The Thistle and the Rose: a Bacchian analysis of the 'problems' of drug use, diversion and the Scottish context

Tracey Price

Thesis submitted for the degree of

Doctor of Philosophy

University of Stirling

March 2022

For mum, who would have been so proud. Thank you for leaving me the legacy of your tenacious spirit and your enduring love.

Declaration

I declare that this thesis has been composed by myself, and that it embodies the results of my own research. I acknowledge that to the best of my knowledge this thesis contains no material written or published by another person, except where due reference to such is made.

Signature: *Tracey Price*

Date: 26th March 2022

Abstract

Background: Police diversion has emerged as a key strategy capable of reducing the harms associated with criminalisation by providing early interventions and routes to health-focused support for those with drug-related problems. A growing international evidence base points to the potential for police diversion to act as a form of de facto decriminalisation, where drug laws remain in place, but arrest and prosecution are de-prioritised. To date, the contextual factors that could influence effective implementation of such de facto approaches to reform have been underexplored, particularly in relation to plurinational states. The UK offers a valuable opportunity to explore such approaches due to the complexity of the context. The study aimed to examine how diversion, drug use, and the Scottish context have been represented in official UK parliamentary discourses, the extent to which reform could be considered necessary, and the types of reform that could be implemented to meet the needs of the Scottish context.

Methods: Carol Bacchi's (2009) 'what's the 'problem' represented to be' (WPR) approach was used to critically examine how policy discourses represented drug use, diversion, and the Scottish context, as specific types of 'problems'. Data comprised UK parliamentary inquiry reports, Scottish Government policies, legislature, and institutional guidelines related to diversion and drug policy. Documents were purposively sampled and then critically analysed using the WPR framework to reveal conceptual logics related to UK and Scottish contexts. A genealogical analysis was then conducted to explore policy 'silences'.

Results: Several 'unseen' barriers to implementing police diversion are described that have received insufficient attention due to the dominant assumption that the UK operates as a single, homogenous legal context. Barriers to implementation include Scots Law, the constitutional principle, and Scotland's system of independent public prosecution.

Conclusions: The study findings suggest that, in Scotland, police diversion cannot be seen to operate as de facto decriminalisation, given that the Lord Advocate has a constitutional obligation to ensure that Scottish police and prosecutorial guidelines do not amount to a de facto change to UK law. Nonetheless, the study concludes that the Lord Advocate has considerable autonomy and power and could agree adaptations to police and prosecutorial practice if diversion were to be reconceptualised and developed into a Scottish approach that aligned with the constraints of the existing system.

Table of contents

List of Tables

List of Figures

Definitions

This section provides a definition of key terms, outlining how these terms are used and understood within this study.

Addiction	Every attempt has been made to use neutral terms throughout this thesis. The term addiction has been explored within existing literature where it has been considered to have the potential to increase the stigma faced by people who use drugs (Avery and Avery 2019). There are, however, a few occasions where the term has had to be used in this study to enable a review of relevant literature (see Chapter two, section three). The study thereby uses the definition of 'addiction' proposed by Sussman and Sussman (2011), where 'addiction' refers to habitual patterns of behaviour that persist beyond the point where negative consequences emerge.
Drug use	The use of substances controlled by the UK Misuse of Drugs Act 1971 and the 1961 United Nations (UN) Single Convention on Narcotic Drugs.
Drug-related death	This study uses the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2022) definition of drug-related death which acknowledges the complexity of this term. For the purposes of this study, the term drug-related death is used to refer to deaths that have been considered to be directly related to the consumption of drugs. This includes deaths from accidental overdose, as well as those which have occurred shortly after a person has consumed drugs.
Drug-related problems	This term is used to refer to drug use which is presenting adverse social or health effects in the life of an individual.
Drugs	As per the definition of drug use above, this study uses the term 'drugs' to refer to substances which are controlled by international conventions and national drug laws and strategies. For the purposes of this study, therefore, the term 'drug' refers to substances which are controlled via the UK Misuse of Drugs Act 1971.
Genealogy	The term genealogy is used in this study to refer to Michel Foucault's genealogical method (Foucault 1971). Foucault's (1971) genealogical method is concerned with examining the moments in history that have shaped the way a 'problem' is known in contemporary times. It does

not seek to identify the origin of a way of thinking, but rather, seeks to explore how contextual factors have led to 'ontological turns', that is, changes in conceptualisations. Notably, the Bacchian WPR approach (2009) used in the current study places dual emphasis on using a genealogical approach to identify the conditions that have produced ontological turns, as well as those which can be considered to have maintained continuity of the status quo over time.

Othering	A way of constructing a person or group that makes said individual or group appear as different from oneself, or from 'mainstream' society (Becker 1997).
Policy proposal	The solutions or actions suggested in policy discourse to address 'problems' (Bacchi 2009).
Policy 'silence'	This term is taken from Bacchi (2009) and refers to question four of the WPR approach, which asks, *'what is left unproblematic in this representation of the 'problem'? Where are the 'silences'? Can the 'problem' be conceptualised differently?'* The term 'silence' refers to the knowledge that has been de-prioritised and thereby falls outside of the policy frame. A policy 'silence' is, therefore, the knowledge that could be considered 'missing'.
Post-structuralism	Within this study, a broad conceptualisation of post-structuralism is used, where post-structuralism is understood to mean an analytic approach to actively question processes of knowledge production and ways of knowing a 'problem' (Bacchi 2018). Within the current study, post-structuralism is taken to mean an analytic approach which is concerned with exploring how history, politics, and power have shaped policy and practice. Post-structuralism is recognised as a broad umbrella term containing multiple epistemological and ontological positions. How the term is used within the research method used in this study, is explored in Chapter four, section two. The relationship between post-structuralism and the study's underpinning theoretical framework is explored in Chapter two, section two.
Problem representations	The issue that is constructed via the policy proposal. The problem representation that appears in policy discourse can either be explicit, as in outlined within the policy text, or it can be implied by the policy proposal. For example, if a policy aims to address a lack of females in senior management roles and proposes additional training for women, then the problem is represented to be women's

skillsets and lack of relevant training (Bacchi 2009). If the same policy proposes free childcare, then the problem is represented to be the unequal distribution of domestic caring responsibilities. As such, this thesis uses the term problem representation to refer to both explicit and implicit representations of the issue to be addressed as it appears within policy discourses.

Problematic drug use	This term is used to refer to patterns of drug use which have been recognised as presenting a high risk to the health or mortality of the individual. It is used to describe circumstances where drug use has persisted for a long time, or where use continues despite evidence of negative consequences.
Problems	This thesis uses Hoppe's (2011:23) definition, where a problem is defined as follows: "A gap between the current situation and a more desired state".
Recreational drug use	The use of illegal substances that occurs without the individual experiencing any adverse social or health impacts, and where use is not dependent or compulsive.
SFT	Ritchie and Spencer (2002) structured framework technique which involves a sequential step approach to qualitative data analysis.
WPR	Carol Bacchi's (2009) 'what's the 'problem' represented to be' approach to policy analysis (explored further in Chapter one, section one).

Acknowledgements

This thesis would not have been possible without the support of many.

The first thanks are owed to Tessa, for her guidance, understanding and support. Thank you for helping me navigate the journey, for inspiring me and lighting the way.

Thanks to Margaret for her thoughtfulness, patience, insights, and keen eye. Thanks for taking the time to read every word and for encouraging me to be as critical as I am wired to be.

Thanks to my family, and to Graham, for patience, love and understanding.

Thanks to my Research Advisory Group for supporting me from the very beginning. I hope that this work will be useful to you.

Thanks to all those who met with me regularly to brainstorm, throw ideas around, and 'set the world to rights'.

Thanks to my friends and colleagues across the pond for our inspirational discussions and for empowering me to aim high.

Thanks to my funders, the Scottish Government, and Economic and Social Research Council, without whom this thesis would not have been possible.

Thanks to my friends near and far for their love and support along the way. I send my love and thanks to you all.

Chapter 1: Introduction

How a social phenomenon or context is described can influence the types of solutions that appear logical, relevant, and legitimate. Definitions are important, as the meanings given to terms can vary depending upon the methodological orientation of the work, the discipline in which it sits, and the positionality of the researcher (Bacchi 2018). This chapter introduces the reader to the key concepts relevant to the study. The chapter explores the diverse meanings that can be given to terms and indicates how key terms are being used within the current work. The study is methodologically oriented towards post-structuralism. Many post-structural researchers and philosophers have suggested that terms themselves have no inherent meaning, and that meaning is acquired through complex interactions between power, knowledge, and culture (Bacchi 2018). Such processes are influenced by history and can vary between contexts, and between academic disciplines. The current study uses Carol Bacchi's (2009) 'what's the 'problem' represented to be' (WPR) approach to examine how the 'problems' of drug use, diversion, and the Scottish context are represented within the UK and Scottish policy discourses. This chapter first explores what is meant by the term 'problem' and outlines how this relates to the term 'problematisation'. While the concept of 'public health' is not a direct focus of this study, it is highly relevant to much of the work, so a definition is provided in Chapter one, section two. As the study focuses on diversion and context, a definition of both these terms is provided in Chapter one, section three and Chapter one, section four respectively. The current chapter also provides a brief introduction to the chapters that follow.

1.1 'Problem' representations and problematisation

The chapter now turns to the concepts of 'problematisation' and 'problem', outlining how these terms are used within this thesis. The study aligns with the work of Carol Bacchi (2018) who proposes that processes of governance occur within societies as a result of processes of 'problematisation'. The term 'problematisation' comes from Michel Foucault's (1985) work, in which he describes problematisation as an analytic strategy that involves 'thinking problematically'. Thinking problematically is described, both by Bacchi (2018) and Foucault (1985), as being about identifying the terms of reference that are involved in the process of a 'problem' coming into being. The terms of reference can also be described as the 'discursive frame', which means the boundary that is implicitly drawn around what can and cannot be said. Bacchi (2009) proposes that, by examining the processes of a 'problem' coming to be recognised as problematic, it is possible to

gain insight into the ways of thinking that have come to be dominant within a society at a particular moment in time. Within this research paradigm, a 'problem' is not taken to be a fixed issue to be addressed via action but, rather, an *object* that is produced by processes of power and knowledge production (Bacchi 2018). Within this theoretical premise, concepts have no inherent meaning on their own. Instead, meaning emerges due to the way a social phenomenon, community or society is represented within policy, legislation, or official documents. Bacchi (2009; 2018) suggests that most problem representations are held in place by identifiable assumptions, presuppositions, and 'silences' that shape the 'discursive frame' which can then be identified via analysis. According to Bacchi (2018), concepts become meaningful *objects,* or *things,* via processes of classification.

Bacchi (2009) puts forward that governmental policies and legislative frameworks are ontologically active in that they contain implicit assumptions and presuppositions about the *way things are.* Much of Bacchi's (2009) work adopts a Foucauldian frame, proffering that processes of classification within discourse produce identifiable *subjects.* A full, detailed exploration of what is meant by *'discourse'* is provided in Chapter two, section two. A brief definition is provided here, however, to help to orient the reader to the underpinning rationale behind the work. A discourse is a way of representing a 'problem', a social phenomenon, or a society, that appears as a universal 'truth' (an exploration of the term 'truth' is provided in Chapter four, section two). According to Mol (1999), discourses appear as stable 'facts' because of power structures that sit beneath selected forms of knowledge. Foucault (1971) suggests that less emphasis should be placed upon what is said, and instead a greater focus should be placed on what is possible to say, and what factors create boundaries around what can be said. According to Foucault (1971), power is a mediating factor that shapes what can be said and what appears as 'true'. The 'discursive frame', that is the boundary around what can be said, is, according to Foucault (1971), shaped by historical factors that have become embedded within the institutions of each society. Institutional practices then produce and maintain classifications and power relations, producing a problem to be solved, as well as conferring imposed identity positions. As such, discourse is a way of conceptualising a social phenomenon that confers *subject* positions, and legitimates mechanisms of surveillance, classification and, ultimately, produces social control (Foucault 1971). Foucault (1971:52) describes this as follows:

> *"In every society the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to*

> *ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous formidable materiality".*

(Foucault 1971:52).

As Foucault explores above, the aim of discourse or, for the purposes of this study, *policy* discourse, is to produce procedures designed to reduce uncertainty and chance, creating social order. Both Bacchi (2019) and Foucault (1971), however, describe the complexity of the above assertion. Looking to governmental policy specifically, Bacchi (2009, 2018) suggests that policies can be a window into understanding how governance occurs in a context. In her WPR approach (2009) Bacchi proposes an analytic strategy that works back from policy proposals to identify the *object* for policy change, the problem, as it is represented to be. There are complexities associated with the term 'problem' when it comes to drug policy. According to Bacchi (2018), the word 'problem' can be laced with negative connotations in drug policy, where the term is often linked to the notion of 'social problems'. Indeed, drug use is sometimes conceptualised as a 'wicked problem' for governments to resolve (McConnell 2018).

The notion of 'evidence-based' drug policymaking can be critiqued on the basis that the relationship between evidence and its use in policy is not straightforward. Bacchi (2018) argues that the 'evidence-based' policy 'movement' is often underpinned by a problem-solving paradigm. Policies are sometimes considered to be documents that merely address pre-existing societal 'problems' giving a technical-rational explanation of what governments aim to do and how success will be measured. The notion of a linear relationship between evidence and policy, however, has been critiqued by many, including Cairney (2020), who suggests that the concept of 'evidence-based' policymaking often fails to recognise the hierarchies of knowledge and methodologies that comprise academic research. Similarly, Stevens (2010) proposes that, when it comes to drug policy, the research that most closely aligns with dominant political narratives tends to be selected as the basis for policy, regardless of its methodological robustness. Bacchi (2019:4) attests that in *"evidence-based policy, there is a grounding assumption that the 'problems' being "addressed are readily identifiable and uncontroversial".* Through examining *problematisations,* or the processes that shape how 'problems' are represented, it becomes possible to displace and identify power structures and move beyond a linear conceptualisation of both policy and problem (Bacchi 2019). As such, Bletsas and Beasley (2012) propose that the WPR approach, as advocated by Bacchi (2009; 2019), can have an emancipatory function. This

theoretical premise implies an implicit relationship between power and knowledge that shapes policy discourses, as well as the types of proposals that appear as logical.

1.2 Public health and drug-related harm

Narratives on drug use, like other areas of social policy, change over time. Foucault (1971) suggests that most discourses remain stable only for a period of a few hundred years before new conceptualisations begin to emerge. Over the last 30 years there have been calls for a public health approach to drug use. The term 'public health' has been described by Van Dijk et al. (2019) as being a multi-disciplinary approach, where a broad range of stakeholders work in partnership to maximise resources, drawing from existing evidence to provide strategies that seek to ameliorate health harms at a population-level. The term 'public health' can be understood as a broad, umbrella term that prioritises early intervention, while also providing support to individuals to address harms once the first signs of harm have begun to appear (Kennedy et al. 2017). As a discipline, public health seeks to treat the society as a whole, identifying potential threats via an assessment of existing evidence, and acting rapidly to introduce potential solutions. A shift toward public health approaches to drugs within much of the international academic literature could signal the onset of an 'epochal shift'.

In much of the existing literature, the criminalisation of drug possession is considered to be a barrier to public health responses to drug-related harm. Because the history of criminalisation is highly relevant to the current study, an in-depth exploration of how drug use emerged as a 'problem' to be addressed via state action is provided in Chapter two. A brief introduction is necessary here, however, to introduce the reader to the thesis. The United Nations (UN) Single Convention on Narcotic Drugs 1961 is considered to have stimulated the introduction of national laws to prohibit drug possession in all UN member states. However, since its introduction, there has been an ever-expanding research base that points to the unintended negative health outcomes associated with criminalisation (Ayres 2020, Csete et al. 2016, Pūras and Hannah 2017, Volkow et al. 2017). While the laws and legal arrangements concerning drug use differ between countries, many systems including the UK include criminal sanctions for possessing small amounts of illegal substances for personal use. In the UK, the Misuse of Drugs Act 1971 deals with both possession and intent to supply simultaneously. Criminalisation of personal drug use is considered to have increased public health risks associated with drug use by legitimating punitive, stigma-based responses when people who use drugs come into contact with health, social care and criminal justice services (Pūras and Hannah 2017). According to Muncan et al. (2020), the stigma associated with drug use

can present a range of barriers to accessing basic healthcare. They suggest that stigma also increases the likelihood of punitive early discharge from drug treatment which has been associated with accidental overdose and drug-related death. Drug-related deaths are rising worldwide, with an estimated 500,000 people losing their lives to drug related deaths in the last year (United Nations Office on Drugs and Crime 2021). Therefore, authors such as Csete et al. (2016), Muncan et al. (2020) and Pūras and Hannah (2017) have argued that countries should reform approaches to policing drug possession and ensure that prosecutions for possession-only offences are reduced. This type of reform is considered to fall under the broad umbrella of a public health approach.

Public health approaches to drug use have been proposed by many academics as being required to reduce drug-related harm. Existing evidence suggests that many drug-related deaths are preventable with targeted public health strategies (Csete et al. 2016, Kennedy et al. 2017, Lewis et al. 2021, Trayner et al. 2018). However, Stevens (2019) argues that persistent *'tough on drugs, tough on crime'* political narratives in some countries have meant that life-saving harm reduction and public health initiatives have appeared to be controversial. As such there has been a gap between research evidence and public policy in many countries (Csete et al. 2016). Health inequalities and stigma are particularly relevant to injecting drug use, where an estimated 1.4 million are living with HIV globally, and many do not have access to basic health care, harm reduction services or treatment (Kennedy et al. 2017, McAuley et al. 2019, Pūras and Hannah 2017, Trayner et al. 2020, United Nations Office on Drugs and Crime 2021, World Health Organization 2014). Ezell (2019) suggests that international drug prohibition, sometimes referred to as 'the war on drugs', has legitimated low investment in drug treatment and public health initiatives for people who use drugs, compromising the choice of treatments offered, the dignity of individuals, and the accessibility of services. Both Hannah and Nahir de la Silva (2015) and the Human Rights Council (2015) have proposed that decriminalisation is required to reduce health inequalities and drug-related deaths. Consequently, many academics, UN agencies, and health lobbying organisations have argued that drug law reform is required on human rights grounds in many parts of the world.

Enforcement-heavy approaches to policing drug possession have been associated with spikes in public injecting, resulting in increased transmission of blood-borne viruses, wound infections, and accidental drug overdose (McAuley et al. 2019, Pūras and Hannah 2017, Trayner et al. 2018). A recent joint statement from the World Health Organisation (WHO) and the UN Chief Executives Board proposed that all nations should prioritise

and upscale 'alternatives' to arrest and prosecution for drug possession offences (Kennedy et al. 2017, United Nations Chief Executives Board 2019, Zobel and Maier 2018). Relatedly, there has been an upsurge in academic interest in exploring which 'alternatives' to criminal sanctions could be used as part of a public health approach to reducing drug-related harm. Some 'alternatives' can be offered without legislative change, enabling de facto decriminalisation to occur in countries where there has been political resistance to drug law reform. As such, two types of reform exist, legal change and de facto changes to law enforcement arrangements.

1.3 Diversion

Police diversion is one possible 'alternative' to criminal sanctions for drug possession offences that often attracts academic and policy interest (Hayhurst et al. 2017, Stevens et al. 2019, United Nations Chief Executives Board 2019, United Nations Office on Drugs and Crime 2007). Diversion is a strategy where arrest or prosecution for drug possession is de-prioritised in favour of a referral to health, social, or psychosocial interventions (Hughes et al. 2019c). The term 'police diversion' refers to schemes where police officers can use discretionary decision-making to offer an instant referral to health, social care, or drug treatment as a voluntary 'alternative' to arrest. There are a variety of models of police diversion in operation across the world and these are explored in detail in Chapter two, section four, subsection two. In some countries such as the USA (Collins et al. 2015, Kopak and Gleicher 2020, Law Enforcement Assisted Diversion 2021), Australia, and parts of the UK (Spyt et al. 2019), police diversion schemes act as a form of de facto decriminalisation (Hughes et al. 2019a).

Within existing literature, police diversion has been described as a key harm reduction strategy capable of reducing barriers to support while deflecting people away from arrest. The impetus toward evidence-based policy making means that several police diversion schemes have been adapted from one context and translated and implemented in another (Law Enforcement Assisted Diversion 2021). Some police diversion schemes have obtained more international recognition than others. This can be due to a range of factors, such as being first on the scene, media narratives, and funded marketing (Kopak and Gleicher 2020). Police diversion relies upon police discretion, and the role and power of the police varies from one country and one locality to another. Discretionary decision-making can vary and be influenced by institutional culture and the police role, as well as narratives concerning drug use that dominate within the broader society (Bacon 2017, Bacon 2021). The role, scope and power of police and prosecutors also varies from one country to another, having been shaped by history, events, and the culture of each

society (Jehle 2006). In some countries, prosecutors, rather than police, have the discretion to decide which cases are formally processed and which are diverted. As such, context is an important factor to understand.

In the existing literature on diversion, Hughes et al. (2019b) have acknowledged that contextual factors can influence the likelihood of successful implementation of diversion. However, there has been no context-specific research undertaken to examine what barriers or facilitators might exist to implement diversion in devolved nations such as Scotland. Scotland presents a particularly interesting case when it comes to diversion for drug-related offences because, while drug legislation via the Misuse of Drugs Act 1971 is reserved to the UK Government, the Scottish Government are able to set Scottish drug strategies. As such, Scottish diversion occupies an area of complex governance requiring detailed analysis.

1.4 Context

The current study seeks to address the aforementioned gap in the literature by providing a context-specific analysis of drug policy discourses related to drug use and diversion in the Scottish context. According to O'Madagain and Tomasello (2022), the meaning of contemporary arrangements and processes of sense-making is not given or fixed but, rather, derived from context-specific factors, including power structures and culture. David Garland (2012) describes culture as follows:

> *"Culture must be viewed as inextricably bound up with material forms of action, ways of life and situational conditions. The intricate, interwoven webs of significance which make up the fabric of a culture develop in a kind of dialectical relationship with social patterns of action, each supporting and facilitating the other, in much the same way that linguistic meaning is determined by social usage while simultaneously forming the framework in which that usage occurs"*

(Garland, 2012:194).

Thus, Garland, much like Geertz (1973), proposes that culture and social structure are inherently intertwined. The purpose of providing a definition of culture within this chapter is to alert the reader to the proposed interconnectivity of systems of meaning, context, and discourse. Garland (2012) suggests that 'culture' also denotes conceptualisations, values, and frameworks of ideas that dominate within a particular society at a particular time. He argues that cultural patterns of thought produce 'intellectual frameworks' which

17

contribute to the 'discursive frame' that Bacchi (2009) refers to. Therefore, culture can in many ways be considered a contextually situated factor.

The current study addresses a gap in the existing literature by examining in detail the relationship between 'problem' representations, problematisations, and discourses related to diversion in the Scottish context. Resultantly, the concept of culture and context are both central components of the study. The term *'context'* has been criticised in some of the existing academic literature because the term is often used in ambiguous ways. For example, Nilsen and Bernhardsson (2019) argue that the term is under-theorised. Dey (2001) proposes that the term context is commonly used to refer to a multitude of linked, collective factors that have not been deconstructed and explored in detail. Nilsen and Bernhardsson (2019) point to differing conceptualisations of 'context' across different academic disciplines. For example, they suggest that, within implementation science research, context is often reported as a factor held responsible for variations in study outcomes where there is no identifiable difference in the methods used. According to Nilsen (2020), there have been many attempts to theorise and define context via the creation of models, taxonomies, or frameworks, but there has been a failure to arrive at a workable, uncontested definition. Damschroder et al. (2009) suggest a slightly more nuanced understanding of context and propose that context could be defined as the environmental factors that exist within a specific research setting. Context therefore relates, in some ways at least, to location. Damschroder et al. (2009) point to context as being a set of related, specific, identifiable, but situated factors that influence the likelihood of successfully implementing evidence-based strategies that have worked well elsewhere. Cane et al. (2012) provide a definition of context that helps to introduce the focus of the current study. They define context as being a combination of the geographic location of the study, the institutions that exist within that territory, and the unique ways in which history has shaped expectations of the relationship between citizen and state. Within the current study, the term 'context' is used to refer to historical processes that have shaped institutions, thoughts and culture(s), the geographical location, and the processes of meaning-making that have influenced the 'discursive frame' identifiable within policy.

Within the existing UK literature on diversion (Bacon 2021, Hancock et al. 2012, Sondhi and Eastwood 2021, Spyt et al. 2019), contextually specific barriers to implementing diversion have been under-researched. To date, no Scottish-specific research has been undertaken to examine the potential cultural, structural, or institutional 'fit' of diversion strategies for drug-related offences. Examples from other countries, and indeed from

other parts of the UK, have shown that diversion, particularly police diversion, is a strategy capable of reducing the stigma associated with criminal sanctions, while providing a rapid route to health-based interventions in suitable cases (Hughes et al. 2019b, Sondhi and Eastwood 2021, Spyt et al. 2019). Hughes et al. (2019c) and Sondhi and Eastwood (2021) describe diversion as being part of a public health approach to drug-related health harm. It is timely that the gap in knowledge related to the contextual 'fit' of proposed diversion strategies in Scotland be addressed given that drug-related deaths in Scotland continue to rise each year and that there have been urgent calls for reform (Christie 2019, Scottish Drug Deaths Taskforce 2020a, Scottish Government 2019a). The current study, therefore, seeks to offer a detailed exploration of such contextual factors. It will examine how contextual factors influence the type of diversion that could be implemented in Scotland as a strategy to reduce criminalisation of personal drug use and provide routes to public health interventions.

1.5 Research Questions

The study sets out to answer the following research questions:

1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
2. To what extent do these discourses suggest that reform is required?
3. What types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?

As outlined in Chapter one, section one, this study is methodologically aligned with the work of Carol Bacchi (2009; 2018). The study uses Bacchi's (2009) WPR approach, which is based upon a set of questions. These questions have been adapted to the topic and are as outlined below:

1. What's the 'problem' (of drug use, diversion and the Scottish context) represented to be in official policy-related discourses?
2. What deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?
3. How has this representation of the 'problem' arisen?
4. What is left unproblematic in this 'problem' representation?
   a. Where are the 'silences'?
   b. Could the 'problem' be conceptualised differently?
5. What effects are produced by this representation of the 'problem'?

6. How and where has this representation of the 'problem' been produced, disseminated and defended?
   a. How has it been, or how could it be disrupted and replaced?
7. What are the effects of a re-conceptualisation?

The table below sets out where in the thesis the WPR questions are addressed.

Table 1. WPR analysis, thesis section guide

WPR Question	Thesis section
1	Chapter five, section two
2	Chapter five, section three
3	Chapter five, section three Chapter six, section four
4	Chapter five, section four Chapter six, section two.
5	Chapter five, section four Chapter six, section two Chapter six, section three Chapter six, section four Chapter seven, sections one to five
6	Chapter seven, sections one to five Chapter eight, sections one to three

Table 2 below sets out where the key research questions are addressed.

Table 2. Chapter sections

1	How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?	Chapter five, section two
2	To what extent do these discourses suggest that reform is required?	Chapter five, section three to five Chapter six, section two to five
3	What types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?	Chapter five, section four and five Chapter six, section two Chapter six, section three

1.6 Researcher positioning

This section offers an exploration of researcher positioning[1]. I am a white Scottish female. I am the first in my family to achieve a university education. I was brought up to believe that a strong work ethic was a virtue to be coveted and nurtured. I have enjoyed a varied and eclectic career history. I began working at a very young age as a sales consultant, gradually working my way toward becoming a Territory Manager and then a Recruitment Consultant. After some time, I became disenchanted and sought a new direction. I re-trained as a Complementary Therapist and established my own practice, where I worked for many years. I enjoyed helping people immensely and thrived in the connections and relationships that I developed with clients. I noticed that many people turned to complementary therapies when they had exhausted all other possibilities to address wellbeing or health issues. Many clients struggled with physical or mental health difficulties and sought comfort in the therapies I was providing. Gradually, I began to realise that the value in what I was doing was in 'holding space', containing emotions by being a consistent, calming presence who regularly arrived to help in their individual journeys toward healing. I came to realise that I enjoyed this hugely and wanted to give more to society. I then began volunteering and then working as a support worker for those who had faced challenging life circumstances, social isolation and, often, marginalisation.

I learned from some very inspirational people about the long-term impact of trauma. It was a privilege and an honour to sit alongside people as they gradually started making connections and seeing themselves in a more positive light, repairing hurts day by day, little by little. I became drawn again to learning how to do more to help and so, I embarked upon a social work degree. During my degree, I began working part-time as a Reflective Learning Manager for a small organisation that provides therapeutic residential care to young people deemed to be on the edge of secure care. Perhaps the most eye-opening and significant experience that occurred during my social work training was the time that I spent as a social worker working on a specialist local authority drug and alcohol team. My role was to conduct intensive, extended periods of assessment and referral for people who had long-term dependent substance use, multiple and complex needs, and who had expressed a desire to change. Several things stimulated my interest in learning more about drug policy during this time. First, I recognised the value of definitions and how constraining they could be if misused. For example, part of my role involved assessing 'willingness to change' and it was my duty to withdraw my support from anyone who was

---

[1] This section uses a first-person narrative to enable the researcher to introduce herself to the reader.

not ready or unwilling to reduce drug use. Immediately I could see the complexities of this, and I fought hard to keep working with many clients who could fit these criteria only if the criteria were to be relaxed or reconceptualised, but who nonetheless required compassion, hope and a route to services. I was astonished during conversations with clients, who regularly expressed that I should give up on them, often stating that they were unworthy of care. I was also, perhaps naively, surprised that clients so often used stigma-based language and terms to describe their own identities and self-view. It both saddened me and compelled me to be part of something capable of changing societal responses to drug use. I felt profound empathy and could see that although every person's story was unique, there were similarities in narratives concerning stigma and ostracisation.

Those who accessed the specialist local authority alcohol and drug social work team often had patterns of drug use and health complications that put them at high risk of drug-related deaths. As a social worker, I became frustrated because assessments would identify unmet needs for trauma counselling and mental health support. Yet, such services were closed to those in active drug use. In my practice, I had come to understand that flexibility and acceptance were vital in reducing barriers to engagement. For example, if appointments were offered early in the day, some clients would agree not to consume substances before appointments, and a window of engagement would open. Many services could not, or would not, work in these flexible ways, resulting in blanket refusals to accept referrals from people who could not address their drug use without accessing specialist interventions first. I understood that flexibility on the part of the service and the worker was essential to enabling access to treatment and support.

Despite my strong advocacy and the track record of compliance and engagement that I could evidence from my clients, most services remained aligned with their position of preventing those with drug-related problems from accessing the types of support that could help meet their underlying health needs. I came to understand the lived effects of institutional stigma and wanted to explore this further. Weber (1978) theorises that institutional cultures, traditions, and ways of approaching social problems result from regularly repeated meaningful social interactions that gradually become normative. Weber insists that where a belief or a process takes hold, it shapes cultures via repetitive meaningful action. This perspective suggests that, as a social worker, I would have had a certain sphere of influence. However, I quickly felt as though I was swimming against the tide and did not want to become engulfed by the problems I could see around me. I wanted to understand how drug use was represented and understood at a policy level

and how this was manifesting across multiple sectors. Durkheim (1983) suggests that the role of social science is to examine the processes that sit beneath institutional responses to social issues, looking at the parts of a system that work, and at those that have become pathological over time. By this point in my career, I felt that I wanted to know more about 'the system'. As a practitioner, my work had been guided by a complex interaction of my training, my own values, and policy. I felt that, of these, the one that I understood the least was the impact of policy and I was drawn to learn more, and that provided the impetus for the current work.

1.7 Concluding comments

Chapter two will discuss concepts of knowledge, discourse, and power, exploring the relevance of concepts to the study. Chapter two also discusses an 'ontological turn' toward public health narratives in drug policy discourses. As this introductory chapter has highlighted, the status quo, where drug possession is criminalised in much of the world, did not necessarily need to come to be. Chapter two discusses the journey towards where we are now, providing background to drug policy narratives concerning the criminalisation of personal drug use. Because context is a particular focus of the thesis, Chapter three discusses the ways that the UK and the Scottish context have been defined in existing academic literature. Chapter three also explores the policy background of the study and examines UK and Scottish drug policy narratives. Chapter four describes the research strategy and study design, outlining sampling and ethical decisions and the research process in detail. Chapters five and six present the study findings. The research contribution, relevance, implications, and recommendations are discussed in Chapter seven. Chapter eight concludes the thesis and summarises the answers to the research questions alongside discussing the strengths and limitations of the study and areas for future research.

Chapter 2: Drugs and state intervention

2.1 Introduction

This chapter begins by exploring the theoretical framework that informs the study by closely examining conceptualisations of knowledge, discourse, and power. An exploration of the journey towards the problematisation of personal drug use is then provided. Chapter two, section three explores the macro international events and political structures that created a shift away from drug use being viewed as benign, towards drug use being represented as an issue requiring international control. Section four then examines the emergence of international drug prohibition by presenting literature that critiques the 'war on drugs' by outlining how these emerging knowledges relate to drug policy discourses. From there, section five introduces two 'alternatives' to criminalisation that have been proposed by academics, UN agencies, and health lobbying organisations. Section five begins by exploring de jure decriminalisation, a term used to refer to legislative change, and then examines 'alternatives' to criminalisation that have been proposed as de facto decriminalisation models that do not necessarily require drug law reform.

The concept of diversion is central to the current study. Although diversion was briefly introduced in the previous chapter, a more detailed and nuanced exploration is offered within section three of the current chapter.

2.2 Discourse

The focus of the current study is to examine how drug use, diversion, and the Scottish context have been represented as specific types of 'problems' within policy discourse, and how this relates to the case that has been made for reform. Because discourse is key to the focus of this study, a detailed examination of what is meant by this term is required to orient the work. To enable this detailed examination of the term discourse, the first few paragraphs of this section broaden out, moving temporarily away from the topic of drug use and drug policy towards a broader focus on discourse. While the concept of discourse as a way of knowing a problem has been touched upon briefly in Chapter one, a more nuanced and detailed exploration is provided here to orient the study.

Johnstone (2017) describes discourse as a symbolic language practice that is embedded in texts such as legislation, policy, or speech that reflects power structures and political

ideology. Carol Bacchi (2006) adopts a slightly different view, proposing that, when it comes to narratives on social phenomena, the power structures that can be identified via policy analysis are not always deliberate nor ideological. Rather, the conceptual logics or assumptions about the *way things are* that are evident in policy reflect the type of knowledge and belief that dominates in a specific society at a particular moment in time. Within this, knowledge is not considered to be objective fact, nor universal truth. Rather, knowledge is considered to be a cultural product, shaped by sociohistorical and cultural factors and political contexts (Bacchi 2018). Bacchi (2018) proposes a need for a post-structural analytic strategy that actively questions the notion of 'truth' and 'knowledge' when it comes to drug use. She proposes that this type of analytic questioning is necessary because, in political and policy discourses, drug use is often conceptualised as a problem with a capital 'P'. What she means by this is that, within policy and political discourse, it is often assumed that drug use is something that needs to be eliminated from society. For Bacchi (2018), a post-structural analysis is one which actively questions the way that 'problems' are constructed, where there is a focus on displacing the power that exists within the problem representation. This form of post-structural analysis, therefore, seeks to expose, question, and disrupt the implicit power structures that exist within policy discourse.

The meaning of 'discourse' is core to the current thesis which adopts the post-structural analytic strategy outlined in the previous paragraph[2]. It is worth highlighting, however, that the current thesis aligns with Tanssini's (1994) perspective, where it is argued that concepts themselves have no inherent meaning but, rather, are constructed through time by a complex interplay of cultural and historical factors that manifest within institutions and processes of governance to form the status quo, or the *way things are.* Discourse is described by Bacchi (2006:204) as being an *"interpretive and conceptual schema".* Mol (1999) advocates for the value of policy analysis, proposing that policies are ontologically active documents that can give insights into the interpretive, conceptual schemas that dominate in a society to produce representations of social phenomena as 'problems' to be addressed. These points suggest that the way issues are framed in policy produces effects, such as the classification of people and/or social phenomena, that appear as one dimensional 'truths'. Within this, problem representations are not understood to be one dimensional 'truths', but instead are reflections of the dominant *ways of knowing* and *ways of thinking* that exist within a society at that point in time.

---

[2] The research strategy is outlined in detail in Chapter four but noted here because it is relevant to the points being discussed here.

The problem representations that appear in policy discourse can be considered as being incomplete, because, as Cairney (2019) suggests, the process of policy making is a complex endeavour, often involving consultations with multiple actors and multiple sources of information. Due to the speed at which policies must be made, and the complexity of the task, policies often rely on a slimmed down representation of a problem, something that is often referred to in policy studies as a 'bounded rationality'. 'Bounded rationalities' are themselves, complex and sometimes contested, and they tend to occur due to the *"informational shortcuts and other heuristics or emotional cues"* that policy makers use to make what they consider to be good enough decisions (Heikkila and Cairney, 2018: 308). The slimmed down representation of a social phenomena or context occurs because most policy makers lack the time and sometimes the cognitive capacity to process all the nuanced detail that relates to the policy issue. Bacchi (2009) refers to this as the 'discursive frame' of policy, proposing that in the slimming down process, some elements of the context or phenomena appear as relevant for inclusion in the policy narrative, where other elements appear less so. When relevant information has been lost within the slimming down process, this is referred to by Bacchi (2009) as 'the policy silence'. Important to this thesis, is a recognition that policies are not formed via linear, logical processes, but rather through discussion, consultation and negotiated information and knowledge exchange processes with a variety of actors. Therefore, discourse is a key focus within this thesis.

The definition of discourse changes between academic disciplines which created the need to be clear on how the term is used and interpreted within the current thesis. Wetherell et al. (2001) note that the term 'discourse' is interpreted differently between linguistic scholars, psychologists, political scientists, and even between sociologists and criminologists. The current study is oriented towards both the fields of sociology and criminology and drug policy. Post-structuralism provides a theoretical framework relevant to the study. The current study is particularly aligned with several of Bacchi's works (2009, 2018, 2016) and is also influenced by several of Foucault's works (1991, 1971, 2012). As described by Bacchi and Bonham (2014), much of the post-structural analytic approach to policy analysis that is advocated by Bacchi is inspired by Foucault's (1991) work on problematisations. A definition of problematisation is required here to orient the reader to the central premise of the current study. Foucault (1991) proposes that governance processes classify, produce, and maintain social problems. Analysing problematisations involves looking at the processes and events that have enabled a 'problem' to emerge as a 'problem' within policy discourses. The analytic approach

involves identifying and then questioning the processes involved in producing a frame of reference that problematises a social phenomenon.

For both Foucault (1991) and Bacchi (2009), the processes involved in problematisation hold insights into how governance occurs within a context. Although Bacchi's (2009) approach is inspired by Foucault's (1991) texts, there are notable differences. Foucault's approach advocates a post-structurally inspired approach to identifying the conditions that present 'ontological turns'. What is meant by an 'ontological turn' is a recognisable shift in conceptualisation of a social phenomenon, and the type of governance process or state intervention that appears as legitimate. In contrast, Bacchi (2009) suggests that a study of both the conditions that lead to 'ontological turns' and those that maintain the status quo is valuable. Bacchi (2009) elaborates that a research strategy that places dual emphasis on identifying the factors that hold the status quo in place and those that signal potential reform can generate insights into how governance occurs within a context. Within the theoretical premise of the WPR, discourse is considered to be a body of knowledge that produces an ontology, a way of viewing the world, and the 'problem'. Because the focus of the analysis is on policy, and because policies tend to focus on providing solutions, the ontology is considered to have identifiable effects (Bacchi and Goodwin 2016).

There are several types of policy effects described throughout Bacchi's work. For example, Bacchi and Goodwin (2016) describe the 'subjectification effects' of policy, postulating that policy logics portray people who experience the social phenomenon in a specific but identifiable way. Subjectification effects are explored further by Bacchi (2017) where she notes that subjectification effects can be either empowering and can be taken up and used by those most affected by policy, who can advocate for change, or they can be reductionist, deleterious and disempowering. Bacchi and Goodwin (2016) note that the ontological activity of policy discourse also produces lived effects such as making services either more or less accessible, depending on the solutions posed. Bacchi and Goodwin's (2016) outline the 'discursive effects' of policy. Bacchi (2009) suggests that policy discourses, and their embedded problem representations, produce a 'discursive frame': a boundary around what is sayable and appears as relevant. Bletsas and Beasley (2012) propose that Bacchi's post-structural analytic strategy makes it possible to deconstruct the 'discursive frame' that appears in policy, to disrupt and analyse the logics that hold it in place, thereby creating new perspectives on the relationship between knowledge, power structures and contextual responses to the policy focus.

As described in the introduction to this thesis, the current study is theoretically aligned with Bacchi's perspectives as they appear in her 2009 work, as well as in Bacchi and Goodwin (2016). A detailed exploration of the underpinning research paradigm is therefore provided as background to the current study. Bacchi (2018) outlines that the philosophical basis of the WPR sits close to social constructivism but has notable differences. As Cottone (2017) suggests, radical constructivists hold that all social reality is produced via discursive practices. Bacchi's (2009) conceptualisation of policy logics does not deny the pre-existence of an antecedent reality sitting beneath policy proposals and does not distinguish between the real and the constructed. Instead, Bacchi (2009) proposes that while policy discourses produce effects, including shaping what can be said and what cannot, the focus of the analysis is to identify the events, conditions and structures that have contributed to a social phenomenon, or social group, coming to be represented as a problem to be addressed via policy action. Problem representations within this research paradigm are not seen as fixed *objects*, but rather as inherently unstable and influenced by cultural, political, and historical factors. This aligns with the work of Chia (1996), who suggests that discourses are inherently unfinished, evolving, and in a process of *becoming.* The focus of a Bacchian discourse analysis, therefore, is not the problem representation itself but, rather, the factors such as events and sociohistorical conditions that have led to 'ontological turns'. The term 'ontological' turn is described by Bacchi and Goodwin (2016) as a moment in time where a social phenomenon comes to be viewed as a problem and thereby begins the start of problem production and classification.

The philosophical basis of the WPR as it relates to discourse is central to the current study, so a deeper exploration is now provided. Within the WPR, discourse is assumed to be about more than linguistic or symbolic constructions within the language of policy (Bacchi 2005). Discourse, according to Bacchi (2005), gives a way in, which provides a gateway to a deeper analysis of context, power, knowledge(s), and the relationship between structure and agency. Bacchi (2005) argues that this can make a positive contribution to policy development because it enables new questions to be asked, leading to new avenues for research which are capable of 'unsticking' areas of policy that appear to be stuck. In one paper (2005), Bacchi criticises a turn toward the term discourse being used interchangeably with terms such as discursive and discussion, suggesting that these terms produce ambiguity in which power dimensions are lost. For Bacchi (2006), the focus of a post-structural analysis, such as the current study, should be on identifying how interpretive and conceptual schemas, or *ways of understanding and ways of thinking*, produce a relationship between *subject* (the *object* for change) and

discourse. Bacchi (2006) proposes that carrying out a WPR analysis can have an emancipatory function because it is possible to make visible whether the discourse mobilises or constrains the/a subject.

For Bacchi (2006), discourse analysis should allow some critical exploration of whether dominant discourses can be picked up and used by the subject to advocate for change. Bacchi (2006) notes that it is also possible to identify whether the analysed discourse has a deleterious effect on the identity of the policy subject. The term *subject* is used here to refer to the target for action, which, when it comes to social policy areas such as drug policy, tends to be a social group who are *produced* and *classified* by policy discourse. Bacchi (2019) proposes that the focus of a WPR analysis is to identify the power structures that have shaped how knowledge is used to inform the conceptual schema or 'logics' that sit beneath policy. When policy discourses propose reform, Bacchi (2018) suggests that reform-discussion does not always produce any lasting or measurable change to practices, social action, or institutional responses. Bacchi (2009) proposes, however, that a study of *problematisations* i.e., the processes that produce frames of reference, can produce insights into the likelihood of reform being achieved.

To make it possible to identify the emergence of a 'problem' as a 'problem', also referred to as problematisation, Bacchi (2009) has embedded much of Foucault's (1971) genealogical method within the WPR approach. In his genealogical method, Foucault (1971) states that it is possible to trace the concepts that underpin problematisations through time, searching for the conditions that have stimulated ontological turns. He proposes that, when discourses begin to fragment, binary conceptualisations of a 'problem' emerge, signalling a rupture of the status quo. At this point, Foucault (1971) clarifies that there is a moment where reform appears possible, and sometimes occurs. Foucault (1971) proposes that discourses on governance, punishment, and social control remain stable for a maximum of a few hundred years, and he defines this as a 'historical epoch'. He observes that, as new technology emerges, it brings with it new ways of knowing and new forms of knowledge, leading to a fragmentation of existing discourses. Braudel (1949) also argues that, when discourses on the governance of social phenomena fragment, it can appear that reform is imminent. However, he observes that discourses calling for reform can be mere 'ripples' of reform discussion, rather than signals of lasting change, particularly if policy proposals do not align with the deeper structures of a nation or state. Braudel (1949), Foucault (1971), and Bacchi (2009) insist, albeit in different ways, that the 'discursive frame' is an important factor to consider, because there can be context-specific knowledge concerning cultures,

institutions, and power structures that sit outside of the dominant frame. Braudel (1949) refers to such contextual factors as 'currents of continuity' and insists that these can present barriers to change and result in gaps between policy discourses and practices.

The WPR offers an opportunity to deconstruct, destabilise, and replace policy logics that have become 'fixed' over time (Bacchi 2009). This is particularly relevant to drug policy analysis, where it has been noted that the international 'war on drugs' has had a considerable legacy, leading to an increasing gap between research evidence and policy logics (Lancaster et al. 2015b, Stevens 2007). Bletsas and Beasley (2012) explain that Bacchi's (2009) WPR approach creates a new conceptual space where it is possible to question dominant representations of the status quo by deconstructing the knowledge forms that make the status quo appear as 'truth'. Bacchi (2018) elaborates that post-structural analysis is particularly relevant to drug policy, given that the legacy of the international 'war on drugs' has endured for more than four decades. Bacchi (2009) describes a post-structural policy analysis as having the ability to identify and explore de-prioritised knowledge that sits outside of the current policy frame. Unlike Foucault's (2002) genealogical method for which a key focus is on identifying moments of discontinuity or ontological turns, Bacchi (2009) proposes a dual emphasis on identifying the factors that have maintained the status quo and produced change in conceptualisations through time. The analysis that is presented in Chapters five and six of the current thesis draws from this perspective and is therefore not merely focused on discourse but, rather, on the effects of discourse and the sociohistorical conditions and structural factors that sit beneath policy logics. A post-structural WPR analysis, such as the current study, aims to render invisible processes of knowledge production visible, and to illustrate how dominant ways of knowing have shaped policy narratives and contributed to a narrowed 'discursive frame'.

Thus far, this section has focused predominantly on concepts of discourse, policy, and analysis. The focus of the section now returns to drug policy discourse specifically. Several authors have emphasised the importance of recognising that drug policymaking does not occur in a vacuum but is instead very closely related to international as well as domestic politics (Csete et al. 2016, Stevens and Zampini 2018, Tosh 2021, Volkow et al. 2017, Weiss et al. 2010). Bacchi and Goodwin (2016) clarify that it is important to acknowledge that policymakers are part of broader society and are thereby influenced by dominant ideas and ideologies concerning the 'problem' they seek to address via drug policy discourses. Stevens and Zampini (2018) argue that, in the UK, there is a tendency toward cross-sector collaboration where multiple groups of drug policy entrepreneurs

come together to push for strategic action on drug policy. Stevens and Zampini (2018) insist that drug policies are rarely based on a rational assessment of evidence, but rather on processes of negotiated deliberation. The notion of 'evidence-based' drug policy making is also critiqued by Lancaster (2016), who suggests that the stigma associated with drug use leads to a significant gap between research evidence and the solutions proposed in policy.

Stevens and Zampini (2018) propose that drug policymaking is the product of an interplay between rationality, power, and normativity. They refer to networks of policy entrepreneurs who work together to advocate for drug policy change as 'drug policy constellations'. What they mean by this, is that policies are formed by groups of people who share similar views on drug use and on what is required of policy, who come together from diverse professional backgrounds. They draw from the work of Habermas (1992) who suggests that groups are drawn together due to shared interests and a shared perspective on what the 'problem' is and what types of solutions are desirable. Power is an important factor to understand when it comes to the drug policy sphere. Again, the perspectives of Stevens and Zampini (2018) are useful here, as they propose that the collective voice of several 'drug policy constellations' becomes stronger than the sum of its parts. According to Stevens and Zampini (2018), the collective voice of the 'constellation' is stronger, because those who have the greatest social power, capital, or position deliberatively and decisively hold back and share opportunities with those who share similar views of the problem, with the effect that the power of the 'constellation' grows via the rising social capital of all members. Despite the potential for advocacy that exists within these 'constellations' or interest groups, Stevens and Zampini (2018) observe that drug polices tend to reflect pre-existing power asymmetries in society, thereby favouring the voices of the most powerful political actors. Stevens and Zampini (2018) note that there are some exceptions to this and that public concern with rising rates of drug-related deaths in the UK and beyond have led to the potential for greater advocacy and discussion on drug policy reform. However, despite a potential slight increase in the power of policy activism groups, there has been a lack of progress toward drug law reform in the UK, and recent UK drug policy discourses reinforce a narrative which prioritises criminalisation[3] (Stevens and Zampini 2018, UK Home Office 2021). While power balances in the policy advocacy sphere may shift, drug policymaking remains underpinned by a complex interplay of knowledge, power, and, as some argue,

---

[3] The most recent UK drug strategy is explored in greater depth in Chapter three, Section three.

political ideology (Ross 2020, Stevens 2010). As such, the context in which drug policy is made is relevant to the likelihood of reform being achieved.

2.3 The problematisation of drugs

The processes involved in problematisation and the frames of reference that have emerged as fixed within a policy narrative are important to understand, given that these shape what appears as 'sayable' within policy. The current section provides background to the study by exploring the emergence of drug use as a 'problem' to be addressed via state intervention. Drug use has not always been viewed as problematic and, as has been proposed so far in the thesis, the processes involved in *problematisation* are important factors to understand, given that they sit beneath contemporary discourse and shape the 'discursive frame'. In the sections that follow, a range of literature and evidence is presented that examines the emergence of narratives on the criminalisation of personal drug use. The relationship between knowledge, power, and discourse, as explored in the previous section, remains relevant to the literature explored within this section. The current section broadens out to examine macro-level international power structures that have shaped discourses on the criminalisation of possession of drugs. It examines several pivotal moments where drug use[4] has shifted from being represented as a benign, socially acceptable activity to being problematised. The section explores the processes involved in problematisation, and then the emergence of drug use as a 'problem' to be addressed via policy action. The current section also examines what Bacchi (2009) refers to as the 'subjectification' effects of dominant discourses on drugs and how discourses on drugs relate to the problematisation of specific social groups.

Since criminalisation of personal drug use is the focus of the current study, it is prudent to begin by noting that international drug prohibition formally began with the passing of the UN Single Convention on Narcotic Drugs 1961. Some theoretical framing of the literature that follows, is helpful. Foucault (1971) argues that the status quo, in terms of narratives on governance and/or social control, did not necessarily *need* to come to be but, rather, the status quo emerged because of a range of processes and events. Drug use has not always been viewed as something that requires state intervention and, as Kerimi (2000) and Rivera et al. (2005) have demonstrated, there is evidence of humans using derivatives of natural substances to achieve altered psychological states as far back as the first century AD. Rivera et al. (2005) note that the plants from which cocaine and opium are derived have had religious and sacred meaning within some cultures in

---

[4] Note: under the terms of the Misuse of Drugs Act 1971, it is drug possession, rather than drug use, that is considered to be a criminal act.

history as well as in contemporary times. Irvine (2020), Helle (2017), Gao (2019), and Hsu (2014) elaborate that the colonial period, and specifically the British colonisation of India, gradually led to shifting international discourses on drugs, producing what is referred to in the current thesis as processes of *problematisation.*

The processes implicated in problematisation tend to develop over time and are shaped by a range of factors (Bacchi, 2009). Several authors have proposed that narratives on drug use gradually shifted as a result of concerns related to international trade. Helle (2017) states that when the British East India Company arrived in India in the seventeenth century, they quickly established a strong market in tea, cotton, spices and opium. According to Booth (2013), sensing the potential for rapid profit, the British East India Company quickly acquired considerable land and established opium plantations in India. Irvine (2020) describes British production methods as being more advanced than in neighbouring states, which meant that British Indian grown opium could be produced for a lower cost and at a higher quality than locally owned opium plantations, which produced shifts in the opium market. Westermeyer (1995) observes that opium smoking was relatively common in China at this time and, according to Westermeyer, there was a strong demand for British-Indian grown opium within China. He notes, however, that while smoking opium was a relatively endorsed cultural practice in China, public intoxication and/or dependence was negatively viewed. Kerimi (2000) describes shaming practices, for example, where it came to be forbidden to marry or associate with people who were considered to be addicted to opium, or who had regularly been seen in public under the influence of the drug. According to Gao (2019), the increase in availability and reduced costs caused by the British supply meant that opium use increased in China. Gao (2014) suggests that political narratives within China began to represent intoxication and dependence as a 'problem' that required to be urgently addressed. Kerimi (2000) notes that political leaders within neighbouring states across central and middle Asia also began to express concern related to opium dependency and public intoxication, which fuelled calls for international drug market regulation and calls for the British supply to be controlled. The 'problem' of drug use thus initially seemed to relate strongly to international political and economic concerns. As such, initially, drug use emerged as a problem related to international affairs.

