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Introduction: Drugs, Crime, and Criminal Justice

We had a healthy drug policy. We don't have one now. Drug policy has now focused down on the link between drugs and crime. If things are done to drug users, it is because of the effect they have on others. We are witnessing the introduction of a punitive and coercive ethos.

[Stimson, 2000: 260]

Introduction

Walk around any police custody suite in England and Wales and something quite remarkable will soon become apparent: the pervasive presence of drug workers. They go in and out of the cells to speak to detainees, they liaise with custody sergeants and detention officers, all the time working from their own permanent office bases in the police station. Visit any magistrates' court building or probation office or prison and you will find drug workers similarly ensconced there.

This would have been unthinkable even 25 years ago, when, for example, drug workers involved in pioneering arrest referral schemes often encountered obstruction and hostility when trying to operate in police custody suites (Dorn et al, 1990). In effect, an entire new infrastructure of drug treatment embedded within criminal justice has been rapidly built up almost from scratch over the last couple of decades.

This growing emphasis on crime and the prioritization of the delivery of drug treatment through criminal justice has led to claims that British drug policy has been 'criminalized' or that there has been a criminal justice turn within policy (see: Stimson, 2000; Hunt and Stevens, 2004; Duke, 2006; Stevens, 2007; Seddon et al, 2008). A central aim of this book is to explore this shift or transformation in policy. Why did it happen? How did it evolve? What exactly does

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this new drug policy landscape look like? What new ways of dealing with drug-using offenders have been created? With what impact and consequences?

These questions are, of course, of pressing importance and interest to criminologists and policy-makers involved in seeking to study and understand recent drug policy and we hope that the account we present here will have much to interest those readers. But one of the central premises of this book is that this transformation—in shorthand, the ‘criminal justice turn’—is of much wider significance, not only for criminology but also for the social sciences more generally. In a nutshell, our thesis is that both the emergence of this new drug policy direction and its implementation in practice can best be understood as part of a broader transformation in governance in which risk-based thinking has become central to the ways in which we seek to address our contemporary insecurities. In this way, we see the book as a contribution to the more general literature on the sociology of punishment and social control in contemporary society, an area of scholarship that has been probably the most vibrant and interesting in criminology in recent decades, encompassing some seminal monographs (eg Cohen, 1985; Downes, 1988; Garland, 1990, 2001; Simon, 2007; Ericson, 2007), as well as some landmark papers (eg Feeley and Simon, 1992, 1994; O’Malley, 1999a; Sparks, 2001; Shearing, 2001; Braithwaite, 2003).

Although we seek to contribute to this literature, we should make clear that we are definitely not attempting to make general claims in this book about the nature of late modernity or neo-liberalism or the risk society (on which, more in a moment). Rather, we are looking at those grand claims from the other end of the telescope. To what extent do the high-level arguments of Garland, Simon, Ericson, and others still hold when we look at a very specific policy area in a specific time and place? It is, in a sense, the shortcomings of those accounts, the tendency to over-generalize, for which, for example, Garland’s *Culture of Control* has been criticized (eg Zedner, 2002; Young, 2003a) that we are seeking to correct in our particular case study. We think this focus is appropriate and timely because there have been so many of these ‘big picture’ accounts that more specific local studies are now needed to point towards ways in which the ‘big picture’ might begin to be adjusted, revised, and refined. We think, in other words, that at this stage in the development of the field, the advancement of these debates is most likely to

come through case studies of the kind we are presenting in this book rather than from yet more sweeping generalized accounts.

This raises a further point about the scope of coverage of our book. This is neither a comparative nor an international study. Our focus, for the reasons above, is on a particular time and place, that is England and Wales from the early 1980s to the present. Nevertheless, it is a significant matter that the criminal justice turn has been an international phenomenon during this period, spanning around the world, from Australia, to Canada, to the Netherlands, including many countries in between. We say a little about this wider international experience later in this chapter when we look at the evidence for the effectiveness of different types of drug interventions in the criminal justice system.

To prepare the ground for the rest of the book, we now turn to three matters that we need to expand on in this introductory chapter. First, we set out our understanding of the broader transformation in governance that has taken place during this period, which we claim provides a vital part of the context for our account. Second, we outline what we mean by the criminal justice turn and review the international research on which it has been based. Third, we describe in brief how this has taken shape in recent decades within English and Welsh drug policy. We conclude the chapter by describing the research methods used in the study on which most of this book is based and outlining the structure of the rest of the book.

Neo-liberal governance

As we have already noted, at the heart of this book is a claim about the significance to this area of drug policy of wider transformations in governance that have taken place over recent decades. We now say a little more here about what we understand these transformations to be. In doing so, we sketch in unseemly brevity what is a vast and complex body of literature that seeks to understand the nature of our contemporary world. Nevertheless, we think it is possible to pinpoint the main contours of these mutations in governance.

