determined by the likelihood of arrest and the severity of punishment, but other factors, such as porous borders, vertical integration of manufacture and distribution, competition among cartels, and globalisation, can sometimes eclipse this effect, and drive down prices even as enforcement increases¹¹¹. The fall of drug prices has been shown to affect the rate of hospital admission for drug overdoses¹¹², indicating that consumption and ease of obtaining drugs are closely related. Reduction in the market supply of a given drug has been shown to lead to cause some users to leave the market, though others switch their drug of choice¹¹³. The confluence of these facts can have dramatic effects. While the price of most hard drugs fell dramatically from 1980-2000, producing widespread concern, the United States ramped up their “war on drugs”. The confluence of these trends produced a 15-fold increase in incarceration rates for drug offenses¹¹⁴. The United States of course has its own problems with police strategy, which tends to be driven by arrest quotas and budget restraints, leading to high levels of frivolous incarceration with little impact on organised crime, which damages police-community relations, further reducing legal cooperation¹¹⁵.

Since one of the two large-scale functions the police perform is supply reduction, the ability to control the borders is paramount. Middle Eastern efforts to control drug traffic are frustrated by porous borders, refugee crises and ongoing conflicts¹¹⁶, or by low levels of state penetration into vast, rough and sparsely populated terrain, through which the trade in illicit goods runs relatively little risk from government intervention¹¹⁷. Large states like Russia, China and the United States generally have great difficulty in securing their borders¹¹⁸. Since drugs are predominantly manufactured or grown in poorer parts of Asia and Latin America, the ability of states to control the influx has a significant impact on availability. Europe has little control over drug trafficking, and the vast majority of amphetamines are now produced in the Netherlands and Czechia, two countries with comparatively lenient enforcement¹¹⁹.

Korea, having almost entirely eliminated domestic production of drugs since the late 1970s, has refocused its attention to border control, with a specialised foreign policy advocacy group dedicated to fostering international cooperation with their “war on red drugs” – a reference to

¹¹¹ Grossman et al, 2002; Storti & de Grauwe, 2009

¹¹² Dave, 2006; Caulkins, 2001

¹¹³ Topp et al, 2003

¹¹⁴ Kuziemko & Levitt, 2004

¹¹⁵ Bronstein, 2014

¹¹⁶ Arslan et al, 2015

¹¹⁷ Lacher, 2012; Shaw et al, 2014

¹¹⁸ Golunov, 2007; Astorga & Shirk, 2010; Omelicheva & Markovitz, 2019

¹¹⁹ European Monitoring Centre for Drugs and Addiction, 2016: 124-125

the overwhelming source of Korean methamphetamine being China and North Korea¹²⁰. Sweden's widely praised and highly effective drug repression scheme lost much of their effectiveness after 1990, with the simultaneous advent of an economic recession and the opening of borders to the European Union¹²¹. It seems fair to suggest the possibility that the effectiveness of strict drug control regimes maybe highly dependent on effective border control.

Comparing the States of the United States with the nations of Europe or the states of Australia generally shows that most forms of relaxation of drug enforcement leads to higher use and dependency¹²². Burkett and Ward found that deterrence was found to be irrelevant among those who believed that cannabis consumption was a sin, but functioned on those who felt it was not¹²³. Gallupe and Baron find that morality has a significant effect on hard-, but not soft-drug use¹²⁴. However, they conceptualise morality as a linear, measurable quality ("high" or "low" morality), rather than a propositional attitude towards authorities or rules, ignoring the capacity for deeply-felt moral beliefs to conflict with laws deemed immoral, and as such underappreciate the effect of the beliefs of those who consider "soft drugs" to be harmless or even beneficial. Clearly, law enforcement is only part of the picture, and preventing people from using in the first place is far more preferable.

Prevention

Most large-scale meta-analyses agree that school-based programmes have some positive impact. But which ones work, and which do not is not agreed upon¹²⁵. These programmes are called "preventive" for a reason; their effectiveness is negligible once consumption of the substance has already begun¹²⁶. Lack of nuance or realistic depiction of drugs and the actual situations in which people will encounter opportunities to use them, tend to lead to distrust and resentment of anti-drug use advice¹²⁷. Some meta-analyses conclude that the best results do not come from fear-based programmes or from increasing knowledge, both of which can be harmful in isolation, but instead from teaching norms and protocols towards avoiding use and

¹²⁰ Park Ji-Young, 2016

¹²¹ CAN. 2019

¹²² Cérda et al, 2012; Choo et al, 2014; Pacula et al, 2015; Ritter et al, 2016

¹²³ Burkett & Ward, 1993

¹²⁴ Gallupe & Baron, 2014

¹²⁵ Cuijpers, 2002a; Emmers et al, 2015

¹²⁶ Faggiano et al, 2010

¹²⁷ Caputi & McLellan, 2017; Coggans et al, 1999

influence¹²⁸. Nevertheless, the overview of which curriculum ingredients work suggests that these generalisations are not certainties¹²⁹. Some advocates for education reforms believe that “safe” drug use should be encouraged instead of abstinence¹³⁰, however, this radical approach is criticised for its lack of empirical grounding¹³¹.

The takeaway from the studies quoted here appears to be that trust and respect for teachers’ authority on the matter, and a focus on norms and social skills are highly important, and early and comprehensive delivery of the education program is essential. Programmes which rely on cartoonish scare tactics or stigmatisation fail, as do liberal, non-judgmental ones. There appears to be some sort of intangible balance, relying on effectively establishing cohort consensus on willingly complying with morality and authority, at least where drugs are concerned.

Healthcare & Harm Reduction

Harm reduction describes a certain approach to vice laws. It is in this essay part of what is described as the liberal approach – the priority is to make vices safer rather than reducing the incidence, since the incarceration and prosecution of breakers of “morality laws”¹³² is often considered a significant harm to the user which should be part of the calculus of the policymaker; specifically, the harm of prosecution should never be greater than the harm of the isolated act¹³³. The drug-use related harm reduction strategies which are favoured by the leading agenda-setting institutions today are mostly centred around medicocentric interventions – needle exchanges, maintenance therapy, drug testing, etc, and are favoured by the healthcare community over justiciocentric interventions like the enforcement of prohibition, hence the alternate name, the “public health” approach¹³⁴.

Contemporary harm reduction evolved from a number of responses to the explosion of drug use in liberal jurisdictions in the 1980s – the UK, Australia, Canada and the Netherlands – and centred on responses to the growing HIV crisis, and centred on the use of needle exchanges and free blood tests pioneered by the Dutch in 1984, though these were first articulated by

¹²⁸ Caputi & McLellan, 2017; Sheer et al, 2018; Foxcroft & Tsertsvadze, 2012

¹²⁹ Emmers et al, 2015

¹³⁰ Rosenbaum, 2015; Cohen, 2012; Nicholson et al, 2013

¹³¹ Caputi & Sabet, 2016; McBride et al, 2004;

¹³² Usually, this refers to prostitution, homosexuality, sexual discrimination, drug use, etc. This is an odd neologism – are not laws against rape, murder, theft or pollution “morality laws”? It is also arguably an unfair smear to group laws against prostitution and drug use with discrimination against LGBT and women, but I digress.

¹³³ Engelsman, 1989: 213

¹³⁴ Csete et al, 2016; Ritter & Cameron, 2006

junkiebonden (“junkie’s unions”) in the Netherlands as early as 1980¹³⁵. As open drug scenes exploded in the decades following decriminalisation, pressure from the public was ignored, until the *junkiebonden* pressurised local left-wing policymakers in Amsterdam, where over 1% of the population were heroin users¹³⁶. This led to a reform in 1995 - clearance of public drug scenes by police, an introduction of age restrictions in “coffeeshops” (soft drug retail outlets) and the opening of special drug consumption areas¹³⁷.

Many medical interventions grew out of an effort to treat drug addiction as a medical condition. The earliest state-sanctioned interventions of this kind were the now little-known addiction maintenance programmes, which originated in England in the 1920’s (more below). When Sweden trialled their own addiction maintenance programmes in the late 1960s, prison doctor Nils Bejerot became the first man to produce a proper epidemiological study of the effectiveness of this practice¹³⁸. It turned out to vastly exacerbate the spread of injection drug use, and was, following his report, discontinued amid public ignominy¹³⁹.

Of all harm reduction strategies, needle exchange programmes are the most widely used and researched¹⁴⁰. They mostly target chronic, or recovering users, assisting those attempting to get off the drug. Some studies show it is effective at reducing infection-risking behaviour (e.g., sharing needles, reusing used needles) to some degree¹⁴¹, though its main aim tends to be reducing HIV and hepatitis infections, at which it is also deemed successful by some meta-analyses¹⁴². However some report an *increase* in HIV seroconversion among exchange program populations¹⁴³, and most are inconclusive or tentative, several remarking on statistical and ideological biases¹⁴⁴.

Supervised injection sites aim to tackle the same issues as needle exchanges, but with the additional benefit of providing public order by keeping users off the streets and close to medical supervision, reducing overdose and improving hygiene, first appearing in the Netherlands and Switzerland¹⁴⁵. To date there has been only one scientific meta-analysis of its impact, but this

¹³⁵ Marlatt, 1996: 784

¹³⁶ Van Brussel & Buning, 1988: 295-6

¹³⁷ Tweede Kamer, 1995

¹³⁸ Bejerot, 2017

¹³⁹ Boekhout-van Solinge, 1997: 44-45

¹⁴⁰ Ritter & Cameron, 2006: 614

¹⁴¹ Wilson et al, 2015; MacArthur et al, 2014

¹⁴² Csete et al, 2016; Wilson et al, 2015

¹⁴³ Mir et al, 2018

¹⁴⁴ Fernandes et al, 2017; Davis et al, 2017; MacArthur et al, 2014; Sawangjit et al, 2017

¹⁴⁵ Ritter & Cameron, 2006:

has been retracted due to methodological errors¹⁴⁶. Systematic literature reviews show research is dominated by the examples of Vancouver and Sydney, and tend to favour the strategy, highlighting its synergistic impact on both public order and public health, reducing overdoses, syringe littering and needle sharing, while having no significant impact on trafficking or rates of use in the population, and introducing users to addiction treatment¹⁴⁷.

Opioid substitution therapy is also a significant harm reduction strategy, prescribing less euphoria-inducing and longer-acting opiates (buprenorphine, methadone) to opiate addicts (heroin, morphine, Vicodin). It has a modicum of a positive effect, on risky behaviour such as needle sharing¹⁴⁸, but the overall effect on the general drug using population is inconclusive. All three of the big harm reduction interventions seem to have some effect on hepatitis C transmission¹⁴⁹, but the natural selection bias – those who approach and use these facilities tend to already exhibit the desire to get clean. All studies indicate the need to create safe spaces free from judgment or police presence. Ultimately however, all of these programs require the police to turn a blind eye, and whether they have a positive or negative effect on the prevalence of use in the wider community has only ever been thoroughly studied once, so conclusions can only be speculative.

¹⁴⁶ May et al, 2018

¹⁴⁷ Potier et al, 2014; Kennedy et al, 2017

¹⁴⁸ MacArthur et al, 2012

¹⁴⁹ Turner et al, 2011

Theory

The main proposition here is that crime is a function of self-control, self-interest and moral attitudes. What this means is that a) the ease of committing a crime, b) the consequences of committing that crime, and c) one's moral attitudes towards the commission of that crime, work to increase or decrease the likelihood of one committing it. Each person who acts on a crime does so because of a combination of personal and environmental motives, many of which are under the control of the state, and can thus be examined from the perspective of national policy. These variables are also closely interrelated. According to John Braithwaite social shaming and shared moral judgment lie at the centre of crime prevention, but success relies on criminal law, because:

[...] putting aside the problems arising from the insufficiently preventive nature of this strategy, [decriminalisation's] fundamental flaw is that it naïvely assumes that social control can work when drained of its denunciatory element¹⁵⁰.

This is a factual aspect of any criminal justice system – it reflects the power of moral judgment exercised by the authorities on behalf of society. In other words, as legal systems relax enforcement, they encourage those who would flout the law, and demoralise those who would uphold it. At the social level, absence of moral judgment should have a similar effect: normalisation. While it cannot be said to guarantee such an outcome, failure of institutional authorities (whether police, politicians, educators or popular media) to denounce a given practice create room for its proliferation. This requires a broad approach to thinking about the issue at hand, grounded in meaningful considerations and thick descriptions.

