**Title**: The Burgeoning Recognition and Accommodation of the Social Supply of Drugs in International Criminal Justice Systems: A Ten-Nation Comparative Overview.

**Authors**: Coomber, R., Moyle, L., Belackova, V., Decorte, T., Hakkarainen, P., Hathaway, A., Joe Laidler, K., Lenton, S., Murphy, S., Scott, J., Stefunkova, M., van de Ven, K., Vlaemynck, M. and Werse, B.,

**Abstract**

**Background:** It is now commonly accepted that there exists a form of drug supply qualitatively different from profit motivated drug dealing (proper), which involves the non-commercial supply of drugs to friends and acquaintances for little or no profit. ‘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 ten 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, UK and US, supported by expert reflection on research evidence and analysis of sentencing and media reporting in that context.

**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 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 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.

**Keywords**: social supply; minimally commercial supply; user-dealers; friend supply; drugs; drug dealing; proportionality;

**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). Viscountess Runiciman, the author of the report, distinguished between ‘dealers proper’, whose supply activity was essentially commercial in nature and characterised by a more serious culpability, with ‘acts of a different gravity’ - that of supply ‘for the purposes of small-scale consumption between friends’ (p.63). The recommendations of the Runciman report 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. Normalisation does not mean ‘everyone’ is now a drug user, nor condone drug use or otherwise; nonetheless, it does suggest that drug 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). 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, 2015: 1). In 2002, an ‘informal drug distribution system’ whereby friends and acquaintances ‘sort’ each other with drugs was identified by Parker, Williams and Aldridge as a consequence of the demand and accessibility associated with normalisation. Contemporary data continues to support these themes (Coomber et al., 2015), 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 & Reinarman, 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, 2004; 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., 2015) 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, 2002) 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 Report (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, 2002). 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 important to note that a number of nations still impose disproportionate sentencing tariffs that include life imprisonment and the death penalty (see Gallahue et al., 2012). But despite emergent international standards around proportionality and drug supply, the implementation of proportionate sentencing frameworks is culturally mediated, and at ground level this means that different jurisdictions’ conceptions of proportionate penalties for drug supply offences are invariably shaped both by the political climate and underlying understandings of whom and what the drug dealer is (Coomber, 2006).

*Social Supply*

Evidence of different forms of low-level supply practices such as those outlined in the Police Foundation Report (2000) have been observed in a range of empirical research studies undertaken from the 1960’s (Goode, 1969; Blum, 1972; Dorn, Murji & South, 1990) up to the present day (see Werse & Bernard (eds), 2016). From the symbolic sharing and gift giving behaviours associated with cannabis users (Coomber & Turnbull, 2007; Duffy, Schafer, Coomber, O’Connell & Turnbull, 2008; Belackova & Zabransky, 2016; Lenton, Grigg, Scott, Barratt & Elefttheriadis 2015), to the group and ‘party buying’ practices undertaken by clubbers (Murphy et al., 2004; Coomber & Moyle, 2013; Joe Laidler & Hunt, 2008; Measham, Aldridge & Parker, 2001) and the social distribution of drugs in gyms by users of Performance and Image Enhancing Drugs (PIED) (Coomber et al., 2014; van de Ven & Mulrooney, 2017), social supply is now largely understood both as an observable and qualitatively different form of supply to that of drug dealing proper. Despite the wealth of research that has documented social drug distribution across many international contexts, definition has nonetheless tended to be a slippery business characterised by an absence of accepted definition criteria (Taylor & Potter, 2013).

There are two central elements that are often associated with the term: social supply as ‘non-profit’, and as ‘non-stranger’ supply (Potter, 2009). The idea of social supply as characterized by non-commercial distribution appears to have been widely supported in the literature base (Hough et al., 2003; Coomber & Turnbull, 2007), and empirical studies (see Hough et al., 2003; Duffy et al., 2008; Moyle & Coomber, forthcoming) have also depicted the regularity and high incidence of drug users sharing, swapping and ‘chipping in’ (combining funds to buy a quantity of drugs as a group). These practices have been identified as an important means of negotiating drug prohibition through providing access to those without contacts to drug supply networks (Measham et al., 2001), as well as offering users the prospect to share drug costs (Moyle & Coomber, forthcoming) and protect themselves from the threat of the police and prosecution (Potter, 2009; Parker et al., 1998; Belackova & Vaccaro, 2013). Though motivations for accessing drugs through social suppliers have tended to be *predominately* non-commercial in character, emerging evidence suggests these transactions are more nuanced. Empirical data indicates that social suppliers may be routinely given free drugs or a monetary contribution for their troubles and risk (Parker, 2000; Coomber & Turnbull, 2007), or effectively earn their drugs for free through retail ‘markup’ (See Goode, 1969; Dorn et al., 1992; Murphy et al.,1990). The routine inclusion of gain and financial profit through ‘taxing’ (Moyle & Coomber, forthcoming), bulk purchase and markup (Werse and Müller, 2016) has elicited a call for social supply to be understood as part of a broader concept of ‘minimally commercial supply’ (see Coomber & Moyle, 2014). Here it is argued that extending the parameters of the concept would more accurately describe the nature of low-level drug transactions (including those of drugs such as heroin and crack cocaine when sold by ‘user-dealers’) which more often than not involve some in-kind benefit or monetary gain (Coomber & Moyle, 2014; Lenton et al., 2015).

