



## Research Paper

# From punishment to help? Continuity and change in the Norwegian decriminalization reform proposal

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## ABSTRACT

**Background:** In 2018 the Norwegian government appointed a committee to prepare the implementation of a drug decriminalization reform. The overall goal of the committee was to propose a model where responsibility for society's response to the use and possession of illegal drugs for personal use would be transferred from the justice sector to the health service, under the catchphrase 'from punishment to help'. While the proposal ultimately did not get the necessary backing in parliament, the proposed reform still constitutes a very comprehensive and recent proposal for reforming national drug policy and it provides an ideal case for studying contemporary discourses on 'drug decriminalization'.

**Methods:** The analysis of this reform proposal is guided by the post-structuralist "What's the Problem Represented to be" (WPR) approach, which is used for investigating the problem representation(s) in the proposal, as well as the rationalities, practices and deep-seated assumptions underpinning these. In doing this, the paper explores how the strategy represents both changes and continuities in discourses around illicit drugs and the people who use them.

**Results:** Based on the WPR approach, two problem representations in the proposal are identified: the 'problem of illicit drug use' and the 'problem of criminalization'. However, the 'problem of illicit drug use' is argued to be the authoritative representation, that takes precedence over the other. In that regard, the paper points to how the proposed shift from the justice sector to the health sector would only be partial, given that the role of the police and drug law enforcement would be retained in the reform. Furthermore, the paper points to how illicit drug use continued to be fundamentally pathologized in the proposed reform.

**Conclusion:** The paper concludes with a discussion about the overall ambition of shifting from a crime-centered to a health-centered approach to people who use drugs and some reflections on the potential of an additional rights-based approach is provided.

## Introduction

It has been argued that we are beginning to see an end to the 'War on Drugs' era in international drug policy in recent years (Collins, 2018). Several organizations have been calling for decriminalization of simple possession, including the Global Commission on Drug Policy, as well as several United Nations agencies, such as the WHO, UNAIDS, the United Nations Development Programme and the United Nations Human Rights Office. While there remains much common ground in the international community on several aspects of the control of illicit drugs, recent years have seen the emergence of diverging and differential levels of support for "prohibition in its punitive form" (Bewley-Taylor, 2012, p. 2). In that regard, there has been an increase in countries that have changed their drug laws and enforcement guidelines at the local level in the direction

of decriminalization, amounting to what has been called a "quiet revolution" in the drugs field (Eastwood, Fox & Rosmarin, 2016). However, the most familiar and debated case of nationwide decriminalization is probably Portugal, where all criminal sanctions for possessing illicit drugs for personal consumption were removed in 2001. Studies of the Portuguese drug reform point to how drug decriminalization did not lead to major increases in drug use and that it might have reduced 'problematic drug use' as well as drug-related harms (Hughes & Stevens, 2010). Furthermore, decriminalization of drugs has been perceived as a way to prioritize help and support over punishment for people who use drugs and as a way to reduce the stigma associated with drug use, which might encourage more people to seek out help and support to manage their use (Lloyd, 2013). In that regard, the political strategy of 'decriminalization' as practiced in Portugal has generally been celebrated in the drug pol-

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icy literature as providing relief to many of the problems associated with the use of criminal sanctions.

Nevertheless, some have also pointed to limitations in the Portuguese model. In that regard, [Walmsley \(2019\)](#) found that the documents detailing the Portuguese drug decriminalization strategy still displayed problematic understandings of illicit drug use and that the reform may simply constitute a transfer from one system of control to another. In that regard, [Walmsley \(2019\)](#) found that people who use drugs were “discursively positioned by the strategy as irrational, unhealthy, and antisocial outsiders” ([Walmsley, 2019](#), p. 191), and that the meanings of recreational drug use as a potentially ‘normal’ part of youth culture were silenced. Furthermore, the overall goal of the Portuguese decriminalization strategy remained the same as in traditional drug prohibition, namely, to prevent the use of illicit drugs altogether and work towards a drug free society. In that regard, [Taylor et al. \(2016\)](#) has similarly argued, that alternative models of legalization, decriminalization and regulation simply represent what they call a ‘metamorphosis of prohibition’, where “the structure of drug policy changes, yet the underpinning principles remain unchanged” (p. 452). Consequently, they argue that such reforms should not be considered ‘progressive’ as they adhere to the same arbitrary notions as the dominant model of drug prohibition and in this way, these “superficial policy reforms” ([Taylor et al. 2016](#), p. 453) can risk further consolidating such notions and stand in the way of more fundamental change.

In addition to this, organizations representing people who use drugs have also pointed to the limitations of decriminalization. For instance, the International Network of People who Use Drugs (INPUD) has argued in a report that “Portugal’s decriminalisation model has not done entirely as it claims, and the decriminalisation law itself is not as permissive and progressive as it is often understood to be: *people who use drugs are only partially, not fully, decriminalised*” ([Levy, 2018](#), p. 6, emphasis in original). Specifically, the report points to how low thresholds for the quantity of drugs one could possess contributed to continued criminalization of users, because they would carry more than the allowed amount to ensure a stable supply, disproportionately affecting the most dependent users with a high consumption pattern. Furthermore, it is pointed out that people who use drugs are still stopped, searched, and sometimes harassed by the police in Portugal, given that the police retain the right to search for illicit drugs and confiscate any if found, irrespective of quantity. In that regard, it is concluded that “the most marginalised drug users in Portugal are still, for all intents and purposes, experiencing forms of criminalisation and police control” ([Levy, 2018](#), p. 10). In a more recent report by INPUD, it is similarly argued that while current developments towards decriminalization in global drug policy often has been celebrated as progressive, it is “time to disrupt the misconception that current decriminalisation efforts unquestionably represents progress” ([Madden, Tanguay & Chang, 2021](#), p. 6).

