The Deterrent Effect of Penalties on Drink/Drivers

An Outline of Work in Progress

Ross Homel\textsuperscript{a,b}

INTRODUCTION

This study is based primarily on a sample of 1021 drivers convicted of a 'breathalyser offence' in New South Wales during 1972. The sample was selected from the statistical records compiled by the N.S.W. Bureau of Crime Statistics and Research for drink/drivers appearing at Magistrates' Courts throughout New South Wales. Late in 1974 compilation of information on the subsequent drink/drive, traffic and criminal records of this sample of drivers was begun. All data were derived from official records.

This present paper has three main aims. The first aim is to put the study in the context of deterrence research and to summarise something of what is known about the Australian drink/driver. The second aim is to reconsider the question of how the severity of a penalty should be measured, and to suggest an approach which appears to get closer to measuring severity as perceived by the offender. The third aim is to present some findings from the first analysis of data.

DETERRENCE AND THE DRINK/DRIVER

Gibbs\textsuperscript{8} notes that there has been a recent renewal of interest in deterrence, especially among sociologists. There seems also to have been a renewal of interest in the motoring offender among criminologists, with the books by Hood\textsuperscript{10}, Willett\textsuperscript{20} and Macmillan\textsuperscript{11} forming a small part of the recently published studies. Part of the reason for the interest in motoring offenders, especially those who commit serious offences such as dangerous driving or drink/driving, undoubtedly lies in the socially damaging effects which these offences can have. At the same time, it is part of the popular stereotype of the motoring offender\textsuperscript{11} that he is not essentially different from the average, responsible driver, and that he can therefore be expected (unlike the 'hardened' criminal) to be responsive to the threat or actual imposition of penalties for illegal behaviour.

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\textsuperscript{b} The research reported here was partially funded by the Commonwealth Department of Transport, and was begun in 1973 when the author was employed by the New South Wales Bureau of Crime Statistics and Research. The opinions expressed here are those of the author, and in no way represent those of the Department of Transport or the Bureau of Crime Statistics.
Broadly speaking, 'deterrence' can be thought of as the omission of an act as a response to the perceived risk and fear of punishment for contrary behaviour.8 Traditionally, deterrence has been conceived as either general or specific. Specific deterrence has to do with the impact of legal punishment on those who have suffered it, while general deterrence pertains to the impact or threat of punishment on the public at large.

Gibbs8 criticises Andenaes' formulation of this distinction as 'vague and seemingly far too inclusive', and substitutes a detailed typology of his own consisting of 16 combinations of conditions. These distinctions are very useful for research purposes, but in this paper the basic distinction between specific and general deterrence will suffice.

The focus of this paper is on the convicted drink/driver, so it is worth reviewing what is known about this class of offender before considering the results of some studies relevant to the question of deterrence.14,15 In New South Wales, invariably 98 per cent of offenders are men, but they tend to be younger than other drivers. Men up to 24 years of age hold about 24 per cent of Class 1 licences, but represent over 30 per cent of convictions. However, the young men are only half as likely to record blood alcohol concentrations in excess of 0.16 as those over 40 (31.5 per cent compared with 60.5 per cent). It appears that this difference extends even to those who have been involved in accidents,1 so clearly the mechanism by which young men come to the attention of the police warrants further attention.

Drivers who report an unskilled or semi-skilled occupation are also overrepresented in the statistics. About 50 per cent of offenders are coded 'D' status or unskilled (Congalton4 scale), compared with an estimated 20 per cent of the general population. There are probably several reasons for this imbalance. Some drivers may deliberately downgrade their occupations to avoid the social consequences of detection, although the number who do this is likely to be small.6 There is evidence7 that at the lower socioeconomic levels, a man is far more likely to be a heavy drinker than a moderate-frequent drinker. Moreover, because of their place of drinking, lower occupational groups may combine drinking and driving more often than others or alternatively they may, like the young, attract more attention from the police.