*The Current Study*

Despite definition remaining elusive, it is now apparent that a discernible set of behaviours, commonly understood as ‘social supply’ are now observed and in a growing number of international contexts. There is evidence to suggest that legal frameworks in the United Kingdom have evolved to acknowledge and accommodate this differentiation in terms of culpability and proportionality – however, the extent to which this is the case for social supply type behaviours elsewhere is the purpose of this paper. Up until now, there have been few efforts to consider social supply and the treatment of social suppliers outside distinctive national contexts and this will be the first paper to focus on these issues from an international perspective. The aim of this paper is to explore the extent to which social supply is acknowledged and developed in different countries, and to identify which contexts and circumstances make it more likely. In addition to exploring the discursive milieu for social supply, we also explore how it is accommodated in international criminal justice systems: in statute, sentencing provisions and through mitigation.

**Methods**

The absence of research that seeks to provide an analysis of the place of social supply in international criminal justice systems might be in part related to the difficulties in accessing this data in unfamiliar contexts. Apart from obvious language barriers, social supply practices may not always be defined as such or may be only recognised informally, with little explicit discussion of its parameters or characteristics in official documents. For these reasons, data presented in this paper are derived from individual and team research stemming from the country in question, supported by expert reflection on research evidence and analysis of sentencing and media reporting in that context. Drawing on an established international social supply network, contributions were welcomed from researchers working in the social supply space in the United States (SM), Canada (AH), Australia (JS and SL), Hong Kong (KJL), the Netherlands (KvDV), Czech Republic (VB and MS), Belgium (TD and MV), Germany (BW) and Finland (PH) – these were combined with evidence from the UK (RC and LM), where the research network originated. In each context researchers were required to respond to a set of questions regarding the nature of social supply in their particular context. This included providing an overview of social supply research activity, commenting on the extent to which differentiation is accommodated in drug supply sentencing frameworks, and evaluating how far social supply is recognised both as a concept in legal discourse and in sentencing practices. Finally, contributors were also requested to comment on how far social supply - or what might be considered an equivalent conceptual phrase or practice - is accepted at a broader discursive level in their particular society; in short, how far social supply was used as a descriptor by criminal justice professionals and within the public sphere. A content analysis of these scripts was then undertaken (LM and RC) and emergent themes were developed.

The findings section presents this data, organised according to theme as opposed to providing country profiles. Organising it in this way offers a more effective means of presenting broad international trends and tracking how evident and developed different countries’ accommodation of social supply is - ultimately enabling a discussion appraising the transferability of social supply as an international concept. Collecting data in this way is not without its challenges and in this respect, we would highlight that this is an *indicative* rather than an exhaustive exercise. In some contexts, it is still unclear even to scholars interested in social supply, how far policy and sentencing guidelines are adopted in practice. Further, it became evident in many contexts that while there is some discussion of social supply in relation to cannabis, there is much less research and publicly accessible information in regard to the treatment of social suppliers of *other* recreational substances. Though findings are based principally on data from the aforementioned countries, in places we have alluded to important practices or developments in contexts outside the international research network.