Previous studies have thus raised some potentially problematic aspects and limits to the governmental strategy of drug decriminalization. In this paper, the aim is to build on these existing studies and contribute to the emerging literature that has begun to critically assess current developments in drug policy and the extent to which these represent a re-orientation in thinking about drugs. This will be done by assessing one of the more recent examples of a national decriminalization strategy, which was set into motion in Norway in 2018, when the government appointed a committee to prepare the implementation of a new drug policy. The aim of this policy was to transfer “responsibility for society’s response to the use and possession of illegal drugs for personal use (...) from the justice sector to the health service” ([Norwegian government webpage, 2019](#)) and the subheading of the report that the committee produced in 2019 was titled “*From Punishment to Help*”. While the proposal ultimately did not get the necessary backing in parliament, the proposed reform still constitutes a recent and significant attempt of reforming national drug policy. In that regard, the Norwegian drug law reform proposal provides an ideal case for studying contemporary discourses on ‘drug decriminalization’ as a political strategy.

The purpose of this paper is thus to explore the extent to which the Norwegian drug decriminalization reform represented a reorientation in discourses and approaches to illicit drugs, and to what extent existing rationalities and practices associated with prohibition remained intact in the proposal. The analysis of the reform proposal is guided by the post-structuralist “What’s the Problem Represented to be” (WPR) approach, which is used for investigating the problem representation(s) in the proposal, as well as the rationalities, practices and deep-seated assumptions underpinning these. Lastly, the paper scrutinizes the main goal of the reform of shifting from a crime-centered to a health-centered approach to people who use drugs and discuss the potential of a rights-based approach for reforming contemporary drug policy more fundamentally. This will illustrate how contemporary thinking and policy-making around ‘drugs’ and ‘drug users’ are both changing and displaying continuity.

## Context

### *Developments in drug policy and drug law enforcement in Norway*

The Nordic countries have been characterized as having more humane and mild penal regimes compared to most other countries in the world, which has been linked to their expansive welfare states. This is what has been referred to as “Nordic Exceptionalism” ([Pratt, 2008a](#)). However, drug law enforcement in the Nordic countries has been highlighted as an exception to this and the Nordic countries have been characterized as strict in their drug laws and the enforcement of these, at least in a European context. According to [Pratt \(2008b\)](#), “Norway and Sweden have very strict anti-drugs laws” and “these began to be introduced from the late-1960s and their penalties were progressively increased in the 1970s and 1980s for smuggling, selling and eventually using drugs.” (p. 285). However, while the Nordic countries share the same welfare regime, the literature has pointed to how the countries have displayed somewhat different approaches to the issue of illicit drugs, even though they are similar in many other respects, described in the 1990s ranging “from the pragmatic liberalism of Denmark to the extremely restrictive control policy of Norway” ([Hakkarainen, Laursen & Tigerstedt, 1996](#), p. 15). In addition to this, recent research based on drug seizures from 2000 to 2016 in Denmark, Finland, Norway and Sweden has pointed to how “Norway has the highest overall intensity and is overrepresented in the share of the total number of seizures for most drugs.” ([Moeller, 2019](#), p. 143). In conclusion, Norway has historically been one of the stricter countries in the Nordic region, both in terms of the severity of drug laws and in terms of drug law enforcement intensity.

However, while Norway could be characterized as relatively strict in its drug laws and the implementation of these, there have also been developments towards less punitive approaches to drug use and the use of alternative sanctions in the country. In that regard, while drug law enforcement intensity in Norway has been relatively high when comparing to the other Nordic countries, the intensity has been decreasing since 2014 with a decrease in the number of reported drug offences of 26,6 percent from 2014 to 2018 ([POD, 2019](#)). Furthermore, while the drug legislation has not changed since the 1980s, the use of fines instead of custodial sentences has increased markedly. In 1980 cases of possession of illicit drugs were almost never settled with a fine, in 1990 approximately half of the cases were settled with a fine and in 2010 this had increased to 69 percent of the cases being settled with a fine ([Sandøy & Hauge, 2019](#)). Simultaneously, the use of alternative sanctions, especially in cases with young offenders, have been increasing. Since the 2000s young drug offenders between 15-17 years have increasingly been met with a conditional waiver of prosecution, where they can avoid monetary sanctions and/or custodial sentences, if they participate in some type of social service and/or drug-testing program ([Sandøy, 2020](#)). In 2014 conditional waivers of prosecution were used to double the rate of monetary sanctions for young drug offenders ([Sandøy & Hauge, 2019](#)). Whether these forms of sanctions can be said to be

less intrusive than monetary fines are debatable, but they reflect a development where some drug offenders increasingly are being processed by health care and social workers, rather than traditional penal actors (Sandøy, 2020). In that regard, the recent drug law reform proposal discussed in this paper can be seen as a continuation of this movement away from traditional punitive interventions and towards health and social interventions instead.

### *The Norwegian drug law reform proposal*

In 2016, a range of NGOs urged the then justice minister in Norway, Anders Anundsen from The Progress Party, to take action to decriminalize possession of illicit drugs for personal use in an op-ed (Arctander, 2021). While the justice minister never responded to this appeal the health minister at the time, Bent Høie from The Conservative Party, soon thereafter suggested in a newspaper commentary, that the responsibility for reacting to possession of illicit drugs for personal consumption should be shifted from the justice sector to the health sector (Høie, 2016). Later, he also submitted a formal proposal to the program committee of his party where he outlined such a model for a drug law reform. A possible driver for this apparent shift in policy, was that Norway has ranked high for drug-related overdose deaths for many years with approximately 4 times as many incidents per capita than the EU average (Marthinussen, 2018, p. 57).