1. Historical Institutionalism

Pierson and Skocpol characterise the Historical-Institutionalist approach as being comprised of three distinguishing features. The first is the focus on “substantive agendas” – broad questions which examine fundamental features of society as a whole. The second is a preference for “temporal arguments” – not historicism, so much as a focus on how the passage of time, processes of change, and historicist perspectives borne by the culture at large affect

¹⁵⁰ Braithwaite, 1989: 143

the transformation of institutions. Finally, it is an attention to broad context and institutional configurations¹⁵¹. As David puts it, institutions are the “carriers of history”, recognized social arrangements in which people have structured expectations of coordinated behaviour, around which they have learned a series of protocols for role- and situation-dependent behaviour. Institutions shape perceptions and expectations, beliefs and norms, through role allocation¹⁵².

Historical Institutionalism is neither exactly a theory, nor precisely a method – it was not articulated as such until the 1990s. However, as a general approach, it has been noted in the works of Theda Skocpol, Karl Polyani and Phillip Schmitter; the general idea being to describe how certain institutional arrangements will encourage different sorts of politically defined actions¹⁵³. These complex arrangements decide the shape of governance and affect what policies can be enacted in future, and influence politics as a whole, shaping how the members of society understand the rules of the game. This is to say that policy changes government, and changes politics – it is a system with many feedback effects¹⁵⁴.

The central pillars of the model, according to Peter May, are “ideas, institutional arrangements, and interests”¹⁵⁵. Ideas, like “war on x” or “community policing” form symbolic fulcra for meaning-making and cooperation across organisations, and coordinate behaviour throughout the political system, either with it or against it. Structural and institutional perspectives also shape how policies are made¹⁵⁶. Similar models, like the regime model, are most popular with international relations¹⁵⁷ and urban politics¹⁵⁸ scholars, and macro-economists¹⁵⁹, but few are applied to drug policy. However, several aspects of this approach are employed in the analysis of drug policy, particularly in those which analyse ecological models¹⁶⁰.

The roles of elites in shaping policies is central, not only in their own decisionmaking domains, but in their ability to legitimate, and generate meaning; foundations can cast long shadows¹⁶¹. The historical approach does not assume rational behaviour, nor that interest- and

¹⁵¹ Pierson & Skocpol, 2002: 3

¹⁵² David, 1994: 212

¹⁵³ Steinmo, 2008

¹⁵⁴ May and Jochim, 2013

¹⁵⁵ May, 2014: 4

¹⁵⁶ Skocpol, 1992

¹⁵⁷ Krasner, 1983; Kratochwil & Ruggie, 1986; Martin & Simmons, 1998; Braman, 2004;

¹⁵⁸ Stone, 1993; Stoker, 1995; Elkin, 2015

¹⁵⁹ Crouch, 2009; Bryant, Hoopoe & Mann, 2010; Davig & Doh, 2014

¹⁶⁰ Burris et al, 2004

¹⁶¹ Brook & Wakabayashi, 2000; Skocpol, 1992

goal-oriented motives are the sole driver, including normative, rules-based behaviour and political compromise into the picture¹⁶². It looks at dynamic features, and pays particular attention to changes and their mechanisms¹⁶³, major events or developments in the broader society¹⁶⁴, evolution of social values, or interconnected values¹⁶⁵. The actors in this system create changes either because the membership of a certain institution or strata of society sees new members with different values enter¹⁶⁶, or because changes in the environment, like crises or shocks, force changes in perspective¹⁶⁷.

One of the central notions is that higher-level politics can shift implementation even when legislation is not being enacted¹⁶⁸. This means that whether a policy can attain legitimacy within a political system will significantly affect its success¹⁶⁹, making feedback mechanisms are rather important¹⁷⁰. The proposition that policies change politics is not new¹⁷¹, and has informed not only academia but institutional approaches to policy formation for decades¹⁷². But what distinguishes the historical approach in particular is the centrality of social learning¹⁷³. Individuals do not live in a vacuum, and societies were not born yesterday. They proceed through life, informed in their behaviour and decisions by an understanding of morality, interests, institutions and deterrents.

Most importantly, it treats culture as real, and tangible, not an abstraction to be waved away¹⁷⁴. All of the above-quoted writers share this feature – that when analysing a political system, the monolithic notion of “culture”, in the sense that we understand a cultural unit or identity, does not define the functions of its parts. It is often remarked when comparing different countries that they have a different “culture”, but what that means is seldom explained in granular fashion. The most one can say about culture, in the social science sense, is that it is learned behaviours, acquired attitudes, received beliefs.

¹⁶² Bleiklie, 2006: 48

¹⁶³ Ostrom, 1990

¹⁶⁴ Sabatier & Jenkins-Smith, 1993

¹⁶⁵ Skocpol 1992; March & Olsen, 1989

¹⁶⁶ Ostrom, 1990

¹⁶⁷ Sabatier & Jenkins-Smith, 1993

¹⁶⁸ May & Jochim, 2013: 427

¹⁶⁹ May, 2014

¹⁷⁰ May & Jochim, 2013

¹⁷¹ Schattschneider, 1935: 288

¹⁷² Ranney, 1968: 14

¹⁷³ Béland, 2005; Steele, 2011

¹⁷⁴ Steinmo, 2008

But while a great deal of learned behaviour may be visibly different, such as dress habits, cuisine or language, it would be absurd to claim that someone who eats rice rather than bread is significantly less likely to be into heroin. And while received beliefs can vary wildly across cultures, to chalk up the difference in one's drug of choice to the religious denomination of the country would be a crudity usually confined to the back pages of right-wing propaganda sites. Given this *reductio*, it would be reasonable to conclude that if one were to make the claim that "culture" is to blame for the differences in behaviour, that these differences would need to be of some significant pertinence to the behaviour treated as the dependent variable.

The ability to provide a moral code to which society adheres requires common institutions. That is, patterns of organised behaviour which concentrate the reproductive capacity of norms in legitimate hierarchies in which the vast majority of society participates. This includes the state and its legal system, the national education program, the university, social media, traditional religion, and so on. The history of each of the countries' policies informs the average citizen's understanding of drug policy. Even if the citizen is themselves ignorant, their parents, their politicians and civil servants, their journalists, their film script writers and their corporate managers are likely not to be. The citizen's understanding of the country's history with drugs, the means by which children are raised, and the network of incentives present in public and private life depend on a long chain of events, their public understanding and their relation to current affairs.

The effect a state policy has on creating compliance is not merely the effect of the police, who are but one instrument. But the law is a powerful signal to society of a firm and consistently held moral code. The effect of a firmly believed moral code among the ruling class and the sincere and consistent enforcement thereof by the instruments of state power, is that people perceive their norms to be secure. Visible and consistent deterrence from police confirms to both moral defectors and to law-abiding citizens, that the law is safe from widespread defection. In order to show this, we need to have a framework for assessing the reasons for people's decisions.

2: Situational Action Theory

In England and Wales, as in Japan, the possession of narcotics is prohibited, yet their citizens have vastly different rates of compliance with this general injunction. To explain what makes people conform to the law, one must explain what causes people to break it. This requires the use of a general theory of crime. If the definition of crime cannot be generalised beyond a breach of the law (which, according to the literature, it cannot) it requires an explanation of what causes people to conform with or transgress behavioural codes in general, and law in particular. Examinations of the moral dimension of crime have been offered in economics¹⁷⁵, jurisprudence¹⁷⁶ and criminology¹⁷⁷, but is not particularly widely used, and the current social science paradigm tends to see people more as the blind tools of invisible forces, material incentives and social structures than as moral agents¹⁷⁸.

However, in 2004, Cambridge criminologist Per-Olof Wikström and neuroscientist Kyle Treiber developed a theory called Situational Action Theory (SAT)¹⁷⁹ to explain criminal behaviour, which has been used in empirical studies on youth delinquency¹⁸⁰, drug use¹⁸¹ and terrorist recruitment¹⁸², among other crimes. It draws on empirical findings from neuroscience¹⁸³, combining observations across the major fields of the social sciences. It centres on morality, and relies on a few basic premises, the foremost of which is that human beings are rule-guided agents, not constantly calculating, self-interested subjects. While SAT was designed as an individual level theory, many of its core features are adaptable to the national or societal scale.

It describes the interactions between microphenomena (individual choices) and macrophenomena (law, state institutions, economic and social pressures) in a systematic model. Rather than seeking to explain away the variance of crimes through the use of demographic filters like race, age, sex or culture, Wikström instead relegates these to “causes of causes”¹⁸⁴, which have a correlation with crime statistics, but cannot actually explain why crime is committed – one cannot say that a person committed a crime because they were young,

¹⁷⁵ Etzioni, 2010

¹⁷⁶ Sunstein, 1996

¹⁷⁷ Braithwaite, 1989

¹⁷⁸ Hitlin and Vaisey, 2013

¹⁷⁹ Wikström, 2004. Not related to the similarly-named “situational policing” strategy (Nolan et al, 2004)

¹⁸⁰ Wikström & Svensson, 2008

¹⁸¹ Gallupe & Baron, 2014

¹⁸² Bouhana & Wikström, 2011

¹⁸³ Treiber, 2011

¹⁸⁴ Wikström, 2014:

black, poor or Muslim. They commit crimes because of specific motives, and the situational process that synthesises personal morality, the setting and the motivations: the historical emergence of the normative setting and the morality of the person over their lifetime.

Like other general theories of crime, SAT draws on the psychological sciences as well as these philosophical and sociological methods. But only a few of these modern theories incorporate the dimension of morality. While Hirschi's *General Theory of Crime*¹⁸⁵ centres on the element of self-control, and the famed Routine Activity Theory focuses exclusively on habit and environment, SAT incorporates elements of both; its most fundamental axiom being that human beings are moral animals – we act, to the extent that we have self-control, in accordance with rules of behaviour.

Among these rules of behaviour to which people may conform or transgress, are those codified in law. The prescription or proscription of any act is by definition a moral rule, and the law is, by extension, a moral code itself; the only function it has is to prescribe behaviours, it does not exist to declare facts about reality¹⁸⁶. The law does not state what is real or what is known, only what is allowed, disallowed or compulsory. Consequently, all crimes are conceptualised as a special category of moral rule-breaking. The choice, to break these rules or not, is the function of several factors, which according to SAT include motivations (temptation or provocation), internal morality, external morality, and deterrents.

Crimes are thus the result of a choice between the “action alternatives” we perceive, framed by personal morality and the norms of the setting. When no live alternatives are perceived, people typically react in an automatic or habitual fashion. But if several alternatives are apparent, we deliberate over them, making a conscious decision to act in a certain way. The act itself is driven by various motives, falling under two categories: temptation and provocation. Temptations are fairly self-explanatory, and provocations are frictions caused by the intrusion of some person or obstacle between the agent and their desired state of affairs (leading to assault, if the variables align, but violent crime is extraneous to this study). The choice to indulge in our desires, whether out of temptation or provocation, is constrained by two factors: self-control, and external deterrents. Our *personal morals* and the norms of the setting do not always coincide. When it comes into conflict with personal morality or wanton habit, the law

¹⁸⁵ Gottfredson & Hirschi, 1990

¹⁸⁶ von Wright, 1963: 2 “*The laws of the state are prescriptive. They lay down regulations for the conduct and intercourse of men. They have no truth-value. The aim is to influence behaviour.*”

has the power to offer deterrents to our transgressions, or incentives to our cooperation, as does the judgment of others whose judgment matters to us.

The advantage it has over other general theories of crime is that it reduces all acts of crime to their single common characteristic – rule-breaking. While it treats crime as a moral issue, it places no judgment on the righteousness of a given crime, creating flexibility and clarity in describing the immediate causes of crime. When our personal morality differs from the law, self-control, if not self-mastery, will be instrumental in resisting or violating it, against the deterrents the state provides, as much as self-control is instrumental in obeying it when desire or provocation offers contrary motivation. As an example to illustrate this flexibility, take the anti-apartheid liberation movement. Most forms of resistance to apartheid in South Africa were crimes, but not acts of wanton whimsy or selfish spontaneity – rather they were choices to violate the norms of the state, which required immense will, that is, self-control, to resist its violent deterrents.