Before setting these out, we acknowledge that although most scholars agree that the world has changed dramatically over the last part of the twentieth century, there is major disagreement about terminology. John Braithwaite (2008: 4), for example, one of the surest-footed commentators on these matters on the planet, states

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baldly that ‘those who think we are in an era of neo-liberalism are mistaken’. He prefers the term ‘regulatory capitalism’, which he borrows from the work of David Levi-Faur and collaborators (Levi-Faur, 2005; Jordana et al, 2011). He argues that this better captures the reality of contemporary governance where the state is very far from being ‘hollowed out’ and the trend is towards more regulation rather than less (he calls this the ‘myth of deregulation’). Within criminology, and influenced by some key sociologists (eg Beck et al, 1994), many have preferred the term ‘late modernity’, notably David Garland (2001) who suggests that this best serves to indicate ‘an historical phase of the modernization process without assuming that we are coming to the end, or even to the high point, of a centuries-old dynamic that shows no signs of letting up’ (2001: 77; see also Young, 1999). Yet another variation is the term ‘post-modernism’ which has resonated particularly within cultural studies and certain areas of social theory (eg Jameson, 1984, 1991) and which conveys, *contra* Garland, the idea that we have indeed left the era of modernity behind and entered into a new phase, albeit one that can still only be defined in relation to its predecessor.

But perhaps the most common label is the one Braithwaite rejects so vigorously, neo-liberalism. Although we are largely persuaded by Braithwaite’s demolition of the ‘myth of deregulation’, nevertheless, neo-liberalism is our preferred term, for several reasons. It helpfully indicates the connection with the tradition of classical liberalism and its valorization of markets. It also encourages us to see the present as the latest mutation within liberal governance, rather than as something entirely new. We recognize, too, that it has become the most widely used term, not only within the academic literature across several disciplines but also in the public sphere. Drawing, then, from what is an eclectic and diverse body of scholarship, we see there being four key, and interrelated, dimensions that define the distinctive characteristics of neo-liberal governance.

(1) *The centrality of markets.* Neo-liberalism involves a revival of certain elements of nineteenth-century liberal capitalism, in particular the renewed primacy of the idea of the ‘free market’ as a central mechanism in the effective and efficient operation of a capitalist economy. However, this ‘revival’ is not simply a ‘return to the past’, rather, neo-liberalism has a new character (Levi-Faur, 2005: 15), which centres on the way it focuses on competition rather than exchange (Foucault, 2008). *Homo economicus* is now recast as a ‘creature whose tendency to compete must be fostered’

(Read, 2009: 28). And with this new focus on competition, the central liberal formula of 'laissez-faire' is transformed. The optimal conditions for competition are not achievable simply by a passive strategy of 'leaving markets alone' and allowing Smith's 'invisible hand' to work its magic. Rather, the conditions of the market need to be nurtured and protected by active intervention. While exchange was something that occurred 'naturally' within markets, competition is an 'artificial relation' that has to be created and then sustained (Read, 2009: 28; Foucault, 2008).

(2) *The extension of markets into new realms.* The emphasis on competition has spread across diverse fields, including the governmental sphere, and innovations based on market thinking have colonized many new areas—from prisons, to health care, to telecommunications, to transport. As already noted, and contrary to some claims, this has been accompanied by a proliferation of regulatory instruments and technologies, rather than any overall trend towards deregulation (Levi-Faur, 2005; Braithwaite, 2008). This is not as straightforward as just saying that central state oversight and regulation have increased. Regulation now also occurs increasingly beyond the state in private sector and non-governmental agencies, as well as in transnational networks. It is this thickening, extending, and spreading of regulation and governance that is encapsulated in the idea of 'regulatory capitalism.' (Levi-Faur, 2005; Braithwaite, 2008).

(3) *The consumer society.* There has been a shift away from the primacy of production towards a new emphasis on consumption—the rise of the 'consumer society' in shorthand (see: Bauman, 1988; Miller and Rose, 1997; Rose, 1999: 85–9). Choices about consumption have become central to the construction of identities and consumption has become a site for 'symbolic competition' between individuals about lifestyles and identity (Bauman, 1988: 58; Miles, 1998, 2000).

(4) *The rise of risk.* Recent decades have also seen the emergence of a 'risk society' (Beck, 1992), in the sense that risk has become a central organizing principle for life and hence a 'defining characteristic of the world in which we live' (Garland, 2003: 48). Modes of governance in diverse areas have become more risk-oriented or risk-based (O'Malley, 2004).

For our purposes in this book, a significant matter to draw out here is the way in which neo-liberal subjects are viewed or constituted within these new modes of governance. As Rose (1999: 141) suggests, the concept of choice is central to this, with our entire

understanding of human behaviour now reconceptualized as ‘calculative actions undertaken through the universal human faculty of choice’. Garland (2001: 190) calls this the shift to an economic style of reasoning. The neo-liberal subject is a choice-maker, a consumer, a ‘competing creature’, required simultaneously to act *responsibly* by minimizing negative risks (O’Malley, 2004: 71–4) and to be *entrepreneurial* in taking risks in order to innovate (O’Malley, 2004: 57–71, 2011; Osborne and Gaebler, 1992). As we will see in later chapters, this is a critical insight for understanding these new directions in drugs and crime policy.

Drugs and criminal justice: what does the evidence say?