On March 23, 2018, a Drug Policy Reform Committee was appointed to propose a model for the implementation of a drug reform, where responses to personal possession of illicit drugs would be moved from the justice sector to the health sector. The committee was chaired by a lawyer from the office of the Director of Public Prosecutions of Norway and had various members from the health care sector, the university sector and one representative from the police. Furthermore, there were two representatives from organizations representing people who use drugs in the committee and these organizations have been argued to have had “considerable influence over the agenda and the recommendations of the Drug Policy Reform Committee” (Pedersen et al., 2021, p. 12).

On December 19, 2019, the committee delivered their report to the Ministry of Health and Care Services and the Ministry of Justice and Public Security (NOU, 2019a). The committee proposed a model whereby the use, purchase, and possession of a limited quantity of drugs for personal use would be decriminalized, but nevertheless still constitute illegal acts and trigger a response in the form of mandatory attendance at a municipal counselling service. The content of the meeting between the individual and the counselling unit would depend on whether the individual consented to counselling about their drug use. If the individual did not wish to receive such counseling and disclose any details about their drug use and personal history, then they would receive information about the potential risks and consequences associated with using illicit drugs, and the counseling unit would emphasize that drug use and possession were still illegal. If the individual consented to receive counselling, the counselling unit would map the drug use history of the individual and identify any needs and desires for follow up services, such as drug use treatment or other services. The committee did not propose any authorization for compulsory or mandatory treatment or medical care without the consent of the individual. Furthermore, the committee did not suggest that the counselling unit or other public services within the health and welfare sector should be able to apply punitive or coercive measures against individuals who use illicit drugs, apart from those already stipulated in the Norwegian Health and Care Services Act. Finally, the committee did not suggest that the counselling unit should be able to impose a monetary fine or fee if an individual was caught in the possession of illicit drugs and failed to attend a mandatory meeting at the municipal counselling unit.

On February 19, 2021, the government published their bill containing their proposal for changes to the existing legislation in order to implement the reform (Ministry of Health and Care Services, 2021). The bill followed the recommendations of the committee in most aspects, how-

ever, in some respects it differed. For instance, the government proposed that individuals who did not attend the municipal counselling unit upon receiving an order by the police to do so, should be required to pay a fee.

On June 3, 2021, the bill was voted on in parliament, but was not passed since there was no longer a majority for it. This disintegration of the majority behind the reform has been ascribed to The Progress Party leaving government in January 2020, which meant that they decided not to vote in accordance with the government platform they had agreed upon in 2018 (Arctander, 2021). This made the reform dependent on the support from The Labour Party from the opposition, which ultimately decided to vote against the bill<sup>1</sup>.

On September 13, 2021, there was a change of government in Norway and Jonas Gahr Støre from The Labour Party became the new prime minister. The new government has started to implement their own version of a drug policy reform, but general decriminalization does not form a part of it. In that regard, decriminalization in Norway does not seem likely in the near future anymore. However, given that the Norwegian drug law reform proposal constitutes a very comprehensive and recent proposal for reforming national drug policy, the proposal still constitutes a valuable source and a useful case for exploring contemporary thinking around drug decriminalization, including the rationalities and conceptualizations that this thinking is based upon.

### **Analytical approach and methodology**

The analysis presented in this article is guided by the Foucault-inspired post-structuralist “What’s the Problem Represented to be” (WPR) approach (Bacchi, 2009; Bacchi & Goodwin, 2016). The WPR approach has proved a very useful resource for critical drug scholars who increasingly have taken up the approach in recent years (Houborg et al., 2020), to the extent that this has formed the basis of a “new sub-field of drug policy research work” (Seear & Fraser, 2014, p. 828). Several themes and topics in the drug policy literature have been investigated with the WPR approach, including ‘addiction’ (Seear & Fraser, 2014), ‘evidence’ (Lancaster, Treloar & Ritter, 2017), ‘recovery’ (Lancaster, Duke & Ritter, 2015), ‘vulnerability’ (Brown & Wincup, 2020) and ‘decriminalization’ (Walmsley, 2019), to name just a few. The WPR approach diverts our attention away from questions of whether decriminalization of drugs is an ‘effective’ strategy for dealing with the ‘problem’ of illicit drugs, in terms of whether this strategy would be successful in reducing the number of drug-related deaths and whether it would potentially increase or decrease overall drug consumption in the population. These are of course important questions, however this focus on whether drug decriminalization is, or would be, a success or a failure in terms of the quantifiable measures of number of drug users, drug deaths and drug-related harms, also misses other important issues. For instance, this focus does not bring our attention to whether and how drug decriminalization reforms represent changes in the assumptions about illicit drugs and the people who use them. In other words,

<sup>1</sup> While the drug law reform was not passed, the policy process around it sparked considerable debate around drug law enforcement, including what investigatory steps the police could legally take in cases where someone was caught in the possession of a smaller quantity of illicit drugs. The Norwegian Director of Public Prosecutions found that the police in some cases had gone too far in their methods and clarified that the police could not search a suspect’s mobile phone or their homes, if they were only found in possession of a smaller quantity of illicit drugs (The Norwegian Director of Public Prosecutions, 2022a). Furthermore, the debate later led to significant ‘de facto’ changes in drug law enforcement, following three cases where The Supreme Court of Norway decided that three defendants with drug dependency should not receive a sanction for their personal possession of illicit drugs. This led to new recommendations from the The Norwegian Director of Public Prosecutions, which stipulated that people with drug dependency found in possession of less than 5 grams of heroin, cocaine or amphetamine, should generally not be prosecuted (The Norwegian Director of Public Prosecutions, 2022b).

when we are asking ‘what works’ in terms of addressing illicit drug use, the ‘drug problem’ continues to operate as an unexamined taken-for-granted social problem to be removed (Bacchi, 2018). In that regard, the WPR approach differs from ‘evidence-based’ approaches to policy by asking fundamentally different questions, and Bacchi (2009) defines the approach as engaged in ‘problem-questioning’ rather than ‘problem-solving’ (p. xvii).