Similarly, believing that it is not wrong, or even beneficial, to consume certain illicit drugs will direct the capacity for considered action towards either tolerating or engaging in drug use, denouncing its prosecution or refusing to cooperate with police. Influences can change one's personal morality, such that exposure to drug culture can weaken one's resolve against illegal intoxication, leading one to believe that the effort is futile, and therefore not worth the cost. However, in cases where one's personal morality is *not* in variance with the law (for example, a heroin user who wishes to quit using), the violation of the law can be seen as a result of a lack of self-control. The availability of drugs, whether in terms of social proximity to users and dealers, or in terms of the price and consistency of supply, will have bearing on those whose resolve against using is diminished, whether because of weak or absent moral disapproval, because of lack of willpower, or because of weak deterrents.

By examining society in this atomic manner, the theory can account for an enormous variety of behaviour, without falling into reductionism.

Methodology

This study consists of a detailed comparison of the drug policy environments of Japan and England and Wales. I believe that the main elements of Situational Action Theory can explain a great deal of the difference in outcomes between these two countries. In order to demonstrate this, I have performed a comprehensive review of all publicly available statistical indicators for the last 30 years, roughly coinciding with the length of UK membership of the EU and the Japanese Heisei era, in order to examine differences between the two countries. I use a mixture of qualitative and quantitative sources, to create a thick description of the drug control environment, with special attention paid to the ability of state institutions to affect the availability of drugs, moral attitudes, and deterrents against use.

1: Case Selection

Japan and England share several key similarities which allow for a narrowing of focus in what is an extremely crowded pool of social variables. England and Wales maintain indefinite imprisonment without parole in its penal code, and Japan retains the death penalty¹⁸⁷. They both are liberal democracies with parliamentary constitutional monarchies, and both share ministerial models of executive government. Both have what are considered harsh penal codes for drug-related offenses, and both have a history of drug control in overseas colonial territories, were early adopters of scientific medical approaches to drug addiction, and are islands, with greater control over their borders than most countries. Both are high-income countries with large populations, generous welfare programmes and a high degree of urbanisation. Consequently, they are rather similar in their theoretical enforcement capacity.

On the other hand, Japan has a reputation for taking drug control very seriously, and having very low rates of drug abuse. England and Wales may have the reputation, compared to Western Europe at least, of being unduly punitive, but is nonetheless far more lenient than Japan, both in terms of legal deterrence and moral disapprobation, and has a far greater problem with drug abuse. I believe this leniency explains the rate of abuse.

¹⁸⁷ Weitzdörfer et al, 2018

2: Variables

In order to demonstrate that Situational Action Theory can be used to explain the differences in drug policy outcomes, I have had to adapt variables for use at a macro scale (*temptation* → *availability*), and exclude variables which are either irrelevant (*frustration*) or difficult/impossible to measure (*self-control*). The dependent variable is the *prevalence of drug use* in the country. The independent variables consist of three explanatory variables: [*law-relevant morality; availability; deterrence*]. Each of these variables are interpreted in terms of their relationship to policies undertaken by the states, in order to produce a thick description of the state of drug use and policy. These are accounted for in terms of both statistical indicators and qualitative policy features, to produce a reliable and detailed impression.

The statistics displayed here exist in the public record. However, several of them are discontinuous, because few have been fully published. While a freedom of information request would undoubtedly achieve a full picture, the constraints of a major dissertation do not accommodate the indefinite length of time this would take. Each of the statistical indicators, secondary historical sources and policy documents on their own can be subjected to criticism, but in aggregate, they form detailed pictures of the general state of the drug enforcement environment.

3: Operationalisation

For each country, a brief background [~ one page] on the institutional foundations of the national policy is given, followed by a detailed examination of the current era of drug control, broken down according to the main variables. Policy backgrounds serve to demonstrate that while certain approaches are institutionally ingrained, neither country has always borne its current attitude or approach to drugs, nor the prevalence of use, explaining policy formation as choice, rather than the fated result of some hidden, essentialist cultural variable. This consists of a comprehensive review of the available national-scale statistics, a summary of the laws, policies and strategies employed by the state and allied institutions, and prominent features of the society's moral attitudes to drugs not captured by simple survey data, all of which are analysed according to how they relate to the key variables of Situational Action Theory (*temptation, deterrence and law-relevant morality*) and the prevalence of drug use.

Dependent Variable: Prevalence of Drug Use

The prevalence of recreational drug use in society is given by a combination of historical studies, official reports, as well as six different per-capita-adjusted statistical indicators to which I will refer – survey self-report; seizure volumes; arrests; prosecutions; HIV infection from IV drug use; hospital overdose statistics. Some of these are available for several years, allowing me to demonstrate that the comparative situation is not exceptional, while others are only available sporadically, and must be taken in context. Self-reported lifetime- and past-year use come from the Nationwide General Population Survey on Drug Use (NGPS)¹⁸⁸, while the Anglo-Welsh figures are obtained from the Crime Survey for England and Wales (CSEW) and the England and Wales reports of the British Crime Survey¹⁸⁹. HIV and hepatitis infection rates are from the Japanese National Institute of Infectious Diseases (NIID)¹⁹⁰, and the English-Welsh figures come from Public Health England¹⁹¹. The figure for hospital admissions and mortalities come from the Ministry of Health, Labour and Welfare (MHLW)'s Dynamic Surveys of Medical Institutions and Hospital Report, a survey of 177,546 medical care institutions, accounting for 98.7% of all those in Japan, and from public health service comparator Caloo¹⁹². For England and Wales, these come from the National Health Service annual report. Cannabis and khat warnings, which are recorded separately, have been taken from the Crime Outcomes report of 2017¹⁹³. These are seen as constituting recorded crimes, since Japan treats all recorded police encounters with drug users as such.

Recorded crimes and criminal charge rates for England and Wales come from the ONS¹⁹⁴ and the Ministry of Justice (UK)¹⁹⁵ respectively, while the Japanese statistics come from the Heisei era review Police White Paper and the historical data from the Ministry of Justice. The statistics for English-Welsh arrests from 1990-98 were incomplete, showing only but the trafficking arrests. However, the mean ratio of trafficking arrests to total arrests for other years was 6.7, with a variance of 0.49, and so I reconstructed the missing years based on this ratio. The Japanese survey data are obtained from the Department of Drug Dependency Research

¹⁸⁸ Ministry of Health, Labour, and Welfare, 2019

¹⁸⁹ Office for National Statistics, 1990-2020: Obtained online from the UK Data Service.

¹⁹⁰ National Institute of Infectious Diseases, 2018

¹⁹¹ Public Health England, 2020; 2014; Health Protection Agency, 2004

¹⁹² Okumura, 2017; Caloo, 2020

¹⁹³ Home Office, 2017a

¹⁹⁴ Office of National Statistics, 2017

¹⁹⁵ Ministry of Justice (UK), 2018

(DDDR), a branch of the MHLW¹⁹⁶. Overdose deaths are obtained from the drug poisoning statistics by Okumura et al¹⁹⁷, which does not differentiate by the legal status of the chemical, and so are only comparable to the total drug overdose mortalities from the United Kingdom Office for National Statistics (ONS)¹⁹⁸ in order to provide a cognate measurement.

Independent Variables

The three variables here are those aspects of SAT which can be empirically established at a national scale. The concept of self-control, as central as it is to life-histories used in the theory as a micro-scale analytical framework, is not possible to measure reliably here, and has been mostly ignored.

1) *Law relevant morality* is an agreement between the moral beliefs of the individual and the law. To adapt this concept to a notional scale, it is measured by the extent to which the society sees taking drugs, dealing drugs, or portrayals of these acts in a sympathetic light, as acceptable. In terms of relevant policies, one can look at school prevention programmes and public awareness campaigns, as well as the nature and extent of treatment. Other indicators of public attitudes include portrayal in media, and how the public respond to public scandals where celebrities and authority figures are caught in possession of drugs, or are found to be regular users. These are of course, more qualitative and subjective, and many attitudes vary across class and ethnicity.

For both countries, there are several polls on public attitudes over the last 30 years. The Japanese results for law-relevant morality are drawn from the NGPS, but its equivalent, the CSEW, does not contain such a question. However, there are several relevant public polls on English and Welsh attitudes to drugs, including a repeated nationwide survey conducted in 1989 and 2019 by IPSOS Mori at Kings College London¹⁹⁹. All will be collected to form a general picture of the attitudes within the country.

2) *Deterrence* is the strength of disincentive the state produces for engaging in drug abuse. It can of course be argued that social pressure from a prevailing moral system constitutes a deterrent, in the sense that social stigma and disapproval of peers, family and society are

¹⁹⁶ Shimane et al, 2018

¹⁹⁷ Okumura et al, 2017

¹⁹⁸ Home Office, 2018

¹⁹⁹ Pedley & Spielman, 2019

disincentives to transgression, but they are secondary to the role of the state and its efforts to control illicit substances, and form part of the picture of the prevailing law-relevant moral attitudes. The argument here, is that strict and consistent application of the law (not harshness of punishment per se) constitutes the stronger deterrent. Thus I am looking for policies which offer exceptions from the law; policing strategies which reduce or increase the risk of serious punishment.

Supporting the picture of the policy environment are statistical indicators like arrest rates and prosecution rates (the proportion of cases of detention by police which result in a criminal charge). The prosecution rate is the best available indicator, since it gives an indicator of the likelihood of serious consequences given a policeman discovering a breach of the law. The number of times one is stopped by a policeman is not in itself a measure of the strength of a state's deterrent, since the prescribed sanctions can be small enough to ignore, or the state may choose not to press charges.

3) *Availability* of drugs is the way I will operationalise the SAT concept of temptation. If it is easy to come in contact with drug users, or get one's hands on a drug, there is less effort required to engage in breaking the law, and less effort required to sustain a habit. The quantity of drugs seized per capita is an indicator of both *availability* and *prevalence*, but the most salient indicators are the perceived availability of drugs to the average resident and official drug price estimates, obtained from the UNODC. The survey responses in the NGPS and CSEW relating to the perceived availability of drugs in general, function as a subjective indicator of this variable. Price estimates are a more objective indicator, which I will adjust for purchasing-power parity for the relevant years in discussion.

Comparing Policy Systems

1: Institutional Foundations

These two countries differ in several key aspects. These differences, among others, will be used to show the mechanisms by which each country achieves the results described by the statistical indicators. While a sample of two countries cannot prove anything conclusively, any systematic national comparison, given the portion of persons involved, is informative to understanding how policy affects behaviour.

England and Wales

The United Kingdom has long had a public health-centred approach to drugs, with several major elements recognisable to modern harm reduction advocates appearing in the first decades of the 20th century. Responding to native pressure in Egypt, British authorities placed a ban on narcotics, with emphasis on refined “white” (heroin, morphine, cocaine) drugs over raw “brown” drugs (opium, hashish)²⁰⁰; the roots of the modern hard/soft distinction. The Rolleston Report of 1926, composed of a group of British medical professionals, proposed a ban on the possession of drugs without prescription, and handed the power to prescribe “white” drugs to doctors²⁰¹. The report designated addiction a disease, and recommended a policy of addiction maintenance²⁰².

The provision of heroin to addicts was prevalent throughout the 20th century by doctors, but until the 1970s, unlicensed possession of heroin, cannabis and cocaine were punished with imprisonment, with no difference of schedule under the 1928 Dangerous Drugs Act, drafted to address a failure of the regulatory attempt in 1922 to prevent doctors from prescribing drugs to themselves²⁰³. Doctors were the only source of hard drugs, and arrests for breach of policy remained roughly 50 per year, except for a brief spike during the Second World War²⁰⁴. Following the post-war emergence of drugs via the “French Connection” and United States servicemen, buffered by a growing counterculture, caused the number of addicts to triple

²⁰⁰ Hallam, 2016: 80-84

²⁰¹ Riley & O’Hare, 1999: 5; Hallam, 2016: 80

²⁰² Dole, 1988; Bart, 2012

²⁰³ Berridge, 2004: 14

²⁰⁴ Hallam, 2016: 79-80; Bennett, 1988: 302

between 1955 and 1965. The government responded with a more closely controlled clinic system, where patients could be monitored. Doctors prescribed a wider variety of maintenance drugs, including heroin, but switched to methadone in 1970. The number of addicts registered, quality of drugs seized, and arrests made all doubled in the following decade, leading to increased concern that the clinic system was failing²⁰⁵.

