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Distinctly Divergent or Hanging onto English Coat Tails? Drug Policy in Post-Devolution Wales

Dr David Brewster and Dr Robert Jones

Abstract

The process of Welsh devolution has marshalled major political, social and institutional change. Whilst scholars within various disciplines have attempted to make sense of these changes, the discipline of criminology remains something of an exception. This article offers an examination of the unique Welsh criminal justice policy space that has been opened up by devolution in Wales. The paper provides a long overdue assessment of how drug policy in Wales, while continuing to straddle the UK Government's criminal justice responsibilities, is configured and shaped within post-devolution Wales. The empirical findings presented here reveal the existence of a distinct Welsh drug policy as well as discovering clear limitations to Welsh policy divergence. The article outlines the need for criminologists to take Wales – and the Welsh policy space – more seriously, while highlighting the need for criminologists to become more attuned to the considerable effects being made by constitutional change.

Keywords

Wales, devolution, substance misuse, drug policy, divergence

Introduction

Throughout the course of the last twenty years, the United Kingdom (UK) has undergone extraordinary constitutional change. In 1998, the UK Parliament passed three devolution Acts. The Scotland Act, The Government of Wales Act and the Northern Ireland Act established new political institutions and oversaw the transfer of *some* powers and functions previously held by the UK Government (UKG) in Westminster. In the time that has elapsed, the devolution settlements of each constituent part of the UK have undergone yet further transformation. This includes, *inter alia*, a referendum on primary law making powers in Wales, the introduction of a new devolution dispensation in Scotland¹, as well as the transfer of policing and justice powers to the Northern Ireland Assembly. These developments have further contributed to the emergence of an ‘asymmetric’ set of governance relations whereby devolved polities now have varying powers to craft legislation and policy across, as well as within, different fields.

The changes that have been catalysed by devolution have been reflected within the research agendas of criminologists across parts of the UK, including Scotland (see Croall et al., 2010; McAra, 2008) and Northern Ireland (McAlinden and Dwyer, 2015; O’Mahony, 2012). In Wales, however, with a few notable exceptions (Drakeford, 2010; Haines, 2010), criminologists have provided very little coverage of the impact made by Welsh devolution to its role within the England & Wales system. Consequently, debates on criminal justice in Wales continue to be characterised by a presumed policy linearity with Westminster. This discourse is one that consistently fails to comprehend the vastly more complex and interweaving negotiations of power and agenda setting that now occur within the governable space of Wales. As Stenson and Edwards (2004: 219) pertinently argued over a decade ago, there is a need for criminologists to

consider “the uneven ways in which political rationalities and governmental technologies are configured in different localities by competing coalitions of actors”.

This article explores the ‘uneven ways’ in which drug policy is configured within post-devolution Wales. The first section of the paper explains how the combined processes of Welsh devolution *and* changes to UKG criminal justice policy are responsible for delivering major changes to Wales’ position within the supposed ‘unitary’ England & Wales system. From here, through drawing upon empirical research into drug policy in Wales, the article presents a much-needed analysis of the ways in which this Welsh policy space is being used. This includes a discussion of the extent to which Welsh drug policy is divergent from that of England, as well as offering an original analysis of some of the limitations to Welsh policy divergence. By framing the emergence of a distinctive Welsh criminological policy space, and exploring some of the important issues within it, this article illustrates the need for criminologists to think beyond ‘England & Wales’ as a unit of analysis despite the continuing formal existence of the unitary jurisdiction.

The Emergence of Wales

The England & Wales system was created during the sixteenth century with one central aim: to legally incorporate Wales into England. While sweeping away many of the “customs and usages” that had once included Wales’ very own penal code (Rawlings, 2003: 460), the formation of the single jurisdiction was responsible for producing dominant ways of talking about criminal justice policy. The absorption of Wales ensured that it was to be rendered invisible from debates on crime control and criminal justice (Jones, 2017). As such, Wales was – and indeed has been ever since – simply spoken of through the dominant position assumed by England. This has been

reflected within a range of different studies on criminal justice that, by speaking solely about England on the behalf of both England *and* Wales, have helped to conjure up ‘common sense’ characterisations of “English criminal justice” as well as an active “English criminological tradition” that has helped to shape criminal justice policy in England *and* Wales from the nineteenth century onwards (see Radzinowicz and Hood, 1986; Rutherford, 1988: 136).

The legacy of this anglocentric narrative is that, so long as the England & Wales system remains intact, it is deemed perfectly acceptable to speak on the behalf of Wales through the dominant position of England. However, while the England & Wales system remains formally in place to this day, at least in name, the combined effect of changes to criminal justice policy *and* the start of executive devolution to Wales has been responsible for a radical, yet rather inconspicuous, transformation to Wales’s role within a jurisdiction supposedly characterized by the abolition of difference.