The WPR approach starts from the premise that social problems are not given but are made through processes of ‘problematization’. The task in a WPR analysis is then to facilitate the interrogation of public policies, in order to discern how the ‘problem’, such as illicit drug use, is represented within them and subject this problem representation to critical scrutiny. In that regard, the WPR approach is an analytic strategy that questions the conventional view that policies are reactions to problems independent of the policy process waiting to be ‘addressed’ and ‘solved’ (Bacchi & Goodwin, 2016, chap. 2). Accordingly, studying problematizations represents a powerful way of ‘making politics visible’ and illustrates that certain ways of thinking reflect specific institutional and cultural contexts in a way that challenges taken-for-granted ‘truths’ and alerts us to the fact that things can often be thought of otherwise (Bacchi, 2012).

The term ‘problem representation’ (Bacchi, 2009), refers to the “problematization or the problematized phenomenon in a specific site” (Bacchi & Goodwin, 2016, p. 17). In order to identify the problem representation in a WPR analysis, the idea is to ‘work backwards’ from the proposed solutions in a policy text and from that explore how the ‘problem’ is being represented and the rationalities and practices underpinning it. In that regard, it is important to recognize how policies and problem representations are elaborated and embedded in discourse. The term ‘discourse’ refers to the “assumptions, values, presuppositions and accompanying signs” (Bacchi, 2009, p. 7), that make up systems of meaning. The point of studying policies as discourse then, is to interrogate the possible binaries, the key concepts and the assumptions that operate within a policy or problem representation. Referring to these policies as discourse means putting their truth status into question and it entails exploring how certain things are rendered ‘sayable’ and how these have been considered truthful or legitimate things to say (Bacchi & Bonham, 2016, p. 116).

The WPR approach suggests six questions and one step (Bacchi & Goodwin, 2016, p. 20), that could be applied to various kinds of public policies, in order to explore their foundations and assumptions:

- Question 1: What’s the problem (e.g., of ‘gender inequality’, ‘drug use/abuse’, ‘economic development’, ‘global warming’, ‘childhood obesity’, ‘irregular migration’, etc.) represented to be in a specific policy or policies?
- Question 2: What deep-seated presuppositions or assumptions underlie this representation of the ‘problem’ (problem representation)?
- Question 3: How has this representation of the ‘problem’ come about?
- Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be conceptualized differently?
- Question 5: What effects (discursive, subjectification, lived) are produced by this representation of the ‘problem’?
- Question 6: How and where has this representation of the ‘problem’ been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?
- Step 7: Apply this list of questions to your own problem representations.

According to Bacchi and Goodwin (2016) it is possible to draw selectively on these questions in a WPR analysis, as long as the self-problematizing ethic of the last question/step is maintained. Furthermore, they emphasize that it is very likely that a WPR analysis may need to be applied more than once to explore a specific problem representation. In that regard, and in order to provide a focused analysis, this

paper will engage with questions one, two, four, five, and seven. Furthermore, Bacchi and Goodwin (2016) makes clear, that these “seven modes of analysis necessarily involve overlap and some repetition” and therefore “their listing as separate ‘steps’ serves a heuristic function and ought to be treated accordingly” (p. 19). In that regard, the analysis is not structured as a direct response to each question after the other, but instead considers the issues raised by the different questions throughout the analysis.

The analysis is based on two central texts, the Drug Policy Reform Committees report *NOU 2019:26 Rusreform – fra straff til hjelp* (NOU, 2019a) and the bill proposed by the government to change current drug legislation *Prop. 92 L. Endringer i helse- og omsorgstjenesteloven og straffeloven m.m. (rusreform – opphevelse av straffansvar m.m.)* (Ministry of Health and Care Services, 2021). Furthermore, a short English summary of the Drug Policy Reform Committee’s report is used in order to provide the official translations of key passages in the Norwegian-language report, where these are available (NOU 2019b). These policy documents outline the background of the reform, the aims of the reform and the specific changes to legislation and the practices and procedures involved in carrying out the reform. The documents are understood as “prescriptive texts” (Bacchi & Goodwin, 2016, p. 34), meaning that they state a specific problem (either implicitly or explicitly) and a guide for how to approach this problem. These texts then, tell us both about the political rationalities, assumptions about ‘drugs’ and ‘drug users’ and the internal logics of the proposed reform, as well as about the specific procedures involved in carrying it out. The policy documents have been coded with the qualitative data analysis software package NVivo. This coding was done in order to systematically organize the data and identify key themes. Codes were developed based on the various themes contained in the policy documents, as well as informed by the literature review and the post-structural policy analysis framework. Central codes in the analysis for this paper were “different public sectors”, “different types of drug users”, “pleasure”, “recreative drug use”, “support/help with drug use”, “rights”, “consent” and “police”.