In this period, the number of arrests for cannabis possession increased from 185 in 1959, to 2 393 by 1967²⁰⁶. This precipitated a committee investigation into drug use, published in 1969, which advised not to prosecute first-time offenders for possession of small amounts of cannabis, and recommended that sale or supply should not be punished with anything more severe than a £100²⁰⁷. The liberal-leaning committee concluded that the philosophy around substance abuse needed to change²⁰⁸. At the time, the trial of Mick Jagger for cannabis possession was a prominent cause of liberal political concern. A legalisation advocacy group called SOMA²⁰⁹, posted a front-page advertisement funded by knighted Beatles member Paul McCartney in the *Times* newspaper calling for the commission to debate the scheduling of cannabis separately to take the focus off of LSD, which was successful²¹⁰.

Following the suggestions of this report, the 1971 Misuse of Drugs Act made a distinction between possession and wholesale trade, and while it allowed for a sentence of up to six months, the Lord Hailsham instructed the Magistrates Association, when the law received Royal Assent in 1973, to enforce the legislation only in the case of large-scale trafficking²¹¹. The powers to imprison were curtailed further in 1976, placing a maximum sentence of three months for offenses regarding cannabis, and a subsequent Advisory Council reported that prison sentences for cannabis possession were “all but abolished”²¹².

Crucial to understanding the British system, aside from the attitudes of the ruling class, is the unique system of common law the United Kingdom operates upon. Judges have great leeway in interpreting the law, and follow prosecution guidelines established by non-legislative policies, which can vary substantially in sentencing recommendations. By the 1990s, prison

²⁰⁵ Bennett, 1988: 303-307

²⁰⁶ Abrams, 2008

²⁰⁷ Advisory Committee on Drug Dependence, 1969

²⁰⁸ Johnson & Schofield, 1973: 529

²⁰⁹ Named either after the miracle pacifying drug in Aldus Huxley’s *Brave New World*, or else after the legendary magic sacrament of the ancient Hindus purported to provide divine insight by writings the Rig Veda.

²¹⁰ Abrams, 2008: 42 the article, whose headline, “*the law against marijuana is immoral in principle and unworkable in practice*”, was an extremely bold and controversial statement for the time.

²¹¹ Abrams, 2008: 47

²¹² Advisory Council on the Misuse of Drugs, 1978

sentences for offenses involving cannabis were uncommon, and the law with regard to this drug was “all but unenforced”²¹³. This reflected a consensus among policymakers that progress meant liberal reform, communicating to the public that drug prohibition was old-fashioned, and keeping with the times meant increasingly lenient or accepting attitudes to drug consumption.

Consequently, the current strategy in England and Wales emphasises trafficking over consumption. The 1994 Drug Trafficking Act imposes extra penalties for trafficking in drugs designated under the schedules of the 1971 Misuse of Drugs Act, including 25 years-to-life for trafficking in class A drugs (heroin and cocaine), and a change in sentencing in 2000 introduced a minimum 7 year sentence for a third repeated conviction for any trafficking offence. Possession of substances under the drug schedules A, B and C incur maximum sentences of seven, five and two years respectively, with cannabis and amphetamine-type substances categorised as class B, and a long list of “less harmful” drugs including steroids under class C. The 1971 law itself has seen little change since, except for a brief change in the scheduling of cannabis.

Japan

Japan has maintained a strict normative consensus on drugs since the end of the Second World War, when an extraordinary epidemic of amphetamine abuse emerged, and was swiftly crushed, with an effectiveness perhaps only matched by Sweden from 1970-1990. At a time when the rest of the world is leaning towards decriminalisation²¹⁴, Japan remains conservative. This comes from a collective and institutional memory of dealing with the post-war drugs crisis, and a historical memory of the opium wars in China, and efforts to eradicate opium in the colonies.

Seeing the effect of the opium wars on China, and seeking to expand and strengthen the nation, the Meiji Empire strictly forbade the import of narcotics²¹⁵. Japan created a state monopoly on opium, which sold exclusively to its colonies²¹⁶, rationing and reducing the

²¹³ Ibid: 48. This is somewhat of an exaggeration, but certainly English courts do hand down fewer custodial sentences than some other countries.

²¹⁴ United Nations, 2016

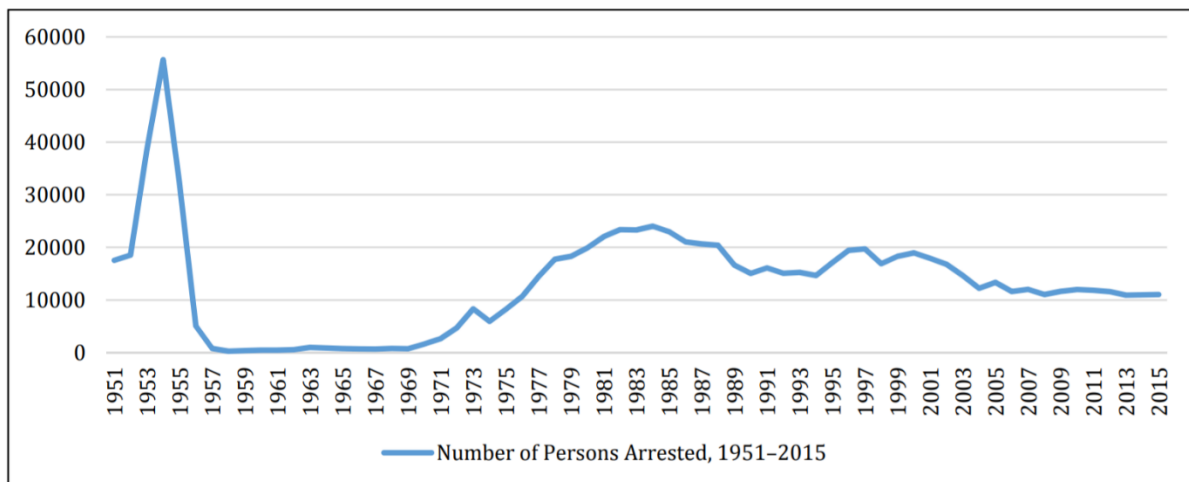
²¹⁵ Jennings, 1997: 2-3 At the same time, opium sales were promoted in China, explicitly to demoralise her.

²¹⁶ Brook & Wakabayashi, 2000; Jennings, 1997; Kingsberg, 2011

supply through individual licenses for addicts, to remarkable success²¹⁷. They set up the world's first scientific medical research centre for the treatment and study of drug addiction in 1924, which engendered a “benevolent” approach to addicts, using overbearing supervision combined with weaning maintenance and substitution measures²¹⁸. This model evolved into a combination of cold-turkey “detox” and vocational labour training that became the norm for the next century.

However, the normative consensus against drug abuse was not completely widespread throughout society. Japan had invented methamphetamine in the late 19th century, and used it as a means of augmenting the performance of its soldiers in combat through the Second World War. Immediately following the occupation, the legality and availability of amphetamines led to an uncontrolled proliferation of private companies selling the product openly²¹⁹, and a national census produced a figure of 7.5% of the population with experience of amphetamine abuse, 3/4 of which being daily users²²⁰. After a schoolgirl was found dead and raped in a school bathroom, the victim of a *hiropon* (methamphetamine) addict, the incident became the catalyst of a nationwide civil society effort. It was the culmination of years of national distress at a skyrocketing problem of addiction, delinquency and death, and this narrative is still deeply embedded in the social memory²²¹.

Figure 2 - persons arrested for drug-related crimes, 1951-2015²²²



²¹⁷ Kingsberg, 2011 “From [...] 6.3 percent of the population of Taiwan, the number of registered smokers declined to [0.5 percent of the population] in 1930.” (p. 101-102)

²¹⁸ Kingsberg, 2013: 157 However, it must be borne in mind that this was in the context of Japanese colonialism and scientific racism, so this compassion, while often heartfelt, was of a decidedly paternalistic character.

²¹⁹ Kingsberg, 2013: 143

²²⁰ Kingsberg, 2013: 184

²²¹ Kingsberg, 2013: 140

²²² Nakamura, 2016

The post-war legislation for controlling the methamphetamine epidemic and expanding the mental health system was drafted by Dr. Kaneko Junji, who also introduced Western psychiatry. Junji saw drug abuse and other deviant lifestyles to be precursors of anti-community behaviour such as support for revolutionary ideologies and other disruptive forces²²³. The rapid and effective manner it was dealt with has shaped subsequent drug policy and cultural values²²⁴. The government continues to frame its drug problem in epidemiological terms, describing three waves, focusing on methamphetamine, the most popular hard drug in Japan²²⁵. The second methamphetamine wave, in the 1960s & 1970s, was fuelled by organised crime. This was responded to with another crackdown, focusing on special problem districts, increasing police presence, school route security and spot inspections²²⁶, leading to another spike in arrest figures²²⁷.

The Cannabis Control Act of 1948; the Stimulant Control Act of 1951; the Poisonous and Deleterious Substances Control Law of 1952; the Narcotics and Psychotropic Control Act of 1953 and the Opium Control Act of 1954 constitute “Special Laws”, which supplement the 1907 Criminal Code and the 1948 Code of Criminal Procedure. The current approach (incorporating enforcement, treatment and prevention), is centralised, directed from the cabinet of the Prime Minister, under the auspices of the Headquarters for the Promotion of Measures to Prevent Drug Abuse²²⁸. “The Headquarters”, as they are referred to, have on their directing board, members from every major branch of the civil service, incorporating trafficking prevention through not only customs and security, but through international diplomacy to solicit cooperation²²⁹. This centralized, interdepartmental approach has helped reproduce the policy regime through almost every institution, ensuring that the consensus cannot be disrupted by political entrepreneurs.

Internal reports often refer to “foreign undesirables” as a trafficking threat, particularly Iranian gangs and Koreans with connections to the communist regime, which manufactures a large quantity of methamphetamine²³⁰.

²²³ Matsumura, 2004

²²⁴ Kingsberg, 2013; Alexander, 2013; Edström, 2015

²²⁵ Wada et al, 2013; Yamamoto, 2004

²²⁶ Nakamori et al, 2017

²²⁷ Vaughn et al, 1995: 500; Edström, 2015

²²⁸ Headquarters for the Promotion of Measures to Prevent Drug Abuse, 1998

²²⁹ Council for Promoting Measures to Prevent Drug Abuse, 2013

²³⁰ See [76] and [77].

2: Extent of Drug Use

Statistical indicators, whether from law enforcement or public health institutions, demonstrate a stark contrast between Japan and England and Wales. For Japan, only a single nationwide hospital survey exists which distinguished between drug overdoses and other forms of poisoning, which reports a rate of 0.35 per 100 000 in 2014²³¹, while their vital statistics rate of undifferentiated poisoning is 0.55²³². This is still far lower than the English-Welsh figure for only drug overdose mortalities, at an extraordinary 6.61 per 100 000²³³. Official hospital reports for Japanese addiction admissions are not available further back than the last fiscal year, but these can be found at the health services comparison site Caloo, which has a registry of all hospital admissions in Japan. They place the number of drug related admissions for 2017/18 at 23 776 (18.7 per 100 000) and psychiatric admissions related to substance abuse at 7 903 (6.2 per 100 000)²³⁴. The latest figures for England and Wales mental hospital admissions related to drug abuse sits at 7 376 (12.5 per 100 000) and for overdose admissions at 18 053, or 30.5 per 100 000²³⁵. Data on mental hospital admissions proved difficult to obtain.