The view that young, lower status drivers receive a disproportionate share of police attention is supported by a very recent study of reasons for apprehension of drink/drivers in some police districts in Newcastle, New South Wales.19 Reasons for coming to the attention of the police may be divided into two broad categories: 'mechanical' and 'non-mechanical'. 'Mechanical' reasons include the occurrence of an accident to which police are called, or apprehension for speeding using radar equipment. 'Non-mechanical' reasons include speeding detected without radar, manner of driving or vehicle modifications. The essence of this distinction is that in non-mechanical cases, a greater element of police discretion is involved in the decision to investigate a driver.

When the mechanical and non-mechanical groups were compared with respect to the percentage of unskilled workers, a significant difference emerged. Of 98 drivers apprehended by mechanical means, 49.0 per cent were D status, compared with 63.4 per cent of the 93 drivers apprehended for non-mechanical reasons (P <.05). These figures compare with 26.5 per cent of the workforce of the region who are unskilled workers. As expected, the non-mechanical group was also significantly younger.6

Whether or not these differences between the two groups remain when factors such as the 'visibility' of the vehicle (age, degree of modification, whether or not a motor bike) are taken into account, the data do support the view that the young, lower class male is more

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6 Studies of prison populations, where there is less scope for concealing one's occupation, reveal a pattern essentially the same as that reported in the court statistics.

7 Further details of the analysis of these data are available from the author.
likely to be chosen by the police for investigation. This is consistent with studies of self-reported crime, which generally indicate that the official gap between the crime rates of working class and middle class youth is a considerable overstatement of the 'true' difference. Although it cannot be pursued further here, this finding, and others like it, have a number of implications for social policy. In particular, as Macmillan has noted, for some motoring offenders:

'... it seems to have been the way in which they have been treated by authority, rather than the problem itself, which had created their social difficulties and led to anti-social attitudes and behaviour, and so affected the way in which they saw and performed their role as drivers.'

Whatever the total explanation for their appearance in the statistics, the preponderance of young, lower class men among convicted drink/drivers narrows any alleged gap between them and other classes of criminal offenders. 35 per cent of convicted drink/drivers in New South Wales also have a criminal record (either indictable, summary or children's court). Raymond also found a figure of 35 per cent, while Willett found 37 per cent. These figures can be compared with a proportion of between 10 and 15 per cent of a control group of drivers.

Finally, not only do drink/drivers have criminal records more often than the general population, multiple drink/drive offenders are more than twice as likely as first offenders to have such a record (57.3 per cent compared with 27.4 per cent).

One implication of all these findings, as other commentators have noted (see, for example, Meddendorf), is that the process of deterring or rehabilitating the drinking driver may not be a problem as separate from the problem of deterring other types of criminals as is sometimes supposed. In fact, the general finding of studies in a variety of countries which have investigated the specific deterrent effect of penalties on drink/drivers is that there is little, if any, such effect.

One of the most thorough British studies of the impact of the legal system on motoring offenders was undertaken by Willett. He followed up and interviewed 181 people convicted of relatively serious motoring offences (including driving under the influence). Nearly three-quarters (71 per cent) of the sample felt their sentences were unjust, especially the drunken drivers. More than one in three (36 per cent) of those disqualified from driving admitted to having disobeyed the disqualification order, and most of those were never caught. After a four-year period, 39 per cent had been reconvicted for some offence, 27 per cent for a motoring offence.

Willett found that overall about two-thirds of the offenders were relatively untouched by their sentences. There was a great distaste for disqualification, but its power rested mainly on bluff; as soon as it was realised that the disqualification order is not energetically enforced, it was reduced to the status of irritant. Moreover, sentences appeared to be most effective in the case of law-abiding drivers, rather than the group of experienced law-breakers who tended to ignore disqualification and fines.

A recent American study by Blumenthal and Ross attempted to overcome some of the methodological problems in deterrence research by assigning drink/drive offenders at random to three types of penalties (a fine or two types of probation). The difficulties in applying randomisation in social research are well illustrated by the results of this study. The lawyers got wind of the experiment and either introduced delaying tactics so that their clients did not appear until the 'fine month', or argued persuasively for a penalty other than probation. Thus the advantages of a randomised experiment were lost, and statistical controls had to be introduced.