## Analysis

### *Addressing the ‘problem of criminalization’ with decriminalization*

The WPR approach urges us to start by identifying the proposed ‘solution’ presented in a policy and from that read off the, often implicit, *problem* that the policy seeks to address. The Norwegian drug law reform proposal states its purpose in the opening sentences like this:

*The committee’s task was to prepare the implementation of the Government’s drug policy reform, by transferring the authorities’ responsibility for the response to use and possession of illicit drugs for personal use from the justice sector to the health and care services (NOU 2019b, p. 1)*

In essence, the proposed solution in the reform was to transfer the processing of people who use drugs from one part of government (criminal justice) to another (health and care services). Furthermore, as evident from the title of the reform proposal, “*from punishment to help*”, the criminal justice system is presented as a punitive response, whereas the health and care services is presented as a ‘helping’ response. Furthermore, these two responses are, at least on the surface, presented as contrasting and without much convergence.

In the reform committee’s proposal, the need for changing the approach to people who use drugs was based on the perceived failure of the use of punishment to effectively deter people from using illicit drugs, as well as the adverse effects of criminalizing people who use drugs:

*According to the committee’s assessment, the best available knowledge provides quite a clear basis for establishing that criminalisation of drugs has unintentional adverse effects. At the same time, it does not appear*

*to provide good empirical evidence for the potential preventive effect of punishment (NOU 2019b, p. 7)*

Furthermore, the committee argued that given that “punishment is society’s most severe instrument to counteract and condemn unacceptable behaviour ... [the] use of punishment requires a solid reason” (NOU 2019b, p. 5). Given its adverse effects, punishment is thus presented as a tool of last resort for preventing unwanted behavior, that should only be used if it had demonstrable preventive effects, which the committee did not find the evidence to support. The adverse effects of criminalizing people who use drugs that the committee mentions, related to marginalization and stigmatization, as stated in the terms of reference from the government to the committee:

*Prosecution of the use and possession of illicit drugs for personal use has contributed to stigmatisation, marginalization and social exclusion and may have stood in the way of meeting the individual user with appropriate offers and services (NOU, 2019a, p. 17, my translation)*

As mentioned here, the stigmatizing and marginalizing effects of punishment was presented as barriers for providing adequate support to people who use drugs, and it was presented as potentially causing “distrust and resistance that can make disadvantaged people fail to seek help when they need it” (NOU, 2019a, p. 251, my translation). It was acknowledged by the committee that the criminalization of drug possession was not the only factor contributing to the stigmatization of people who use drugs. In that regard, the committee stated that the general public would likely still hold unfavorable views of people who use drugs, especially those with substance dependency problems, even after decriminalization. However, they also stated that:

*When punishment is society’s most severe instrument for condemning an act, it is difficult to see any noteworthy possibility to reduce the stigmatisation of people, who have developed or are at risk of developing a drug problem, without decriminalising the person’s own use of substances (NOU 2019b, p. 5)*

Based on this, we can see from the reform committee’s proposal, that one of the problems that this decriminalization reform sets out to address is the ‘problem of criminalization’, since criminalization and punishment was presented as failing in addressing illicit drug use in an adequate and appropriate manner.

#### *The health sector and the principle of ‘consent’*

Valverde (2014) has noted that shifts in the *who* of government often also ends up changing the *how* of governing. In the health and social care system, clients and patients need to consent before any intervention is provided and they have the right to refuse treatment. Furthermore, service providers often have an ethical and legal obligation to ensure that the consent provided is informed and voluntary, meaning that they have ensured that the service user has a clear understanding of the intervention proposed and its possible implications. The Norwegian drug law reform proposal also presented consent as an important principle for how people who use drugs should be processed in the health and social care system. In that regard, it is mentioned several times throughout the document, that consent is a prerequisite for providing any form of treatment or medical care to people who use drugs:

*In social welfare law, the principle of consent is strong. This principle forms a framework for assessing and following up the potential substance-related problems of each individual person. The committee’s proposal implies that medical care shall be administered in a way that harmonises with these provisions. This type of assessment, individual counselling and any additional follow up, shall only be carried out based on informed consent (NOU, 2019b, p. 11)*

In this way we see how the shift in jurisdiction from the justice sector to the health sector, means that the issue of drug use is presented as

something that should be governed as any other health issue or medical issue, and that treatment, counselling, and any follow up, should only be carried out with the informed consent of the individual. Criminal offenders, who are governed by the justice sector, are routinely subjected to coercive interventions against their will, while consent and voluntary participation is a crucial principle and a condition for administering any kind of treatment to someone in the health sector.

This emphasis on consent represents a noteworthy feature of the committee’s reform proposal, which arguably did not feature to the same extent in the Portuguese decriminalization model, that the Norwegian reform proposal drew much of its inspiration from. In that regard, the committee also note in their report, that the model and the possible sanctions for drug possession they proposed were less intrusive than the sanctions available to the authorities in the Portuguese model (NOU, 2019a, p. 325), where the so-called Drug Dissuasion Commissions have the authority to impose various monetary or nonmonetary sanctions, including fines, suspension of benefits, requirements to report to an authorized body periodically, or to engage in community service (Laqueur, 2015, p. 752).

In that regard, the proposed drug law reform proposal could potentially be taken to represent a radical shift in the governance of illicit drug use, if this shift in jurisdiction was to be realized in full effect. However, rather than representing a complete shift and reorientation in the governance of illicit drug use from the justice sector to the health sector, it is evident in the committee’s report and the government proposal, that this shift would only be partial. In that regard, there were still many continuities in how the issue of illicit drug use was to be governed in the reform proposal and it is these continuities that we will now turn to.

