



## Policy Analysis

# The burgeoning recognition and accommodation of the social supply of drugs in international criminal justice systems: An eleven-nation comparative overview



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## ABSTRACT

**Background:** It is now commonly accepted that there exists a form of drug supply, that involves the non-commercial supply of drugs to friends and acquaintances for little or no profit, which is qualitatively different from profit motivated ‘drug dealing proper’. ‘Social supply’, as it has become known, has a strong conceptual footprint in the United Kingdom, shaped by empirical research, policy discussion and its accommodation in legal frameworks. Though scholarship has emerged in a number of contexts outside the UK, the extent to which social supply has developed as an internationally recognised concept in criminal justice contexts is still unclear.

**Methods:** Drawing on an established international social supply research network across eleven nations, this paper provides the first assessment of social supply as an internationally relevant concept. Data derives from individual and team research stemming from Australia, Belgium, Canada, Czech Republic, Finland, Germany, Hong Kong, the Netherlands, England and Wales, and the United States, supported by expert reflection on research evidence and analysis of sentencing and media reporting in each context. In situ social supply experts addressed a common set of questions regarding the nature of social supply for their particular context including: an overview of social supply research activity, reflection on the extent that differentiation is accommodated in drug supply sentencing frameworks; evaluating the extent to which social supply is recognised in legal discourse and in sentencing practices and more broadly by e.g. criminal justice professionals in the public sphere. A thematic analysis of these scripts was undertaken and emergent themes were developed. Whilst having an absence of local research, New Zealand is also included in the analysis as there exists a genuine discursive presence of social supply in the drug control and sentencing policy contexts in that country.

**Results:** Findings suggest that while social supply has been found to exist as a real and distinct behaviour, its acceptance and application in criminal justice systems ranges from explicit through to implicit. In the absence of dedicated guiding frameworks, strong use is made of discretion and mitigating circumstances in attempts to acknowledge supply differentiation. In some jurisdictions, there is no accommodation of social supply, and while

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aggravating factors can be applied to differentiate more serious offences, social suppliers remain subject to arbitrary deterrent sentencing apparatus.

*Conclusion:* Due to the shifting sands of politics, mood, or geographical disparity, reliance on judicial discretion and the use of mitigating circumstances to implement commensurate sentences for social suppliers is no longer sufficient. Further research is required to strengthen the conceptual presence of social supply in policy and practice as a behaviour that extends beyond cannabis and is relevant to users of all drugs. Research informed guidelines and/or specific sentencing provisions for social suppliers would provide fewer possibilities for inconsistency and promote more proportionate outcomes for this fast-growing group.

## Background

In 2000, the Police Foundation published its inquiry into the United Kingdom's Misuse of Drugs Act 1971, and in it raised the issue that too many of those prosecuted for supply offences did not resemble the type of supplier that the Act was initially designed to capture and prosecute (Coomber & Moyle, 2013). Specifically, the report distinguished between 'dealers proper', whose supply activity was essentially commercial in nature and characterised by a more serious culpability, with supply 'for the purposes of small-scale consumption between friends' which were considered 'acts of a different gravity' (Police Foundation, 2000, p.63). The recommendations of the Runciman Report (as it became known) came at a moment in which many 'developed' nations were recognising, and in some cases accepting the 'normalisation' (Parker, Aldridge, & Measham, 1998) of recreational drug use. A context of normalisation does not mean that 'everyone' is now a drug user, nor that drug use is generally condoned. It does however, suggest that recreational drug use has shifted from a behaviour for those in some way on the margins of society to place whereby most recreational drug use is now comparatively mainstream and where users are now as likely to come from a range of 'normal' backgrounds crossing the social spectrum as be associated with socially excluded populations (South, 1999). It also suggests that there has been a relative mind-shift in terms of mainstream acceptability of what was termed sensible recreational drug use. In the United States this mind-shift is being accompanied by new regulatory frameworks and in many countries around Europe by a relaxation of the prosecution of such use. With 'sensible' recreational drug use continuing to be gradually further accommodated into the lifestyles of ordinary young Britons (Parker et al., 1998), it has recently been suggested that this relative normalisation of recreational drug use in the UK has been 'productive of, and fused with' the relatively normalised, non-commercial supply of recreational drugs' (Coomber, Moyle, & South, 2016: 1). In 2002, an 'informal drug distribution system' whereby friends and acquaintances 'sort' each other with drugs was identified by Parker, Williams, and Aldridge (2002) as a consequence of the demand and accessibility associated with normalisation. Contemporary data continues to support these themes (Coomber et al., 2016), suggesting that recreational drug users engage in a range of distribution behaviours which include gift giving, sharing (both acts deemed as supply under the Misuse of Drugs Act 1971) and acting as 'go-betweens' who purchase substances on behalf of the group (Murphy, Waldorf, & Reinerman, 1990; Measham, Aldridge, & Parker, 2001; Coomber & Moyle, 2013).