Welsh Devolution

The short history of Welsh devolution is marked by continuous iteration, development and change. Although administrative devolution to Wales first began during the middle of the twentieth century, the Government of Wales Act 1998 heralded the beginning of executive devolution with functions previously held by the UK Secretary of State for Wales in Whitehall transferred to the newly established National Assembly for Wales in Cardiff.

By the middle of the millennium’s first decade, having taken on a number of different faces during its early formative years (Rawlings, 2003), the Welsh Assembly was well on its way to becoming a more orthodox parliamentary structure. The Government of Wales Act 2006

conferred some legislative powers to the National Assembly, however, it was not until 2011, following a successful ‘Yes’ vote in the referendum (Wyn Jones and Scully, 2012), that full primary law making powers were given to the National Assembly. This outcome led to yet another inquiry into the future of Welsh devolution, also referred to as the Silk Commission, which has helped to shape some of the most recent constitutional developments.

When its findings were published in 2013 and 2014, the Silk Commission recommended a number of modifications, including the transfer of some tax raising powers to Wales, as well as calling for a move towards a “superior” reserved powers model (Silk Commission, 2014: 37). The UK Government, although largely rejecting many of the Commission’s recommendations², legislated to provide Welsh Ministers with tax raising powers (Wales Act 2014) as well as introduce a reserved powers model (Wales Act 2017). In January 2017, the Wales Act 2017 became Wales’ third devolution dispensation in less than a twenty-year period.

The rather condensed tale of Welsh constitutional development that has been told here illustrates the many ‘gear changes’ that Welsh devolution has gone through since its early beginnings (Rawlings, 2015). Importantly, however, what remains clear is that since becoming formally empowered in April 1999, the newly formed democratic institutions in Wales have been formally responsible for twenty separate areas of government. Although this still does not extend to criminal justice powers in Wales, the Welsh Government’s (WG)³ control over many social policy functions was key – and indeed still is – to shaping the identity of Welsh devolution. As argued by Chaney and Drakeford (2004: 123-4), the “essence” of early Welsh devolution had been to create a “social policy Assembly for Wales”, with a significant amount of the WG’s entire budget spent on areas such as health⁴, education, housing and social services. Crucially, it is the WG’s control over these areas that is key to understanding Wales’ changing role within the

England & Wales system. In particular, as the process of Welsh executive devolution began, the social policy responsibilities being handed over to Welsh Ministers in Cardiff were about to assume a central role in the UKG's 'modernised' approach to tackling crime and offending.

'A Social Policy Assembly'

In 1997, at the same time that plans for Welsh devolution were being unveiled by the Welsh Office (1997), the newly elected New Labour Government outlined its commitment to a different approach to tackling crime across England & Wales. Elected at a time when Western states were beginning to reconfigure their approaches to tackling crime (Garland, 1996), the New Labour Government embarked itself on a "relentless quest" to "modernize" state institutions (McLaughlin et al., 2001: 305). At the heart of its policy was a commitment to delivering 'joined-up' approaches and the need for integrated working between state, local and community agencies. This strategy was most clearly evidenced during New Labour's early years in its approach to youth justice (McLaughlin et al., 2001), as well as the introduction of the Crime and Disorder Act 1998 (Gilling, 2007).

A central pillar within New Labour's policy was a commitment to new forms of governance. Its plans included reforms at the level of the state itself with an emphasis upon the development of "horizontal" coordination and collaboration *between* state departments and public sector organisations (Newman, 2001: 106). Rather than simply responsibilising individuals and groups beyond the central government, New Labour's commitment to joint working meant that non-criminal justice government departments, including those responsible for tackling drug and alcohol misuse, were also drawn in as part of its collaborative efforts to create an "enhanced

network” of agencies actively involved in supporting criminal justice institutions to reduce crime (Garland, 2001: 124).

From 1999 onwards, this “criminalization of social policy” was being reflected in the ways in which social policies were being used by “devolved authorities” to tackle crime and offending, including the newly created WG (Rodger, 2008: 3). In Wales, despite being handed no formal responsibilities over the criminal justice system, the WG set about using its own social policy functions to help tackle crime and lower offending in Wales. From 1999 onwards, for example, the WG has introduced provisions to improve offender health (WG, 2005a), education (WG, 2007), substance misuse (WG, 2008), and housing services (WG, 2015), measures to tackle domestic violence (WG, 2010), as well as steps to improve community safety across Wales (Edwards and Hughes, 2008).