As far as the researchers were able to determine, the type of penalty imposed on the 500 first offenders who were sampled had no effect on subsequent drink/drive behaviour or traffic safety. Those sentenced to jail rather than to one of the three prescribed treatments were also found not to differ from the balance of the group in subsequent records. Overall about 5 per cent of the sample were reconvicted for a DUI offence within one year.
Middendorff provides a comprehensive summary of many studies undertaken in Europe and the United States up till about 1968. One West German study to which he refers compared the effect of a suspended gaol sentence versus an actual period of imprisonment on a sample of drinking drivers. The reconviction rates between the years 1959 and 1962 averaged 8 per cent for both groups; there was no significant difference. However, these figures are open to the criticism that they were not adequately controlled for differences in regions or for variations among the drivers who received the two types of penalties.

Finally, a study by Shoham18 of traffic offenders in Israel found a positive correlation between severity of penalty for first offence and the number of subsequent offences. Thus, for example, of those drivers who were warned on their first offence, 52.7 per cent remained free of further convictions compared with 38.7 per cent of those who were fined.

It seems that the overwhelming weight of evidence collected in studies undertaken to date is not consistent with the doctrine of specific deterrence. The evidence, if anything is that penalties encourage rather than discourage further offences. Gibbs'8 statement applies to motoring offences as much as to other offences:

'Briefly, few findings support the contention that individuals who have been punished for a crime are deterred from subsequent offences, or for that matter that specific deterrence is a function of the severity of punishment.'

MEASURING THE EFFECT OF PENALTIES

The present study attempts to measure the specific deterrent effect of judicial penalties on breathalyser offenders in New South Wales. A reconviction for same offence within a two year period from the date of conviction or date of release from prison has been selected as the fundamental tool for developing such a measure. The null hypothesis is that the experiences of being breathalysed, arrested and convicted for a drink/driving offence, and the judicial penalties imposed, have no effect whatsoever on an offender's subsequent behaviour.

Given the methodology of the study, only some aspects of this null hypothesis can be tested. There is no information about offenders after a two-year (or three-year) period, but more importantly the impact of being caught, in itself, cannot be assessed. To use Gibbs' terminology, only the 'marginal', not the 'absolute' efficacy of being apprehended and punished can be measured. Another important consideration is that in a non-randomised study a simple correlation between penalties and reconviction rates does not constitute sufficient evidence to reject the null hypothesis.

There is an even more fundamental problem to be faced. This relates to how judicial penalties should be expressed when undertaking deterrence research. It is easy to list the actual penalties which are imposed on drink/drivers in New South Wales. However, it would be superficial to regard the penalty imposed by the court as some sort of 'absolute', independent of the characteristics of the offender and his offence. A penalty is never imposed in a vacuum; it is imposed on a human being from a certain social background at a certain stage in his life cycle with a certain conviction record and probably a general (if unexpressed)

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6 The final sample will extend to a three-year follow-up.
7 On average, 84 per cent receive a combination of a fine (up to $400) and a period of licence disqualification (median period three months); 10 per cent receive a dismissal or recognisance under s. 556A of the Crimes Act, 2 per cent go to prison; and the remainder receive a combination of recognisance, fine, probation and licence disqualification. The most favourable outcome for which a convicted offender can hope is a s. 556A dismissal or recognisance, for which there is no fine or licence disqualification.
feeling as to what he 'deserves' in the way of punishment. As we have already noted, deterrence is concerned with the perceived fear of punishment; thus the doctrine of deterrence really rests on a psychological foundation.

That there really is something to measure which is more than the magistrate’s actual sentence is apparent if we consider the following situations. Compare the man who has been driving for 30 years and has an unblemished record in every sense, and receives a sentence of six months imprisonment, with the man who receives the same sentence, yet has dozens of previous convictions for motoring and non-motoring offences and knows that he can expect to receive the maximum penalty when he offends again. In a sense, of course, the penalties the two men receive are identical. However, the important factor in the study of deterrence is the response to punishment, and for that reason the two penalties cannot be equated — in terms of deserving, one is extremely heavy, the other is only average or even light.