Policy proposals and political action often represent structural issues as what Mills (1959) refers to as 'personal troubles'. Bacchi (2009) refers to this as the 'subjectification' effect of discourse and asserts that the related *subject positioning* is a factor which helps to shape the 'discursive frame', producing 'discursive effects' within policy. An

exploration of literature exploring historical events thereby confers an opportunity to identify how problems have arisen and contributed to the 'discursive effects' present within contemporary policies. To that end, further exploration of the effects of a gradual problematisation of drug use in Asian states is provided to demonstrate gradual shifts in discourses, related to the case for international agreements on drugs. Kerimi (2000) suggests that, from the seventeenth century onwards, political narratives in many middle and eastern Asian countries moved toward representing individual drug use as a 'problem' requiring state intervention. This led to high-profile raids being carried out where opium dens were destroyed by newly appointed law enforcement authorities. Kerimi (2000) describes the impact of shifts in political narratives on drugs in Turkmenistan, for example, where communities and family members were encouraged to report the drug use of neighbours and family to avoid the punishment and shame of living with/near those considered to be using opium. These moves were leading toward the creation of new law enforcement authorities, as well as new public courts where people could be tried for drug consumption and publicly shamed in front of their communities. According to Hsu (2014), however, the backdrop to these events was that there was an increasing strain between the British and Chinese authorities related to a growth in colonial power. Hsu (2014) describes an expansion of the British East India Trading Company which had moved into positions of ruling power across much of India. The resultant political and economic tensions in the region are considered to have then increased, with many Asian nations responding by trying to reduce the size and power of the drug market via attempting to control personal drug use (Hsu, 2014). To clarify, these macro, structural issues began to be represented as 'personal troubles' to legitimate calls for state intervention from UK authorities.

The impetus for international agreements on drugs is considered to have been strengthened by a failed diplomatic mission between the King of England and the Chinese Emperor in 1792 which escalated tensions between the UK and China. Several authors, such as Melancon (1999), Gao (2019), and Hsu (2014), propose that the failures of this diplomatic endeavour, and continued rising tensions between the two states, resulted in the outbreak of war. Deming (2011) describes the first opium war which began in 1840 and ended in 1842. The military battle, however, is considered to have done very little to reduce British colonial power or the strength of the British opium market in the region, with a second opium war occurring between 1856 and 1860. Deming (2011) reports that the British East India Trading company was overturned during the second opium war that led to the UK state taking control of India which became a British colony.

As such, the drug market was considerably profitable in terms of immediate financial gains and the acquisition of countries to the British empire (Deming 2011).

As has been described, 'problem' representations, as they appear in both policy and political discourse, shape the type of governmental response that appears as legitimate (Bacchi 2018). The above tensions between states are rarely noted within drug policy narratives, which tend to focus on drug use as a personal rather than structural issue (Stevens 2010). Bacchi (2018) proposes that structural issues often come to be represented as personal issues as a result of the subjectification effects of policy. A historical account of subject positioning can, thereby, yield insights into the contemporary framing of a 'problem'. Exploring the historical events that are considered to have provided a backdrop to international conventions on drugs can yield insights into the emergence of narratives problematising *people who use drugs*. According to Lodwick (2014), Chinese concern with British trade escalated during the nineteenth century, culminating in the two opium wars described above. Lodwick (2014) agrees with Deming (2011) that the opium wars did very little to reduce the supply of British opium to China. In addition, she observed that British colonial power increased during this time, and that Christian missionaries from the USA and UK were granted permission to settle within China during the second opium war. Lodwick (2014) explains that US political narratives on drug use altered at this time and led to the emergence of a new subjectification effect. She indicates that, when faced with cultural differences between Chinese society and their own cultural understandings, many of the Christian missionaries wrote letters home which described Chinese people as 'strange', 'exotic', and frequently intoxicated with opium. These subjectification effects have been explored elsewhere, for example by Said (1985) who describes 'Orientalist' discourses in which Asian cultures were, at the time, often represented as 'exotic' and different. Said (1985) notes that Orientalism had much in common with discourses legitimising colonisation in other parts of the world where 'The West' was constructed as being a required civilising influence, and the indigenous population was represented as barbaric or backwards. Hari (2015) notes that, at the start of the industrial revolution, many Chinese people flocked to the USA where many would become part of the labour force. Therefore, during this period, several authors have argued that reductionist, racialised representations of Chinese people began to fuse with political discourses on drugs, leading to shifting policy and political narratives on drug control.

National context and history are two factors that must be considered together, since both have a bearing on structural factors that sit beneath policy narratives both within and

between contexts. Boyd (2017) suggests that contemporary discourses on drugs have emerged as a result of both racialised and gendered representations, which she believes to be particularly acute in US political narratives but have also influenced UK perspectives on drugs. Several authors such as Hari (2015), Boyd (2017), and Walsh (2019) have suggested that patriarchal and racist discourses became part of a campaign by several high-profile American politicians who campaigned for drug control. Hari (2015) reports that several USA based politicians were joined by US religious leaders who proposed that opium-dependent Chinese men had a corrupting influence on white women's sexuality. Boyd (2017) elaborates, stating that women were simultaneously represented as having insufficient personal agency to resist such influences as well as being considered wanton in their pursuit of pleasure. According to Bacchi (2009), analysing how social and structural issues have emerged as 'problems' requiring state control, requires a critical post-structural lens capable of deconstructing policy 'truisms' about the *way things are*. Thus, examining the years leading to the first international convention on drugs can provide an important background to contextualise the current study.

Further international factors are considered to have contributed to the emergence of drug use as a problem within political narratives. For example, Deming (2011) describes that, in the aftermath of World War II, the UK Government owed considerable revenue to the USA and so, despite still finding the opium market profitable, the UK was under pressure to conform and agree to international conventions on drugs to stabilise international relations. Although there was a growing recognition of a need to reach international agreement on drugs, and specifically on the drug market, the approach taken differed between countries. Berridge and Edwards (1981) explore the journey toward drug prohibition and suggest that the Hague Opium Convention of 1912 was the first international agreement on drug market regulation. They suggest, however, that the approach taken to regulate drug use and supply differed between national contexts. The USA introduced the Harrison Act 1912, which meant that people could continue to distribute the substances noted in the act but would have to register on a 'narcotics register' and pay tax on income.

Kammersgaard (2019) states that drug markets have been shown to be resilient. When supply became constrained by international prohibitions, he notes that demand did not reduce, resulting in the emergence of an illegal market. According to Musto (1989), this was particularly pronounced on the Mexican and Canadian borders, where international drug smuggling organisations began to emerge and rise in power as a direct result of

market regulation and enforcement activities. In the USA, calls for an international 'war on drugs' have been shown to relate to a desire to control specific social groups, rather than the supply of drugs itself. For example, Hari (2015) notes that political calls for a 'war on drugs' in the USA and beyond coincided with racialised discourses related to Chinese, Mexican, Latin American, and Black and Brown people who had recently migrated to join the labour market. Tosh (2021) refers to 'drug war' narratives as processes of 'crimmigration'[5], the criminalisation of recent immigrants who became targets for policy action and law enforcement. Ross (2020) argues that drug laws have tended to replicate pre-existing stigma within societies, legitimating oppressive responses to individuals. As such, drug policy in many countries has been influenced by structural factors specific to each context yet shaped by international political influences.

As explored in section two, discourses often shift gradually and are continually evolving (Chia 1996). Hari (2005) and Tosh (2021) have observed that, since the beginning of the twentieth century, drug use has gradually come to be constructed as an 'evil' requiring immediate state action. Hari (2015) argues that the media in the UK and USA played a role in this representation, alongside high-profile politicians in the USA. Hari (2005) cites multiple examples of high-profile crimes such as murders and violent attacks that were sensationalised and generalised, with factual details lost, in order to represent drug use as the cause of crime. The subjectification effects embedded within the discourses of the time, where people who use drugs were constituted as dangerous and in need of control, provided further strength to long-held calls for international conventions on drug use. Because of the ways that they can legitimate or condone certain courses of action, the implicit subjectification effects of discourse are important factors to examine. The literature outlined in this section notes that how people who use drugs are represented in policy can shape the type of response that appears as logical. Therefore, subjectification effects are one factor that can shape the 'discursive frame' within policy narratives.

2.4 Drug prohibition

As previous sections have demonstrated, the processes involved in the problematisation of drug use provide a relevant background to this study. As Foucault (1971) asserts, we did not need to end up where we are now, and the status quo is the result of processes

---

[5] The concept of 'crimmigration' was coined by Juliet Stumpf in 2006 to describe the merging of criminal law and immigration law.

of problematisation. The current section explores the contemporary frame of reference by examining the emergence of international agreement on drug control.

The formal establishment of international drug prohibition is referred to by some as, 'the war on drugs' (Ayres 2020, Del Pozo et al. 2021, Earp et al. 2021, Godlee and Hurley 2016, Roles 2014). While Anglo-Chinese relations provide a backdrop to the political tensions that have surrounded the opium market, Windle (2013) proposes that it was the UK's relationship with the USA that led to a gradual shift toward reaching international agreement as well as influenced domestic drug legislation within the UK. According to Windle (2013), British opium trade had begun to decline by the early twentieth century, but the UK Government remained reluctant to agree stringent international drug market control. Windle (2013) notes however, that in the aftermath of World War II, the UK Government owed considerable revenue to the USA and were under increasing pressure to maintain positive diplomatic relations. Windle (2013) sees the Hague Opium Convention that was held in China in 1912 as a moment of change, creating a trajectory toward international drug prohibition. The outcome of the convention was that opium, morphine, diamorphine and cocaine became controlled via international law. Berridge (1980) states that there was enough flexibility in the terms of the 1912 agreement to allow each nation to develop context-specific legislation and policy to meet with the agreed terms. As such, drug prohibition began to emerge differently in each nation, but was influenced by macro, international conventions.

The introduction of drug legislation in the USA produced identifiable effects, such as the emergence of illegal drug markets, but this did not halt calls for similar acts to be established within other countries such as the UK (Berridge 1980). Berridge (1980) suggests that this led to the USA announcing the Harrison Act 1914, which meant that doctors could continue to prescribe controlled substances, as long as specific conditions were met. The prescribers were entered on a register where they were expected to pay tax. According to Berridge (1980), this led to an increase in cost and the emergence of an illicit market where the substances could be obtained cheaper. Kammersgaard (2019) observed that, from the outset, drug laws had begun to produce unintended negative consequences such as the emergence of international drug smuggling organisations. Media reports of the violence associated with maintaining the illicit market were, according to Musto (1989), used within media narratives portraying drug use as a danger to social order. The link between drug use and crime, which began with sensationalised stories of potentially unlinked crimes, came to be associated with the illicit market, both

of which have been linked to ideological discourses on drugs. As such, narratives related to drug use and crime began to intertwine.

From the outset, international relations are considered to have shaped UK domestic legislation on drugs. Authors such as Berridge (1980) have suggested that the UK was under increasing pressure from the UN to enact drug control measures via the passing of legislation similar to the USA's Harrison Act. According to Berridge (1980), the UK's 1920 Dangerous Drugs Act produced a change in representations of drug use. Berridge (1980) elaborates that drug use had previously been viewed as a medical disease; a natural, unfortunate consequence of opiate use in particular. She argues that the 1920 Act represented drug use instead as a moral disease, related to a lack of will to abstain from mind-altering substances and lack of ability to be a contributing member of society. Berridge (1980) notes that there was some resistance to the representation of drug use as a moral failure from the UK medical profession, where many activists proposed that addiction should be viewed as a pharmacological side effect of the substances themselves and dealt with as a medical disease. This led to the establishment of the Rolleston Committee that was set up to provide detailed guidance on the circumstances where medical prescribing was considered to be appropriate (Berridge 1980). According to the Rolleston Committee, medical prescribing was viewed by the committee as being acceptable in two circumstances: first, where it was part of a harm reduction plan to wean people off drugs; and second, where the patient could demonstrate that s/he was able to maintain a 'useful' life while sustained on a low level of narcotic drugs (Berridge 1980).

Gradually, discourses on drug use began to provide the impetus for international drug control agreements. What is now often referred to as the 'war on drugs', or international drug prohibition, was initiated by the 1961 UN Single Convention on drugs (Csete et al. 2016, Hughes et al. 2019c). Hughes et al. (2019b) note that, in the years that followed, each amendment to the 1961 convention brought with it the message of needing to upscale law enforcement and to issue tougher sanctions for possession. Amendments include the 1972 protocol, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Wodak (2014) suggests that international drug prohibition was an abject failure for multiple reasons, one of which being that the acts proposed that punishing those in possession of drugs would reduce demand, which would in turn reduce supply. In the years running up to the 1961 Act, Wodak (2014) argues that international drug smuggling gangs had increased exponentially in strength as a result of tightening restrictions in many nations. Woods and Rafaeli (2016) observe that, from the 1960's

onwards, as governments moved toward translating the international conventions into national policies and laws, there was a surge in ideologically-orientated narratives that represented drug use as an 'evil' and a threat to social order. According to Woods and Rafaeli (2016), these discourses helped to legitimate enforcement-heavy responses to drug use and extensive criminal sanctions for simple drug possession.

As explored in the previous section, the way that a 'problem' is framed in policy and political narratives is important to understand, because the 'problem representation' produces a boundary around the type of intervention or response that appears as legitimate. This section, therefore, focuses on the events and developments that have produced a policy frame in which criminalisation of personal drug use appears logical. According to Stevens (2010), discourses related to what has been termed the 'war on drugs', have produced a gap between research evidence and drug policies. As such, discourse is inlaid with power that shapes what knowledge is selected as 'relevant' (Stevens 2010). In recent work, Stevens (2019) goes further and suggests that there has been a *'moral sidestep',* where several governments have deprioritised the human rights of people with drug-related problems in favour of enforcement heavy policies which appear as legitimate due to the stigma held in place by 'the drug war'. He argues that a focus on drug law enforcement has justified low investment in harm reduction-focused services as well as health interventions. Stevens' 2019 paper proposes that discourses on criminalisation have enabled evidence-based, life-saving strategies, such as safer consumption sites, to be represented as 'controversial' within political and media narratives. As such, political narratives associated with the international 'war on drugs' have produced what Bacchi (2009) refers to as 'lived effects', such as a lack of availability of 'evidence-based' harm reduction services in many countries, because such services appear as politically contentious.

It has been acknowledged that part of the legacy of the 'war on drugs' is that people who use drugs are often stigmatised (Ezell 2019, Muncan et al. 2020). According to Ezell (2019), stigma often legitimates a lack of investment in drug treatment and support interventions. Muncan et al. (2020) argue that people who use drugs often face stigma when attempting to access healthcare services more broadly and that many people in such situations have little or no access to basic healthcare. Bacchi (2009) proposes that a WPR analysis can have an emancipatory function, because the analytic framework makes it possible to identify the lived effects of policy. Lewis et al. (2021) argue that drug law enforcement practices in many countries have legitimised the stigmatisation of people who use drugs, and that this disproportionately affects specific racialised groups.

They make the argument that harm reduction alone is insufficient to tackle multi-layered stigma and reason that a detailed, comprehensive regime of tailored reforms is required within each national context. According to Pūras and Hannah (2017), drug prohibition creates further lived effects by undermining public health. They argue that, where drug possession is illegal, fear of reprisals can present a barrier to coming forward for treatment or support until drug use becomes problematic. They argue that drug law reform is urgently required to reduce criminalisation of personal drug use. Fear of arrest has also been linked to high-risk injecting practices, such as rushed injecting and public injecting which can increase risk of accidental overdose, as well as transmission of blood borne viruses such as HIV (see Trayner et al. 2020). For reasons such as these, there have been calls to deprioritise arrest and enact legislative reform to reduce harms (Beckett et al. 2016, International Centre on Human Rights and Drug Policy 2019, Lewis et al. 2021, Pūras and Hannah 2017, Trayner et al. 2018). In the last 30 years, there has been a gradual destabilisation of 'drug war' narratives amidst growing support for reducing the lived effects of drug law enforcement. The WPR analysis used within the current thesis enables a critical analysis of the effects of drug policy narratives, including rendering processes of classification and subjectification visible.

In many countries, including the UK, there have also been calls for drug law and law enforcement practices to be reformed to tackle inequalities in policing approaches, as well as to address health inequalities. Robinson and Scherlen (2014) argue that enforcement-heavy approaches to policing drug possession are often justified in policy discourses because of the misuse and/or misinterpretation of statistics on drug use prevalence within areas of socio-economic deprivation. Robinson and Scherlen (2014) describe that within political and media narratives it is often assumed that drug use prevalence is higher in areas of high socio-economic deprivation, thereby legitimating policy proposals for higher police presence within identified communities. They remark however, that the statistics that are used to legitimate drug control policies are often misused, telling only part of the story. The misinterpretation of drug use statistics that appear in political narratives is also explored by Enang et al. (2021), who suggest that drug use appears statistically higher in deprived areas only because those facing poverty and socio-economic disadvantage are more likely to come into contact with statutory services where substance use is harder to hide and more likely to be detected. Notably, Buchanan and Young (2018) state that higher detection rates of substance use in areas of high socio-economic deprivation serve to legitimate increased police presence in these areas. Heavy police presence within certain areas can lead to tensions between

communities and police, and is, according to the literature presented here, often associated with a policy focus on reducing drug use via law enforcement activity.

Several authors have suggested a need for greater recognition of the impact of social structure on drug use statistics. For example, May and Hough (2004) observe that illegal drug markets have tended to find a stronger foothold in areas where there is a pre-existing illegal goods market. They suggest that, in areas where there are large numbers of people who do not have the financial means to obtain goods, illegal markets tend to fill the gap, leading to higher availability of illegal drugs. Areas where there are high levels of socio-economic inequality appear to make 'ideal' targets for opportunistic individuals to set up profitable drug markets (May and Hough 2004). Maté (2011) adopts a slightly different view, which combines elements of both a structural and an individualist view of drug use. He elaborates that structural inequalities mean that, for those living in situations of poverty or inequality, there can be intergenerational patterns of pain and suffering where drug use occurs as a means to soothe emotional suffering. It can be argued that policy narratives and problem representations contain implicit subject positions which result in processes of surveillance or social control that can affect people's lives in myriad ways.

The impact of social pain, socio-economic inequalities, and concentrated police presence have been explored by several commentators who propose that political narratives related to the 'war on drugs' have led to strain between many communities and police. For example, Del Pozo et al. (2021) note that a high police presence within communities that are facing layered difficulties, has resulted in strain between police and communities in some parts of the world. Del Pozo et al. (2021) suggest that when people who are already in contact with welfare or social services come into contact with police via stop and search procedures, they are often facing layered, intersectional stigma. The term intersectional stigma refers to an individual having several negative, imposed identity positions that result in stigma-based responses. The term layered is used to recognise that a person may experience multiple forms of stigma at one time. Del Pozo et al. (2021) advocate for a public health approach to reduce stigma, reasoning that stigma is exacerbated by criminalisation and the over-policing of certain neighbourhoods. This is also explored by Çankaya (2020) who suggests that, when police come into contact with people from affluent areas, they are less likely to report minor drug possession charges and more likely to take a decision not to act. In this way, stigma can have a bearing on police responses. Both Del Pozo et al. (2021) and Çankaya (2020) describe a need for a public health lens within policy and suggest that there

should be a greater focus on what reforms may be required to enable police to prioritise harm reduction over law enforcement. Both argue that stigma limits the choices offered, reduces police discretion in terms of who is reported for drug-related offences and who is not, and means that drug statistics and crime detection statistics tell only a small part of the story. Such statistics then appear in political narratives to legitimate 'tough on drugs' approaches.

As the legitimacy of the 'war on drugs' has begun to be questioned, there have been increased calls for a public health approach (Van Dijk et al. 2019). Often, as Lewis et al. (2021) have suggested, a public health approach is conceptualised as an approach that prioritises the reduction of harms, including the harm associated with stigma. As outlined in section two of this chapter, discourses are rarely stable and often evolve as new knowledge, or new technologies emerge. The research evidence related to drug use has developed significantly during the decades since the 1961 Single Convention on Narcotic Drugs. Discourses shape the types of intervention that appear as legitimate, and so discourses are significant to the focus of this study. Discourses in which people who use drugs are represented as being to blame for their drug use and/or drug-related problems, because of a 'selfish' pursuit of pleasure, have begun to reduce amidst a range of theories and evidence to explore why people may use drugs. Neurobiological research has begun to provide empirical evidence of the effects on brain chemistry. For example, Stimmel and Kreek (2000) propose that opiates such as heroin can permanently alter neurochemical, molecular and physiologic functions. What this means is that, for some people, using short-acting opiates can produce emotional highs and lows that are difficult to manage, and are experienced via the endocrine system as pain. Stimmel and Kreek (2000) suggest that long-term use of short-acting opiates can result in changes in responsivity to stress, resulting in people becoming under or over responsive to stress. They argue that the role of methadone maintenance and/or opiate replacement therapy is to produce stability in terms of stress and pain regulation to allow participation in therapies. Such evidence has the potential to shift narratives on blame, reducing stigma, and leading to increased calls for treatment rather than punishment of people who use drugs.

How a 'problem' is understood influences the type of policy solutions that appear as legitimate. Neuroscientific explanations of drug use and dependency have been challenged by some critics who argue that disease-based conceptualisations produce pathologised subjects who are lacking in agency. Researchers such as Roviš et al. (2019), for example, have explored links between childhood risk factors such as

emotional neglect and addiction. Their 2019 study proposes that chemical imbalances in the brain can predispose certain people to what they refer to as 'addiction', particularly to opiates. They evidence that these neurobiological imbalances, located within the endocrine system, can be present at birth or emerge because of childhood neglect, trauma or abuse. While Barnett et al. (2018) concur that theories on addiction neuroscience has reduced stigma and blame to a certain extent, these theories have also been constraining for those individuals and families that do not appear to 'fit' the neurobiological theory. Barnett et al. (2018) suggest that the disease model of addiction reduces emphasis on the structural context in which drug use occurs, leaving limited scope to consider cultural and social factors. They propose that cultural and structural factors should be a policy priority when considering drug-related harm.

As has been pointed out above, the subjectification effects of policy are a core focus of a WPR analysis such as the current study. Discourses on vulnerability, as they appear in policy narratives, can produce polarising subject positions, and create implicit representations of those who should be deemed deserving of care and compassion and of those who can be legitimately blamed and therefore can become subject to institutional control (Ezell 2019). There is now an established body of evidence that considers law enforcement and vulnerability. Kuhlman et al. (2015) show that opiates stimulate the same part of the brain involved in receiving and interpreting maternal love. According to Maté (2011), those with long-term, dependent heroin use have often experienced trauma and loss, and many are experiencing emotional pain and mental health difficulties. Green et al. (2016) and Wrigley and Dawson (2016) report that, by the time people who use drugs come into contact with criminal justice authorities, they are often vulnerable and experiencing multi-layered, complex challenges. However, the concept of vulnerability has been challenged by Bartkowiak-Théron and Asquith (2017), Asquith et al. (2017), and Enang et al. (2021), who state that, despite vulnerability appearing increasingly in policing and policy discourses, the concept remains poorly defined. Sometimes, those involved in low-level drug supply are deemed less structurally vulnerable than those who are found in possession of drugs with amounts consistent with possession charges. However, Spicer et al. (2020) argue that this is a false demarcation because some people are drawn into low-level supply or forced to allow others to store drugs within their houses, precisely because of being marked out as vulnerable within a community. Additionally, vulnerability can be challenging for services such as the police to identify, because, as Brown (2015) highlights, the people most in need of support often act in the most challenging of ways. Bloom and Farragher (2013) suggest that a lack of societal understanding about the impact that trauma can have on

a person's social and emotional wellbeing can lead to reduced compassion, where individuals are judged purely on their behaviour and responded to on that basis. As such, the extent to which decriminalisation results in reduced sanctions, criminal or administrative, will depend on cultural perceptions of people who use drugs, as well as institutional understandings of complex trauma.

Narratives on drug use influence the level of state intervention that appears as necessary and legitimate. However, the relationship between citizens and states differs from one context to another, as do policing arrangements. In many countries, funding to health and social care services has been cut and police officers must increasingly respond to situations involving people who are experiencing acute mental distress, including the worsening of substance-related problems (Enang et al. 2021). Enang et al. (2021) argue that police do not always receive enough training to know how to recognise or respond to vulnerability, distress, or mental health difficulties. Interpretations of the vulnerability concept also relate to pre-existing inequalities in society, and the perspectives of individual officers are likely to be influenced by attitudes concerning the social problems that people are facing (Enang et al. 2021). For example, a person who regularly comes into contact with police due to living in a deprived area where there is a high police presence, is less likely to receive a compassionate response than someone from an affluent background. Therefore, frequency of contact with police officers, alongside pre-existing conceptualisations of specific communities, is likely to influence perspectives concerning vulnerability, which in turn will influence the likelihood of an officer working across sectors to link a person into support.

There has been a recognised gap between research evidence and policy discourses related to drugs, leading to increased calls for drug policy reform. For example, Taylor et al. (2016) have argued that the 'tough on crime' and 'war on drugs' policy narratives have worsened social, structural, and individual problems in many countries by producing and legitimating stigma and enabling harsh control measures to appear politically safe. Adam and Raschzok (2017) note that a broad evidence base now exists to support the view that restrictive drug policies do nothing to reduce the prevalence of drug laws. According to Csete et al. (2016), drug legislation and modes of social control are more likely to increase pre-existing inequalities in a society rather than produce change in terms of drug use prevalence. In 2016, UN member states came together for a special assembly on drugs with all nations agreeing to review national drug laws and policies to identify what reforms could be required to reduce drug-related health harm and reduce criminal sanctions for those with drug-related health problems. In a joint

statement in 2017, UNAIDS, the UN Development Programme, UNICEF, and the WHO proposed that all nations should consider decriminalisation of drug possession as a mechanism to reduce harm (United Nations Chief Executives Board 2019).

Calls for drug policy reform have also been made by UN bodies and lobbying organisations. For example, the UN Human Rights Council (2015) and the International Centre on Human Rights and Drug Policy (2019) have proposed that full access to the best quality, appropriate health care available within each context is a basic human right. The International Centre on Human Rights and Drug Policy (2019) has also proposed that stigma-based perspectives on drug use have disrupted access to healthcare for many people who use drugs. There have been calls to proactively address inequalities in healthcare access on human rights grounds. Decriminalisation is defined by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2018a) as a shift away from criminalisation via policy and/or legislative change. Eastwood et al. (2016) suggest that decriminalisation should be viewed as a broad umbrella term encompassing a range of arrangements and approaches. The two subsections that follow, explore existing literature related to two forms of decriminalisation: de facto, where drug laws remain in place, but arrest and prosecution are deprioritised; and de jure, where legislative change means that drug possession is no longer deemed a criminal offence. As such, there have been calls within the academic literature, as well as within UN Guidelines for governments, to consider what reforms could be required to address drug-related harm and move toward a 'humanitarian approach' to drug policy (Pūras and Hannah 2017).

As this section has shown, discourses are rarely stable and are often in the process of evolving or coming into being (Chia 1996). This section has looked first at how international relations led to calls for international drug regulation. The section has been an example of 'thinking problematically' about the processes and events that enabled criminalisation of personal drug use to emerge as a legitimate and 'just' use of state power. The section has explored existing literature that has influenced dominant conceptualisations of drug use, state relations, and people who use drugs. Chapter two, section four, then looked at the journey away from criminalisation and presented key pieces of literature concerning a gradual fragmentation of criminalisation and the emergence of public health narratives. The following section, Chapter two, section five, now turns to the topic of decriminalisation.

2.5 Decriminalisation

As the previous section indicated, discourses and evidence on drug use have begun to shift from criminalisation toward decriminalisation over the last three decades, although political narratives have not always kept pace with emerging research on drugs. This section considers the 'alternatives' to criminalisation that have been proposed, beginning with de jure decriminalisation, where drug laws are changed and drug possession is no longer a criminal act, to de facto decriminalisation where arrest and prosecution are deprioritised.

De jure decriminalisation

Decriminalisation via legislative change means that drug possession is no longer dealt with via criminal law. According to Stevens and Hughes (2016), this form of decriminalisation removes ambiguity and acts as a clear strategy to reduce criminalisation of personal drug use. Eastwood et al. (2016) explore details of the more than 30 countries that now operate de jure decriminalisation and suggest that, although drug possession is decriminalised, the arrangements that exist when people come into contact with police for drug possession, differ from one country to another. They point out that decriminalisation of drug possession does not amount to legalisation because production and supply continue to be illegal, and the drug markets are therefore still illegal markets. Many academics and health lobbying organisations have proposed that decriminalisation of drug possession would be a penultimate way to reduce the harms associated with criminalisation, while providing increased access to human-rights based, health-first support (Belackova and Stefunkova 2018, Eastwood et al. 2016, Hughes et al. 2019b, Stevens and Hughes 2016). Although drug possession is not an illegal act in countries that are operating de jure decriminalisation, a range of administrative sanctions usually continue to exist for possession (Unlu et al. 2020). Unlu et al. (2020) suggest that the model of decriminalisation that is adopted by each country tends to be unique to that national/state context and propose that such variations exist because of differences in how and why decriminalisation has emerged. Unlu et al. (2020: 5) argue that *"while policy expectations define the means, the context mainly shapes the ends".* This suggests that drug law reform may define how decriminalisation is expected to occur, but contextual factors, such as power structures and institutional arrangements, are likely to shape how successful implementation may be.

According to the Global Commission on Drug Policy (2017), drug possession (of all drug types) has been decriminalised in the following countries: Armenia, Chile, Colombia, Costa Rica, Denmark, Ecuador, Estonia, Italy, Latvia, Netherlands, Paraguay, Peru,

Portugal, Slovenia, Spain and Uruguay. However, decriminalisation is not always permanent and can change according to political leadership (Global Commission on Drug Policy 2017). Reports can also differ depending on how decriminalisation is defined. The Global Commission on Drug Policy (2017) has also noted that cannabis possession has been decriminalised in Australia, Belgium, Germany, Georgia, Israel, Jamaica, South Africa, Switzerland, and parts of the USA. However, in some countries there can be vast differences in what the term decriminalisation means, and what 'alternatives' are offered. Hughes et al. (2019d) also note that there can be differences within contexts related to the form of decriminalisation used. For example, Hughes et al. (2019c) suggest that there are considerable differences in how drug laws are interpreted and differences in the role of the police across Australian territories. These authors suggest that context-specific factors can influence how decriminalisation occurs even within de jure models.

Cultural norms and dominant views on drug use have also been shown to influence the approach to de jure decriminalisation adopted (Eastwood et al. 2016). According to Garland (2012), culture can be understood as a densely woven tapestry of ideas, practices and norms that are specific to the context. When considering penal reforms, Garland (2012) suggests that culture can play a crucial role in how 'new' approaches are conceptualised and enacted. Context is therefore an important factor that can shape approaches to implementation. Eastwood et al. (2016) propose that decriminalisation should be viewed as an umbrella term that can encompass a broad range of models, arrangements and approaches that can range from a human-rights informed to a punitive approach. For example, Eastwood et al. (2016) cite examples of some countries where de jure decriminalisation has led to human rights abuses. Eastwood et al. (2016) describe that while some Southeast Asian countries have decriminalised drug possession, rather than a person receiving a criminal sanction or a trial, s/he can be taken involuntarily to a compulsory detention centre under the auspices of 'drug treatment'. Lines et al. (2021) suggest that more than 500,000 people worldwide who are detained for 'drug treatment', have been incarcerated without trial and without the right to appeal. Such 'drug treatment' centres operate under the auspices of decriminalisation of drug possession, yet authors such as Lines et al. (2021) have argued that compulsory 'drug treatment' centres breach international human rights conventions. While this example of compulsory drug 'treatment' centres is not indicative of the type of response possible in all contexts, it points to the cultural and contextual specificity of arrangements, and the likelihood that a decriminalised approach to drug use will evolve in line with perspectives on drug use and in line with the role of the state within each

national context. While decriminalisation can reduce the negative consequences associated with acquiring criminal records, and the potential for incarceration, a shift away from a system of law toward an administrative response to drug use will not necessarily reduce punitivism or stigma, as the approach taken reflects cultural and institutional perspectives on drugs.

Relatedly, Eastwood et al. (2016) suggest that de jure decriminalisation is not always the panacea that it is sometimes represented to be. Both Belackova and Stefunkova (2018) and Eastwood et al. (2016) emphasise the importance of a clear definition of what constitutes personal drug possession within decriminalised models. Eastwood et al. (2016) propose that there can be 'weak' or 'strong' examples of decriminalisation, depending upon how clearly and appropriately threshold amounts are defined. This means that, in some countries, possession of threshold amounts can be decriminalised without any real change occurring, because the amounts of drugs are either set too low, in which case more people are charged with supply offences, or too unclearly, which leaves scope for police and prosecutor discretion within the legal framework. Belackova and Stefunkova (2018) state that, although cannabis possession was decriminalised in the Czech Republic in 2010, the legislation did not give a clear definition of the threshold amount that was to be deemed possession for personal use, which was unclearly defined as a "small amount". According to Belackova and Stefunkova (2018), this unclear definition meant that, while there was a reduction in drug arrests, the approach could not be considered decriminalisation, since many cases continued to be processed as low-level supply or intent to supply.

How drug use is represented and understood within a society also has a bearing on the likelihood of decriminalisation appearing as politically possible. According to Hughes et al. (2019c), moving toward a decriminalised approach to drug use and/or drug law reform requires strong political leadership, advocacy, and the support of the general public. In their 2016 paper, Hughes et al. explore the Portuguese approach to decriminalisation. They provide evidence that Portugal has dramatically decreased drug-related death, overdose and blood borne virus transmission by combining decriminalisation with a heavy investment in harm reduction, drug treatment, and social integration services. Within the Portuguese system, people who are found in possession of small amounts of controlled drugs are dealt with via an administrative system, rather than a system of criminal justice. An encounter with police involving drug possession can result in a referral to a 'dissuasion committee'. According to Stevens and Hughes (2016), the dissuasion committees focus on identifying underlying needs and motivations for

change, and seek to create person-centred, tailored pathways toward suitable services and interventions. Definitions are contested in this space, and Weatherburn (2014) suggests that, because the dissuasion committees can also give out administrative sanctions such as restricting driving and/or professional licences or issuing fines, the system should be reconceptualised as depenalisation rather than decriminalisation.

Babor et al. (2019) and Weatherburn (2014) share a similar definition of depenalisation, with both suggesting that this term should be used to describe arrangements where there is no legislative or policy change related to supply, and where all proposed reforms are targeted at drug possession or use. Weatherburn (2014) proposes that, within some models of decriminalisation such as the Portuguese model, an element of state coercion to change and punishment remains but shifts from a criminal justice-led system to an administrative system. Definitions aside, Stevens et al. (2019) point out that the removal of criminal sanctions can reduce future-costs associated with criminal justice involvement so that a shift from criminalisation to an administrative system can reduce stigma and restrictions to future housing, employment, or education opportunities. Hughes et al. (2019b) suggest that depenalisation strategies are being used in the Czech Republic, Australia, parts of the USA, and Jamaica. In these examples, low-level administrative sanctions such as civil fines or licence restrictions are offered as an 'alternative' to criminal justice case processing when people come into contact with police for drug possession.

De facto decriminalisation and police diversion

As the previous section has indicated, the arrangements that fall under the broad umbrella of decriminalisation can differ from one context to another. The role of societal culture and expectations of the relationship between citizen and state will also have a bearing on how the system is experienced: the cross-contextual translatability of evidence-based strategies from other countries cannot be assumed. Furthermore, how social groups and social problems are understood and responded to within particular nation states are important factors to consider, given that these can shape the types of policy and practice responses that are deemed legitimate. This section moves on to explore de facto decriminalisation which is where drug laws remain unchanged, but arrest and/or prosecution[6] of drug-related offences is de-prioritised.

---

[6] In some examples, de facto decriminalisation includes both primary drug-related offences, such as drug possession, and low-level secondary offences, such as acquisitive offences where drug use is deemed to be a motivating factor in the offence.

As Kopak and Gleicher (2020) point out, in some countries a shift away from criminalisation toward a rights-based public health approach to drugs has required systems-level change. Systems-level change is often incremental, requiring a sound analysis of context prior to implementation or tests of change. In some countries legislative change has helped to kick start a process of reform. In other countries, while legal frameworks have remained unchanged, a range of 'alternatives' to arrest/prosecution' has emerged (Barberi and Taxman 2019, Carpenter 2019, Collins et al. 2017, European Monitoring Centre for Drugs and Drug Addiction 2015, Kruithof et al. 2016, Law Enforcement Assisted Diversion 2021, Razmadze et al. 2015, Schlesinger 2018, Spyt et al. 2019, Stevens et al. 2019), which includes strategies such as police diversion. The term 'police diversion' is used here to refer to schemes where police officers can use discretionary decision-making to offer an instant referral to health, social care, or drug treatment as a voluntary 'alternative' to arrest. There are a variety of models of police diversion in operation across the world. In some countries such as the USA, Australia, and parts of the UK, police diversion schemes act as a form of de facto decriminalisation. Bacon (2021) suggests that in some countries police are leading the way on de facto decriminalisation because of the willingness of individual officers to do things differently, innovate, and find strategies to reduce drug-related harm and increase access to health and/or social care support.

Sondhi and Eastwood (2021) define police diversion as an initiative where a person can be diverted from criminal justice to a structured treatment, support, or education programme that is designed to reduce the likelihood of sentencing or further sanctions. The model and arrangements that fall beneath the descriptor of 'diversion' can vary. For example, a scheme exists in Thames Valley, England where police officers can make an instant referral to a mentor who will work with the person where there is no need for an omission of guilt and no offence recorded on the police system. Richardson and McSherry (2010) point out that in some cases a diversion to treatment will influence decisions on further sentencing. Some models of diversion, such as the Treatment Alternatives Accountability (TASC) scheme described by Clark et al. (2013), are based on case management that retains some monitoring via the criminal justice system. Initiatives such as TASC retain some sanctions for noncompliance with treatment. Hayhurst et al. (2017) propose that, historically, the UK has offered arrest referral models of diversion that have focused on identifying detainees in police custody who might be eligible for drug treatment within community-based services.

Some diversionary schemes, such as the Drug Intervention Programme (DIP) that was evaluated by Sondhi and Eastwood (2021), involve detainees in police custody undergoing a mandatory toxicology test to detect drug use for what has been called 'trigger offences' such as acquisitive crimes. If a person received a positive screening result, s/he would undergo a referral with a drug worker who would make a referral to treatment within the community. The aim of the scheme, according to the UK Home Office Drug Interventions Programme Operational Handbook (2009), was to stimulate a case-management plan to address drug and alcohol use, as well as broader social and health needs such as housing, interpersonal relationships, physical and mental health difficulties. Hancock et al. (2012) found that different approaches to the DIP approach were observable across local areas in the UK, with variations in terms of the mandatory and voluntary aspects of engagement with the programme and, as such, variations in terms of coercion to change and/or to engage. McSweeney et al. (2018) found no correlation between compliance with the DIP programme and engagement with treatment, concluding that the programme had no effect on the likelihood of recidivism. They attributed these findings to the coercion and mandatory treatment elements of the programme. These points suggest that the term diversion can be understood as a broad term encompassing a variety of interventions.

Sondhi and Eastwood (2021) propose that, over time, many areas in London in particular, reduced the use of the DIP model and moved toward developing various different forms of diversion programmes. Diversion programmes in the UK and other countries have tended to evolve based on local area need, as well as the motivation of individual police officers to do things differently. Sondhi and Eastwood (2021) found that case-managed models of diversion focusing on tailored holistic packages of support, including a focus on housing and welfare, were more likely to result in successful outcomes such as reductions in substance use and reoffending. Their 2021 paper concluded that case-managed diversion schemes should focus on addressing a variety of complex needs and take into account the unique needs of criminal justice-involved women. There are a variety of case management diversion schemes in operation throughout the world. One example that receives international interest is the Law Enforcement Assisted Diversion (LEAD) scheme (Law Enforcement Assisted Diversion 2021). In the LEAD scheme, police can deflect people away from criminal sanctions by providing a 'warm hand-off' to behavioural health specialists who work with the person to identify needs, motivations and goals. Advocacy and support are provided to help the person access services, and ongoing case work is provided for as long as the individual feels that they need it (Clifasefi and Collins 2016).

As Bolger et al. (2019) describe, there are a variety of models of police diversion operating across the world, and the evidence base is developing. According to Bolger et al. (2019), the extent to which these schemes are used depends upon police officer training and the level of awareness each officer has about the complexity of drug use. Bacon (2021) also proposes that police culture can influence the uptake of available diversion schemes. Hughes et al. (2019c) outline that there are variations in the way diversion schemes are used between and within countries. Despite these potential differences, there are some schemes such as LEAD that have shown cross-national translatability. Collins et al. (2017) indicate that the LEAD scheme has now been rolled out across 21 US States, 42 local areas and is being explored in South Africa, Vietnam, and the UK.

Despite the cross-contextual translation of some diversion schemes, Hughes et al. (2019c) have indicated that, in some contexts, institutional and cultural factors related to the country's history can produce barriers to the implementation of police diversion schemes. Bacon (2021) points out that offering a simultaneous diversion toward support and away from criminal justice processing requires police discretion. However, discretion is a complex issue. Gaines and Kappeler (2014) suggest that police decision-making is influenced by a range of factors including legislative frameworks, institutional culture, and the perceived seriousness of the offence. Ishoy and Dabney (2018) propose that police decisions concerning who requires a criminal sanction and who might benefit from a diversion are also influenced by perceptions of blame versus vulnerability. As discussed in Chapter two, section three, vulnerability is a challenging concept to define and can have both empowering or deleterious effects. Understandings of who is vulnerable and who is not are likely to be influenced by police culture as well as societal understandings of drug use (Bacon 2021). Adding to this complexity, Jehle and Wade (2006) suggest that the role and power of police officers will differ from one context to another, having been shaped by historical and cultural factors. Although there is a growing evidence base that points to police diversion being a key public health measure to reduce drug-related harm, the contextual barriers that could impede implementation have been poorly defined and are under-researched, particularly in relation to countries that exist within larger countries, such as Scotland.

So far, the current section has focused primarily on police diversion. The section has outlined that diversion has emerged as one of several 'alternatives' to criminalisation that are considered to be implementable in countries where drug possession remains an illegal act. As the aforementioned examples indicate, a great deal of academic literature

on diversion focuses on the role of the police (Barberi and Taxman 2019, Bolger et al. 2019, Collins et al. 2017, Hayhurst et al. 2017). In some countries and US states, prosecutors play a key role in facilitating incremental reductions in criminalisation outcomes (Davis 2019, Green and Roiphe 2020). To that end, the current section now turns to prosecutorial diversion. According to Barkow (2020), while police officers in Baltimore, USA, continue to arrest people for simple drug possession offences, a progressive prosecution movement exists where there is agreement between prosecutors in the area to refuse to prosecute such cases. Resultantly, Barkow (2020) concludes that most simple drug possession cases are dismissed without action, or any follow up required. Buozis (2018) also examined the Baltimore prosecutorial movement and suggests that the impetus for this change was a recognition among prosecutors concerning racial disparities in arrests and a desire to reduce inequalities within the criminal justice system. The benefit of this movement, according to both Barkow (2020) and Buozis (2018), is that criminal sanctions and the future-costs associated with acquiring a criminal record are avoided. Crofts and Thomas (2017) propose that police diversion, however, should be viewed as part of a public health approach to reduce tension between police and communities concerning inequalities in arrests as well as mechanisms to reduce harms. Although progressive prosecutorial movements, such as those described by Buozis (2018) and Barkow (2020), could reduce inequalities, it is likely that tension will continue to exist within over-policed communities if drug possession arrests continue. It is perhaps for this reason that Van Dijk et al. (2019) propose a role for police in moving toward reform, and particularly in creating pathways to public health-based initiatives. Van Dijk et al. (2019) also suggest that the role of police in diversion and public health should be tailored to the needs of each context. To date, however, because much of the existing literature has focused on diversion as a police intervention, there are gaps in knowledge related to the role of prosecutors in diversion. As has been pointed out, policing and prosecutorial arrangements surrounding drug use relate to overarching drug laws as well as context-specific arrangements.

As this section has shown, the international 'war on drugs' has been considered to have had a lasting legacy, where, in contemporary times, the criminalisation of personal drug use has appeared as legitimate and just. The current section explores the various calls that there have been for drug policy and drug law reform within the academic literature. The section has demonstrated an acknowledgement within the academic literature of a growing gap between research and policy discourse related to drug use. The section has presented literature that relates to two potential solutions to reduce criminalisation that have been explored: de jure decriminalisation, where legislative frameworks are

reformed, and de facto decriminalisation, where drug laws remain in place, but police and/or prosecutorial 'alternatives' are used to reduce criminal sanctions. The section emphasises that such 'alternatives' to criminalisation are considered to be influenced by cultural factors that shape expectations of the role of the state to intervene, as well as shaping narratives on drug use. The section has reinforced the perspective that how drug use and the role of the state are conceptualised influences the policy frame, shaping what is sayable, and what appears as a logical policy 'proposal' or solution. The threads of previous sections are now drawn together with the current section to bring the current chapter to a close.

2.6 Chapter summary

This chapter has discussed underpinning theoretical concepts that have influenced the study design. The chapter has described Bacchi's post-structural analytic approach in depth, drawing from Bacchi's (2009) work, where the WPR approach was described. The chapter has also explored the post-structural orientation of the WPR approach and explored the current PhD study by drawing on the work of Bacchi and Goodwin (2016). The relevance of Bacchi's post-structural analytic approach to drug policy has been explored in relation to Bacchi's (2019) work. The chapter has discussed the relationship between Bacchi's (2009 and 2019) theories, and Foucault's (1971) problematisation method. Drawing from this theoretical framework, the chapter has outlined a key focus for the current study: to examine the processes, events, factors, and conditions that create the potential for drug policy reform and those that could be deemed likely to maintain the status quo. The literature presented in this chapter has expressed that policy discourse could be viewed as an interpretative and conceptual schema that reflects the way things are considered to be. Yet, as the chapter has shown, discourses are inherently unfinished, and always in the process of becoming. Therefore, the Bacchian post-structural analytic strategy outlined in this chapter provides a theoretical framework that is developed into a methodological approach in Chapter four of the thesis. Nonetheless, the exploration provided in this chapter has served to orient and situate the study, demonstrating the concepts that have been considered relevant.

The chapter has emphasised that discourses on drug use and criminalisation have been influenced by a range of macro, international political factors which have been distilled into national drug polices, laws, and policing arrangements within each context. The chapter has shown that how drug use and the role of the state are conceptualised differs from one national context to another, and so the chapter also acknowledges a further key focus of the study: context. This chapter has presented a range of literature that

suggests that the 'problems' that appear in policy discourses have acquired meaning through processes of 'problematisation' that is deeply context-specific. As outlined in the introduction to this thesis, the term *problematisation* refers to the processes and events that have enabled the emergence of 'problems'. Within Bacchi's WPR (2009), the way that a problem is represented, is understood to be the result of these processes, and so the processes involved in problem production are considered important. The chapter used a historical lens to examine the emergence of political narratives concerning calls for international drug control, and demonstrated how, over time, the emphasis shifted from the international drug market to individuals who use drugs. Initially, the historical factors that led to strain between states related to the drug market and the outbreak of war in the nineteenth century, were considered. Then, the focus of the chapter turned to the subjectification of *people who use drugs,* showing how macro structural issues are considered to have been translated into discourses constructing drug use as a 'personal trouble', thereby strengthening calls for international agreements on drugs. The literature that has been selected for inclusion in the chapter has been included on the basis that it provides a backdrop from which to acknowledge the many factors that have contributed to the current status quo, where drug possession remains illegal in many countries, including the UK. Section four of the chapter explored how international influences have shaped domestic legislative frameworks as they relate to drugs. A primary focus of the chapter has been to illustrate that while power structures and political contexts can shape drug policy narratives, they do not always do so in explicit ways. Rather, there can be underlying factors that shape the 'discursive frame' in hidden, less obvious, yet nonetheless significant ways. The chapter shows the value of a detailed, nuanced examination of factors that relate to drug policy discourses.

Section five of the current chapter was concerned with exploring the existing literature related to a gradual fragmentation of narratives on criminalisation. Section five noted that there now exists a well-developed body of evidence that points to the unintended consequences of criminalisation, resulting in some academics, health lobbying organisations, and UN agencies calling for governments to consider enacting drug law reform. The current chapter has focused primarily upon the macro international political context surrounding drug policy discourses. In the chapter that follows, Chapter three, the focus lies on national and state contexts and then examines the notion of policy 'context' in detail, providing background to another key element of the current study: the Scottish context.

Chapter 3: National contexts and drug policy

3.1 Introduction

This chapter critically examines the role of national contexts in shaping and influencing drug policy and institutional arrangements. The chapter begins by exploring how the Scottish context has been conceptualised in the broader literature. The chapter focuses on the role of context in shaping responses to drug use and drug-related harm. Chapter three, section three drills down into the contextual specificity of criminal justice arrangements, using existing literature to illustrate that the same policy proposal can yield different outcomes depending on contextual factors such as culture, institutions, and prioritised knowledges. This section is about hidden power structures that influence the representation of problems as they appear in policy. Finally, in Chapter three, section four, the study is situated, and background information is provided on the Scottish context including legislative and policy issues related to diversion and drug use. This section also includes a discussion on the various ways that the Scottish context has been theorised and on concepts of nation and state.

3.2 Conceptualisations of the Scottish context

The current study is an exploration of drug use, diversion, and the Scottish context. As outlined in Chapter two, section two, the study is theoretically aligned with post-structuralism, as well as with the discipline of criminology. Therefore, part of the aim of the work is to explore the relationship between structure and agency, critically examining how power structures[7] have shaped the ways in which drug use, diversion, and the Scottish context are represented in policy. The aim of the work is to get beneath policy 'logics' to explore the assumptions and 'silences' that support contemporary framing of the problems as they appear in policy-related discourses. As such, the work involves exploration of place. This section provides an overview of existing literature related to conceptualisations of Scottish context and then moves on to policymaking in Scotland. As Chapter one, section two, has outlined, the term context is used here to refer to the geographical territory in which the study takes place. Context, however, also refers to more than the geographical location of the work and encompasses conceptualisations of nation and state. The UK comprises four nations: England, Wales, Northern Ireland,

---

[7] A definition of how power is understood within the post-structural orientation of the current study is provided as part of the definition of terms section that appears on page vii.

and Scotland, and is therefore an example of 'countries within a country'. Although relevant background on UK drug policy will be provided in Chapter three, section four, the current section explores how the Scottish context can be defined and understood.

According to Gellner (2008), the terms *nation* and *state* are inextricably linked, with one dependent upon the other. Gellner (2008:3) notes, in line with Weber (1978), that the term state can be understood as *"that agency within society which possesses the monopoly of legitimate violence".* In making this argument, he suggests that violence to resolve conflict can only be wielded by a legitimate political authority that is internationally recognised as such. Anderson (2016) also points to the need for the majority of citizens to acknowledge the legitimacy of the state, to encourage their compliance with the rules of that state as set out in law. Gellner's (2008) definition of a state extends to state infrastructure, that is, the institutions of social control. Foucault (2020) refers to institutions of social control and surveillance as the carceral network. According to Foucault (2020), in many states, the threat of incarceration for wrongdoing overshadows a society, legitimating and organising institutions of surveillance that shape social life and convey state power. Combining these perspectives makes it possible to suggest that a state is an internationally recognised political body with the authority to protect its borders, and thereby it's people, with violence if it comes under attack. At the same time, these theories propose that a state is also a recognised authority that induces compliance with laws and policies due to the existence of the carceral network and the threat of loss of liberty for those who do not comply with the rules of that society.

As Henry et al. (2021) note, the concept of state and citizenship is complex terrain and intersected by concepts of rights. The rights and responsibilities of states and citizens are interpreted differently across time, and between countries, and are thus contextual factors. Anderson (2016) suggests that globalisation has brought with it a renewed interest in the concept of *nation* and *nationhood* as distinct communities of belonging that sit outside of statehood. Where a state is a political authority, Anderson (2016) proposes that a nation is an imagined community. The term 'imagined' is used by Anderson to convey the notion that, in a nation, belonging is derived from emotional legitimacy, rather than political or military force. A nation may be a state but, as Miller (1995) points out, nations can exist outside of states. Law and Mooney (2012), Minahan (2002), and Miller (1995) explore the term 'stateless nation' in relation to small nations such as Scotland, Catalonia, and Quebec. Minahan (2002) points to several small nations, including Scotland, that can be characterised as 'stateless' because they are political bodies that exist within a larger state where inhabitants have plural national

identities and where national identity cannot be assumed. For Miller (1995), national identity should be viewed as a valid source of personal identity: he critiques the notion of an 'imagined community', arguing that national identity is not an illusion, but that people should have the right to protect this identity position. Miller (1995) expresses the view that national identities have often become conflated with nationalism and have been manipulated by powerful groups to compel loyalty to larger states.

Miller (1995) also points to the fluidity, in terms of national identity and culture within contemporary societies, suggesting that in small nations the sense of belonging to the nation is often derived from a shared commitment to egalitarian values and social justice, rather than a perceived hereditary right to land. He argues that small nations such as Scotland often display cultural rather than political nationalism. According to Miller (1995) and Billig (1995), political nationalism is an exclusionary political tactic that protects perceptions of unity by portraying false homogeneity. Billig (1995) suggests that this type of political nationalism can be most commonly observed in larger states, whereas small states and substate nations tend toward a weaker, more cultural types of expression of nationalism. As these arguments show, concepts of nation, national identity and nationalism are challenging to disentangle when it comes to conceptualising a small nation like Scotland. Miller (1995) gives a slightly clearer definition of nation when drawing from Renan and Zimmern (1939) perspective, suggesting that a nation could be defined as a large body of people who desire political affiliation to each other and who occupy a specific territory. According to Anderson (2016), nations are one of the most important political concepts of the globalising era and he proposes that small, substate nations like Scotland are particularly important, because the way that the nation is negotiated and understood can convey insights into legitimacy to rule.

