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Renaud Colson, Henri Bergeron

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European drug policies in context

Henri Bergeron and Renaud Colson

European drug policies in historical context

For much of human history psychoactive substances were geographically confined products, the use of which was restricted by limited availability and both formal (religious and political rituals) and informal regulation. Some of these mind-altering substances were propelled outside their traditional settings by the development of global commerce in the seventeenth and eighteenth centuries. Tobacco, coffee, opiates, cannabis, alcohol or coca became global commodities thanks to the rise of maritime European empires (Mills and Barton, 2007). Quickly escaping the therapeutic realm, psychoactive substances entered into nonmedical use. Wide popular consumption at times occasioned social alarm and political controversy. Yet official intervention long remained scarce.

Not only did the spread of psychoactive substances appeal to European elites, who sometimes indulged in the new intoxicants and often turned them into fashionable commodities, but it also served the interests of the wealthy and powerful who promoted the use of these products in the colonies and at home as a way to corrupt their opponents, pacify their soldiers and soothe their workers. In an era of *laissez-faire* economics with little control over private enterprise, the world's governments were mainly concerned with how best to tax the traffic, not how to suppress it (Courtwright, 2002, p. 165).

In the course of the nineteenth century, objections to non-medical drug use grew more vocal, invoking individual harm, social costs and moral considerations which generated increased regulatory pressure. Gradual medico-technological advances and the progressive 'medicalisation of political power' (Withington, 2014, p. 20) gave rise to the framing of drugs as a regulatory concept (Seddon, 2016). The association of particular substances with deviant groups or ethnic minorities fuelled social anxieties harnessed by moral entrepreneurs. By the beginning of the twentieth century the movement to restrict the production, the trade and the use of psychoactive substances gained momentum, both at national and international levels. European drug policies were born out of this great historical about-face which precipitated the shift in priorities of Western political elites from the promotion of intoxicants to their partial prohibition. International activism to form a

2 Henri Bergeron and Renaud Colson

global response to drug abuse actually preceded, and heavily influenced, the development of comprehensive domestic regulation of psychoactive substances in European states.

European powers in international drug policy

The negotiation of the 1912 Hague Opium Convention – the first treaty which set the trajectory of a century of drug control efforts – showed the lack of enthusiasm of European powers for an American drug control initiative which could endanger their economic interests. While colonial powers such as France and the United Kingdom defended their government monopolies of opium in their colonies, Portugal pledged to protect the Macao opium trade, and Germany, Switzerland and the Netherlands, which possessed pharmaceutical industries, objected to limitations on manufactured drugs (McAllister, 2000, pp. 31–32). Eventually, the 1912 Convention preamble stated that the international community was ‘determined to bring about the gradual suppression of the abuse of opium, morphine and cocaine’, but the treaty was a non-binding document with no implementation mechanisms.

Other conventions were negotiated in the following decades leading to the creation of a functional bureaucratic structure in order to implement this treaty framework, first organised under the banner of the League of Nations and then transferred to the United Nations in 1946. International law formalised a distinction between global licit markets controlled by oversight bodies and the illicit markets against which, initially, no enforcement response was designed at the global level. The configuration of this international drug control system owes much to the competition between states advocating an absolutist prohibitionist approach, led by the United States, and those promoting international regulation in order to manage commodity flows and encourage better domestic management of the issue. The majority of European states, which followed that second strand, led the opposition to strong supervisory bodies in the organisation of the licit market. European states also resisted American plans to secure an international agreement over an end to ‘all non-medical and scientific drug use’.

The Second World War changed the balance of power in international drug control. Before the end of the conflict, the US extracted commitments from Britain, France and the Netherlands to end opium monopolies, and new American predominance strengthened the position of control advocates.¹ The aim of drug supply minimisation which characterised the first drug control treaties was consequently reinforced with plans of bringing synthetic narcotics under control

1 In the following years, influential prohibitionist figures such as Henri Anslinger, the American representative to the Commission on Narcotic Drugs from 1945 to 1970 and possibly the most prominent actor in international drug control circles in the twentieth century, and Charles Vaille, a French civil servant singleminded in his focus on supply control, set the tone for the future of the regime (McAllister, 2000, pp. 89–90 and 168).