What exactly do we mean by the idea of the criminal justice turn in drug policy? A first and important observation to make is that it is not without historical antecedents. Penal or criminal justice responses to drugs have a long history. In late nineteenth-century Britain, for example, legislation provided powers to the courts for the compulsory detention of criminal inebriates in specialist reformatories (Garland, 1985: 217–18). And, of course, the global drug-control regime that was constructed in the first two decades of the twentieth century has been based since its inception on the use of the criminal law as a tool for regulating the manufacture, distribution, and possession of ‘dangerous drugs’. In the United States, for example, the Harrison Narcotics Act of 1914, one of the earliest pieces of national ‘prohibition’ legislation, provided for fines of up to \$2,000 and prison sentences of up to five years for violations of its regulations. The connection then between drugs and criminal justice is not a recent invention. It is embedded in the foundations of drug control. Indeed, we might even go as far as to say that the very concept of ‘drugs’, in the sense we understand it today, did not exist before the creation of the criminal law regulatory regime (Seddon, 2010a, 2010b).

But the type of fusion of drug treatment and criminal justice that we are interested in here represents a new line of development in this longer story. This integration of the two systems is built around a single central purpose: to do something about the problem of drug-driven crime. It is based on three linked assumptions:

- (1) *Drugs cause crime*. Drug-driven property crime—‘addicts stealing to fund their habit’—is a major driver of local area crime rates, especially in deprived neighbourhoods.

- (2) *Identification and targeting*. The criminal justice system can be used to target these drug-motivated offenders and channel them into treatment.
- (3) *'Treatment works'*. Treatment can lead to significant reductions in their offending.

As we will see in chapter three, the development of the criminal justice turn has been closely linked with the development of a research evidence base. Here, we summarize and review some of the key elements of this research foundation. We begin by looking at the evidential foundation for these three assumptions.

Assumption 1: Drugs cause crime. The behavioural model underpinning this first assumption is straightforward: users of addictive drugs like heroin and crack cocaine, who tend to have limited sources of legal income, are driven to commit income-generating property crime in order to fund their drug purchases. Its empirical basis is the well-established finding that there is a strong correlation or association between heroin/crack use and involvement in property crime (eg Gandossy et al, 1989; Nurco et al, 1985; Johnson et al, 1985; Parker and Newcombe, 1987; Holloway and Bennett, 2004; Bennett et al, 2008). If we take samples of offenders, we find very elevated levels of heroin and crack use. For example, research on arrestees in England and Wales has found rates of recent heroin use that are around 10 times higher than in the general adult population (Holloway et al, 2004; Boreham et al, 2006). Similarly, if we look at samples of heroin and crack users in treatment, levels of involvement in property crime are also high (Harocopos et al, 2003; Jones et al, 2007). Further, there is evidence that heavier and more frequent use of heroin or crack is associated with higher rates of property or acquisitive offending (Hammersley et al, 1989; Best et al, 2001). A recent paper by Trevor Bennett and colleagues provides perhaps the definitive account of this evidence by presenting a meta-analysis of data from 30 published studies from around the world, concluding that there is a 'significant positive association between drug use and crime' (Bennett et al, 2008: 112). This was concentrated most strongly among crack and heroin users, and the association was strongest for a particular set of offence types (shoplifting, theft, robbery, burglary, and prostitution) (2008: 114–15).

What is far less clear is the extent to which drug-related crime really does drive neighbourhood crime problems. In other words, how big a problem is drug-related crime in the context of the crime

problem in general? In recent years, British drug policy-makers have consistently claimed that up to a half of all property crime is drug-driven (Home Office, 2008: 8). Yet there are good reasons to suggest that this may be a considerable exaggeration (see Stevens, 2008). A study by Dorn et al (1994), for example, based on data from the early 1990s, estimated that rather than 50 per cent, the proportion actually lay between 1 and 21 per cent. The answer to the question also depends on how we define 'property crime'. Increasingly, the 'crime of choice' for heroin and crack users in Britain is shoplifting, rather than burglary or robbery (eg Jones et al, 2007) and it is a moot point whether public and political anxieties about drug-driven crime extend to concern for the profits of high street retail stores.

While the drug-crime association is well established, the nature of that link is highly contested. We have referred so far to 'drug-related' and 'drug-driven' crime, other terms include 'drug-motivated' crime, but there is considerable uncertainty and disagreement about what is meant by 'related', 'driven', or 'motivated'. There is a voluminous literature on this and we direct readers to some of the better and more interesting contributions (eg Auld et al, 1986; Parker and Newcombe, 1987; Simpson, 2003; Seddon, 2000, 2006). The criminal justice turn is based on what has been described as the 'economic necessity' or 'drugs cause crime' model: property crime provides a means of financing expensive drug habits for people with limited legitimate income (eg Parker and Newcombe, 1987). However, this has been much criticized as an over-simplification of what is in fact a more complex causal picture (see Seddon, 2000, 2006). An alternative account is the 'informal economy' or 'crime causes drugs' model: people experiencing socio-economic disadvantage encounter drugs as commodities within the semi-criminal informal economies they operate in (eg Auld et al, 1986; Seddon, 2008a). In other words, it is the need for marginalized groups to engage in economic activity that brings drugs and crime together. Others have suggested that drugs and crime are highly correlated because they are both causally connected to a third common factor (eg poverty) or else form part of a complex causal web (Seddon, 2006). Bennett and Holloway (2007) argue that there is no single drugs-crime link but rather a series of specific drug-crime connections.