Although Miller (1995) and Billig (1995) have argued that distinctions can be drawn between political and cultural nationalism in discussions on small nations, Cairns (2020) highlights further complexity related to Scotland. Cairns (2020) observes that Scotland has a rich cultural wealth that has, at times, been mobilised to produce political effects. He gives the example of post-war Britain, where after World War II there was a strong sense of British unity and hope across the UK, including within Scotland. He suggests that the establishment of the National Health Service and the welfare state stimulated a sense of optimism, but that this had begun to dwindle by the 1960s, when there were structural changes and growing inequalities in Scotland. Cairns (2020) observed that, at the time, the Scottish literati promoted a Scottish cultural revival in media and magazines. capturing the imagination of many. Traditional songs, stories, fabrics, and art were,

rebirthed, stimulating a renewed sense of shared history and belonging. Cairns notes that in the late 1960's, the Labour party lost a seat in the central UK parliament to the Scottish National Party. He argues that resultantly, Scottish cultural renaissance then came to be viewed as a political threat, leading to a constitutional consultation in the UK Parliament in 1968. According to Cairns (2020), the 1968 consultation was the first step toward what would become Scottish devolution some decades later. Therefore, while distinctions have been drawn between political and cultural nationalism, these two concepts often intertwine.

Law and Mooney (2012) observe that in a multinational state such as the UK, social policy can be a contested and complex area of governance. They say that what they refer to as 'substate nationalists' utilise differences in state architecture to argue that policy divergence is required to ensure territorial justice within the smaller nation. Law and Mooney (2012) argue that social policy discourses in Scotland are often entwined with discussions that produce 'the nation' as an *object*. They observe that, in terms of discourses, Scotland is commonly anthropomorphised and conceptualised as a sentient being that sees and feels things. Béland and Lecours (2008) remark that this tendency toward conceptualising the territory as a collective that does, sees, and feels things in a certain way, also appears within social policy discourses in other multinational states such as Canada and Belgium. For Law and Mooney (2012:162) this sets up a *"policy and nation dialectic"* which uses social policy as a lens from which to push for areas of social policy to be devolved from the central state. Similarly, Béland and Lecours (2008) propose that social policy acts as a nation-building tool, where consensus on the way forward within the smaller nation acts as a 'truism' due to dominant representations of the nation as a cohesive collective. Kellas (1989) proposes, however, that Scotland has always maintained a strong national identity through its institutions, having always maintained an independent legal system, church, education, and local government. As such, the appearance of 'nation' within social policy discourses is a matter of some debate. To date, the impact of Scottish institutions on diversion arrangements has not been considered within UK drug policy discourses.

Scotland acquired status as a 'devolved' UK nation in 1998 after several decades of negotiation when a devolution settlement was agreed and a devolved Scottish Parliament was established in Holyrood, Edinburgh. Hazell (2000) describes the devolution settlement as a major achievement, because a parliament was established without breaking up the UK. According to Hazell (2000), the establishment of a devolved parliament in Scotland was represented in political and policy discourses as a turning

point in Scottish history: a fresh start. Hazell (2000) notes that many observers at the time believed that the new Scottish Parliament would lead to stronger links between 'civil society', the public, and the parliament. Mooney and Scott (2005) highlight that Scottish policy discourses often propose 'Scottish solutions for Scottish problems', suggesting a distinctiveness to both context and policymaking. Cairney (2012) has examined changes since devolution and critiques the notion of Scottish policy divergence from UK norms that appears in much of the literature, suggesting instead that the term *policy divergence* should not be used interchangeably with the term *policy change.* The latter, according to Cairney (2012), reflects the slow, incremental pace of policy change that characterises policy development in most territories. Indeed, Cairney (2012) proposes that while Scottish public policy may have a unique 'flavour', it is not necessarily markedly divergent from UK policies, nor changing at a faster speed. Keating et al. (2012) point out that policy divergence, or rapid change in a new direction, is often temporary and in some cases one government, the central UK Government, or the Scottish Government, will wait and assess the outcomes of the changes made by the other before initiating change. Thus, Scottish policy divergence is also a contextual factor attracting some debate.

Winetrobe (2001) comments that after the devolved parliament was established in Scotland, some areas of Scottish policy were constrained by UK legislative frameworks. Since the establishment of the devolved Scottish Parliament in 1998, there has been some political strain on both sides, where the Scottish Government express frustration at the constraints imposed by UK legislation, and the UK Government represent the Scottish Government as failing to keep up with English policy progress in some areas of policy (Winetrobe 2001). Keating et al. (2012:289) explore the complexity of UK policy making in the quote below.

> *"[…] policy transfer between England and the devolved territories can be conceptualized either as horizontal, among the nations, or vertical, between centre and periphery; in practice it is most useful to see it as a bit of both. The UK is not a federation, with two orders of government, each with its own powers and competences. In theory, Westminster retains the right to legislate for all parts of the state, and so to impose its policy line, but in practice it is limited by whereby it only legislates in devolved matters with the agreement of the competent assembly or parliament"*

> (Keating et al. 2012: 289).

Cairney (2017) explores the notion of a 'uniquely Scottish style of policymaking' in a 2017 paper where he posits that a close relationship exists between Scottish ministers, civil servants, and the public, making it possible to attract greater public involvement in policy consultations. He also describes a Scottish Government commitment to co-produce policies and involve those affected by policy issues in policy development where possible. Cairney (2012) suggests that there is also some observable policy divergence in Scotland when it comes to health, with a focus on reducing health inequalities related to Scotland's large areas of socio-economic deprivation. Much of this focus is considered to relate to the consultative style of Scottish policymaking. He also notes, however, that there is some policy convergence within health policy due to the National Health Service, which is organised in similar ways across all UK nations. Differences and similarities between Scottish policies and central UK policies cannot therefore be entirely dismissed. To date, there has been no Scottish-specific research undertaken to examine policy convergence or divergence as it relates to drug related diversion arrangements.

3.3 Policy context

The previous section outlined the various ways in which the Scottish context has been defined in academic literature. The current section will now explore the policy background to the study. As has been described in the introductory chapter of this thesis, Scotland operates a devolved parliament which has responsibility for key policy areas such as health and justice, which includes Scottish drug strategy (Scottish Government 2018a). Drug policy analysis in relation to the Scottish context is timely, because as Chapter one outlined, Scotland is experiencing disproportionately high levels of drug-related deaths (National Records of Scotland 2021), and there have been increases in more general drug harms such as recent cluster outbreaks of HIV among people who use drugs in cities such as Dundee and Glasgow (McAuley et al. 2019, Trayner et al. 2020, Trayner et al. 2018). These harms have been described by Trayner et al. (2018) as being preventable with 'pragmatic', targeted public health strategies. This section explores the policy developments related to drug use in Scotland and the UK. The section is divided into two parts, where subsection one examines UK drug policy developments and subsection two examines Scottish Government drug policy developments.

3.3.1 UK drug policy

As described in the above section, the focus of the chapter now turns to developments in UK drug policies. As has been discussed in other chapters[8], the way that a problem is framed in policy shapes the type of response that appears as legitimate. Duke (2013) suggests that, throughout the last century, there has been a tension within UK policy and legislation between medical and penal ideologies. Duke (2013) proposes that the Rolleston Committee Inquiry and report in 1926 brought the medical profession and the UK state closer together in terms of drug policy and practice. She suggests that, while there have been occasional policy shifts over the last century, there has been a continued dual focus on health and criminal justice together, with the only change being an occasional shift in the balance between the two. Duke (2013) suggests that the 'HIV crisis' of the 1980s led to an increase in focus on harm reduction in UK policy discourses, but notes that the UK Government's (1995) '*Tackling Drugs Together'* strategy shifted the policy narrative back toward drug-related crime. She suggests that, although there were some narrative shifts toward harm reduction prior to this, the emphasis on the perceived drugs and crime link had not significantly changed.

Within the current study, policies are understood to be 'ontologically active' (Mol, 1999) in that they *shape* practices. According to Duke (2003), the UK Government's 1995 drug policy led to the establishment of several groups which brought together professionals from the areas of social services, health and criminal justice who were tasked with ensuring that the aims of the strategy were met. According to both Duke (2003) and MacGregor (2009), this led to the legitimation of the idea that the criminal justice system should process people who use drugs and provide pathways to treatment as part of criminal sanctions. Seddon et al. (2008) suggest that when the UK Government introduced their 1998 *Tackling Drugs to Build a Better Britain* strategy, UK drug policy became 'criminalised'. What they refer to here, is that health interventions became further embedded within the UK criminal justice system. This is also explored by Duke (2013), who notes that the 1998 strategy introduced Drug Treatment and Testing Orders (DTTOs), which are court mandated sanctions that enable drug testing and treatment to be made part of a community sentence. As such, the policy focus on drugs and crime led to health interventions and drug treatment becoming further embedded within criminal justice sanctions, such as community sentences for drug-related crime.

The dual focus on drugs and crime within UK policy narratives is considered to have continued when the Criminal Justice and Court Services Act was introduced in 2000

---

[8] See Chapter one, section one and Chapter two, section six.

(Duke 2013). According to Duke (2013), this act meant that people who had been charged with property crimes, acquisitive crimes, or drug offences, were able to be subjected to mandatory drug testing. Duke (2013) notes that, at the same time, people who were on probation for a range of crimes could receive Drug Abstinence Orders and Drug Abstinence Requirements as part of criminal sentences. As such, abstinence became a focus for both policy and practice. Duke (2013) suggests that the UK Government's 2002 drug strategy update further entrenched the focus on abstinence and led to an expansion of coercive measures. For example, the DIP[9] meant that drug testing and treatment could be used at various points in the criminal justice system (Duke 2013). In 2008, the UK Government released *Drugs: Protecting Families and Communities.* MacGregor (2009) suggests that this strategy was another example of the fusion of health and criminal justice within the UK. According to MacGregor (2009), this strategy emphasised that the criminal justice system was a legitimate and just place to provide treatment for people with problematic drug use. Duke (2013) notes that the strategy also enabled cuts to welfare benefits for those who did not engage in drug treatment. The strategy introduced administrative sanctions alongside the pre-existing criminal justice-led sanctions that existed for drug possession. The strategy retained a focus on abstinence as being the goal of treatment, but also represented methadone maintenance to be part of a 'recovery-oriented' strategy.

Many authors have examined the UK Coalition Government's 2010 drug strategy which proposed that it was outlining a 'fundamentally different approach to tackling drugs' (HM Government, 2010:3). According to Duke (2013), the language of this policy may have shifted slightly, yet, there remained an enduring dual focus on drugs and crime, where the policy described the aim of supporting people who use drugs to become abstinent. Within this, recovery was a policy focus, and was taken to mean being abstinent from all substances. Further, she describes that harm and demand reduction have existed alongside each other since the beginning of drug control measures in the UK. As such, she offers a critical analysis of the UK Coalition Government's proposal of a 'fundamentally different approach to tackling drugs', by pointing to continuities across historical time. Others have explored the perceived tension between abstinence and harm reduction in UK drug policies. For example, according to Stevens and Zampini (2019), the perceived tension between harm reduction and abstinence led to an expansion of Opioid Substitution Treatment (OST) under the UK's Labour Government between 1997 and 2010. Stevens and Zampini (2019) suggest that, during this period,

---

[9] As outlined in the previous chapter.

OST became the dominant form of treatment offered when people with drug dependency came into contact with services, despite only 4% of people achieving abstinence which had been considered the aim of the intervention at the time. MacGregor (1998) suggests that oscillations between harm reduction and abstinence in UK drug policy discourses could best be described as a 'working compromise', rather than a shift in policy focus from one to the other.

Monaghan (2012) suggests that, after the 2010 drug strategy, the recovery concept had taken hold, and methadone maintenance was no longer considered to be 'recovery', which required abstinence from all such substances. As the previous chapter has demonstrated, 'problem' representations related to drug use differ from one country to another and tend to relate to what the underlying problem is considered to be (Bacchi 2018). Stevens (2019) suggests that, in UK policy narratives, there has been a misinterpretation of statistical analyses related to the prevalence of drug use in areas of high socio-economic deprivation, where there is a perceived link with poverty, drugs and crime. Since the Conservative Government came into power in the UK in 2010, government ministers frequently referred to a 'culture of worklessness' in certain communities, and Stevens (2019) observes that drug use statistics have been used to 'sidestep' the need for the government to invest in welfare and infrastructure to address these structural inequalities (Stevens 2019). Stevens (2019) describes such discourses as being inlaid with what he refers to as 'class contempt', where inequalities have been overlooked and people who use drugs have been blamed and represented as being undeserving of state support or investment in harm reduction initiatives. Stevens (2019:448) argues that:

> *"…instead of acting as an expression of solidarity, the welfare system (and drug policy)* [in the UK] *now operates as a motor of division, channelling resentment towards working class people who are considered unwilling rather than unable to work".*

(Stevens, 2019:448)

According to Matheson et al. (2014), there is observable ambivalence toward people who have drug-related problems within UK policy, where they are largely seen as requiring both care and sanction. Stevens (2019) notes that resentment toward working class people can be observed across multiple domains of UK policy, where reductionist discourses have been used by Conservative governments to win support for cuts to welfare and services. Stevens (2019) explains that what he describes as a reductionist

discourse and associated class contempt, has resulted in an extension of state shrinkage and led to a failure to implement services or interventions known to reduce drug-related deaths. Lancaster et al. (2015a) and Roy and Buchanan (2016) highlight that some of this debate has more recently manifested as a conflict between harm reduction and abstinence.

Several reports were released between 2010 and 2012 which have been considered to reflect a continued focus on abstinence, rather than harm reduction. For example, an Inter-Ministerial Group on Drugs was convened by the UK Government and its report published in 2012 suggested that 'recovery' should be taken to mean complete abstinence from all controlled substances (Inter-Ministerial Group on Drugs 2012). This meant that people on OST could no longer be considered to be 'in recovery'. Resultantly, the 2012 report called for a reduction in the offer of OST and proposed that people with lived experience of drug use who were in fully abstinent recovery should be given a prominent role in promoting abstinence to those in active drug use, or on OST. Stevens and Zampini (2019) propose that, although drug policies are usually formed via deliberation among policy entrepreneurs, those who promote abstinent-based recovery tend to have a greater influence on UK drug policy than those who support decriminalisation or person-centred approaches to drug use. They suggest, however, that rising rates of drug-related deaths across the UK has led to a gradual recognition of a need for policy change, with several reports having played a key role in pushing toward a focus on harm reduction. These include two reports by the Advisory Council on the Misuse of Drugs (2012; 2015), as well as a report from Strang (2012) that called for harm reduction to be placed back on the government's agenda.

3.2 Scottish drug policy

In the UK, drug legislation, the Misuse of Drugs Act 1971, is reserved to the central UK Government. The Scottish Government have devolved responsibility for setting Scottish health and justice policy, including setting drug strategies for Scotland. The tension between harm reduction and abstinence explored in the previous section, has played out slightly differently within Scottish Government drug policy narratives. For example, in 2008, the Scottish Government announced their new drug strategy, entitled '*Road to recovery: A new approach to tackling Scotland's drug problem'.* Duke (2013) suggests that the 2008 strategy demonstrated some divergence from the UK Government's (2008) strategy, which had introduced both administrative and criminal justice sanctions to 'encourage' abstinence as part of the 'recovery' rhetoric. In contrast, the Scottish Government's (2010) drug strategy emphasised choice and self-determination and

described recovery as an individual journey of varying length. Within this, however, Duke (2013) notes that there was a retained focus on abstinence as being the ultimate long-term goal of the recovery process, where recovery was conceptualised as being a circumstance whereby a person was both drug-free and contributing to society.

By 2016, the Scottish Government had demonstrated a commitment to responding to drug use as a complex health problem and shifted strategic responsibility from criminal justice to health (Scottish Government 2017). This move was indicative of growing recognition that people with drug-related problems were often experiencing multi-layered social inequalities. While there remains a strong focus on coercive control and law enforcement in UK drug policy, there has been a shift towards use of public health discourses in Scottish policies, as well as in Scottish and UK policing discourses (Police Scotland 2021b, Scottish Government 2018a, Scottish Government 2019b). In 2018, the Scottish Government released *Rights, Respect, Recovery,* their most recent alcohol and drug treatment strategy. This strategy proposed that people with drug-related problems were often experiencing health inequalities, which could be worsened by criminal sanctions. The strategy proposed that priority should be given to diverting people away from the criminal justice system at the earliest possible opportunity. The 2018 strategy also noted that all decisions on who is prosecuted, and who is not, lie with Scotland's Lord Advocate in their role as head of Scotland's independent prosecutorial authority, the Crown Office and Procurator Fiscal Service (COPFS) (Scottish Government 2019b). The 2018 strategy advocated for a shift towards harm reduction as part of a 'rights-based' approach that prioritised choice and person-centred care.

In 2019, the Scottish Government Minister for Public Health and Sport, and the Cabinet Secretary for Justice, formally established the Scottish Drugs Death Taskforce (SDDT) (Scottish Drug Deaths Taskforce 2019). The Taskforce comprises four subgroups and reference groups who are each responsible for supporting six identified areas of strategic development. The four subgroups include: criminal justice and law, medication-assisted treatment, public health surveillance and multiple complex needs. Each group comprises of invited members from a range of professional backgrounds relevant to their focus area, including leads from within health, police, prosecution, policy, and academics. The four associated reference groups provide wider consultation, including opening up policy discussions for public participation (Scottish Drug Deaths Taskforce 2019). Relevant to the current study, the Taskforce have recently published a report on drug law reform in Scotland (Scottish Drug Deaths Taskforce 2021b), as well as a report outlining plans to

address stigma within services (Scottish Drug Deaths Taskforce 2020b). As such, there is a growing recognition of a need for drug policy reform in Scotland.

Policy divergence between the UK and Scottish Governments is highly relevant to the current study, and so further exploration of this is required. When it comes to existing drug policies, there has been some criticism of what is considered to be a growing policy divergence between the two governments. For example, a recent report by the Royal College of Physicians of Edinburgh (2021) noted increasing divergence between Scottish and UK Government approaches to drug policy development and called for urgent action to address drug-related deaths in Scotland. Both governments announced that drug policy summits would be held in February 2020 to discuss the way forward. The first was held in Glasgow by the Scottish Government on 26th February 2020, and the second was held in the same location 24 hours later by the UK Government (Scottish Government 2020, UK Government 2020). Media and academic narratives began to represent these two events as being evidence of escalating tensions between the two governments, and growing divergence concerning the way forward for drug policy (Brooks 2020, Christie 2021, Royal College of Physicians of Edinburgh 2021). In their 2019 – 2020 Programme for Government, the Scottish Government proposed that the UK Misuse of Drugs Act was 'costing Scottish lives' and in need of urgent reform (Scottish Government 2019a). Drawing from Steven's (2019) work on 'moral sidesteps' in drug policy, Ross (2020) has problematised the notion of UK drug legislation presenting a barrier to reform in Scotland, describing it as a 'constitutional sidestep' that legitimates delayed decision-making.

Ross (2020) proposes that a *'critical drug theory'* is required to explore drug policy in Scotland, the UK, and elsewhere, arguing that drug policy discourse emerges as a result of

> "…*systemic narratives that have been used to justify policies and practices which disproportionately impact those whose ethnicity, social class, gender, religious, ideological and political viewpoints do not fit into the dominant narrative*"

> (Ross 2020: 238).

According to Ross (2020), drug policy in many countries can be viewed as an *"oppressive framework"* that legitimates the stigmatisation of those who are already the focus of deleterious and negative representations in political discourses. Ross (2020) argues that the Scottish policy focus on drug-related harm fails to acknowledge that some drug use is recreational and occurs without negative consequence. She suggests

that the Scottish policy focus on harm relates to an underlying tension between abstinence and harm reduction that she suggests is less obvious, but still present within Scottish drug policy narratives. Bacchi (2009) proposes that policy logics reflect dominant assumptions about social phenomena and that they reflect cultural and structural conditions. She suggests that a deep level of critical analysis is required to 'dig' deeper, to reveal dominant perspectives, and bodies of knowledge that have informed policy development within a context. The UK Government's 2021 drug strategy entitled, '*From harm to hope: A 10-year drugs plan to cut crime and save lives',* has less focus on problem drug use per se, and proposes that abstinence from drugs is required for both recreational and problematic drug use. The focus on abstinence in UK drug policy discourses, outlined by Stevens (2019), has, arguably, intensified with the release of the 2021 strategy. Given that Scottish policy discourses focus on the right to choice, self-determination, and harm reduction, it is possible to suggest that there is growing policy divergence between the two governments that requires further analysis[10]. In his Ministerial foreword to the 2021 strategy, UK Prime Minister Boris Johnson proposed the following.

> *"There are more than 300,000 heroin and crack addicts in England who, between them, are responsible for nearly half of all burglaries, robberies and other acquisitive crime. These serial offenders should be properly punished for the crimes they commit, crimes which cause misery in communities across the country. But they should also be given the chance to get off drugs and turn their lives around. Because if we can turn around the lives of addicts, the communities in which they live will experience lower crime, lower disorder and less violence. That is our goal".*

> (Boris Johnson, Ministerial Foreword, UK Drug Strategy 2021, Page 3).

In the above example, the focus has shifted from drug-related harm and abstinent recovery toward a renewed focus on drugs and crime. The foreword to the strategy proposed that there would be no tolerance of recreational drug use and represented all forms of drug use as unacceptable, suggesting that there should be additional penalties levied upon people who use drugs. The document proposed that *"drugs cause crime and crime ruins innocent lives"* (UK Government, 2021:4). The strategy focuses upon increasing rather than reducing criminalisation and proposed that in 2022, there would

---

[10] Please note that the UK Government's 2021 strategy was released after the PhD analysis was conducted, and so the policy does not feature within the research findings. It is outlined here to situate the study only.

be a White Paper produced to consider increasing sanctions such as curfews, fines and the removal of passports and/or driving licences for those found in possession of drugs for recreational use. There is further observable divergence when comparisons are made with the Scottish Government's (2018) Rights, Respect, Recovery (RRR) Alcohol and Drug Strategy, which proposed that many people who use drugs should be considered vulnerable and be diverted away from criminal justice sanctions at the earliest possible point.

A possible area of consensus could be said to exist between UK and Scottish drug policy discourses in terms of a recognition of a need for investment in drug treatment services. The UK drug strategy has proposed an investment of £780 million to be used to create 'world-class' treatment and recovery services in England. The Scottish Government's (2018) RRR strategy conferred an investment of £20 million per year between 2018 and 2021 for treatment and support services, delivered via local Alcohol and Drug Partnerships. As such, there has been a recognition of a need for investment in public health initiatives from both the UK and Scottish Governments. In 2021, the Scottish First Minister announced a 'national mission' to reduce drug-related deaths and drug-related health harm (Scottish Government 2021a). The statement outlined a further £50 million investment in treatment and support services, much of the budget was allocated to residential rehabilitation. A recent systematic review by de Andrade et al. (2019) suggests that there is very little evidence to suggest that residential rehabilitation is a universally effective intervention for drug related problems. According to De Andrade et al (2019), a range of factors, including the underlying reasons for drug use, the mode of delivery and the treatment modality within the residential centre, can influence the likelihood of treatment aims, such as abstinence, being achieved. Nonetheless, the focus on residential rehabilitation within Scottish policy leans into the abstinence versus harm reduction debate because most residential drug treatment centres set out with the goal of individuals achieving abstinence.

There is less of a tension between abstinence and harm reduction in the most recent UK drug strategy, where the explicit goal of the 2021 strategy is firmly to create abstinence from all illegal substances. Notably, the UK's 2021 drug strategy uses the words treatment and recovery interchangeably and both relate to the concept that abstinence will reduce demand and thereby reduce the strength of the illicit drug market. Part of the proposal for the strategy is that the UK Government will build a 'world-leading evidence base' while 'applying tougher and more meaningful consequences for drug possession'. The document also states

> *"Decriminalisation is often suggested as a simple solution to many of the problems caused by illegal drugs. This is not the case. It would leave organised criminals in control while risking an increase in drug use"*
>
> (UK Government 2021:17).

The research presented elsewhere in this chapter, and in Chapter two, highlights that there is an established body of evidence that indicates that criminal sanctions do not reduce drug use, but rather lead to other negative individual and community consequences. The proposal for harsher sentences seems to relate to the below policy logic.

> *"The strategy is unashamedly clear on our position: illegal drug use is wrong and unlawful possession of controlled drugs is a crime"*
>
> (UK Government 2021: 51).

In contrast, the Scottish Government's most recent alcohol and drug treatment strategy (2018) proposes that

> *"Supporting a better response to those harmed by alcohol and drugs is one of the hardest and most complex challenges we face as a country. The harms are real and will persist alongside the often-inspiring stories of lives saved. It ought to be the work of all of us, together, to improve our response – recognising: the rights of people, their families and their communities; the need to treat people with respect; and that all individuals will be supported on their own, unique, recovery journey"*
>
> (Scottish Government 2018: 4).

The current study examines areas of policy convergence and divergence, specifically exploring how drug use, diversion, and the Scottish context have been constructed within policy narratives. Perhaps the most telling example of how the context has been described relates to a UK Parliamentary Inquiry into Problem Drug Use in Scotland which reported in 2019. The inquiry sought to explore divergence between the UK and Scottish Governments and examine what legislative changes, if any, could be necessary to enable the Scottish Government to move toward implementing a public health approach to drugs. The report described Scotland's levels of drug-related deaths as a 'crisis' that required an urgent response and made several recommendations of potential solutions to the UK Government's reluctance to enacting legislative reform. These recommendations are outlined in detail in Chapter five, section two, which relate to

research question one, "*how are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?*".

3.4 Chapter summary

This chapter began by exploring how the Scottish context has been conceptualised within academic and policy discourses. Section two of the chapter looked at conceptualisations of nation and state, and indicated that some authors, such as Anderson (2016), have described a 'nation' as an imagined community that holds significant legitimacy in the hearts and minds of citizens. The chapter noted that, for Anderson, the emotional legitimacy of a nation is of political significance within a globalising world as it denotes rule by consent rather than rule as an implied threat of force. The notion of a 'threat' of force is used here to encapsulate the perspectives of Gellner (2008) who describes a state as a large, internationally recognised political authority with the infrastructure to enact social control. As outlined within section two, this notion aligns with Foucault's (2020)[11] descriptions of the carceral network, where a state ensures the compliance of citizens via institutions within and outside of the criminal justice system by setting up processes of surveillance and consequence. For Foucault (2020), the presence of prisons conveys state power, and the loss of liberty is one expression of the state's capacity to enact violence. Of course, as this chapter has also noted, the conceptualisation of citizen and state is complex within all territories, and the relationship between each is cut across by contextual factors. The chapter has proposed that the relationship between citizen and state is particularly complex within Scotland, which is a nation within a larger state.

The exploration of nation and state in section two of the chapter has been provided to note that, although there have been many attempts to define the Scottish context, there has been a lack of agreement within the existing academic literature. For example, Law and Mooney (2012) describe Scotland as a 'stateless nation', while Billig (1995) describes Scotland as a 'substate nation'. What each of these perspectives share in common is an unequivocal recognition that Scotland is a nation rather than a mere geographic area within the UK. As such, it is possible to conclude that Scotland is a political and/or conceptual *object*. The concept of the objectification of nation was also explored within the current chapter, which has highlighted that, for Law and Mooney (2012), Scottish social policy has often contained what they describe as a nation-policy dialect which centralises the concept of nation within policy discourse. Others, such as

---

[11] Originally published in 1975.

Kellas (1989), acknowledge that Scotland has distinct, separate and independent institutions, thereby legitimating discussion of difference within UK and Scottish policy discourses. This is of note to the current study, given the lack of research to examine how Scottish institutions shape diversion practices within the context. The notion of nationhood and nation provide a justification for an analysis of the Scottish context as potentially distinct and different from other UK nations.

Section two of the chapter also noted that, according to Keating et al. (2012), not all of Scottish policy can be conceptualised in the same way, and while there are areas of social policy divergence from the UK, there are also areas of convergence. Section three of the chapter examined an area of potential policy convergence by exploring a UK-wide recognition of a need to address drug-related health harms. The section aimed to demonstrate that, at points in recent history, there has been a convergence in UK and Scottish policy related to the 'recovery' concept. Yet, section three also pointed to nuanced differences and fluctuations through time, related to whether 'recovery' was used to mean abstinence from all illegal substances. The section illustrated that the UK Government's 2021 drug strategy has reasserted a return to an abstinence focus, constructing the use of all illegal substances as 'wrong'. Section three explored Scottish Government policy narratives and outlined a focus on harm reduction, choice, and rights. As such, the chapter has pointed to growing policy divergence between the two governments related to proposals to address drug use. Within this, the complexity of drug policymaking within Scotland has been examined, and the chapter has provided background to orient the study, noting that, while the UK Government set UK-wide drug legislation and policy, the Scottish Government have devolved responsibility for health and justice policy which includes drug strategy. This produces complexity around drug policy where it is not necessarily clear who has the power to enact what changes. The chapter has highlighted that, for some authors such as Ross (2020), the complexity of governance related to drug use in Scotland has led to delayed decision-making and a lack of policy progress.

The current study offers a contextually situated analysis that explores policy discourses related to drug use and diversion. Conceptualisations of the Scottish context are, therefore, core to the study focus. The existing literature explored in this, and the previous chapters has demonstrated that there is a growing recognition of a need for drug policy reform across the world. The current chapter has demonstrated the complexity of the Scottish context, where drug policymaking cuts across both reserved and devolved administrations, leading to discussion and debate related to policy

convergence and divergence. The chapter has suggested that Scottish arrangements are often understood via a comparative lens that sets the larger UK state as a 'norm'. The next chapter, chapter four, revisits the research questions and provides detail on the gap in knowledge that this study was designed to examine.

Chapter 4: Research strategy, questions, design and method

4.1 Introduction

As the previous chapter has explored, there has been a lack of research to examine the institutional and legal arrangements that surround diversion in Scotland. This chapter explores the research paradigm and outlines how Carol Bacchi's WPR approach has informed the orientation of the study. Section two of this chapter introduces the rationale for the methodological decisions. Theoretical frameworks that were detailed in Chapter two, section two, are briefly re-visited to demonstrate how these have influenced the methods selected. Section three then outlines the study design and strategy. Sampling and ethical considerations are explored in section four. Section five outlines the adjustments that were made to the study due to the COVID-19 pandemic.

The research questions were first set out in Chapter one, section five. However, the questions are provided again here as a reminder to the reader. The study sets out to answer the following research questions:

1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
2. To what extent do these discourses suggest that reform is required?
3. What types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?

4.2 Research paradigm and methodological orientation

This section returns to and consolidates the theoretical framework that was outlined in Chapter two, section two. Chapter two, section two outlined the theoretical framework that has influenced the study design but focused on how the theoretical framework understands and relates to concepts of knowledge, discourse, and policy. The current section focuses instead on how the theoretical framework relates to the methodological approach. As such, Chapter two, section two, was concerned with the underpinning ontology, whereas the current section focuses on the epistemology, and demonstrates how this has influenced decisions on the approach used within the study.

The study is aligned with the work of Carol Bacchi (2009), who suggests that policy proposals contain implicit logics concerning what a problem is considered to be, and the types of responses that appear both logical and legitimate to address it. Bacchi (2009) proposes that these implied logics can be identified by asking the following questions.

1. What is the 'problem' represented to be?
2. What deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the problem?
3. How has this representation of the problem arisen?
4. What is left unproblematic in this representation of the problem? Can the 'problem' be conceptualised differently?
5. What effects are produced by this representation of the problem?
6. How and where has this representation of the problem been produced, disseminated and defended? How has it been, or how could it be disrupted and replaced?

Within this approach, the term 'discourse' is highly relevant. As described in Chapter two, section two, a discourse is a set of discursive practices that have emerged as a *way of knowing* a problem, or a problem ontology (Mol 1999). Bacchi (2009) proposes a methodological framework that offers an opportunity to ask different questions and deconstruct dominant beliefs about a subject and context. The approach enables the researcher to identify and 'peel back' layers of meaning to create a new conceptual space where dominant ideas can be disrupted and replaced. Within her WPR approach, Bacchi (2009, 2018) proposes that policies are 'ontologically active' in that they produce and maintain ontological views.

As described in Chapter two, section two, the WPR is methodologically aligned with Foucault's (1991) work on problematisations, which proposes that governance processes classify, produce, and maintain social problems. Problematisation is about questioning how the processes involved in governance of a social phenomenon such as drug use relate to broader ideas about governing a society. Like Foucault's (1991) problematisation method, Bacchi (2009) advocates for a shift away from looking solely at perceptions about the phenomena itself, towards critically exploring what the prioritisation and de-prioritisation of parts of knowledge about the phenomena tells us about society, social control, and governmental intervention in social life (Bacchi 2018). The WPR's underlying theoretical premise proposes that processes of governance, embedded within discourses, create social actions which have lived effects. As defined in Chapter two, section two, discourse is a body of knowledge that produces an ontology

that shapes social realities, but it also creates a boundary around what is sayable and what appears relevant (Bacchi and Goodwin 2016, Bletsas and Beasley 2012).

Braudel (1949) suggests that moments where discourses fragment can fail to produce actual reform or lasting change because unseen 'currents of continuity' operate deep under the surface, embedded within institutional processes as well as cultural and structural conditions. The Braudelian perspective illustrates that alterations in discourses do not necessarily result in reform; 'alternative' knowledge can sit on the margins of the 'discursive frame', de-prioritised and obscured from view. Braudel (1949), Foucault (1971), and Bacchi (2009) insist, albeit in different ways, that 'subjugated knowledge' is often a hidden factor, deeply ingrained in national traditions, cultures, and institutions, which silently maintain the status quo and thus preventing lasting reforms from taking hold. Braudel and Mayne (1995) suggest that these under-acknowledged factors can create a magnetic 'pull back' to a pre-existing status quo by maintaining *'undercurrents of continuity'.* Bacchi (2009) proposes that the WPR approach enables a critical exploration of how history has shaped institutional powers, problem representations, and expectations concerning governance within a national context. As such, the WPR approach offers a methodological framework that makes it possible to identify and explore 'hidden', marginalised, and de-prioritised bodies of knowledge.

Although she acknowledges that much of the WPR has been inspired by Foucauldian thought, Bacchi (2009) identifies key areas of difference that are relevant to the current study. According to Bacchi (2009), the WPR embeds a Foucauldian genealogical analysis within the approach which examines how social phenomena emerge as particular problem representations. She suggests that Foucault's original genealogical method focuses upon identifying the factors, events, and conditions that created 'ontological turns'. Bacchi (2009) suggests that the WPR framework takes this a step further by placing dual emphasis on identifying the conditions that maintain the status quo, as well as those that support ontological turns. In this way, the WPR is a quest to identify power structures, events, and contextual conditions that have maintained continuity over time and identify those events or circumstance that could strengthen a case for reform. Bacchi (2009) proposes that the analysis should not merely be focused on discourse but, rather, on the effects of discourse and the sociohistorical conditions and structural factors that have allowed the discourse to emerge as a 'truism' and shaped the way a problem is framed. Bletsas and Beasley (2012) have proposed that the WPR creates a crucial conceptual space where it is possible to ask different questions. They suggest that the WPR's ability to disrupt dominant narratives enables a critical

exploration of the underpinning structures and socio-historical conditions that have influenced governance processes within a context. This involves actively questioning knowledge that has come to be taken-for-granted as true, and problematising the status quo. According to Chia (1996), discourses and knowledge are viewed as inherently unfinished. The focus of this form of post-structural analysis is to move beyond this instability to uncover the multiple realities that sit beneath. Chia (1996) suggests that analysing discourses can be considered political, because knowledge that has been under-acknowledged for a long period of time might well be buried for a specific reason, becoming part of a national mythology that eventually gets embedded within expectations about the *way things are.* Bacchi (2018) suggests that, while all knowledge creation is inherently political, the WPR can be considered particularly political in the way that it can render invisible processes of knowledge production and ontological posturing visible.

Policymakers are part of broader society and are influenced by dominant ideas and ideologies concerning the 'problem' they seek to address. Solutions proposed in policy produce social interactions, shape institutional responses, and produce governance processes via interventions (Bacchi 2009). This multi-layering of policy and action creates relatively stable processes of problem classification (Bletsas and Beasley 2012). Problem classification influences perceptions about the identity of those who experience social problems, and classification can produce identifiable 'cohorts' and individuals as *governable subjects* (Bacchi and Goodwin 2016). A WPR analysis is thus concerned with identifying the subject positions produced by the way a problem is represented in policies. The approach also critically explores the potential effects of policy representations, such as the denial or provision of services to address the human needs, that sit beneath the problem if constituted differently. The WPR focuses upon how problems have been framed, and why the contemporary framing appears to make sense within a specific society at a particular time.

The relationship between research evidence and policy is of importance to the focus of this thesis. The WPR approach used within the study enables a critical exploration of knowledge and power, looking to how both have shaped the 'discursive frame' that appears in policy. Several authors have pointed to the complexity of the 'evidence-based' policy paradigm. Resultantly, some exploration of the literature related to the 'discursive frame', that is the boundary around what appears as 'relevant' knowledge, is provided here. Cairney (2019) proposes that most policies use a slimmed-down version of a situation or social phenomenon that prioritises certain parts of information over others.

He states that policymakers often have responsibility for a certain area of policy, and only have the time to pay attention to a limited amount of available information. To get around this, Cairney (2019) proposes that policymakers often select shortcuts by relying on those trusted to advise and select the information that best aligns with their own belief systems. Cairney (2020) suggests that many complex policymaking environments consist of multiple institutions, networks, and beliefs related to the social phenomena that the policy seeks to address and to the socio-economic contexts. Because of the complex interplay of all of these factors, policy analysis, which seeks to disaggregate power structures and better understand the relationship between knowledge, context and power, is inherently political (Cairney 2021). Eveline et al. (2009), however, posit that by making the processes that have produced classifications of phenomenon, people and communities as 'problems', a WPR analysis can play a role in emancipatory politics. By examining both the boundary that has been drawn around what is 'sayable', otherwise referred to as the 'discursive frame', as well as the knowledge that lies beyond, it is possible to destabilise and counter what Eveline et al. (2009) describe as 'category politics'. The WPR thereby offers an opportunity to widen the 'discursive frame' and examine what de-prioritised knowledge may lie beyond. This makes it possible to question and de-stabilise the status quo, creating space for policy innovation (Bacchi 2018, Lancaster et al. 2015a, Lancaster et al. 2015b, Lancaster et al. 2017).

Silverman (2013) suggests that quantitative research methodologies are most suited to research which considers what, who, when, where, and how much questions. Silverman (2013) proposes that qualitative research methodologies are most suited to research that seeks to explore how a phenomenon has emerged. Creswell and Poth (2016) describe qualitative research as a process of inquiry that seeks to build a full, 'holistic' picture of a phenomenon and setting that is able to consider complexity in multiple ways. They suggest that a qualitative approach gives a solid basis for analysis, because it is able to take into account a range of factors and interpret meaning. Srivastava and Thomson (2009) propose that policy research often requires the use of multiple methods to provide a more in-depth analysis, while increasing the reliability of findings. According to Ritchie et al. (1994), qualitative research is particularly suited to four distinct categories of research: diagnostic, evaluative, strategic, and contextual. Given the focus of the current study is to provide detailed contextual analysis, qualitative methods were chosen because of their ability to be flexible and provide multiple mechanisms to interpret and analyse meaning. The following section, section four, will now introduce the research design and strategy.

4.4 Research design and strategy

The current section outlines the research design and strategy. As previous sections of this chapter have indicated, the current study uses Carol Bacchi's WPR approach. The approach is based upon a set of questions. These questions have been adapted to the topic and are as outlined below:

1. What's the 'problem' (of drug use, diversion, and the Scottish context) represented to be in official policy-related discourses?
2. What deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?
3. How has this representation of the 'problem' arisen?
4. What is left unproblematic in this 'problem' representation?
    a. Where are the 'silences'?
    b. Could the 'problem' be conceptualised differently?
5. What effects are produced by this representation of the 'problem'?
6. How and where has this representation of the 'problem' been produced, disseminated and defended?
    a. How has it been, or how could it be disrupted and replaced?
7. What are the effects of a re-conceptualisation?

Bacchi (2009) cautions that the WPR questions are not designed for use as a prescriptive process, but rather, should be used as a theoretical and analytical guide that informs thought. Several authors, such as Martin and Aston (2014) and Lancaster et al. (2015a), have demonstrated the suitability of the WPR to drug policy research. Other researchers who had used the Bacchian WPR approach before, had relayed, during informal discussions at conferences, that the approach had the tendency to generate messy, difficult to navigate findings. Rigour and transparency were two factors considered important to the study when reviewing potential research methodologies. Therefore, alternative methods were examined to identify approaches that could be adapted to suit the study aims. Consideration was given to what existing methods could be used alongside the WPR to create structure and ensure rigour. In 1985, Lincoln and Guba described the value of using data analysis software to generate an electronic audit trail to evidence analytic stages and proposed that this could increase the 'trustworthiness' of findings (Lincoln and Guba 1985). Bonello and Meehan (2019) propose that using the software package NVivo, alongside framework analysis, can be useful in introducing sequential, evidencable analytic stages and thereby increase both transparency and rigour. The framework analysis that they describe, was introduced by Ritchie et al.

(1994), and the structured framework technique (SFT) (Ritchie and Spencer 2002, Ritchie et al. 1994) is outlined below.

Familiarisation: This step involves the researcher becoming immersed in the data by reading and re-reading until themes begin to become apparent. When this occurs, the researcher makes a note of the themes to return to later.

Identifying a thematic framework: In this second step, the researcher uses the themes that emerged during familiarisation to form a loose coding hierarchy. This remains flexible as new themes emerge from a structured, analytic thematic analysis, conducted via line by line coding, sometimes using a software package such as NVivo (Bonello and Meehan 2019). This involves examining meaning, thinking using a combination of logic and intuition, and an understanding of the broader literature. When used in policy analysis, this stage also involves ensuring that the research questions are being addressed (Ritchie et al. 1994).

Indexing   In this third step, the researcher returns to the data again, this time identifying the sections of data that relate to each of the themes.

Charting   In this forth step, the researcher charts the data that have been indexed and arranges them in charts that capture the themes. Software packages such as NVivo are used to ensure that the data, once divided into thematic codes, can still be traced to their source. As such, the data and the case that it came from, remain identifiable (Ritchie and Spencer 2002).

Interpretation   In the final step of the SFT, the researcher maps and interprets the charts. This step enables the creation of a schematic diagram that helps the

researcher to interpret the data set. Spencer and Ritchie (1994) note that it is at this stage that the underpinning values of qualitative research are most evident: it is here that defining concepts and explanations are identified. Spencer and Ritchie (1994) state that software packages can also be used to annotate and capture reflective processes to ensure that the concepts and associations that emerge at this step reflect the original data, rather than the beliefs or values of the researcher.

Gale et al. (2013) demonstrate that the above structured framework technique (SFT) is particularly beneficial in policy development, programme evaluation and health research. According to Gale et al. (2013), one of the benefits of the SFT is that it can be used for either deductive, or inductive analysis, depending on the study aims. The current study did not feature a priori themes, nor was there a hypothesis identified at the outset. Because the aim was to allow meaning to emerge from the data itself, SFT, with its evidencable steps and in-built reflective processes, was assessed to be a good fit for the current research. Further, Patton (2014) indicate that the SFT can help when dealing with a large volume of data, such as multiple policy texts, lending itself to the identification of patterns and being able to display these in a clear way, thus maintaining rigour and aiding in the analytic process. Srivastava and Thomson (2009) advocate that qualitative research methods play an important role in social policy research and propose that the SFT is particularly valuable as it is able to deal with complexity while providing a clear analytic strategy.

Srivastava and Thompson (2009) explore similarities and distinct differences between framework and grounded theory. They suggest that the framework technique is more suited to research that is time-bound, where there are specific questions and only a few, loose a priori 'issues' that need to be addressed. Spencer and Ritchie (1994) state that the focus of a SFT analysis is to examine what is happening within a particular context. This does not rule out the fact that the analysis might generate theories (Spencer and Ritchie 1994). However, explanation rather than theory generation is the main focus of framework analysis (Spencer and Ritchie, 1994). The need for the current study was recognised following a report by the Advisory Council on the Misuse of Drugs (2015) that emphasised the importance of providing early interventions and routes away from criminal justice as part of a strategy to reduce drug-related harm. During discussions

within the Scottish Government's then Partnership for Action on Drugs, attended by the principal supervisor who oversees the current PhD, it was proposed that there was a need to explore what early interventions were being used in Scotland to divert people away from the criminal justice system at the points of arrest, prosecution or sentencing. Thus, there were some pre-existing issues that the study sought to address, but these were not fixed a priori themes, rather an acknowledgement that more detailed, Scottish-specific research was required. While the need for Scottish-specific research on diversion provided motivation and support for the study, there remained enough scope for inductive analysis, and no hypothesis was formed before the research commenced. While the study did not seek to identify theories, it also did not preclude the emergence of them. Thus, the SFT appeared to fit well with the study aims. Furthermore, the SFT was considered relevant to the current study because existing studies had demonstrated that it was a comprehensive and rigorous approach to dealing with complex qualitative data (Archer et al. 2014). The current study was time-bound and sought to make a timely contribution to policy development as well as academic knowledge. Srivastava and Thompson (2009) demonstrate that because the SFT is data-driven, it is well suited to time-bound research, and it enables rapid policy recommendations to be discovered. Their (2009) paper argued that the SFT provides a robust tool to examine policies and their effects.

As outlined earlier in Chapter four, section two, the current study is theoretically informed by and methodologically oriented towards Carol Bacchi's WPR approach. I conducted a literature search to explore whether the framework technique had ever been used alongside the WPR and found no articles to suggest that the two approaches had been used in conjunction with each other before. I then reached out to Carol Bacchi via email, who expressed interest in the approach that I was proposing. She confirmed that, to her knowledge, the two approaches had not yet been used together, and invited me to attend a conference to outline and discuss the new methodology that I was considering[12]. The approach, which I refer to[13] as the Modified SFT-WPR, is outlined in Figure 1 on the following page.

---

[12] Unfortunately, the conference which was to take place in Switzerland in 2020, did not take place due to COVID-19 restrictions. It has been rescheduled for August 2022 and I have been invited to speak at the event.
[13] The chapter now uses a first-person narrative to enable the researcher to demonstrate the steps taken during the research process.

Step 1

Familiarisation: becoming immersed in the primary data sources via reading until 'problem' themes become apparent

Step 2

Conducting descriptive line by Line coding in NVivo to capture 'problems' as thematic categories

Step 3

Returning to the data, identifying relationships and links between thematic categories

Step 4

Charting the data, arranging the data into charts that capture 'problem themes

Step 5

Mapping & interpreting the data, using the WPR questions

Step 6

Identifying & obtaining the documents cited in the primary data documents, hereafter referred to as the 'secondary' data sources

Step 7

Exploring the policy 'silences'. Conducting steps 1 – 3 on the secondary sources to identify knowledge that had been de-prioritised within the primary data sources

Step 8

Consulting with stakeholders to identify further documents that could enable further analysis of the de-prioritised knowledge identified at step 7

Step 9

Conducting steps 1 – 3 on the documents identified as the 'de-prioritised knowledges', referred to hereafter as policy 'silences'
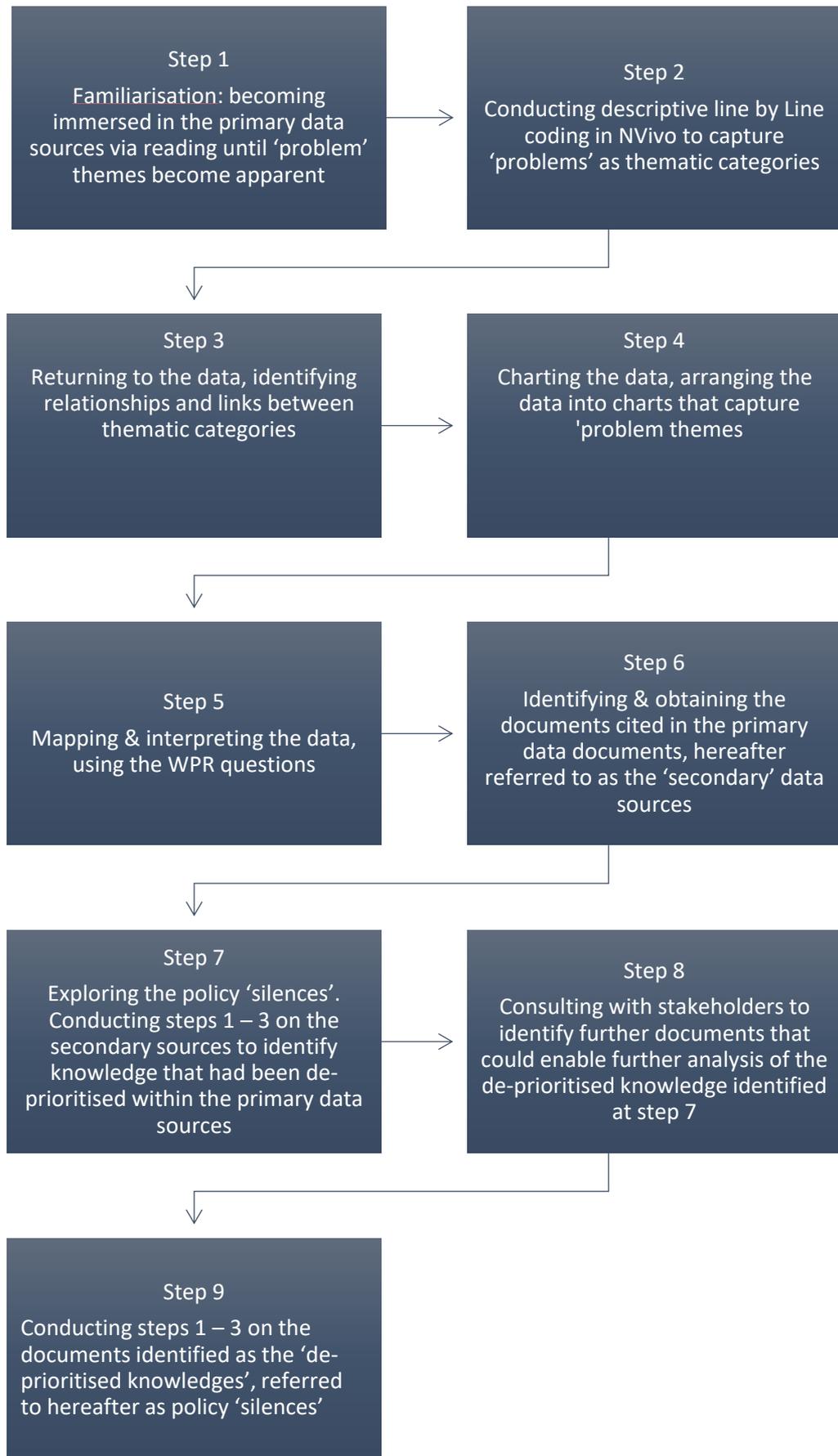
Figure 1. The Modified WPR-SFT Approach

The paragraphs that follow outline the tasks that were undertaken during each of the steps detailed in Figure 1. Further information on how data sources were identified will now be provided in Chapter four, section four, subsection one below. Subsequently, further detail on the research process and methods will be provided in Chapter four, section five.

4.4.1 Sampling decisions

This subsection outlines how documents were identified and selected for inclusion in the analysis stages noted above. Detail will then be provided to elaborate on the methods used during each of the research steps noted in Figure 1 on the previous page.

The documents selected for inclusion in the research were purposively sampled, which essentially means that the documents considered most likely to answer the research questions were selected for inclusion. These decisions were reached via collaboration between the researcher and a Research Advisory Group (RAG). The PhD was a 1+3 appointment, co-funded by the Economic and Social Research Council and Scottish Government. With the support of supervisors, it was possible to create a RAG within the Scottish Government. RAG membership included policy analysts and policymakers from within several departments of the Scottish Government, including Safer Communities, Substance Misuse Directorate, and Justice Analytic Services. In year one of the PhD, RAG membership was extended to include a member from Police Scotland and a drug policy activist who had lived experience of both drug use and criminal justice involvement. Those involved in the group signed confidentiality statements and were assured that the issues discussed in the group would be treated with sensitivity and care. The RAG group helped guide methodological decisions and share ideas during the research planning stage. The PhD was also supported by key stakeholders within the COPFS who helped sense-check research planning and offered insights and input which helped shape the project. The RAG group and stakeholders from within the COPFS and Police Scotland helped to purposively identify the documents considered most likely to answer the research questions, which are described as the 'primary data sources' and are outlined below.

1. The UK Parliament's Scottish Affairs Committee Inquiry Report into Problem Drug Use in Scotland (SAC)
2. The Scottish Government's Rights, Respect, Recovery Alcohol and Drug Strategy (RRR).

These two documents were considered particularly relevant to the research questions and to the analysis of drug policy within the Scottish context. The reasons that these documents were considered the most relevant, are now outlined.

The UK Parliament had established an inquiry into problem drug use in Scotland, which took place in 2018 – 2019. The inquiry, which reported on 4th November 2019, had expressed that Scotland should be considered to be in the midst of what the report referred to as a 'drug death crisis', and had recommended that the UK Government should work with the Scottish Government and take "urgent and radical steps" to address drug-related deaths by "implementing innovative evidence-based solutions with the scale and urgency required" (UK Parliament, 2019:10). The inquiry had sought evidence from academics, policymakers, police, prosecutors, politicians, third sector organisations, and people with lived experience. The report was considered, therefore, to represent a broad range of perspectives related to representations of the 'problem' of drug use in Scotland. While the document cannot be considered a formal policy, it falls under what Cairney (2019) refers to as a broad conceptualisation of policy, as it is a signal of intent. The report recognised that the UK Government Minister with responsibility for drug policy was not in agreement with the recommendations of the inquiry, and so this document was selected for its ability to allow a critical exploration of a variety of perspectives on drug use in Scotland. The document is not considered to be representative of the UK Government's perspective on drugs, rather, it was selected for its ability to offer insights into the types of interventions that have been proposed to address the 'problem' of drug use in Scotland, as well as to identify what that 'problem' is represented to be. The focus of the analysis is to critically explore proposed solutions to address the 'problems' as represented within discourse. The SAC had proposed diversion as a solution to address drug-related harm in Scotland. Because diversion is a key focus of the current thesis, this document was selected as a key primary data source.