(1948 Synthetic Narcotics Protocol) and limiting agricultural production (1953 Opium Protocol). Yet the negotiation of the 1961 Single Convention on Narcotic Drugs shows that under the leadership of British officials, the majority of European states adopted the cause of ‘regulatory moderation’ in defeat of the American hard line (McAllister, 2000, p. 195). This development turned out to be temporary as the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances revealed a renewed resolve for international drug control, with the promotion of an ambitious target of eradication of non-scientific and non-medical use and the encouragement of states to pursue more aggressive domestic policies in the implementation of this objective. Here again, most European powers (with the exception of France and then Italy) defended a minimalist approach to the further development of the global drug prohibition regime as a whole (Friedrichs, 2008, pp. 113–133). But this did not prevent a strongly punitive interpretation of the drug control regime coming to dominate in the international arena in the last decades of the twentieth century.

European Union drug policy

Though framed as an international necessity from the early twentieth century, drug control was hardly a subject of regional cooperation in Europe before the 1970s. It was only when the threat of a ‘drug epidemic’ developed in the late 1960s that concern over this issue grew and an intergovernmental ‘co-operation group to combat drug abuse and illicit trafficking in drugs’ was set up in 1971, at the initiative of the French President Georges Pompidou, as France was going through a moral panic about drug abuse. The Pompidou group, which originally consisted of seven European countries – France, Belgium, Germany, Italy, Luxembourg, Netherlands, United Kingdom – was created to allow states to share their experience and knowledge in the field of drug abuse and drug trafficking. This informal group was incorporated by the Council of Europe in 1980, a time when the then European Communities (EC) had no stake in drug policies. Although still active, the Pompidou group, which has extended to new countries and now includes 38 states, has suffered from competition with the European Union.

The 1980s saw the development of transnational political interest in the drug issue in the European public sphere as demonstrated by a variety of resolutions and reports of the European Parliament. The creation, in 1989, of the European Committee to Combat Drugs (CELAD), an *ad hoc* political committee established by the European Council to coordinate drug-related activities within the EC, gave drugs a more prominent place on the European political agenda (Estievenart, 1995). With drug-related matters formally added to the area of competence of the European Union in 1991 (Maastricht Treaty), an EU drug policy slowly came into being (on this issue, see the chapter in this volume by Martin Elvins). The dynamics of European decision-making on drugs are complex. Beyond the

objective of tackling drug trafficking – a criminal activity which might benefit from the abolition of internal borders within an integrated union – the need to respond to European public opinion anxious about drug-related crime and addiction motivated European politicians to take action (Boekhout van Solinge, 2002, pp. 80–90). Once set in motion by the European Council, the Council and the Commission have produced a number of policy documents promoting harmonisation between Member States (discussed by Caroline Chatwin in her chapter).

The development of an EU drug policy is in line with a general constitutional evolution transforming the EU into a guarantor of the security and health of the nationals of the Member States. The Treaty on the functioning of the European Union explicitly provides regulatory powers to fight ‘illicit drug trafficking’ (Art. 83(1) TFEU) and reduce ‘drugs-related health damage’ (Art. 168 (1) TFEU). With a view to promoting research and facilitating evidence-based decision making, the institutionalisation of an EU drug policy included the establishment of a European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (for the origins and development of this institution see the chapter by Henri Bergeron). Three ‘strategies’ were successively adopted by the European Council² presenting a comprehensive approach linking drug supply reduction, drug demand reduction, European coordination and international cooperation. Notwithstanding the Europeanisation of drug policy, national specificities still prevail in institutional responses to the drug issue in Europe.