‘Different Welsh Perspective’

The significant changes made by devolution forced the UKG to recognise the existence of a distinct set of arrangements in Wales (see MoJ, 2014; Wales Office, 2013). No longer able to be spoken of through the dominant position of England, a 2006 joint report by National Offender Management Service (NOMS) Cymru and the WG (2006: iii) vowed to take full account of “the different Welsh perspective” that had been brought about by devolution. Significantly, this included an acknowledgement that the WG now enjoyed “considerable autonomy” over policy development within pathway areas that were absolutely central to the UKG’s ‘joined-up’ approach (NOMS Cymru et al., 2006: 8).

Far from being part of any named, deliberate or formal strategy to provide the WG with any kind of official responsibility for criminal justice in Wales, the forging of closer ties between social policy and criminal justice have simply meant that responsibilities over crime and tackling offending have been picked up as part of the WG's existing strategic programme of government. Despite the magnitude of these changes, however, academics continue to disregard the distinct policy context that exists in Wales (e.g. Czerniawski, 2016; Forrester et al., 2013). As a response to this continuing failure, this paper will showcase the importance of taking Wales seriously by offering a critical analysis of the WG's approach to drug policy.

The Study: Drug Policy and Devolution in Wales

For almost 100 years, commentators have characterised “British” drug policy by its straddling of several policy spheres, and most notably that of health and criminal justice (see Berridge, 1984; Stevens, 2017). With powers over the misuse of drugs or psychoactive substances reserved to the UKG⁵, analyses of drug policy in Wales have largely been absent or otherwise framed as a silent, and emulative, player in discussions of “Britain”, “UK”, or “England & Wales”⁶ (see Monaghan, 2012; Duke, 2013; Shiner, 2013). However, the enduring feature of “health” and other related social policy spheres has ensured that Wales, in the post-devolution era, has become more actively involved in the crafting of policy decisions and legislation on areas that directly pertain to drug policy. This has opened up the possibility of a distinctive and divergent approach to that of England and/or the UKG. Considering its supposed social democratic and welfarist principles (Drakeford and Gregory, 2011), it could be expected that Wales has the ability to generate strategies and approaches which are more ‘adaptive’ in nature (Garland, 2001), and which are more resistant to overly punitive measures than that found in England.

Despite the emergence of a Welsh criminal justice policy space, the trend of neglecting drug policy in Wales in favour of reinforcing the hegemony of a “UK” approach remains dominant. As illustrated within a recent journal article by Duke et al., (2013: 971), who, in a footnote, state that devolved strategies are merely ‘...coordinated within the overall UK strategy’. It is problematic, if not concerning, just how little academic attention, with the exception of some notable evaluative studies (e.g. Bennett and Holloway, 2011; Bennett et al., 2013), has been directed towards this policy sphere. By taking Wales as the central unit of analysis, the remainder of this paper will empirically examine how this Welsh space has diverged from the broader UK (or Westminster) approach to drug policy, as well as exploring the extent to which that a distinct Welsh approach to drug policy may in fact be limited.

The data used in this paper is drawn from a broader project that examined the policy-making processes relating to cannabis in England & Wales (E&W) and the Netherlands (NL). More specifically, it compared the 2009 reclassification of cannabis from Class C to Class B (E&W) to the 2012/13 changes to the ‘coffee shop’ tolerance policy (NL). The research design was a multiple-embedded case study and compared two ‘national’ cases and two ‘subnational’ cases in order to decipher the nature and extent of convergence and divergence in policy-making processes, and what this signified in terms of contemporary cultures of control (Brewster, 2017). For the purposes of this paper, this provided a useful and interesting way in which to explore the development and projection of drug policy in Wales and how it navigated a legislative change which was beyond the power of the WG.

The paper draws upon a reading of official Welsh drug strategy policy documents (WG, 2000; WG, 2008) as well as qualitative data from a series of interviews with policy stakeholders in Wales (n=10), which included senior political figures (SPF) (3), senior civil servants (SCS) from

WG (3), and senior practitioners working in health and police services (SPO) (4). Participants were recruited through purposive and reputational sampling. Documents and organisations were identified from a review of the literature as being relevant and involved in drug policy, and identified contacts were sent formal emails or letters explaining the research and inviting their participation in the study. Data collection occurred between 2011-2013. Interviews were conducted face-to-face and lasted on average 40 minutes and were recorded and transcribed. Kingdon's (1995) Multiple Streams model of policy-making was used as a 'middle-range' analytical framework to thematically code and sort both the interview and documentary data into different policy 'streams', as well as allowing for in-vivo codes to emerge from the data itself. Together this enabled the study to critically compare processes of policy change across the different cases in terms of convergence and divergence⁷.

For this paper, the analysis presented takes a less rigid form than that of the Multiple Streams model, in order to explore the development of drug policy in Wales as a whole, whilst still drawing upon prominent themes that emerged in relation to the cannabis reclassification in 2009. Next, through intertwining findings from both the interviews and drug strategies, the substantive empirical analysis discusses the extent of divergence in drug policy in Wales. First, the claims for a distinctive approach are considered, before turning to critically examine the limitations of divergence.