The concept of 'deserving' is closely related to one conception of the sentencing process. Hood notes that the public view of justice demands a retributive or tariff approach based on the gravity of the offence committed, whereas a preventive or deterrent system would entail an individualised approach which would attempt to distinguish likely recidivists from those who could be given a nominal penalty. He found in his investigations that a tariff approach partly undergirded the sentencing practices of British magistrates, especially for the less serious offences. He noted that variations in penalties were largest for the more grave offences, and that within each kind of offence, cases with special circumstances (such as previous convictions) led to more disagreement.

Given the general lack of information about the impact of penalties on future conduct, and the pressure on magistrates to impose 'fair' penalties, especially in motoring cases, it seems reasonable to assume that a tariff approach generally underlies a magistrate's sentencing of motoring offenders, including drink/drivers.

The variable 'perceived severity of penalty' has been constructed in this study by the application of canonical correlation analysis to a tariff model of sentencing. The assumption has been made that on the basis of the average behaviour of all magistrates, certain weights can be assigned to the various characteristics of offenders and their offences, and also to the elements which comprise the penalty in a drink/drive matter. In any given case, the sum of the offender/offence weights gives a measure of the 'seriousness' of the case, while the sum of the penalty weights represents a measure of the 'severity of penalty'. The weights are derived mathematically on the basis that the correlation between seriousness and severity scores should be a maximum.

It follows that an offender with a severity score markedly in excess of that predicted by his combination of personal attributes and offence characteristics would have received a high relative severity penalty; conversely, a smaller than predicted score would correspond to a penalty of light relative severity. It cannot be said that the offender has received a heavier or lighter penalty than he expected, but it can be said that he has received a heavier or lighter penalty than 'average' for his age, previous conviction record and so on. The assumption is made that the relative severity variable constructed in this way will be a satisfactory surrogate measure of the severity of the penalty as perceived by the offender.

Details of the canonical correlation analysis are presented elsewhere. Briefly the analysis of 15 054 drivers convicted in 1972 yielded a correlation of 0.70 between the first two canonical variables. Such a substantial correlation tends to confirm the validity of the underlying assumption of a tariff model. Of greater importance, however, is the question of whether the statistical constructs really perform the function of measuring the perceived severity of penalty.

There are a number of ways of approaching this question (see Homel). For example, one way of verifying that the statistical constructs correspond to the concepts of seriousness of offence and severity of penalty is to examine Hood's assertion that more serious offences result in greater disagreement among magistrates as to penalties which should be imposed.
Variations in penalties are conveniently measured by the variance of the severity variable. The variance of this variable over the total population of offenders is 1.00. If Hood's observation is true for N.S.W. drink/drivers, the variance of the severity variable among those cases representing less serious offences should be generally less than the variance among more serious cases. Figure 1 indicates that this is in fact the case.

The figure shows the variance in the severity variable for each decile of the seriousness, or 'offender/offence', construct. The results are entirely consistent with Hood's observation, and encourage us to view the statistical constructs as indices which do correspond to real aspects of the sentencing process.

Perhaps the most satisfactory way of verifying that the relative severity of penalty construct reflects perceived severity would be to correlate it with the judgements of the offenders themselves, as reported in an interview. In the absence of that kind of data in this study, the most persuasive evidence that relative severity reflects perceived severity would be a correlation with incidence of appeals against the sentence. Table I shows the percentages who appealed in each of nine relative severity categories.