Diversity of European domestic drug policies

In spite of their obligation to abide by the global prohibition regime and their shared commitment to EU policies, each European state has developed their own way of dealing with drug use and drug trafficking (Boekhout van Solinge, 2004). Within the international drug control framework, textual ambiguity allows states some leeway in the implementation of global prohibition. EU action, meanwhile, remains limited in scope and power. On the one hand, illicit drugs remain an area where subsidiarity reigns supreme and the autonomy of Member States prioritised, except when the objectives of the proposed action are not sufficiently achievable at the national level. On the other hand, when specific measures are eventually adopted by the Union, they either bring limited added value compared to international law (Kert and Lehner, 2013), or belong to the realm of soft law and appear toothless. No wonder, then, that at first sight plurality seems to prevail in European domestic drug policies.

The range of drug policy models is often highlighted by reference to the Swedish and the Dutch examples, two countries at either ends of a continuum from a very punitive form of drug prohibition to the most tolerant (see the chapters on Sweden by Johan Edman, and on the Netherlands by Jean-Paul C. Grund and

2 The last one was issued in 2012: European Council (2012) *EU Drugs Strategy (2013–20)*. Official Journal of the European Union C 402/1, 29.12.2012, pp. 1–10.

Joost J. Brecksema). But there is more to European diversity than coffee shops in the Netherlands and a Swedish policy of zero tolerance. And any attempt to describe European drug policies by reference to a scale of punitiveness falls short of conveying the complexity of the matter. The drugs issue cuts across a spectrum of controversial topics ranging from basic rights and freedoms, through public health policies including HIV prevention, to criminal justice responses. And each of these areas is influenced by national traditions and depends on the domestic politico-cultural environment.

When it comes to developing policy responses, the extent of the drugs problem itself seems to have less of an influence than institutional and political determinants among which are: political values, a particular notion of citizenship, the organisation of a given political system, specific legal and administrative traditions and institutional power balances, the role of expertise and the weight of science in shaping/framing public policy, degrees of independence and involvement of the medical profession and pharmacists, the access of social movements to the locus of public power and the legitimacy of these actions (compare the chapters on Denmark by Esben Houborg, and on Italy by Grazia Zuffa).

Many studies claim that the particularities of national public policies are due primarily to such singularities, which reflect cultural habitus. Berridge (1996) points out that common historical patterns can be discerned in the policies and policy instruments used in European countries (e.g., the laws passed against drug use and sale in the 1920s, then again in the 1970s, and those passed in the 1980s and 1990s in response to the HIV/AIDS epidemic), but most existing studies have drawn attention instead to the formal diversity of these relatively synchronous policy responses (compare the chapters on France by Ivana Obradovic, and on the United Kingdom by Susanne MacGregor). What should be emphasised here is that beyond their diversity, European drug policies are very much in a state of flux: most of them were subject to many reforms in recent decades and they now display a certain level of convergence.

Convergence of European drug policies

Starting in the mid-1980s in some European countries (see the chapter on Switzerland by Frank Zobel), and in the remainder from the following decade, the drug policies of European countries were reformulated through the beefing up of health and social provisions and by the design and extensive implementation of so-called ‘risk reduction’ instruments which most Member States had until then resisted (Bergeron, 2009). It gradually became clear in European countries that the strategic requirement that treatment *cure* drug addiction and, in some countries, the hysterical attempt to require abstinence, was not compatible with the risks implied by the growing HIV/AIDS epidemic. It is true that the implementation level of these policies (i.e., degree to which user populations are covered) and the accessibility of their programmes still differ considerably by country and ‘setting’ (e.g., prison, treatment centres). Some

measures are still subjects of controversy, such as the controlled distribution of heroin or medically supervised injection centres. Still, it can be said that a number of important harm and risk-reduction instruments (distribution of sterile injection equipment, extensive distribution of substitution substances, ‘low threshold’ treatment centres, targeted prevention campaigns, and so on) have now become part of the ‘legitimate’ strategy of most European states (see the chapter by Dagmar Hedrich and Alessandro Pirona). The European Union, meanwhile, officially recognised the importance of harm reduction measures by way of a Council recommendation adopted in 2003.³ This overall policy approach signifies that Member States have recognised – and (to varying degrees) are willing to assume the political consequences of that recognition – that drug use is not, as was thought in the 1970s and 1980s, a disease but, indeed, a lasting anthropological fact of Western societies, and that not only its causes but also its risk-heavy consequences have to be addressed.

