LIMITATIONS ON DETERRING THE DRINKING DRIVER

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SYNOPSIS

In the current political climate, influenced especially in North America by an anti-drunk-driving social movement, deterrence-oriented countermeasures form the principal, often unique, response to the problem of reducing crash-related injuries and fatalities. Numerous jurisdictions are attempting to increase the perceived certainty and severity of punishment for drunk-driving. However, as the results are evaluated, considerable disappointment is being experienced, especially among the more methodologically sophisticated observers. I wish here to discuss the reasons for the very limited success of deterrence-oriented countermeasures and to draw conclusions with implications for policy.

The theoretical deterrence proposition suggests that proscribed behavior will be reduced to the extent that swift, severe, and certain punishment is threatened for violations. Where countermeasures based on this proposition result in modest, temporary, or even negative results, we are led to question the validity of the theory. I wish to add the suggestion that we may also question the extent to which actual countermeasures succeed in applying the theory; that is, perhaps the problem lies not so much in an invalid theory as in invalid applications of theoretical strictures. These alternative interpretations of experience to date have different implications for future policy. I will offer my own conclusions following a brief review of the evidence.

SIMPLE DETERRENCE AT THE MARGIN

Although the relationship between law and behavior is acknowledged to be complex, as shown in the notion of general prevention, current policy is based largely on expectations of simple deterrence. By this we mean that the behavioral change predicted is due to avoidance of a present threat, rather than to lessons learned over time from the experience of punishment. Current policy must also be understood as anticipating marginal increments of deterrence in a situation where some level of threat and, presumably, some deterrent consequences may exist prior to new policy initiatives.

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The results of implementing changes are due not to the presence or absence of threat but to increments in the level of threat. To repeat, present countermeasures regarding drunk driving are largely based on expectations of short-run prevention due to marginal increments in the celerity, certainty, or severity of punishment threatened for the violation. I make this point because many of the more intelligent defenses of the deterrent approach claim results on other bases, for example, the development of moral attitudes over time. Such claims are difficult to support and difficult to disconfirm by scientifically acceptable methods because the time lapse presents large numbers of plausible rival interpretations for any behavioral changes that might be observed. However, contemporary political dialogue indicates that shorter-range, more testable, expectations are the principal rationale for inflicting punishment on violators of drunk-driving laws.

A survey of world experience to date finds only limited confirmation of these expectations. The most favorable results relate to efforts to increase the perceived certainty of punishment by such measures as well-publicized adoptions of Scandinavian-type laws (e.g., the British Road Safety Act of 1967) and police enforcement campaigns (e.g., the Cheshire "blitz"). However, favorable results in terms of reduced alcohol-related crash fatalities have been demonstrated only in the short run, generally for less than a year, after which the indexes tend to resume their prior trends. No success in reducing casualties has been reported for countermeasures restricted to increasing the severity of penalties, whether by legislative or judicial means. The world literature lacks instances in which countermeasures have been restricted to increasing only the swiftness of penalties, but in light of the relationship between swift and certain penalties one may speculate that the consequences would likely be similar to those reported for certainty.

These findings have been received with some skepticism, perhaps because they are counterintuitive—we all know that we try to avoid punishment—and also because they are unwelcome. However, my mission as a social scientist is described by Henry Morgenthau: "The genuine intellectual must be the "enemy of the people" who tells the world things it either does not want to hear or cannot understand." The experience to date with attempts to deter drunk driving, in many widely diverse jurisdictions and reported with the use of widely different evaluation techniques, cannot be ignored. It leads to the conclusion that either the deterrence proposition, simply stated, is in error or else
that the measures taken in its name have failed to apply its principles in the empirical world. I suggest that both explanations may be involved.

INADEQUACY OF THE DETERRENCE OF PROPOSITION

Although ideas related to deterrence have been validated in many studies of market-based behavior, studies of deterrence of traditional criminality have often found disconfirmation, for instance in relating arrests and imprisonment to various crime rates. Critics attempting to understand these results have suggested that the proposition as stated is too simple to fit empirical reality. For instance, individuals more oriented to present than to future gratification may prove resistant to attempts to affect their present behavior through threats of future punishment. Moreover, expressive or non-rational behavior may be resistant to sanctions that would affect more rational or instrumental behavior. The literature also contains the suggestion that if the swiftness, certainty, and severity of threatened punishment do not exceed hypothesized thresholds, the threat may be disregarded by the population addressed. Furthermore, the variables may interact: if the likelihood of any punishment is negligible, then the severity of the threatened sanction may have no effect.