**Findings**

**How far is social supply recognised in international research?**

*Active social supply research contexts*

The UK has produced a variety of different empirical research studies that focus directly (see Coomber & Turnbull, 2007; Potter, 2009; Taylor & Potter, 2013), or provide peripheral analysis (Parker, 2000; Hough et al., 2003) of social supply behaviours. From early identifications of ‘mutual societies’ and ‘trading charities’ described in Dorn et al. (1990) who engaged in reciprocal or ideologically motivated supply practices, to the young cannabis suppliers in Coomber and Turnbull (2007), and the involved recreational ketamine, cocaine and ecstasy users who drifted from social supply to ‘real dealing’ (see Taylor & Potter, 2013), this literature base has tended to be united by its focus on supply as ‘embedded practice’ (Coomber et al., 2015), supply to non-strangers (Potter, 2009) and transactions characterised by ‘minimal profit’ (Coomber & Moyle, 2014). In wider Europe, social supply is often researched with focus on cannabis distribution, especially small-scale cannabis cultivation, which can create an influential context for social supply. According to a web survey conducted among Finnish cannabis growers, many said they often gave or ‘served’ part of their crops to friends for free, and in this respect, they did not grow cannabis for the money, or to make a profit, but for the pleasure of growing, enjoying and sharing it with friends (Hakkarainen & Perälä, 2016). In Belgium, one study identified different forms of cannabis networks, which were more likely described as an ‘informal business network amongst ‘friends’, family and acquaintances’ (Decorte et al., 2014: 101) than criminal collaborations. Social supply research exploring cannabis cultivation in the Czech Republic unveils similar supply systems but attributes their dominance to the spread of outdoor cultivation that comes at a low (or no) cost and a specific culture in which it remains imperative that cannabis should not be ‘sold’ at all (Belackova & Zabransky, 2014). In the North American context, Canadian social supply research has also tended to focus on cannabis transactions and the nature of relationships between distributor and user. In line with many of the European studies, Canadian data suggests impersonal transactions with drug dealers are avoided in favour of loose networks of fellow users with whom they feel comfortable buying and using. Consistent with some of the early UK studies on social forms of supply (see Dorn et al., 1990, 1992), studies in this region emphasise reciprocity, maintaining that access through a social network of supply offers mutual assurance that, from one source or another, a small quantity of cannabis will always be available to users (Hathaway, 2004; Hathaway, Erickson & Lucas, 2007). A body of social supply research undertaken in Germany confirms many of the themes outlined above (see Werse, 2008; 2014) and also usefully contributes to our understanding of supply transitions (Werse and Müller, 2016: 117). This research suggests that drug users are most likely to transition in social supply through attempting to fund their own drug use (becoming a ‘stash dealer’), acting as a ‘go between’, or to ensure a constant supply of good quality drugs (supply guarantee/’connoisseur’). Insight into transitions *out* of social supply are also reported and include factors such as ‘social stress’, ‘change of life course’ and ‘risk of discovery’ (Werse and Müller (2016: 117).

On the other side of the globe, Australian researchers have highlighted the similarities between socially based cannabis distribution patterns (Grigg, Lenton, Scott & Barratt, 2015) and supply practices in ecstasy markets (see Fowler, Kinner & Krenske, 2007). Though empirical focus is based primarily on cannabis markets in Australia (see Lenton et al., 2015; Grigg et al., 2015), peripheral studies in this space have also identified social supply as predominant in the majority of cocaine, methamphetamine as well as ecstasy-related transactions - a large proportion of which are carried out on a not-for-profit basis (see Nicholas, 2008). Much like Australia, in Hong Kong - a context in which cannabis use is comparatively low but use of amphetamine type substances (ATS) is relatively high - social supply behaviours have also been identified in ecstasy and methamphetamine markets. In contrast to the Australian context however, Hong Kong exhibits high levels of ketamine use, particularly among young people, and So (2009) observes that the number of young people involved in drug supply has increased, the age at which they commence ‘dealing’ is younger, and that many are now selling to friends as a way to cover the costs of their own supply. Studies undertaken by Joe Laidler (2014; Joe Laidler and Hunt, 2008) also suggest that although ecstasy has been typically associated with dance party settings, ketamine and other psychoactive drugs are used in a range of public and private settings. Given this diversification in backdrops for consumption, the range of methods of obtaining drugs have also changed, but friendship networks and relations in consuming and obtaining these substances remain salient for recreational users.

*Emergent social supply themes and research contexts*

In the US, research focussed on social supply is comparatively less developed than in Europe. A number of in-depth ethnographic studies have offered rich insight into the lives of ‘dorm room dealers’ or college students that engage in ‘social dealing’ to friends or acquaintances in the aim of funding their own drug use or as an act of sociability (see Blum, 1972; Mohamed & Fritzvold, 2010; Jacques & Wright, 2015), but these studies have tended to avoid conceptual discussion. Elsewhere in the US, a trail of publications from Murphy and colleagues which investigate drug supply in the San Francisco Bay area (see Murphy et al., 1990; 2004; Jacinto et al., 2008) have also shed light on social supply practices, but until very recently, without labelling them as such. In ‘*drifting into dealing: becoming a cocaine dealer’* the authors explored the ways in which a cocaine user could drift from drug use to being known as a source of supply, and almost 13 years later similar narratives emerged in understanding initiation into ecstasy sales (see Murphy et al., 2004). In a recent study exploring nonmedical prescription stimulant use in the San Francisco Bay Area (2017), participants discussed the risks of diverting legitimately prescribed stimulants or obtaining others’ prescription stimulants within social supply networks. This piece of research explicitly refers to distribution practices as ‘social supply’ and is also representative of an emerging research base which has moved beyond analysing the social supply of *recreational drugs*. In the UK for example, Coomber et al. (2015) identified the importance of social supply networks in accessing steroids and other performance and image enhancing drugs (PIEDS) in an English city. These findings have been supported by scholars in the Netherlands who observe the prevalence of social supply networks within bodybuilding subcultures, illustrating that for many PIED suppliers, profit is not the primary motivation for involvement in this trade (van de Ven & Mulrooney, 2017).