Long-term public data paint just as stark a picture. England and Wales's statistics for HIV infections attributed to injection drug use (*Figure 3*), completely dwarf the Japanese figure, despite the fact that Japan's most abused illicit drug, methamphetamine, is typically consumed by injection. Arrest figures are similarly stark (*Figure 2*), and drug seizure statistics, adjusted for population (*Figure 4*), are so drastic that cannabis seizures for England and Wales require plotting on a separate axis to reveal any differentiation in the series beneath. The Japanese survey on drug use derives about half of the volume of its positive lifetime responses from solvent abuse, which was taken off the CSEW questionnaire in 2010, and yet the same pattern is observable. Another irregular feature is the specialised cannabis/khat warning, an informal but officially recorded warning issued by officers for possession of the drug. The number of warnings issued began at 40 138 in the first year of use, 2005, and peaked at 107 241 in 2009, before police were encouraged to further relax enforcement under the Conservative/Liberal coalition government, following which this figure sank to 33 514 by 2017²³⁶.

²³¹ Okumura et al, 2017

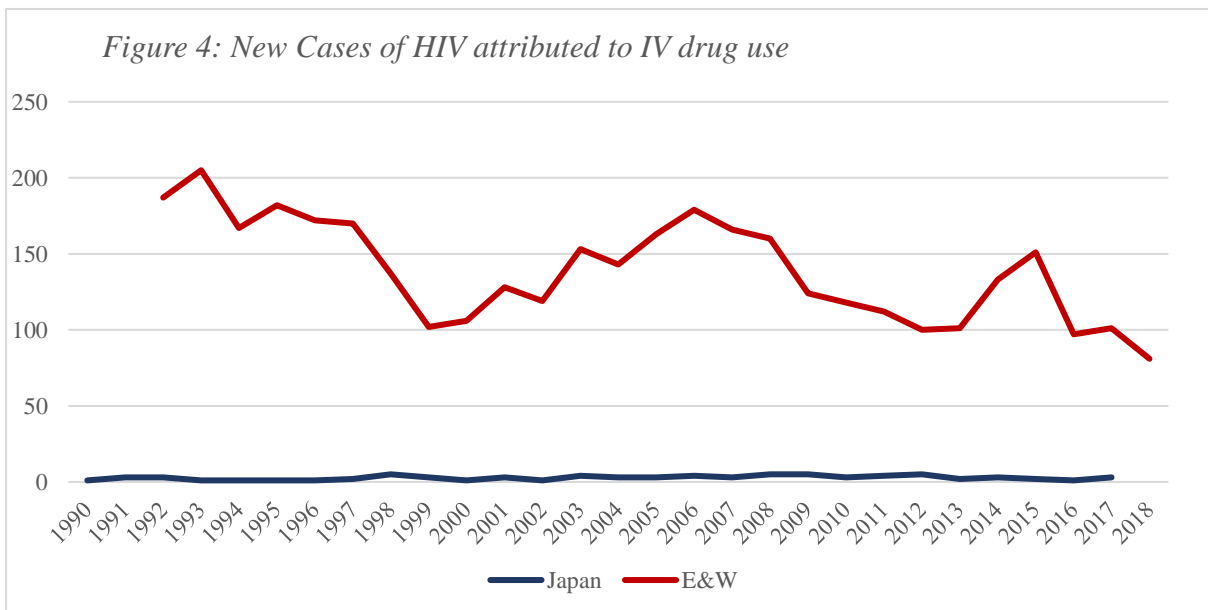
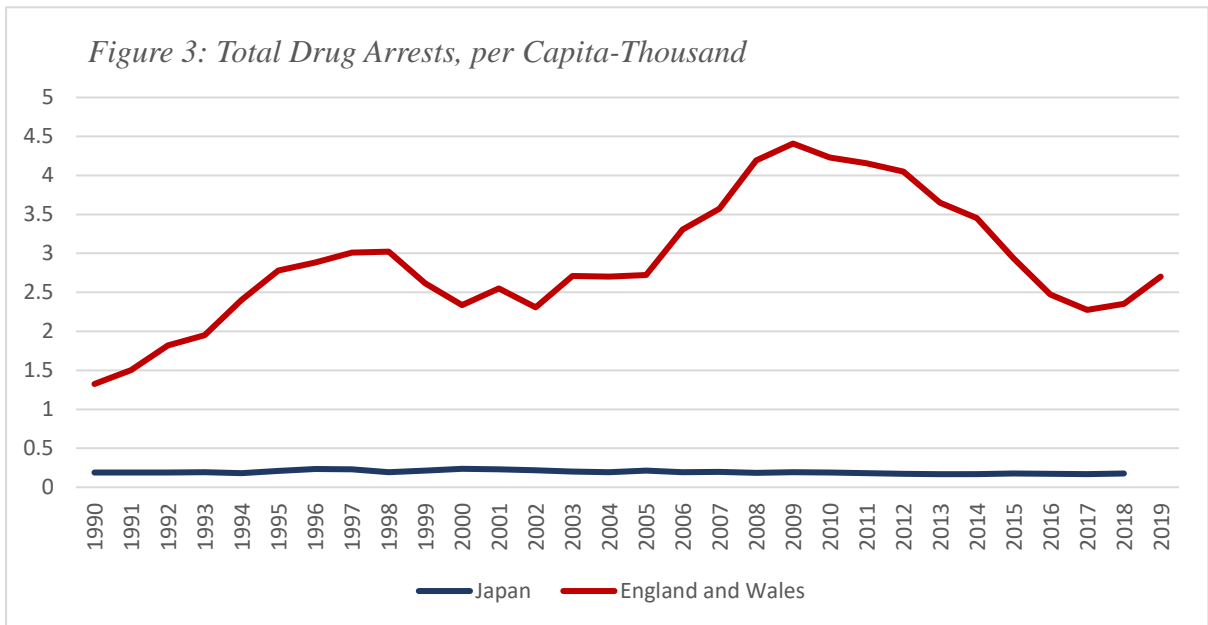
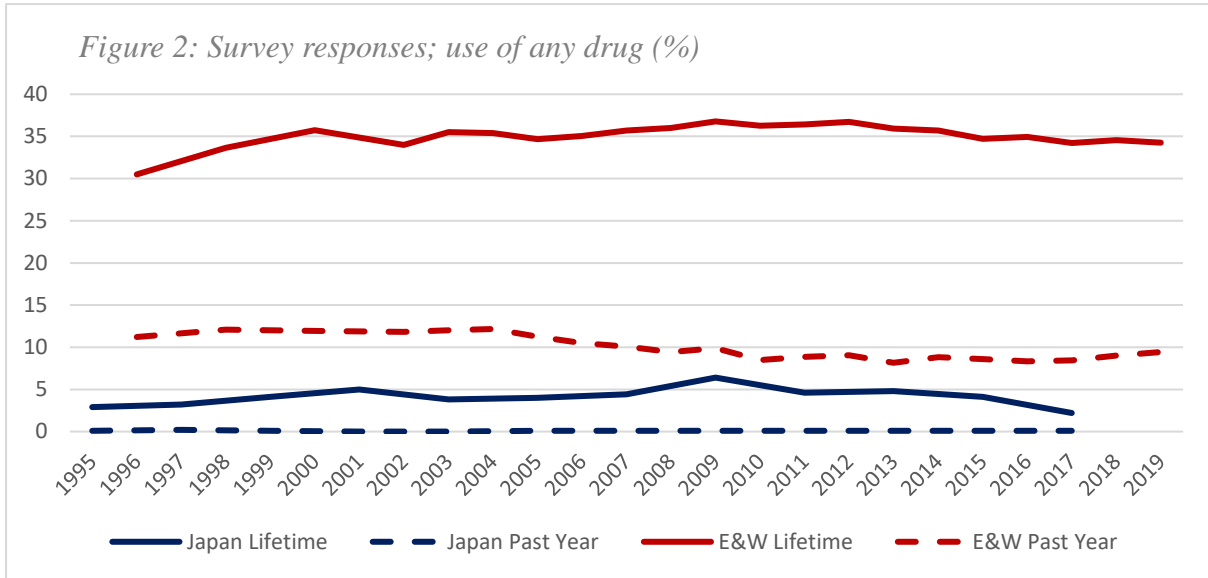
²³² Ministry of Health, Labour and Welfare, 2018