The second of the selected primary data sources was the Scottish Government's RRR, which was published in 2018. The document was the Scottish Government's most up to date drug strategy at the time of conducting the analysis[14]. This document was considered highly relevant to the research questions and was selected for its ability to examine the case for reform, as it appears in Scottish Government policy. Both primary data sources addressed drug use, diversion and the Scottish context, as well as the case for reform. Both documents also outlined 'evidence-based' strategies that they proposed could be used to address drug-related harm in Scotland, with diversion being one of

---

[14] The PhD analysis was conducted between November 2019 and August 2020.

these proposed strategies. As such, the two documents that comprise the primary data sources were selected for their ability to confer insights into the Scottish context, as a key focus of the analysis was to use policy discourses as a gateway to a deep level of analysis that critically explored the processes of governance within Scotland as they relate to both drug use and diversion. As such, the documents were identified and discussed within the RAG and were selected for inclusion as primary data sources due to their perceived ability to answer the research questions.

As Figure 1 indicates, step six of the analysis involved the identification of 'secondary data sources'. The term 'secondary data sources' is used here to refer to the documents and sources of knowledge that were directly cited in the primary texts. To identify these documents, I returned to the primary data source documents which I had uploaded into NVivo12 during step two of the research process. I began to re-read each of the primary data sources and coded for sources that were mentioned in relation to the problem themes. I obtained the relevant cited sources and read these until familiarisation and immersion were achieved. Once I had a sense of the documents that were most relevant to the problem themes that I had identified through the analysis of the primary text, I moved on to step seven. Step seven involved using the secondary texts to identify areas of de-prioritised knowledge that had fallen outside of the 'discursive frame' of the primary texts. Once I had a sense of what some of these policy 'silences' may be, I reached out to the aforementioned key stakeholders from the Scottish Government, COPFS, and Police Scotland and asked for their help in identifying the documents most likely to give insight into the 'hidden' knowledge. The aim of these discussions was to enable the identification of documents that could address WPR question four, *"what is left unproblematic in this representation of the problem? Where are the 'silences'? Can the 'problem' be conceptualised differently?"* The secondary sources that were deemed most likely to answer this question, and also enable a critical exploration of the overarching research questions, are outlined below.

1. UK Parliament (2019) Written Evidence - Letter from the Lord Advocate for Scotland to The Scottish Affairs Committee.
2. Angiolini (2007) Oral Evidence to the UK Constitutional Inquiry, as detailed in Annex A. The Role and Functions of the Lord Advocate.
3. Wolffe (2016) The Justice Human Rights Day Lecture, verbatim speech transcript, Sir James Wolffe, Lord Advocate.
4. Wolffe (2017) Apex Scotland Annual Lecture: prosecution in the public interest, verbatim speech transcript.

5. The Articles of Union, 1707.
6. The Scotland Act, 1998.
7. The Police and Fire Reform (Scotland) Act 2012.
8. Police Scotland (2020) [draft] Drug Strategy.
9. Police Scotland (2021) Police Scotland Annual Police Plan 2021/2022.
10. Population Health Directorate (2021) *Medication Assisted Treatment (MAT) standards: access, choice, support.*
11. Crown Office and Procurator Fiscal Service (2001) *Prosecution Code.*
12. Omond (1883) *The Lord Advocates of Scotland from the close of the fifteenth century to the passing of the reform bill.* Edinburgh: David Douglas*.*
13. Stair (1759) The Institutions of the Law of Scotland: Deduced from Its Originals, and Collated with the Civil, Canon, and Feudal Laws, and with the Customs of Neighboring Nations. in, Edinburgh: Heir of Andrew Anderson.
14. Community Justice Scotland (2020) *National Guidelines on Diversion from Prosecution in Scotland.* Edinburgh: Community Justice Scotland.

Research steps one to three, as outlined in Figure 1, were conducted on the documents listed above, which comprise the 'secondary data'. In the next section, a detailed account is provided of how the primary and secondary data sources were analysed.

4.5 Method

The paragraphs that follow outline the tasks that were undertaken during each of the steps detailed in Figure 1. As with the original framework technique, during the first step of the analysis, I read, re-read, and annotated the first primary data source (the SAC report), until I became familiar with the document and began to identify 'problem themes'. I made notes of the problem themes to return to later. At step two, I uploaded the SAC report document into NVivo12, where I began to conduct line by line thematic coding. The initial codes that were identified were descriptive codes, rather than analytic, as is common with the comparable stage in the original SFT approach. At step three, I returned to the SAC report (primary data source one) and began a further iteration, focusing on identifying relationships and links between the thematic 'problem' codes. At step four, I began to arrange the data into a coding hierarchy chart which was arranged using a template created for this purpose, as outlined in Figure 2 below.
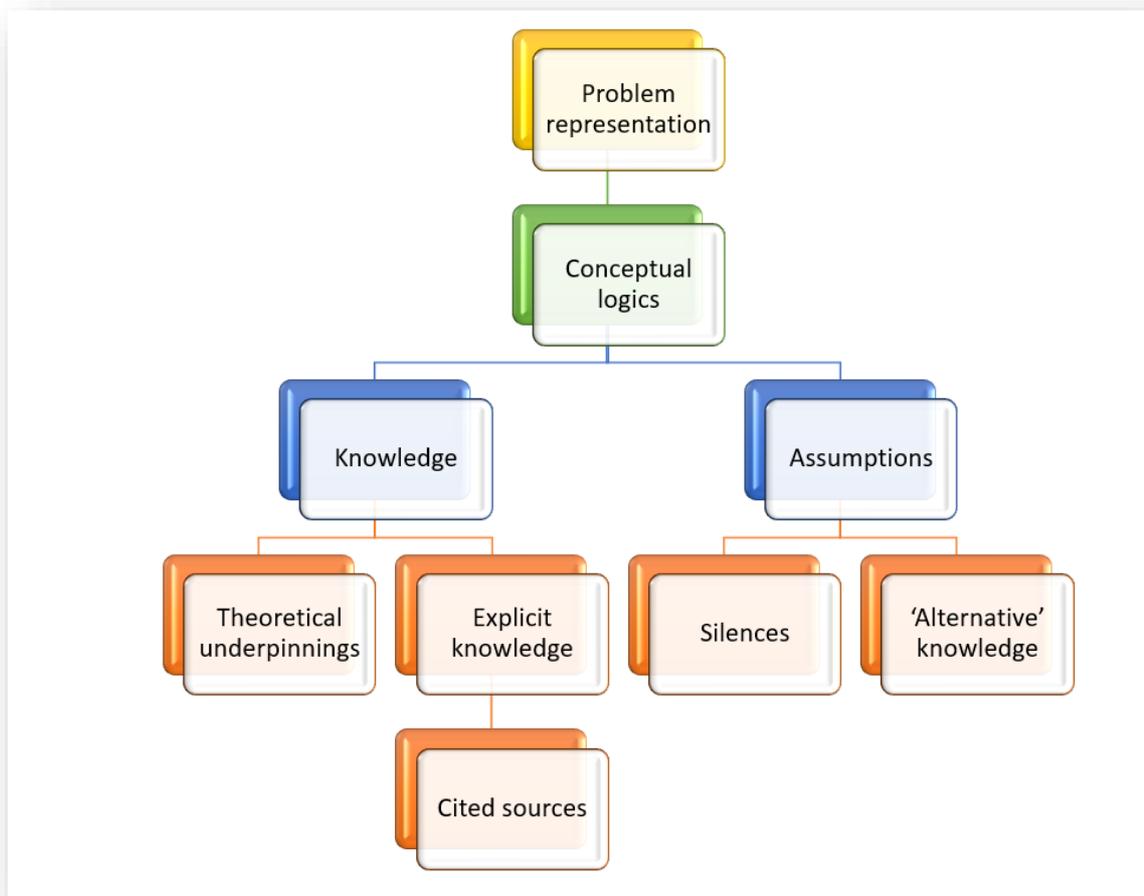
Figure 2. Coding tree

To aid in the analytic process, I used a combination of A0 handwritten mind-maps, Microsoft Word, and PowerPoint to visualise the data. Some examples of these visualisations are provided in Appendix 1. At step five, I began to map out and interpret the data using the WPR questions as analytic categories, as demonstrated in Figure 2 above. At step six, I moved deeper into the WPR approach and began to search for potential areas of policy 'silence'. To understand the landscape better, I returned to the NVivo file and began to code the document again, this time to identify sources cited within the primary data source as being important to the policy narrative or 'discursive frame'. The aim here was to identify how problem representations had arisen (WPR question three), what assumptions were holding the representation in place, and what potential areas of 'silence' could be considered to exist. To identify the potential 'silences' (WPR question four), I read, re-read, and immersed myself in the documents that had been cited within the primary data source. I then completed the WPR-SFT steps one to seven on the second of the primary data sources, the RRR. Once I had developed an

understanding of the knowledge that existed on the periphery of each of the primary data sources, I began to develop a sense of the potential 'alterative knowledge' that could exist (step seven). At step eight, I reached out to my stakeholder network, including the RAG, academic supervisors, and key informants within the COPFS and Police Scotland. I outlined research progress to stakeholders and asked if any could provide me with insights to secondary data sources that could enable an examination of the de-prioritised knowledge that I began to suspect lay beyond the periphery of the 'discursive frame'. This led to the identification of the secondary data sources, outlined in the previous section. The reader will note that many of these secondary data sources are historical documents. The purpose of including these historical documents within the analysis was to enable a detailed examination of the 'discursive turns' and contextual factors that had led to shifts in conceptualisation of the geographical context in which the work took place. The inclusion of the historical documents also enabled an exploration of the 'silences' (WPR question 4), that is the 'alternative knowledge', that lay beyond the discursive frame of the contemporary policy documents.

Once these documents had been identified and obtained, an analysis of the secondary data sources was conducted, using the steps outlined in Figure 3 below.
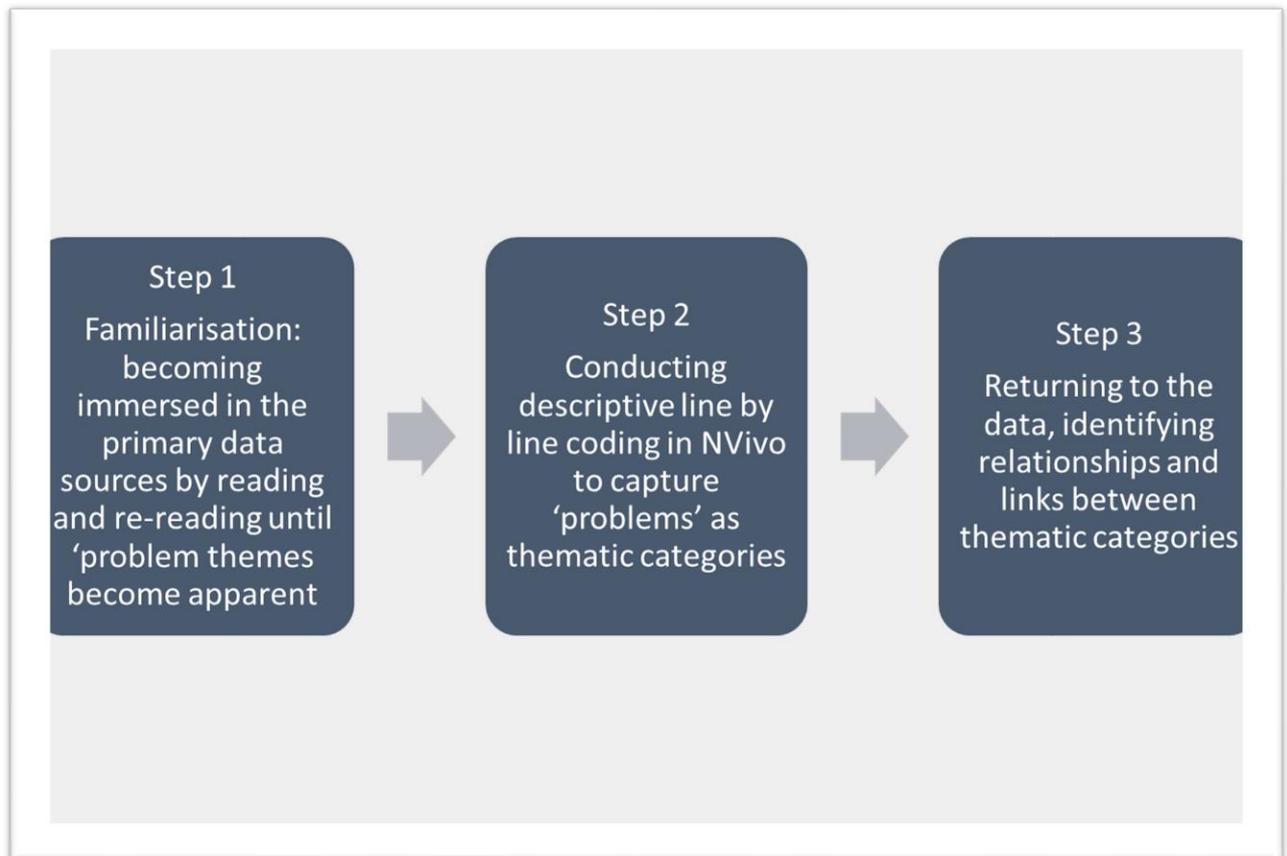
Figure 3. Analysing the secondary data sources

The fusion of the WPR and the SFT helped to ensure that the findings were data-driven and that there were demonstrable steps within the analysis. An exploration of a Bacchian-inspired PhD thesis had indicated that the Bacchian WPR approach sometimes blurs the boundaries between literature and analysis. However, the fusion of the SFT and the WPR ensured that there was a clear delineation between data and literature. I now move on to outlining the adjustments that were made to the original research strategy as a result of the COVID-19 pandemic restrictions of 2020 – 2022.

4.6 COVID-19 adjustments

In late 2019, a virus causing severe acute respiratory syndrome (SARS) sparked concern across the world (Fauci et al. 2020). By March 2020 the virus had been named COVID-19 and a global pandemic was announced. As Fauci et al. (2020:1268) describe, a period of uncertainty ensued, as governments and individuals began to "navigate the unchartered". In many parts of the world, including Scotland, countries went into 'lockdown'. This section explores the impact of COVID-19 restrictions on the current study, and the adjustments that were required to be made. In this section, the narrative shifts back into first-person to enable some personal and professional reflection on the impact of the COVID-19 pandemic upon the study.

Originally, the plan had been for two research stages to be conducted. The first stage, described above, was a Bacchian WPR analysis, and the second stage would have been to organise a knowledge exchange event involving data collection. I had planned that the knowledge exchange event would bring together policy actors, practitioners, academics, and people with lived experience of drug use and criminal justice, to discuss the topic of diversion and the potential for reform. Within the event, I had planned to use vignettes to stimulate discussion on diversion approaches that had been used in other countries to identify what elements of these approaches could be translated to fit the needs of the Scottish context. Vignettes are short case studies underpinned by narratives and often visuals such as photographs and video clips. Previous studies such as Phillips (2009) have suggested that vignettes can help overcome the political potency of divisive topics by transporting people into the depths of an alternative narrative. As such, I felt that the use of narratives, videos and stories related to alternative models would offer enough personal distance from the topic to make expressing opinion less daunting and to help creating a collaborative environment. I felt that this was particularly important given the potential for power imbalances between participants. Originally, I had

been of the view that this second research stage would allow an exploration of some of the findings that had arisen from phase one of the research.

Between 2018 and early 2020, many conferences had taken place, which had seemed to revitalise international discussions on diversion and drug policy reform. For example, I joined the Global Law Enforcement and Public Health Association and, along with two police strategists from the USA, I established and began to co-convene a global special interest group on diversion. The group served as a platform to exchange ideas and knowledge related to 'best practices' that had been identified in other countries. Discussions within the network made it possible to identify examples that I could develop into vignettes for use within the planned Scottish event.

In the months leading up to the planned knowledge exchange event, the COVID-19 pandemic began. The Scottish Government imposed lockdown regulations in March 2020 to reduce virus transmission, which meant that public gatherings were not permitted. The University of Stirling also quickly shifted to a 'work from home directive' which, with periods of flexibility in the summer of 2020 and autumn of 2021, largely remained in place until February 2022. During the 'work from home' period, I maintained stakeholder engagement via email and video calls. For example, I regularly had online meetings with stakeholders from Police Scotland, the COPFS, and the Scottish Government, maintaining the relationships that I had established during the early part of the PhD. I also met online with several people with lived experience who had an interest in the project. Throughout, I maintained regular contact with the aforementioned global network where I convened quarterly meetings and developed future projects. This continued focus on engagement meant that I had multiple platforms to explore emerging themes with key informants across multiple sectors within Scotland and that I could also explore how this fitted within a global picture. The meetings with Scottish stakeholders in particular, acted as a form of member-checking, providing opportunities to identify further reports or sources of information that could help to interrogate emerging 'problem' themes, conceptual logics and 'silences' in new ways. The Bacchian analysis had already begun to produce rich, detailed research findings, and the conversations with key stakeholders indicated the valuable contribution the research would make to policy and academic knowledge on Scottish diversion.

I chose not to use online stakeholder interviews in place of the stakeholder event that had been planned, based on a discussion with my supervisory team that confirmed the importance of continuing the in-depth documentary analysis which was providing new avenues worthy of exploration. This decision was also influenced by my awareness of

how much strain many professionals were under in the sector, a number of whom were involved in responding directly to the COVID-19 pandemic. While stakeholders were willing to meet with me for brief informal, mutually supportive discussions, the decision of the research team was not to impose additional pressure by requesting formal interviews.

The time of sudden change caused by the COVID-19 pandemic was not entirely negative. The time of change brought a brief interlude in the fast-paced nature of the drug policy and research realm. For a short time, the continual buzz of emails, travel and events slowed. As the world adjusted, it was possible to engage in a period of deep critical reflection which led to a re-evaluation of the study's progress and direction. During the initial lockdown, while citizens were unable to leave their homes, a moment of innovation occurred that shaped the PhD and led to a realisation that may otherwise have taken longer to emerge. Up until that point, much of the reading for the study had involved contemporary drug policy literature and sociological and criminological research. While the world slowed, the analysis identified a key period in Scottish history relevant to the 'silences' evident in the primary policy texts. The reflective, slower pace of the first UK lockdown (and the challenges of managing more intensive caring responsibilities with the schools shut alongside the PhD) offered space and time for more creativity and exploration. Creative data visualisation techniques were beneficial when lengthy spells of writing were more challenging to carve out due to caring responsibilities. The visualisation techniques, such as mind-maps and artistic representations, became precious moments where key research discoveries were made. A small selection of these representations is provided in appendices one to three.

4.7 Chapter summary

This chapter began by outlining the underlying epistemology that motivated the decision to use the WPR approach to address the research questions. The chapter built upon and developed the concepts that were first introduced in Chapter two, which explored existing literature related to the conceptualisation of policy discourse as a mechanism to develop insights into the contextual conditions that have enabled problem representations to emerge in relation to drug use. Section two of the current chapter outlined that a key focus of the WPR analysis used in the current study, was to critically deconstruct the relationship between power, knowledge, institutions, and the solutions proposed in policy. Section three outlined that, in a WPR analysis, the line between data, analysis and existing literature can become blurred due to a lack of transparency. Section three and four outlined the steps that were taken to create a rigorous, transparent approach to

both data and analysis involving the fusion of the WPR and Ritchie and Spencer's (2003) SFT. The method outlined in section five highlighted that the fusion of the WPR and SFT created a research process where it was possible to critically examine, explore, and deconstruct the policy frame in order to identify what knowledge had fallen outside of the policy frame. This chapter has referred to this de-prioritised knowledge as policy 'silences' and has demonstrated that stakeholder engagement activities, made possible by the RAG and by consulting with key informants, led to the identification of 'secondary data sources' that could be used to explore the 'silences', thereby addressing WPR question four, which is broken down into the following three sub questions, *"what is left unproblematic in this representation of the problem? Where are the 'silences'? Can the 'problem' be conceptualised differently?"* The aim of question four, as outlined throughout this chapter, was to enable a critical examination of how the Scottish context has been represented in policy discourses related to drug use and diversion. As described in the current chapter, the aim of the analysis and the chosen method was to create new conceptual space, where it is possible to ask new questions by showing how dominant policy logics could be de-stabilised by re-focusing on 'alternative', missing or de-prioritised knowledge about the context.

Chapter 5: The discursive frame and legal pluralism

5.1 Introduction

This chapter is the first of two chapters that present the study findings. The research questions that the study sought to address are laid out here to orient the reader toward the chapters that follow. As explored throughout, the study uses Carol Bacchi's WPR approach to examine the following questions:

1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
2. To what extent do these discourses suggest that reform is required?
3. What types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?

Bacchi's WPR approach is based on the below questions, which have been adapted to the study topic, as described in Chapter four, section four:

1. What's 'the problem' (of drug use, diversion and the Scottish context) represented to be in official policy-related discourses?
2. What deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?
3. How has this representation of the 'problem' arisen?
4. What is left unproblematic in this 'problem' representation? Where are the 'silences'? Could the 'problem' be conceptualised differently?
5. What effects are produced by this representation of the 'problem'?
6. How and where has this representation of the 'problem' been produced, disseminated and defended? How has it been, or how could it be disrupted and replaced? What are the effects of a re-conceptualisation?

The above questions are provided here again as a reminder to the reader, and to introduce the findings that follow. Bacchi (2009) proposes that, by using the above questions as an analytical framework, it becomes possible to move beyond policy logics toward a deep, critical examination of place, context, knowledge and power. The findings as they relate to Bacchi's questions are described in Chapter one, section five. The current chapter is concerned with Bacchi's WPR questions one, two and four, as detailed in Table 2 below.

Table 3 Chapter sections

WPR Question	Chapter section	Research Question
1. What is the 'problem' represented to be?	Chapter five, section two.	1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
2. What deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?	Chapter five, section three.	1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
4. What is left unproblematic in this representation of the 'problem'? Where are the 'silences'? Can the 'problem' be conceptualised differently?	Chapter five, section four.	2. To what extent do these discourses suggest that reform is required? 3. What type of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?

As Table 2 above states, Chapter five, section two is concerned with Carol Bacchi's (2009) WPR question one which asks, *'what is the 'problem' represented to be?'.* As Chapter four described, this question orients the analysis by helping to 'dig' beneath the surface. Policy proposals are taken to be signals for what is considered to be in need of change or reform or, in other words, the policy *object for change.* This section addresses the explicit problems that the policy texts represent, and the implicit problem representations that emerged from the analysis of policy proposals. Both components are explored as 'problem themes' using the method outlined in Chapter four.

Section three of this chapter moves on to outlining the assumptions and conceptual logics that were identified via the WPR analysis. The section is concerned with Bacchi's (2009) question two, *"what deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?"* and explores what beliefs about context and place require to be in place for the policy proposals to make sense. The ontological activity of the 'problem' representations is then examined, and the section explores what is assumed to be unproblematic in the representation of the Scottish context. Section three also speaks to Bacchi's WPR question three which asks, *"how has this representation of the problem arisen?"*[15] Section three presents a

---

[15]The reader will note that the WPR questions have not been used in sequential order but, rather, the order that aligned with the data and the emerging findings. Bacchi (2009) advises that the WPR should be used as a theoretical and methodological framework that sits behind the analysis, rather than being used in a constraining, linear order. This use of the framework is discussed further in Chapter four, section four.

genealogical analysis of the concept of the UK as a single, homogenous legal context and identifies key events that have shaped the identified narrative of context and place.

Section four of this chapter presents what Bacchi (2009) refers to as 'subjugated knowledge', or the policy 'silences'. The term 'subjugated knowledge' refers to knowledge that has been de-prioritised due to the constraints of the 'discursive frame' within current policy and the narrative held in place by the dominant logics that are set out in section three. Section four includes several subsections, as outlined below.

5.4.1 Scots Law
5.4.2 The constitutional principle
5.4.3 Independent public prosecution.

The above subsections present evidence related to the elements of Scottish arrangements that I suggest have been overlooked in policy logics due to the discursive effects of a dominant policy logic, namely, the concept that the UK operates as a single, homogenous legal context. This section identifies context-specific barriers to the policy proposals outlined in Chapter five, section two, and is concerned with research question two, *"to what extent do the analysed discourses indicate that reform is required?"* The section also presents a further dimension of 'subjugated knowledge' and explores knowledge related to Scottish diversion. As outlined in Chapter two, section five, the term diversion refers to interventions that provide a route to health, social care, or psychosocial interventions when people who use drugs come into contact with the criminal justice system. As has been outlined, diversion arrangements and approaches differ from one context to another. The findings that follow outline what form of diversion has been proposed within UK and Scottish policy discourses. The Bacchian analysis that is presented within the current chapter offers some exploration related to research question three, *"what type of diversion could be implemented to meet the needs of the Scottish context?"*[16]

An overarching theme of the entire chapter relates to the discursive effects produced by the representation of the 'problem' (Bacchi's WPR question five). As the chapter develops, the findings move beneath the surface-level 'problem' representations to outline the effects of the policy 'silences' and proposals. These will illustrate how beliefs about the Scottish context have led to an unintended de-prioritisation of Scottish-specific

---

The reader will note that the WPR questions have not been used in sequential order but, rather, the order that aligned with the data and the emerging findings. Bacchi (2009) advises that the WPR should be used as a theoretical and methodological framework that sits behind the analysis, rather than being used in a constraining, linear order.

knowledge. As such, the findings presented in this chapter move beneath policy logics, presenting evidence that renders assumptions and 'silences' visible to allow a deep level of critical exploration of place.

5.2 Policy proposals and 'problem' representation

This section outlines the main policy proposals or 'problem themes' that were discerned through the analytic process. As a reminder to the reader, in the Bacchian WPR approach, policy proposals are considered to be 'calls for action' that are ontologically active: the proposal communicates what the problem is considered to be. As such, policy proposals and problem representations are almost two sides of the same coin and thus inextricably linked. This section presents the policy proposals that will be critically deconstructed and explored throughout the thesis.

The UK Parliament conducted a SAC Inquiry in 2018 – 2019 to examine what reforms or interventions could be used to reduce drug-related deaths in the Scottish context. A brief description of the aims of the inquiry is provided here to orient the reader to the findings that follow. The SAC sought evidence in written and oral form from stakeholders across policy, healthcare, academia, the third sector, criminal justice, family members, and those with lived experience of drug use (UK Parliament 2019a). The inquiry was undertaken to identify what reforms could be used to reduce drug-related harm in Scotland, alongside a consideration of the impact of devolved health and justice policy and reserved drug law. The rationale and aim of the inquiry, therefore, indicates an implied logic, that there is something unique about drug use in the Scottish context that requires analysis, and that the 'problem' may have something to do with the complexity of governance within this context.

The inquiry, which reported in 2019, represented decriminalisation as an evidence-based response to Scotland's high-levels of drug-related health harms, and problematised the UK Government's unwillingness to consider legislative change. Please see the box below for an example of this.

| House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry page 43, section 114 | Decriminalisation of the possession of drugs for personal use is an evidence-based solution to problem drug use. There is a strong case for doing this across the UK, as decriminalisation is proven to address the root causes of problem drug use. Decriminalisation would also allow the government to focus efforts and resources on tackling the drug supply chain and providing services to support people who use drugs into recovery. |

The SAC report also represented policy divergence between the Scottish Government and the central UK Government as a problem that could be addressed via devolution of aspects of the 1971 Misuse of Drugs Act. The Scottish Government were represented as being willing to develop a public health approach to addressing drug-related harm, but the report indicated that aspects of the 1971 Act constrained the government's ability to achieve this aim. The SAC report made two nested proposals to address criminalisation and the divergence between the two governments:

1. The UK Government should formally decriminalise drug possession via an amendment to the UK Misuse of Drugs Act 1971;
2. The UK Government should devolve all or part of the Misuse of Drugs Act 1971 to the Scottish Government to enable drug law reforms to be made via the Scottish Parliament in Holyrood.

The above proposals were represented as being able to overcome political differences between the two contexts, the UK and Scotland. These logics suggest that the underlying problem was considered to be political in nature. The SAC report, however, concluded that the UK Home Office had been consulted during their inquiry and had been unwilling to consider legislative reform.

House of Commons Scottish Affairs Committee (SAC), UK Parliament, Problem Drug Use in Scotland Inquiry, page 44, section 110	In oral evidence to us, the Home Office Minister reiterated that he is "not supportive of the decriminalisation push".

To overcome political unwillingness to consider legislative reform and enable the Scottish Government to develop a tailored approach to drug-related harm within the context, the SAC proposed devolution of all or part of the Misuse of Drugs Act 1971, as the below excerpts illustrate.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 4, section 2.	Drugs policy is an issue on which the UK and Scottish Governments take divergent approaches. The UK Government treats problem drug use primarily as a criminal justice matter, whereas the Scottish Government believes it should be addressed as a health issue.
House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 44. Section 111.	The Scottish Government told us that if the UK Government will not decriminalise drugs across the whole of the UK, then drugs laws should be devolved to allow the Scottish Parliament to take this approach.

Research question two asks, *"to what extent do the analysed official policy discourses suggest that reform could be required?"* These findings already point to an explicit representation of a need for reform. Bacchi (2009) cautions, however, that the policy logics that are identifiable at the preliminary stage of a WPR analysis often have deeper meaning nested within, and she advocates for continuing to unravel complexity by working through the WPR questions. To that end, the analysis continued, this time with the aim of identifying what type of reforms were being proposed, and how well the proposed reforms aligned with the pre-existing arrangements within the Scottish context.

As the excerpts presented illustrate, the UK Misuse of Drugs Act 1971 was represented to be a problem, because it holds in place a system of criminalisation. Criminalisation was represented as a barrier to enacting a public health approach to reducing harms such as drug-related death. The Scottish Government was represented as being forward thinking and ready to enact reform, where the reserved nature of the UK Misuse of Drugs Act 1971 and the UK Government's focus on law enforcement was considered to be a barrier to reform. The proposal to devolve aspects of the Misuse of Drugs Act 1971 to the Scottish Government was considered to enable a shift toward reducing arrests for drug possession offences in favour of providing routes to health-based interventions. The underlying assumption that held this proposal in place was that if the Act were to be devolved to the Scottish Government, the Scottish Government would then be able to decriminalise personal drug use within Scotland as part of a public health approach to address drug-related harm.

The SAC concluded that a shift toward decriminalisation would be an evidence-based strategy capable of reducing the stigma associated with drug use, and reducing barriers to accessing services, leading to reduced numbers of drug-related deaths and accidental overdose. In terms of how this representation of the 'problem' has arisen and what makes it appear as logical, relevant, and timely, the analysis found that the SAC report directly cited examples from other countries that have enacted drug law reform to create de jure decriminalisation. As outlined in Chapter two, section five, the type of de jure decriminalisation being described here means that drug possession is no longer deemed a criminal act. This means that when people come into contact with police and are found to be in possession of small amounts of illegal drugs, a referral can be made to an administrative body. The administrative body may have the ability to use non-criminal sanctions, or the contact might result in a decision of non-action or case dismissal, depending on the model of decriminalisation that is used. This form of legislated reform, de jure decriminalisation, was proposed within the SAC as the 'ideal' mechanism to

reduce drug-related harm in Scotland as part of a broader public health approach to drugs. The SAC report, however, identified that the UK Government were unwilling to reform the UK Misuse of Drugs Act 1971 at a central level, and were unwilling to devolve this law, or aspects of it, to the Scottish Government. To that end, the SAC made a second, nested proposal, that the Scottish Government should roll out police diversion across Scotland as a form of de facto decriminalisation. This is where drug laws remain in place, but arrest is deprioritised. The SAC report concluded that the UK Government's reluctance to consider legislative reform lacked an explicit evidence base, proposing that its position appeared to be based on political and ideological grounds.

A further proposal was made within the SAC, this time to overcome the 'problem' of the UK Government's unwillingness to consider drug law reform, or devolution of the Misuse of Drugs Act 1971. The report proposed that de facto decriminalisation involving the de-prioritisation of arrest for drug possession offences should be rolled out across Scotland to address this disconnect or policy 'problem'. Again, drawing on the evidence-based policy paradigm, the SAC report gave examples of the police diversion schemes that were operating as a form of de facto decriminalisation in parts of England. The report concluded that these proposals had been discussed with the UK Home Office Minister with responsibility in this area, who was supportive of de facto, but not de jure decriminalisation, as the box below demonstrates.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 44, section 120.	[…] the responsible Home Office Minister, was supportive of these schemes, calling Durham's Checkpoint scheme "a wholly laudable project", adding that "if it results in an overall reduction in crime and offending, it seems sensible to me". The minister also appeared relaxed about the prospect of de facto decriminalisation schemes being implemented more fully in Scotland.

De facto decriminalisation was therefore proposed as a mechanism capable of reducing the harms to the individual by changing the approach to law enforcement, without requiring more fundamental legislative change via de jure mechanisms. Additionally, de facto decriminalisation appeared to be more politically 'palatable', and therefore suggested as a way to circumnavigate the political complexities of the drugs issue. Please see below for relevant excerpts.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland	Despite the current legal context there are some areas of the UK where de facto decriminalisation is currently taking place. De facto decriminalisation means that drug possession is effectively decriminalised.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 43, section 115.	
House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 43, section 115.	The laws making drug possession an offence remain in place, but a decision is taken not to take legal action, and divert offenders towards treatment or civil penalties instead of criminal sanctions. We looked at two such systems, operated by Durham Police and Thames Valley Police, to further evaluate the effectiveness of decriminalisation, and see whether its benefits could be delivered under the current legal regime.

As the above excerpts show, diversion was represented as a police-led intervention and a form of de facto decriminalisation. Diversion was proposed to enable a form of decriminalisation of drug possession to occur in a context where drug-law reform would be considered unlikely due to political constraints. The WPR framework rests on the premise that by working backward from the proposed solution, it is possible to identify what the problem is represented to be. If police diversion is the solution, then non-implementation of police diversion is the problem representation.

The problem representation (non-implementation) appears logical because the diversion schemes noted in the example above allow English police officers to use their pre-existing powers of discretion to adapt how they use Community Resolutions (Spyt et al. 2019). As described in Chapter three, community resolutions are a police disposal that police officers in England can use in cases of low-level offending, where officers believe that a referral to a health or support service would be most likely to reduce future offences. The success of police diversion schemes in other parts of the UK, and indeed across the world, makes the proposal within the SAC report that they be rolled out across Scotland appear timely and relevant. The fact that England and Scotland share the same drug law, the Misuse of Drugs Act 1971, makes the proposal appear logical.

5.3 Assumptions and conceptual logics

This section presents findings related to Bacchi's (2009) WPR question two, by exploring the deep-seated conceptual logics that sit beneath the policy proposals and 'problem' representations. This section is concerned with representations of *place and context* and how they relate to diversion proposals.

The SAC proposal is outlined in the box below.

| House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry page 43, section 115. | Despite the ***current legal context*** [emphasis added] there are some areas of the UK where de facto decriminalisation is currently taking place. De facto decriminalisation means that drug possession is effectively decriminalised. The laws making drug possession an offence remain in place, but a decision is taken not to take legal action, and divert offenders towards |

| | treatment or civil penalties instead of criminal sanctions [...] [emphasis added]. |

The proposed solution, police diversion as de facto decriminalisation, contains an implicit problem representation. It problematises the Scottish Government's lack of progress toward implementing the type of diversion schemes that have been established *"in some areas of the UK"*. The problematisation makes sense because of an underlying conceptual logic, which will now be outlined. The statement (above) *"despite the current legal context"* is ontologically active: it produces a policy 'truism' in which it is implied that the UK is a single, homogenous legal context. The assumption appears logical because all UK nations operate under shared drug legislation, the Misuse of Drugs Act 1971. However, the concept of the UK as a single legal context does not take into account that the UK is a pluri-national state comprising several sub-state nations which each have unique legal institutions and legal systems. In the above excerpt from the SAC report (2019), the presupposition that the UK operates as a homogenous legal context was found to have a discursive effect: the statement de-prioritises context-specific knowledge and thereby creates what Bacchi (2009) refers to as a policy 'silence'. In this case, the de-prioritised knowledge contains 'alternative' knowledge about how Scotland's criminal legal system operates, which is relevant to the police diversion proposal. Bacchi (2009) suggests that the de-prioritisation of knowledge is rarely deliberate, nor ideological, but rather, reflects the views and conceptualisations that dominate within a society at a particular time. The statement above, in which the UK is assumed to be a single legal context, therefore, produces a 'logic' of homogeneity.

The portrayal of the UK as a homogenous legal context appeared first in the SAC report of 2019. However, following the publication of the report, several 'drug policy constellations' could be observed, and events were held nationally to promote English-style police diversion schemes as mechanisms to enable the Scottish Government to take a public health approach to drug use by first reducing the criminalisation of drug possession. As such discourses grew, the 'window' to describe, analyse and explore differences between the criminal and legal systems of UK nations appeared to wane.

A genealogical analysis was conducted to explore the concept of the UK as a homogenous, single legal context. The focus of this was to examine 'alternative' knowledge related to how the Scottish criminal legal system operates, to explore under-acknowledged barriers and facilitators to implementation of police diversion as de facto decriminalisation in Scotland. As Bacchi (2009) notes, the WPR confers an opportunity to examine how history has shaped contemporary practices and beliefs about the *way*

things are which includes perceptions of context and governance. To explore 'alternative' knowledge related to Scottish diversion and the barriers/facilitators for implementation, an archaeological 'dig' for 'alternative' knowledge was conducted. The aim of this endeavour was to explore differences between English and Scottish criminal justice arrangements and potential differences within the 'legal contexts' of the two nations.

This section now turns to a genealogical analysis that relates to WPR question three, *"how has this representation emerged?"* The focus of the remainder of the section is thereby upon the processes and events that could be said to have shaped the 'discursive frame' by producing dominant discourses of unity where differences in the Scottish legal system appear not to exist. The genealogical analysis explored the processes involved in the UK coming to be conceptualised as a single legal context. The genealogical analysis traced what is referred to here as *the logic of homogeneity* to the discourses of union that existed during the reign of King James VI of Scotland.

Many historians, including Broadie (1997), Geuss (2012), and Hoyle and Ramsdale (2004) suggest that King James VI of Scotland's legacy laid the foundation for the now United Kingdom of Great Britain. Omond's (1833) analysis of historical records indicates that there had been many attempts to amalgamate the nations of England and Scotland prior to the life of King James VI. However, Broadie (1997) and King James' political writings (as reprinted by Guess, 2012), note that King James VI of Scotland was born a direct heir to the Scottish throne and a distant heir to the English throne as a result of his grandparent's lineage. Historical accounts suggest that, when Queen Elizabeth I of England died, she had no living children and so the English throne passed to her cousin, King James VI of Scotland (Broadie 1997, Campbell 2010, Hoyle and Ramsdale 2004, McMurray 2018). According to Campbell (2010), King James VI faced considerable controversy as he journeyed south to claim his place on the English throne. However, Campbell (2010) narrates that the King was a wordsmith and poet who was liked and loathed by many and, as he travelled, he spoke with multiple audiences about his dream to create a union between the two nations. The King's words are captured in his political writings, edited by Geuss and reprinted in 2012.

> *"When I speak of a perfect union, I mean such a general union of laws as may reduce the whole land, that as they have already one Monarch, so they may all be governed by one law"*

> (James VI and I, edited by Geuss 2012).

McMurray (2018) suggests that many symbolic discourses of union were established during this time, where, between 1603 and his arrival in England in 1604, the King produced several items of enduring iconography. McMurray's (2018) research suggests that King James gave out coins of union in marketplaces which were emblazoned with a thistle on one side to represent Scotland and a rose on the other to represent England. This, according to McMurray (2018), gave an early impression of the two nations as merely one side of the same coin. The King is also recorded as having created the Union Jack flag, which is used to this day to represent the UK. McMurray (2018) suggests that artists were commissioned to produce the flag quickly during the King's progress to England to represent the English and Scottish flags nested within each other as one. Campbell (2010) suggests that the King's symbolism of the new united nation as natural, pre-destined, and God-given, was carried forward by the King James Bible, which contains a narrative of the new nation and the divinity of union as a foreword. As such, the symbolic discourses of national unity could be considered to predate the parliamentary union that formally created the UK just over a century later.

The genealogical findings presented in this subsection indicate that the concept of the UK as homogenous is not new. The origins of this concept go back to the strength and endurance of the symbolic iconography prevalent during the early seventeenth century, thereby responding to Bacchi's question three, *"how has this representation arisen?"*. The above findings demonstrate that history can have a bearing on how a context is conceptualised and represented within policy. However, as the literature presented in Chapters two and three suggest, history is not necessarily a linear progression of events and, as Foucault (1971) has noted, the dominant way of viewing history is often shaped by power structures. This suggests that in the UK the dominance of a narrative of unity has led to the de-prioritisation of Scottish specific research. This brief genealogical analysis acts as an introduction to the more detailed findings that follow in Chapter five, section four, which specifically examine the 'silences' that exist outside of the current 'discursive frame' which emerged from the analysis once the logic of homogeneity had been explored and destabilised.

5.4 Policy 'silences'

The findings presented in the current section are concerned with Bacchi's WPR question four, *"what is left unproblematic in this representation? Where are the 'silences'?"* This section is divided into three subsections: Scots Law, prosecution, and the Scottish Lord Advocate. Each of these subsections represents a body of 'subjugated' or 'alternative' knowledge about Scottish institutional and legal arrangements that relate to the *police*

diversion as de facto decriminalisation proposal. The rationale behind the inclusion of this 'alternative' knowledge was that it speaks to both Bacchi's question four, the 'silences' that sit outside of the policy frame, and relates to research questions two and three, *"to what extent do the analysed discourses suggest that reform could be required?",* and *"what type of diversion could be implemented to meet the needs of the Scottish context?".*

The first policy 'silence' that will be explored relates to Scotland's system of law, Scots Law. The genealogical analysis presented below, suggests that the Scottish system of law differs from the form of law practiced in the English context, where Common Law is used. This is relevant to the *police diversion as de facto decriminalisation proposal* because, as Hudson (2014) and Winfield (1928) demonstrate, there is only a minor distinction between law and law enforcement in common law. According to Hudson (2014), law reform can occur in two ways within a common law system, either via democratically agreed process in parliament, or via adapted law enforcement practices such as the de-prioritisation of arrest. Caenegem and van Caenegem (1988) suggest that in a common law system, altered policing practices highlight the degree of flex that is possible within the legislative framework. Hudson (2014) proposes that, when there is strong public support for altered law enforcement in specific circumstances such as drug possession offences, police officers can lobby police authorities who have a degree of power to push government ministers to consider the case for changes to law and legal policy. Indeed, Bacon's (2021) study illustrates that, in parts of England, police officers are taking a key role in pushing forward the political agenda for decriminalisation of drug possession due to the role they are playing in creating publicly supported diversion schemes.

More recently, this has led to the English Royal College of Policing pushing forward a public health agenda in policing. Given the background and the alignment with England's legal context, the *police diversion as de facto decriminalisation proposal* as an 'alternative' to legislative reform, makes sense. However, Scotland does not operate common law, and instead operates its own form of law, Scots Law. The WPR analysis suggests that Scot's Law is a notable area of policy 'silence' that has been taken to be unproblematic due to the dominant conceptualisation of the UK as a single, homogenous legal context. An example of this will now be provided. In oral evidence given to the SAC committee that produced the SAC report (as explored in Chapter five, section three), the (now former) Lord Advocate for Scotland, Sir James Wolffe provided the below statement.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, Oral Evidence, Q354.	I suppose, in the context of decriminalisation, it is just as important that I make clear that I operate within the framework of criminal law that parliament has laid down.

Read from a common law perspective, the above evidence may appear as an obvious statement, and the above statement was not considered relevant enough to appear in the final SAC report. Without context-specific knowledge, the meaning implied in the above statement is lost. As subsequent sections of this chapter will demonstrate, in Scotland, law and legal practices cannot evolve without amendments being agreed via parliamentary action. I now turn to explore the policy 'silence' by outlining 'alternative' knowledge related to Scots Law. The subsection that follows, begins by taking the reader back again to the reign of King James VI to highlight the significance of this time in history to conceptualisations of both context and law.

5.4.1 Scots Law

The section begins by outlining data related to historical events that have shaped discourses related to Scots Law and conceptualisations of the context. From there, the section provides detail concerning the aspects of Scots Law that present under-acknowledged barriers to the police diversion proposal outlined in the SAC (2019) report.

Chapter five, section three, explored King James' legacy in producing symbolic discourses of union so strong, that to this day, UK nations are sometimes considered to have a shared history that supersedes that of its substate nations. However, as Reid and Zimmermann (2000) have pointed out, the process of nation-building is complex and lengthy, and the concept of the UK as it is known today developed over time. Reid and Zimmermann (2000), and Smyth and McKinlay (2011), have proposed that, after the King's court departed for London in 1604, a parliamentary union between England and Scotland appeared inevitable and preparations began in both countries. King James VI and I's own political writings (as edited by Geuss in 2012) suggest that the King was passionate about law. Many legal scholars and historians alike have proposed that Scots Law should be considered important to Scotland's national identity and have argued that the principles on which it is based characterise the country's culture and history (Clancy 2018, Farmer 2005, Levack 1975, MacQueen 1995, Walker 1954, Wormald 2009). Scots Law has been described as a unique blend of Roman, Canon, Feudal and Civil Law influences (Farmer 2005). In his political writings (reprinted by Geuss in 2012), King James VI expresses his concern with the feudal aspects of Scots Law which he proposed

would present a threat to central rule. In his analysis of historical parliamentary records of the time, Omond (1883) suggests that, after his coronation, King James VI returned to Scotland only a handful of times, and that the King's absence strengthened old alliances. Omond (1883) proposes that the King's absence, and the feudal aspects of the Scottish legal and political system, meant that parts of Scotland remained relatively self-governing.

The SAC report indicates a prevailing logic of homogeneity that appears as a policy 'truism'. This stimulated a further genealogical analysis to examine 'ontological turns', times in history where the context had been conceptualised differently. The aim of conducting this genealogical analysis was to critically examine the conditions and factors that may have stimulated re-conceptualisation. The genealogical analysis found that there was a great deal of debate about the English Common Law and Scots Law systems in the early nineteenth century (Smyth and McKinlay 2011). Details of this debate will now be provided. According to Smyth and McKinlay (2011), by 1832 several members of the Faculty of Advocates, who were collectively referred to as Whigs, believed that English Common Law was superior to Scots Law and that the system should be reformed. The Faculty of Advocates was then, and still remains, a regulatory body (Smyth and McKinlay 2011). The Faculty of Advocates (2022) describe Advocates as highly trained lawyers who have taken the 'Kings Oath' and who can sit in the highest courts in the land. Scottish Lord Advocates are often recruited from within the faculty, although the Faculty have no say over this appointment[17]. Another group of influential Edinburgh-based lawyers in the early nineteenth century are described by Smyth and McKinlay (2011) as being vehemently opposed to the notion of English Common Law as being superior, arguing that Scots Law was fundamentally important to the Scottish national identity. Kidd (2003) suggests that the Whig perspective was an expression of Anglicisation, which was viewed by the latter lawyers as being a threat to the uniqueness of Scottish institutions and cultural heritage. According to Smyth and McKinlay (2011), many were opposed to the assimilation of Scots law into the English system because of a view that Scots Law and its development was the legacy of the Scottish enlightenment and a reflection of beliefs about the relationship between citizen and state[18]. Broadie

---

[17] Currently, the Scottish First Minister makes a recommendation to the Queen regarding the appointment, which, once royal approval is obtained, must be agreed within the Scottish Parliament (The Scotland Act 1998, S48(1)).

[18] The Scottish enlightenment is thought to have occurred in the eighteenth century and is described as a period where the bounds of authority loosened enough to make it safer to openly debate governance, society, and law, without fear of recrimination. Despite this, some thinkers risked a great deal when speaking publicly, as anti-treason laws continued to be enforced and public hangings continued to occur.

(1997) suggests that the notion of Scotland as a rights-based nation, which are present within the Scottish Government's (2018) RRR, emerged from deliberations over Scots Law during the Scottish enlightenment.

According to Omond (1883), Scottish Lord Advocates had traditionally played a key role in maintaining diplomatic relations between the English and Scottish thrones. His (1883) research suggests that the Lord Advocate, Sir James Dalrymple, the Viscount of Stair, also played a key role in the law commissions that were established to codify, preserve, and maintain Scots Law in the event of a union with England. Stair's (1759) publication *The institutions of law of Scotland deduced from its originals, and collated with the civil, cannon and feudal laws and with the customs of neighbouring nations* is considered to have prevented assimilation of Scots Law. Omond (1883) suggests that, after the Union of Crowns, the Lord Advocate continued to act as a state-level diplomat, amassing considerable power.

5.4.2 The constitutional principle

The UK was formed via a 1707 Articles of Union and these articles form the UK constitutions. The analysis conducted for the current study found that section XIX of the 1707 Act contains specific provisions to preserve the institutions of the law in Scotland. Section XIX also preserves the independence of public prosecution and creates a role for the Lord Advocate, who is responsible for maintaining Scots Law and preventing assimilation into the English common law system.

In his written evidence to the SAC committee, the former Lord Advocate, Sir James Wolffe stated the following (excerpt below).

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, Lord Advocate's evidence, Q339, paragraph 7.	I cannot change the law. For practical reasons, as well as reasons of constitutional principle […]

While the above evidence did not appear in the final report, the analysis conducted for this study found the above excerpt to be very relevant to the 'subjugated knowledges' that seem to hold dominant policy logics in place. Scots law cannot evolve via legal precedents, and section XIX of the 1707 UK constitution confers a responsibility on to the Lord Advocate to ensure that all prosecution policy and law enforcement activity in Scotland complies with UK law. As such, the Lord Advocate, who is also Head of

Prosecution for Scotland, cannot approve any alteration to law enforcement practice that amounts to a deviation from the laws outlined in the UK Parliament.

Scots Law, and the fact that it does not evolve via legal precedents, was found to be the first context-specific barrier to police diversion being used as a form of de facto decriminalisation in Scotland. The Lord Advocate's constitutional duty, embedded within section XIX of the 1707 UK constitutional document, suggests a further contextual barrier to police diversion operating as a form of de facto decriminalisation. The devolved Scottish Parliament was formed via the passing of the Scotland Act 1998, which forms the Scottish constitution. The analysis of the Scotland Act 1998 revealed a further constitutional barrier to de facto decriminalisation, where this time the Scottish constitution conferred a duty for the Lord Advocate to ensure that Scottish prosecution and policing policies do not amount to a deviation from UK law. These two constitutional duties were loosely hinted at within the former Lord Advocate's oral evidence given to the SAC inquiry, as outlined below.

| House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry SAC Oral Evidence Transcript, Lord Advocate, Q372, paragraph 1. | […] the process of putting legislation through, whether by regulation or primary legislation, ensures a process of democratic accountability. It provides a framework within which the policy issues can be properly thought through with full ramifications, and that can be scrutinised by legislators such as yourself. In a sense, the starting point for me is that I work within the current legal regime. If legislators change the regime, I will work within that regime and exercise my functions appropriately. |

The above excerpt outlines the Scottish approach to law and law enforcement, and while it hints at the Lord Advocate's obligations, does not detail what these are nor how they relate to the context, including the diversion proposal. Within Scots Law, legal change cannot occur via altered legal practices, at least not if they are considered to deviate from legislative frameworks. As the above excerpt suggests, the Lord Advocate also has a constitutional obligation, this time to the Scottish Government, to prevent de facto decriminalisation. As such, the constitutional principle refers to both the UK constitution (the 1707 Act, section XIX) and the Scottish constitution (the 1998 Act, section 29).

Despite this evidence having been presented to the SAC committee as part of their inquiry, it was not considered relevant enough to the recommendations and findings for it to appear in the final report. As such, the relevance of the constitutional principle fell outside of the 'discursive frame'. It can thus be argued that the logic of homogeneity, where it was assumed that the UK operates as a single legal context, overshadowed the importance of this. The 'subjugated', 'alternative' knowledge presented within this section

identifies a barrier to de facto decriminalisation that is specific to the Scottish context. The context-specific data presented here suggests that one of the discursive effects of the current policy frame is that contextual barriers to police diversion have been overlooked. The effect of disrupting the policy frame, as the data presented here has revealed, is to illustrate the importance of a far more nuanced understanding of *context* and *place* when considering de facto reforms such as diversion.

This section has presented 'subjugated' or de-prioritised knowledge related to Scots Law and the position of the Lord Advocate. The following section digs deeper into this knowledge, relating specifically to Scotland's institutional arrangements.

5.4.3 Independent public prosecution

The previous section, Chapter five, section four, subsection two focused upon Scotland's system of law. This section now turns to the structure of Scotland's criminal justice system and the differences between this and the English criminal justice system that are taken as unproblematic within the SAC. These differences are noted to show how the policy proposal could be disrupted and replaced (Bacchi question six), and the influence this could have on the case for reform (research question two). The findings presented here also relate to the type of strategies or approaches that could be implemented to meet the needs of the Scottish context (research question three). As with the previous section, this section enables a critical exploration of *place* and *context*, made possible by disrupting the dominant policy logic of homogeneity.

According to Bacon (2021), the police diversion schemes that are operating in parts of England exist because police have the power to use discretionary decision making to determine the public interest in case processing. The analysis conducted for the current study found that according to guidance published by the Director of Public Prosecutions (2013), part of a police officer's role in England is to consider whether or not prosecution is likely to reduce reoffending risk. Part of the decision concerning this, relates to the officer's assessment of the circumstances surrounding the offence, the offence type, and the impact on any victims (Director of Public Prosecutions 2013). As such, in England, police discretion concerning prosecution is an allowable part of the police role. However, the role of police and prosecution differs from one country to another, having evolved as a result of the history of that context (Jehle and Wade 2006). According to Jehle and Wade (2006), because the English Prosecutorial Authority, the Crown Prosecution Service, is relatively new, having only been established in 1986, it's role and power is still in a process of evolving. Under the current system in England, while prosecutors decide on the sufficiency of evidence for court, decisions on the public interest in

progressing a case to arrest and prosecution remain with police (Crown Prosecution Service 2019, Director of Public Prosecutions 2013, The Crown Prosecution Service 2020). This, alongside Common Law, makes it possible for police diversion to act as de facto decriminalisation in England via the de-prioritisation of arrest.