A Distinct Welsh Drug Policy

In support of a distinct Welsh drug policy, this section will first explore various manifestations of divergence that can be detected in policy 'talk' and 'action' in Wales (Politt, 2001). Then, it will seek to contextualise and explain this through charting the growth of the 'substance misuse'

policy machinery and illuminating components of Welsh political culture which have facilitated these developments.

In several important ways, contemporary drug policy in Wales demonstrates a more rational, inclusive and innovative approach than can be found in England. While it may well be possible to point towards the beginnings of a unique Welsh approach via the Welsh Office (McBride et al., 1998)⁸, executive devolution to Wales in 1999 was the major catalyst for policy divergence as it enabled actors, agencies and institutions in Wales to gain more influence and power in the crafting and administering of drug policy. Whilst continuing to straddle criminal justice (Rodger, 2008), the dominant approach taken in Wales is that of health and particularly harm reduction.

The claim to a distinctive approach can be clearly identified through both official rhetoric and the introduction and support of policy initiatives by the WG. First and foremost, nowhere is this approach more clearly on show than in the language of ‘substance misuse’. This lies in stark contrast to the separate strategies towards alcohol and illicit drugs in England, as well as the shift towards an abstinence-based ‘recovery’ approach at the UK level (Monaghan, 2012). The central positioning of ‘substance misuse’ and ‘harm reduction’ rhetoric in Wales is not just political posturing, but it has major consequences for how problems are recognised, responses organised, and resources allocated at a central (WG) level of decision making.

In terms of Welsh-specific policies, there are several examples that demonstrate distinctiveness. In 2004, for example, the WG’s introduction of a Transitional Support Service (TSS) marked its major commitment to tackling substance misuse amongst Welsh prison leavers. Introduced to help address the shortfall in support for prisoners only serving short-term sentences (see Maguire et al., 2000), TSS quickly developed a reputation as a “very effective practice model” – and one

that clearly diverged from England – for delivering ‘through the gate’ support aimed specifically at short-term prisoners from Wales suffering from substance misuse (Maguire et al., 2010: iv).

In a further example, the use of Naloxone in Wales has gained significant attention in policy circles for its use in preventing opiate overdoses. Whilst this is available in England, it does not receive central UKG funding which makes provision more sporadic and based upon local commissioning decisions. In Wales, however, since 2011 it has been centrally (WG) managed and funded and has been rolled out nationally.

Finally, in 2013 the WG formally supported the ‘Welsh Emerging Drugs and Identification of Novel Substances’ (WEDINOS) to provide a mechanism to allow the public to test unknown or unidentified substances, whilst offering better public information about potentially dangerous or contaminated substances on the market. Although there are also pill and powder testing services in England, which have recently gained some traction⁹, these are not yet endorsed by the UKG and appear to lie in tension with the direction towards an abstinence-based approach.

Importantly, the examples highlighted here demonstrate some pertinent differences from UKG drug policy, both in terms of policy ‘talk’ as well as ‘action’ (Pollitt, 2001). As will be further explained below, these manifestations of difference are connected to the increased policy machinery that has developed around drug policy in Wales *as well as* the political culture that has come to govern the way in which drug policies in Wales are created.

'Brand Wales' – Policy Machinery and Political Culture

The early years of post-devolution drug policy in Wales provided little by way of genuine policy distinctiveness. The WG's (2000) first drug strategy, *Tackling Substance Misuse in Wales*, included some subtle additions to the UKG's own *Tackling Drugs to Build a Better Britain* strategy (Home Office, 1998), but the differences appeared to be minor beyond a continuation of the rhetorical commitment to a health-based harm reduction approach that had developed during the Welsh Office years. As executive devolution developed during its early formative years (Rawlings, 2003), however, drug policy in Wales began to take on a more divergent and autonomous character.

The period that separates the publication of the WG's first substance misuse strategy in 2000 and its second, and current strategy, *Working Together to Reduce Harm* in 2008, is key to understanding the development of a distinct Welsh drug policy. *First*, as confidence in the maturity and resilience of Welsh devolution grew, this came to be reflected in an expanded policy machinery surrounding substance misuse in Wales. Supported by increased levels of central (WG) funding¹⁰, this expanded machinery has been complimented by improvements in recording, monitoring and analysing Welsh-specific substance misuse data. This process formally began in 2006 with the decision to introduce the Welsh National Database for Substance Misuse. According to one SCS who was involved in its creation, prior to this '...there was no information, no data' which limited the WG's ability to respond to, and manage, the drug problem in Wales.