**Differentiation and proportionality in supply**

*Systems that acknowledge and take some steps to accommodate supply differentiation*

The developing international research base presents a diverse picture of social supply, oscillating from one that is strongly focussed on cannabis cultivation, and the cultural values that shape transactional practices, to one that has become dominant in understanding the ways in which recreational substances like ecstasy and ketamine are accessed, and increasingly, as central to drug supply networks in non-traditional settings such as gyms. The extent to which supply differentiation and low-level distribution activity such as social supply is recognised at an international level may be in part related to the degree of proportionality exercised at state level and how far varying levels of harm and culpability are accepted by the legal system in question. In the UK, a context which purports to put proportionality at the heart of their justice system (Moyle, Coomber & Lowther, 2013), the implementation of sentencing guidelines for drug offences (Sentencing Council, 2012) allows the court to determine the drug supplier’s culpability and harm caused through reference to their ‘role’ and quantity of substance supplied. In practice, an offender could be classified as taking on a ‘lesser’ (e.g. performs a limited function under direction), ‘significant’ (e.g. operational or management function within a chain) or ‘leading’ supply role (e.g. directing and organising buying and selling on a commercial scale’), and this ‘role’ is then matched with the appropriate quantity based category and a sentence is determined with reference to relevant starting points and category ranges. Australia, like the UK, is among a number of countries throughout the world that relies on the identification of ‘threshold quantities’ of prospective illicit substances as an indicator of supply offences when distinguishing suppliers from users. State and territory, as well as Commonwealth drug legislation specifies threshold amounts of drug over which offenders are either presumed to possess a drug ‘for the purposes of supply and are liable to sanction as ‘drug traffickers’ (of up to 15 years in most states) (Hughes et al., 2014). The threshold system generally differentiates between a trafficable threshold (to distinguish low level trafficking from possession or personal use), a ‘commercial’ threshold and a ‘large commercial’ threshold, each imposing increasingly severe penalties. Though this gradated system is designed to successfully filter out drug users from drug traffickers and impose harsher penalties for more serious offences, thresholds have been criticised for placing Australian drug users at risk of unjustified supply charge or sanction (Hughes et al., 2014) and of course the nuances of the concept of ‘social supply’, as articulated in this paper and elsewhere, are ignored in such an amount-based classification system.

In Canada, in addition to distinguishing between “hard drugs” and “soft drugs”, some Canadian courts distinguish between different levels of gravity for trafficking offences. In increasing order of severity or seriousness for trafficking offences are: social sharing, petty retail operations, and full-time commercial operations. Factors taken into consideration include the offender’s level of involvement in the drug trade, amount and value of the drug, number of transactions, prior related record, the degree of planning, trafficking in other types of drugs, and commercial versus social trafficking. Moving to Asia, in Hong Kong, although drug patterns have taken a dramatic transformation, drug policy remains firmly embedded in a prohibitionist model, with the government’s first public campaign slogan (Hong Kong Public Records Office, 1960): “drug addiction means death” echoed in its current stance: “stand firm, knock drugs out” (see Leung, 2010). Despite the government’s overall policy, there is however evidence to suggest that the courts have taken into account the changing nature of the drug market, its consumers, and the ways in which young people obtain their drugs through establishing separate sentencing tariff bands for supply of different substances.

*Less Differentiated Systems: Discretion and Disparity.*

Across Europe there is evidence of wide spectrum of drug laws that deal with drug offences such as possession, supply and transportation in a range of ways. Drug use, for example, is not an offence in the Czech Republic, and possession of small quantities of any drug for personal use is a non-criminal (administrative) offence under the Act of Violations, punishable by a fine of up to CZK 15 000 (EUR 550) (EMCDDA, 2017c); this applies equally to cultivating cannabis for personal use in small amounts (Belackova & Stefunkova, 2017). Still, the penalties for drug supply range from 1-5 to years to 10-18 years of imprisonment, depending on various specified aggravating circumstances including, frequency of offending, duration of offending and the way the substance had been handled. The financial value of the transaction, and notably the financial gain or profit are also taken into account as well as the number of individuals who had been affected by offending (e.g. the number of individuals the person sold the drug to) (Zeman, Stefunkova, & Travnickova, 2015). Finland provides an example of a context in which supply differentiation is absent due to there being ‘*no specific offence of dealing or trafficking’* (EMCDDA, 2017d) - with drug offences being split within the categories of ‘drug user offence’, ‘drug offence’ and ‘aggravated drug offence’. The penalties for a ‘drug user offence’ begin from a fine to six month’s imprisonment, while a ‘drug offence ranges from a fine to a maximum of two years’ imprisonment, and an ‘aggravated drug offence’ to be punishable by 1-10 years’ imprisonment. Aggravating circumstances for a drug offence include the involvement of substances considered as ‘very dangerous’; if substantial financial profit is sought; if the offender acts as part of an organized group; if the offence causes severe danger for the health or life of several people, or the drugs are distributed to minors or otherwise in an unscrupulous manner (Kainulainen, 2006). Like Finland, Belgium also harnesses ‘aggravating circumstances’ as a means of distinguishing between supply sentences of more and lesser seriousness. For drugs other than cannabis, Belgian law punishes possession, production, import, export or sale without aggravating circumstances with three months’ to five years’ imprisonment with the potential for the term to be increased to 15 or even 20 years in various specified aggravating circumstances (EMCDDA, 2017b).