#### *From ‘the problem of criminalization’ and back to ‘the problem of drug use’*

In addition to the ‘problem of criminalization’, another problem resurfaces in the proposal upon closer inspection, which is the ‘problem of drug use’. In that regard, the reform does not question whether and to what extent illicit drug use is a problem that should be addressed:

*The committee’s proposal thus clearly implies that the public sector cannot be considered to allow, approve or recommend the use of these drugs under decriminalization (NOU 2019a, p. 270, emphasis in original, my translation)*

Here we explicitly see the articulation of the ‘problem of drug use’ and the committee importantly states that the public sector cannot allow the use of these drugs. In that regard, the overarching problem that the reform seeks to address, the use of illicit drugs, remains the same in the proposal, meaning that the reform does not question whether and to what extent illicit drug use is a problem that should be addressed. This illustrates how policy texts tend to be “complex constructions that may well involve more than one problem representation” (Bacchi and Goodwin, 2016, p. 20). In that regard, the reform both attempted to alleviate the negative effects of criminalization for people who use drugs, by moving away from ‘punishment’, as well as address the problem of illicit drug use, by providing more adequate ‘help’ to people who use drugs, in terms of stopping or managing their (problematic) drug consumption. Consequently, the proposed reform could be said to contain two significant problem representations, which were ‘the problem of criminalization’ and ‘the problem of drug use’.

Furthermore, it is not only the *problem* of drug use that remains the same in the proposal, some of the proposed *solutions* to this problem also display significant continuity with previous approaches, in ways that bring them into tension and contrast with the ‘problem of criminalization’, that the proposal also was seeking to address. In that regard, the reform did not seek to change or address the role that the police have in the control of illicit drugs. As is emphasized throughout the committee’s report, the police would retain their current status and role in identifying possession of illicit drugs and in apprehending users of these substances:

*The committee deems that the police will play an important role in society's overall efforts related to drugs also after such a reform as the committee proposes (NOU 2019a, p. 293, my translation)*

*The police will be responsible for uncovering drug use and the committee propose that the police will get the authority to carry out searches to enforce drug prohibition (NOU, 2019b, p. 1).*

While it was an aim of the reform to address the negative effects of criminalizing people who use drugs, in terms of marginalization and stigmatization, the reform does not address the potential experiences of criminalization that are connected with police enforcement, such as getting stopped, questioned and body-searched (see e.g., Selfridge et al., 2020; Greer et al., 2021), and focuses only on the potential stigmatization that might arise from processing in the criminal justice system, such as getting a fine or a custodial sentence<sup>2</sup>. Furthermore, from the committee's proposal it is also clear that there is an ambition to reduce illicit drug use, in a way that goes beyond only offering treatment and counselling to those who approach such services themselves:

*The committee's model creates opportunities to intervene in citizens' drug use. The model will help address drug use with health and welfare-oriented measures (NOU 2019b, p. 1).*

These 'opportunities to intervene' include the instances where a police officer searches someone for possession of illicit drugs, confiscates any illicit drugs found<sup>3</sup>, as well as refers the individual to the municipal counselling service. In that regard, it is clear that the 'problem of criminalization' that the reform seeks to address is mitigated and limited in important ways by the overarching 'problem of drug use', which the reform still subscribes to, and which constitutes the authoritative problem representation. This illustrates how several problem representations within a policy might well "conflict or even contradict each other" (Bacchi, 2009, p. 4), and in this case, take precedence over one another. In that regard, the proposal suggests that even though people who use drugs should not be coerced into treatment interventions, because of the principle of consent in the health and care sector, they should nevertheless still be coerced by the police and be submitted to various interventions, including arrest and searches for possession of small amounts of illicit drugs.

In conclusion, the emphasis on consent in the committee's proposal might to some extent be indicative of an emerging 'rights-based' approach to people who use drugs. However, importantly, the rights conferred upon the drug-using subject were still very limited in scope and included only the right to refuse drug treatment and counselling. In that regard, the proposal did not entail that people who use or are dependent on illicit drugs, would have a right to possess or use these substances without interference from the police and the authorities. Furthermore, it also placed an obligation on the drug-using subject to attend the municipal counselling service and receive information about the dangers of using illicit drugs.

<sup>2</sup> While one might assume that drug law enforcement intensity would decrease with decriminalization and that the police would deprioritize stopping and searching individuals for possession of drugs for personal consumption, this was not what happened in Portugal where the number of drug arrests and administrative citations were almost the same in 2010 as in 2000 just before decriminalization was introduced, indicating largely unchanged patterns of police stop-and-search in relation to illicit drugs (Laqueur, 2015).

<sup>3</sup> However, the committee suggested to use the phrase "seized drugs may be destroyed" (NOU 2019b, p. 10) to give room for discretion to refrain from seizing small amounts of drugs in some cases, where the users are for instance "addicted to opiates with clear abstinence symptoms or where it seems likely that the user will commit a crime of gain or sell sexual services to acquire money to buy another user dose to replace what has been seized" (NOU 2019b, p. 10).

*Helping people who use drugs and the assumed pathology of illicit drug use*

The WPR approach invites us to consider the effects of the identified problem representations, and it is stressed that effects should be understood as "political implications" rather than "measurable outcomes" (Bacchi & Goodwin, 2016, p. 23). These effects can come in at least three different forms, discursive effects, subjectification effects, and lived effects. In the following, we will consider how the proposed reform by the committee could be said to produce effects along each of these three different pathways, and how they interconnect.

*Discursive effects* refer to how a particular problem representation "set limits on what can be thought and said" (Bacchi & Goodwin, 2016, p. 23). As is evident from the subheading of the committee's report, the reform aimed at changing the response of the authorities to illicit drug use from 'punishment' to 'help'. The term 'help' is thus a fundamental concept in the proposal and arguably constitutes the key 'policy solution'. The concept of 'help' is enacted in a very broad way in the proposal and encompasses a large variety of different activities. In the proposal, 'helping' people who use drugs included assisting them with seizing or managing their drug use and other factors in their lives, that might drive or be driven by problematic drug use. However, the reform also focused on providing social services apart from drug use treatment, that those arrested for possession might need, including help with housing, education and jobs. However, this very broad concept of 'help', rather than for example the narrower concept of 'treatment', could also be said to have the 'discursive effect' of including all people who use drugs in the purview of the policy, also people who did not use drugs in a way that warranted treatment interventions.