Overall, then, the evidence suggests that this first assumption is built on some shaky foundations. Perhaps the only point on which

most would agree is that there is a strong association between (consumption of certain types of) drugs and (particular types of) crime. Beyond that, the picture is less clear and there are good reasons to doubt the accepted policy view of 'drug-related crime'.

Assumption 2: Identification and targeting. At the heart of the second assumption is the idea that the criminal justice system is a good place to find these drug-using offenders. The premise here is that a sufficiently high proportion of this group are apprehended at some stage and brought into the system. Given the uncertainties described above in measuring the extent of drug-related crime, this assumption is very difficult to assess. We know that the best estimates of the number of heroin and crack users in England put the figure at around 330,000 (Hay et al, 2008). It is uncertain, however, what proportion of that group are involved in property crime. A recent large-scale English study found that only 43 per cent of treatment entrants had committed an acquisitive offence in the previous four weeks (Jones et al, 2007) but extrapolating from that sample may be misleading as we know that at least one-third of the heroin/crack-using population are not in treatment at any given time (NTA, 2010). In the absence of better data, we could perhaps estimate very crudely, and no doubt imprecisely, that there may be around 165,000 heroin/crack users who are currently engaged in property crime. So how many of that group does testing at the police station manage to identify? Again, this is not straightforward to estimate. There are approximately 240,000 tests conducted annually, around one-third of which give positive results. However, some of these 80,000 positive tests will involve repeat tests of individuals who have multiple visits to the police station during the year, so the annual figure of people identified will be somewhat less than that. This suggests, then, that a rough estimate would be that perhaps between one-third and one-half of the drug-using offender population is picked up by drug testing in the police station.

There are two broad reasons why so many of this target population may slip through the net. An unknown proportion may simply not be arrested and taken to a police station in a given year. In other words, they may successfully evade capture for sustained periods of time. A second reason is that, even for those people who are captured and end up in police stations, testing itself may be an imprecise identification tool. The evidence for its efficacy is certainly mixed. In the piloting of drug testing in England and Wales,

there was continual concern expressed both by testers and arrestees about its accuracy (Matrix & Nacro, 2004: 12–13; Seddon, 2005). We examine this issue further in chapter four. An earlier and much-cited review of (largely US) research on drug testing by Wish and Gropper (1990) was a little more positive than this, although they noted that the most serious shortcoming of testing is that it offers only a binary result (positive or negative) and gives no indication either of the severity of drug problems or of drug-related behaviours.

We might conclude then that using the criminal justice system as a site for finding this group is a strategy likely to be only partially successful. Certainly, many drug-using offenders will be found there but a substantial proportion will not. We explore this further in subsequent chapters, chapter four in particular, when we look at the question of attrition through the criminal justice process.

Assumption 3: 'Treatment works'. The third assumption is that individuals who enter and then stay in treatment will reduce their level of offending. The supporting evidence for this assumption comes from a series of longitudinal studies of treatment outcomes that have been undertaken in several different countries around the world (eg Gossop et al, 2001; Hubbard et al, 2003; Jones et al, 2009). The evidence here is quite compelling at one level. For example, the Drug Treatment Outcomes Research Study (DTORS) conducted in England found that the percentage reporting involvement in acquisitive offending nearly halved after three to five months in treatment (Jones et al, 2009), replicating the findings from the earlier National Treatment Outcome Research Study (NTORS) (Gossop, 2005). A large-scale study of the impact of the prescribing of opiate substitutes found similar reductions in crime (Millar et al, 2008). Other international studies paint a similar picture in terms of the crime-reduction benefits of treatment.

One caveat we should highlight here is the problem of drop-out. Clearly we can only talk of treatment 'working' for those people that treatment services manage to keep in touch with. Retention rates vary quite considerably between treatment types or modalities as well as between different services. Recent data for England, provided by the National Treatment Agency, suggest that just under 80 per cent of new treatment entrants are successfully retained for three months (NTA, 2010).

A further question posed by delivering treatment through criminal justice concerns whether treatment can be effective for

individuals who are pushed into it through the leverage of the criminal justice system. Drug users ‘coerced’ into treatment, so the argument goes, cannot be compelled to change if they lack the motivation. Somewhat counter-intuitively, the research evidence from the United Kingdom (McSweeney et al, 2007), Europe (Schaub et al, 2010), and the United States (Farabee et al, 1998) points to the opposite conclusion: treatment is no less effective for ‘coerced’ clients than it is for those who enter voluntarily (see also Stevens et al, 2005a). As we will see, this is an absolutely critical finding for the criminal justice turn (for a discussion of some of the explanations for the finding, see Seddon, 2007a). The *ethics* of coerced treatment is a different question that we do not consider here but interested readers are referred to the discussions in Seddon (2007a), Stevens et al (2005b), Caplan (2006), and Urbanoski (2010).