In England, the Criminal Evidence Act 1984 (s37)(a) and the Criminal Justice Act 1998 (s40) confer responsibility to English Police to determine all charging decisions in summary cases. Summary cases are so called low-level offences, where it is likely that the offence will result in a maximum of £5000 fine or six months custodial sentence and includes minor amounts of controlled substances and acquisitive offences[19]. Police in England have an obligation to identify cases that are suitable for out of court disposals early, ideally before a charge is made against an individual. This gives an impetus to ensure that, where possible, informal cautions and/or diversions occur (Director of Public Prosecutions, 2013). As such, it is part of the duty of a police officer to use discretionary decisions to ensure that people in all suitable cases are offered diversion. Diversion is not merely an option, but indeed is a priority for all suitable cases. England has elected independent Police Commissioners who have a degree of autonomy in terms of how laws are interpreted and enforced within their local regions. Chief Area Prosecutors (CAP) work closely with Police Commissioners, and exceptions to prosecution can be negotiated based upon local area needs. Such decisions are made collaboratively between Police Commissioning Leads and CAP (The Crown Prosecution Service 2020). The common law system in England (outlined in the previous section) also makes this level of negotiation and 'drift' from legal statute possible.

The analysis found that in a lecture given to Apex, the former Lord Advocate, Sir James Wolffe (2017), referred to the Scottish system as a 'monopoly system' of public prosecution, proposing that the Scottish system shares more in common with European countries than with other UK nations. The Scottish Prosecution Authority is considerably older than its English comparator, having been in existence more than 400 years (Wolffe, 2017). As such, the authority, which is led by the Lord Advocate, has considerable independence, autonomy, and power. In Scotland, all decisions concerning who will be prosecuted and who will not, lie with the COPFS.

According to the Scottish Crown Office and Procurator Fiscal Service (2001) Prosecution Code, police officers in Scotland have a statutory obligation to refer all cases where there is sufficient evidence that a criminal act has been committed to the COPFS for decision-

---

[19] Provided that the offence does not relate to terrorism.

making. This means that, unlike police officers in England, Scottish police officers do not officially have the power to make discretionary decisions concerning what action, or non-action, may be required to fulfil the public interest in arrest. The Scottish COPFS is led by the Lord Advocate (Crown Office and Procurator Fiscal Service, 2001), is independent of the Scottish Government and has considerable independence and autonomy (Crown Office and Procurator Fiscal Service 2001, UK Parliament 2019b). The COPFS Prosecution Code (2001) outlines that, in Scotland, police officers conduct their inquiries on behalf of the COPFS, following the guidance set by the Lord Advocate, and do not have the authority to use discretionary powers to determine the public interest in arrest or prosecution. Because police diversion relies on police officer discretion, the current institutional arrangements in Scotland present a further context-specific barrier to the *police diversion as de facto decriminalisation proposal.*

As outlined in the COPFS Prosecution code (2001), and the current Lord Advocate's statement on diversion (Crown Office and Procurator Fiscal Service 2021c), all decisions on prosecution in Scotland are made by COPFS prosecutors who use a combination of guidance from the Lord Advocate and discretionary decision-making to decide whether or not prosecution is in the public interest. Prosecutorial action (or non-action) is decided upon by prosecutors who assess the circumstances of each case. This includes an assessment of the circumstances that may have motivated the offence, as well as potential underlying needs that could be met via a suitable intervention. Prosecutors have several alternative disposals available, including non-action, warning letters, fines, or prosecutorial diversion[20].

Although the Lord Advocate is noted in the SAC report several times, the complexity of this role and how it relates to prosecution and law is not outlined in detail. The archaeological components of the analysis indicated that the logic of homogeneity had led to the de-prioritisation of knowledge concerning the Lord Advocate's role, and the relationship between this role and de facto decriminalisation or altered police powers. Because the barriers to police diversion in the Scottish context were not analysed as part of the SAC inquiry's evidence gathering sessions, a lack of progress toward implementation has been constructed within media narratives as being political. For example, the SAC report states that the inquiry had found evidence that the Scottish Government were not doing enough with their existing powers but did not provide detail concerning what these powers may be. The findings that follow suggest a more nuanced

---

[20] What diversion means in the Scottish context is explored further in Chapter six, section two, which examines (or analyses, perhaps?) what strategies could be and are being used in Scotland as 'alternatives' to criminal sanctions for drug-related offences.

view that considers pre-union 'state' institutions and the power structures that shape their power, role, and level of independence.

In the excerpts already presented, the SAC proposes that implementation of police diversion is possible and within the 'gift' of the Scottish Government. However, the Scotland Act (1998) (s52) (b) and (6) ensures that prosecution is entirely independent of the Scottish Government, presenting a constitutional barrier to police diversion. All criminal proceedings are altogether independent of the Scottish Government and fall within the gift of the Lord Advocate and the COPFS (Scottish Ministerial Code 2018, paragraph 2.5, 2.26 and 2.27) (Scottish Government 2018b). In cases where a policy proposal or devolved legislative bill is considered high profile, or politically sensitive, the Scottish Government are bound by the Scottish Ministerial Code (2018) to consult the Lord Advocate[21], or his/her Depute the Solicitor General, as the country's most senior Law officers. In these instances, the Lord Advocate, and/or his/her Depute the Solicitor General, will advise the Scottish Government on the legal competency of proposals being made by the devolved administration, ensuring that all legislation and policy is compliant with reserved and devolved law. Under section 2.3 of the Scottish Ministerial Code, 2018, the Lord Advocate has a legal obligation to ensure that the government acts lawfully at all times. This means that s/he must ensure that all Scottish Government policy complies with UK legislation. At the time of writing this thesis, *police diversion as de facto decriminalisation* was the source of polarising media and political discourse. Because of this, police diversion was a matter that the Scottish Government would be obliged to consult on with the Lord Advocate. Such consultations would not focus on political competency of diversion but, rather, legal competency. The Lord Advocate has a constitutional imperative to protect the independence of Scottish prosecution, and to ensure that prosecutorial decisions as not politically influenced (Angiolini 2007; Marchett 2021). So, to a certain extent, the mere existence of the role of Lord Advocate presents a context-specific barrier to police diversion that has been overlooked due to the current policy frame and the dominant logic of assumed homogeneity.

Further confused policy logics were identified related to the role, power, and position of the Lord Advocate. Resultantly, a further archaeological analysis was undertaken to explore this role in more detail to ascertain the impact the role could have upon the *police diversion as de facto decriminalisation proposal*. The analysis indicated that enquiries had previously been undertaken in 2007 as part of a UK constitutional inquiry to better

---

[21] While the post of Lord Advocate can be held by a man or a woman, the title 'Lord' is used regardless. In the 430 year history of the role, there have been only two female Lord Advocates, which includes the current post holder, Dorothy Bain.

understand the role of the Lord Advocate. In the 2007 inquiry, the then Lord Advocate Dame Elish Angiolini, was asked to clarify the role of Lord Advocate, including outlining differences between Scotland's Lord Advocate and England's Attorney General. Within these discussions, the issue of an Anglo-normative lens was raised, just as it had reportedly been in legal debates around the time of union. For example, a previous Lord Advocate, Dame Angiolini's (2007) stated the following.

Select Committee on Constitutional Affairs Written Evidence (UK Parliament, 2007), Evidence submitted by The Lord Advocate, Scotland, Annex B, paragraph 2.	I am privileged to be one in a very long line of Lord Advocates of Scotland. While the title has remained constant, the office is one which has developed and changed as much as our nation itself. I would, however, venture to suggest, that while most Scots are very familiar with the title of the office and know that it is an intricate part of the legal fabric and history of Scotland, there was, until recently, only a limited circle of legal and political anoraks (if I may use that term in a non-pejorative sense!) who had a full understanding of the role […]

As the evidence presented above highlights, Scotland's Lord Advocate and the English Attorney General are the most senior Law Officers in their respective nations and heads of their respective prosecution authorities. It is commonly assumed in academic and drug policy discourse that the Lord Advocate is a minister of the Scottish Government (as well as being Head of Prosecution). The nuance and specificity of the relationship to the Scottish Government is explored in the box below.

The Scottish Government (2021) Lord Advocate: role and functions, Publication – Factsheet, page 1, paragraph 1. [available at: https://www.gov.scot/publications/lord-advocate-role-and-functions/]	The Lord Advocate is the senior of the two Scottish Law Officers. She is a minister in the Scottish Government and the holder of a historic office which has a range of functions associated with the maintenance of the rule of law and the proper administration of justice. The role has four main components: • head of the systems of criminal prosecution and investigation of deaths • principal legal adviser to the Scottish Government • representing the Scottish Government in civil proceedings • representing the public interest in a range of statutory and common law civil and constitutional functions.

Recently, the Scottish First Minister was criticised for suppressing key information about an allegation of sexual abuse concerning her predecessor, Alex Salmond, made by a member of staff. In the inquiry into alleged offences, Mr Salmond, the former First Minister of Scotland, accused the Lord Advocate of acting under political influence. The

Lord Advocate has a constitutional duty to ensure the separation of prosecution and state: if such allegations were to be upheld, this would have amounted to a neglect of duty[22]. Throughout the Salmond Inquiry, the Lord Advocate Sir James Wolffe argued that his role was not a political appointment, but rather one related to law and prosecution. In media reports concerning the case, it was argued that the Lord Advocate was a political minister and the duality involved in this role was problematic to the democracy of law. This controversy related to the role is not new, and steps had been taken by Alex Salmond himself to de-politicise the role of Lord Advocate in 2007. The 2007 amendments to the role meant that the Lord Advocate was no longer required to attend parliament and s/he became a non-voting member of the Scottish Parliament. Current arrangements are outlined in the box below.

The Scottish Government (2021) Lord Advocate: role and functions, Publication – Factsheet, page 1, paragraph 7. [available at: https://www.gov.scot/publications/lord-advocate-role-and-functions/]	Accountability to the Scottish Parliament is an important aspect of the Lord Advocate's constitutional role. If not an MSP, a Law Officer is nevertheless entitled to participate in the proceedings of the parliament but may not vote (SA s.27). A Law Officer can therefore be questioned by MSPs about the exercise of her functions, although she is not required to answer questions or produce documents relating to the operation of the system of criminal prosecution in any particular case where it is considered that it might prejudice criminal proceedings or would otherwise be contrary to the public interest (SA s.27(3)). Under the Parliament's Standing Orders, written questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable only by the Law Officers, as are oral questions on those matters in all but exceptional circumstances (rules 13.5.1, 13.7.1 and 13.8.3).

Further controversy concerning the role emerged recently in relation to prosecutions related to the liquidation of the Rangers Football Club. Again, the actions of the Lord Advocate were criticised amidst growing claims of the political nature of the role, and calls made for greater separation between the political and legal aspects of the role of Lord Advocate (MacAskill 2021). However, although the Lord Advocate, as Senior Law Officer, has a duty to provide legal advice regarding actions of the Scottish Parliament, his/her duties related to prosecution remain entirely independent of the Scottish Government, as the box below demonstrates.

The Scottish Government (2021) Lord Advocate: role and functions, Publication – Factsheet, page 1,	In relation to criminal prosecutions and investigation of deaths, the Law Officers have always acted independently of other ministers and, indeed, of any

---

[22] The Articles of Union, 1707 (s. xix) and the Scotland act 1998 (s.29).

| paragraph 2. [available at: https://www.gov.scot/publications/lord-advocate-role-and-functions/] | other person. That duty is expressly recognised in s.48(5) of the Scotland Act 1998. |

5.5 A genealogical analysis of the role of Lord Advocate

This section presents the findings of a genealogical and archaeological 'dig' that was undertaken to examine the history of the role of Lord Advocate. The section examines the role in depth, beginning in contemporary times, and then exploring the history of the role and the origins of authority and independence. As such, the section explores how history has produced organising power structures, specific to the Scottish context. The section is concerned with examining the 'silences' that exist outside of the policy frame outlined in the previous section of the current chapter. An analysis of legislation, parliamentary records, and constitutional legislature revealed that the Lord Advocate's role shares some similarities with the English Solicitor General, where both are the most Senior Law Officers in their respective nations (Angiolini 2007). The Lord Advocate has ultimate independent authority for Scottish Prosecution and is head of the COPFS. Before the devolved Scottish Parliament was established in 1998, the Lord Advocate and his/her depute the Scottish Solicitor General were ministers within the UK Government (Angiolini 2007). Both were responsible for all Scottish Prosecutions and for advising the UK Government on Scots Law. Pre-devolution, the Lord Advocate was involved in UK parliamentary business, but the Lord Advocate alone was responsible for prosecution (Angiolini 2007).

As the previous section outlined, the devolved Scottish Parliament in Holyrood was established via the passing of the 1998 Scotland Act. This meant that the Scottish Parliament and the Scottish Executive (now Government) established a constitutional relationship. According to section 29 of the Scotland Act 1998, the Scottish Government cannot change or adapt the role of the Lord Advocate concerning criminal prosecution. Section 29 of the 1998 Act confers the right for the Lord Advocate to determine the public interest in prosecution and conveys a constitutional role concerning Scottish parliamentary legislation. If any legislation is passed which the Lord Advocate believes to be outside of the Scottish Government's competence, s/he can refer to a Judicial Committee of the Privy Council, and this responsibility is entirely independent of the Scottish Government. According to a speech given by former Lord Advocate, Dame Angiolini (2007), this, *"makes the Lord Advocate into a sort of constitutional policeman over the legitimacy of the legislation passed by the Parliament"* (Angiolini 2007: Annex B, page 2).

In terms of prosecutorial function, the Lord Advocate is not subject to any conditions laid out by the Scottish Government, in fact, the converse is more accurate.

Select Committee on Constitutional Affairs Written Evidence (UK Parliament, 2007), Evidence submitted by The Lord Advocate, Scotland, Annex B, page 2.	Finally, on this matter, the Lord Advocate's functions as chief prosecutor and head of the system of investigation of deaths, and any statutory responsibilities conferred on her alone, are kept outside that collective responsibility. So, my decisions as chief prosecutor are not subject to any kind of collective ministerial decision making process. And to make that even clearer, section 48 of the Act provides in terms that: "any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person". That last provision is not new law. It is not some novel concept inserted into the business of government in Scotland for the purposes of devolution. It is, as the use of the word "continue" suggests, a re-statement of what has always been the position. It is recognised as one of the most important aspects of the Lord Advocate's role in relation to prosecutions, that prosecution decisions must be taken by him or her alone, and in the public interest.

The analysis found that it is the conceptualisation of diversion *as a form of decriminalisation* that results in a constitutional barrier to reform in the Scottish context. The Lord Advocate can alter prosecution policy to reflect the public interest and has considerable autonomy to do so. This includes deviations from policing arrangements, provided that the shift is not considered to be decriminalisation, and thereby a deviation from the constitutional duty to uphold UK law. The independence, authority, and scope of the role of Lord Advocate, both concerning prosecution and the Scottish Government, is a notable policy 'silence' that lies at the core of the police diversion proposal in the SAC. This, and the recent controversy afforded to the role, acted as the impetus to carry out more detailed analysis of the Lord Advocate's role. The aim of this deep dive was specifically to explore the relationship between the Lord Advocate's role and the police diversion proposal.

This section now presents study findings that illustrate how the Lord Advocate's role has changed over time. The section explores data that demonstrate how the Lord Advocate's role has been shaped by key events in Scottish history. The previous sections have illustrated that the position of Lord Advocate is relevant to the way that Scottish criminal justice and legal systems operate. This section explores in detail what this role is, and how it relates specifically to the police diversion proposal. This section is therefore concerned with structural issues, such as the power afforded to specific institutions of governance within the Scottish context, providing a nuanced exploration of *context*, *place,* and the policy 'silences'. The section begins by presenting data related to the

history of the role of the Lord Advocate and the contextual events that have shaped the power and autonomy of the role bearer through time.

The first mention of a King's Advocate[23] appears in a legal trial in 1483 (Omond, 1883). Omond's (1883) work comprises a detailed analysis and presentation of historical records of the lives of Lord Advocates from the end of the fifteenth century to 1830. According to Omond (1883), the role of the Lord Advocate was multidimensional across time. Historical accounts show that the majority of Lord Advocates have been legal advisors to past monarchs. However, over time, this has morphed into being Senior Law Officer to the Scottish Government (Angiolini 2007, O'Neill 2000). Omond (1883) suggests that, in the fifteenth century, criminal trials could not occur without the King's presence, leading to lengthy delays within the criminal justice system. Omond's (1883) research shows that, gradually, the Lord Advocate began to act as a proxy for the King, and their word came to be viewed as the word of the King and, as was tradition at the time, this meant that the Lord's decisions were considered sanctified by God and thereby unquestionable[24]. Although the current Scottish context is more secular, the Lord Advocate continues to hold considerable 'independent' power to this day, deriving this not from the Scottish or UK Governments, but from a historical connection to the Crown.

In a speech given to Apex, the Lord Advocate, Sir James Wolffe made a statement of interest which has been provided below.

| Sir James Wolffe, Lord Advocate's speech to Apex, delivered on 5th September 2017, page 2, paragraph 1. | Four hundred and thirty years ago, in 1587, the Scottish Parliament enacted a significant programme of criminal justice reform. The legislation of that parliament established certain principles which endure today […] and among the measures of that parliament was the Act which established the title of the Lord Advocate to prosecute any crime in Scotland – which, accordingly, established the Lord Advocate as the public prosecutor. It might therefore be said, at the risk of some over-simplification, that my predecessors in office and I have, together, accumulated 430 years of experience of Prosecution in the public interest. |

Both Omond (1880, 1883) and Barrie (2008) suggest that, through history, Scotland's Lord Advocates have held considerable power and autonomy. According to Kennedy (2020) the Lord Advocates during the sixteenth and seventeenth centuries had direct

---

[23] The term 'Lord' was acquired as a result of linguistic changes in the sixteenth century, where all members of the King's Privy Council came to be known as 'Lord'. Before that, the term King's Advocate had been used.

[24] It is worth acknowledging that concepts of criminal justice and God-given rights to rule are very different today than they would have been in the fifteenth century. Nonetheless, the lineage of the role is a contributory factor that imbues the role with significant independence and authority to this day.

access to the monarch, and were not beholden to the King's Privy Council. Kennedy (2020) suggests that this direct access to the monarch was not popular with Privy Council members, as each had significant influence, hereditary titles, and wealth. Kennedy (2020) suggests that many Privy Council members were suspicious of the King's Advocates because very few people were afforded such privileged access to the King at this time. According to Omond (1883), the Lord Advocate was under no obligation to listen to the Privy Council, or to take their advice forward to the King. The Lord Advocate was required to consult the King's Privy Council concerning prosecutorial decisions, but not required to take their advice. Omond (1883) also suggests that wealthy nobles, such as members of the Privy Council, were accustomed to being able to circumnavigate criminal laws by bribing and/or frightening victims to dissuade them from testifying. The Lord Advocate's new position as independent public prosecutor disrupted this, as cases could be tried with or without victim[25] testimony. As a result, the Lord Advocate's decisions to pursue cases in the public (or indeed, in the Crown's) interests were not always popular. The Lord Advocate's known associations with the King, and the King's Privy Council, leant legitimacy and power which acted as a buffer when unpopular decisions were made and gave some personal protection against threats and attacks (Omond, 1883).

According to an evidence submission given to a UK parliamentary inquiry into the Scottish constitution, two principal legal officers have held a state-level role for many centuries. In her evidence submission to the 2007 Constitutional Inquiry, the then Lord Advocate, Rt Hon Elish Angiolini QC suggested that these are the Lord Advocate and his/her depute, the Solicitor General. For more than 400 years, both have held relatively independent, senior roles, appointed by the monarch. Thereafter, and to this day, two principal legal officers hold a senior state-level role. These are the Lord Advocate and his/her depute, the Solicitor General (Angiolini 2007). Both are responsible to the UK Home Secretary (Smyth and McKinlay, 2011). The history and development of the Lord Advocate's role is significant to the policy proposals made in the SAC, which assume that any barriers to police diversion could be overcome via policy made by the Scottish Government. This is not the case, because the Lord Advocate (in their role as a Law Officer and Head of Scotland's independent prosecution authority) has a constitutional obligation to ensure that prosecution remains separate from government and to ensure that all decisions are free from political influence, as the below excerpt illustrates.

---

[25] While the concept of 'victim' falls beyond the scope of the present chapter, it is worth acknowledging that concepts of justice, and concepts of 'victim' would have been considerably different to the meaning of the concepts used today.

Notably, as the box below states, and the points made above demonstrate, the position of Lord Advocate pre-dates the establishment of the Scottish Parliament in 1998, and the position has amassed considerable power, independence, and autonomy through time.

| Select Committee on Constitutional Affairs , written evidence. Evidence submitted by the Lord Advocate, Scotland, 2007, paragraph 17. [available at: https://publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306we13.htm] | Finally, on this matter, the Lord Advocate's functions as chief prosecutor and head of the system of investigation of deaths, and any statutory responsibilities conferred on her alone, are kept outside that collective responsibility. So my decisions as chief prosecutor are not subject to any kind of collective ministerial decision making process. And to make that even clearer, section 48 of the Act provides in terms that: "any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person". That last provision is not new law. It is not some novel concept inserted into the business of government in Scotland for the purposes of devolution. It is, as the use of the word "continue" suggests, a re-statement of what has always been the position. It is recognised as one of the most important aspects of the Lord Advocate's role in relation to prosecutions, that prosecution decisions must be taken by him or her alone, and in the public interest. |

The current analysis and related arguments presented in this chapter recognise that Scotland's prosecution authority's independence is a constitutional matter that cannot be altered without reforming the entire Scottish constitution. As the above quotes illustrate, this would require a primary change of the Scotland Act 1998, which can only be altered by the central UK Government in Westminster. Scotland's current constitutional position and the role of the Lord Advocate therefore presents a barrier to police diversion schemes that act as a de facto change to UK law. Therefore, it is the type of diversion proposed within the SAC that cannot be implemented in Scotland due to the barriers found in the thus far de-prioritised context-specific knowledge. As such, *police diversion as de facto decriminalisation* would require an amendment to the UK Misuse of Drugs Act 1971, which would make the proposal legislative rather than practice reform. Alternatively, a change to the Scotland Act of 1998 and the position of Lord Advocate would be required to enable deviation from UK law.

5.6 Chapter summary

This chapter was the first of two findings chapters. The chapter has presented findings that relate to research question one, *'how are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?'.* Section two

outlined the problem representations that were critically explored throughout the chapter. As Chapter four explored, the WPR approach is based on the premise that policies contain proposals that outline what solutions appear as relevant and logical to address a 'problem' (Bacchi, 2009). According to Bacchi (2009), the solutions proposed in policy can be traced backwards to identify what the 'problem' is represented to be. Within the WPR's theoretical framework, a 'problem' representation is an implied logic that is identifiable via an analysis of the solutions posed. Section two of the chapter identified that the two solutions proposed to address the 'problems' associated with drug use and the Scottish context, were de jure decriminalisation, that is, reform of the UK's Misuse of Drugs Act 1971, or de facto decriminalisation, where drug laws remain unchanged, but arrest or prosecution are de-prioritised.

Section two demonstrated that, in the SAC, legislative reform was represented as being the ideal solution to address an underlying problem, which was the level of drug-related deaths in Scotland. Section two of the chapter also highlighted that the SAC inquiry report stated that the UK Government had expressed an unwillingness to enact legislative reform. The implied problem representation that emerged from the analysis was the UK Government's unwillingness to approve legislative reform. Section two of the current chapter identified a further problem representation that could be discerned from the second proposal made. The second proposal was that the Scottish Government should overcome the UK Government's unwillingness to approve de jure decriminalisation (drug law reform) by establishing police diversion schemes as a form of de facto decriminalisation. The implied problem representation at the core of this proposal was that the UK and Scottish Government were considered to be taking different approaches to drug use. The assumption was that police diversion schemes could be used in Scotland to circumnavigate the UK Government's political resistance to reform or devolve the Misuse of Drugs Act 1971.

Section three of the thesis was concerned with WPR question two, *"what deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the 'problem'?"* Section three drew from the secondary data sources to outline the assumptions that had to be considered as 'true' in order for the diversion *as de facto decriminalisation proposal* to make sense. The section highlighted that the proposal was held in place by an assumption that, because all UK nations operate under the same drug law, the UK exists as a single legal context. Section four of the current chapter presented data related to WPR question three, *"how has this representation of the problem arisen?"* The section explored a genealogically-inspired analysis of the notion

of the UK as a single, homogenous legal context, tracing this concept back through time to the legacy of King James VI and the Articles of Union 1707 that brought together the four nations of the UK into a single state. Section four also used the secondary data to examine the policy 'silences', that is, the knowledge that has been de-prioritised due to the logic, whereby the UK is assumed to be a single legal context. The de-prioritised knowledge was shown to be particularly relevant to the SAC's proposal, which was that police diversion should be used as a form of de facto decriminalisation in Scotland. As has been demonstrated, the police diversion proposal made in the SAC appeared implementable because contextually specific barriers to implementation had been overlooked. The chapter has highlighted the following barriers to implementing police diversion (as de facto decriminalisation) in Scotland: Scots Law, the constitution principle, and Scotland's system of independent public prosecution. Section five of the chapter deconstructed the policy frame further by using the secondary data to examine the role of the Lord Advocate in relation to all the aforementioned contextual barriers to *police diversion as de facto decriminalisation.* The current chapter used the primary and secondary data sources to highlight a key discursive effect of the SAC's representation of the UK as a single legal context: the de-prioritisation of knowledge concerning Scottish legal, constitutional, and institutional arrangements.

In relation to research question two, *"to what extent do the analysed discourses suggest that reform is required?",* the data presented in this chapter suggest that, indeed, drug policy and legislative reform have been described as being required. Research question three asks, *"what type of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?"* The analysis of the proposals and logics of the primary data presented here suggests that the type of 'evidence-based' strategy that has been proposed to meet the needs of the Scottish context cannot be implemented without constitutional change, or a change in the way that diversion is conceptualised and discussed in policy narratives. This latter point relates to a key finding presented in this chapter, where the analysis has indicated that Scotland's Lord Advocate has considerable autonomy and power, and could, in theory, approve adaptations to policing and prosecutorial policy, provided that the change is not considered to amount to de facto decriminalisation, which s/he has a constitutional obligation to prevent. The chapter thereby points to the complexity of the conceptual and interpretative schema that is policy discourse. The findings also emphasise the importance of a deep understanding of context within proposals related to diversion and de facto decriminalisation.

The current chapter has identified the type of 'evidence-based' strategy that cannot be implemented in Scotland, and so has explored contextual barriers to the implementation of proposed reforms. The focus of the thesis now turns to the type of strategies that could and are being used in Scotland to reduce the criminalisation of personal drug use.

Chapter 6: Public health approach to policing and prosecution

6.1 Introduction

Carol Bacchi (2009; 2018) suggests that policy proposals, conceptual logics, and 'silences' are rarely one dimensional. As such, there are multiple ways to address and explore a problem. The central problem which this thesis seeks to address is that, to date, it has been assumed that, because police diversion is operating as a form of de facto decriminalisation for drug possession offences in some parts of the UK, it could be implemented in Scotland. As Chapter two explored, and Chapter five analysed, there has been a lack of Scottish-specific analysis of institutional and contextual factors that could influence the type of diversion that could be successfully implemented. The findings presented in the previous chapter address this gap up to a point. Chapter five went some of the way to answering research question two, which is concerned with identifying the extent to which reform could be considered necessary. If police diversion is considered to be the primary means to deliver a reduction in criminalisation, then it is indeed possible to argue that constitutional reform is required, although drug law reform may be the preferred solution, given the complexity of constitutional law. There remains, however, an element of research question two that has not yet been considered. This chapter addresses the remaining aspects still to be explored and uses a selection of institutional guidelines and historical texts to examine what could be done to reduce criminalisation of drug-related offences within the constraints of the current system. This chapter is therefore also concerned with research question three, *"what type of diversion could be implemented to meet the needs of the Scottish context?"*

Section two of this chapter expands upon the policy 'silences' outlined in the previous chapter. The secondary data in the previous chapter were used to examine contextual knowledge that sat outside of the policy frame, related to Scotland-specific barriers to police diversion. The focus of the current chapter moves on to explore what strategies already exist in Scotland to reduce the criminalisation of personal drug use. The chapter begins by presenting the analysis of a further secondary data source, the National Guidelines on Prosecutorial Diversion in Scotland (NGDPS), that was published by Community Justice Scotland in 2020. Further detail on these guidelines and the role of Community Justice Scotland is provided in section two.

In section three of the chapter, a further secondary data source is introduced. The Medication Assisted Treatment (MAT) standards were published by the Public Health

Directorate in association with the Scottish Government and SDDT in 2021. This document is used to examine the focus and subjectification effects of the NGDPS document. As a reminder to the reader, the term 'subjectification effects' is described by Bacchi (2009) as being the identity positions imposed by the way people who use drugs are described in policies and/or official texts. Subjectification effects can be either positive, advocating for enhanced rights, or understanding; or they can be reductionist, and thereby related to stigmatising discourses (Bacchi, 2009).

6.2 Scottish diversion arrangements

As outlined in the previous chapter, within the UK Parliament's SAC Inquiry into Problem Drug Use, which reported in 2019, diversion was represented to be a police-led intervention that could be used to overcome the 'problem' of the UK Government's unwillingness to reform the Misuse of Drugs Act 1971. Within the SAC, decriminalisation, whether de jure or de facto, was represented as being required to reduce drug-related deaths in Scotland. The current section explores a further dimension of the discursive effect in which Scottish-specific contextual knowledge has been de-prioritised due to the assumption that Scottish criminal justice and legal systems operate in the same way as English arrangements. The current section examines the strategies that can and are being used in Scotland to reduce criminal sanctions for circumstances where an underlying need, such as but not limited to drug use, is considered to be a motivating factor in low-level criminal offences. The current section is thereby concerned with a critical analysis that relates to research questions two and three, *"to what extent do the analysed discourses suggest that reform is required?",* and *"what type of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?"*

The data for the current section will now be described. The Scottish Government introduced a National Strategy for Community Justice in 2016 (Scottish Government 2016). The 2016 strategy proposed what was described as a 'preventative' approach to crime. This approach was described in the strategy as being one that recognises the impact of structural inequalities and seeks to redress imbalances within the justice process by providing support to individuals to address the underlying causes of offending behaviour. The strategy proposed that delivery of these aims would require enhanced partnership between multiple sectors, including statutory social work services, the criminal justice system, health, and the third sector. The 2016 strategy introduced a new public body, Community Justice (Scotland), who were formed to support statutory and third sector agencies to work together to achieve better outcomes for justice within the community (Scottish Government 2016). The 2016 strategy proposed that Community

Justice Scotland would provide leadership, opportunities for innovation and independent assurance of the mechanisms being used to improve the system. In 2020, Community Justice Scotland released national guidelines on diversion from prosecution in Scotland. A WPR analysis of this document was conducted using the steps outlined in Chapter four, section four. Because the NGDPS document is a guideline for practitioners involved in Scottish diversion, rather than being governmental strategy, the analysis presented in sections two and three focus on the discursive and subjectification effects of the document, rather than the problem representations. The term 'problem representations' relate to the things that a policy-related discourse identifies as the focus for change, the *object* to be addressed via the solutions posed within the document. The discursive effect is the boundary around what is sayable and what appears as relevant. The subjectification effect is the way that the policy narrative constructs the identity position of those who experience the social phenomenon that the discourse seeks to address. In the current chapter, the term subjectification effect relates to underlying assumptions about the identity, choice and personal agency that were identified via the WPR analysis of the NGDPS.

The NGDPS (2020) were introduced as a guide to be used by all practitioners involved in diversion. The guidelines highlight that Scotland is already operating a form of diversion, which was not reported in the SAC report (2019). The box below offers a definition of diversion as it appears in Scottish institutional guidelines.

Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland, 2020, paragraph 1.	Diversion from Prosecution is a process by which the COPFS are able to refer a case to social work – and their partners – as a means of addressing the underlying causes of alleged offending when this is deemed the most appropriate course of action.

In the SAC report (2019), diversion is assumed to be a police-led intervention, whereas the NGDPS (2020) document assumes that diversion is prosecutor-led. Both documents produce diversion as a one-dimensional *object,* with neither acknowledging the multiple forms of diversion that could exist. Interestingly, the Scottish form of prosecutorial diversion did not appear within the SAC report (2019), despite it aiming to analyse 'alternatives' to criminalisation when people who use drugs come into contact with criminal justice agencies. The prosecutorial diversion explored in the NGDPS (2020) indicates that, in Scotland, diversion can be considered in any case where the person has identifiable needs that could be addressed via an intervention, and where it is considered that criminal sanctions could have a negative impact on the circumstances that sit beneath 'offending behaviour'. This form of diversion is not limited to drug use or

drug possession charges and can be considered in cases where there are low-level (primarily non-violent) offences. Therefore, although this form of diversion occurs later in the criminal justice process than the form of police diversion proposed in the SAC report (2019), it could have a wider application, including being used in cases where a secondary offence exists alongside drug possession, or in cases of drug-related offending, such as acquisitive offences. Therefore, it is possible to suggest that the absence of focus on *context* and the specificity of *place* in the SAC's proposals means that there are aspects of the Scottish system that could be used to reduce multiple forms of criminalisation for a wider group of people, that is, those with primary and secondary drug-related offending, that have been overlooked.

The analysis of the NGDPS (2020) indicated that, in the Scottish context, prosecutors have a range of options available to them that can be considered via an assessment of the case, the circumstances surrounding the offence, and the prosecutor's beliefs about the offence. However, to make these decisions in the proposed holistic way, prosecutors require a depth of information to be provided from the Standard Police Report (SPR). Again, the de-emphasis on context within the SAC report (2019) means that the key role played by police in this space is not identified or explored. However, the NGDPS (2020), when compared to the SAC report (2019), enables a deeper level of analysis concerning who has the power to determine the public interest in criminalisation in the Scottish context. The NGDPS (2020) states the following on this matter.

Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland, 2020, page 3, paragraph 2.	Diversion from Prosecution will be considered in any case where the individual reported to COPFS has an identifiable need and where it is assessed that diversion from Prosecution is the most appropriate outcome in the public interest. There must be a sufficiency of evidence before COPFS can take action to refer an individual for diversion from Prosecution.

The NGDPS (2020) suggests that Scottish police officers can play a public health role by gathering information to support prosecutorial decision-making, influencing the likelihood of a prosecutorial decision to dismiss the case, or offer a diversion, as the below excerpt outlines.

Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland, 2020, page 4, paragraph 4.	When attending an incident and undertaking the necessary enquiries, the officers involved should not only note required case details but give consideration to capturing any antecedent information in the following areas. • Mental health • Alcohol/Drugs/Other • Risk • Vulnerabilities

	• Disability • Attitude to offending • Family dynamics • Education/Employment/Training The police should ensure that this information is included within the 'antecedent details' section of the SPR when submitted to COPFS. There is also the opportunity for police to give a view on the potential suitability for diversion from Prosecution based on their knowledge of the incident and individual. This should be included within the 'remarks' section of the SPR.

The NGDPS (2020) guidelines point out that a prosecutorial diversion is a voluntary agreement that is offered via a letter sent to the address of the accused person outlining details of the diversion and the possible outcomes of a decision not to accept. According to the guidelines, if a person decides to accept, the case is referred to the local authority criminal justice social work department which assesses the referral for suitability and considers whether they have the capacity to accept the referral. The guidelines suggest that the local authority has 20 working days to decide on the suitability of the referral and conduct an initial assessment which involves meeting with the person to assess his/her suitability for diversion. The NGDPS also indicate that the diversion is designed to be twelve weeks of assessment and intervention, where the assigned local authority criminal justice social worker visits with the person to discuss the offence and assesses whether the person is willing/able to change and what the likelihood of reoffending is. The guidelines also state the following.

Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland, 2020, page 7, paragraph 1.	In some cases, the nature of the intervention deemed necessary may be outwith what the local authority or their partners can provide as part of a diversion from Prosecution. For example, the complexity of the intervention may require highly specialised services or extended timescales. In these rare cases, the LA ought to inform the prosecutor that an extended period of work may be undertaken, with consideration of referrals to universal services, in order to provide additional support for other presenting needs where necessary. This will allow the individual the opportunity to make longer term changes in their lives, should they wish to, within the appropriate services. After considering all the facts, if any disagreement occurs regarding the referral for diversion from Prosecution, this will be discussed and resolved between the prosecutor and the LA.

While the form of diversion proposed above could reduce criminal sanctions in the first instance, very little is known about how well this form of diversion works for those with long term drug use who may require access to a range of services to meet diversity of need. The notion of drug-related offending being amenable to a short-term, single agency intervention, contrasts with the Scottish Government's (2018) RRR, which represents drug use as a complex health and social care issue requiring access to

person-centred, tailored packages of multi-agency support. Therefore, a further effect of the focus on *police diversion as de facto decriminalisation,* and the absence of recognition of the complexity of *place* and *context*, is that there is a form of diversion operating in Scotland which has been overlooked in drug policy and research. For example, the UK SAC (2019) sought to explore what interventions could be used to reduce criminalisation of drug possession in Scotland, and what interventions could be used to provide enhanced routes to support. However, the inquiry did not report on the type of diversion already being used in Scotland, and focused instead upon English style diversion, which is, as the previous chapter noted, police diversion.

The NGDPS suggests that in Scotland, prosecutors make decisions concerning whether a case is suitable for diversion, and local authority social workers make decisions concerning the suitability of the person's life circumstances for a social work diversion intervention. Police have a role to play, but this role is limited to deciding what information is relevant enough to the case to be recorded on the report that is provided to prosecutors. As such, the role of Scottish police in diversion differs from the English police diversion schemes. In Scotland, diversion is one of several 'alternatives' to prosecution that COPFS prosecutors can offer in cases where there is an identified underlying need that is considered to be contributing to offending behaviour. This is not limited to drug possession, as diversion or other 'alternatives' such as case dismissal, warning letters, fines and deferred prosecution can be used in a range of offence types, depending on the individual circumstances related to each offence.

As outlined in Chapter three, section four, the SDDT was established in 2019 to examine what interventions or strategies could be used to reduce drug-related deaths in Scotland (2021a). Their 'forward plan' document indicates that the Taskforce is currently examining several tests of change, including a police officer to peer navigator pathway. The 2021a plan outlines a pilot scheme that is being conducted in Inverness where if police come into contact with someone for a drug-related offence, a referral to a peer navigator can be made alongside case processing. While the scheme does not act as an alternative to case processing, it aims to offer a rapid route to support provided by a person with lived experience of drug use. If the person agrees to the referral being made, then s/he is matched with a trained peer who has established relationships with local services and can advise and ensure access to support and/or harm reduction while required. The SDDT forward plan (2021a) proposes that the scheme should mean that more information is available to prosecutors when the case is being assessed, which could lead to reduced use of criminal sanctions and increased incidences of

prosecutorial non-action, case dismissal, warning letters or diversion. This scheme is relatively new, having only been established in 2021, so it is not possible to identify additional sources that may confer insights into how well it is working.

Bacchi's (2009) WPR approach question five asks, *"what effects are produced by the representation of the 'problem'?"* Chapter five, section two outlined the problem representations found within the analysis of the SAC report (2019). Within this document, criminalisation of drug possession was identified as a 'problem', and police diversion was proposed as a strategy to reduce criminalisation. The analysis presented in the current section points to a discursive effect of this problem representation. The discursive effect is that a focus on diversion as a police intervention has led to a de-emphasis on the prosecutorial diversion arrangements that are already operating in Scotland. Although the SDDT are investigating what opportunities may exist to provide additional routes to support between arrest and prosecution, there has been no research undertaken to examine the perspectives of those involved in prosecutorial diversions for drug-related offences. As such, it is not possible to conclude how well the current system is working, or for whom.

The findings presented in this section relate to a condensed WPR-SFT analysis that was conducted to examine how the subjectification effects of the NGDPS compare to official guidelines that relate specifically to drug use in Scotland. The modified, and this time condensed version of the WPR-SFT approach, involved a thematic analysis of the MAT which were published in 2021 by the Scottish Government, Public Health Scotland and the SDDT (Population Health Directorate 2021). As a reminder to the reader, a subjectification effect is the way that a policy narrative produces the person affected by the policy as a specific type of *subject*. This is therefore about the relationship between citizen and state, and considers concepts of power, in this case played out on the care versus control continuum.

The (2021) MAT guidelines draw from a broad range of evidence to suggest that, given people with drug-related problems often have complex trauma histories, all services should be trauma-informed. The guidelines propose that "psychological trauma is everyone's business" (Population Health Directorate, 2021: 32), and define a trauma informed approach as follows.

Medication Assisted Treatment Standards for Scotland Access, Choice, Support.	Trauma informed care reflects a model that is grounded in, and directed by, a complete understanding of how trauma affects service users' neurological, biological, psychological and social development.

131

Standard 10, page 32, paragraph 5.	

The above conceptualisation of trauma and drug use produces people with drug-related problems as citizens deserving of care and compassion and places the impetus on all services to respond to people in a way that recognises the complexity of trauma and substance-related problems. Notably, while the standards are concerned with medication assisted treatment, the wording reflects the expectations for all services, and so, by extension, this includes those that fall beneath the umbrella of the criminal justice system, as is the case with the social work interventions that comprise prosecutorial diversion.

Medication Assisted Treatment Standards for Scotland Access, Choice, Support, 2021. Page 18, paragraph 3.1.	Each service within the drug treatment system should have a documented procedure to identify and follow-up people at high risk of severe drug-related harm, including death. This includes those who may have left residential, justice and inpatient settings, as well as those who have stopped attending treatment services and people who have just experienced a near-fatal overdose. The multiagency response should:
	a) include at a minimum the Scottish Ambulance Service, emergency departments, primary care, public health, community pharmacy, secondary care (acute and psychiatric inpatient services), housing providers, Police Scotland and specialist drug, alcohol and mental health services.

The MAT (2021) standards suggest that all services that come into contact with people with drug-related problems should have a responsibility to be mindful of the impact of psychological trauma on the ability to engage in rigid appointment scheduling, as can be seen in the following extract.

Medication Assisted Treatment Standards for Scotland Access, Choice, Support. Standard 5, page 23, paragraph 5.	More socially stable people using services who may not need frequent attendance can be over treated or over supervised, and this can have a detrimental effect on their ability to return to or sustain a stable lifestyle.
	Attendance requirements must not be arbitrary and should respect peoples' personal circumstances. There should be flexible arrangements for appointments, particularly for people who are homeless and with comorbidities or social issues that affect their ability to engage or organise their time.
	Offering people only fixed appointment times is an unjustifiable barrier to access, ties up practitioner capacity, and is an unnecessary waste of resources.

The MAT (2021) guidelines also propose that people should be supported to remain in treatment for as long as they want or need to and suggest that people should be offered

choice. This sits incongruously with prosecutorial diversion arrangements, where people's choice may be constrained by the terms of the diversion, which is a criminal justice sanction. Perhaps unsurprisingly, given that the NGDPS retain a criminal justice lens, they focus more upon the accused person's requirement to demonstrate compliance and attendance, rather than the requirement of a service to be flexible and offer a broad range of services. The NGDPS suggest that prosecutorial diversion arrangements will involve social workers meeting with the person one to two times per week to conduct assessment and as part of the intervention itself. The guidelines also state that, while onward referrals to other services can be made, these are not the focus of the intervention. Instead, the intervention seeks to initiate discussion on behavioural change and assess reoffending risk. This appears misaligned with the concept of a person with drug-related problems as a person with potentially complex underlying needs, requiring a compassionate response. The disconnect between these two documents points to a potential gap in research related to how prosecutorial diversion is experienced by those with complex needs and drug use. This may be particularly necessary given that the MAT (2021) standards recognise that people with drug-related problems may be facing homelessness, and the offer of prosecutorial diversion is made.

It is possible that those who are experiencing challenging life situations such as homelessness and drug use may find attending regular appointments difficult. The implications of a person not managing to adhere to appointment scheduling, or the flexibility offered within prosecutorial diversion, is also unclear. A lack of acknowledgement of the unique needs of people with drug-related problems within current diversion arrangements could mean that there is a potential for net widening, where difficulty to manage to keep to appointment schedules could result in a later prosecution. There remains this potential because Scottish diversion operates on a deferred model of prosecution: if people do not engage in the intervention, they may be referred back to the prosecutor who will decide whether or not a trial for the original offence is required. The perspectives of prosecutors and social workers are critical to this because, although prosecutors are the decision-makers who determine whether a person will receive a later prosecution after a 'failed' diversion, much of this is based on the information provided by the social worker. The dominant policy narrative that assumes that diversion is police-led, has contributed to a significant gap in research and policy. Very little is known about how Scottish diversion operates, how well it is working and from whose perspectives.

The analysis found a shared subjectification effect that emerged within the SAC (2019) report and the Scottish Government's RRR (2018), where people with drug-related problems are represented as being vulnerable, with further links to trauma. However, the representation constitutes vulnerability as a structural problem related to Scotland's economic and political history, rather than being a personal attribute of an individual, as the following excerpts illustrate.

House of Commons Scottish Affairs Committee , UK Parliament, Problem Drug Use in Scotland Inquiry, page 13, section 29.	We heard accounts which suggested that there is a particular link between problem drug use and poverty and inequality caused by the UK's socio-economic policies of the 1970s and 80s—notably de-industrialisation. Dr Saket Priyadarshi, NHS Greater Glasgow and Clyde, explained that the closure of Scotland's industries— "everything from ship building, coal mining, steel industries and so on"—resulted in a loss of employment, and a loss of "meaning" in many Scottish communities.
House of Commons Scottish Affairs Committee , UK Parliament, Problem Drug Use in Scotland Inquiry, page 13, section 29.	Dr McAuley added that these closures "may have impacted a population that was more dependent than others on those economies and industries". Elinor Dickie, NHS Health Scotland, explained: "It appears that the policies in the '70s and '80s [...] those changing socio-economic circumstances and the displacement of communities, disentangling their resilience, appears to have had a greater impact in Scotland".
House of Commons Scottish Affairs Committee , UK Parliament, Problem Drug Use in Scotland Inquiry, page 13, section 29.	Similarly, the Scottish Drugs Forum noted that economic changes between the 1960s and 1990s resulted in "dispossession and social displacement", the legacy of which continues to manifest itself as 'The Glasgow Effect' today.
The Scottish Government, *Rights, Respect, Recovery* Alcohol and Drug Strategy (2018), page 10, section 1.	There are a number of key challenges which we face today, many are interconnected or underpinned by the same socio-economic and demographic challenges.

Thus, the prevalence of drug use and drug-related harm in Scotland is represented as being a problem that relates to relatively recent history and the ongoing impact of the UK Government's strategies of de-industrialisation that occurred in the 1980s. The above examples are loosely underpinned by a discursive practice of health, where drug use is seen as a way to self-medicate for social and emotional suffering. A discursive practice is described by Bacchi and Goodwin (2016) as being a relatively fixed way of describing a social phenomenon that contains an embedded ontology, that is, that appears as a 'truth'. The representation of drug use as a health issue related to underlying structural and social problems, is consistent with a large body of literature (see Levy 2019; Maté 2011; Mouly et al. 2015; Barnett et al. 2018; Kuhlman et al. 2015; Nutt et al. 2015;

Stimmel and Kreek 2000; Roviš et al. 2019). The SAC and the RRR represent the proposal that there is a high prevalence of drug use and drug-related health harms in Scotland because many people began using drugs as a way to cope with economic and social change in the 1970s and 80s. As a result, the policy-related discourses suggest that there is now an ageing cohort of people with long-term drug use and co-morbid health difficulties. Therefore, drug use in Scotland is represented as a structural issue with personal, lived effects, but nonetheless a problem located in the structure and history of the context, as the following excerpts demonstrate.

The Scottish Government, *Rights, Respect, Recovery* Alcohol and Drug Strategy (2018), page 3, Ministerial Foreword, paragraph 6.	We live in a changing landscape in which fewer young people are using alcohol and drugs. However, a significant number of the group of people who need our urgent help are older and less healthy. Consequently, they are more vulnerable.
House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 55, Conclusions and Recommendations 2.	People who use drugs are a vulnerable group who require help and support, not prejudice and judgement.

This representation is backed by a further body of evidence that points to links between dependent drug use, adverse life experiences, mental health challenges, and trauma (see Bateson, McManus and Johnson 2020; Knopf 2020; McHugh, Gratz and Tull 2017; Volkow, Poznyak, Saxena and Gerra 2017). The representation of people who use drugs as people with multiple, complex needs, also aligns with the Scottish Government's (2019 – 2020) Programme for Government which proposed that all services should be trauma informed, as part of a strategy to reduce the impact of adverse childhood experiences (Scottish Government 2019a). Davidson et al. (2020) suggest that the concept of Scotland as an 'Adverse Childhood Experiences (ACE) aware nation' began with grassroots campaigning within the last decade, which then led to lobbying and the gradual inclusion of ACEs and trauma within policy narratives related to multiple social policy issues. The *vulnerable subject* positioning creates a discursive practice that is evident within both the SAC and the RRR, where drug use and drug-related problems fall within the discursive practices of health. These discursive practices serve to de-legitimate criminal justice sanctions because criminalisation acts as a barrier to accessing services and can exacerbate stigma, presenting barriers to future opportunities.

Within the SAC and RRR, the *vulnerable subject* positioning serves as a proxy for deservedness of care, compassion, and health-first intervention. Possessing controlled

psychoactive substances remains illegal and is not permitted under the UK Misuse of Drugs Act 1971. Representations of PWUD as *vulnerable subjects* problematises stigma-based punitive responses when PWUD come into contact with services. Existing drug law, however, creates disjuncture where stigma can be legitimated regardless of these counter-narratives within drug policy and reports. The concept of vulnerability attracts some criticism in the broader academic literature because it is a negatively laden concept that implies low personal resilience or coping skills. For example, Bartkowiak-Théron et al. (2017) suggest that those who do not fit a stereotypical view of 'vulnerable person' are sometimes denied access to treatment or support and subject to greater measures of control or coercion. As such, the most resilient or articulate people can be subject to increased measures of control, leading to inequities when people come into contact with criminal justice agencies such as the police (Bartkowiak-Théron et al. 2017). As Chapter six, section two indicated, the information recorded on the SPR can influence the likelihood of a prosecutorial 'alternative' such as diversion. If the police officer considers the person to be 'non-vulnerable', it is possible that there may be more blame and less interest in discovering the circumstances surrounding the offence. Perspectives on people who use drugs, and subject positions, are therefore important determinants of the potential lived effects of policy.

Conceptualisations of policy *subjects* (in this instance, people who use drugs) are also influenced by contextual factors such as institutional cultures. An archaeological analysis was conducted to examine in greater depth how representations of the vulnerable subject position relate to structural context. The following problem representations appeared within the RRR and SAC.

House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 55, Conclusions and Recommendations 2.	Both governments must ensure that their approaches to problem drug use acknowledge and address the underlying causes, such as poverty and inequality, social marginalisation, trauma and the lack of strong family structures and support networks.
House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 8, section 14.	The single biggest structural driver of problem drug use is poverty and deprivation.

A logical response to this would be to state that the *object* requiring change would be the economic and welfare practices that lead to inequality and potential investment in services for areas most affected. While the cause of the problem is considered to be located in the economic sphere, the proposed solution is a public health approach. This disjuncture between problem representation, problematisation, and proposed solution,

provides the entry point for a deeper analysis. The public health approach proposal is outlined in the following excerpts.

The Scottish Government, *Rights, Respect, Recovery* Alcohol and Drug Strategy (2018), page 4, section 3.	[…] a focus on taking an improved public health approach in justice settings - reducing use and harm - and taking vulnerable people out of the justice system;
House of Commons Scottish Affairs Committee, UK Parliament, Problem Drug Use in Scotland Inquiry, page 3, paragraph 2.	The UK Government currently treats drugs as a criminal justice matter. However, the evidence we have heard overwhelmingly shows that the current approach is counterproductive. We therefore recommend that the UK Government adopts a public health approach to drugs, and transfers lead responsibility for drugs policy from the Home Office to the Department for Health and Social Care.

Csete et al. (2016), Volkow et al. (2017), and Van Dijk et al. (2019) refer to 'public health' as an evidence-informed approach to ameliorate population-level harms that emphasises intervening at the earliest possible point. Many public health approaches focus on early intervention, providing tertiary support that seeks to 'treat' an issue before it becomes a problem. As Van Dijk et al. (2019) attest, however, some public health approaches offer interventions when the problem is identified as a problem (primary intervention) and some when the problem is more entrenched (secondary intervention). However, the form of approach represented as 'public health' within the SAC and RRR, is concerned primarily with the intersection between health and criminal justice. This intersection is viewed as an intercept, an intervention point that could be used to stimulate a shift from criminal justice sanctions to health-based interventions. This conceptualisation comprises a further dimension to the problematisation of criminalisation that was first introduced as part of the policy logics within the previous chapter (Chapter five, section two). The excerpts below illustrate these logics.

The Scottish Government, *Rights, Respect, Recovery* Alcohol and Drug Strategy (2018), page 49, section 8.	A public health approach means focusing our community justice response on improving health and wellbeing, reducing inequalities and reducing crime. This means that where appropriate, we must focus on diverting vulnerable people away from the justice system and into treatment and support.
House of Commons Scottish Affairs Committee , UK Parliament, Problem Drug Use in Scotland Inquiry, page 18, section 43.	There are two broad approaches to problem drug use—criminal justice, and public health. The former perceives problem drug use as a moral failure and criminal behaviour, which should be dealt with primarily through punitive sanctions delivered by the criminal justice system. It focuses on policing and law enforcement as the primary means of addressing and reducing drug use.