Another example of convergence in European drug policies is the legal status granted to the use of drugs (without any aggravating circumstances) or to possession of drugs for personal use. In terms of both legislation and policies, European countries were deeply divided only 20 years ago as to appropriate responses for discouraging the use or possession of controlled substances for personal use. Rooted in history and tradition, penal justice emerges within a national context which overwhelmingly determines its character (Colson and Field, 2016, pp. 1–10), and we can observe an array of very different regimes when it comes to criminal justice systems in Europe. Nonetheless, recent developments within those systems reflect a tendency in which drug use offences are no longer punishable by prison sentences, with the complementary understanding that treatment and reintegration measures are to be preferred (see the chapter by Brendan Hughes). In a growing number of countries, drug use is no longer considered an offence (in this volume see the chapters on Germany by Tilmann Holzer, and on Spain by Cristina Díaz Gómez and Emiliano Martín González) thus allowing the development of grassroots drug users social clubs (see the chapter by Tom Decorte and Mafalda Pardal). Even in countries where it is heavily policed, personal use repression policy can be said to have undergone relative *de facto* (as opposed to *de jure*) depenalisation (see the chapter on Belgium by Christine Guillain), a process rendering unlikely the punishment with a court sentence of legally punishable behaviour.

The rise of harm reduction and partial and uneven decriminalisation of drug use in Europe followed such a multiplicity of paths that one may be tempted to emphasise differences over similarities. While some European governments have been early active proponents of a public health oriented approach in drug policy (see the chapter on Portugal by Caitlin Hughes), others still defend a morally inspired approach at the expense of harm reduction policies and continue

3 Council Recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence, Official Journal of the European Union L 165, 3.7.2003, pp. 31–33.

prosecuting drug users (see the chapter on Poland by Kasia Malinowska). And the links between drug policy and other public policies, such as criminal, social or public health policy, vary between different countries. But in this landscape characterised by heterogeneity, commonalities have increased (see the chapter by Franz Trautmann) and in most European jurisdictions there has been a drift towards a more common approach to drug policy which includes the political recognition of a common experience of the drug phenomenon and a growing commitment to give the policy debate a scientific and rational foundation (as exemplified by the common European position during the last Special Session of the General Assembly of the United Nations on the world drug problem).⁴ In this respect, the existence of shared elements of expertise has contributed to increasing the similarities between European drug policies.

Purpose and structure of the book

Dutch tolerance towards cannabis and Swiss emphasis on harm reduction, once considered European exceptions to a punitive orthodoxy maintained by UN bureaucracy, are no longer a regional singularity. And the EU is no longer the only constituted intergovernmental structure to promote a move towards more pragmatic approaches.⁵ Signs of soft defection and systemic breaches now come from outside Europe and official calls to establish alternative regulatory regimes for drug control are now heard in other regions of the world (Bewley-Taylor, 2012; Boister, 2016). The long dominant punitive interpretation of the treaty system promoted by UN bodies under the influence of the United States has lost its appeal: the Special Session of the United Nations General Assembly on the world drug problem held in April 2016 may well have reaffirmed the commitment of the international community to a traditional prohibitionist approach,⁶ but it hardly conceals the growing tensions within the drug control regime.

New ways of governing addiction are gathering momentum and this is the time to take stock of European experiences. While the ideological context, bureaucratic politics and the policymaking process often seem to impede any deviation from the path initially set by public policy entrepreneurs, other historical phases offer examples of windows of opportunity for a policy change. After a long period

4 United Nations, Special Session of the General Assembly UNGASS 2016, European Union common position on UNGASS 2016. Available from: https://www.unodc.org/documents/ungass2016/Contributions/IO/EU_COMMON_POSITION_ON_UNGASS.pdf [Accessed: 22 June 2016].