Drug interventions in criminal justice

So there are clearly some weaknesses in the evidence base for these three assumptions. Nevertheless, a series of drug interventions within the criminal justice system have been tried out in countries around the world over the last 30 or more years. Perhaps the first significant step along this road was Robert DuPont’s ill-starred ‘Operation Tripwire’ proposal in 1977 in the United States (see DuPont and Wish, 1992). DuPont was the first Director of the National Institute on Drug Abuse (NIDA) between 1973 and 1978 and the second White House ‘drug czar’ between 1973 and 1975. Despite DuPont’s powerful and influential position, Tripwire was never implemented. Nevertheless, its key components—the use of drug testing as a screening tool and for the monitoring of compliance, coupled with the systematic integration of treatment and criminal justice—set the template for much of what has followed over the last 30 years.

Early pioneering projects in the United States, on which DuPont drew in formulating his ideas, included the civil commitment programmes in California (see McGlothlin et al, 1977; Anglin, 1988) and New York in the 1960s and the TASC initiative (Treatment Accountability for Safer Communities—previously Treatment Alternatives to Street Crime) first established in 1972. An interesting review by Webster (1986) describes now largely forgotten programmes from the 1970s as far afield as Singapore, Hong Kong, and Sweden. But it was in the 1980s and 1990s that these developments

really gathered pace and began to extend in a significant way beyond the United States. By the first decade of the twenty-first century, we can certainly say that the fusion of drug treatment and criminal justice had become a genuinely worldwide phenomenon (see Stevens et al, 2005a). But what do we know about the effectiveness of this fusion? Here, we begin by summarizing the research on the two principal community-based models for dealing with drug-using offenders: drug courts and treatment sentences.

Drug courts

Perhaps the single most well-known and widely adopted model for responding to drug-using offenders is that of drug courts (see: Belenko, 2001; Fischer, 2003; Wilson et al, 2006). The first drug court was established in Miami, Florida, in 1989. In the following years, others were set up across the United States, and then around the world, including in Australia, Canada, England, and Scotland. There is no single drug court model but there are some common features:

- (1) *Specialism*. Drug courts are specialist courts that are designed to deal exclusively with drug-using offenders. The aim here is to ensure that those involved in the court process—such as judges, lawyers, and clerks—develop high levels of expertise. In some versions, speeding up case processing is central to the operation of the courts.
- (2) *Integrated treatment*. Drug courts offer access to a range of treatment and related support services. Treatment and criminal case processing are integrated. This requires a significant degree of co-ordination and partnership working between judges, court clerks, lawyers, probation officers, treatment workers, and others.
- (3) *Drug testing*. Frequent testing is used to monitor participants' compliance. Rigorous testing procedures (eg direct observation of the collection of samples) ensure that the results can be used within the legal process.
- (4) *Judicial monitoring*. The judge takes a central role in reviewing progress and draws on information provided by others, notably the treatment agency that reports on attendance and drug-test results. The judge is also central in rewarding positive progress (eg by praise or suspending imprisonment) and punishing

non-compliance (eg by warnings or increasing testing frequency). Some models also emphasize the importance of judicial continuity, that is that the same judge maintains contact with an individual participant.

The evidence on the impact and effectiveness of drug courts is mixed. Some studies, and indeed some reviews of research, have found that drug courts reduce reoffending (Wilson et al, 2006; Shaffer, 2006; Rossman et al, 2011), while others have suggested their impact on reoffending is marginal or unproven (Granfield et al, 1998; McIvor, 2009). In Sherman's language they can probably be best described as 'promising' (Sherman et al, 1997). Nevertheless, drug courts are the most widespread model for court-ordered treatment across the world.

Treatment sentences

The second main model of interventions is community sentences that include a drug-treatment component. These can operate within the framework of drug courts or simply as standalone sentences. Again, there are many varieties here but there are some common features:

- (1) *Attendance requirements*. At the heart of treatment sentences is a requirement by the court for the offender to attend appointments at a treatment agency.
- (2) *Supervision*. Offenders on these sentences are usually under the close supervision of probation or parole officers who manage and coordinate their case.
- (3) *Drug testing*. Testing is often used for the purpose of monitoring progress and compliance with treatment.
- (4) *Alternative to imprisonment*. Treatment sentences are typically intended to be community-based alternatives to imprisonment, although breaches for non-compliance often lead to incarceration.

Examples of this type of court-ordered treatment sentence are many and varied. In the United States, TASC, which we have already mentioned, is one of the oldest, dating back to the early 1970s. Other US examples include DTAP (Drug Treatment Alternatives to Prison), established in New York in 1990, which involves referral to residential treatment in lieu of a prison sentence, and California's

Proposition 36, initiated in 2001, which allows first- and second-time non-violent drug-possession offenders the opportunity to receive drug treatment instead of incarceration. Evaluations of TASC (Anglin et al, 1999) and DTAP (Belenko et al, 2004) show some evidence of positive impact on reoffending, although findings for TASC are a little more equivocal, reflecting the wide variations in local arrangements for case management and monitoring. The evaluation of Proposition 36 has found quite mixed outcomes for reoffending (Urada et al, 2008).