The analysis found that the dominance of the health-based discourse in both documents has a further discursive effect. It diverts the gaze away from a need to address structural

and socio-economic inequality, enabling only very limited focus on welfare policy and proactive attempts to invest in deprived areas. Furthermore, the conceptualisations of vulnerability and ACE awareness do not appear within the NGDPS. The complexity of needs that commonly co-occur with drug-related problems appears to be considered across multiple Scottish policy discourses and within health policy guidelines. However, despite responsibility for Scottish drug strategy having shifted from criminal justice to health in 2017, there appears to be a disconnect where vulnerability and the need for flexible services has not been reflected in prosecutorial diversion guidelines. The impact of these disconnects in terms of the lived experience of those who go through the system, cannot be determined from the results of the current analysis, and will require further exploration in the longer term.

This section has presented an analysis of two secondary data sources, the NGDPS and the MAT standards. The section highlights that in Scotland, prosecutorial diversion can be considered in any case involving low-level offending, where there is an identified underlying need that is considered to have motivated the offence. This means that the current system in Scotland is broader than drug possession, and prosecutorial diversion can be considered in cases involving secondary drug-related offences, such as acquisitive crimes as well as drug possession. By comparing the subjectification effects of the NGDPS and the MAT standards, this section has highlighted that the broad focus of the NGDPS guidelines means that the specific and unique needs of people who use drugs in relation to prosecutorial diversion arrangements have not yet been considered. As the section has shown, the MAT standards, in contrast, propose that people who use drugs should be viewed as a 'special group' with specific needs. One of these needs is described within the standards as being flexible around appointment scheduling, and a recognition that people with more acute drug-related problems may find managing time difficult or may not have the financial resources to travel to appointments. While, as the section shows, drug-related 'problems' are a reason why diversion may be considered, there has been no policy or procedural focus on what some of the specific needs may be related to people who use drugs. Furthermore, the MAT standards recognize that people who use drugs should be afforded choice in terms of the treatment modality or intervention that each individual considers most likely to meet his/her needs and substance use goals. As demonstrated in the previous section, the Scottish Government's (2018) RRR strategy advocates for a public health approach to drug use, suggesting that this should prioritise diversion. However, the data presented here demonstrate that within Scottish diversion arrangements, there remains a criminal justice focus. This is important to note, because the NGDPS guidelines state that prosecutorial

diversion operates on a deferred model of prosecution, and social workers, who conduct the diversion intervention, provide regular progress updates to prosecutors. If diversion arrangements do not fit the needs of people who use drugs well, then there is a potential for net-widening for those who are unable to demonstrate willingness to comply, or willingness to address drug use within the allotted time of the intervention. The chapter now turns, in section three, to policy proposals related to a public health approach to drug-related harm.

6.3 Public health and policing in the Scottish context

This section examines further developments related to the intersection of criminal justice and public health for people who use drugs in Scotland. The data presented in this section relate to research question three, which asks, *"what type of evidence-based strategies could be implemented to meet the needs of the Scottish context?"* The data presented here relate to the second of the two primary data sources, the Scottish Government's (2018) RRR. The analysis presented in this section uses the below secondary data sources to examine the logics, assumptions and 'silences' of the primary data sources in detail. The secondary data sources presented in this section are outlined below.

1. Police and Fire Reform (Scotland) Act 2012
2. Police Scotland (2020) [draft] Drug Strategy
3. Police Scotland (2021c) *Police Scotland Annual Police Plan 2021/22*.

The WPR-SFT analysis of the RRR found relative consistency between the RRR and the SAC's logics, whereby both documents problematise the criminalisation of drug possession, and propose that criminalisation exacerbates the problem of drug-related health harm in Scotland. The RRR also represents pre-existing health inequalities within areas of high socio-economic deprivation as part of the problem of drug use and drug-related harm in Scotland. Similar to the MAT standard outlined in the previous section, the RRR represents people who use drugs as vulnerable, and proposes that diversion away from the criminal justice system should be prioritised by all services, as part of a community justice-focused response to drug use. This is outlined in the below box.

The Scottish Government, RRR Alcohol and Drug Strategy (2018), page	A public health approach means focusing our community justice response on improving health and wellbeing, reducing inequalities, and reducing crime. This means that where appropriate, we must focus on diverting vulnerable people away from the justice system and into treatment and support.

50, paragraph 8.	

Further analysis of the above secondary texts was conducted to examine what areas of convergence or divergence may exist within Scottish policing discourses related to drug use. In 2012, all local area police forces amalgamated into a single policing authority, Police Scotland. This centralisation was brought about by the Police and Fire Reform (Scotland) Act 2012. Section 32 of the 2012 act is outlined in the below excerpt.

Police and Fire Reform (Scotland) Act 2012, section 32 (a).	[...] the main purpose of policing is to improve the safety and wellbeing of persons, localities, and communities in Scotland, and that the police service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which is accessible to, and engaged with, local communities, and promotes measures to prevent crime, harm, and disorder.

As the box above demonstrates, section 32 (a) of the 2012 Act proposes a focus on crime and disorder, as well as harm. The above excerpt also demonstrates that there is a dual focus on safety and wellbeing. Section 32 (a) (outlined above) also gives police officers in Scotland a statutory duty to work in collaboration with other services to ensure that the needs of individuals and communities are met. Notably, while the Act uses the terms *wellbeing* and *harm* (above), there is no definition provided for these terms within the Act. Section 33, subsection 3 and 4 of the 2012 Act, notes that Scottish Government ministers determine strategic priorities for Police Scotland, and that they do so in association with the Chief Constable and local authority councils. Overarching strategic priorities for policing are decided in the Scottish Parliament[26]. However, the 2012 Act states that, while strategic priorities can be set by Scottish Parliament ministers and the Chief Constable, all recommendations must comply with the Lord Advocate's guidance and advice on policing and prosecution. Thus, the Lord Advocate as Head of Scotland's prosecution authority, the COPFS, has the ultimate say over policing arrangements in Scotland.

A key stakeholder within Police Scotland, who took part in the RAG for the PhD, was approached, and a request was made for further detail concerning recent developments in public health policing narratives related to drug use. This discussion revealed that in recognition of a need to establish partnerships with other sectors to identify local area needs and national priorities, a Police Scotland Partnership for Prevention and Community Wellbeing (PPCW) was established (Police Scotland 2021c). During the time

---

[26] Police and Fire Reform (Scotland) Act 2012, Section 33(3)(4) and (5).

that the PhD analysis was being conducted, Police Scotland were working on a draft drug strategy. As part of the stakeholder engagement activities related to this PhD, several conversations took place related to the development of the strategy. These conversations revealed greater detail into the development of the strategy. This information is included here to give background to the findings being presented. The PPCW is led by a Police Scotland Assistant Chief Constable (ACC)[27], and divided into four functional areas. The PPCW worked with several Scottish Government taskforces and commissions and this process identified a need for a strategic commitment to create a national Police Scotland drug strategy. While this Scotland-level policing strategy was being negotiated, some local divisions also began to create bottom-up drug strategies driven by the aim to proactively address drug-related harms in their area (Police Scotland 2021a, Police Scotland 2021b). The PPCW also worked with Public Health Scotland in 2020 – 2021 and aimed to release a statement of intent on public health policing in the summer of 2021, which was delayed as a result of the COVID-19 pandemic.

The analysis for this chapter was conducted between 2019 – 2021. During this period, the Police Scotland [draft] drug strategy had been circulated for consultation several times and had undergone a series of iterations. A copy was made available for the purposes of this consultation. Notably, the COVID-19 pandemic caused a delay to the publication of this strategy, which remains unpublished at the time of PhD submission. The 2020 [draft] version of the strategy proposed that police integrate prevention and enforcement, while taking a 'whole-systems approach' by working with partners to reduce harms. The strategy represented a commitment to working across agencies to share knowledge and create pathways to health-based support when people with drug-related problems come into contact with the police.

Police Scotland (2020) [draft v.1] Drug Strategy, page 3, Strategic Objective 4.	Developing referral pathways towards partners who can assist with harm reduction and recovery from addiction […]

The SAC, and the RRR and the MAT standards, all represent stigma toward people who use drugs as being a 'problem', in that stigma can reduce access to treatment and support interventions. As such, stigma is represented to be a factor that increases drug-related harm. In light of these wider policy discourses on drugs, the Police Scotland commitment to working with other services in evidence-informed ways, and with a commitment to harm reduction, appears both logical and timely. The Police Scotland

---

[27] It is noted that there is more than one ACC within Police Scotland.

2020 [draft] Strategy also proposes that a trauma informed workforce would be required and indicated that this may require a cultural shift within policing, including engagement with academia, to develop evidence-based approaches to support cultural change.

Police Scotland (2020) [draft] Drug Strategy, page 1, point 9.	Review and develop an evidence base with academia to influence strategic development of our approach;
Police Scotland (2020) [draft] Drug Strategy, page 1, point 6.	Reduce the effect of stigma through awareness raising and adopting a trauma informed approach, treating people with dignity and respect;

Bacchi (2009) suggests that all proposals that appear in policy and official discourses contain embedded logics, or assumptions about what is considered to be in need of change. The above box demonstrates an assumption that if police officers are provided with enough knowledge and understanding about drug use, then more awareness of structural inequality and vulnerability will gradually lead toward a cultural shift toward community and individual wellbeing. This relates to the subjectification effects examined in the previous section.

The Police Scotland (2020) [draft] strategy emphasises the need for police to work in partnership with other agencies, as the box below demonstrates.

Police Scotland (2020) [draft] Drug Strategy, page 3, point 4.	• Fully participate in development of multi-agency approaches under the leadership of the DDTF and relevant sub-groups. • Consider partnership approaches at national level to inform local delivery structures, including the role of ADP and CPPs, and ensure these structures are delivered effectively. • Consider partnership approaches at local level to inform national delivery structures and use identified learning to continually improve policy development.

Within the Police Scotland (2020) [draft] strategy, the RRR (2018) and the SAC report (2020), a public health approach was described as being a multi-agency approach to meeting the needs of communities. The proposal for *public health approach to criminal justice* to reduce drug-related harm in Scotland, appeared in the SAC, RRR, and the Police Scotland (2020) [draft] drug strategy. In each of the texts, the proposal for a public health approach was found to be part of what Bacchi (2009) describes as a 'radical contingency' to address drug-related health harm. The term 'radical contingency' refers to a proposal made in policy that relies upon another concept or condition (Bacchi, 2009). In this case, the public health proposal is contingent upon the representation of drug-

related deaths in Scotland as being evidence of a need to do things differently at the intersection of drug law enforcement.

The public health proposals in the RRR, SAC, and the Police Scotland (2020) [draft] strategy, describe a public health approach as being a multi-disciplinary, partnership-based approach that prioritises strategies that have been proven to reduce drug-related harm. The frame of reference that enables this proposal to emerge as timely and implementable is provided by the Police and Fire Reform (Scotland) Act, which emphasises that police officers in Scotland have a dual focus on public wellbeing and community safety. The problematisation of criminalisation that appears in the primary texts, the SAC and RRR, could also be viewed as having influenced the public health focus in the new Police Scotland drug strategy that remained as a draft at the time of writing this thesis in early 2022. There is a dearth of literature related to the historical development of policing approaches in Scotland, with only very few researchers having focused on Scottish-specific police history. However, the literature that does exist, authored by Barrie (2008), Barrie (2010), Barrie and Broomhall (2012), Donnelly and Scott (2010) and McGowan (2010, 2013) suggests that a public health and wellbeing focus for Scottish police authorities may not be entirely new, or as 'radical' as it may appear. Barrie (2008) suggests that police officers were introduced to Scotland before the rest of the UK and that, at the very beginning, the police role related to public wellbeing as well as public safety. There is not enough existing literature on the history of Scottish policing approaches to be conclusive about whether or not a public health role for Scottish police can be considered new. The literature that does exist, however, raises some interesting questions that may point to the potential cultural, institutional, and contextual alignment of public health policing in Scotland, and is something that would be valuable to address in future research.

6.4 Chapter summary

This chapter began by examining data related to existing diversion arrangements in Scotland and identified that Scotland is currently operating a strategy for diversion that falls outside of the 'discursive frame' outlined in the previous chapter. The previous chapter focused on discourses that represented diversion as a policing strategy, and as a mechanism to deliver de facto decriminalisation. The current chapter adopted a different focus and used secondary data sources to examine the policy 'silences', presenting the secondary data that related to research question three, thereby exploring *'what types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context'.* The chapter found, as the previous one did, that the notion of

'evidence-based strategies' assumes cross-contextual translatability of strategies that have worked well elsewhere. The current chapter, like the previous, demonstrated that the notion of 'evidence-based' strategies de-prioritises knowledge related to the context in which strategies are implemented.

The previous chapter, Chapter five, focused on overlooked barriers to implementing the strategies proposed in the SAC. The current chapter, Chapter six, changed focus to examine the strategies that can and are being used in Scotland to reduce criminalisation and, in theory, provide access to interventions to address the needs that sit beneath offending. As section two of this chapter showed, however, current prosecutorial guidelines in Scotland propose that diversion can be used in a range of low-level offence types. Section two explored the subjectification effects of the Population Health Directorate's (2021) MAT standards, to outline the contrasts between a public health focus, and the current criminal justice-led approach to prosecutorial diversion in Scotland. The section identified that, because diversion arrangements do not make specific provision for the potentially unique needs of people with problematic drug use, there is the potential for unintended negative consequences, such as net widening, in circumstances where the diversion arrangement may not necessarily be equipped to the unique needs of people who use drugs. The analysis of both of these documents together showed a potential disconnect with the overarching Scottish Government drug strategy, where the RRR proposes that diversion should be viewed as part of a public health approach to drug use that moves people away from criminal justice involvement at the earliest possible opportunity.

Section three of this chapter moved on to examine the RRR's logics in relation to a public health focus within the Police Scotland (2020) [draft] drug strategy, the Police Fire Reform (Scotland) Act 2012, and the Police Scotland Annual Police Plan 2021/2022. The analysis demonstrated relative consistency between the discourses that appeared within the RRR, the SAC, and the aforementioned secondary literature sources, where a public health approach was defined as being a multi-disciplinary, 'evidence-based' partnership approach to reducing drug-related harm. Section three demonstrated that the public health approach could be considered a 'radical contingency' and that the proposal that public health be prioritised, was able to emerge due to the scale of drug-related deaths in Scotland, which were represented in the SAC as an 'urgent crisis' requiring a radical, rapid response. Research question two remains relevant to the data presented here, as the data suggested that both policy and practice reform are considered to be necessary to reduce the harms associated with criminalisation and

drug-related health harm. Therefore, in response to research question three, the 'evidence-based' strategy that emerged as being required from the findings in both chapters, is a renewed focus on harm reduction.

Chapter 7: Discussion

7.1 Introduction

This chapter begins by summarising the main thesis findings in order to explicate the study's original contribution to knowledge. It will then outline the ways that these findings specifically extend existing literature on diversion, decriminalisation, and drug policy reform. The chapter then outlines implications of the thesis findings for policy implementation in practice. It also considers the strengths and limitations of the study. As a reminder to the reader, the research questions that this study sought to address were:

1. How are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?
2. To what extent do these discourses suggest that reform is required?
3. What types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?

The following section, Chapter seven, section two, is divided into subheadings which address each of the research questions in turn.

7.2 Summary of main findings and contribution

Problem representations

This section provides a summary of the study findings related to research question one, *"how are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourses?"* Before discussing the findings, however, it is necessary to return briefly to how 'problem' representations are conceptualised within the Bacchian WPR, and why they are considered to be relevant to this form of policy analysis. Bacchi (2009) describes policies as being a 'window' that can be used to critically examine how governance occurs within a particular context. She proposes that all societies are governed by *problematisations.* As outlined previously (see Chapter one, section one), problematisation refers to the processes and events that lead to a social phenomenon coming to be conceptualised as a problem. Therefore, the problematisation is the process that has led to ontological shifts in meaning and understanding of, and response to the phenomenon, which in this study is illicit drug use. However, as has been reiterated throughout, the thesis is also concerned with how policy discourses produce diversion and the Scottish context

as 'problems' to be resolved via policy action. Chapter five outlines that police diversion emerges as a policy focus that is deemed 'possible' within Scotland. The de-prioritisation of the contextual data provided in this thesis makes *police diversion as de facto decriminalisation* appear possible in Scotland. As such, a lack of progress toward implementation of English-style police diversion schemes in Scotland appears as part of the problem. Paradoxically, Scottish divergence, where the Scottish Government is in the SAC represented as being more progressive than the UK Government when it comes to drug policy, is presented as part of the problem. A lack of convergence toward English practices of de facto decriminalisation, however, is also considered to be a part of the problem. As such, UK and Scottish Government divergence on drug policy and policing practice is represented as problematic within the SAC's policy-related discourse. The complexity and inter-relatedness of these concepts lend themselves to visual representation. Figure 4, below, addresses research question one, *"how are the 'problems' of drug use, diversion and the Scottish context represented in official policy-related discourse?"*
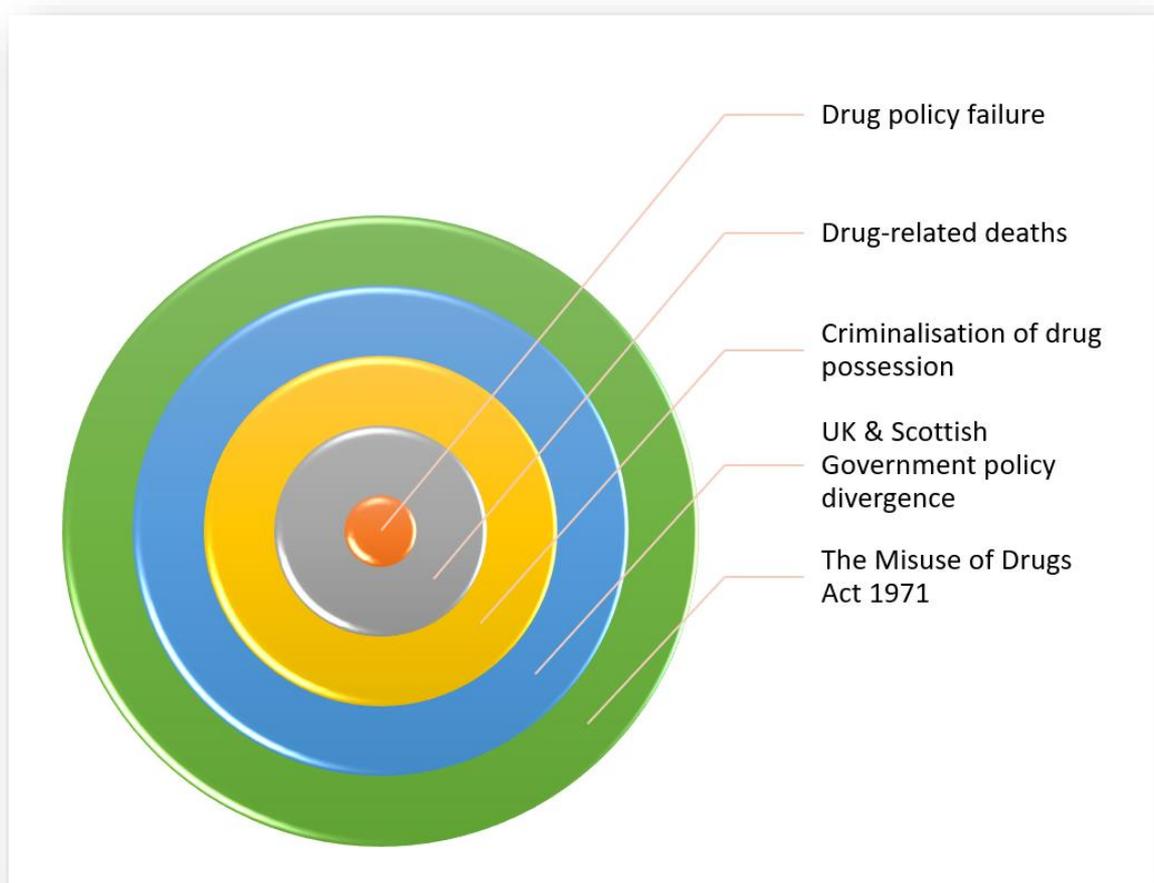

Figure 4. Problem representations

As Figure 4 indicates, the initial problem representation that emerged from the analysis was drug policy failure. In several of the analysed policy texts, drug policy failure was described as being responsible for exacerbating drug-related deaths. Criminalisation of drug possession (for personal use) was described as being problematic, because it was exacerbating stigma and creating barriers to the implementation of public health strategies to reduce harms. The Scottish Government was described within the SAC report of 2019 as being more progressive and ready to implement public health approaches to reducing drug-related health harm but was depicted as being unable to do so due to the constraints of the UK Misuse of Drugs Act 1971. To overcome this problem, the SAC report (2019) proposed police diversion as a solution. As Bacchi (2009) states, the solution proposed can be traced backward to reveal the implied problem representation. Therefore, if the solution is police diversion, then it holds that the implicit problem representation is a lack of progress toward implementing police diversion in Scotland. While implicit problem representations such as this are a key focus for Bacchian WPR analysis, it is worth noting that the SAC report (2019) also explicitly stated the view that the Scottish Government were not doing enough within their existing powers to reduce drug-related harm or the criminalisation of drug possession. This assumes (WPR question 2) that the proposed solution, police diversion as de facto decriminalisation, is within the existing power of the Scottish Government to implement.

A different, but related, problem representation emerged from the analysis of Scottish Government policy texts. For example, the Scottish Government's (2018) RRR Alcohol and Drug Strategy and Protecting Scotland's Future: the government's programme for Scotland 2019-2020 state that reducing criminalisation in Scotland is not possible without devolution of, or centrally agreed change to the UK Misuse of Drugs Act 1971. The proposed solution within these Scottish Government policy texts was for the UK Misuse of Drugs Act 1971 to be amended. This solution produces the UK's Misuse of Drugs Act 1971 as the problem. The assumption that is embedded within this solution is that arrests for drug possession offences, and harm reduction measures, such as supervised drug consumption sites, cannot be implemented in Scotland without legislative reform. While the explicit policy problems, criminalisation and drug-related deaths, as they appear within the SAC report and Scottish Government policy documents are the same, the proposed solutions differ, and so too do the implicit problem representations. For the SAC report (2019) the problem is represented to be the Scottish Government's lack of progress toward implementing police diversion as a form of de facto decriminalisation. The Scottish Government texts, on the other hand, represent the problem to be the UK Government's lack of willingness to reform or devolve the UK Misuse of Drugs Act 1971.

The difference between these two representations relates, therefore, to the type of change that could be enacted and who has the power to enact said change.

All analysed discourses problematised criminalisation of criminalisation of personal drug use, which was represented as being a factor that increased drug-related health harms, including drug-related deaths. This problem representation is consistent with a now well-developed body of academic literature. For example, Csete et al. (2016) indicate that criminalisation of drug possession has led to unintended public health consequences in many parts of the world. Pūras and Hannah (2017) have also called for an end to what they term drug prohibition on the basis that it legitimates inhumane treatment of people who use drugs who can be denied access to services on the basis of stigma-based perspectives on drug use. As described in Chapter two, section five, there have been calls from various UN agencies and health lobbying organisations for nations to consider what reforms could be enacted to reduce the harms associated with criminalisation and increase access to health care and harm reduction services (Human Rights Council 2015, United Nations Chief Executives Board 2019, United Nations Office on Drugs and Crime 2021). The representation of criminalisation as a problem that appears within the policy narratives outlined in Chapter five, is thus consistent with a considerable volume of academic literature, as well as being in alignment with recent developments in the international political realm.

As Chapter five, section two, outlined, policy divergence between the UK Government and Scottish Government concerning drug policy, was represented as the next layer of the problem representation related to drug use and the Scottish context. The SAC report of 2019 suggested that the Scottish Government treats problem drug use as a health issue, whereas the UK Government remains committed to treating it as a criminal justice matter. As Chapter five, section two indicated, the linked proposal was that the UK Government should either devolve aspects of drug legislation to the Scottish Government to enable a public health approach to be taken or enact legislative reform. As such, the final layer of the problem representation, as shown in Figure 4 above, was the UK Misuse of Drugs Act 1971. The Misuse of Drugs Act 1971 was represented to be the ultimate problem related to drug use in the Scottish context, where it is considered to be creating a barrier to reducing harms.

In summary, this section has outlined that in response to research question one, the study found that the 'problem' of drug use, diversion, and the Scottish context, was represented to be the following, layered 'problems': drug policy failure, drug-related deaths, criminalisation, drug-policy divergence, and ultimately, the Misuse of Drugs Act

1971. The next subsection is concerned with research question two, *'to what extent do these discourses suggest that reform is required?'.*

The case for reform

This subsection now discusses the policy proposals that emerged from the analysis of the primary data sources. The term policy proposals is used here to refer to the solutions posed within the SAC and the RRR. These proposals relate to research question two*, "to what extent do these discourses suggest that reform is required?"* Figure 5 below, indicates the linked reform proposals, as they appeared in the SAC report of 2019.
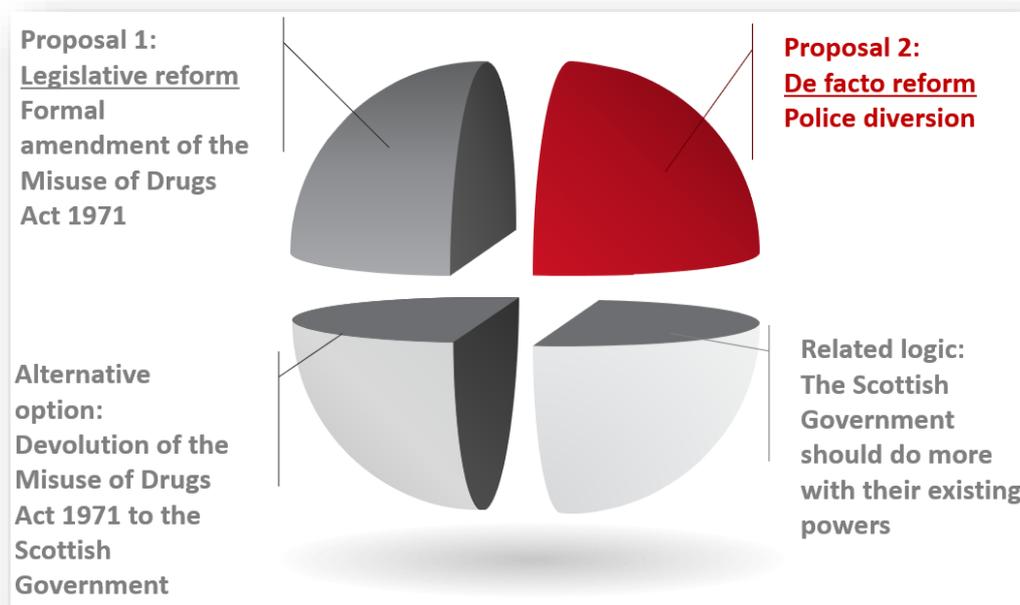

Figure 5. Reform proposals

As represented in Figure 5 above, and described in Chapter five, section two, the UK Parliament's SAC report (2019) explicitly proposed that reform was necessary. The first type of reform proposed, was de jure decriminalisation, which is described in the report and in the broader literature as the complete removal of criminal sanctions for possession of small amounts of drugs (Hughes et al. 2019c, UK Parliament 2019a). As Chapter five, section two, demonstrated, however, the SAC report suggested that the UK Government were unwilling to consider this type of drug law reform. To overcome this, a second scenario was proposed where it was assumed that devolving aspects of the UK Misuse of Drugs Act 1971 to the Scottish Government would enable the Scottish Government to

enact legislative reform to decriminalise drug possession. The SAC report (2019), however, also quoted the UK Minister with responsibility for this area as having given evidence stating that devolution of aspects of the Act would not be considered. It is possible, therefore, to suggest that, in response to research question two, the analysed discourses do indeed suggest that reform is required. Bacchi (2009), however, cautions against early conclusions and suggests that the WPR can be used to get beneath policy logics, to confer more detailed, nuanced findings. This study found that the UK Government's unwillingness to allow legislative reform, was a further problem representation. In the Scottish Government's 2019 – 2020 Programme for Government, the UK's position on drug law reform was represented as a factor that was exacerbating drug-related harm and preventing the full implementation of a public health approach to drugs. This representation also appeared within the SAC report (2019), which made a further reform proposal, proposing that if the UK Government remained unwilling to consider reforming, or devolving the Misuse of Drugs Act 1971, then police diversion should be implemented in Scotland as a form of de facto decriminalisation. The SAC report (2019) noted that several police diversion schemes were de-prioritising arrest and offering routes to health and social care interventions. In this way, diversion was represented as a type of reform that could be provided within the UK's 'current legal context'.

Chapter five, section three of the thesis, was concerned with Bacchi's (2009) WPR question three, which asks, *"what deep-seated conceptual logics (assumptions and presuppositions) underlie this representation of the problem?"* The analysis undertaken indicated that the notion of the UK as a single, homogenous legal context, made the *police diversion as de facto decriminalisation proposal* appear as a logical, relevant, and implementable proposal. However, Chapter five, section four, offered a detailed, contextually situated analysis of 'alternative' knowledge that had fallen outside of the 'discursive frame'. In so doing, it exposed the notion of the UK as a singular legal context as a 'truism', rather than an accurate representation of place and context. Chapter five, section four, indicated that Scotland's system of law, independent prosecution authority, and the constitutional position of the Lord Advocate presented significant, context-specific barriers to de facto reform that arguably have so far been overlooked within the policy discourses on drug law reform. The findings of this thesis suggest that police diversion cannot be used as a form of de facto decriminalisation in the Scottish context, or, police diversion cannot be overtly conceptualised as a mechanism to circumvent UK law. If strategies are not developed to enable diversion to be used to reduce criminalisation at the earliest possible intercept with criminal justice authorities in

Scotland, then the case for drug law reform in Scotland is particularly strong. In response to research question two, it is possible to tentatively conclude that, indeed, the policy discourses analysed for this study do indicate that reform is necessary. However, the type of reform that can be considered possible depends upon the conceptual and interpretative schemas used to describe 'alternatives' to criminalisation. The following section turns to research question three and examines the type of 'evidence-based' strategies that could be implemented in Scotland.

Strategies that could be implemented

This section is concerned with research question three, which asks, *"what types of 'evidence-based' strategies could be implemented to meet the needs of the Scottish context?"* The concept of 'evidence-based' strategies has been critically examined in Chapter two in relation to social policymaking more generally, and in Chapter three, section four, which explores policy developments related to the UK and Scottish contexts. The post-structural analytic strategy used within the thesis is underpinned by an ontological view that the 'truth' and, therefore, knowledge about a social phenomenon or context is not universal, nor unequivocal, but rather the product of historical and cultural events, occurrences, and constructs. The notion of 'evidence-based' policy is thereby questioned throughout the thesis, which proposes that the strategies that work well in one national context, will not necessarily work elsewhere. The non-linear relationship between evidence and policy was described in Chapter two, section two, which explored theories on discourse and policy, and Chapter three, section three, which explored the complexity of drug policymaking in the UK and the complexity of social policy within Scotland. The findings presented in Chapters five and six extend and compliment the work of others, such as Cairney (2017) and Cairney and McGarvey (2013), who have pointed to the complexity of drug policymaking in the Scottish context.

The current thesis points to a further dimension of the 'evidence-based' policy paradigm, where there has been an overarching assumption in drug policy narratives that when it comes to diversion, what works in one part of the UK will work in another. The oversimplified representation of the UK as a single, homogenous legal context has led to a de-prioritisation of knowledge related to Scottish-specific barriers to police diversion. This section, therefore, moves beyond the 'evidence-based' policy paradigm to look at Scottish specific arrangements and opportunities for contextually aligned diversion strategies.

Research question three asked *"what types of strategies could be implemented to meet the needs of the Scottish context?"* The study found that the first proposal, de jure

decriminalisation, cannot occur in Scotland without the UK Government agreeing to enact legislative reform. By analysing what Bacchi (2009) describes as the policy 'silences', that is, the knowledge that exists outside of the policy frame, the study found three contextual barriers to de facto decriminalisation of this type in Scotland: Scots Law, the constitutional principle, and the Scottish system of independent public prosecution. In response to research question three, Chapter six outlined that Scotland is currently operating prosecutorial diversion. Chapter six also noted, however, that there is some divergence in the conceptualisation of people who use drugs as it appears within the national guidelines on prosecutorial diversion (2021) and other Scottish Government reports. As such, the study concludes that Scotland can, and is, operating a system of prosecutorial diversion. However, as Chapter six has demonstrated, there are gaps in knowledge concerning how well current approaches are working that require to be addressed in future research. When it comes to the Scottish context, the findings presented in the thesis suggest that there exists a stronger case for drug law reform in Scotland than in other UK nations, due to the presence of context-specific barriers to de facto decriminalisation. However, as the thesis has demonstrated, it is the conceptualisation of diversion *as de facto decriminalisation* that produces these problems. As outlined in Chapter five, section four and five, the Scottish Lord Advocate has considerable power, independence, and autonomy, to alter police and prosecutor guidance, and so, if diversion were to be reconceptualised as a 'public health approach' to drug-related harm, and not as a form of de facto decriminalisation, it may be possible to overcome these contextual barriers to reform, and move toward developing a Scottish approach to the intersection of criminal justice and public health that works within the constraints of the Scottish system.

The master's work undertaken for this 1+3 PhD appointment indicated that in Scotland, diversion occurs at the point of prosecution, conviction and sentencing, rather than arrest (Price et al. 2020). The findings presented in Chapters five and six provide detail concerning why current arrangements in Scotland differ from other UK nations. The findings presented in the current thesis challenge the notion of the translatability of 'evidence-based' strategies from one context to another, and point to the importance of a nuanced, detailed exploration of the contextual arrangements that could present barriers to implementation. The findings presented in this thesis suggest that prosecutorial diversion can and is being used in Scotland and can be used in cases where substance use is identified as an underlying need that could be addressed via a diversion from prosecution. However, sections two and three of Chapter six have suggested that the dominant focus on diversion as a police-led early intervention (as it

appears in the SAC) has led to the de-prioritisation of Scottish specific diversion research, and so, currently very little can be conclusively known about how well current diversion arrangements are working from the perspectives of those operating and experiencing Scottish diversion.

7.3 Post-analysis developments: Recorded Police Warnings

A key moment of change occurred just after the final PhD analysis had been completed in 2021. In May 2021, Sir James Wolffe announced his decision to step down from the position of Lord Advocate. While Lord Advocates conduct their prosecutorial duties independently of the Scottish and UK state, the Scottish First Minister recommends appointees to the UK monarch. And so, in June of 2021, Nicola Sturgeon, First Minister, lodged a motion in the Scottish Parliament to request that the Queen appoint Dorothy Bain QC as Scotland's new Lord Advocate (Scottish Government 2021c). Dorothy Bain took up the position of the Lord Advocate in June 2021 (Crown Office and Procurator Fiscal Service 2021a). On the 22nd of September 2021, the newly appointed Lord Advocate, Dorothy Bain QC addressed the Scottish Parliament to make a statement about drug use, Recorded Police Warnings (RPW), and prosecutorial diversion (Crown Office and Procurator Fiscal Service 2021b). The new Lord Advocate announced that, after a recent analysis of prosecutorial action in relation to drug possession (only) offences, it had become evident that the majority of cases involving possession of class A drugs had resulted in prosecutorial direct measures, rather than court proceedings. Direct measures include prosecutorial diversion[28], prosecutorial non-action, case dismissal, prosecutorial warnings, and fiscal fines (Crown Office and Procurator Fiscal Service 2001). The rationale given for the expansion of the RPW scheme to include Class A and Class B substances, was that it did not amount to change but, rather, made it clear to police officers and Police Scotland that such cases were unlikely to result in prosecutorial action. It is possible to argue, therefore, that the expansion of the scheme did not necessarily represent a radical change but made it possible to save criminal justice resources by making such decisions visible to police, while discouraging the reporting of cases that were unlikely to result in prosecutorial action.

Further research is required to ascertain the changes that may follow in terms of policing possession of drugs, now that the RPW scheme has been expanded. The shift was viewed as positive by many, and there were discussions in the media labelling the move de facto decriminalisation (Johnson 2021, Lavelle 2021). However, the analysis

---

[28] Explored in the next chapter.

presented in Chapter five, section four and five, indicates that there are constitutional and legal barriers that prevent the Lord Advocate from agreeing to any change that is considered to be decriminalisation, unless there is a change to the Misuse of Drugs Act 1971 agreed by the central UK Government. The findings presented in this chapter outline that the expansion of the scheme does not necessarily amount to any change at all, if the evidence suggests that prosecutors were not prosecuting the majority of drug possession only offences. The scheme merely makes prosecutorial decision-making in such cases clear to police, thereby reducing the time and revenue involved in processing cases that are unlikely to be prosecuted. However, the media representation of this move as de facto decriminalisation may, in future, present an issue to the continuation of the scheme, given that the Lord Advocate cannot agree changes to law enforcement that could amount to non-enforcement of UK law (see Chapter five, section four). Shortly after the announcement was made, the COPFS posted the following on the social media platform Twitter.

The Crown Office and Procurator Fiscal Service (2021) [Twitter] 29th September 2021. Available at: https://twitter.com/copfs/status/1443148532509196288. Accessed 29th September 2021.	Possession of Class A Drugs: The Lord Advocate has not decriminalised; police may now issue recorded warnings in some circumstances.

The COPFS also gave the below statement.

Lord Advocate statement on Diversion from Prosecution. Crown Office and Procurator Fiscal Service (Crown Office and Procurator Fiscal Service 2021b), paragraph 9.	Recorded Police Warnings do not represent decriminalisation of an offence. Recorded Police Warnings represent a proportionate criminal justice response to a level of offending, and are an enforcement of the law.

The analysis presented throughout this chapter gives a rationale for the reinforcement of the above message. If the expansion of the RPW were to be considered a de facto change to drug law enforcement, it would contravene the Lord Advocate's duty as a Senior Law Officer, where s/he is responsible for ensuring the enforcement of UK law, and the legislative competency of devolved policy areas. However, in her 2021 statement, the Lord Advocate proposed that the shift was based on a full assessment of prosecution records related to possession-only offences, and it was posited that this shift

was an 'evidence-based', proportionate response that reflected growing recognition of a need to reduce case processing in circumstances that were unlikely to result in prosecutorial action.

The Lord Advocate's parliamentary address focused upon drug use as a complex health and social care disorder, requiring a compassionate and proportionate response. The Lord Advocate stated that the expansion of the RPW scheme was a necessary response to "Scotland's drug-death emergency" (Crown Office and Procurator Fiscal Service 2021b). This illustrates that, despite barriers existing to altering law enforcement practices in Scotland, catalyst events can provide the impetus for rapid shifts. The announcement suggested that, regardless of whether a case was to be reported for prosecutorial decision making or dealt with via a direct measure (RPW), police officers could and should play a key role in connecting people with services to meet assessed need. Indeed, the shift could enable a more rapid resolution of the criminal justice process, which would alleviate the stress involved in waiting for a case decision for many. However, it is possible that this shift also related to the fact that the Scottish criminal justice system is overloaded and facing significant backlogs as a result of the COVID-19 pandemic and the aftermaths of two periods of national lockdown. In June of 2021, the Scottish Parliament had announced an ambition to reform the justice system to make processes "faster, fairer, and more effective" (Scottish Government 2021b). These developments, alongside growing recognition of a need for an urgent response to address drug-related deaths, acted as key contextual factors that stimulated what could amount to structural change.

The extent to which these new developments will result in altered policing practices cannot be known. Existing research conducted by Bacon (2021), highlights that changes to policing practices often take time, and the availability of a 'no action' alternative does not always result in an uptake of such options. The likelihood of case reporting compared to a decision to issue a police warning, is likely to depend upon police culture, officer training, and the beliefs of individual officers concerning the nature of drug use and the likelihood of reoffending following an RPW being issued. The expansion of the RPW scheme introduces a layering of discretionary action that requires further analysis. First, police officers can decide whether the RPW scheme is suitable to the offence and individual circumstances, second, the COPFS prosecutor can decide whether an 'alternative' to prosecution would be appropriate. Further analysis of the beliefs, values, and culture within both policing and prosecutorial bodies in Scotland is therefore

required. Further detail on recommendations for future research is provided in Chapter eight, section four.

7.3 Theoretical contribution

The central thesis of this work is that the 'evidence-based' policy paradigm has led to a dominant assumption that the diversion strategies that have worked well in one country will be readily translatable to another. The current study sought to address the problem statement outlined in Figure 6 below.
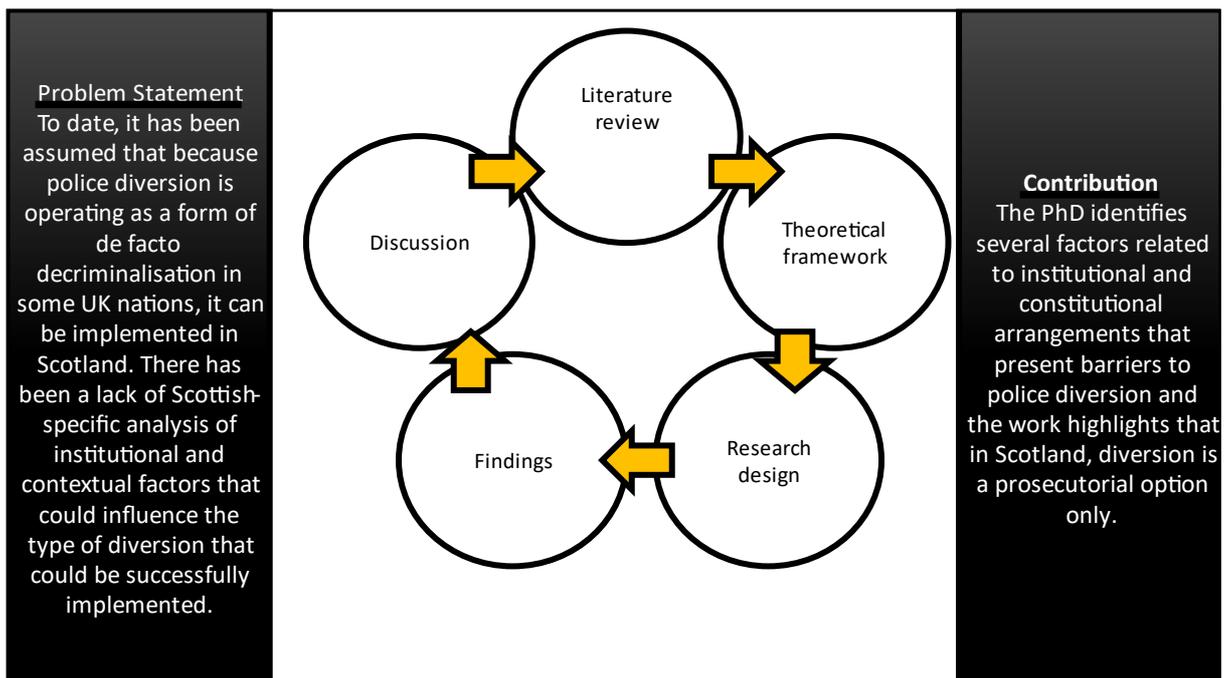

Figure 6. The golden thread

The current thesis expands upon existing literature on diversion, particularly the work of Hughes et al. (2019), who suggest that contextual factors can influence the likelihood of successful implementation of diversion strategies. The current study addresses a gap in literature concerning what these factors are within a Scottish context. As introduced in Chapter one, section two, the term context is often used loosely to refer to a set of situated, inter-related factors. This study has used the example of Scottish diversion to explore specific, contextually situated factors that can act as barriers or facilitators to diversion. As has been explored throughout, the study is underpinned by a post-structural research paradigm, informed by the work of Carol Bacchi (2009). The study proposes that, while context-specific factors can influence institutional roles, the effects of power can be muted or amplified by the way that 'problems' are represented in policy. For example, the policy frame outlined in the SAC does not acknowledge the power,

independence, or authority of Scotland's independent public prosecutorial authority, the COPFS, due to the dominance of the logic of homogeneity between UK nations.

The current thesis, and the post-analysis developments explored in the previous section, highlight that some barriers to policy proposals can be conceptual, where others are legal. Nonetheless, as the expansion of the RPW scheme highlights, a re-conceptualisation of 'problem' and solution can make what once appeared impossible, suddenly possible. As the expansion of the RPW scheme, there is a potential for rapid reform in any context when conceptual and interpretive schemas (discourses) shift.

Using Bacchi's (2009) WPR approach has made it possible to get beneath policy logics to enable a critical examination of context and place. The findings presented in the current study demonstrate that there are legal and constitutional barriers to the Lord Advocate approving any change to police or prosecutor guidance that amounts to a de facto deviation from UK law. It is, therefore, the conceptualisation of diversion *as de facto decriminalisation* that presents a contextual barrier to implementation. This suggests a need for a re-conceptualisation of diversion, as well as a need to develop Scottish-specific approaches to diversion. The above example of the expansion of the RPW scheme serves to demonstrate the potential that a re-conceptualisation may hold. While the data explored in the thesis is deliberately context-specific, it makes a unique contribution to international literature on diversion in two ways. Firstly, it presents a 'deep dive' into one country (a plurinational state) which has important lessons for other international settings. Secondly, it identifies areas for foundational research to be undertaken within contexts that are considering implementing 'evidence-based' diversion schemes from other countries. The foundational research noted here relates to the nuanced understanding of context, as outlined in Figure 7 below.

Figure 7. Theorising context

The study complements the work of other scholars who have sought to define context in greater detail, such as Nilsen and Bernhardsson (2019) and Øvretveit et al. (2011). Nilsen and Bernhardsson (2019:18) suggest the following:

> *The term "context" is derived from the Latin cum ("with" or "together") and texere ("to weave"). Understanding what happens when an evidence-based practice, e.g. an intervention, programme, method or service, is "woven together" with a team, department, or organization, it is important to better address implementation challenges in health care and other settings. Accounting for the influence of context is necessary to explain how or why certain implementation outcomes are achieved, and failure to do so may limit the generalizability of study findings to different settings or circumstances.*

(Nilsen and Bernhardsson, 2019: 18) Nilsen and Bernhardson, as quoted above, sought to explain the differences between study outcomes within implementation science, noting that definitions of context differ between academic disciplines, as well as between studies. Øvretveit et al. (2011) define context as being simply everything else that is not the intervention. The current study was aligned with post-structuralism, rather than the more positivist orientations of implementation science. Nilsen and Bernhardson (2019) note that the term context requires further theorisation, since a loose definition of the term presents challenges in assessing the likelihood of successful implementation of

strategies. Stevens et al. (2019) have suggested that contextual factors can influence the likelihood of successful implementation of 'alternatives' to criminalisation for drug-related offences, such as diversion. The current study extends this further, by offering detailed insights into what some of these contextual factors may be, as outlined in Figure 7. The study findings point to a need for a nuanced, detailed understanding of context when it comes to diversion strategies, where the translatability of 'evidence-based' strategies from one context to another is often assumed. The findings presented in Chapters five and six identify that the evidence-based policy paradigm, that is, the notion of a linear relationship between research and policy, has led to the de-prioritisation of potential contextual barriers to the implementation of diversion strategies that have been implemented elsewhere. The current study contributes to existing literature related to diversion by identifying relevant contextual factors that can influence implementation. Context, within this study, includes an examination of eight related factors outlined in Figure 7.

The nuanced and contested definitions of the Scottish context that exist within the broader literature, were examined in Chapter three, section three, which outlined that, although many authors concur that Scotland can be described as a nation, some authors have used the term substate, or 'stateless', to acknowledge the complexity of the relationship between Scotland and the UK (Miller 1995, Minahan 2002). Gellner (2008) proposes that a definition of the term *state* should include state infrastructure such as the legal system and criminal justice system. The findings presented in Chapter five, section four, indicate that several aspects of the Scottish legal system, such as the form of law practiced and the institutions of law such as the independent prosecutorial authority, were protected from assimilation via constitutional agreements when the UK was formed. As Chapter five, section four, notes, further constitutional protections were put in place when the Scottish devolved parliament was established in 1998. The retention of pre-union state infrastructure means that Scotland could be conceptualised as a partial state to this day. These findings provide a counter argument to Mooney and Scott (2005), who assert that Scottish policy divergence is merely a political strategy to push for further devolution of power. Instead, the findings presented in Chapter five, section four, suggest that there has been an under-acknowledgement of the heterogeneity of legal and criminal justice arrangements within the UK.

By providing detailed information related to Scottish-specific barriers to police diversion, the study has disrupted the dominant policy narrative, where police diversion is represented as a mechanism to deliver de facto decriminalisation in Scotland. As the

previous chapter described, rendering this 'hidden' contextual knowledge visible has the ability to alter the 'discursive frame', enabling clarity concerning drug policy development in Scotland. As the existing literature presented in Chapter three, section four, indicated, Scottish policy divergence has attracted some debate within the academic literature. Since the devolution settlement of 1998, knowledge concerning Scotland's pre-union state infrastructure has been viewed as irrelevant to drug policy development. In other policy debates, Scottish divergence from UK approaches is often dismissed as a political attempt to justify devolved governance. For example, Law and Mooney (2012) suggest that policy divergence is often implicated as part of what they refer to as Scottish 'nation-centrism'. They use this phrase to describe social policy divergence appearing as a political mechanism to argue for further devolution of power. The findings of the current study present an alternative, perhaps opposing view, in indicating that a false logic of homogeneity has resulted in the subjugation of knowledge related to key contextual barriers to the types of reforms proposed. This means that *police diversion as de facto decriminalisation* has appeared as an implementable policy proposal, and Scottish-specific constitutional, legal and institutional arrangements have been assumed to be unproblematic. This thesis, thereby, demonstrates the value of a WPR analysis to drug policy developments in contexts where complex governance structures exist and, in particular, to 'devolved' contexts.

As the thesis described, Scotland is often referred to as a devolved nation. The current thesis makes a unique contribution by proposing that the retention of pre-union state infrastructure raises some questions as to whether Scotland could, instead, be considered as a partial state. The findings align with the work of Billig (1995), who asserts that false homogeneity in 'compound states' such as the UK is often an expression of 'banal' centre-state nationalism that denies differences in the smaller nation to protect the sense of unity on which the larger state is based. The term banal, as Billig (1995) uses it, does not confer harmlessness but, rather, an ontological conceptualisation of the context that has dominated for such a long period of time that it has become viewed as the only conceptualisation that could be considered as 'true'. The notion of Scotland as merely a geographical area within the UK, or a devolved administration, has been challenged by the findings. This thesis has outlined that, while the devolution agreement of 1998 conferred greater responsibility to the Scottish Executive (which became the Scottish Government in 2008), the agreement did little to alter the Scottish prosecutorial body, or the practices involved in Scots Law. In fact, as Chapter five, section four demonstrated, the 1998 Act created the devolved Scottish Parliament and acts as a constitutional document. However, section 29 of the Act also protected the

independence of Scottish prosecution, preserved the independence of the judiciary, and conferred a constitutional duty for the Lord Advocate to preserve Scots Law. These obligations to the Scottish constitution mirrored those of the 1707 UK constitution, which have been unchanged for several centuries and have been considered important to Scottish culture and national identity (Clancy 2018, Kidd 2003, MacQueen 1995). The study has demonstrated the value of a post-structural analytic strategy which has made it possible to critically deconstruct how representations of the context have shaped drug policy narratives.

Until Hughes et al. (2019b) paper on models of depenalisation, decriminalisation and diversion was published, there had been very limited recognition in the academic literature of the importance of contextual factors to the implementation of diversion. The study therefore contributes to scholarship in this area by exploring the constitutional, legal, and institutional barriers that can exist to de facto decriminalisation. The findings set a new direction for diversionary research, which qualifies the notion of translatability. The theoretical model proposed in Chapter eight proposes that, in many contexts, an 'alternative' to criminalisation involves a systems-level change which is often incremental, and must be undertaken by first conducting foundational, contextually situated research to understand the criminal justice, legal and constitutional arrangements that exist which could influence the likelihood of implementation. While the current study focuses on the Scottish context, the findings contribute to academic scholarship more broadly by pointing to the importance of context that has, so far, been underacknowledged when it comes to 'alternatives' to criminal sanctions.