Much of what is known concerning drunk driving and drunk drivers indicates that the problem we are trying to control may lie within these exceptional parameters. Large proportions of known drunk drivers are believed to be problem drinkers and youths whose drinking and driving may be less amenable to threatened punishment than similar behavior on the part of other classes of the population. Moreover, the rarity of apprehension and conviction for drinking drivers is notorious, even though underestimated by the driving public. Actual chances of 1 arrest in a 1,000 impaired trips may well fall beneath the threshold of effectiveness and vitiate the potential deterrent effect of whatever severe penalties may be contemplated in legislation. I hold to my interpretation of the decay of deterrent accomplishments of many countermeasures: experience is a good teacher and its historical lesson has always been that violators of drunk-driving laws are very unlikely to be punished.
INADEQUATE APPLICATION OF THE DETERRENCE PROPOSITION

Deterrence is most accurately understood to be a psychological mechanism. What is expected to have effects is perceptions of risk and punishment, but these are not easily amenable to direct manipulation through law (except by official propaganda). Policymakers can try through legal means to alter the objective conditions of punishment in the hope that such alteration will be perceived by the relevant population and adopted into their behavioral calculus. From this viewpoint, the limited success of deterrence-based countermeasures may be ascribed to the failure of policymakers to change the actual conditions of swiftness, certainty, and severity of punishment to a notable credible extent.

In numerous jurisdictions, police, prosecutors, and judges have failed to play their parts in punishing drunk drivers. In normal circumstances police find drunk-driving patrol to be merely one time-consuming and relatively low-priority activity in the spectrum of crime-control and order-maintenance functions which administrators, legislators, and the public unconcernedly thrust on their limited personnel. The resources of prosecutors and courts are likewise limited, and were the police to funnel enormous numbers of additional drunk drivers into the courts (a relatively easy accomplishment with sufficient incentives) the latter would quickly be overwhelmed. Thus, the criminal justice system experiences a general inertia, a tendency to remain the same despite pressures for change from external sources. This inertia is reinforced by the feelings of criminal justice personnel, whose daily experience includes rapists and murderers, that drunk driving is a trivial offense and that the routine offender is in some meaningful sense unlucky: he has been selected on arbitrary grounds from a large population of similar offenders who go unsuspected and unpunished. This feeling is supported by facts, probably intuited rather than known. In the United States there are an estimated 5000 miles of alcohol-impaired driving for every offense charged, and such impaired driving results in fatal consequences only once in about 330,000 miles. Paradoxically, the attempt to mandate severe punishment for drunk drivers increases the pressure on criminal justice system personnel to refrain from charging, prosecuting, and convicting because there is no way to avoid a result these people consider unfair—unmerited and arbitrary—if the offender is convicted of drunk driving.
It is possible to increase the actual risk of punishment for drunk drivers. Provided that the processing of those charged can be streamlined, by necessity through the use of cheap and superficial dispositions such as the requirement to attend classes, increased police patrol alone can enormously raise the fraction of drunk drivers receiving sanctions. Of course, increased patrol is expensive, either in terms of additional personnel and equipment to be provided or in terms of diversion of these from other police tasks. Focusing patrol on places and times where drunk driving is especially likely, such as the vicinity of roadhouses on weekend nights, can increase its efficiency. However, both the increased costs and increased police intrusiveness associated with these activities are likely to be resisted in democratic societies if the population is not wholeheartedly preoccupied with the drunk-driving problem. Much current experience suggests that there are limits to public acceptance of the amount and kinds of patrol that might be needed to raise levels of apprehension for drunk drivers to the point where the risk would be considered other than negligible. Although this point is not known, it apparently exceeds what has been accomplished in the way of patrol anywhere in the world to date.

CONCLUSION

The limited success of deterrence-based countermeasures for drunk driving seems attributable both to oversimplified theory and inadequate application of theoretical prescriptions due to the inertia of the criminal justice system. Concerning the latter, I have noted that when the price of apprehension necessary to maintain simple deterrence is responsibly estimated that price seems to be too high. For example, even in Norway there was enormous, resistance to permitting police to demand breath tests of drivers "at random," and now that the law has been changed to permit this the police are loath to use the permission. In the United States, it has been impossible to pass legislation permitting a breath test of a driver on the grounds of his involvement in an accident or traffic-law violation. Sophisticated and reliable breath-testing equipment has been treated in many courts as suspect, in the same category as the polygraph. Our experience is that, without considerable incentives to the contrary, the criminal justice system remains largely governed by inertia in the matter of numbers of drivers punished and the magnitude of their punishment. Neither the public nor the officials charged with the legal control of drunk driving in
the United States agree with Candy Lightner that "drunk driving is the worst crime in America." For all the sound and fury of recent years, not much has actually changed in the matter of the severity and certainty of punishment for drunk driving, in the United States and most other countries.