In constructing representations of substance misuse problems specific to a Welsh-defined context, the expanded Welsh drug policy machinery has been able to claim greater ownership

over issues and provided the rationale and legitimacy to craft responses tailored to those specific problems. For example, the overt recognition that ‘the harmful use of alcohol in Wales is far more widespread than that of illegal drugs and other substances’ lends credibility to a joint approach to substance misuse as a whole, partly because it ‘...enables local commissioners to target resources in proportion to the relative harms of drug misuse and alcohol misuse in their area’ (WG, 2008:12).

The bureaucratisation of substance misuse, and of ‘...wanting to embed a culture of evidence-based practice’ (SCS 2, WG), is not a development specific to Wales given the ‘modernising agenda’ that New Labour had embarked upon at the same time (McLaughlin et al., 2001; Rodger, 2008). However, whilst authors have often articulated the more punitive criminal justice-based manifestations of managerialist influences in England (UK) at that time (Duke 2006; Seddon et al., 2008), in Wales, an expanded policy machinery has helped to propel a more dominant health-based approach which has solidified an identity, or ‘brand’, around harm reduction. Thus, a set of frameworks have been created which project Wales as commanding a distinct entity and position on the issue of substance misuse. This is evidenced, for example, in the *Framework for Community Safety Partnerships to Commission Substance Misuse Services* (WG, 2005b), the Comprehensive Performance Management Framework (see WG, 2008: 16), and the Substance Misuse Treatment Framework (see WG, 2008: 73-75).

The *second* driver behind a distinct Welsh drug policy is the political culture operating *within* the expanded policy machinery. A reading of the 2008-2018 strategy indicates a more definitive shift in the rhetoric towards an autonomous approach than in previous strategies. For example, this marks a transformation in terms of the relationship with the UKG, with the current strategy projecting one of equal partnership rather than the asymmetrical dependency which characterised

previous strategies: ‘...it requires the WG and UKG to work together on issues which cross the boundary of devolved and non-devolved areas of responsibility’, creating ‘links with UKG strategies’ (WG, 2008: 19).

The shift in rhetoric was driven forward at a time when other organisations, including NOMS, were forced to acknowledge the extent of the WG’s involvement in shaping and implementing criminal justice policy in Wales (NOMS Cyrmu et al., 2006). For those operating *within* the policy machinery in Wales, the emergence of a distinct culture amongst policy insiders reflects the growing strength, maturity and confidence of political institutions in Wales. In relation to the area of substance misuse, policy insiders confidently claim that a distinct political identity enables them to produce Welsh-specific policy responses. As one policy stakeholder suggested:

‘It’s no longer about us just hanging on English coat-tails and taking an English policy and dragonising it. We don’t do that but we used to do that 20 years ago. But we don’t... we develop policies which meet the needs of the Welsh population.’ (SCS 2, WG)

A strong theme, which contributes towards this sense of policy autonomy, is the projection of Welsh unity through shared common values and goals. In the accounts of policy insiders are refrains to notions of a close-knit community of policy-makers and practitioners (or in their language, ‘partners’) (see Drakeford, 2010). In part, this is adjudged to be a result of a set of geographical, cultural and historical factors which have served to forge a clear Welsh identity and divergence from England:

‘We’ve got common things that we do together, so we are held together by the language and that makes, I suppose, a desire with everyone I ever bump into to work together. We

want to be integrated, we want to have a brand Wales, we want to be together.’ (SPO and WG)

‘I think we are fortunate that we are quite a small nation. The number of partners that we have... because we have less regions it is easier for us to work very closely with our partners and I think you will probably find that the relationships that we have with our partners are probably better and closer than they are in England.’ (SCS 1, WG)

‘...it is a document [substance misuse strategy] that is not a WG document, it’s owned by everyone in Wales and you will find if you talk to partners that they will say that.’ (SCS 2, WG)

What remains central to our understanding of a distinct Welsh drug policy, however, is that the shared values underpinning political culture in Wales translate themselves into shaping the way in which Welsh policy insiders view, construct and respond to ‘the problem’ of substance misuse. According to one SPF, responses in Wales are framed as being more ‘sympathetic’ towards the individual substance user than in England. This sentiment is also clearly outlined within the foreword to the 2008 strategy, which states that ‘...the needs of the substance misuser, their families and the wider community must be at the heart of everything we do’ (WG, 2008: iii). Crucially, while dominant discourses in Wales centre on the construction of the substance user as victim, who should be offered help rather than creating a divide between ‘us’ respectable citizens, this approach appears markedly different to the perceived strategy in England:

‘I think the tone at the UK level is still very much a criminal justice driven approach with a pretty moral distancing... We are more likely to use the softer language of, these could

be people you know, these could be people like you, and if they fall into difficulty we ought to be able to help them because you might be in difficulty one day.’ (SPF 1)