It was this propensity for drug users to also become involved in informal low-level 'supply' for little or no profit to/between friends and acquaintances – behaviours that we now understand as 'social supply' – that stoked much of the concern of the Police Foundation and called attention to the issue of 'difference' in drug supply over 15 years ago. As Runciman notes, the drug supply sentencing apparatus 'catches some activities which it is highly misleading to regard as 'trafficking' in any serious sense or at all' (p.62) and many of those inhabiting social supply roles would also not see themselves as "real dealers" (Jacinto, Duterte, Sales, & Murphy, 2008) as commonly and legally understood, nor would many or most of those that they sell drugs to (Coomber, 2006; South, 2004). For drug users, disproportionate sentences can thus occur

because the disjuncture between drug use and supply has become less distinct or easily observable (Coomber et al., 2016) and the boundary between the two is often blurred (Chatwin & Potter, 2014). These issues are not confined to the UK context, and as we shall see, many international sentencing frameworks, in their rigidity, often fail to recognise or address the realities of recreational drug use and access as it occurs in the real world, with drug users/social suppliers routinely subject to the deterrent sentences (Lai, 2012) designed to discourage and punish committed commercial drug dealers.

## Proportionality

In seeking to ameliorate these problems and make a case for a delineation between 'trafficking offences' and social supply, the Police Foundation (2000) pointed to the ways in which other European countries at that time had started differentiating between different kinds of drug dealing. In 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances set a mandatory requirement that specific activities that constitute or contribute to trafficking be made 'criminal offences', subject to sanctions which take into account the grave nature of the offences, such as 'imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation' (p.129). There is however an exception for appropriate cases of a 'minor nature', and where these are concerned, the Convention states that non-punitive sanctions may be used as alternatives, not in addition, to penal sanctions. As a result, a number of Jurisdictions were legally able to attach 'aggravating factors' to the most serious forms of supply and utilise legal developments to treat social supply type offences as 'falling outside the range of trafficking' (Police Foundation, 2000: 62). In Italy, 'gift giving', and 'go-between' behaviours were dealt with through administrative sanctions, and in Spain, the same practices may not even be deemed an offence, depending on the circumstances (p.62). The need to accommodate differentiation in drug supply offences can be linked to a wider drive in modern legal systems and international law for proportionality in sentencing (Lai, 2012), representing an essential means for safeguarding fundamental human rights (Engle, 2012). At the core of this principle is commensurability between offence seriousness and sentence severity, meaning that the more serious the crime, the more blameworthy the offender, and thus the greater the deserved punishment (Lovegrove, 2010). Differentiation in supply – as pointed out by the Police Foundation report – therefore clearly suggests that some suppliers do more harm than others and that those producing less harm should receive proportionately less severe penalties from the criminal justice system.

Although as we shall see, there are some geographies that feature as 'outliers', general acknowledgement and reference to proportionality in sentencing law has become increasingly accepted. While the UNODC has called on countries to ensure proportionate penalties for drug offences and many jurisdictions now recognise the principle of proportionality in their drug sentencing laws and practices, there is variance in regard to the ways in which it is applied in practice (Lai, 2012). For example, in Romania and Luxembourg, there is currently no distinction in penalty according to the quantities of drug supplied or personal circumstances of the offender (EMCDDA 2017a), and it is

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