Foucault (1971) notes that the discourses and conceptualisations that dominate in a society remain stable only for a limited time, or what he refers to as a 'historical epoch'. He observes that, gradually, the forms of social control that once appeared legitimate are de-legitimised as new knowledges emerge. Foucault (1971) proposes that moments where discourses fragment and shift, can confer insights into the relationship between knowledge, power, institutions, culture, and the society. For Braudel and Mayne (1995), however, there are often unseen 'currents of continuity' that sit beneath discourses, embedded within institutions that constrain the likelihood of lasting change. The current study sought to explore how policy discourses were representing drug use, diversion, and the Scottish context as specific types of 'problems'. The aim was to identify context-specific insights into the processes of governance and to analyse the case for reform. The study found several such 'currents of continuity' that had occurred as a result of the de-prioritisation of Scottish-specific research related to diversion. The de-prioritisation of

Scottish knowledge was found to relate to a dominant logic of homogeneity, where it had been assumed that because the UK operates under a single drug law, differences in criminal justice arrangements were irrelevant to the policy frame. This section draws from Braudel and Mayne's (1995) notion of contextually embedded 'currents of continuity' to propose what can be referred to as a 'continuity theory of diversionary research', which is visually represented in Figure 8 below.
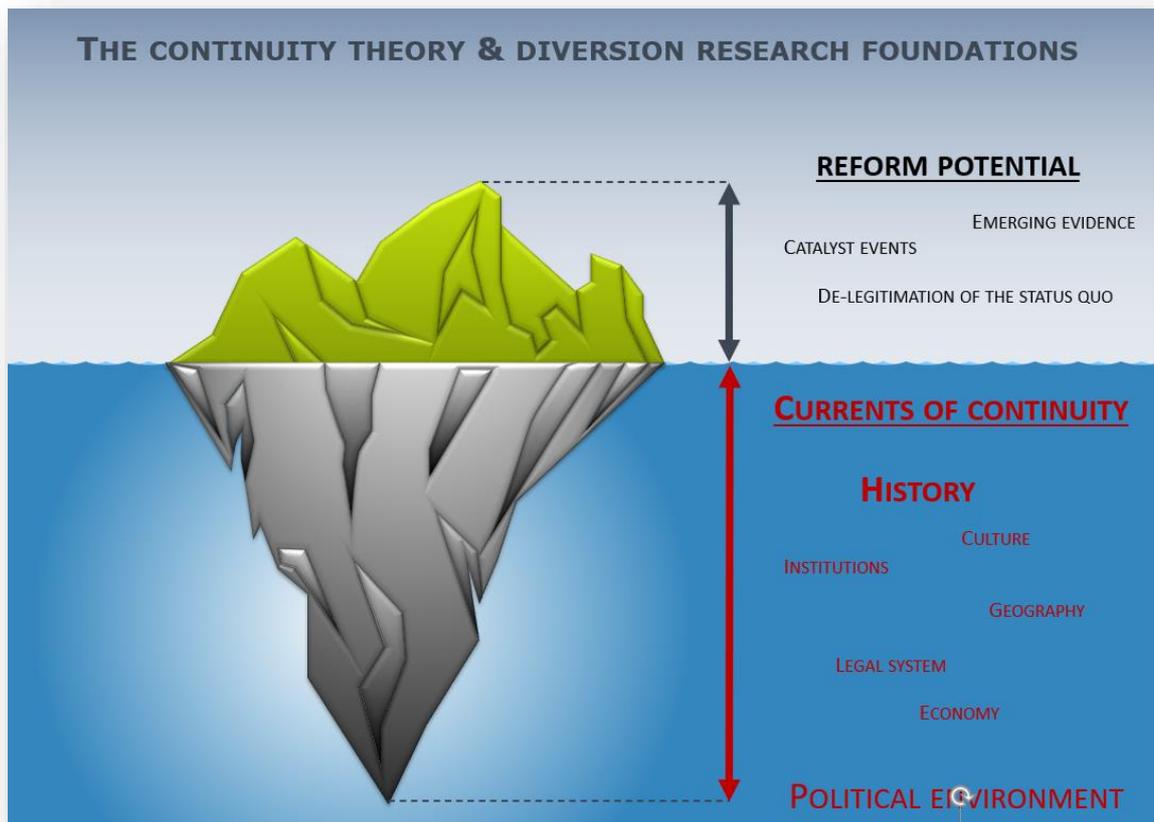
Figure 8. The continuity theory

The above figure, Figure 8, amalgamates and builds upon several theoretical perspectives which inform a proposed model for foundational research that could be undertaken to inform the development of contextually aligned models of diversion. The model outlined above, is inspired by Braudel and Mayne's (1995) work on 'currents of continuity', which suggests that discussions on reform can be 'mere ripples on the surface of an unchanging sea' if they fail to align with deeper 'currents of continuity' embedded within a context.

In proposing the model outlined in Figure 8, I outline a new agenda for future research in the field of drug policy reform. The model, and the findings presented throughout,

illustrate that unseen 'currents of continuity' are often deeply embedded within societies, where they can act as barriers to lasting reform. As Braudel (2002) outlined in his study of the civilisations surrounding the Mediterranean, events can sometimes cause shifts in discourses and altered practices of governance or social control. However, there is often an unseen pull back to centre, particularly when orders of discourse are misaligned with institutional cultures or structural conditions. As Figure 8 illustrates, the potential for reform is influenced by discussions in policy but is also influenced by catalyst events. This thesis has demonstrated that in Scotland, rising rates of drug-related deaths provide one such catalyst for discussion on drug policy reform. The thesis has noted examples of policy discourses where there have been calls for reform. However, the findings presented throughout demonstrate that although change appears imminent, there have been 'unseen' barriers to policy implementation due to a lack of Scottish specific, contextually situated research. Drawing from Braudel's (1949) theory, I refer to these 'unseen' contextual factors as 'currents of continuity'. In this case, these are the contextually embedded legal, institutional and constitutional barriers to reform explored in Chapter Five. This has, as Figure 8 illustrates, created a 'grey area' of proverbial 'murky water' at the centre, where there is discursive flux, masked confusion and disparate views concerning who has the power to implement proposed reforms, such as police diversion as de facto decriminalisation. I propose that this 'grey area' of discursive flux has fuelled political polarisation on the topic of drug policy reform and drug-related deaths in Scotland. The impetus toward evidence-based policy, and a growing recognition that diversion can act as a de facto measure to reduce the harms of criminalisation has, I argue, also increased the political potency of the topic of diversion, drug policy reform and the Scottish context. In devolved or substate nations, expressions of legal, institutional and constitutional difference are often met with suspicion, and this commonly sits amidst everyday narratives on homogeneity with the compound state (Billig, 1995). This adds a further (unintended) current of continuity which holds the status quo in place because of the marginalisation of knowledge concerning context specific arrangements.

As examples from other countries such as the USA and Australia have shown, diversion has the potential to reduce the harms associated with criminalisation of personal drug use and to reduce public health harms by providing early interventions. The current study, however, proposes that this is only the case when the form of diversion proposed in policy aligns with the institutional and legal arrangements in place within that geographical context. As Chapter six highlighted, some proposals are more contextually aligned than others, and speak to the cultural, and/or economic structural contexts of

nations. Chapter six, for example, indicated potential contextual alignment of public health policing in the Scottish context, and demonstrated the proposal's relationship to the notion of structural vulnerability related to macro-economic structures. While the findings presented here relate to the Scottish context specifically, it is likely that the model proposed above will be helpful for those exploring implementation of diversion approaches in other countries where diversion does not yet exist. The model provided in Figure 8 thereby contributes to international literature on diversion by demonstrating the areas of research that could be helpful to explore to facilitate implementation.

7.4 Methodological contribution

The current thesis also makes a methodological contribution to academic research by providing the new research method outlined in Chapter four, section four, which I have named, the Modified SFT-WPR. As Chapter four, section four, has illustrated, the model is based upon a fusion of Ritchie et al.'s (1994) structured framework technique and Bacchi's (2009) WPR approach. The thesis has demonstrated the value of this new approach, where the structure introduced by bringing the two approaches together has enabled the identification of very detailed historical, contextual knowledge that had existed as policy 'silences'. I propose that the level of detail provided in Chapter five, section four, was required to de-politicise the notion of Scottish policy divergence as a political strategy, replacing the narrative via a recognition of pre-union state infrastructure. I suggest that, without the structured analysis that the structured framework technique introduced, and the level of stakeholder engagement that informally supported the project, it may not have been possible to identify the significance of the findings to policy and context. It is likely that the Modified SFT-WPR will be of value to researchers examining complex governance structures and public policy, as it provides a theoretical framework, as well as a clear, rigorous, transparent research process.

7.5 Policy contribution

A great deal of time and effort has been invested by the Scottish Government, where several partnerships have formed to critically explore what de facto 'alternatives' to criminal sanctions can be provided without legislative change. To date, the foundational piece of the puzzle provided by the current study, had been missing. The study has shown the value of recognising structural and sociohistorical differences to enable a detailed analysis of the barriers and facilitators to implementing public health approaches, as well as the value of 'alternatives' to criminal sanctions. The study contributes policy-relevant insights into the type of strategies that could be used to

reduce the harms associated with criminalising people with drug-related problems in the Scottish context. The study has argued that in a devolved policy 'context' such as Scotland, what is required first, is to disrupt logics of homogeneity between nations. The insights offered in this thesis are likely to be of value to other small nations that exist within what Moreno (2006) refers to as 'plurinational' or 'compound states', such as the UK and Spain. A need to critically explore contextual conditions and structural factors via a sociohistorical lens is valuable to those exploring the translatability of diversion and depenalisation schemes across national contexts more broadly. The shift toward sharing best practices via international forums of policy entrepreneurs is incredibly valuable to this field. The research, however, adds a caveat that points to the areas of foundational research that are required before translatability can be assumed.

The central thesis that has been reiterated throughout, is that shedding the logic of homogeneity opens the possibility to de-politicise discussions on Scottish structural differences and contextual conditions. The point made throughout this thesis is that a lack of progress toward implementing police diversion schemes is not a political unwillingness to use existing power, but, rather, a lack of central acknowledgement of what these powers are and where they lie. The study has highlighted that disrupting the notion of the UK as a single legal context helps to make governance structures clearer, which in turn makes it possible to examine how Scottish legal and institutional arrangements operate. The effect of this re=conceptualisation is that important gaps in research have emerged, which, if addressed, could lead to the development of a uniquely Scottish approach to the intersection of criminal justice and health.

The findings have highlighted the complexity of Scotland's system of law, prosecution, and policing and have illustrated that it is not possible for police diversion to act as a form of de facto decriminalisation in Scotland. This is not unique to the Scottish context, and the findings make an important contribution to international knowledge where, to date, the translatability of police diversion to countries operating constitutional law or independent prosecution authorities has not been explored. There is a flavour for international research concerning law enforcement and public health more widely, so it is essential that consideration is given to the contextual factors that constrain the types of diversion able to be implemented. If this gap in terms of research, policy and practice is not addressed, there is a risk that the window of opportunity for reform will close without any actual change being achieved.

Findings suggest that contextual data has been the missing piece in a jigsaw related to diversion in Scotland. As the findings presented in Chapter five, section two, has

demonstrated, criminalisation of personal drug use has been represented as a problem within policy texts from both the UK Parliamentary Inquiry into Problem Drug Use in Scotland, and the Scottish Government's (2018) RRR. As Chapter five, section two, has shown, diversion has been proposed to overcome the UK Government's unwillingness to consider drug law reform. The findings point to policy divergence between the two governments as part of the problem and suggest that diversion would enable the Scottish Government to move toward a public health approach to drug use. Diversion has appeared, within the analysed texts, as a panacea, a mechanism to overcome the UK Government's reluctance to enact drug law reform. Diversion has appeared as a key component of a public health approach, a way to prioritise the reduction of drug-related health harm, as well as the harms associated with criminalisation. The findings presented in Chapter six identify key barriers to implementing the type of diversion that has been proposed, within the Scottish context.

7.6 Recommendations

The following recommendations are made in relation to drug legislation, policy and practice in Scotland.

1. The UK Government should consider the case for formal amendment to the Misuse of Drugs Act 1971, treating Scotland as a 'unique' setting with specific needs.

Because police diversion cannot be used as an early intervention to deflect people away from criminal sanctions, the UK Government should consider formal amendment to the Misuse of Drugs Act 1971. Such an amendment could be used to enable police diversion to occur in Scotland via legislative change. Although full de jure decriminalisation would be advantageous, there remains thus far unresolved political tension around this.

2. Legislated diversion should be explored as a potential policy solution that may be workable in Scotland.

If the UK Government will not consider devolving or amending the UK Misuse of Drugs Act 1971, then the type of legislated diversion currently being used in some Australian territories may provide an implementable solution that will allow diversion to be used in Scotland as an 'alternative' to arrest without breaching Scots Law, the constitution, and without compromising the role of the Lord Advocate. Further information on legislated diversion is explored by Hughes et al. (2019), and it is advised that Scottish and/or UK policymakers explore the approach to legislated diversion being used in Australia in more

detail. A legislated form of diversion, implemented via an amendment to the Misuse of Drugs Act 1971, or via separate, new legislation, could help to introduce police diversion to Scotland without compromising the constitutional and legal role of the Lord Advocate. Legislated diversion, delivered via legal amendment, would, theoretically, remove police discretion, and introduce a legal obligation for police to refer people with drug-related problems to support as an 'alternative' to case processing. This may ease some of the tensions between drug legislation and diversion practices in Scotland, by eliminating the need to deviate from UK law to provide an 'alternative' to arrest for diversion. The complexities of this legislative and policy option, however, require a deeper level of legal analysis.

7.6.1 Areas for future research

This section begins by outlining areas for future research in Scotland. It then moves on to describe areas for future research related to cross-contextual translatability of diversion schemes.

1. Research should be undertaken to examine how well current prosecutorial diversion arrangements are working in Scotland.

As outlined in Chapter five, section four, Scotland operates a system of independent public prosecution that shares more in common with the systems used in other European countries than it does with the systems used in other UK nations (Crown Office and Procurator Fiscal Service 2001, Wolffe 2017). As explored in Chapter six, section four, police officers in Scotland have a statutory duty to report all cases where there is sufficient evidence that a criminal act has been committed, to the Crown Office and Procurator Fiscal Service (COPFS), who have the sole authority to determine what action or non-action is deemed to fulfil the 'public interest'. The term 'public interest' refers to the prosecutor's assessment of the required action to reduce the risk of reoffending. As Chapter six, section two, indicated, such decisions are based on an assessment of the circumstances surrounding the offence, and consider any underlying needs that are considered to have contributed to the offence. Where there is deemed to be an underlying need, such as welfare needs, health needs, or substance use, the prosecutor has a range of 'alternatives' to criminalisation at his/her disposal, with diversion being one such option.

As Chapter six, section two, noted, diversion, in this context, consists of a referral to the local authority social work department. The social work department has a duty to consider the details of the case, the suitability of the referral, and the department's

capacity to accept the referral (Community Justice Scotland 2020). Although officially prosecutors are the only authority with discretion concerning 'alternatives' to prosecution, the local authority social work department's assessment of suitability enters a further area of discretionary decision-making.

2. It is crucial that further research be undertaken to examine social worker's perspectives on drug use, people who use drugs, and diversion, since beliefs and attitudes toward drug use can have a bearing on decisions made.

Stigma has been recognised as a focus for Scottish Government strategy, as part of a public health approach to drugs (The Scottish Government 2021). The recent Medication Assisted Treatment Standards (MATS) published by the public health directorate, suggest that stigma within services can result in early unplanned discharge from treatment services, which exacerbates the risk of accidental overdose and drug-related death (Population Health Directorate 2021). There has been no Scottish-specific research undertaken to examine stigma within local authority criminal justice social work departments, and so, very little is known about how social worker's perspectives on drugs influence decisions on suitability for diversion.

3. Research is required to better understand the socio-demographics of offers of diversion to better understand whether this precludes 'roofless' homeless people, and if so, what adjustments could be made to ensure equality within the system.

The Community Justice Scotland (2020) NGDPS indicate that Scottish diversion is a voluntary arrangement, where, if on assessment of the case, the referral is accepted, an offer of diversion is made in writing to the 'accused'.

4. The issue of coercion is also an important factor to understand via further research.

While Scottish prosecutorial diversion is a voluntary arrangement, studies conducted elsewhere have questioned the notion of 'non-coercive' criminal justice-led interventions. For example, Tiquet (2019) emphasises the importance of hearing service user perspectives to understand how coercion is experienced and understood. This is important to the management of drug-related offences because coercion has been shown to increase the experience of stigma and has been linked to detrimental treatment outcomes (Hachtel et al. 2019). According to Roviš et al. (2019), many people with drug-related problems are also dealing with mental health difficulties or trauma histories and

so, the effect of coercion related to diversion appointments is something that requires further examination. Lasalvia et al. (2013) examined coercion within mental health treatment from the perspectives of those with lived experience, and found that when coercion was experienced as discriminatory, or when it constrained lives, it led to reduced self-esteem and increased stress and anxiety.

5.   Research is required to understand lived experience perspectives concerning whether or not current arrangements are experienced as discriminatory or challenging to adhere to.

The current prosecutorial diversion arrangements in Scotland require social workers to provide regular updates to prosecutors concerning the individual's level of engagement and compliance with meeting schedules. As noted in Chapter six, section three, the Public Heath Directorate's (2021) MATS report suggests that people with drug-related problems often experience difficulty in attending meetings, or organising time, and proposes that flexibility should be prioritised. The impact of 'drop out' via non-attendance at diversion appointments, or early termination of diversion for non-engagement, should also be researched. Malloch and McIvor (2013) note that some criminal justice arrangements in Scotland have had a net widening effect, and currently not enough is known about the potential for terminated diversions to widen the net of criminal justice involvement. Further research into how diversion is experienced by those who have been through it, has the potential to identify what improvements, if any, could be required to enhance participation and improve outcomes.

6.   Scottish specific research should be undertaken to examine police officer perspectives concerning drug use and prosecutorial diversion.

This thesis has indicated that, in Scotland, police officers are not decision-makers concerning diversion. Chapter six, section two and four, however, noted that Scottish police officers can play a key role in increasing the likelihood of prosecutors deciding to either use diversion, prosecutorial non-action or case dismissal, based on the quality and depth of information provided on the SPR. The term discretion is used, in the broader academic literature, to refer to decision-making authority and the flexibility to use professional judgement (Bacon 2021). This thesis has demonstrated that police in Scotland do not officially have discretion when it comes to deciding whether or not to report a case to the COPFS. However, it could be argued that police can exercise discretion when it comes to what each officer decides is relevant to record on the SPR. If prosecutors receive no detail of circumstances related to the life of the individual, or

the offence, then a decision to divert becomes less likely, unless the prosecutor instructs police officers to conduct further inquiries. The perspectives of police officers concerning drug use, people who use drugs, and diversion, are likely to have a bearing upon what emphasis is placed on the information that goes into the report.

7. Further research should be undertaken with Police Scotland to identify opportunities to develop harm reduction strategies to address drug-related harm via a public health lens.

Such research should take into consideration the role of Scottish police, and should consider this in relation to institutional culture. The term 'diversion' should be avoided, as this term is misaligned with the Scottish police role.

The focus now turns to areas for future research in relation to diversion and the cross-contextual translatability of approaches that have worked well in other countries. As the model outlined in section two of this chapter, demonstrates, future diversion research should examine context-specific barriers or facilitators to the successful implementation of diversion strategies by considering the following factors:

1. The history of the nation, state, or locality
2. The existing institutional arrangements related to policing, prosecution, and public health
3. Cultural understandings of drug use and the role of the state
4. The legal system, including the type of law practiced
5. Economic and geographical factors that have been considered to relate to drug use within the context.

7.7 Chapter summary

This chapter focussed on a model for understanding context, informed by the findings of this study, and outlined how this nuanced understanding of context had led to the development of the 'continuity theory for diversion research'. The 'continuity model of diversion research' outlined within this chapter, proposes that, if research is not conducted to examine these inter-related factors in detail, then there is a danger that the status quo will be retained by hidden 'currents' of continuity. The term 'currents of continuity' refers to hidden, contextually specific barriers to reform that can account for gaps between policy and implementation. The 'continuity model' provides a framework for examining the multiple dimensions that fall under the descriptor of 'context'. The following chapter explores the strengths and limitations of the study. A personal reflection

on conducting the study during the COVID-19 pandemic is provided before the final threads of the thesis are woven together, and the thesis draws to a close.

Chapter 8: Conclusion

8.1 Introduction to chapter

This final chapter restates the research approach, summarises the findings related to the research questions, explores the strengths and limitations of the study, and makes recommendations for future research. The chapter also provides a reflective account of conducting doctoral research during a global pandemic.

The thesis has explored how diversion, drug use, and the Scottish context have been represented as 'problems' within official policy-related discourses. The initial literature review, presented in Chapters two and three, highlighted the existing knowledge that informed the research approach. Chapter two highlighted that over many centuries, tensions between states has been an underlying issue that international conventions on drugs have implicitly sought to address. The literature presented within Chapters two and three combined, however, described the notion that political and policy discourses related to drug use have tended to focus on drug use as a personal trouble, rather than a structural, or state-level issue. The gap between policy narratives and macro-level political concerns was shown to lend itself well to a post-structural analytic strategy, as described by Bacchi (2009).

Chapter four demonstrated how Bacchi's (2009) WPR approach was fused with Ritchie and Spencer's (2003) SFT, to introduce what has been described in the current study as 'the Modified WPR-SFT' approach. The fusion of these two methods enabled, as Chapter four described, a rigorous, sequential stepped research method. As Chapter seven described, the study data (presented in Chapters five and six) informed the development of a 'continuity theory for diversionary research' which identifies areas for contextual analysis that are required before the translatability of 'evidence-based' diversion strategies from other countries can be considered translatable within a given national context. When it comes to the UK, the findings presented in the thesis make an important contribution to drug policy development by presenting detailed information about Scottish-specific barriers to implementing English-style diversion approaches.

The findings of this study confirm the relevance of post-structural analysis as a mechanism to critically explore drug policy development within devolved nations. Braudel's 'currents of continuity' emerged as an explanatory construct, which inspired the 'continuity theory for diversionary research'. Braudel's (1959) theory helped to explain the significance of the identified barriers to implementing the policy solutions

posed within the analysed texts, which could be conceptualised as unseen 'currents of continuity' that maintain the status quo, preventing the type of reform that had been proposed in the analysed policy-related texts.

Although this study has demonstrated the value of post-structural drug policy analysis within a devolved nation, the data were less clear on how well the current system in Scotland is working, and for whom. The attitudes and perspectives of police, prosecutors and social workers involved in the Scottish form of diversion that is currently being used, were not investigated. Nevertheless, the study findings set a new direction for Scottish diversion research, emphasising the need to recognise Scottish difference and examine the Scottish system as unique, and different from other UK nations. The study findings also add to existing critiques of 'evidence-based' drug policy making (see Duke 2013; Stevens 2010 and Lancaster 2016). Although it has been acknowledged by others that there is a non-linear relationship between evidence and policy within the drug policymaking sphere, this study extends the existing literature by demonstrating the complexity of the notion of 'evidence-based' policy in devolved contexts, where the policy frame may also influence the level of attention paid to the uniqueness of the context. The study also makes a contribution to diversion research more generally, by identifying the contextual factors that should be investigated before the strategies that have worked well elsewhere can be considered 'translatable' between national contexts. The study proposes that a nuanced, detailed understanding of context is required that considers institutional arrangements, power, politics, culture, and history, both within the context and the external influences that may exist out with.

The previous chapter outlined the study findings in relation to the research questions. To conclude the thesis, however, a short section is provided in section two below, which summarises the study findings in relation to the research questions. Subsequently, the strengths and limitations are considered, and detailed consideration is given to areas for further research.

8.2 Strengths and limitations of study

In this section, the focus now turns to a reflective account of the strengths and limitations of the study. The section begins with some personal reflection on the lessons learned by the researcher during the doctoral journey. To allow the researcher to reconnect with the reader, the section adopts a first-person narrative.

One of the strengths of this study, I believe, is in the unique contribution, where it has been possible to identify moments in Scottish history that have shaped narratives on

context, as well as influenced the type of reform that is possible within Scotland. The use of historical accounts in sociological research, of course, is not new. Bringing to light 'subjugated knowledge' about Scottish legal and constitutional structures, however, has the potential to create clarity in what is currently a potent area of drug policy debate. Although I was unable to complete the knowledge exchange event that I'd planned for research phase two due to the COVID-19 lockdown restrictions, I maintained contact with key informants throughout. As such, there were informal mechanisms of 'member-checking' that acted as a 'sound board' to check the validity of emerging findings. The journey toward discussing the study with confidence involved some personal and professional development. Initially, I was nervous about networking, and I understood the political potency of the topic as well as my early career status. Because the study was co-funded by the Scottish Government, as well as the Economic and Social Research Council, and because of the active role my principal supervisor played in policy discussions, there was interest in the study from the outset. At first, I found the interest in the project a little overwhelming and it was challenging to navigate what could be said, and to whom. In this, I am indebted to my principal supervisor who provided mentoring and provided a good example of how to navigate what Stevens and Zampini (2018) refer to as multiple 'drug policy constellations'. While I was considered a policy outsider at the beginning of the PhD, as time progressed, I came to be related to as an insider-outsider. With the help of supervisors, I was able to establish a RAG formed of policy analysts and policymakers from criminal justice, health, and communities' divisions of the Scottish Government. Therefore, there were opportunities to take part in policy discussions from the outset, and the developing insider-outsider identity position enhanced the research by conferring opportunities to discuss ideas and exchange knowledge.

As the research progressed, it troubled me that there were no lived/living experience representatives on the advisory group, nor members from Police Scotland, and so, after some negotiation to protect anonymity and confidentiality, membership was expanded to include a Police Scotland lead and a member with lived experience. Institutional constraints and obligations to maintain independence from government meant that it was not possible for the relevant COPFS lead to join the advisory group. The COPFS lead, however, was willing to meet with me regularly to discuss the PhD individually, and we established a supportive relationship that enhanced my professional development and my knowledge of the COPFS and provided opportunities to explore the validity of the findings. As described in Chapter four, section six, the formal knowledge exchange event that would have comprised research phase two, had to be cancelled due to the COVID-19 lockdown restrictions of 2020 – 2021. Although not having had the knowledge

exchange event is recognised as a limitation of the study, the ongoing informal involvement of key stakeholders helped to provide opportunities for member-checking and an exchange of ideas, which helped to enhance the validity of the findings.

Conducting the PhD during a time where drug policies were continually evolving and in a state of ongoing flux, was no doubt challenging. The complexity of being an invited, insider-outsider to policy discussions within multiple sectors was challenging, but a source of valued professional and personal development. Maintaining relationships between people from diverse professional backgrounds with differing perspectives on drug use, diversion, and reform, while maintaining research integrity and independence, was a steep learning curve. As Chapter one, section three, indicated, drug policy and practice is something that I care deeply about, and yet, through observing others during events, I learned that tact, discretion and diplomacy are at the core of progress. It was exciting to be involved in a project capable of contributing to policy development. Additionally, I gradually came to recognise that I was often playing an incidental 'bridging' role during my conversations with different stakeholder groups, representing the views of multiple organisations at forums, and using knowledge to bring people together. That role was certainly an accidental one, but one that played a part in me being invited to join the Scottish Drug Death Taskforce subgroup on criminal justice and law reform in late 2021. The learning that I have gained during the PhD has been transformative, and I have gained valuable experience through having had the opportunity to be a part of multiple drug policy conversations. I believe that these opportunities have enhanced the PhD, offsetting the limitations produced by the adjustments made due to the COVID-19 restrictions.

The originality of this study is in some ways owed to the period of reflection that began when the COVID-19 restrictions were announced. As Chapter four, section six, explored, there was a brief spell in which the constant buzz of emails slowed, and engagement activities waned, while the world caught a collective breath. The idea of early lockdown being a pause for reflection and creativity has been explored elsewhere, by Buheji (2020). The lockdown period coincided with the analysis, and the focused time (despite the challenges of additional caring responsibilities) allowed scope to get creative. The PhD had, until that point, been very fast paced and the level of stakeholder engagement that accompanied it, had taken considerable time. The period of quiet reflection, adjustment and change, offered some time to follow lines of inquiry that otherwise might have been overlooked, or not afforded the time that they required. And so, the limitations of the study are also the source of its originality. Had it not been for the pandemic, it is

doubtful that I would have had the time to research the periods in Scottish history that had emerged as relevant in the level of detail that I did. If the level of detail had not been provided, it is possible that the relevance of what I was discovering would not have been recognised. When the schools closed, my caring responsibilities increased, and my son worked by my side. This made writing challenging, and so, I switched to capturing thoughts and analysis using visual techniques. These data visualisation techniques alerted me to the relevance of what I was finding, and the need for a 'deeper-dive' into historical data became evident. Buheji (2020) suggests that for some researchers, the pandemic gave an enhanced opportunity for focus, to reflect, absorb, and synthesize information. That was certainly true for the current research, where a desire not to be overwhelmed by messy or challenging to navigate findings led to methodological innovation, where I developed the Modified SFT-WPR model. The pandemic also brought opportunities for rapid member-checking with the stakeholders, who I knew to be open to brief conversations on Microsoft Teams, where 'lightbulb' discoveries could be explored.

During the pandemic, I maintained stakeholder engagement via online platforms. I noticed, however, that in some instances, particularly in group meetings, some of the informalities of discussions were lost. While my efforts to maintain stakeholder engagement were successful with many, others became lost along the way, and I feel that this would not have been the case if meetings had been possible in person. It was, in some ways, easier to maintain relationships that had been established in-person before the pandemic, than it was to establish new ones that were based purely on on-line interactions. While the RAG continued to meet online during the pandemic restrictions of 2020 and 2021, the meetings became less regular because many RAG members were directly involved in the COVID-19 response, and others had taken on additional responsibilities since the work-from-home directive. When the world readjusted to online engagement, rather than face-to-face interactions, workloads and priorities began to shift for many stakeholders. I learned that the most solid, ongoing support was often provided by stakeholders via one-to-one online discussions, which enabled space for informal chat alongside formal discussion. This is valuable learning, given that online engagement and hybrid working appears to be here for the longer term. One benefit of the pandemic, however, was that it seemed just as easy to connect with researchers, policymakers, and practitioners in other countries as it was within local networks. The benefit of this was that I was able to participate in many discussion forums and form networks across multiple countries with ease. This helped me to be continually alert to emerging diversion and public health developments across the world, which

enhanced my understanding of the validity of the findings and has provided research and career opportunities to be explored in the future.

8.3 Personal reflection: conducting doctoral research during uncertain times

This section provides a reflective account of conducting doctoral research during the COVID-19 pandemic. To enable greater reflection, this section uses the first-person narrative.

Wang and DeLaquil (2020) suggest that doctoral research is often an isolating experience, but propose that, for many, the COVID-19 pandemic has intensified feelings of solitude and isolation. When our university announced a 'work from home' directive in March 2020, our team began to meet for an informal catch up one lunchtime per fortnight. These were a lifeline that helped to maintain a feeling of connection to the university and to colleagues. To maintain the collegiate informality, however, the group had an unspoken, but often joked about 'no work-related chat' rule. This meant that while feelings of isolation were reduced, and a sense of connection maintained, there was limited scope to bounce research ideas off each other. Before the pandemic, informal discussions with other doctoral researchers, or more senior academics, over coffee, had been a valuable source of inspiration. Wang and DeLaquil (2020) also note that it is often in these informal, chance, interactions that research discoveries are made, and 'lightbulb' moments occur. Until the pandemic, this had always been the case for me, and discussions with other researchers had been enriching. I feel that the lack of opportunities for what Long et al. (2007) refer to as 'corridor conversations' certainly impacted upon my research journey, if not the research itself.

The earliest part of the pandemic was an uncertain time. Walking outside was permitted once per day only and I often felt so protective over our little household bubble, that I was reluctant to go outside. During this period, my principal supervisor provided emotional support and encouraged me to remember to look after my own wellbeing alongside the research. My caring responsibilities were particularly intense for a variety of reasons, and the early lockdown period had brought many challenges. When lockdown restrictions temporarily eased enough to allow people to meet in small groups outdoors, I did not take the opportunity to meet with department colleagues in person. If I had my time again, I would have done more of this. By that time, however, my expectations of myself and my daily work output had risen, and it did not feel like I could afford the time to travel to meet with others. Over time, I came to realise the importance of maintaining a work and wellbeing balance. The lessons learned during this period are

likely to enhance my future career and workload planning decisions. I now recognise, and better understand, the value of prioritising self-care alongside research activities, and have developed strategies to help me maintain productivity as well as commit to personal wellbeing.

8.4 Concluding comments

The study title, *'The thistle and the rose'* was inspired by the genealogical findings related to King James VI's symbolic discourses of union, and by accounts of the 'coins of union' that he is said to have given out, emblazoned with a Scottish thistle on one side, and an English rose on the other. The notion of Scotland and England as merely two sides of the same coin have been implicitly examined throughout the thesis findings presented in Chapters five and six. The central thesis, explored throughout, has been that context-specific knowledge is required to ensure the successful implementation of 'alternatives' to arrest and prosecution, such as diversion. By undertaking a situated, contextual analysis of drug policy discourses and 'alternative' knowledge, the thesis has pointed to several factors specific to the Scottish context that had been overlooked due to a dominant conceptualisation of the UK as a single, homogenous legal context. The title, therefore, is used as a reminder of the symbolism that has been questioned throughout.

The thesis has highlighted distinctly different arrangements between Scotland and England concerning the role of the police and prosecution, which means that it is prosecutors, rather than police, who are decision-makers in diversion. The thesis also notes that the Scottish Lord Advocate has a constitutional duty, enshrined in the UK constitutional document of 1707 and the Scotland Act of 1998, to ensure that Scottish prosecution policy does not deviate from UK law, and that law does not evolve via legal practice, rather than democratically agreed legislative reform. The findings highlight the complexity of Scotland's system of law, prosecution and policing, and have illustrated that it is not possible for police diversion to act as a form of de facto decriminalisation in Scotland. This is not unique to the Scottish context, and so, the findings make an important contribution to international knowledge where, to date, the translatability of police diversion to 'pluri-national', 'compound states' (Moreno 2006), or those constrained by constitutional issues, had not been explored.

References

Adam, C. and Raschzok, A. (2017) Cannabis policy and the uptake of treatment for cannabis-related problems. *Drug and Alcohol Review, 36*(2), pp. 171-177.

Advisory Council on the Misuse of Drugs (2012) *Recovery from drug and alcohol dependence: An overview of the evidence*. London: Home Office.

Advisory Council on the Misuse of Drugs (2015) *How can opioid substitution therapy (and drug treatment and recovery systems) be optimised to maximise recovery outcomes for service users?* London: Home Office.

Anderson, B. (2016) *The shifting foundations of modern nation-states,* Toronto: University Press.

Angiolini, E. (2007) *Annex A The role and functions of the Lord Advocate*, Available: https://publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306we13.htm [Accessed 24th November 2020].

Archer, L., Maylor, U., Osgood, J. and Read, B. (2014) Final report: An exploration of the attitudinal, social and cultural factors impacting year 10 students performance. *Institute for Policy Studies in Education.*

Articles of Union, 1707. London: HM Parliament, Available: https://www.parliament.uk/documents/heritage/articlesofunion.pdf [Accessed 2nd February 2021].

Asquith, N. L., Bartkowiak-Théron, I. and Roberts, K. A. (2017) *Policing encounters with vulnerability,* New York: Springer.

Avery, J. D. and Avery, J. J. (2019) *The stigma of addiction: An essential guide,* New York: Springer.

Ayres, T. (2020) *The War on Drugs and its invisible collateral damage,* London: Routledge.

Babor, T. F., Caulkins, J., Fischer, B., Foxcroft, D., Medina-Mora, M. E., Obot, I., Rehm, J., Reuter, P., Room, R. and Rossow, I. (2019) Drug policy and the public good: A summary of the second edition. *Addiction, 114*(11), pp. 1941-1950.

Bacchi, C. (2005) Discourse, discourse everywhere: Subject "agency" in feminist discourse methodology. *Nordic Journal of Feminist and Gender Research, 13*(3), pp. 198-209.

Bacchi, C. (2009) *Analysing policy: What's the problem represented to be?,* London: Pearson.

Bacchi, C. (2017) Policies as gendering practices: Re-viewing categorical distinctions. *Journal of Women, Politics and Policy, 38*(1), pp. 20-41.

Bacchi, C. (2018) Drug problematizations and politics: Deploying a poststructural analytic strategy. *Contemporary Drug Problems, 45*(1), pp. 3-14.

Bacchi, C. and Bonham, J. (2014) Reclaiming discursive practices as an analytic focus: Political implications. *Foucault Studies*, (17) pp. 179-192.

Bacchi, C. and Goodwin, S. (2016) *Poststructural policy analysis: A guide to practice,* New York: Springer.

Bacon, M. (2017) *Taking care of business: Police detectives, drug law enforcement and proactive investigation,* Oxford: University Press.

Bacon, M. (2021) Desistance from criminalisation: Police culture and new directions in drugs policing. *Policing and Society*, pp. 1-18.

Barberi, D. and Taxman, F. S. (2019) Diversion and alternatives to arrest: A qualitative understanding of police and substance users' perspective. *Journal of Drug Issues, 49*(4), pp. 703-717.

Barkow, R. E. (2020) Can prosecutors help to end mass incarceration? *Michigan Law Review, Forthcoming*.

Barnett, A., Dilkes-Frayne, E., Savic, M. and Carter, A. (2018) When the brain leaves the scanner and enters the clinic: The role of neuroscientific discourses in producing the problem of "addiction". *Journal of Contemporary Drug Problems, 45*(3), pp. 227-243.

Barrie, D. (2008) *Police in the Age of Improvement,* Edinburgh: Routledge.

Barrie, D. G. (2010) A typology of British police: Locating the Scottish municipal police model in its British context, 1800–35. *The British Journal of Criminology, 50*(2), pp. 259-277.

Barrie, D. G. and Broomhall, S. (2012) Public men, private interests: The origins, structure and practice of police courts in Scotland, c. 1800-1833. *Continuity and Change, 27*(1), pp. 83.

Bartkowiak-Théron, I. and Asquith, N. L. (2017) Conceptual divides and practice synergies in law enforcement and public health: Some lessons from policing vulnerability in Australia. *Policing and Society, 27*(3), pp. 276-288.

Bartkowiak-Théron, I., Asquith, N. L. and Roberts, K. A. (2017) Vulnerability as a contemporary challenge for policing. In *Policing encounters with vulnerability*, New York: Springer. pp. 1-24.

Bateson, K., McManus, M. and Johnson, G. (2020) Understanding the use, and misuse, of Adverse Childhood Experiences (ACEs) in trauma-informed policing. *The Police Journal, 93*(2), pp. 131-145.

Becker, H. S. (1997) *Outsiders : Studies in the sociology of deviance,* New York: The Free Press.

Beckett, K., Reosti, A. and Knaphus, E. (2016) The end of an era? Understanding the contradictions of criminal justice reform. *The ANNALS of the American Academy of Political and Social Science, 664*(1), pp. 238-259.

Belackova, V. and Stefunkova, M. (2018) Interpreting the Czech drug decriminalization: The glass is half full–Response to Cerveny, J., Chomynova, P., Mravcik, V., &

van Ours, JC (2017). Cannabis decriminalization and the age of onset of cannabis use. *International Journal of Drug Policy, 52*, pp. 102-105.

Béland, D. and Lecours, A. (2008) *Nationalism and social policy: The politics of territorial solidarity,* Oxford: University Press.

Berridge, V. (1980) The making of the Rolleston Report, 1908–1926. *Journal of Drug Issues, 10*(1), pp. 7-28.

Berridge, V. and Edwards, G. (1981) *Opium and the people: Opiate use in nineteenth-century England,* New York: St. Martin's.

Billig, M. (1995) *Banal nationalism,* New York: sage.

Bletsas, A. and Beasley, C. (2012) *Engaging with Carol Bacchi. Strategic interventions and exchanges,* Adelaide: University Press.

Bloom, S. L. and Farragher, B. (2013) *Restoring sanctuary: A new operating system for trauma-informed systems of care,* Oxford: University Press.

Bolger, P. C., Kremser, J. and Walker, H. (2019) Detention or diversion? The influence of training and education on school police officer discretion. *Policing: An International Journal, 42*(2), pp. 255-269.

Bonello, M. and Meehan, B. (2019) Transparency and coherence in a doctoral study case analysis: Reflecting on the use of NVivo within a 'Framework' approach. *The Qualitative Report, 24*(3), pp. 483-498.

Booth, M. (2013) *Opium: A history,* New York: St. Martin's Griffin.

Boyd, S. (2017) A call to action: Women and the drug war. *Contemporary Justice Review, 20*(3), pp. 297-298.

Braudel, F. (1949) *The Mediterranean world,* London: Collins.

Braudel, F. (2002) *The Mediterranean in the ancient world,* London: Penguin UK.

Braudel, F. and Mayne, R. (1995) *A history of civilizations,* New York: Penguin.

Broadie, A. (1997) *The Scottish Enlightenment: An anthology,* Edinburgh: Canongate.

Brooks, L. (2020) *Scotland to hold drug summit a day before UK's at same venue*, Available: https://www.theguardian.com/politics/2020/feb/12/scotland-to-hold-drugs-summit-a-day-before-uks-at-same-venue.

Brown, B. (2015) *Rising strong,* New York: Random House.

Buchanan, J. and Young, L. (2018) Examining the relationship between material conditions, long-term problematic drug misuse and social exclusion: A new strategy for social inclusion. In *Experiencing Poverty*, London: Routledge. pp. 120-143.

Buheji, M. (2020) Optimising 'moments of pauses'–A reflection from COVID-19 pandemic. *International Journal of Psychology and Behavioral Sciences, 10*(4), pp. 85-92.

Buozis, M. (2018) "Bizarre dissonances in Baltimore": Class and race in the color-blind discourses of police violence. *Democratic Communiqué, 27*(2), pp. 36-36.

Burchell, G., Gordon, C. and Miller, P. (1991) The Foucault effect: Studies in governmentality. Chicago: University Press.

Caenegem, R. C. and van Caenegem, R. C. (1988) *The birth of the English common law,* Cambridge: University Press.

Cairney, P. (2012) *The Scottish political system since devolution: From new politics to the new Scottish Government,* London: Andrews UK.

Cairney, P. (2017) Evidence-based best practice is more political than it looks: A case study of the 'Scottish Approach'. *Evidence and Policy, 13*(3), pp. 499-515.

Cairney, P. (2019) *Evidence and policy making,* Bristol: Policy Press.

Cairney, P. (2020) *Understanding public policy,* London, Red Globe.

Cairney, P. (2021) *The politics of policy analysis,* Switzerland: Springer Nature.

Cairney, P. and McGarvey, N. (2013) *Scottish politics,* London: Macmillan International Higher Education.

Cairns, C. (2020) The literary politics of Scottish devolution: Voice, class, nation (review). *Association for Scottish Literary Studies, 12*(2), pp. 178-181.

Campbell, G. (2010) *Bible: the story of the King James version 1611-2011,* Oxford: University Press.

Cane, J., O'Connor, D. and Michie, S. (2012) Validation of the theoretical domains framework for use in behaviour change and implementation research. *Implementation Science, 7*(1), pp. 1-17.

Çankaya, S. (2020) Geopolicing race, gender, and class: How the police immobilise urban allochthones. *Antipode, 52*(3), pp. 702-721.

Carpenter, M. J. (2019) Innovations in problem-solving justice and behavioral health. *Law Enforcement Executive Forum, 19*(1), pp. 1-5.

Chia, R. (1996) The problem of reflexivity in organizational research: Towards a postmodern science of organization. *Organization, 3*(1), pp. 31-59.

Christie, B. (2019) Drug deaths: Record number in Scotland prompts calls for urgent UK policy reform. *British Medical Journal, 366.*

Christie, B. (2021) Record drug deaths need radical response, says Scottish college. *British Medical Journal, 372.*

Clancy, M. P. (2018) Scots Law and Scottish identity: A legendary tale. *Scottish Affairs, 27*(1), pp. 73-81.

Clark, C. B., McCullumsmith, C. B., Redmond, N., Hardy, S., Waesche, M. C., Osula, G. and Cropsey, K. L. (2013) Factors associated with rapid failure in a Treatment Alternatives for Safer Communities (TASC) program. *Journal of Substance Abuse Treatment, 45*(4), pp. 376-380.

Clifasefi, S. and Collins, S. (2016) *LEAD program evaluation: The impact of LEAD on housing, employment and income/benefits. Describing LEAD case management in participants' own words*. Washington: University Harm Reduction Research and Treatment Center.

Collins, S., Lonczak, H. S. and Clifasefi, S. L. (2015) *LEAD program evaluation: Recidivism report*. Washington: University of Washington Harm Reduction Research and Treatment Lab.

Collins, S. E., Lonczak, H. S. and Clifasefi, S. L. (2017) Seattle's Law Enforcement Assisted Diversion (LEAD): Program effects on recidivism outcomes. *Evaluation and Program Planning, 64*, pp. 49-56.

Community Justice Scotland (2020) *National Guidelines on Diversion from Prosecution in Scotland*. Edinburgh: Community Justice Scotland.

Cottone, R. R. (2017) In defense of radical social constructivism. *Journal of Counseling & Development, 95*(4), pp. 465-471.

Creswell, J. W. and Poth, C. N. (2016) *Qualitative inquiry and research design: Choosing among five approaches,* New York: Sage.

Crofts, N. and Thomas, S. (2017) Law enforcement and public health: Finding common ground and global solutions to disparities in health and access to criminal justice. *Journal of Community Safety and Well-being, 2*(3), pp. 74-75.

Crown Office and Procurator Fiscal Service (2001) *Prosecution Code,* Edinburgh: Scottish Government.

Crown Office and Procurator Fiscal Service (2021a) *Lord Advocate - Bibliography*, Available: https://www.copfs.gov.uk/about-us/who-we-are/lord-advocate-biography [Accessed 15 November 2021].

Crown Office and Procurator Fiscal Service (2021b) *Lord Advocate statement on diversion from prosecution*, Available: https://www.copfs.gov.uk/media-site-news-from-copfs/1983-lord-advocate-statement-on-diversion-from-prosecution [Accessed 01 October 2021 2021].

Crown Prosecution Service (2019) *Joint enterprise charging decisions: Principal, secondary and inchoate liability*. London: The Crown Prosecution Service.

Csete, J., Kamarulzaman, A., Kazatchkine, M., Altice, F., Balicki, M., Buxton, J., Cepeda, J., Comfort, M., Goosby, E. and Goulão, J. (2016) Public health and international drug policy. *The Lancet, 387*, pp. 1427-1480.

Damschroder, L. J., Aron, D. C., Keith, R. E., Kirsh, S. R., Alexander, J. A. and Lowery, J. C. (2009) Fostering implementation of health services research findings into practice: A consolidated framework for advancing implementation science. *Implementation Science, 4*(1), pp. 1-15.

Davidson, E., Critchley, A. and Wright, L. H. (2020) Making Scotland an ACE-informed nation. *Scottish Affairs, 29*(4), pp. 451-455.

Davis, A. J. (2019) Reimagining prosecution: A growing progressive movement. *UCLA Criminal Justice Law Review, 3*(1).

de Andrade, D., Elphinston, R. A., Quinn, C., Allan, J. and Hides, L. (2019) The effectiveness of residential treatment services for individuals with substance use disorders: A systematic review. *Drug and Alcohol Dependence, 201*, pp. 227-235.

Del Pozo, B., Beletsky, L., Goulka, J. and Kleinig, J. (2021) Beyond decriminalization: Ending the War on Drugs requires recasting police discretion through the lens of a public health ethic. *The American Journal of Bioethics, 21*(4), pp. 41-44.

Deming, S. (2011) The economic importance of Indian opium and trade with China on Britain's economy, 1843–1890. *Economics Working Papers, 25.*

Director of Public Prosecutions (2013) *Charging (The Director's Guidance) 2013 - fifth edition, May 2013 (revised arrangements) 5th Edition: Legal Guidance,* London: The Crown Prosecution Service.

Donnelly, D. and Scott, K. (2010) *Policing Scotland,* London: Routledge.

Duke, K. (2003) *Drugs, prisons, and policy-making,* London: Palgrave MacMillan.

Duke, K. (2013) From crime to recovery: the reframing of British drugs policy? *Journal of Drug Issues, 43*(1), pp. 39-55.

Durkheim, E. (1983) *Pragmatism and sociology,* Cambridge: University Press Archive.

Earp, B. D., Lewis, J. and Hart, C. L. (2021) Racial justice requires ending the war on drugs. *The American Journal of Bioethics, 21*(4), pp. 4-19.

Eastwood, N., Fox, E. and Rosmarin, A. (2016) *A quiet revolution: Drug decriminalisation across the globe,* London: Release.

Enang, I., Murray, J., Dougall, N., Aston, E., Wooff, A., Heyman, I. and Grandison, G. (2021) Vulnerability assessment across the frontline of law enforcement and public health: A systematic review. *Policing and Society*, pp. 1-20.

European Monitoring Centre for Drugs and Drug Addiction (2015) *Alternatives to punishment for drug using offenders.* EMCDDA Papers. Luxembourg: Publications office of the European Union.

Eveline, J., Bacchi, C. and Binns, J. (2009) Gender mainstreaming versus diversity mainstreaming: Methodology as emancipatory politics. *Gender, Work & Organization, 16*(2), pp. 198-216.

Ezell, J. M. (2019) "They don't believe their tax money should be used to save people who in their eyes are not worthy of saving": Examining stigma around opioid use, treatment and overdose prevention in rural communities. *Conference Papers American Sociological Association*, pp. 1-37.

Farmer, L. (2005) *Criminal law, tradition and legal order: Crime and the genius of Scots law, 1747 to the present,* Cambridge: University Press.

Fauci, A. S., Lane, H. C. and Redfield, R. R. (2020) Covid-19—navigating the uncharted. *New England Journal of Medicine, 382*(13), pp. 1268-1269.

Foucault, M. (1971) Orders of discourse. *Journal of Social Science Information, 10*(2), pp. 7-30.

Foucault, M. (1985) *The use of pleasure. Vol. 2 of The history of sexuality,* New York: Hurley.

Foucault, M. (1991) *The Foucault effect: Studies in governmentality,* Chicago: University Press.

Foucault, M. (2002) *The birth of the clinic,* London: Routledge.

Foucault, M. (2012) *Discipline and punish: The birth of the prison,* New York: Vintage.

Foucault, M. (2020) *Panopticism,* London: Routledge.

Gaines, L. and Kappeler, V. (2014) *Policing in America,* New York: Routledge.

Gale, N. K., Heath, G., Cameron, E., Rashid, S. and Redwood, S. (2013) Using the framework method for the analysis of qualitative data in multi-disciplinary health research. *BMC Medical Research Methodology, 13*(1), pp. 117.

Gao, H. (2019) *Creating the Opium War: British imperial attitudes towards China, 1792 – 1840,* Manchester: University press.

Garland, D. (2012) *Punishment and modern society: A study in social theory,* Chicago: University Press.

Geertz, C. (1973) *The interpretation of cultures,* New York: Basic books.

Gellner, E. (2008) *Nations and nationalism,* Cornell: University Press.

Geuss, R., and Skinner, Q, ed. (2012) *King James VI and I: Political Writings,* London: Cambridge.

Global Commission on Drug Policy (2017) *The world drug perception problem: Countering prejudices about people who use drugs,* Geneva: The Global Commission on Drug Policy.

Godlee, F. and Hurley, R. (2016) The war on drugs has failed: Doctors should lead calls for drug policy reform. *BMJ: British Medical Journal, 355.*

Green, B. A. and Roiphe, R. (2020) When prosecutors politick: Progressive law enforcers then and now. *J. Crim. L. & Criminology, 110*, pp. 719.

Green, M. C. and Brock, T. C. (2002) In the mind's eye: Transportation-imagery model of narrative persuasion. In Green, M. C., Strange, J. J., & Brock, T. C., (ed.) *Narrative impact: Social and cognitive foundations*, New Jersey: Lawrence Erlbaum Associates.

Green, R., Bryant, J., Gray, R., Best, D., Brown, R., Rance, J. and MacLean, S. J. (2016) *Policing and Pathways to diversion and care among vulnerable youth people who use alcohol and other drugs,* National Drug Law Enforcement Research Fund Canberra.

Habermas, J. (1992) *Autonomy and solidarity: Interviews with Jürgen Habermas,* London: Verso.

Hachtel, H., Vogel, T. and Huber, C. G. (2019) Mandated treatment and its impact on therapeutic process and outcome factors. *Frontiers in Psychiatry, 10*, pp. 219.

Haidt, J., Graham, J. and Joseph, C. (2009) Above and below left–right: Ideological narratives and moral foundations. *Psychological Inquiry, 20*(2-3), pp. 110-119.

Hancock, J., Fearon, C., McLaughlin, H. and Fielden, B. (2012) Policing the 'Drugs Intervention Programme'(DIP): An exploratory study of the southern UK policing region. *Policing: A Journal of Policy and Practice, 6*(4), pp. 431-442.

Hannah, J. and Nahir de la Silva (2015) *Human rights, drug control and the UN special procedures: Preventing arbitrary detention through the promotion of human rights in drug control.* Geneva: United Nations Human Rights.

Hari, J. (2015) *Chasing the Scream: The Search for the Truth About Addiction,* London: Bloomsbury.

Hayhurst, K. P., Leitner, M., Davies, L., Millar, T., Jones, A., Flentje, R., Hickman, M., Fazel, S., Mayet, S. and King, C. (2017) The effectiveness of diversion programmes for offenders using Class A drugs: A systematic review and meta-analysis. *Drugs: Education, Prevention & Policy*, pp. 1-12.

Hazell, R. (2000) *The state and the nations: the first year of devolution in the United Kingdom,* London: Imprint Academic.

Henry, N., Vasil, S. and Witt, A. (2021) Digital citizenship in a global society: A feminist approach. *Feminist Media Studies*, pp. 1-18.

Home Office (2009) *Drug interventions programme operational handbook.* London: UK Home Office.

Hoppe, R. (2011). The governance of problems: Puzzling, power and participation. Bristol, England: Policy Press.

Hoyle, R. W. and Ramsdale, J. B. (2004) The royal progress of 1541, the North of England and Anglo-Scottish relations 1534-1542. *Northern History, 41*(2), pp. 239-265.

Hsu, H. B. (2014) The taste of opium: Science, monopoly, and the Japanese colonization in Taiwan, 1895–1945. *Past & Present, 222*(suppl_9), pp. 227-246.

Hudson, J. (2014) *The formation of English Common Law: Law and society in England from the Norman conquest to Magna Carta,* London: Routledge.

Hughes, C., Seear, K., Ritter, A. and Mazerolle, L. (2019a) Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. In *Drug Policy Modelling Program Monograph Series*, Sydney: National Drug and Alcohol Research Centre. pp. 99.

Hughes, C., Stevens, A., Hulme, S. and Cassidy, R. (2019b) Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review. In Paper Presented to the International Journal of Drug Policy.

Hughes, C., Stevens, A., Hulme, S. and Cassidy, R. (2019c) *Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences. A report for the Irish Department of Justice and Equality and the Department of Health,* Kent: University of New South Wales Australia and The University of Kent.

Human Rights Council (2015) *Study on the impact of the world drug problem on the enjoyment of human rights. Report of the United Nations High Commissioner for Human Rights,* Geneva: Human Rights Council.

Inter-Ministerial Group on Drugs (2012) *Putting full recovery first.* London: HM Government.