A British example of a treatment sentence is the Drug Treatment and Testing Order (DTTO), now restyled as the Drug Rehabilitation Requirement (DRR). DTTOs were found to have very poor completion rates and little or no impact on reoffending, apart from the small proportion (30 per cent) who finished their orders successfully (Hough et al, 2003). More recent innovations have seen new court interventions introduced that mirror treatment sentences but that apply at the pre-sentence stage, typically making treatment attendance a condition of bail. This has been introduced, for example, in Australia with the CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment) programme (Heale and Lang, 2001) and in England with the Restriction on Bail (RoB) provision (Hucklesby et al, 2007).

Again, as with drug courts, the evidence base here is a mixed bag. Some interventions show promise, others do not. In an insightful review, Mike Hough (2002) highlights one of the reasons for this patchy performance, namely the sheer difficulty of implementing drug-treatment interventions in the criminal justice context. Getting health services and criminal justice agencies to work together effectively requires levels of partnership working that are not easy to achieve in practice, given the different philosophies, goals, and values of the two sectors. In Hough's view, while the underlying approach behind channelling drug users into treatment as they pass through the criminal justice system is sound, implementation remains problematic.

More recently, a new model for drug-crime interventions has started to emerge in the United States, which may indicate a new direction in this area. Project HOPE in Hawaii, piloted initially in 2004, is based on the idea that not all drug-using offenders require treatment to desist from offending and drug use and that the prevailing model of assessment followed by mandated treatment is therefore highly inefficient. HOPE provides a model for managing

drug-involved offenders on probation in which the emphasis is on the application of swift and certain sanctions for *all* violations or breaches (that is all missed appointments or positive drug tests or other relevant ‘misbehaviour’). It is claimed that for most offenders, this regime is enough to secure compliance. Only the small number who continue to ‘fail’ are deemed to require treatment. Hawken (2010) terms this a ‘behavioural triage’ model, in the sense that it is an offender’s observed behaviour (eg continually providing positive tests) that signals their need for treatment or other services. Initial results from the evaluation of HOPE have certainly been impressive (Hawken and Kleiman, 2009). In a nice echo of the first steps along this path, Robert DuPont, the architect of the Operation Tripwire proposal in the late 1970s, has become a prominent cheerleader for the Project HOPE model as the best bet for the next phase of drugs-crime interventions.

The criminal justice turn in British drug policy

Here, we describe what the criminal justice turn has involved in the British context, beginning with a dotted history (to which we will return in more detail in chapter three). The story begins in the mid-1980s, when a series of experimental arrest referral schemes were developed, initially involving the handing out of information about drugs and drug services to detainees in police stations (Dorn et al, 1990; Dorn, 1994; Turnbull et al, 1995; Edmunds et al, 1997, 1998). Over time, these schemes moved away from the early ‘information-giving’ model to involve drug workers screening and assessing detainees *in situ* in custody suites and attempting, where appropriate, to refer them on to community drug services (see Sondhi et al, 2002; Oerton et al, 2003). A key problem with these schemes was attrition: a very small proportion of those contacted in police stations ended up going through the doors of a drugs service in the community.

In the early 1990s, attention began to focus on the court stage. There were some short-lived experiments to replicate the arrest referral model in magistrates’ courts, although these appeared to have only a limited appeal and impact (Dorn and Seddon, 1996; Webster, 1996). But the most significant developments concerned attempts to bring drugs work into the mainstream for probation officers (ACMD, 1991; Lee, 1993, 1994; Nee and Sibbitt, 1993; Hart and Webster, 1994; Rungay, 1994; Dorn and Lee, 1995; Lee

and Mainwaring, 1995; Sibbitt, 1996; Hearnden et al, 2000). One focus for this was the introduction under the Criminal Justice Act 1991 of a power for the courts to attach a requirement to undergo drug or alcohol treatment to a probation order. Although these orders, known as 1A(6) orders, turned out to be little used in practice (Lee, 1993, 1994; Lee and Mainwaring, 1995; HMIP, 1997), they paved the way for what was to become a flagship element within the new criminal justice approach, the Drug Treatment and Testing Order (DTTO), which we have already briefly mentioned above. The DTTO was a standalone community sentence introduced under sections 61–64 of the Crime and Disorder Act 1998, which required offenders to attend treatment, to submit to regular urine tests, and to undergo periodic court reviews of progress. It was piloted in 1998 (see Turnbull et al, 2000) and subsequently rolled out nationally.

The prison end of the system also saw developments in the 1990s. A programme of mandatory urine testing was piloted in 1995 under section 151 of the Criminal Justice and Public Order Act 1994 and then extended nationally the following year (Edgar and O'Donnell, 1998; Singleton et al, 2005). In 1999, the CARAT (Counselling, Assessment, Referral, Advice, Throughcare) service was introduced across the entire prison estate, with the aim of ensuring a more consistent response to drug-using prisoners (May, 2005).

Following the piloting of drug testing in police custody suites and within certain parts of probation work from 2001 to 2003 (Mallender et al, 2002; Matrix and Nacro, 2004), a pivotal moment was the introduction in 2003 of what was known initially as the Criminal Justice Interventions Programme (CJIP) and subsequently re-named as the Drug Interventions Programme (DIP). The aims of CJIP/DIP were to bring together the range of drug interventions that had been accumulating up to that point in a relatively piecemeal fashion and to provide more co-ordinated and joined-up provision to drug users going through the criminal justice system. A key mechanism here was the introduction of local Criminal Justice Integrated Teams (CJITs), which were tasked with delivering this co-ordinated case management for drug users going through the system.