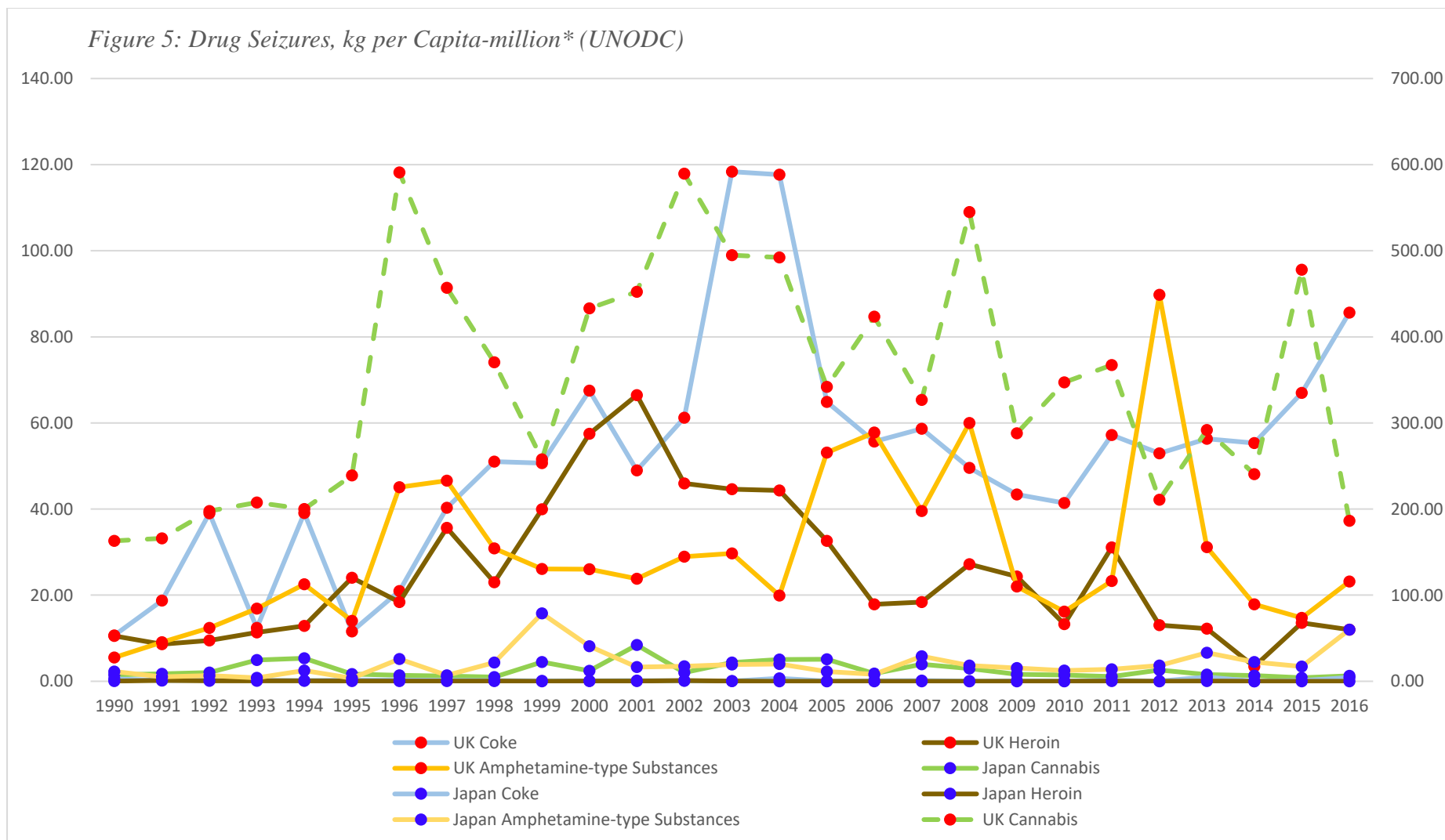
²³³ Home Office, 2018

²³⁴ Caloo, 2020

²³⁵ NHS, 2020

²³⁶ Home Office, 2017a: 60

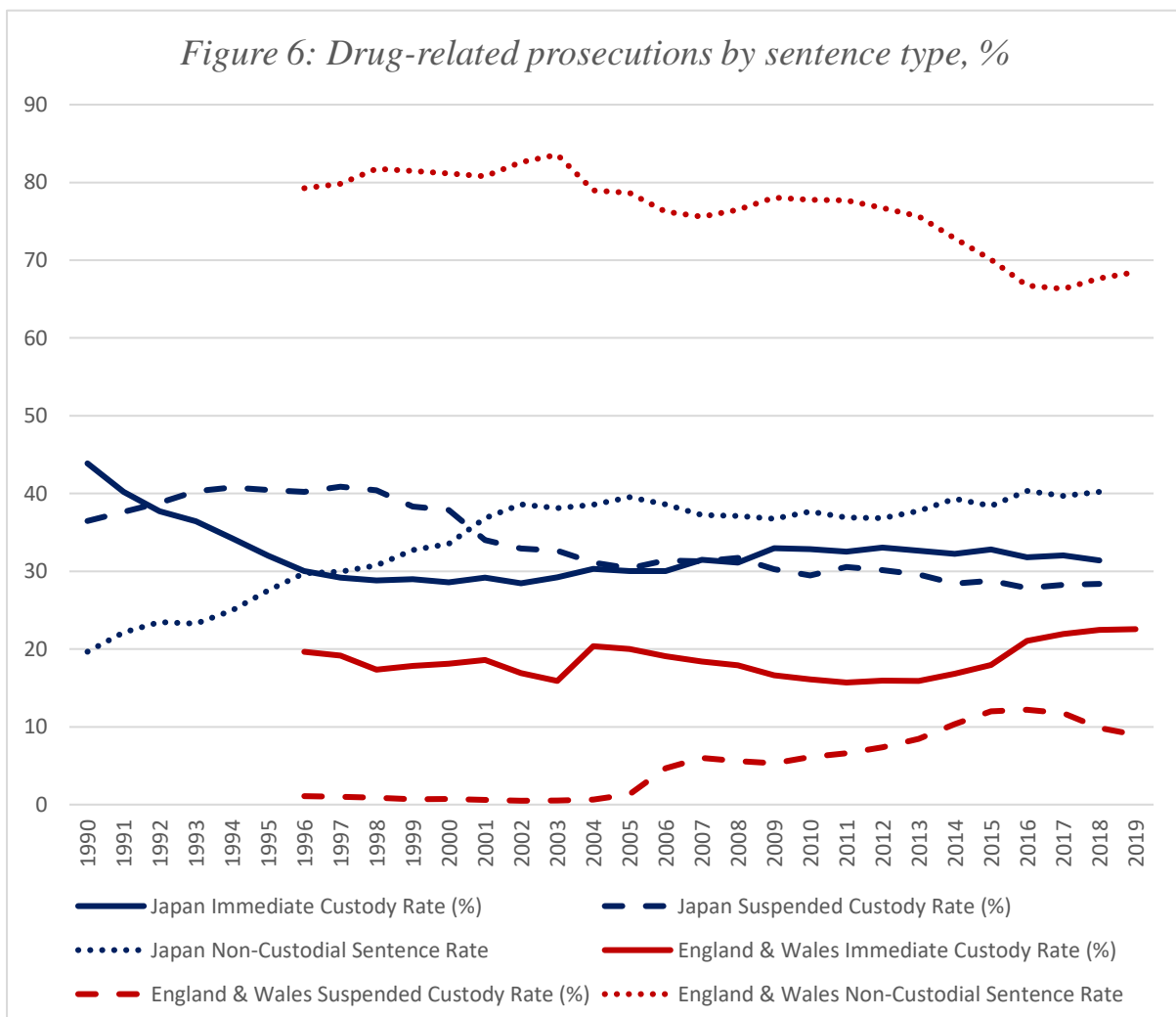




**Note that the series for UK Cannabis is plotted on the right-hand axis, as it is five times the magnitude of the next largest seizure volume.*

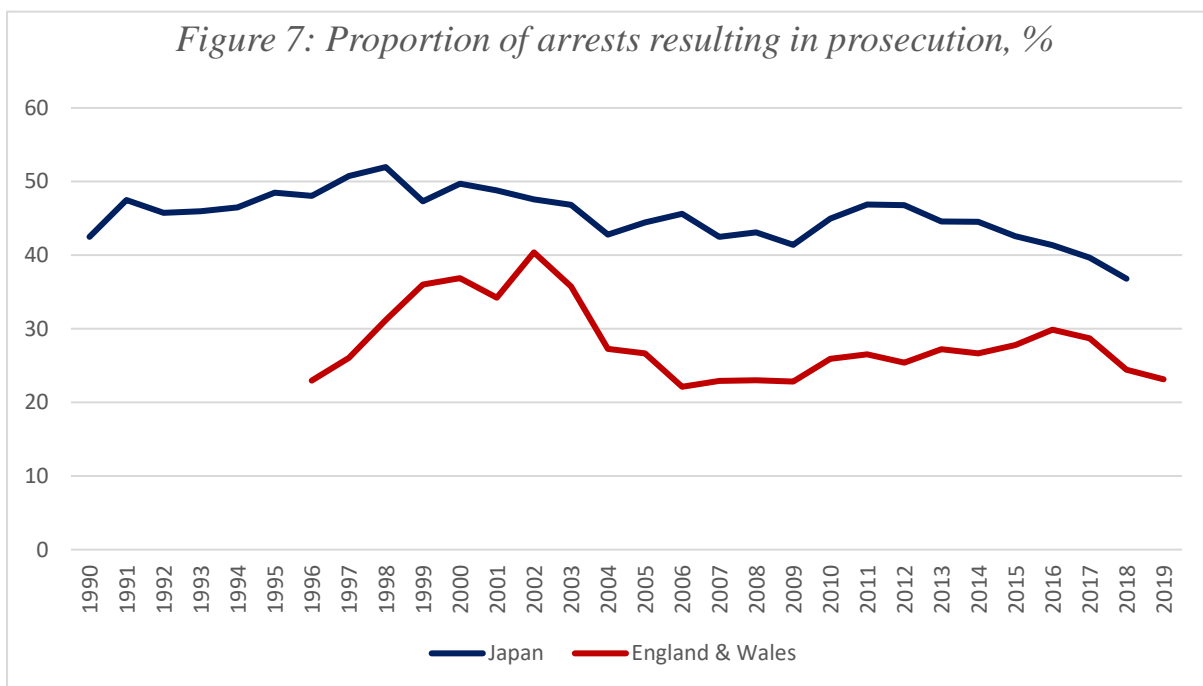
3: Deterrence

The flexibility of sentencing in England and Wales is very wide, in keeping with the Common Law tradition, which aims to take individual circumstances, community interest and common morality into consideration in case law. Judges have discretion to apply anything from a small fine up to 14 years in prison for the trafficking of drugs beneath the most severe category. However, recommended sentencing for Class A drugs is 16 years, and allows sentences up to life imprisonment²³⁷. Still, custodial sentences are not typically as common as they are in Japan (*Figure 6*), the British proceed to prosecution far less frequently (*Figure 7*).



²³⁷ Sentencing Council of England and Wales, 2012: 9

In 2002, the Westminster government attempted to lower the scheduling of cannabis to class C, but reversed this decision under public pressure²³⁸; sentencing guidelines did not consider class C) an arrestable offense. Afterwards, police were instructed to issue non-punitive warnings, which saved officers from paperwork, but also depress arrest statistics²³⁹. However, after the introduction of the targets-based New Public Management system of the New Labour era, police were required to meet arrest quotas, which they filled with superfluous, low-priority crime investigation, resulting in an increase in arrests for drug offenses, which often took the form of superficial profiling and an increase in class and racial tension in the large cities, which has somewhat reduced the police's legitimacy in these areas²⁴⁰.



Mandatory minimum sentencing was introduced in 2000, and then not for drug offenses. Sentencing was significantly liberalised under the Liberal-Democrat/Conservative coalition government, abolishing prison sentences for the possession of up to 6kg of cannabis in 2012²⁴¹. This aimed at lenience to drug mules, leading to only 10% of trafficking charges resulting in prison sentences longer than a year since then²⁴². This continued the downward trend in the number of prison sentences for drug trafficking, from 1654 in 2002 to 458 in 2013²⁴³.

²³⁸ Shiner, 2015

²³⁹ Ibid: 6

²⁴⁰ Flanagan, 2007; Morgan & Newburn, 2012

²⁴¹ Sentencing Council of England and Wales, 2012: 4-6

²⁴² Fleetwood, 2015

²⁴³ Ibid: 431

In Japan, the police are augmented by a contingent of narcotics officers deputised to the Ministry of Health, with special investigative powers²⁴⁴. Punishments are stiff, and traffickers and dealers of methamphetamine can receive 10 years in prison²⁴⁵. Suspension of drug crime sentences was only introduced in June of 2016, prior to which, those sentenced to prison would automatically receive the full recommended sentence²⁴⁶. While Japan has a strict, punitive approach for adults, they employ a wide variety of rehabilitation and reintegration efforts for young offenders, which prioritises social welfare over criminal justice²⁴⁷. Until 21, offenders are treated as still developing, and therefore the responsibility of the community²⁴⁸.

The community policing regime and their extremely tight-knit, public-facing departments became the main tool for combating crime. Part of Japan's community policing efforts include the employment of juvenile officers (*shonen gakari*): units typically composed of three young police officers and two older female civilians whose job is to prevent or cut short juvenile offending through patrolling young hang-out areas, and attempting to return them to wholesome activity through consultation with their parents²⁴⁹. They act in cooperation with police-school liaisons and student guidance councillors to monitor, advise and assist young offenders and other youth to avoid criminal influence and prevent re-offending²⁵⁰.

The approach to criminal rehabilitation has been termed "reintegrative shaming"²⁵¹. Braithwaite argues this is distinct from a stigma – shame is temporary and contingent on change in character. For drugs, this typically manifests as the option, if arrested, to enter a medical treatment program, free of charge for a year; the alternative being prosecution. Offenders are expected to accept the community's terms of reintegration, and their families are expected to assist. But this reintegrative interpretation is criticised by those who say the pressure comes from a tendency to impose shared responsibility in families and organisations²⁵². This shared responsibility model is reflected by the police: when one officer breaches conduct, his superior often resigns²⁵³.

²⁴⁴ Vaughn et al, 1995: 499

²⁴⁵ Tamura 1989: 85

²⁴⁶ Nakamura, 2016: 544

²⁴⁷ Ellis & Kyo, 2017

²⁴⁸ Lewis et al, 2009

²⁴⁹ Ames, 1981 :82

²⁵⁰ Goold, 2003;

²⁵¹ Braithwaite, 1989: 61

²⁵² Suzuki & Otani, 2017

²⁵³ Bayley, 1983: 156

This may obscure some less obvious elements. Japanese police are known to rely on confessions for prosecutions, sometimes resorting to sleep deprivation to achieve positive results²⁵⁴. Some commentators see this behaviour as a face-saving measure. But if it is, the Japanese would not be alone; such behaviour is seen in police departments in the United States and the United Kingdom. What makes Japan different appears to be higher standards for the initiation of a prosecution, which runs the risk of certain crimes never seeing court²⁵⁵.

In an effort to keep ahead of the production of new psychoactive substances, the Conservative government consolidated the drug laws into the UK Psychoactive Substance Bill, which generalises the concept to include any unlicensed psychoactive substance under a general schedule. While coming into some criticism for its continued criminalisation of possession²⁵⁶, it has had little effect on arrests or prosecutions, which have continued to decline relative to observed infractions, as guidelines and informal policies on arrest and sentencing have become more lenient²⁵⁷. The use of drugs in music festivals and raves is entirely ignored by police.