The rhetorical difference between the inclusive ‘*Working Together*’ (WG, 2008) and exclusive ‘*Protecting Families and Communities*’ (Home Office, 2008) appears to corroborate the above account. The ordering of the ‘action areas’ is not inconsequential either, with the UK strategies’ first listed priority that primarily concerning criminal justice (‘protecting communities’/‘reducing demand’). In the Welsh strategy, this corresponding action area is the last discussed whilst ‘preventing harm’ comes first. Even according to the perspectives of those working within criminal justice in Wales, the influence of health is seen as *the* dominant voice shaping contemporary Welsh drug policy:

‘...we like to think we are independently minded, and we have got health devolved so I think the emphasis on treatment and prevention is certainly stronger than enforcement because the policing isn’t devolved and neither is the law...’ (SPO and WG)

The ability to move away from UKG policy has only been made possible following the emergence of a distinct Welsh policy space. Within this space, however, a broadened policy machinery and strong political culture have helped to influence and shape the formation of a distinct Welsh drug policy. While responsibilities over criminal justice remain outside of its competencies, this has arguably led to a sharpening of those areas in which policy movement is possible. The direction of which would appear to be attuned to a political culture which, supposedly, favours social welfarist principles (see Davies and Williams, 2009; Morgan, 2002).

The Limits of Divergence – Hanging onto (or wedded to) English Coat-Tails?

Despite the emergence and claim of a ‘Welsh approach’ to drugs, this section will consider three central issues which have constrained divergence in Wales, namely: insufficient powers; a reluctance to campaign for genuine change; and a lack of critical debate around drug policy in Wales. While what limited research there is on justice in Wales has tended to focus upon the distinct or even progressive elements of Welsh policy (e.g. Drakeford, 2010; Haines, 2010), the arguments presented here offer a more critical examination of the Welsh criminal justice policy space.

Firstly, a distinct Welsh drug policy is restricted by Wales’ devolution dispensation. While Welsh ministers and policy makers may be responsible for the policy drivers and controls over health, primary-law making powers concerning the control and classification of illicit substances in Wales are currently reserved to the UKG¹¹. These controls are principally covered by the Misuse of Drugs Act (MDA) 1971¹², which, *inter alia*, prohibits the possession, sale, supply and production of substances covered under its remit. Other pieces of legislation covering licit substances in Wales, such as the Medicines Act 1968, Customs and Excise Management Act 1979, and the Licensing Act 2003, which predominantly concerns the regulation of how substances can be manufactured, distributed and sold, are the responsibility of the UKG.

In respect of all this legislation, the WG has no formal powers to enact, change or resist decisions made by the UKG, even where such changes may appear to run counter to the direction and wishes of elected officials in Wales. The direct consequence of this is an overt acknowledgement from WG that they must work alongside, and accept the decisions of, the UKG. As the current substance misuse strategy states, this necessitates ‘pressing the case for legislative change with

Whitehall Ministers... or seeking to reach agreement on where Wales and England legislation can be varied in Wales' (WG, 2008:19). This very clearly imposes limitations on any current and future claims and desires for a divergent substance misuse policy.

Following on from their inability to control legislation, the *second* limitation to divergence relates to the willingness of Welsh Ministers to campaign the UKG for change. The broader politics of crime and drugs control that has been widely noted at the broader UKG level (and beyond) generates an imperative for policy makers and politicians to be 'tough' on such issues (Seddon et al., 2008; Garland, 2001). As such, this affects the extent to which politicians can be reflexive about their publicly known positions on drugs policy (see UKDPC, 2012). The research showed that this is also felt in the sensitivities and anxieties of Welsh political actors. Indeed, it was felt by one SPF that 'putting your head above the parapet' to advance more liberal or progressive agendas on drug policy could effectively end your career. This is by no means unique to Wales, but within the Welsh context, there is limited open political support amongst Ministers or elected Assembly Members for alternatives to drug prohibition¹³.

As a consequence, to speak out about issues such as drug classification and the harm-producing role of criminal justice is not perceived to be worth the risk it entails for most political actors. This is especially tricky for WG Ministers because substance misuse only equates to a small proportion of an extensive portfolio¹⁴. Therefore, to be risqué about a relatively modest area may have consequences on other aspects of the job that may well carry greater importance for an individual and their future career (Stevens, 2011). Moreover, these dynamics are particularly conditioned by the relationship between WG and Whitehall, and so there is a sense that the WG has to be 'tentative' in the 'fights to fight':

‘...we have a series of difficult discussions that go on between ourselves and Westminster Government, would we choose to add this one [drugs legislation] to the list? I think probably not, because the other things that are on the list, are, you could argue in some ways are more pressing... you always worry that if you introduce another argument into that you will lose ground on some more important ones... Would you suddenly start not being able to win arguments over here because your attempt to win over here would be overshadowed by, undermined by, a different sort of argument. How could you possibly give those people those powers to do that when they’re asking for this mad thing over here?’ (SPF 1)

Significantly, even where the WG has demonstrated a willingness to challenge the UKG on legislation, which incidentally appears to only concern licit substances, it has also become clear that such endeavours are unlikely to result in a favourable outcome. For example, despite the continuing efforts being made by Welsh Ministers to have powers over alcohol licensing devolved to Wales (see BBC, 2010; WG, 2013), this plan was once again rejected within the UKG’s St David’s Day command paper (Wales Office, 2015). In this instance, the WG’s demands were somewhat lost within a much broader set of discussions taking place around a move towards a reserved powers model, as well as the transfer of further powers to the National Assembly.