In 2006, an extension of the more coercive elements within DIP was launched under the title 'Tough Choices'. This consisted of a set of measures contained in the Drugs Act 2005: the introduction of Testing on Arrest (which had previously been after charge only),

the introduction of the Required Assessment (in effect, a type of coerced arrest referral), and the national roll-out of the Restriction on Bail. The ‘Tough Choices’ measures aimed to curb further the levels of attrition and drop-out between individuals being identified and actually arriving in treatment. A study by the Home Office tentatively indicated it had some impact on this (Skodbo et al, 2007).

The hyperactivity of national policy-makers tailed off at this point and the key elements of DIP have become relatively stable. We summarize its main components below, in order to provide a guide for understanding later chapters where we describe the operation of DIP and related criminal justice interventions.

At the police station

Drug testing

The process begins after an individual has been arrested and brought to the police station for detention in the custody suite. Under section 7 of the Drugs Act 2005 (amending the Police and Criminal Evidence Act 1984), detainees aged 18 or over who have been arrested in relation to a set of offences known as ‘trigger offences’ are required to undergo a drug test to detect whether they have opiates and/or cocaine in their body. Refusing to be tested without good cause is a criminal offence carrying a maximum penalty of three months’ imprisonment and/or a fine of £2,500. The list of ‘trigger offences’ was initially set out in the Criminal Justice and Court Services Act 2000 but has since been amended and added to by subsequent legislative orders. Broadly, they include the types of acquisitive crimes believed to be connected to the use of heroin and/or crack. The list in operation throughout most of our fieldwork period is set out in Table 1.1 below (see also appendix one).

In addition, where an individual has been arrested for a non-trigger offence and brought to the police station, they may be required to be tested if an officer of at least the rank of inspector believes that their use of Class A drugs may have caused or contributed to their alleged offence. This is known as testing under ‘inspectors’ discretion’ or ‘inspectors’ authority’. As we will see, in practice, this discretionary power has been little used.

Table 1.1 'Trigger offences'

Act	Offence
Theft Act 1968	Theft (section 1) [plus attempts] Robbery (section 8) [plus attempts] Burglary (section 9) [plus attempts] Aggravated burglary (section 10) Taking motor vehicle (section 12) Aggravated vehicle-taking (section 12A) Handling stolen goods (section 22) [plus attempts] Going equipped for stealing (section 25)
Misuse of Drugs Act 1971	In respect of Class A drugs only: Production and supply (section 4) Possession (section 5(2)) Possession with intent to supply (section 5(3))
Fraud Act 2006	Fraud (section 1) [plus attempts] Possession of articles for use in frauds (section 6) Making or supplying articles for use in frauds (section 7)
Vagrancy Act 1824	Begging (section 3) Persistent begging (section 4)

Required Assessment

For those detainees who test positive for opiates and/or cocaine, sections 9 and 10 of the Drugs Act 2005 provide a power for the police to require them to attend an assessment with a drugs worker (see appendix two). Failure to attend, or to stay for the duration of the assessment, is a criminal offence, again punishable by imprisonment and/or a fine. Usually, this initial assessment will take place in the police custody suite during the period of detention but where this is not possible an appointment may be made for the assessment to be conducted at a later time.

At the conclusion of the initial assessment, the worker may decide that a further follow-up assessment is required and will make an appointment with the local CJIT. The same requirements to attend and stay for the duration of this assessment apply, along with the same penalties for failure to do so without good cause.

At court

Some of those tested on arrest will not be charged and so drop out of the criminal justice process at that point. Any continuing contact

with a community drug-treatment service from this point on will be on a voluntary basis outside DIP. Those who are charged with an offence and taken to court may enter the next stage within DIP. Interventions at this point can be divided between pre- and post-sentence.

Pre-sentence: the Restriction on Bail

Some defendants who are charged and taken to court may be dealt with on their first appearance, for example if a guilty plea is entered and the appropriate sentence or disposal is straightforward. For these individuals, the post-sentence DIP arrangements described below may apply. For others, the courts will need to make a decision about whether to grant court bail or to remand in custody. Here, under powers introduced by section 19 of the Criminal Justice Act 2003 (amending the Bail Act 1976), where a defendant has tested positive on arrest, the court must take this into account in considering bail (see appendix three). More specifically, section 19 introduces for these defendants a reversal of the usual presumption in favour of bail, unless they agree to attend an assessment and participate in any recommended follow-up treatment. If they do agree, this then becomes a condition of their bail.

The purpose of the Restriction on Bail is to reduce the problem of offending on bail by ensuring that those defendants who have been identified as drug-using offenders are either channelled into community treatment (if bail is granted) or else remanded in custody. It also tests out whether they are likely to comply with a post-sentence treatment requirement, with this compliance information feeding into sentencing decisions.

Post-sentence: the Drug Rehabilitation Requirement

As already mentioned, the DTTO, a flagship of the criminal justice turn in the late 1990s, was restyled as the DRR under sections 209–211 in the Criminal Justice Act 2003, with the new arrangements coming into force for offences committed from April 2005 onwards. The DRR is one of 12 requirements that can be attached to a basic community sentence (other requirements include curfews, unpaid work, and residence restrictions). The requirement can be applied where the court is satisfied that an offender is drug dependent or has a propensity to misuse drugs and would benefit from treatment.