This ties into the *subjectification effects* of the policy, which refers to the way that policies 'make up' subjects (Bacchi & Goodwin, 2016, chap. 5), meaning that they contain assumptions about the people that they are supposed to act upon. In that way, the drug law reform proposal 'makes up' people who use drugs as a specific "people category" (Bacchi & Goodwin, 2016, p. 69) that needs or would benefit from 'help' from the authorities in one form or the other, even though most people who use drugs do so in a way that is episodic and largely can be considered non-problematic (Global Commission on Drug Policy, 2017, p. 14). While it is acknowledged in the reform proposal, that not all of those who would get referred to the counselling units would be in need of drug use treatment or other services, the reform still suggests that those without a problematic use of drugs could benefit from counselling and that:

*... people who have not yet developed problematic drug use should receive preventive help and assistance and people with an already established drug problem should receive help to stop using drugs or to minimize the harmful effects of their drug use (NOU, 2019a, p. 271, my translation)*

In that regard, people who use drugs in ways that can be considered non-problematic are conceptualized as a group that has not yet developed problematic drug use, and as a group that would still benefit from help and assistance, but just in a way that is *preventive* rather than *curative*. With its focus on prevention for those who have not yet developed problems, the reform proposal employs a risk-oriented logic in managing and dealing with non-problematic drug use, that aims to prevent possible future harms and envisions non-problematic drug use first and foremost as a potential steppingstone to problematic drug use.

While it is not possible to investigate the *lived effects* of this particular policy, meaning how the discursive and subjectification effects translate into people's lives, as the policy was ultimately not implemented, it is nevertheless possible to make some remarks about how the policy may neglect some of the lived experiences of people who use drugs. In that regard, the policy importantly silences and disregards understandings of drug use as a potentially pleasurable and relatively widespread and normalized part of contemporary (youth) culture. In that regard, such understandings of drug use can be regarded as 'subjugated knowledges', meaning types of knowledge, perspectives and experiences that are disqualified as irrelevant in the policy process (Bacchi & Goodwin, 2016,

p. 49). Laqueur (2015) has pointed out that most of the drug offenders that have been appearing before the drug councils in Portugal have been younger, nonaddicted, cannabis users. Given that these make up the majority of the drug using population, also in Norway, it is likely that this would also be the case there. It is possible that their 'knowledges' and perspectives on their own drug use does not resonate with 'making them up' as in need of help and counselling. In that regard, recent research suggests that 'recreational drug takers' supports values such as: "personal autonomy to use drugs, rejection of paternalism around the drugs typically associated with recreational scenes (ecstasy, cannabis, magic mushrooms and to some extent, cocaine) and the illumination of the injustices of the current system, that bans the drugs they take but permits alcohol" (Askew, Griffiths & Bone, 2022, p. 8).

That the drug law reform proposal does not acknowledge these 'alternative' perspectives on the use of illicit drugs is not surprising, given that the drug policy field long has been characterized as operating within a "pathology paradigm" (Mugford, 1988), where any considerations of the positive effects and experiences that people might gain from using illicit drugs have been ignored (O'Malley & Valverde, 2004; Moore, 2008). The proposed Norwegian drug decriminalization reform does nevertheless not break with this tendency. In this way, the emphasis in the proposal on moving from one type of intervention, 'punishment', to another type of intervention, 'help', reinforces an understanding of illicit drug use as a problem, and silences alternative understandings of drug use as potentially unproblematic and pleasurable.

## Discussion

The Norwegian drug law reform aimed to transfer the processing and responsibility for people who use drugs from the criminal justice system to health and care services. Even though the proposal eventually failed to get the necessary backing in parliament, the proposed reform still provides an ideal case for studying contemporary discourses on 'drug decriminalization'. The WPR analysis of the reform proposal illustrates how the proposal contained two central problem representations: the 'problem of illicit drug use' and 'the problem of criminalization'. The reform proposal explicitly addressed the 'problem of criminalization' by referring to the negative effects of criminalizing people who use drugs, in terms of the stigmatizing and marginalizing effects this has, as well as questioning the benefits of criminalization, by pointing to the lack of evidence that the threat of criminal sanctions have an effect on drug use rates in the population. However, upon closer inspection it is clear that the proposal also aimed to address the 'problem of drug use'. The analysis explored the tensions between these two problem representations, as the proposal still relied on coercive and criminalizing policy solutions for addressing the 'problem of drug use', such as police drug law enforcement, illustrating how addressing the 'problem of drug use' took precedence over the 'problem of criminalization'. In that regard, the proposed shift from the justice sector to the health sector would only be partial, given that the role and powers of the police in apprehending people who use drugs would be retained. In addition to this, the analysis illustrated how the policy 'makes up' people who use drugs as people in need of help from the authorities. While the proposal acknowledges that not all drug offenders would have a treatment need, it was posited that they could still benefit from 'preventive help', envisioning episodic drug use as first and foremost a steppingstone towards 'problematic drug use'.