The *third* restriction on divergence relates to the fairly narrow nature of policy-making in Wales. One criticism levelled at it by a SPF is that there ‘isn’t enough grit in the oyster’, signifying a lack of critical debate amongst policy makers about drugs in Wales. Another political figure was equally critical of such practices:

‘...this fatuous idea that if you get lots of people sitting around a table you pool their wisdom, you don’t, you pool their stupidity and their prejudice, and you don’t get sense you get prejudice.’ (SPF 2)

As such, there appears to be little willingness to look beyond prohibition for political decisions around illicit substances, with seemingly a large range of individuals from politicians to civil servants, experts (in the form of APoSM) and practitioners not engaging in the wider debate or challenging decisions made in Westminster:

‘...it’s like the debate doesn’t happen at all, so I get very straightforward advice within the parameters of the way that policy is currently configured... people like that [APoSM] who are not in the government machine but are there to advise it, even there they don’t raise it as an issue at all. They simply talk within the tram lines.’ (SPF 1)

‘I don’t see any pressure on the WG to lobby the Westminster Government in opposition to any of the decisions around classification, and I don’t see there currently being any appetite for them to do that either... those kind of pressures to my knowledge, having worked supporting and briefing ministers for some time around this, it’s just not on the radar at all.’ (Local Authority/WG Substance Misuse Policy Worker)

Importantly then, this effectively produces a deficit in Wales in what has been termed the ‘primeval policy soup’ (Kingdon, 1995), with only a narrow set of options made available for serious political consideration. In this sense, there appears to be a lack of debate, or even acknowledgement amongst politicians¹⁵, of alternative ways in which illicit substances could be managed at the UK level which could potentially allow for the WG’s harm-reductive aims to be

more straightforwardly achieved. Pervasive managerialist rhetoric such as ‘...making sure that services are equipped to meet the health needs of substance users is our top priority’ and ‘developing policies and strategies *we know work*’ [SM Policy Worker, emphasis added] are all based within an acceptance of a ‘hierarchy of credibility’ (Becker, 1967) that narrows the focus of ‘harm’ to a bounded framing of issues within a restricted template of policy responses. The notion that the very nature of UK controlled legislative frameworks (and subsequent law enforcement activity) could be a harm-producer is not considered, despite an abundance of research indicating such harms (e.g. Paoli et al., 2013).

From the perspective of substance misuse policy workers, the inability to change drugs legislation is not perceived to be a problem, and indeed is written off almost as incidental to the central aim of reducing harm. In relation to the 2009 reclassification of cannabis from Class C to Class B – which granted greater powers to the police as well as extending the maximum sentences available in the courts – it was suggested by one SCS that discussions over criminal justice and drug classification were ‘irrelevant’. Rather, it was important to ensure that ‘...whatever strategic decisions are taken centrally in terms of classification we end up then with the best fit for our demographic and our population’ [LA/WG Substance Misuse Policy Worker]:

‘...rather than argue about the class of any drug, what we talk about in our strategy are just the harms it can cause... from our point of view the messages to people is almost irrelevant to their classification in that respect because we’re looking at prevention, education, the risks associated, and the treatment... so we have not got dragged in to that ... which is not actually a WG responsibility’ (SCS 2)

Whilst not exhaustive, this paper has identified three limiting factors to a distinct Welsh drug policy. The accounts presented here appear to affirm that in some crucial respects Wales is still ‘hanging on English coat-tails’. Most significantly, however, is that the WG’s inability to change drugs legislation – which is then responsible for a reluctance amongst Welsh Ministers and policy makers to campaign for change, as well as a fairly narrow policy circle – means that Wales remains wedded to the UKG’s approach. Although it important to note that Wales *has* diverged in drug policy – the factors outlined here are helping to reproduce orthodoxical, UK led, positions at the expense of a wholly distinct or divergent Welsh drugs policy.