It includes both treatment and regular testing and the offender's progress is subject to periodic review by the court.

Strictly speaking, and for reasons that we explore further in chapter three, the DRR lies outside the DIP. The management of offenders on DRRs is the responsibility of probation rather than of CJITs. As we will see in later chapters, this poses some challenges for local practice in terms of providing a co-ordinated response to this group.

In prison

Many drug-using offenders end up in prison at some point. Here, their first point of contact should be with a worker from the CARAT service, mentioned above, who should carry out an assessment, offer relevant advice, and make referrals to other provision (see May, 2005). What other provision is available varies across prisons but includes clinical services (detoxification and maintenance prescribing), drug-free wings and rehabilitation programmes of various kinds (including therapeutic communities, 12-step programmes, and cognitive behavioural therapy). On release from prison, drug-using offenders should be contacted by CJITs or probation (if released on licence) to ensure 'continuity of care' post-release and, in particular, to address the serious problem for heroin users of the heightened risk of overdosing at this point (Farrell and Marsden, 2005). The Integrated Drug Treatment System (IDTS) was introduced in selected prisons in 2006 with the aim of enhancing and better integrating drug treatment and case management within prisons.

The picture then is of considerable expansion of drug-related provision within prisons since 1999, but building on a very low base indeed. An important review chaired by Lord Patel found that considerable shortcomings still exist (Patel, 2010), notably in terms of addressing the challenge of connecting what happens in prisons with what happens in the community. The prison end of the system remains problematic from a policy and practice perspective.

Our research study

The main study on which this book is based was carried out over the course of two and a half years between 2007 and 2009. Its general objective was to examine a specific area of British crime policy

in order to explore how broader transitions in governance have played out in a particular field. Our research design was based on the principle that to address these concerns required a micro-macro study. To see the 'big picture' more richly and in a more nuanced way, we needed to see how it was constituted in interactions in practice on the ground, as well as how it was described in the 'blueprints' of government, such as policy documents. Accordingly, we designed a multi-level mixed-methods study.

The first main strand of the study looked at national policy-making. We collected a range of national policy documentation for analysis, including government strategies and action plans, parliamentary proceedings and reports, government press releases, policy guidance, and circulars. We also carried out nearly 30 interviews with senior individuals involved in, or knowledgeable about, policy-making in this area, for example officials in the Home Office and Department of Health, ministerial advisers, and national drug policy campaigners.

The second main strand involved in-depth case studies of practice in three local sites: site A, a city in the Midlands; site B, a mixed area in northern England, containing a mix of small towns and more rural parts; and site C, a large city in northern England. In each of these three sites, we analysed operational data, interviewed service managers and practitioners from a range of agencies (eg drug treatment, police, probation, magistrates), interviewed drug users, and conducted sustained *in situ* observations (in police stations, magistrates' courts, and treatment agencies). Our focus in these local sites was primarily on activities and practice in the community rather than within prisons, although we touched on certain prison-related issues, notably in terms of what has been called 'throughcare and aftercare', that is transitions into and out of prison. The rationale for this focus was largely on two pragmatic grounds. First, the main thrust of the policy developments in this area concerned the police, the courts, and probation, rather than the Prison Service. Our interest in policy inevitably pulled us away from looking too closely at prisons. Second, the issues for prisons and prisoners are sufficiently distinctive and complex that they merit, indeed require, a dedicated research study.

In total, we carried out over 220 interviews (including 77 with drug users), coded and analysed over 150 documents, and did nearly 80 hours of observation in criminal justice and drug-treatment sites. This wealth of empirical material is drawn on throughout

this book. In addition, the book is also informed more generally by the first author's earlier involvement in the evaluations of the piloting of the Restriction on Bail provision (see Hucklesby et al, 2005, 2007) and of drug testing (see Mallender et al, 2002), as well as his work in the 1990s on drugs and criminal justice (see Dorn et al, 1994; Baker et al, 1994; Seddon, 1996; Dorn and Seddon, 1996).

Outline of the book

The rest of this book is organized as follows. In chapter two, we set out our theoretical framework for the book, which makes up the intellectual fabric for the whole. The framework aims to provide a set of tools for explaining why the criminal justice turn emerged in British drug policy at this time and why it has taken on the particular forms that it has. In chapter three, we examine the origins and development of this new direction in policy at the national level, through an analysis of policy documentation and of interviews we conducted with senior policy actors in the field. In chapters four, five, and six, we move on to look at how this policy turn has shaped practice on the ground, drawing primarily on our three local sites. Each of these three chapters focuses on a particular aspect of practice: chapter four on drug testing; chapter five on how coercion or criminal justice leverage works; and chapter six on how drug workers manage information and knowledge. Chapter seven then considers the impact of the criminal justice turn. We define 'impact' here in a broad sense. Lastly, chapter eight brings together the central arguments of the book and revisits the question of what this all tells us about the nature of social control and of the governance of security in the early twenty-first century.