**TABLE I** Percentage of Appeals in Different Relative Severity Categories* (n = 15054, 1972 Breathalyser Statistics)

<table>
<thead>
<tr>
<th>Severity variable</th>
<th>Offender/Offence Variable</th>
<th>Most serious</th>
<th>Average seriousness</th>
<th>Low seriousness</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td></td>
<td>6.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>7.9</td>
<td>7.9</td>
<td>15.4</td>
</tr>
<tr>
<td>Low</td>
<td></td>
<td>2.7</td>
<td>3.4</td>
<td>4.4</td>
</tr>
</tbody>
</table>

*The categories for the severity and offender/offence variables are based on an equal division of the ranges. They are not equal frequency categories.
It is clear that the variation in appeals in Table I is exactly what would be predicted if relative severity reflected perceived severity. Of those who received a penalty in the high severity category but who had an average or low ‘entitlement’, 15.4 per cent appealed. This is three times the overall average of 5.1 per cent. Similarly, of those who had a ‘high entitlement’ for punishment but who received a low severity penalty only 2.7 per cent, a figure half the average, appealed against the sentence.

The evidence in Table I, together with the data presented previously, allows us to conclude that canonical correlation analysis is an effective tool in analysing sentencing patterns. Moreover, we can analyse the data on reconvictions with a degree of confidence that we have been able to measure, indirectly, the perceived severity of the penalties imposed.

SOME PRELIMINARY FINDINGS

The sample of 1021 drink/drivers from the 15 054 convicted in N.S.W. during 1972 was structured to take account of the fact that most offenders received a less severe penalty. The entire 193 drivers who were imprisoned were sampled, and the remainder of the sample was drawn in approximately equal numbers from each of the nine relative severity categories set out in Table I. To avoid confusion in interpreting the effect of penalties, all appeal cases were excluded. The numbers reconvicted within a two year follow-up period are recorded in Table II.

<table>
<thead>
<tr>
<th>TABLE II</th>
<th>Numbers Reconvicted within Two Years from the Date of Conviction or Date of Release from Prison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drink/drive offences</td>
<td>Number</td>
</tr>
<tr>
<td>106</td>
<td>9.7</td>
</tr>
<tr>
<td>Any motoring offences</td>
<td>211</td>
</tr>
<tr>
<td>Criminal offences</td>
<td>165</td>
</tr>
</tbody>
</table>

The reconviction rate of 9.7 per cent for drink/drive offences compares with the figure of 5 per cent over one year found by Blumenthal and Ross. It is also similar to that already quoted from Middendorff’s book for West Germany. More than one driver in five (22.8 per cent) was estimated to have been reconvicted for some motoring offence during the two years. This rate of reconvictions is high compared with the figure of 26.5 per cent found by Willett over a four-year period. Apart from drink/driving the most common motoring offences were speeding (5.3 per cent), negligent driving (3.5 per cent) and not giving way to vehicles on the right (1.1 per cent).

For the purpose of studying the relationship between penalties and reconviction rates, it is convenient to focus on the rate of reconvictions for all motoring offences. It can be argued that if penalties are a deterrent, then they should deter drivers from all offences, not only from the one for which they have been convicted. Taking reconvictions for all motoring offences also has the statistical advantage that larger numbers are involved. The figures for the nine relative severity categories are presented in Table III. Prison cases, which are excluded from this table, are discussed separately below.

8 The high severity, low seriousness category was the only category which had a very small number of offenders. A sample of only six drivers was obtained for this condition.
### TABLE III  Relative Severity of Penalty and Reconviction Rates for Motoring Offenses*

<table>
<thead>
<tr>
<th>Severity variable</th>
<th>Offender/Offenses Variable</th>
<th>Least serious</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Most serious</td>
<td>Average seriousness</td>
</tr>
<tr>
<td>High</td>
<td>19.3 (57)</td>
<td>4.3 (69)</td>
</tr>
<tr>
<td>Average</td>
<td>12.5 (88)</td>
<td>16.7 (96)</td>
</tr>
<tr>
<td>Low</td>
<td>22.1 (95)</td>
<td>33.0 (97)</td>
</tr>
</tbody>
</table>

* Total number of cases in each cell shown in brackets. Prison cases excluded.

Only among cases which are of average seriousness is there a clear, unambiguous trend in the percentages. However, among this group the differences are extremely marked: nearly eight times as many people who received a low severity penalty were reconvicted as those who received a heavy penalty. The average seriousness group tended to be spread evenly over all age categories, and were as likely as not to have previous drink/drive and criminal convictions.