In the Netherlands, there is no legislative framework for formally differentiating between different gravities of supply offences and The Opium Act (1976) sets out that supplying drugs (possession, cultivation or manufacture, import or export) is punishable, depending on the quantity and type of drug involved, by up to 12 years’ imprisonment (EMCDDA, 2017f). Much like the system used prior to the implementation of sentencing guidelines in the UK (2012), the wide *discretionary* power of the police, prosecutors, and judges thus plays an important role in the prosecution and sentencing of drug production and trafficking offences in the Netherlands. In neighbouring Germany, unauthorised possession of drugs is a criminal offence punishable by up to five years in prison. Likewise, the illicit supply, cultivation and manufacture of narcotic drugs carry penalties of up to five years’ imprisonment (EMCDDA, 2017e), however, this increases to 15 years if there are aggravating circumstances. Examples of these aggravating circumstances include ‘not insignificant’ quantities of narcotic drugs; an adult supplying narcotics to a person under the age of 18 (both setting the minimum sentence at one year of imprisonment) a person trafficking narcotics ‘professionally’ or as a member of a gang (minimum sentence two years); or carrying a weapon when committing a serious drug-related offence (minimum sentence five years) (EMCDDA, 2017e). Nonetheless, there are remarkable regional differences in these official rules and the differences are even greater when looking at law enforcement practice (which is facilitated by the aforementioned large ranges of possible sentences). Bavaria for example is known as the *Bundesland* with the toughest enforcement of drug offences, regarding both police search practices and levels of punishment (Reuband, 2007). Here, as well as in some other mainly rural regions, even the possession of small amounts might lead to a sentence, e.g., if the court presumes that there is an intention to distribute the drug, or if minors are involved. On the other hand, in some big cities, such as Berlin, cannabis use can nearly be regarded as decriminalized in practice and as a consequence, differences in the prosecution and sentencing of supply offenses can be attributed to *regional* variances.

*Blanket policies and Disproportionality*

Despite the emergence of liberal state policies relating to the legalization of medicinal or recreational use of cannabis in the United States (see Eastwood, Fox, & Rosmarin al., 2016) *federal* sentencing regimes, shaped by a history of deterrent sentencing policy - including the implementation of mandatory minimum sentences - have resulted in deeply disproportionate sentences, encouraging racial disparity in sentencing and feeding mass incarceration (Porter and Wright, 2011). Threshold sentencing exists for ‘trafficking offences’ and sentencers are led by tariffs that prescribe the maximum fine and prison sentence for a particular schedule of substance. In practice, they read in the following way: for a first offence of trafficking LSD (Schedule I), the supplier would be sentenced according to quantity categories of ‘1-9 grams mixture’, receiving a maximum penalty of ‘not less than 5 years and not more than 40 years’ imprisonment, or for ‘10 grams or more’, punishable by ‘not less than 10 years and not more than life’ imprisonment (DEA, 2017). This system allows for prosecutors to make highly discretionary and consequential decisions which clearly affect sentence severity (Kim, Spohn & Hedberg, 2015) whilst also encouraging disparity and disproportionality in the sentencing process (see Spohn & Fornango, 2009).

**Social Supply in sentencing and legal practice**

As we have seen, different international contexts accommodate differentiation in sentencing for drug supply at varying levels, ranging from systems in which culpability is assessed through regard to an offender’s ‘role’ (UK), to contexts in which supply offences do not exist (Finland), or the courts hold wide discretionary power (Netherlands/US). Perhaps unsurprisingly, the degree to which proportionality and supply differentiation is acknowledged shapes the extent to which ‘social supply’ (or activities that could be described as such) are recognised within sentencing practices. In the UK, the Sentencing Council currently does not explicitly include ‘social supply’ within the ambit of their role categories. However, during a consultation preceding the implementation of the new sentencing guidelines, they note the ‘frequency in which the term is used to ‘discuss’ the role of an offender in a supply offence’ and instead include ‘*absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis*’ in their matrices’ lesser role category (Sentencing Council, 2012: 11). Detailing their decision not to include ‘social suppliers’ as a role within the definitive sentencing guidelines, the Sentencing Council (2011) label the term ‘highly problematic’ and provide the following statement explaining its exclusion (p. 35):

The term can be applied to those selling drugs to friends, where the supply is commercial but the recipients are known. It is also sometimes applied to those offenders who supply for no gain, for example by conducting a joint purchase with friends. The Council’s aim is to draw a distinction in role, and therefore in culpability, between the commercial supplier providing a regular supply for not insignificant financial gain, and the person who provides small amounts of the drug to friends for no financial gain whatsoever, for example by conducting a shared purchase. In order to maintain this distinction throughout, the terms “social supply” and “social supplier” have been avoided so that it is always clear which type of offender is being referred to.