The proposed reform presents itself as proposing a shift from a 'crime-centered' to a 'health-centered' approach to illicit drug use (see also, Larsson, 2021). The continuities in the responses to illicit drug use, such as the continued use of drug law enforcement, might derive from the fact that the shift from the justice system to the health care system would only be partial. However, some of these continuities might also illustrate some potential limitations in envisioning 'drug use' solely as a health problem. Even though promoting 'treatment' rather than punish-

ment and arguing that people who use drugs are 'sick' rather than 'criminal', might seem as a more progressive alternative (Jöhncke, 2009), it has been argued that prohibitory discourses easily can combine with health-oriented ones (Brook & Stringer, 2005). Furthermore, if the only and ultimate goal is to improve health outcomes, then other valued principles, such as autonomy, dignity and self-determination, might be disregarded in this process. This illustrates that a health-centered approach does not necessarily promote less restrictive drug policies and that other ideals than 'health' might be needed in reorienting thinking about illicit drugs (Debbaut & Kammersgaard, 2022).

The WPR approach encourages us to consider how the problem (of illicit drug use, in this case) can be thought of differently (Bacchi & Goodwin, 2016, p. 20). In that regard, the 'problem' of illicit drug use could possibly also be thought of in terms of the *rights* of people who use or are dependent on drugs, rather than just in terms of their *health*. One of the more profound aspects of the proposed reform was its reliance and emphasis on the importance of consent in interventions towards people who use drugs. This might signal an emerging possibility of a *rights-based approach* to people who use drugs. However, having the right to refuse treatment or counselling is arguably still a very limited form of right, and importantly, the reform did not give people who use or are dependent on illicit drugs the right to possess and use these substances. However, it has been argued that stronger rights-based arguments, based for instance on human rights obligations, could be mobilized to a greater extent in the drug policy field to improve conditions for people who use drugs. Flacks (2012) has argued that even though substance dependence is classified as a disability in international systems of disease classification, people with substance dependence have been excluded from disability discrimination legislation, which serves to reinforce their marginalized status and "reproduces their inhumanity in the same way that others excluded from human rights legislation, such as refugees or those seeking asylum, are similarly dehumanized" (p. 407). In addition to this, Bone (2019) has explored case law challenging drug control laws on the basis of human rights and has argued that most case law has focused on the rights of certain groups to use some psychoactive substances for very specific purposes, for example the rights of some groups to use ayahuasca or similar substances for spiritual or religious purposes or the rights of those with specific illnesses to use cannabis for medicinal purposes. Notwithstanding these advancements for the rights of some groups to use specific substances, Bone (2019) argues for the need to develop a broader human rights perspective, that more fundamentally challenges the "whole mentality that sees drugs as a problem and tries to fight them" (p. 8) and that such a human rights perspective ultimately would aid in "rethinking drug policies in a more thoroughgoing and potentially radical way" (p. 185).

However, others have been less enthusiastic about the potential of human rights arguments to advance better conditions for people who use drugs, and as the WPR approach teaches us, it is important to employ a self-problematizing ethic and submit any proposals (including one's own) to critical scrutiny. In that regard, Keane (2003) has argued that the rights of people who use drugs inevitably will come up against the rights of children to have drug-free parents, the rights of people who do not use drugs to be protected from public drug use and health risks, and the rights of tax-payers not to pay for self-inflicted medical costs. While, according to Keane (2003), it might still be possible to argue that the rights of people who use drugs trump these competing rights, these contests would be difficult to win in the current climate where "anti-drug sentiments" and the "authority of the medico-legal discourses" prevail (p. 230). On a more general level, human rights discourse has been criticized for its' false claims to universality, for its reliance on liberal individualism and for presenting itself as 'neutral' and 'apolitical' (Golder, 2014). Furthermore, the language of human rights has been argued to be the dominant mode of expression for political claims today, in a way that could serve to exclude and crowd out other ways of pursuing social justice and emancipa-

tion, that focus more directly on economic justice and social solidarity (Kennedy, 2006)<sup>4</sup>.

However, despite of these potential issues with improving conditions for people who use drugs by recourse to rights-based discourses, it is noteworthy how relatively absent such discourses are in the drug policy landscape today, even in such a prominent reform proposal as the Norwegian one. At the moment, the dominant mode of pursuing progressive politics in the drug policy field thus seems to be with recourse to 'health' rather than to 'rights'. This has arguably resulted in many improvements for people who use drugs, as many nation states have loosened their enforcement practices and turned towards various forms of decriminalization. However, in order to more fundamentally challenge prohibition, as well as the potentially invasive aspects of diversion to social care and health-based approaches (see e.g., Sandøy, 2020), other discourses and approaches might be needed. In that regard, and despite the potential limitations and difficulties in advancing such arguments, considerations around personal autonomy and self-determination could potentially provide both a complement and a counterweight to considerations around health, drug harms and drug use rates in contemporary debates about illicit drugs and their control.

Finally, it should be noted that the Norwegian reform proposal possibly would have represented an important and incremental change that might have minimized some of the harmful effects of criminalization. In that regard, pointing to the limits of the proposed reform should not be taken as a criticism of the important work of devising a reform proposal in the available discursive space at the time, that in many ways did go further than similar and previous decriminalization reforms. However, the reform proposal importantly demonstrates how some things were 'sayable' and others not in such a proposal, which precisely is illustrative of the strong cultural narratives and deep-seated assumptions about illicit drugs and drug use that the reform had to operate within.

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## Ethics approval

The authors declare that the work reported herein did not require ethics approval because it did not involve animal or human participation.

## Declarations of Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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<sup>4</sup> However, according to Golder (2015), even "critical thinkers routinely suspicious of claims to universality, of liberal doxa concerning the subject of rights, and of the constraints of 'juridifying' political claims through rights and law, have nevertheless themselves come to accept rights as forming some part of a critical, radical, or left politics" (p. 2)

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