The percentages in the other two columns reveal, at best, an equivocal situation. The small number of cases in the least serious, most severe category, together with the two similar percentages in this column, make it very difficult to conclude that penalties have any effect on the group who commit the least serious offences. Similarly, the reversal in trend in the first column, due to the high reconviction rate in the most serious, high severity category, indicates an ambiguous impact of penalties on offenders who commit the most serious offences.

An analysis of variance of this table using the empirical logistic transformation (Cox5) indicates that this pattern is statistically significant. There is a significant interaction (p<.025) between the linear effect of severity and the quadratic effect of the offender/offence variable. This just means that the linear effect of severity among the average seriousness group is significantly different from the mean linear effect of severity in the other two groups.

It is worth noting that criminal reconvictions were generally positively correlated with the penalty; the heavier the penalty the higher the percentage of reconvictions.

Analysing reconviction rates in terms of the relative severity of penalties has the advantage that variability between offenders is taken into account when interpreting the effect of penalties. However, a further check on the effect of variability between offenders will be carried out in the final analysis, to guard against the possibility that all reconviction rates could be predicted from the known characteristics of offenders, without reference to penalties. Certainly there is no evidence that any simple combination of variables, such as previous convictions and blood alcohol level, is sufficient to explain the observed pattern of reconvictions.

Determining which particular component of the penalty contributed most strongly to the observed correlation is also not easy to determine. Present evidence indicates that period of licence disqualification was the most important factor, although its effect cannot be seen entirely in isolation from the effect of fines and bonds.

### The Effect of Imprisonment

Offenders sentenced to a period of imprisonment were sampled separately to ensure an adequate number in the sample and to allow a more detailed examination of the effect of imprisonment. The results of a preliminary analysis are set out in Table IV.

The mean reconviction rate for motoring offences for all those sent to prison was 30.6 per cent. This is higher than all but one of the figures in Table III. The correlation with period of imprisonment indicates a curvilinear relationship.

As would be expected, only nine offenders sentenced to a period of imprisonment had no previous convictions for a drink/drive offence. However, of those nine people, six were
reconvicted (for a motoring offence). Drivers with a previous criminal record were slightly more likely than those without such a record to be reconvicted after being released (32.4 per cent to 25.5 per cent).

Although further analysis is required, it is difficult to see how imprisonment could be regarded as a deterrent to future motoring offences. In this respect the findings of the present study confirm the results of previous research.

**TABLE IV**

<table>
<thead>
<tr>
<th>Period of Imprisonment and Reconvictions for Motoring Offences within Two Years of Date of Release*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of motoring reconvictions</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>36.0</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

*This period of imprisonment is the total imposed for all offences dealt with when convicted for drink/drive offences.

The Period of Licence Disqualification

Elliott and Street⁶ state that it is possible:

'...that there is an optimum period of disqualification, probably between six and twelve months'.

A simple correlation between period of licence disqualification and probability of reconviction would suggest a period of not less than twelve months. This view would be supported by the figures in Table III, since among the offences of average seriousness (middle column), the high, average and low severity penalties corresponded to mean periods of licence disqualification of three years, two years and ten months respectively.

While it is probable that this conclusion will be modified by more detailed analysis, there is another strand of evidence which indicates that periods of disqualification over one year may not be desirable in many cases. It should be remembered that there is no systematic enforcement of the disqualification order, and that (as Willett observed) its effect often rests on 'bluff'. Although the majority of drivers may be willing to abide by the order for a certain period, it seems reasonable to assume that as time goes by, the temptations to drive will become stronger and more frequent. In fact Willett²⁰ found that 80 per cent of the thirty-nine drivers in his sample who drove while disqualified and who could say when they first drove, drove by the time three months had elapsed.

On the assumption that it is undesirable to impose a period of disqualification which will be disobeyed by nearly everyone (since this brings the law into disrepute), is it possible from the present data to arrive at an estimate of a period of licence disqualification which has a 'deterrent effect' but which does not itself encourage law-breaking? Clearly everyone in the sample who was disqualified for at least two years and who was reconvicted, drove during the disqualification period. But what of the shorter periods?