Much like the picture emanating from the UK,there has been a willingness to, effectively, acknowledge and/or incorporate social supply within sentencing practices in Hong Kong. In HKSAR vs Hii Siew Cheng (2007), the court’s new sentencing guidelines (with bands based on weight) recognised the difference between traffickers of ecstasy and ketamine who visit entertainment sites, and *“small time pushers of drugs, often with a mere handful of tablets to supply to others, who shouldered the responsibility for taking young people off the rails*.” In clarifying its position on “social trafficking,” the court made reference to instances where a ketamine or ecstasy user with no prior trafficking convictions caught supplying a close friend (who was a drug user) might instead be considered for a non-custodial sentence. In New Zealand, despite a notable absence of research on social supply, there have been repeated calls for it to be recognised as a distinct type of offending in the criminal courts. In 2010, as part of their review of the Misuse of Drugs Act (1975) The New Zealand Law Commission (2010) called for a delineation in penalties for certain supply offences, suggesting there is ‘a class of supply that should be carved out for separate treatment’. They go on:

This class of supply is “social supply”, where supply is of a very low level, among friends or acquaintances, without profit or with a very small profit, and with no significant element of commerciality.

(New Zealand Law Commission, 2010: 195)

Joined more recently by the New Zealand Drug Foundation (2017), the New Zealand Law Commission call for a presumption against custody and removal of penalties for this offence, stressing that the absence of any significant commerciality makes its criminality more analogous to possession (New Zealand Law Commission, 2010: 194). Going beyond a critique of the current sentencing apparatus, suggestions are presented for a separate offence in which a presumption against custody could apply when the judge was satisfied that the following circumstances existed: ‘1) the supply was in small quantities; 2) the offender was also using the drugs; 3) the supply was to friends or acquaintances; 4) the offending was not motivated by profit’ (New Zealand Law Commission, 2010: 195). Notwithstanding these progressive (in terms of proportionality) recommendations, it is suggested that the concept is yet to have penetrated legal practice in New Zealand (Personal communication, New Zealand Drug Foundation, 2017) and more research is required in order to gain an understanding of how social supply offences are dealt with in criminal justice settings in this country.

*Informal, ‘ad hoc’ identifications of social supply*

Alongside systems that actively attempt to incorporate social supply into sentencing frameworks, or as a new offence, there is also evidence of contexts where social supply is recognised and dealt with informally by sentencers who, in many cases, are well acquainted with working with these types of offenders. In *R v Angus Edward Lloyd-Smith* [2015] (Adelaide District Court, Australia), the defendant pleaded guilty to the offence of trafficking in a controlled drug, with maximum penalty of imprisonment for 10 years or a fine of $55,000 or both. The Judge suspended the sentence, and contextualised this outcome explaining that while it was a very serious matter, and that though the defendant was guilty of importing 500g of Methylone (often sold as MDMA), he ‘*was not seeking to profit financially by doing this, but rather there was a small group of people’ [friends] to whom the drug would be distributed ‘at cost or in exchange for drinks and a meal’*. In New South Wales (Australia), in another case concerning a social supplier - who on this occasion had been caught in possession of 20 ecstasy tablets and a small amount of cannabis that he intended to use himself and supply to friends - the Judge afforded the respondent a 25% discount for his early guilty plea and noted that the objective seriousness of the offence was at the ‘very lowest end of the scale’, and that he ‘had not intended to profit from what he did’ (R V Oliver James Tama Mauger [2012] NSWCCA). Cases like these show that there is currently no formal framework for working with social supply offences across jurisdictions in Australia, and in this respect, sentencing outcomes for social supply offences are dependent on the *discretion* of the sentencers. ‘Informal’ acknowledgement of social supply as witnessed in the Australian context can also be found in the Netherlands. Though social supply is not formally recognised within Dutch sentencing guidelines, exceptions can be found in which social supply characteristics seem to be considered. For example, in determining the sentence for a male sentenced to eight months of imprisonment (of which six were conditional) for the supply of ‘hard drugs’ (cocaine, ecstasy and hemp), the court took into consideration that the defendant was not a professional dealer as the drug transactions were described as “a service to friends” of which the dealer only made *minimal profits* (“low profit margins”) (PZC, 2016).