4: Availability

One significant difference between the two countries is the availability of addiction treatment programs. Japan prefers residential treatment facilities, whereas England and Wales prefers harm reduction, including addiction maintenance treatment. State provided methadone can be traded for heroin, and frequently is²⁵⁸. Lib-Dem/Conservative government oversaw many reorganisations of the drug treatment program administration, eventually consolidated into Public Health England, and the expansion of addiction treatment centres²⁵⁹. The first methadone therapy and syringe exchange open to the public on a non-prescription basis was founded in Liverpool in 1986²⁶⁰ and in several other locations from 1987. This aimed at tackling the HIV epidemic, and has become institutionalised as a permanent harm-reduction

²⁵⁴ Suzuki & Otani, 2017

²⁵⁵ Ramseyer & Rasmusen, 2001

²⁵⁶ Stevens et al, 2015

²⁵⁷ Home Office, 2018

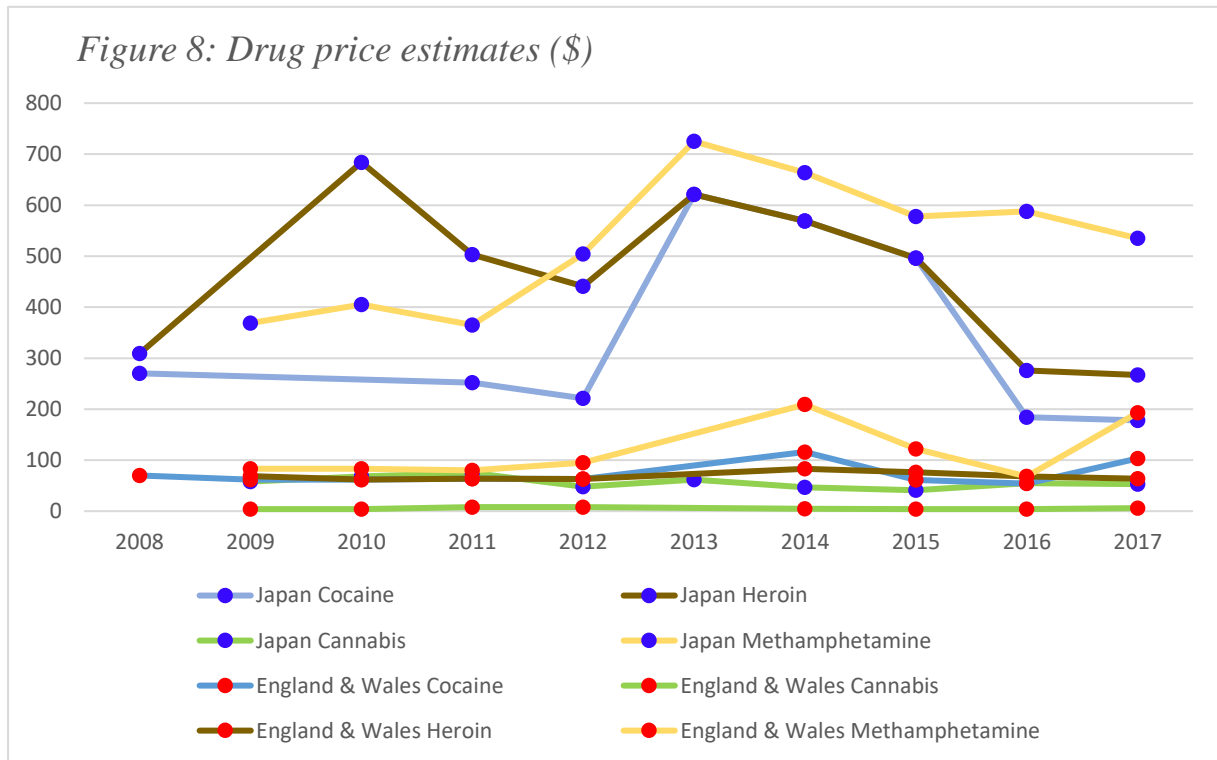
²⁵⁸ Duffy & Baldwin, 2012

²⁵⁹ McGregor, 2017

²⁶⁰ Riley & O'Hare, 1999: 2

strategy²⁶¹. The tolerant attitude to drug use is not just among addicts, but also party drug users, and there is next to zero enforcement at music festivals.

Japan, having placed high pressure on the industry, has driven up the typical price of almost all drugs (*Figure 8*) to multiple times the value of the English-Welsh equivalent.²⁶²



Official sources in Japan worry about Western norms starting to filter in through the internet and universities²⁶³. For those in their 20s, many who have travelled overseas report having tried drugs, and the proliferation of new technologies, such as cell phone communication and the internet, have made acquiring illicit substances significantly easier for those who desire to²⁶⁴. Another major concern has been new psychoactive substances (NPS), which emerged very rapidly in the past decade. From only six persons arrested in 2011, the figure quickly ballooned to 1196 by 2015, prompting a new focus for lawmakers, consisting of chasing down and cataloguing new recreational substances as they emerge onto the market.

²⁶¹ Stimson et al, 1988: 1718

²⁶² UNODC, 2009;...;2019

²⁶³ Wada, 2013

²⁶⁴ Council for Promoting Measures to Prevent Drug Abuse, 2013

These were sold in public at specialised shops, though these were rapidly closed down in 2014²⁶⁵, and the number of arrests for NPS had fallen by half by 2017²⁶⁶.

Figure 9: Japan, NGPS: Positive responses to "how easy is it to obtain drugs?" (%)

	2001	2003	2005	2007	2009	2011	2013	2015	2017
Any Drug	47.0	48.9	49.4	49.6	49.1	50.4	52.4	52.6	49.4
Solvents	45.3	47.1	47.9	48.2	47.9	48.1	51.8	51.5	48.9
Cannabis	12.4	12.7	14.0	11.9	14.0	14.9	12.8	14.1	13.0
Stimulant	13.2	12.2	13.1	11.4	13.1	13.1	11.9	12.7	10.5
MDMA	9.6	10.3	11.0	9.8	11.0	11.2	12.8	12.8	9.8
Cocaine	9.7	10.3	10.9	9.9	10.9	11.4	10.4	11.1	8.6
Heroin	9.9	9.9	11.4	9.9	11.4	12.4	9.9	10.5	8.1
New Psychoactive Substances							22.0	20.1	15.6

Figure 10: England & Wales, Responses on accessibility of all illegal drugs, (%)

	2011/12	N/A	2015/16	2016/17	2017/18	2016/18
Very easy	16.7		14.3	14.0	14.5	18.7
Fairly easy	26.4		23.4	21.3	22.5	22.3
Fairly difficult	8.0		10.5	9.3	10.5	8.4
Very difficult	5.0		9.8	12.1	11.1	10.2
Impossible	1.4		9.3	12.7	13.1	10.5
Don't know	42.5		32.7	30.7	28.3	29.8

Survey responses demonstrate a contrast in perceived availability. While the response values for drugs in general is even, around half of the Japanese responses are taken up by solvent abuse, a legal high typically experimented with in high school which has been removed from the CSEW since 2010. Perceived availability is only intermittently reported by the CSEW, and so a general pattern can only be inferred from context. That said, the difference is notable.

5: Law-Relevant Morality

Public surveys have shown that a plurality of the British population supports the legalisation of cannabis, and that attitudes to drugs have significantly liberalised in the past 30 years. IPSOS Mori conducted a repeated survey in 1989 (n=1458) and 2019 (n=1121), which showed a decline in belief that it is wrong to take drugs, from 60% to 29% for cannabis, and

²⁶⁵ Nakamura, 2016: 546-547

²⁶⁶ Ministry of Justice (Japan), 2018 (Online version: Part4/Chapter2/Section1/3)

from 89% to 67% for hard drugs²⁶⁷. Various IPSOS Mori surveys over the years (including the aforementioned) yield the following²⁶⁸:

Figure 11: IPSOS Mori polls, 1989-2019

	2019	2013	2000	1989
Cannabis/soft drugs				
Should be illegal			42%	
Is immoral	29%			60%
Heroin/hard drugs				
Should be illegal				
Is immoral	67%			89%
Any Drug				
Should be illegal		60%		

YouGov (n=1598) reported 32% of respondents in favour of “legalisation”, and 40% in favour provided taxation and a 21 year age limit²⁶⁹. ICM Research (n=1008) found that 38% supported decriminalising possession²⁷⁰, and Luty & Grewal, 2002 (n=2679) yielded the following results:

Figure 12: Luty & Grewal, 2002 selected survey responses

Statement	Agree (%)	Disagree (%)	Undetermined (%)
I regard most drug addicts as criminals	38	44	18
I think drug addiction is a menace to society	94	1	5
I think cannabis should be legalised	31	41	28
I think heroin should be legalised.	4	90	6
I think the law is too soft on drug addicts	62	17	21

Similar surveys, like Conservative Drug Policy Reform Group’s (n=1690), showed only 40% of respondents believed it should be illegal for anyone to grow their own cannabis plants, and only 24% opposed legalisation of possession, and reported 16% believed taking drugs was morally wrong and 31% considered it a criminal issue²⁷¹, though this question came after a lot of leading information, which may have exploited the psychological priming effect.

²⁶⁷ Pedley & Spielman, 2019

²⁶⁸ IPSOS Mori, 2013, 2008, 2000 (n=1014)

²⁶⁹ YouGov, 2015

²⁷⁰ Horsfield, 2008

²⁷¹ Conservative Drug Policy Reform Group, 2019

There are also two years for which the UK published the responses to the CSEW questions on moral attitudes:

Figure 13: Crime Survey for England and Wales; selected responses (%)

	Response rate (%)	Cannabis	Cocaine	Ecstasy	Heroin	Getting Drunk
2015/16	OK frequently	2.8	0.3	0.4		6.0
	OK occasionally	32.6	8.9	9.2		74.0
	Never OK	64.6	90.8	90.5		21.0
2012/13	OK frequently	2.4	0.2	0.3	0.1	5.2
	OK occasionally	31.9	7.2	8.1	0.8	74.4
	Never OK	65.8	92.6	91.6	99.0	20.5

These surveys all demonstrate a general trend towards liberalisation, and a persistent cohort, roughly between 1/5 and 2/5 of the population, who do not believe the law should prohibit the consumption of (at least) cannabis, or do not consider it morally wrong to consume it. This stands in sharp contrast to the prevailing moral attitudes of the Japanese, as seen in (Figure 14). The cultural stigma against drug abuse is rather high in Japan. Pop culture icons caught with drugs often see their careers ended rather conclusively²⁷². Pro-cannabis activism is limited to but a couple dozen individuals²⁷³. This atmosphere is maintained by a combination of public communication, unrelenting community pressure, and highly morality-oriented school programmes, developed in response to a formative crisis. In the 1990's, there were several high-profile cases in Japanese high schools²⁷⁴. The response was swift and renewed police pressure. This crisis, because of its sensitive pattern of abuse, was approached with a series of regularly updated strategies called “five-year plans”, characterised by increased focus on education and awareness, extending the programs to universities, where increased use in the 21st century had begun to raise alarms²⁷⁵.

The moral dimension of the program is emphasised in policy documents, which repeatedly use the phrase, “boosting normative consciousness” as the first objective²⁷⁶. The strict inculcation of an absolute zero-tolerance attitude in the youth is characterised by the slogan *Dame! Zettai!*; roughly translating as “No! No Way!”. The Drug Abuse Prevention Centre, which designs the curriculum and organises public awareness-raising programmes, has only

²⁷² The Economist, 2019

²⁷³ McCandless, 2017

²⁷⁴ Yamamoto, 2004

²⁷⁵ Kitagaki, 2011

²⁷⁶ Council for Promoting Measures to Prevent Drug Abuse, 2013: 1; Headquarters for the Promotion of Measures to Prevent Drug Abuse, 2008: 4

been around since 1987, before which there was no formal policy towards drug education²⁷⁷. But it was expanded into a comprehensive national programme, which official reports credit for the precipitous drop in hospital admissions for organic solvent abuse, a drug of choice of high school children²⁷⁸, legally accessible as ingredients of glue and paint thinners.

Japan's approach to preventive education places emphasis on the criminality of drug use. Children are taught to be wary of their upperclassmen who might seduce them, and are taught that taking drugs changes one's personality, and harms one's family. They are taught that resistance to taking drugs is an act of courage that their parents will support them in. It also has an absolutist approach – taking drugs even once is seen as abuse, not experimentation. Specific excuses for taking drugs, such as staying awake or losing weight, are warned against, and teachers, pharmacists and police officers are brought in to offer a variety of perspectives in health, law and morality²⁷⁹. Students are also encouraged to become “juvenile officers”, and help in the policing effort²⁸⁰, all of which has a highly normative flavour, relying far less on prudence and rationality than on social pressure, duty, and common respect.