Briefly, the statistical data supports the commonsense view that more of the drivers disqualified for one year (but less than two years) are reconvicted during their period of disqualification than drivers receiving a shorter period of suspension. Of those drivers who were reconvicted, the estimated percentages for disqualification periods of up to three months, 3 months up to twelve months, and twelve months up to two years, were 7.8 per cent, 4.7 per cent and 26.0 per cent respectively. These figures point to a period of between three and twelve months as 'optimum'. Unfortunately, the previous analysis has not established that this period would have the desired overall deterrent effect.

There is one further important piece of evidence concerning disqualification. Restricting comparisons to those who were reconvicted, there was a strong tendency for those drivers
who were simultaneously convicted of driving while disqualified and drink/driving to be reconvicted during their disqualification periods. The estimated proportion of such drivers was 92.8 per cent, compared with an estimated 16.2 per cent of drivers who were not initially convicted of driving while disqualified. This is a marked difference, even allowing for the fact that the former group of drivers generally received longer periods of suspension. In other words, there is a group of drivers who have already been convicted at least once for driving while disqualified who take no notice of a disqualification order.

CONCLUSION

The question of deterrence is closely related to the nature of the drinking driver. To the extent that drink/drivers are similar to other classes of criminal offenders, previous research would indicate that there are few grounds for optimism with respect to the effect of penalties. That the convicted drink/driver in New South Wales has much in common with the typical criminal offender cannot be doubted. There is some evidence, however, that older, higher status drink/drivers may be more likely to be overlooked in police surveillance of the offence.

Contrary to the findings of the majority of studies, for some drink/drive offenders a relatively heavy penalty in the form of a fine and a period of licence disqualification was found to be associated with lower reconviction rates for motoring offences over a two year period. There appear to be most grounds for optimism with drivers who commit offences of 'average' seriousness. These tended to be people from all age categories, with fifty percent of the group having previous drink/drive or criminal convictions.

Further analysis is required to separate the effect of offender characteristics from the effect of penalties. However, the analysis presented in this paper has in one sense incorporated offender and offence characteristics when determining the severity of penalties imposed. The assumption of a tariff model underlying the approach to the sentencing of drink/drivers appears justified from the results of a canonical correlation analysis, and the statistical construct, 'relative severity of penalty', appears to correspond to severity as perceived by offenders.

There is no evidence that imprisonment helps to reduce the rate of recidivism; the evidence if anything is to the contrary. With respect to the optimum period of licence disqualification, the data are equivocal. Lower reconviction rates for the average seriousness group were associated with periods of disqualification of two or three years, but in terms of the percentage of people convicted during their disqualification periods, a period of between three months and twelve months appeared most effective. In any case, there is clear evidence that some drivers (those previously convicted of driving while disqualified) simply ignore disqualification.

Finally, it should be remembered that finding a statistical association is one thing; imputing a deterrent effect is another. Even if a firm link between reconviction rates and penalties could be established, there may be a number of explanations for the relationship. To consider just one possibility, 'partial incapacitation' may be part of the explanation. A young man may not in any way be deterred by a penalty, but his vehicle may be confiscated by his family for the duration of his disqualification period, thus reducing his opportunities to commit the offence of drinking and driving.

These kinds of distinctions have been blurred in this paper, partly because from a policy point of view it is of first importance to establish a link between penalties and reconviction rates, and only of secondary importance to know how this link works. The term 'deterrence' in this paper has really been used to include all the possible preventive effects of punishment, although imprisonment has been assumed to have a totally incapacitating effect with respect to the offence of drinking and driving while the offender is in prison. However, a complete
interpretation of the data must recognise that the term ‘deterrence’ denotes an inherently unobservable phenomenon, and that therefore the finding of a deterrent effect can only ever remain a reasonable inference, other possible causes having been considered and excluded as unlikely or of negligible importance.

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