*Less developed accommodation of social supply characteristics*

While there is evidence of an acceptance of social supply, or at least discretionary actions that attempt to accommodate its characteristics in many international contexts, the term social supply is largely unrecognised in legal practice as well as at a broader discursive level. In Belgium for example, the term 'social supply' is generally not used and although there is some provision for Belgian cannabis suppliers to be distinguished as selling cannabis 'to cover the costs of the own use', this ‘tolerance model’ only applies to *cannabis,* and does not extend to any other illegal drugs. In practice, this means that no distinction is made between 'minor' and 'major' sales of MDMA or other recreational drugs. A similar picture is reported in Finland and Canada where there is not a clear conception of social supply in drug legislation but some of the features that we might consider as characteristic of social supply can be used in mitigation. For Canadian drug users, the predominance of non-commercial, small-scale, social sharing and supply of cannabis is accommodated by discretionary measures that reduce the burden on the courts in relation to this particular drug, however, mirroring the picture outlined in Belgium, there are no provisions for other recreational drug users. In Finland, it is stated in the Criminal Law that motives of an offender (as well as malignancy and dangerousness of an offence) should be taken into account when imposing a sentence. So, in practice, a person sharing or giving away a small amount of cannabis would most likely receive somewhat milder sanctions than in a case when a person is *selling* the same amount of cannabis (Kainulainen, 2006). In Germany and the Czech Republic, similar themes are observed in that there are no special regulations for social supply offenses vs. profit-oriented sale (except for the vague term of “commercial” dealing mentioned above). However, courts would usually impose sanctions in relation to the severity of the case (regarding profits, regularity etc.) and in sentencing can take into consideration lower severity and social harmfulness of such acts. In this respect, in these neighbouring countries, German and Czech citizens cannot expect any explicit legal provisions for social supply, *but* if their offending circumstances are judged as less severe, harmful and their responsibility less, this should be recognised in determining their punishment.

Perhaps the best example of conceptual absence and its consequences comes from the United States, where despite observations of ‘friend dealing’ and socially situated distribution behaviours (Jacques and Wright, 2014; Blum, 1972), the term ‘social supply’ has not taken hold as a descriptor for social, non-profit motivated dealing. Discursive familiarity with the social supply concept is highly underdeveloped in this context to the extent that, when questioned about the utility of the concept, those working in public defender offices at county and federal levels admitted that they ‘*had never heard of it’ (*Personal Communication, 2017*)*. In practice, as previously discussed, Federal drug law prescribes different sentencing tariffs and penalties for distinct types of drugs and specific quantities, but they do not differentiate types of *supply*. In this respect, there is ‘inordinate ambiguity’ in defining “trafficking” regarding Schedule I and II drugs for which no quantity-based parameters exist, including prescription stimulants, and legislation does not specifically distinguish between “dealing” and “social supply” (Murphy et al., forthcoming) Taking the example of a college student who gives a friend a few free Adderall (a prescription stimulant diverted for, and used as, a ‘study drug’), it is suggested that federal laws work in such a way that this social supplier could conceivably receive the same penalty as a first-time offender who sold four hundred grams of cocaine (see Murphy et al., forthcoming).

**Discussion**

From Europe, to North America, Hong Kong and Australia, empirical research suggests that there is a distinctive socially situated supply practice, separate from commercially motivated dealing that is commonly observed in drug using populations. While researchers have agreed on some of the key features of social supply (i.e. largely as not-for-profit distribution to non-strangers), in many ways, the parameters or scope of social supply in particular countries are shaped by the nature of the research conducted in such areas. Across Europe and in Canada for example, social supply is synonymous with the cultural values of cannabis subculture, and this is reflected in formal sentencing systems (see Belgium and Canada) where there is the possibility of dispensation for low-level social supply characteristics - but only for those who use cannabis. Providing sentencers with mitigation tools that reduces the severity of sentences for the inevitably high volume of cannabis offences is progressive from the standard perspective of proportional sentencing. However, it is now argued that the contemporary recreational drug landscape goes *beyond* the normalisation of cannabis use and supply (Coomber et al., 2015), and data here suggests that social supply extends to small scale social distribution of other recreational substances such as ecstasy, cocaine, methamphetamine, and ketamine (for example). With the East, South East Asia and Oceania containing the largest amount of ATS users worldwide (UNODC, 2015), bolstered by continuing increases in recorded use of stimulants in Europe and beyond (EMCDDA, 2017a), it is all the more pertinent that the development of the social supply concept is not limited to its traditional association with cannabis subculture and is instead understood as embedded in *wider* recreational drug using practices (Coomber et al., 2015; Moyle et al., 2013).

The extent to which social supply is accommodated within sentencing guidelines is tied up with the wider drug supply sentencing apparatus and how far that recognises difference or operationalises proportionality. Proportionate sentencing frameworks for drug offences are characterised by distinguishing between the type of drugs and the scale of the illicit activity, as well as the role and motivation of the offender (Lai, 2012). Though support has been growing for a new approach to decriminalisation which demonstrates some of this ‘nuance’ when it comes to punishing those involved in supplying drugs (Global Commission on Drug Policy, 2016: 24), data here shows a disparate picture in terms of how courts deal with supply offences at an international level. In the UK, New Zealand and Hong Kong, social supply is an established discursive concept, recognised at policy level. While the concept itself is not yet explicitly embedded in sentencing frameworks or established as a separate offence, the narrative is nonetheless developed enough that it is visible in public consultation documents (UK, New Zealand), court cases (UK/Australia/Canada) (see Moyle et al., 2013), and supported at a wider level by NGO’s and charities (e.g. Global Policy Commission on Drug Policy; Release, 2009; New Zealand Drug Foundation, 2017). In the UK, sentencing guidelines clearly distinguish between different gravities of supply offences and well-known social supply characteristics are embedded in the ‘lesser role’ category, and in Hong Kong and Canada, the courts now recognise ‘social trafficking’ as a potentially mitigating offence. There are issues with these approaches, not least in regard to the use of threshold quantities to establish ‘harm’ (Sentencing guidelines Council, 2012; Harris, 2011), but regardless, they remain comparatively forward-looking when set against the remainder of the country profiles.