However, although the specifications of the deterrence model have in truth not been given a fair test, in my opinion the model has been demonstrated to be far too simple to serve as a guide for policy concerning drunk driving. Studies of law violations in general show that deterrence-based countermeasures seem effective only in special circumstances: where the behavior is easily observed publicly and punishment can be uniformly and equitably accorded to the violators. The classical example is parking violations. New York City has reduced its midtown traffic jams with severe and certain penalties for illegal parkers. Deterrence-based countermeasures are least effective where the behavior is not obvious and those who know of the violation are likely to be in collusion, as in the examples of adultery and illegal drug sales. Drunk driving seems more like the latter than the former violations. Moreover, a large proportion of violators of drunk-driving laws are believed to be young people and problem drinkers who are relatively resistant to deterrence, according to qualified versions of the proposition that have recently been offered.

If drunk driving is an area in which deterrence-based countermeasures seem comparatively inappropriate, why has the political response to the problem so often been one of punishment-centered crackdowns? I suggest that a major reason is that the anti-drunk-driving social movement is grounded in the grief of survivors, who find that punitive measures bring some solace in the form of retribution against those who are viewed as killers and maimers of loved ones. Retribution, although more respectable these days than in the recent past, is still a suspect motivation, whereas deterrence may not be so. The deterrence justification thus serves to disguise the retributive motive. Furthermore, deterrence-based countermeasures, presented as applicable to a small minority of irresponsible or criminal deviants, avoid direct attack on the economic interests vested in drinking and driving: the manufacturers and distributors of alcoholic beverages and automobiles. Finally, deterrence-based countermeasures appear to be costfree: a mere "stroke of the pen" increasing penalties is offered as a solution for the drunk-driving problem without the need for significant reallocations of resources.
To the extent that the anti-drunk-driving movement can face the resource issue and marshal significant increments of certain and severe punishments for drunk drivers we may come closer to learning the potential of deterrence for handling this problem. I am not sanguine about the results. It is likely, in my opinion, that successful countermeasures for drunk driving will have to go beyond deterrence and attack institutionalized patterns of alcohol consumption and automobile usage. Examples are efforts to raise the price and lower the availability of liquor, or to subsidize alternatives to the private automobile for getting to and from drinking occasions. Alternatively, it is possible to bypass the attempt to control driver behavior as the principal means of reducing crash-related deaths and injuries. Measures are available and utilized which reduce the conditional probability or severity of trauma experienced in crashes that inevitably accompany a high-speed transportation system, regardless of the extent of behavior controls. I refer here to technological modifications of vehicles and highways so that "crashes need not kill." Examples are seat belts, air bags, and protective barriers around fixed objects near the roadway.

In sum, I view drunk driving as a normal, expectable consequence of the routines of modern societies. Because of the nature of the behavior and its perpetrators, and because of the nature of criminal justice systems, drunk driving is not especially amenable to deterrence-based countermeasures. If it is to be controlled, more direct approaches are available, involving countermeasures addressed to the institutions that cause drunk driving: the production and distribution of alcohol, and the use of automobiles in connection with its consumption. However, a more feasible and cost-effective approach to reducing the casualties associated with drunk driving may be to concentrate on reducing the consequences of crashes rather than trying to control the behavior that precedes the crashes.

I am not here suggesting that we should give up on deterring the drinking driver, but rather that we recognize the limitations of deterrence-based countermeasures. Drunk driving is normal behavior in alcohol-using, automobile-dependent societies, supported by fundamental social institutions. Much of this behavior is shielded from deterrent threats because of peculiarities of some fraction of the violators. Moreover, the inertia of our criminal justice systems interferes with the ability to make good on deterrent threats, and this fact seems to be perceived over time by many potential violators. If, as seems co be the
case, short-run results can be expected from deterrence-based laws and campaigns, a case can be made for continuing and increasing these efforts. However, if significant and permanent reductions in deaths and injuries associated with drunk driving are to be achieved, other avenues must also be identified and followed. I have tried here to suggest some directions in which these may lie.