5 See e.g. the Report on the Drug Problem in the Americas issued by the Organization of American States (OAS) in 2013, available from: www.oas.org/documents/eng/press/Introduction_and_Analytical_Report.pdf [Accessed: 22 June 2016]

6 Resolution adopted by the General Assembly of the United Nations. Our joint commitment to effectively addressing and countering the world drug problem, A/RES/S-30/1 (19 April 2016), Available from: [undocs.org/ A/RES/S-30/1](http://undocs.org/A/RES/S-30/1) [Accessed: 22 June 2016].

during which they were shaped by a grammar of public order, moral decline and medical treatment, two decades ago European drug policies entered a new phase.

The purpose of this book is to describe the origins and the outcomes of the slow transformation by which new priorities have emerged in European drug policy. The contributions to this volume reflect the various contexts and different outcomes which characterise domestic policies in Europe, and trace a gradual convergence in the emergence of a model favouring public-health strategies over a strictly penal approach to combating drugs.

Reflecting the diversity of functions generally assigned to comparative research, the book has two distinct, although related, goals. In terms of analytical purpose, it aims at describing drug policies in a variety of settings. From a more evaluative perspective, it also critically assesses these policies in order to increase knowledge about various national approaches and provide tools to reformers in search of successful models. Whereas a substantial proportion of social science research strives to develop indicators to measure the success of drug policies, this collection does not rely on a single evaluative approach. On the contrary, it highlights the weight of cultural tradition in policy-making and the impossibility of promoting a one-size-fits-all policy. The development of new metrics to measure drug policies is fundamental to continuous improvement in addiction governance (Ritter, 2009). But one should remember that policy transfers and legal transplants cannot be successfully undertaken without paying attention to local environment. The politico-cultural contexts from which policies, ideas and practices emerge have a significant impact on their potential for adaptation (Newburn and Sparks, 2004).

In the light of increasing evidence of the complexity of ‘policy convergence’, this book analyses the social and institutional conditions of drug policy reform in Europe from a variety of perspectives. It provides a transnational perspective as well as national case studies and offers a broad-stroke comparative analysis of European trends. The first part investigates the genealogy and the framework of European Union drug policy; it also offers a critical account of the governing tools used to promote European harmonisation (Part 1: Regional dimensions of European drug policies). The second part is devoted to case studies on twelve European Member States (Part 2: Domestic drug policies in Europe). These chapters describe the diverse evolutionary patterns followed by national drug policies in Europe starting with their origins and development from the early twentieth century onward in relation to the specific national history of drug use. Each of these chapters outlines the legal regime in force and delineates the drivers of change and conservative forces in current policy (including national, international and transnational institutions and advocacy groups...). The third part of the book provides an insight on contemporary trends in European drug policies (Part 3: Trends and prospects in European drug policies).

The contributions to this volume leave no doubt as to the importance of the ongoing shift in European drug policies. Policy makers in European countries increasingly share a common understanding of the drug phenomenon and even if they may differ on the most appropriate responses, there is a growing commitment, in what is a highly ideological area, to give drug policy a rational foundation.

From a public policy perspective, the development of harm reduction and the slow decriminalisation of drug use have mostly been the result of gradual and non-coordinated institutional transformation rather than major change as a result of explicit political choice. This incremental process of ‘layering’, adding new rules alongside existing institutions, has been cumulatively transformative but has left the prohibitionist framework almost intact. The question remains: how can the law confer legal status to harm reduction measures and drug users be fully included in the political community when drugs remain illegal? The legal paradox is often ignored, all the more as it can be circumvented in everyday politics. But the contradiction remains and will not be resolved unless we advance the reasoned debate on alternative options including *de jure* decriminalisation and regulated legalisation.

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