International Centre on Human Rights and Drug Policy (2019) *International Guidelines on Human Rights and Drug Policy,* Geneva: International Centre on Human Rights and Drug Policy; UNAIDS, World Health Organisation.

Irvine, T. (2020) *Listening to China,* Chicago: University Press.

Ishoy, G. A. and Dabney, D. A. (2018) Policing and the focal concerns framework: Exploring how its core components apply to the discretionary enforcement decisions of police officers. *Deviant Behavior, 39*(7), pp. 878-895.

Jehle, J.-M. (2006) *Coping with overloaded criminal justice systems,* New York: Springer.

Jehle, J.-M. and Wade, M. (2006) *Coping with overloaded criminal justice systems: The rise of prosecutorial power across Europe,* New York: Springer Science & Business Media.

Johnson, S. (2021) Scots caughts with class A drugs could escape with just a warning in legal shake-up. *The Telegraph.*

Johnstone, B. (2017) *Discourse analysis,* New Jersey: John Wiley & Sons.

Kammersgaard, T. (2019) Harm reduction policing: From drug law enforcement to protection. *Contemporary Drug Problems, 46*(4), pp. 345-362.

Keating, M., Cairney, P. and Hepburn, E. (2012) Policy convergence, transfer and learning in the UK under devolution. *Regional & Federal Studies, 22*(3), pp. 289-307.

Kellas, J. G. (1989) *The Scottish political system,* Cambridge: University Press.

Kennedy, A. (2020) State formation, criminal prosecution and the privy council in Restoration Scotland. *The English Historical Review, 135*(572), pp. 29-62.

Kennedy, M. C., Karamouzian, M. and Kerr, T. (2017) Public health and public order outcomes associated with supervised drug consumption facilities: A systematic review. *Current Hiv/aids Reports, 14*(5), pp. 161-183.

Kerimi, N. (2000) Opium use in Turkmenistan: A historical perspective. *Addiction, 95*(9), pp. 1319-1333.

Kidd, C. (2003) *Subverting Scotland's past: Scottish Whig historians and the creation of an Anglo-British identity 1689-1830,* Cambridge University Press.

Knopf, A. (2020) Describing childhood ACEs found to reduce stigma related to substance use. *The Brown University Child & Adolescent Psychopharmacology Update, 22*(11), pp. 1-5.

Kopak, A. M. and Gleicher, L. (2020) Law enforcement deflection and prearrest diversion programs: A tale of two initiatives. *Journal for Advancing Justice, 3*, pp. 37-55.

Kruithof, K., Davies, M., Disley, E., Strang, L. and Ito, K. (2016) Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes. Brussels: European Commission.

Kuhlman, K. R., Geiss, E. G., Vargas, I. and Lopez-Duran, N. L. (2015) Differential associations between childhood trauma subtypes and adolescent HPA-axis functioning. *Psychoneuroendocrinology, 54*, pp. 103-114.

Lancaster, K. (2016) Performing the evidence-based drug policy paradigm. *Journal of Contemporary Drug Problems, 43*(2), pp. 142-153.

Lancaster, K., Duke, K. and Ritter, A. (2015a) Producing the 'problem of drugs': A cross national-comparison of 'recovery' discourse in two Australian and British reports. *International Journal of Drug Policy, 26*(7), pp. 617-625.

Lancaster, K., Santana, L., Madden, A. and Ritter, A. (2015b) Stigma and subjectivities: Examining the textured relationship between lived experience and opinions about drug policy among people who inject drugs. *Journal of Drugs: Education, Prevention and Policy, 22*(3), pp. 224-231.

Lancaster, K., Seear, K., Treloar, C. and Ritter, A. (2017) The productive techniques and constitutive effects of 'evidence-based policy' and 'consumer participation' discourses in health policy processes. *Social Science & Medicine, 176*, pp. 60-68.

Lasalvia, A., Zoppei, S., Van Bortel, T., Bonetto, C., Cristofalo, D., Wahlbeck, K., Bacle, S. V., Van Audenhove, C., Van Weeghel, J. and Reneses, B. (2013) Global pattern of experienced and anticipated discrimination reported by people with major depressive disorder: A cross-sectional survey. *The Lancet, 381*(9860), pp. 55-62.

Lavelle, C. (2021) Second chance: People caught with Class A drugs in Scotland could now be given police warning instead of a sentence. *The Scottish Sun*, Available: https://www.thescottishsun.co.uk/news/scottish-news/7739706/class-a-drugs-scotland-police-warning/#:~:text=PEOPLE%20caught%20with%20Class%20A%20drugs%20like%20heroin%20and%20cocaine,offences%20for%20Class%20A%20drugs%E2%80%9D [Accessed 24 September 2021].

Law, A. and Mooney, G. (2012) Devolution in a 'Stateless Nation': Nation-building and social policy in Scotland. *Journal of Social Policy Administration, 46*(2), pp. 161-177.

Law Enforcement Assisted Diversion (2021) *LEAD: Advancing criminal justice reform in 2021,* Seattle: LEAD National Support Bureau.

Levack, B. (1975) The proposed union of English law and Scots law in the seventeenth century',(1975). *Juridical Review, 20*, pp. 97.

Levy, M. (2019) The many faces (and potential dangers) of self-medication as an explanatory concept for substance use. *International Journal for the Advancement of Counselling, 41*(1), pp. 15-24.

Lewis, J., Earp, B. D. and Hart, C. L. (2021) Pathways to drug liberalization: Racial justice, public health, and human rights. *The American Journal of Bioethics*, pp. 1-3.

Lincoln, Y. S. and Guba, E. G. (1985) *Naturalistic inquiry,* London: Sage.

Lines, R., Hannah, J. and Girelli, G. (2021) 'Treatment in liberty' Human rights and compulsory detention for drug use. *Human Rights Law Review, 22*(1).

Lodwick, K. L. (2014) *Crusaders against opium: Protestant missionaries in China, 1874-1917,* Kentucky: University Press.

Long, D., Iedema, R. and Lee, B. B. (2007) Corridor conversations: Clinical communication in casual spaces. In *The discourse of hospital communication*, New York: Springer. pp. 182-200.

MacAskill, K. (2021) *Scotland Act 1998: Role of the Lord Advocate [Parliamentary Transcript],* Available: https://hansard.parliament.uk/Commons/2021-07-20/debates/0C27E38D-6942-4782-B9A7-ADDA16DDA2C2/ScotlandAct1998RoleOfTheLordAdvocate [Accessed 23rd August 2021].

MacGregor, S. (2009) *Responding to drugs misuse: Research and policy priorities in health and social care,* London: Routledge.

MacQueen, H. L. (1995) Regiam Majestatem, Scots law, and national identity. *Scottish Historical Review, 74*(1), pp. 1-25.

Malloch, M. and McIvor, G. (2013) Criminal justice responses to drug related crime in Scotland. *International Journal of Drug Policy, 24*(1), pp. 69-77.

Marchett, C. (2021) Analysis: Lord Advocate to face Salmond inquiry amid cries of Crown Office corruption. *The Scotsman*, Available: https://www.scotsman.com/news/politics/analysis-lord-advocate-to-face-salmond-inquiry-amid-cries-of-crown-office-corruption-3150752 [Accessed 2nd March 2021].

Martin, F. S. and Aston, S. (2014) A "special population" with "unique treatment needs": dominant representations of "women's substance abuse" and their effects. *Journal of Contemporary Drug Problems, 41*(3), pp. 335-360.

Maté, G. (2011) *In the realm of hungry ghosts: Close encounters with addiction,* California: North Atlantic Books.

Matheson, C., Jaffray, M., Ryan, M., Bond, C., Fraser, K., Kirk, M. and Liddell, D. (2014) Public opinion of drug treatment policy: Exploring the public's attitudes, knowledge, experience and willingness to pay for drug treatment strategies. *International Journal of Drug Policy, 25*(3), pp. 407-415.

May, T. and Hough, M. (2004) Drug markets and distribution systems. *Addiction Research & Theory, 12*(6), pp. 549-563.

McAuley, A., Palmateer, N. E., Goldberg, D. J., Trayner, K. M., Shepherd, S. J., Gunson, R. N., Metcalfe, R., Milosevic, C., Taylor, A. and Munro, A. (2019) Re-emergence of HIV related to injecting drug use despite a comprehensive harm reduction environment: A cross-sectional analysis. *The Lancet HIV*, *6*(5), pp. e315-e324.

McConnell, A. (2018) Rethinking wicked problems as political problems and policy problems. *Policy Politics, 46*(1), pp. 165-180.

McGowan, J. (2010) *Policing the metropolis of Scotland: A history of the police and systems of police in Edinburgh & Edinburghshire, 1770-1833,* Turlough Publishers.

McGowan, J. (2013) *A new civic order: The contribution of the City of Edinburgh Police, 1805-1812; with reflections on social and public order,* Edinburgh: Turlough Publishers.

McHugh, R. K., Gratz, K. L. and Tull, M. T. (2017) The role of anxiety sensitivity in reactivity to trauma cues in treatment-seeking adults with substance use disorders. *Comprehensive Psychiatry, 78*, pp. 107-114.

McMurray, S. A. (2018) *A Scottish sovereign? Image, iconography and Union on Scotland's coins, medals and seals under the reigns of James VI and I and Charles I, 1603-1642,* Glasgow: University Press.

McSweeney, T., Hughes, C. and Ritter, A. (2018) The impact of compliance with a compulsory model of drug diversion on treatment engagement and reoffending. *Journal of Drugs: Education, Prevention and Policy, 25*(1), pp. 56-66.

Melancon, G. (1999) Honour in opium? The British declaration of war on China, 1839–1840. *The International History Review, 21*(4), pp. 855-874.

Miller, D. (1995) *On nationality,* Oxford: Clarendon Press.

Mills, C. W. (1959) The sociological imagination, New York: Oxford University Press.

Minahan, J. (2002) *Encyclopedia of the stateless nations,* Connecticut: Greenwood Publishing Group.

Mol, A. (1999) Ontological politics. A word and some questions. *The Sociological Review, 47*(1_suppl), pp. 74-89.

Monaghan, M. (2012) The recent evolution of UK drug strategies: From maintenance to behaviour change? *People, Place & Policy Online, 6*(1).

Mooney, G. and Scott, G. (2005) *Exploring social policy in the 'new' Scotland,* Edinburgh: Policy Press.

Moreno, L. (2006) Scotland, Catalonia, Europeanization and the 'Moreno Question'. *Scottish Affairs, 54*(1), pp. 1-21.

Mouly, S., Bloch, V., Peoc'h, K., Houze, P., Labat, L., Ksouda, K., Simoneau, G., Declèves, X., Bergmann, J. F. and Scherrmann, J. M. (2015) Methadone dose in heroin-dependent patients: Role of clinical factors, comedications, genetic polymorphisms and enzyme activity. *British Journal of Clinical Pharmacology, 79*(6), pp. 967-977.

Muncan, B., Walters, S. M., Ezell, J. and Ompad, D. C. (2020) "They look at us like junkies": Influences of drug use stigma on the healthcare engagement of people who inject drugs in New York City. *Harm Reduction Journal, 17*(1), pp. 1-9.

Musto, F. D. (1989) Evolution of American attitudes toward substance abuse. *Annals of the New York Academy of Sciences, 562*, pp. 3-7.

National Records of Scotland (2021) *Drug-related deaths in Scotland in 2020.* Edinbugh: National Records of Scotland.

Nilsen, P. and Bernhardsson, S. (2019) Context matters in implementation science: A scoping review of determinant frameworks that describe contextual determinants for implementation outcomes. *BMC Health Services Research, 19*(1), pp. 1-21.

Nilsen, P. (2020) Making sense of implementation theories, models, and frameworks. in *Implementation Science 3.0*: Springer. pp. 53-79.

Nutt, D. J., Lingford-Hughes, A., Erritzoe, D. and Stokes, P. (2015) The dopamine theory of addiction: 40 years of highs and lows. *Journal of Nature Reviews and Neuroscience, 16*(5), pp. 305.

O'Madagain, C. and Tomasello, M. (2022) Shared intentionality, reason-giving and the evolution of human culture. *Philosophical Transactions of the Royal Society, 377*(1843), pp. 20200320.

O'Neill, C. (2000) *The constitutional position of the Lord Advocate: The position of the Lord Advocate and the criticism being meted out by the media and public generally on the resignation of Lord Hardie,* Edinburgh: The Law Society of Scotland.

Omond, G., W. T. (1880) *The Lord Advocates of Scotland. 2d Series 1834 - 1880,* London: Hardpress.

Omond, G., W. T. (1883) *The Lord Advocates of Scotland from the close of the fifteenth century to the passing of the reform bill,* Edinburgh: David Douglas.

Øvretveit, J. C., Shekelle, P. G., Dy, S. M., McDonald, K. M., Hempel, S., Pronovost, P., Rubenstein, L., Taylor, S. L., Foy, R. and Wachter, R. M. (2011) How does context affect interventions to improve patient safety? An assessment of evidence from studies of five patient safety practices and proposals for research. *BMJ Quality & Safety, 20*(7), pp. 604-610.

Patton, M. Q. (2014) *Qualitative research & evaluation methods: Integrating theory and practice,* London: Sage.

Phillips, S. W. (2009) Using a vignette research design to examine traffic stop decision making of police officers: A research note. *Criminal Justice Policy Review, 20*(4), pp. 495-506.

Police and Fire Reform (Scotland) Act 2012. Edinburgh: Scottish Parliament, Available: https://www.legislation.gov.uk/asp/2012/8/contents [Accessed 2nd June 2020].

Police Scotland (2020) *Annual Police Plan 2020/21 Policing for a safe, protected and resilient Scotland.* Glasgow: Police Scotland.

Police Scotland (2021a) *Anniversary of Greater Glasgow division drugs strategy*, Available: https://www.scotland.police.uk/what-s-happening/news/2021/february/anniversary-of-greater-glasgow-division-drugs-strategy/ [Accessed 19/04/21 2021].

Police Scotland (2021b) *Greater Glasgow division drugs strategy - six months on*, Available: https://www.scotland.police.uk/what-s-happening/news/2020/september/greater-glasgow-division-drugs-strategy-six-months-on/ [Accessed 6 September 2021 2021].

Police Scotland (2021c) *Police Scotland Annual Police Plan 2021/22*. Glasgow: Police Scotland.

Population Health Directorate (2021) *Medication Assisted Treatment (MAT) standards: Access, choice, support*. Edinburgh: Scottish Government.

Price, T., Parkes, T. and Malloch, M. (2020) 'Discursive struggles' between criminal justice sanctions and health interventions for people who use drugs: a qualitative exploration of diversion policy and practice in Scotland. *Drugs: Education, Prevention and Policy*, pp. 1-9.

Pūras, D. and Hannah, J. (2017) Reasons for drug policy reform: Prohibition enables systemic human rights abuses and undermines public health. *British Medical Journal, 356*, pp. 65-86.

Razmadze, M., Otiashvili, D., Balanchivadze, N. and Tabatadze, M. (2015) *Alternatives to incarceration for drug-Related offences. First Report of the Technical Secretariat of the Working Group of the Inter-American Drug Abuse Control Commission (CICAD)*. Colombia: Government of the Republic of Colombia.

Reid, K. G. and Zimmermann, R. (2000) *A history of private law in Scotland: Introduction and property,* Oxford University Press on Demand.

Renan, E. and Zimmern, A. (1939) Modern political doctrines. *By A. Zimmerman. Oxford: Oxford University Press. Chap. What is a Nation*, pp. 186-205.

Richardson, E. and McSherry, B. (2010) Diversion down under—Programs for offenders with mental illnesses in Australia. *International Journal of Law and Psychiatry, 33*(4), pp. 249-257.Ritchie, J. and Spencer, L. (2002) Qualitative data analysis for applied policy research. In *Analyzing Qualitative Data*, London: Routledge. pp. 187-208.

Ritchie, J., Spencer, L., Bryman, A. and Burgess, R. G. (1994) *Analysing qualitative data*. London: Routledge.

Rivera, M. A., Aufderheide, A. C., Cartmell, L. W., Torres, C. M. and Langsjoen, O. (2005) Antiquity of coca-leaf chewing in the south central Andes: A 3,000 year archaeological record of coca-leaf chewing from northern Chile. *Journal of Psychoactive Drugs, 37*(4), pp. 455-458.

Robinson, M. B. and Scherlen, R. G. (2014) *Lies, damned lies, and drug war statistics: A critical analysis of claims made by the office of National Drug Control Policy,* New York: Suny Press.

Roles, S., Murkin, G., Powell, M., Kushlich, D., Slater, J. (2014) *The Alternative World Drug Report: Counting the costs of the War on Drugs,* London: Transform.

Ross, A. (2020) Drug users as stakeholders in drug policy: Questions of legitimacy and the silencing of the happy drug user. In *The impact of global drug policy on women: Shifting the needle*, London: Emerald.

Roviš, D., Vasiljev, V., Jenko-Pražnikar, Z., Petelin, A., Drevenšek, G., Peruč, D. and Černelič-Bizjak, M. (2019) Mental health and drug use severity: The role of substance P, neuropeptide Y, self-reported childhood history of trauma, parental bonding and current resiliency. *Journal of Mental Health*, pp. 1-9.

Roy, A. and Buchanan, J. (2016) The paradoxes of recovery policy: Exploring the impact of austerity and responsibilisation for the citizenship claims of people with drug problems. *Social Policy & Administration, 50*(3), pp. 398-413.

Royal College of Physicians of Edinburgh (2021) *Drug deaths in Scotland: An increasingly medical problem*. Edinburgh: Royal College of Physicians of Edinburgh.

Said, E. W. (1985) Orientalism reconsidered. *Race & Class, 27*(2), pp. 1-15.

Schlesinger, T. (2018) Decriminalizing racialized youth through juvenile diversion. *Future of Children, 28*(1), pp. 59-81.

Scottish Drug Deaths Taskforce (2019) *Scottish Drug Deaths Taskforce: Evidence into action*. Edinburgh: Scottish Drug Deaths Taskforce.

Scottish Drug Deaths Taskforce (2020a) *Scotland's unique challenge,* Edinburgh: Scottish Drug Deaths Taskforce.

Scottish Drug Deaths Taskforce (2020b) A strategy to address the stigmatisation of people and communities affected by drug use, Edinburgh: Scottish Government.

Scottish Drug Deaths Taskforce (2021a) *Forward plan 2021/22*. Edinburgh: Scottish Drug Deaths Taskforce.

Scottish Drug Deaths Taskforce (2021b) *Report on drug law reform*. Edinburgh: Scottish Drug Death Taskforce.

Scottish Government (2016) National Strategy for Community Justice, Edinburgh: Justice Directorate.

Scottish Government (2017) Partnership for Action on Drugs in Scotland Executive Group. Available: https://www.gov.scot/groups/partnership-for-action-on-drugs-in-scotland-executive-group/ [Accessed 4th June 2019].

Scottish Government (2018a) *Rights, Respect and Recovery: Alcohol and Drug Treatment Strategy*. Edinburgh: Scottish Government.

Scottish Government (2018b) *Scottish Ministerial Code (2018 edition): A code of conduct and guidance on procedures for members of the Scottish Government and junior ministers,* Edinburgh: Scottish Government.

Scottish Government (2019a) *Protecting Scotland's future: The goverment's programme for Scotland 2019-2020*. Edinburgh: The Scottish Government.

Scottish Government (2019b) *Rights, Respect and Recovery action plan 2019 - 2021*. Edinburgh: Scottish Government.

Scottish Government (2020) *Scotland hosts major drugs conference*, Available: https://www.gov.scot/news/scotland-hosts-major-drugs-conference/ [Accessed 7 February 2022 2022].

Scottish Government (2021a) Drugs policy - update: Statement by the First Minister - 20 January 2021, Edinburgh: Scottish Government.

Scottish Government (2021b) *Justice - vision and priorities: Report.* Edinburgh: Scottish Government.

Scottish Government (2021c) *Law Officer Appointments*, Available: https://www.gov.scot/news/law-officer-appointments-1/ [Accessed 28 September 2021.

Seddon, T., Ralphs, R. and Williams, L. (2008) Risk, security and the 'criminalization'of British drug policy. *The British Journal of Criminology, 48*(6), pp. 818-834.

Silverman, D. (2013) *Doing qualitative research: A practical handbook,* London: Sage.

Smyth, J. and McKinlay, A. (2011) Whigs, Tories and Scottish Legal Reform, c. 1785-1832. *Crime, Histoire & Sociétés/Crime, History & Societies, 15*(1), pp. 111-132.

Sondhi, A. and Eastwood, B. (2021) Assessing diversionary approaches for drug misusers in police custody in London: Engagement and treatment outcomes as part of the Drug Intervention Programme. *Addiction Research & Theory, 29*(3), pp. 223-230.

Spicer, J., Moyle, L. and Coomber, R. (2020) The variable and evolving nature of 'cuckooing' as a form of criminal exploitation in street level drug markets. *Trends in Organized Crime, 23*(4), pp. 301-323.

Spyt, W., Barnham, L. and Kew, J. (2019) Diversion: Going soft on drugs? *Thames Valley Police Journal, 4*(1), pp. 44 - 68.

Srivastava, A. and Thomson, S. B. (2009) Framework analysis: A qualitative methodology for applied policy research. *Administration and Governance, 72*.

Stair, J. D. (1759) *The institutions of the law of Scotland: Deduced from its originals, and collated with the civil, canon, and feudal laws, and with the customs of neighboring nations*, Edinburgh: Andrew Anderson.

Stevens, A. (2007) When two dark figures collide: Evidence and discourse on drug-related crime. *Critical Social Policy, 27*(1), pp. 77-99.

Stevens, A. (2010) *Drugs, crime and public health: The political economy of drug policy,* London: Routledge-Cavendish.

Stevens, A. (2019) 'Being human'and the 'moral sidestep'in drug policy: Explaining government inaction on opioid-related deaths in the UK. *Addictive Behaviors, 90*, pp. 444-450.

Stevens, A. and Hughes, C. (2016) Decriminalisation and public health: The Portuguese approach to drug policy. *Mouvements (Paris), 356*, pp. 22-33.

Stevens, A., Hughes, C., Hulme, S. and Cassidy, R. (2019) Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*.
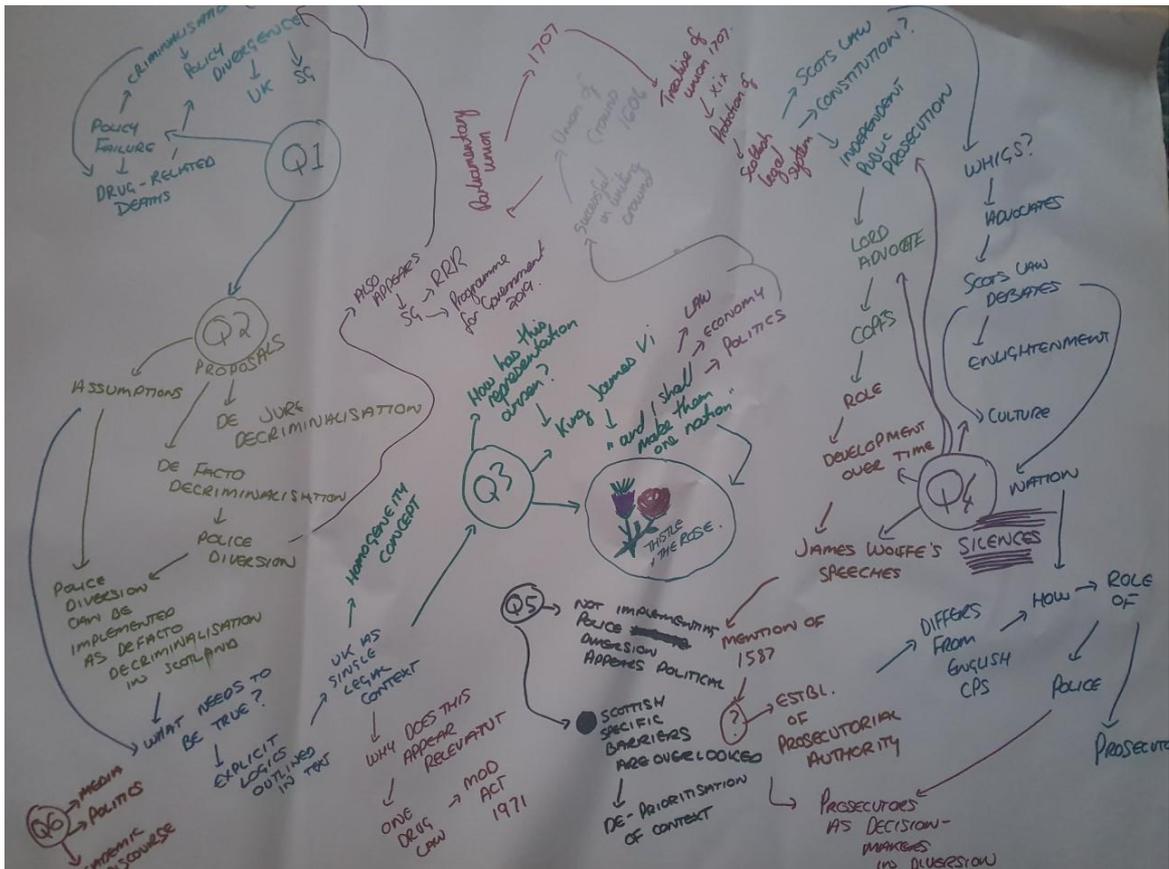
Stevens, A. and Zampini, G. F. (2018) Drug policy constellations: A Habermasian approach for understanding English drug policy. *International Journal of Drug Policy, 57*, pp. 61-71.

Stimmel, B. and Kreek, M. J. (2000) Neurobiology of addictive behaviors and its relationship to methadone maintenance. *Mount Sinai Journal of Medicine, 67*(5-6), pp. 375-380.

Strang, J. (2012) Medications in recovery: Re-orientating drug dependence treatment. *London: National Treatment Agency for Substance Misuse*.

Sussman, S. and Sussman, A. N. (2011) Considering the definition of addiction. *International Journal of Environmental Research and Public Health, 8*(10), pp. 4025-4038.

Taylor, S., Buchanan, J. and Ayres, T. (2016) Prohibition, privilege and the drug apartheid: The failure of drug policy reform to address the underlying fallacies of drug prohibition. *Criminology & Criminal Justice, 16*(4), pp. 452-469.

The Criminal Justice and Court Services Act, 2000. London: HM Stationery Office. Available at: https://www.legislation.gov.uk/ukpga/2000/43/contents [Accessed 12 May 2021].

The Crown Prosecution Service (2020) *About the CPS*, Available: https://www.cps.gov.uk/about-cps#:~:text=The%20CPS%20operates%20across%20England,read%20more%20about%20local%20cases [Accessed 11/12/2020 2020].

The Faculty of Advocates (2022) *History of the faculty*, Edinburgh: Faculty of Advocates. Available: https://www.advocates.org.uk/faculty-of-advocates/history-of-faculty.

The Misuse of Drugs Act, 1971. London: HM Stationery Office. Available at: https://www.legislation.gov.uk/ukpga/1971/38/contents [Accessed 28 June 2021].

The Scottish Government (2021) *Tackling the stigma of addiction*. Edinburgh: The Scottish Government.

Tiquet, M.-E. (2019) Enforcement and rehabilitation: Challenges to partnership working with substance using offenders. In Pycroft, A., Dennis, G., (ed.) *Multi-Agency Working in Criminal Justice: Theory, Policy and Practice*, Bristol: Policy Press.

Tosh, S. (2021) Drug prohibition and the criminalization of immigrants: The compounding of drug war disparities in the United States deportation regime. *International Journal of Drug Policy, 87*, pp. 102846.

Trayner, K. M., McAuley, A., Palmateer, N. E., Goldberg, D. J., Shepherd, S. J., Gunson, R. N., Tweed, E. J., Priyadarshi, S., Milosevic, C. and Hutchinson, S. J. (2020) Increased risk of HIV and other drug-related harms associated with injecting in public places: National bio-behavioural survey of people who inject drugs. *International Journal of Drug Policy*, *77*, p. 102663.

Trayner, K. M., Weir, A., McAuley, A., Godbole, G., Amar, C., Grant, K., Penrice, G. and Roy, K. (2018) A pragmatic harm reduction approach to manage a large outbreak of wound botulism in people who inject drugs, Scotland 2015. *Harm Reduction Journal, 15*(1), pp. 1-7.
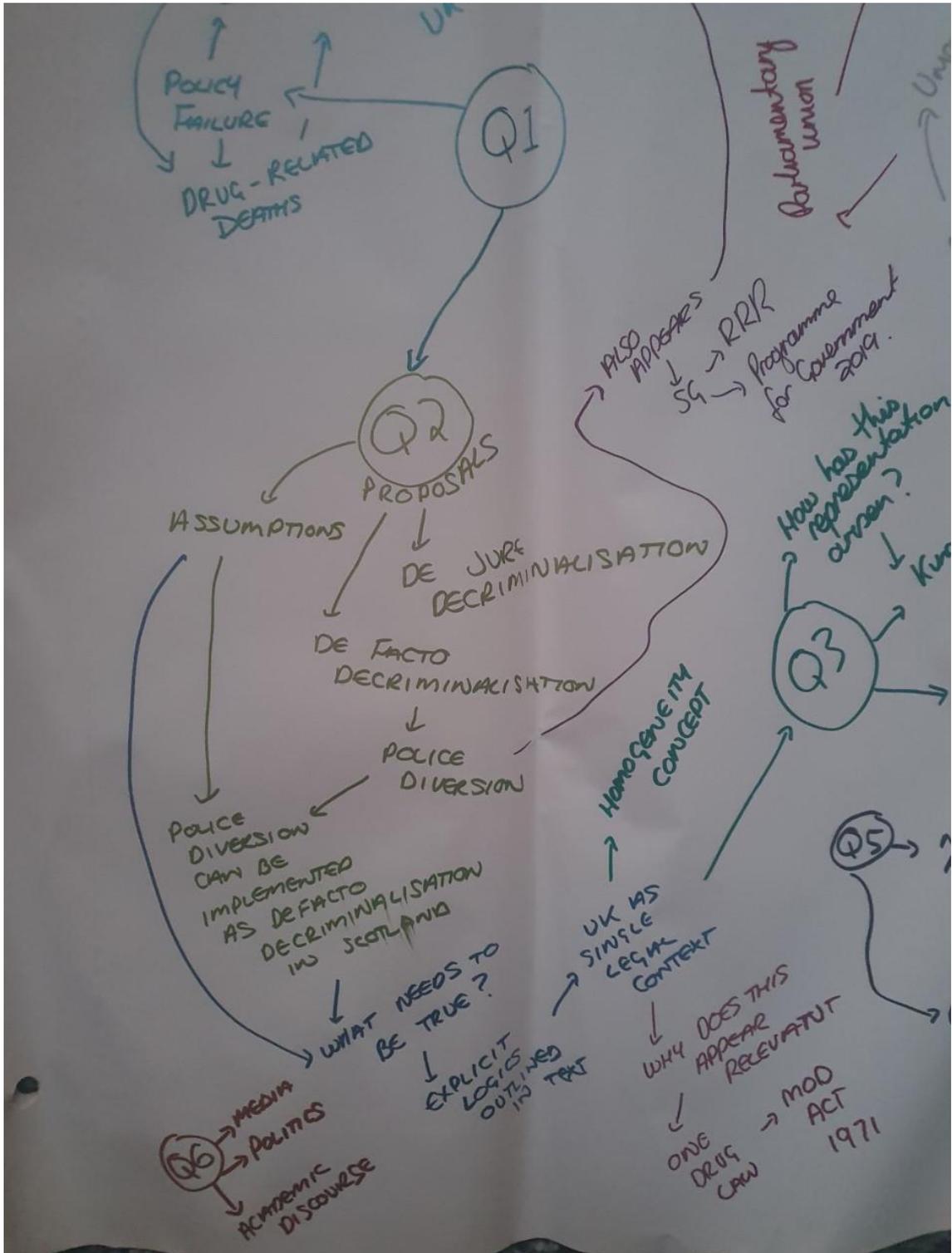
UK Government (1995) *Tackling drugs together.* London: Home Office.

UK Government (2010) *Reducing Demand, Restricting Supply, Building Recovery: Supporting People to Live a Drug Free Life.* London: HM Government.

UK Government (2020) *Date set for UK-wide summit in Glasgow on tackling drug misuse*, Available: https://www.gov.uk/government/news/date-set-for-uk-wide-summit-in-glasgow-on-tackling-drug-misuse--2 [Accessed 7 February 2022 2022].

UK Government (2021) *From harm to hope: A 10-year drugs plan to cut crime and save lives.* London: UK Home Office.

UK Home Office (2021) *Government response to four reports from the advisory council on the misuse of drugs,* London: UK Home Office.

UK Parliament (1998) *Tackling Drugs to Build a Better Britain: The Government's Ten-Year Strategy for Tackling Drugs Misuse.* London.

UK Parliament (2019a) *Scottish Affairs Committee: Problem Drug Use in Scotland Inquiry.* London: UK Parliament.

UK Parliament (2019b) Written Evidence - Letter from the Lord Advocate for Scotland to The Scottish Affairs Committee, London: UK Parliament.

United Nations Chief Executives Board (2019) *CEB/2018/2 - Annex 1.* Vienna: United Nations Chief Executives Board.

United Nations Office on Drugs and Crime (2007) *Handbook of basic principles and promising practices on alternatives to imprisonment*, Vienna: United Nations Office on Drugs and Crime.

United Nations Office on Drugs and Crime (2021) *The world drug report 2021*, Vienna: United Nations.

Unlu, A., Tammi, T. and Hakkarainen, P. (2020) *Drug decriminalization policy: Literature review: Models, implementation and outcomes*, Helsinki: Finnish institute for health and welfare.

Van Dijk, A. J., Herrington, V., Crofts, N., Breunig, R., Burris, S., Sullivan, H., Middleton, J., Sherman, S. and Thomson, N. (2019) Law enforcement and public health: Recognition and enhancement of joined-up solutions. *The Lancet, 393*(10168), pp. 287-294.

Volkow, N. D., Poznyak, V., Saxena, S. and Gerra, G. (2017) Drug use disorders: Impact of a public health rather than a criminal justice approach. *World Psychiatry, 16*(2), pp. 213-214.

Walker, D. M. (1954) Equity in Scots law. *Juridical Review, 66*(103).

Walsh, J. (2019) The Women's Christian Temperance Union: Demanding Rights and Oppressing Immigrants. *The Histories, 9*(2), pp. 6.

Wang, L. and DeLaquil, T. (2020) The isolation of doctoral education in the times of COVID-19: Recommendations for building relationships within person-

environment theory. *Higher Education Research & Development, 39*(7), pp. 1346-1350.

Weatherburn, D. (2014) The pros and cons of prohibiting drugs. *Australian & New Zealand Journal of Criminology, 47*(2), pp. 176-189.

Weber, M. (1978) *Economy and society: An outline of interpretive sociology,* California: University Press.

Weiss, D. B., MacKenzie, D. L. J. V. and Offenders (2010) A global perspective on incarceration: How an international focus can help the United States reconsider its incarceration rates. *5*(3), pp. 268-282.

Westermeyer, J. (1995) Cultural aspects of substance abuse and alcoholism: Assessment and management. *Psychiatric Clinics of North America, 18*(3), pp. 589-605.

Wetherell, M., Taylor, S. and Yates, S. J. (2001) *Discourse theory and practice: A reader,* London: Sage.

Windle, J. (2013) How the east influenced drug prohibition. *The International History Review, 35*(5), pp. 1185-1199.

Winetrobe, B. K. (2001) *Realising the vision: A parliament with a purpose: An audit of the first year of the Scottish Parliament,* Constitution Unit.

Winfield, P. H. (1928) Public policy in the English common law. *Harvard Law Review, 42*, pp. 76.

Wodak, A. M. (2014) The abject failure of drug prohibition. *Australian & New Zealand Journal of Criminology, 47*(2), pp. 190-201.

Wolffe, J. W. (2017) *The Apex Scotland Annual Lecture: Prosecution in the public interest (verbatim speech transcript, Sir James Wolffe, Lord Advocate)*, Available: https://www.copfs.gov.uk/images/Documents/Lord%20Advocates%20Apex%20Scotland%20Lecture.pdf [Accessed 2 March 2020].

Woods, N. and Rafaeli, J. (2016) *Good cop, bad war,* New York: Random House.

World Health Organization (2014) *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*. Geneva: World Health Organization.

Wormald, P. (2009) Anglo-Saxon Law and Scots Law. *Scottish Historical Review, 88*(2), pp. 192-206.

Wrigley, A. and Dawson, A. (2016) Vulnerability and marginalized populations In *Public Health Ethics: Cases Spanning the Globe*, Springer. pp. 203-240.

Zobel, F. and Maier, L. J. (2018) *Switzerland: Moving towards public health and harm reduction, collapse of the global order on drugs: From UNGASS 2016 to Review 2019,* London: Emerald.

Appendices

Appendix 1: Visual Representations of the analysis

POLICY FAILURE

DRUG-RELATED DEATHS

Q1

Q2

PROPOSALS

ASSUMPTIONS

DE JURE DECRIMINALISATION

DE FACTO DECRIMINALISATION

POLICE DIVERSION

POLICE DIVERSION CAN BE IMPLEMENTED AS DE FACTO DECRIMINALISATION IN SCOTLAND

WHAT NEEDS TO BE TRUE?

EXPLICIT LOGIC OUTLINED IN TEXT

UK AS SINGLE LEGAL CONTEXT

HOMOGENEITY CONCEPT

ALSO APPEARS
SG → RRR → Programme for Government 2019.

Parliamentary Union

How had this representation arisen?
↓ Kur

Q3

Q5 →

WHY DOES THIS APPEAR RELEVANT?

ONE DRUG LAW → MOD ACT 1971

Q6
→ MEDIA
→ POLITICS
→ ACADEMIC DISCOURSE

Treatise of Union 1707.

↙ XIX Protection of

↙ Scottish legal system

→ Scots Law → Constitution?

Ground 1606

Successful in limiting Crowns

→ Independent Public Prosecution

WHIGS?
↓
ADVOCATES
↓
Scots Law DEBATES
↓
ENLIGHTENMENT
→ CULTURE

LORD ADVOCATE
↓
COPFS
↓
ROLE
↓
DEVELOPMENT OVER TIME

King James VI → Law → ECONOMY → POLITICS
↓
"and I shall make them one nation"

THISTLE + THE ROSE.

NATION

SILENCES

JAMES WOLFFE'S SPEECHES

NOT IMPLEMENTING POLICE DIVERSION APPEARS POLITICAL

MENTION OF 1587

⬤ SCOTTISH SPECIFIC BARRIERS ARE OVERLOOKED

? → ESTBL. OF PROSECUTORIAL AUTHORITY

PRIORITISATION
CONTEXT

PROSECUTORS AS DECISION-MAKERS IN DIVERSION

DIFFERS FROM ENGLISH CPS

HOW → ROLE OF

POLICE
↓
PROSECUTORS

Appendix 2: Data visualisation examples

As explored in Chapter four, a variety of techniques were used to visualise the data and aid in the analytic process. The examples provided here, helped to lead to analytic discoveries that shaped and enhanced the study.

Genealogy

1587 1604 1707 1740 1779 1970 1998 2014 Now
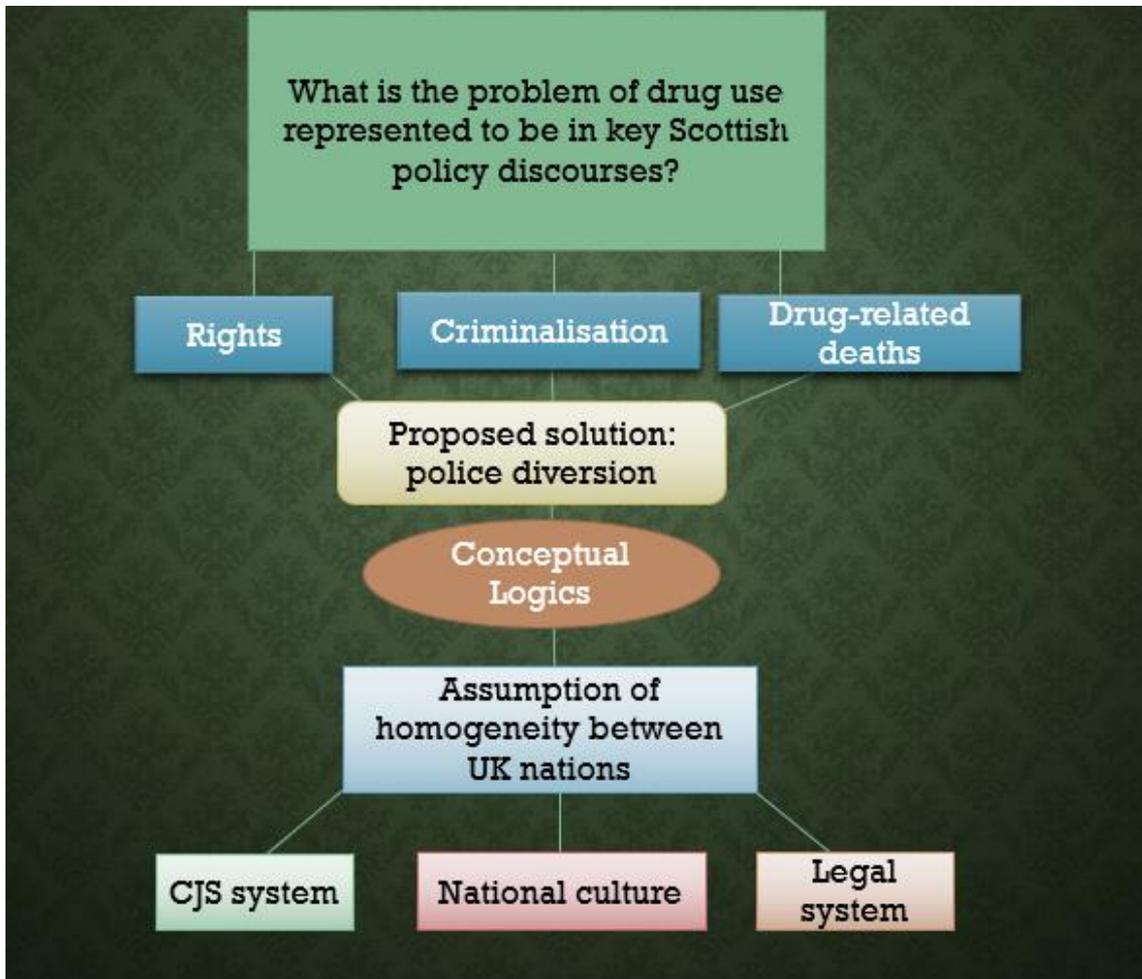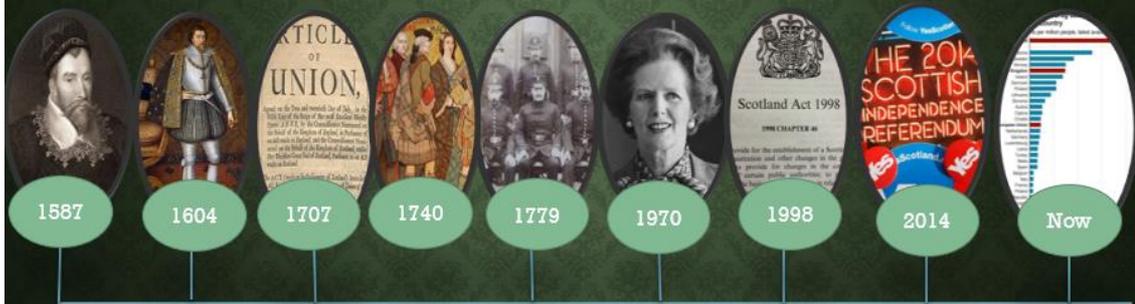
Key moments that have enabled this problem representation to emerge

"AND I SHALL MAKE THEM ONE NATION"

https://glasgowuniscotrenaissance.wordpress.com/2017/01/30/the-collected-works-of-king-james-vi-and-i/

In 1603, King James VI journeyed to London, to claim his hereditary right to the English throne

To overcome resistance, and to realise his long-held aim of unifying the nations of the UK

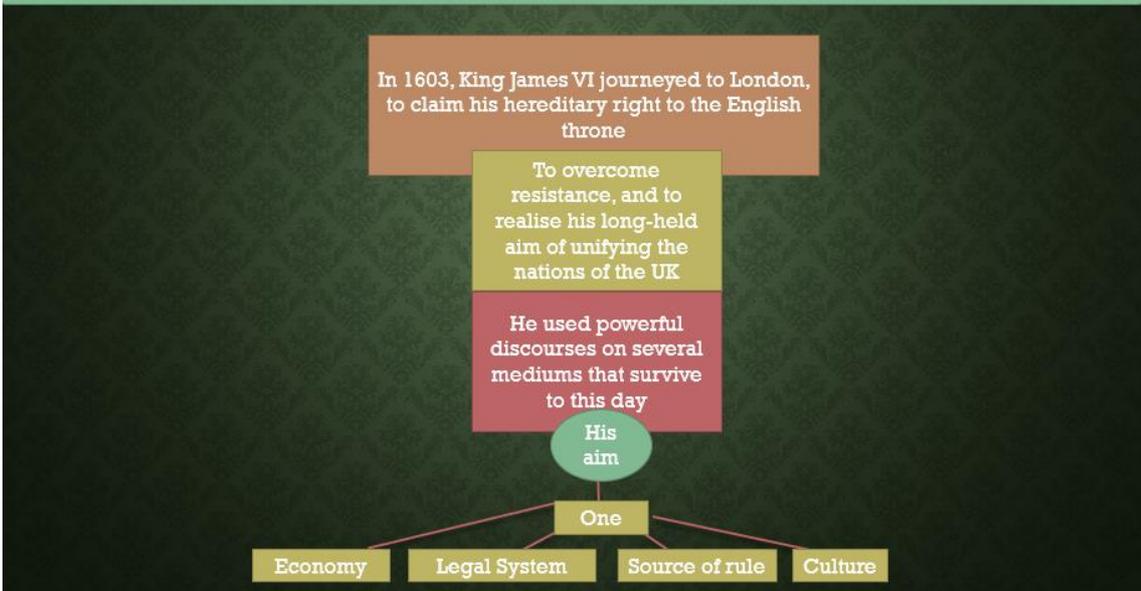He used powerful discourses on several mediums that survive to this day

His aim

One

Economy | Legal System | Source of rule | Culture

Powerful, enduring symbolic discourses that continue to be nationally significant to this day

Two sides of the same coin: the thistle and the rose

THE HOLY BIBLE

TO THE MOST HIGH AND MIGHTIE PRINCE, JAMES BY THE GRACE Of God, King Of Great Britaine, France and Ireland, Defender of the Faith, &c.

THE TRANSLATORS OF THE BIBLE, with Grace, Mercie, and Peace, through IESVS CHRIST Our LORD.

ARTICLES OF UNION,

Agreed on the Two and twentieth Day of *July*, in the Fifth Year of the Reign of Her most Excellent Majesty Queen *A N N E*, by the Commissioners Nominated on the Beh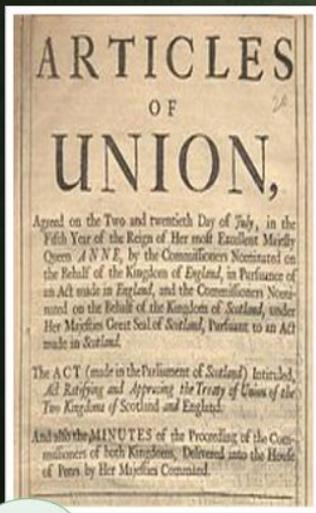alf of the Kingdom of *England*, in Pursuance of an Act made in *England*, and the Commissioners Nominated on the Behalf of the Kingdom of *Scotland*, under Her Majesties Great Seal of *Scotland*, Pursuant to an Act made in *Scotland*.

The ACT (made in the Parliament of *Scotland*) Intituled, *Act Ratifying and Approving the Treaty of Union of the Two Kingdoms of Scotland and England*.

And also the MINUTES of the Proceeding of the Commissioners of both Kingdoms, Delivered into the House of Peers by Her Majesties Command.

1707

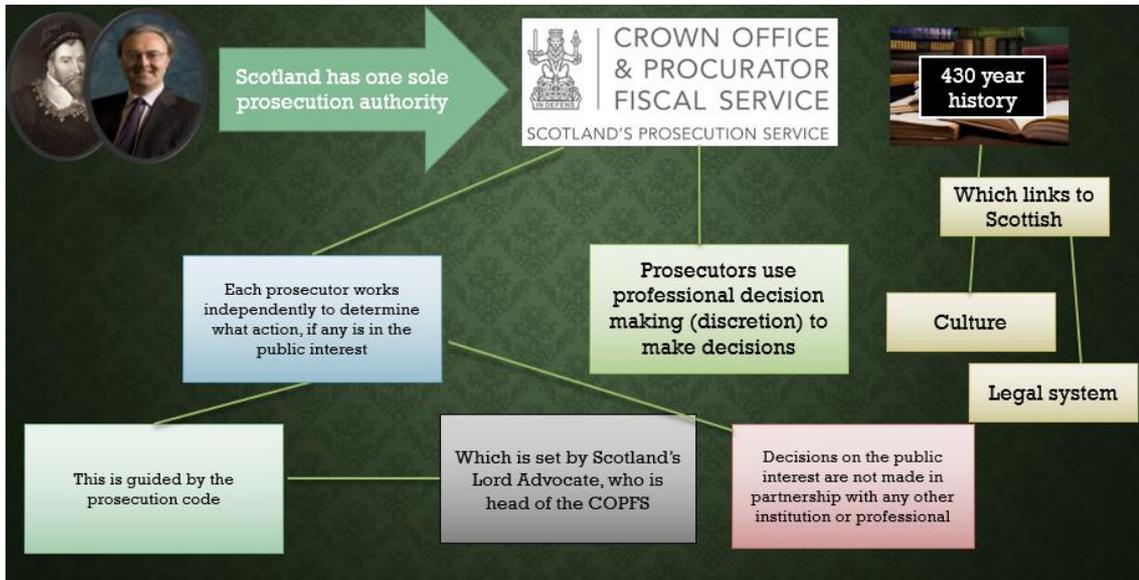**Origins of the concept of institutional and constitutional homogeneity between UK nations**

By 1707, the union was accepted in the hearts and minds of many, and political union was deemed inevitable

However, the parliamentary union created by the treatise of 1707 did not unify the legal systems of the UK nations

Discourses of unity, however, are so strong that this fact has emerged as a point of conceptual silence in the contemporary drug policy discourses

---

Scotland has one sole prosecution authority

CROWN OFFICE & PROCURATOR FISCAL SERVICE
SCOTLAND'S PROSECUTION SERVICE

430 year history

Which links to Scottish

Culture

Legal system

Each prosecutor works independently to determine what action, if any is in the public interest

Prosecutors use professional decision making (discretion) to make decisions

This is guided by the prosecution code

Which is set by Scotland's Lord Advocate, who is head of the COPFS

Decisions on the public interest are not made in partnership with any other institution or professional

Appendix 3: Developing the continuity theory via visual representations

As outlined in the methods, visual representations were used to develop theories and make sense of the data throughout. The below graphic offers an example of how ideas began to be developed via visualisation techniques. On the right of the picture is Braudel's theory. On the left is the developing PhD analysis.
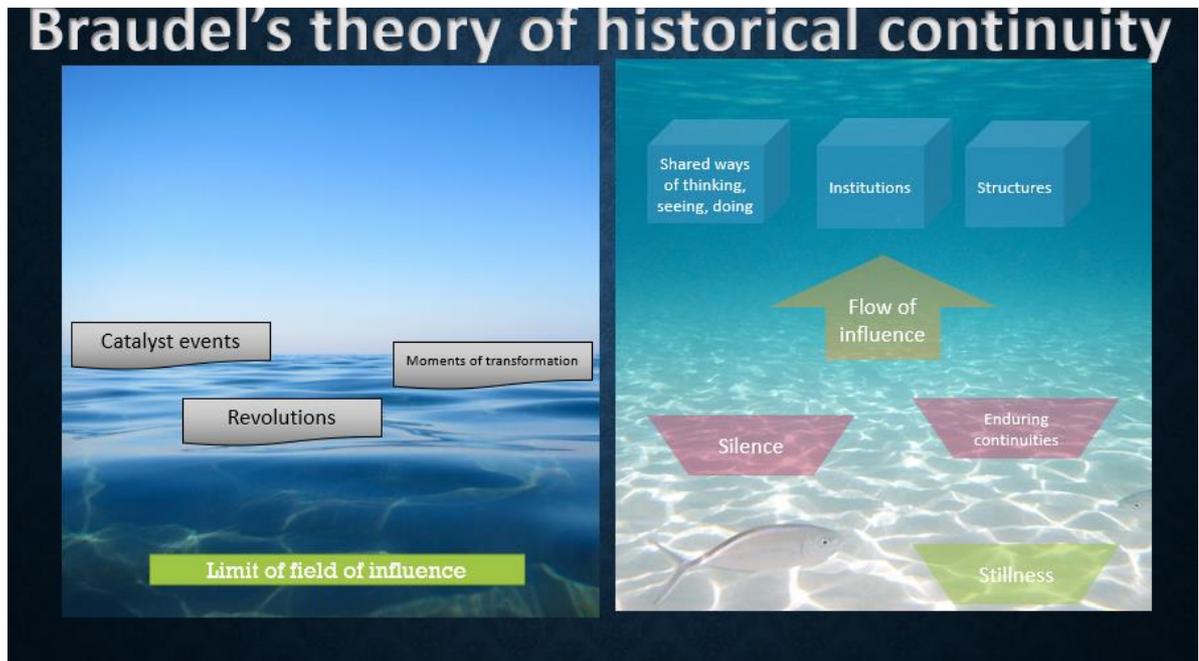
The above was adapted and developed into the below theoretical model, described in Chapter seven as 'the continuity theory & diversion research foundations'.