Concluding Remarks

In summary, executive devolution to Wales has enabled divergence to occur and is responsible for distinctive features in Welsh drug policy. The maturity of Welsh democratic institutions has enabled growth in the bureaucratic policy machinery, including data collection, which in turn has served to further the development of a ‘Welsh approach’ to ‘substance misuse’. There are some commendable aspects to this approach, which appears to be more rational, consistent, and progressive than that found at the UKG level. Nevertheless, owing to a set of limitations, which restrict the ability, and willingness of WG to fundamentally challenge or resist the unidirectional flow of laws and policies enacted in Westminster, any such claims to a distinct Welsh approach must be approached with caution. Given recent figures which reveal an increase in drug-related deaths in Wales (Office for National Statistics, 2017), this somewhat represents a failure to meaningfully, and more radically, respond in ways which reduce one of the severest harms caused by drug use.

Through the examination of drug policy in the Welsh context this paper has challenged the hegemony of anglocentric criminology (see Jones, 2013). Whilst the exact configuration of post-devolution drug policy in Wales remains indisputably complex, it is no longer accurate, and therefore worthwhile or suitable, to approach Welsh drug policy as something simply co-ordinated as part of a 'broader UK strategy' (e.g. Duke et al., 2013). The arguments presented here pose several further interesting and important questions for criminologists attempting to understand the contours of drug policy and criminal justice in Wales and the UK.

First, there is the need to assess the impact made by the UKG's decentralising and privatising reforms to criminal justice. Developments such as the introduction of Police and Crime Commissioners (PCCs), the introduction of Community Rehabilitation Companies (CRCs), and the formation of Welsh-specific organisations such as HM Prison and Probation Service (HMPPS) in Wales, should be paid greater attention to assess how these interact with agenda setting and policy implementation within the devolved context. Second, there is a need to understand more comprehensively the mechanisms and forces in play at a more localised level across all parts of the UK, and how they may shape, and be shaped by, their broader constellations of governance, whether that be at a devolved, UK, or international level. In doing so, there can be greater certainty over whether, for example, adaptive responses 'on the ground' are a result of the 'Welsh approach', or if they reflect broader tendencies and tensions in the 'structured ambivalence' of drugs control (Garland, 2001).

Finally, as drug policy across the UK continues to traverse the forces of constitutional change, future developments such as English regional devolution, the potential transfer of drug policy to Scotland (BBC, 2016), and the UK's exiting of the European Union, are all likely to pose major challenges to the future configuration of UK drug policy. On a much broader international level,

opportunities for divergence and policy innovation are also likely to shape the way in which drug policies are configured across local, municipal, regional, state or national levels (see Brewster, 2017; Dilley et al., 2017; Pacula et al., 2014). Indeed, the need to account for these changes is only likely to become greater as criminologists become more attuned to the fact that, as argued by Edwards et al., (2013: 378), policy variations within national borders “may be as great, or even greater” than those existing between nation states.

For scholars who continue to speak of a unified and homogenous system, spirited by the assumption that intra-national contexts are either inconsequential or unable to resist, negotiate and enact policy change, the arguments presented throughout this paper should encourage critical criminologists to take account of the continually shifting UK terrain and the merits of developing a more constitutionally informed debate.

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Notes

¹ The Scotland Act 2016 was given Royal Assent in March 2016. The Act provides the Scottish Parliament powers to legislate within a number of new areas including equal opportunities, the policing of railways, abortion and consumer advice.

² This included calls to devolve policing and youth justice powers to Wales (see Wales Office, 2015).

³ Initially named the ‘National Assembly’, from 2002 the Welsh executive was referred to as the ‘Welsh Assembly Government’. In May 2011, its name changed to ‘Welsh Government’. The term Welsh Government (WG) is used throughout this paper for purposes of consistency.

⁴ Including the responsibility for tackling drug and alcohol misuse.

⁵ See Wales Act 2017.

⁶ Explained, in part, by the common legislative framework of the Misuse of Drugs Act.

⁷ For more information about the study’s methodology, please refer to Brewster (2017: 570-572).

⁸ The Welsh Office had freedoms to shape policies around health that it did not have with criminal justice, and it was through a health-based framework that guided the creation and direction of joined-up substance misuse policy.

⁹ See ‘The Loop’.

¹⁰ The level of funding awarded to the Drug and Alcohol Action Teams (DAATs) in 2000 was approximately £2 million a year, by 2008-09, the Substance Misuse Action Fund stood at £25 million.

¹¹ Wales Act 2017 (c. 4) Schedule 1 (s.54) — New Schedule 7A to the Government of Wales Act 2006.

¹² Other relevant pieces of legislation include the Psychoactive Substances Act 2016.

¹³ There is arguably greater freedom to speak out on controversial issues amongst ‘list’ members who are not required to win constituencies as part of the proportional representation system.

¹⁴ The WG Minister for Social Services and Public Health’s responsibilities include social services, care in the community, older people’s care, public health, food safety, community sport, prisoner healthcare and the health needs of veterans.

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