The English prevention curriculum begun in 1987 had led to a widespread perception that it had contributed to the normalisation of drug abuse, as the surveyed portion of 16-year old students who had tried an illicit drug reached 50% by 1995²⁸¹. The main flaw appears to be that while schools were encouraged to pursue links with healthcare and law-enforcement officials, they offered no concrete guidelines for the content of the program, reportedly because of the lack of available scientific research into various techniques' effectiveness. The focus tended to be on providing objective information on the assumption that the connection between knowledge and behaviour was commonsense, and did not develop any explicit training in anti-drug norms and attitudes²⁸².

The new guidelines focused far more in developing social skills and protocol, spreading anti-drug attitudes and norms, creating aspirations towards clean-living²⁸³. A review of the ASSIST and FRANK programmes has noted that these have had a somewhat positive impact; the number of students aged 11-15 who had reported consuming illegal drugs in the past year

²⁷⁷ Drug Abuse Prevention Centre, 2019

²⁷⁸ Kitagaki, 2011: 169

²⁷⁹ Nozu et al, 2006

²⁸⁰ Kitagaki, 2011

²⁸¹ Allot et al, 1999: 491

²⁸² Ibid.

²⁸³ Department for Education and Skills, 2004: 19-20

had fallen since the programme's introduction²⁸⁴. These programmes are centred around peer intervention, and train cohorts of students to act as influencers of their fellow students, with emphasis on the health effects rather than the moral or social. This can only be fully appreciated as the cohort ages, and inequality in education efficacy may affect outcomes.

Figure 14: Responses to the National General Population Survey on Drug Use

Drug/Question	Year	1997	1999	2001	2003	2005	2007	2009	2011	2013	2015	2017
Cannabis												
Wrong whether legal or not		89.5%	86.2%	80.2%	84.7%	85.7%	84.7%	85.7%	82.1%	84.1%	82.7%	76.6%
Wrong because illegal		3.7%	6.3%	7.7%	9.1%	7.9%	7.6%	7.9%	10.3%	9.8%	12.2%	16.2%
Acceptable despite illegality		1.7%	0.6%	0.2%	0.1%	0.2%	0.2%	0.2%	0.4%	0.6%	0.3%	0.4%
Should be legal		1.9%	2.9%	3.2%	1.9%	2.5%	1.8%	2.5%	2.4%	1.8%	1.2%	1.7%
Do not know/didn't answer		3.2%	4%	8.7%	4.2%	3.7%	5.7%	3.7%	4.8%	3.7%	3.6%	5.2%
Methamphetamine												
Wrong whether legal or not		89.5%	89.1%	84.7%	88.0%	90.0%	88.1%	90.0%	89.1%	90.0%	89.9%	88.9%
Wrong because illegal		3.7%	4.8%	6.3%	7.6%	6.1%	5.7%	6.1%	6.9%	6.5%	6.7%	7.8%
Acceptable despite illegality		1.7%	0.2%	0.1%	0.1%	0.1%	0.0%	0.1%	0.1%	0.0%	0.1%	0.2%
Should be legal		1.9%	2.8%	2.3%	1.2%	1.1%	1.3%	1.1%	1.3%	0.9%	0.7%	0.6%
Do not know/didn't answer		3.2%	3.7%	6.6%	3.1%	2.7%	4.9%	2.7%	2.6%	2.6%	2.6%	2.5%

²⁸⁴ White et al, 2017: 1

The 1987 school curriculum may well not be to blame for the normalisation of drug culture in Britain. Until then, there was no curriculum. For decades, respected social figures were thought no less of for their open experimentation with drugs. Like much of the West, the cultural revolution of the 1960s created the association between the libertine and the enlightened. The Beatles and the Rolling Stones were knighted despite being well known for popularising experimental drug use. Liberalisation activists have long considered their role as instrumental in the depenalisation of cannabis possession in the United Kingdom²⁸⁵. Drug use is thoroughly normalised, and a frequent feature of nightlife and neutrally or positively portrayed in the vast majority of occurrences in media. An indicative feature of British drug culture is that cocaine abuse is common amongst politicians²⁸⁶. When this fact was revealed to the public through the tabloids, it led to no arrests, resignations, damnations of character or changes in behaviour at any level, in fact, British politicians routinely confess/boast their past use²⁸⁷, and appeal to the public to support decriminalisation of personal possession²⁸⁸. It is hard to imagine any government surviving such a scandal in Japan.

²⁸⁵ Abrams, 2009

²⁸⁶ Segalov, 2019; Webb, 2013

²⁸⁷ Stubbley, 2019

²⁸⁸ BBC News, 2019

Conclusion

I began this thesis by asking what, given that drugs are prohibited worldwide, might cause the differences in the outcome of use seen worldwide. I wrote this thesis with not only social science in mind, but to a greater degree, policymaking. What a policymaker wants to know is what can be done, and whether it is a good idea. There are many things a democratic state has control over besides the content of the penal code in order to effect change, and other states are not so different. The police strategy, prosecution guidelines, school curriculum, public communication and health services are to a very great extent under the government control, and these differ a great deal between states, even when laws are similar. Situational Action Theory analyses why people commit crimes in terms of several variables, many of which correspond to areas within the purview of state power. People's choices are affected by what they deem morally acceptable, and ability to change the moral attitudes of the next (or even current) generation is well in the hands of the state, as is the capacity to deter unwanted behaviour through threat and coercion. Strict control can reduce opportunities for deviance. This can change the social environment significantly.

1: Summary of the Results

The signs for all indicators are consistent and unambiguous. Japan has a far lower level of drug use, as shown by all indicators, whether in terms of hospital admissions, arrests, seizure volumes or reported usage in surveys. They have also made drugs less available - by both objective (drug prices) and subjective (surveyed perception) indicators. The surveys also demonstrate a consistent difference in approval of taking drugs; the Japanese having a strongly prevalent negative moral attitude to it. English and Welsh people are far more accepting of drug use, and many believe the prohibition on cannabis should be repealed. Their school system suggests a more pragmatic approach, while the Japanese emphasise moral prohibition and common solidarity in abstinence. In England and Wales, one is less likely to be arrested for possession of drugs, less likely to be prosecuted if caught, less likely to receive a sentence if prosecuted, and less likely to go to prison if sentenced. The Japanese system includes more police-public contact, puts more emphasis on public information, and is more attentive to juvenile delinquency, focusing on community cohesion.

2: Analysis

Wikström's theory provided a tonic to the conceptual confusion that surrounds crime – it is the only theory I came across that described crime for what it is regardless of context: breaking the law. Therefore it is the only general theory of crime which allows one to treat any breach of the law as a dependent variable *in itself*. Its main concepts of the causes of crime also translate well from individual decisionmaking to environmental and institutional states of affairs. A strong popular disapprobation of drug use makes radical liberal reforms difficult to enact openly, and keeps most people from indulging in transgression. Strict enforcement deters social transgression by those not deterred by social judgment, but also keeps transgressors from acquiring institutional power by marginalising their views. Strict enforcement also reduces availability, which makes it easier for people to miss engaging in drug abuse when they are young and impulsive.

Ultimately however, the institutions and their evolution are what carries the bulk of the analysis beyond mere observation of difference. Once the balance of the ruling class in the United Kingdom had adopted a liberal attitude to drugs, members of the legislature, senior civil service and judiciary moved to depenalise and partially decriminalise possession. By removing the strength of sanctions against drugs in England and Wales, the growing drugs community was never stamped out as it was in post-war Japan, and allowed a growing normalisation of the use of cannabis and other drugs, a pattern maintained by defeatism, tolerance, and victimhood narratives, increasing sympathy towards users of other drugs. With the collapse of community life in the West, centred around church life, and the centralisation of policing, detached as it became from community interfacing, the will and capacity of authorities to control the normative drift of society waned, and the moral vacuum which could have been filled by the education system did little to help.

Japan underwent precisely the opposite transformation. From handing out methamphetamines to soldiers and bureaucrats in the war and allowing it to be sold at corner shops as a pick-me-up, leading to widespread common use, the government ferociously stamped down on the use of the drug, combining fierce and uncompromising enforcement of the law with vociferous propaganda and public denunciation. By applying similar sternness to their colonies earlier, Japan transformed Taiwan and Korea from notoriously opium-addicted societies into sober societies where the drug is all but unheard of. In the modern era, rather than give in to social change, the Japanese cracked down repeatedly on every metamorphosis of the

drug market to choke off supply. Public figures who flouted the rules were and are publicly denounced. By providing strong moral leadership, and insisting on firm and consistent application of the law, lenient to the youth and always with the option of treatment and rehabilitation, the Japanese government has been able to provide both a consistent moral example, and maintain firm control over the opportunity to commit drug crimes.

Overall, the lessons learned from the evidence I have found indicate the importance of political leadership to the overall direction of a country, and the strength of the government to shape the society it governs. Drug use is not a default position, or human nature, any more than it is the nature of people to act on any other selfish impulse. Moral attitudes can have a great effect on the behaviour of a society, and these can be strongly mediated by one's social environment. People require support to conform – maintaining sobriety is harder in a pub than a mosque, but if the imam allows drinks during prayer, things will not remain halaal for long.

3: Reflections and Recommendations

One of the biggest obstacles to this study has been the availability of statistics. While both governments have collected the relevant data, it is often published in discontinuous pieces, or different data are published from year to year. In the case of England and Wales, much of the data required visiting archived pages, some of which were not searchable, and could only be stumbled across by combing the recent releases for links and references. Japan required a tedious process of translation trial and error, and comparison with English-language explanations to find which terms matched with which, and file-format errors associated with Japanese-language pdf documents made after 2007. I was fortunate that the Japanese government published several statistical packages in recognition of the end of the Heisei era, to mark the passing of the throne to the new Mikado.

Were this a professional study, I would have been able to apply for the documents from official sources, or visited the archives in person, but it is hard to know how long this process may have taken. Time constraints being what they are, I decided to push ahead with the survey as comprehensively as I could for those statistics which were available for both countries. I was fortunate that the available data provided such a comprehensive and unambiguous picture – were I analysing more similar prohibition systems, the lack of detailed continuous data records might not have painted so conclusive a portrait.

The background research to this study was greatly disappointing. Despite decades of well-funded drug research, I have found very few authors who operated outside of liberal assumptions. This consensus is not fully warranted, since no author has made any systematic comparison with any country which strictly enforces its policies, and has the material and human capital to enforce such a program. Only two papers could be located which addressed the significance of moral attitudes to drug use, and policy documents only appeared to be tracking opinions regarding the legitimacy of their public positions. The flouting of the law by British politicians was also depressing, but the failure to address differences in the strictness of the application of the law, even by seasoned researchers, was baffling. While I went into this question as a supporter of liberalisation, believing that the levels of drug use in Western society were “natural”, I have never been so thoroughly convinced of my own ignorance, nor so disappointed in my seniors.

The liberal philosophy of drug abuse is one that treats drug use as a health condition or a harmless alternative lifestyle choice, not as a crime – the users are victims or noble rebels. Its adherents therefore judge those who differ from this perspective to be persecutory, unforgiving puritans, trapped in archaic moralism. However, as many of the statistics used above demonstrate, the sort of society which treats drug use as morally wrong and acts on that morality is one in which there are far fewer harmful consequences, whether in mortality, health, rates of incarceration, and volume of drug crime in general. This is not even to address the question of negative moral examples, of the consequences drug abuse visits upon one’s family, or the effect that first-world recreation has on violent crime in poor countries.

If the pattern observed in the current study held true for other states, the argument for the liberalisation of drugs could only be defended from a perspective of defeatism – that there is no political will to return to morality, and that therefore we ought not to try. But if the long-term institutional analysis demonstrates anything, it is that attitudes among the governing elites can drastically alter the perceptions in wider society. The decision to depenalise British drug policy was not put to a vote, but it would almost certainly have been rejected with extreme conviction if it were. The choice not to enforce the law was done clandestinely, and dishonestly, and only recently have moral attitudes caught up with state policy.

If my study is any indication, it is that a clean society is possible without tyranny, stricter reform is well within the power of politicians, and discovering the evidence is well within the power of academics. Academics in general should be paying more attention to systems and

policy regimes outside of the West, and should more directly be addressing the role of morality as a variable in the social sciences. The gaps in the literature found in this study do not reflect well on their efforts.

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