In countries where social supply is less conceptually developed sentencers negotiate supply differentiation through a range of different strategies. In Finland, Belgium, Germany and the Czech Republic for example, aggravating circumstances are used to distinguish between more and less serious supply offences. Though this enables sentencers to impose longer sentences for more culpable or dangerous suppliers, it tends not to distinguish lower-level supply offences and in this respect, social supply offences are still punished through arbitrary prison sentencing bands, often without meaningful provision for sentence discounts. In these systems, *judicial discretion* becomes the mechanism in which individual sentences are selected, reduced harm and culpability are noted, and some gradation can occur. Moving to Australia and the Netherlands, data suggests that there are cases where the Judiciary recognise the characteristics of social supply or minimally commercial supply (Coomber & Moyle, 2014) and punishment is reduced accordingly. Though some offenders may benefit from a magistrate or judge’s recognition of such supply attributes or ‘guideline cases’, there are however obvious challenges with discretionary systems relating to inconsistency in sentencing. While in cases where there is an absence of differentiated sentencing apparatus discretion can facilitate mitigation for mandatory sentences, *dependence* on arbitrary judicial discretion to uphold proportionate sentences culminates in variation across geographical space (Sigler, 2009), and many individuals may have to wait to appeal their sentence before the mitigating factors relating to their case are sufficiently recognised. Significantly, given the deeply embedded societal stereotypes of drug dealers (Coomber, 2006; Taylor, 2008), it is not enough to depend solely on mitigation and the discretion of sentencers, many of whom are likely affected by these tropes. Instead, the implementation of diversion, the creation of separate offences (see Police Foundation, 2000; New Zealand Law Commission, 2011) with distinct sentencing tariffs, or at least differentiated, proportionate frameworks can help to protect against these biases. Grigg et al. (2015) suggest that there may be some merit in expanding current Australian prohibition with cautioning and drug diversion options beyond simple possession offences to include low-level supply of cannabis and perhaps other drugs. Alternatively, the majority of social suppliers could effectively be moved out of the ambit of trafficking offences through adapting sentencing thresholds so that limits for supply are reflective of commercial quantities. Mirroring the approach taken in Spain, this would mean low-level embedded supply offences are instead charged as ‘possession-related offences’ rather than trafficking offences (EMCDDA 2017g: 4).

**Conclusion**

Research on social supply has tended to focus on distinct milieus and communities, and there has to date been little consideration of social supply as an internationally relevant concept. Although this research can only provide a snapshot of the global picture, it offers some important contributions in regard to its applicability, acceptance and operationalisation in international criminal justice contexts. Data suggests that while researchers identified the presence of social drug supply in each setting as an observable and distinct supply behaviour, that when it came to policy and legal discourse, there existed a variegated discursive acceptance of the social supply concept across the different research settings, ranging from those that actively engaged with the term (UK; Hong Kong; New Zealand), to contexts in which ‘supply is supply’ and the social supply term did not exist (e.g. Finland, US). The implementation of different penal approaches has profound consequences for those social suppliers who are prosecuted for trafficking sentences, and this is even more salient for those who take recreational drugs other than cannabis. A range of penal approaches were analysed across the research settings and the most progressive were all located in countries with broadly differentiated sentencing frameworks and an established discursive framework for social supply. Countries less sympathetic to low-level dealing behaviours like social supply tended to apply aggravating factors to more serious forms of supply rather than offering structured sentencing frameworks that incorporated the characteristics of less serious cases, and relied on judicial discretion in attempt to acknowledge difference and implement proportionate sentences for non-commercial suppliers. Proportionate penal approaches toward social supply would ideally feature separate offences for social supply and ‘minimally commercial’ (Coomber & Moyle, 2014) supply offences (see Police Foundation, 2000; Moyle et al., 2013; New Zealand Law Commission, 2011), thereby limiting the severity of punishment and offering opportunities for diversion (Grigg et al., 2015). At the very least, it is important that the identification of social supply is not left entirely to the discretion of sentencers. Instead, social supply characteristics should feature within sentencing structures and guidelines as a less serious form of supply subject to sentencing discounts. In seeking to move towards more proportionate outcomes for social suppliers, further research is crucial in bolstering the conceptual presence of social supply in policy and practice and – reflective of the relative normalisation of recreational drugs- as a behaviour that is relevant to users of *all* drugs.

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