LIBERALIZATION AND RATIONALIZATION OF DRUNK-DRIVING LAWS IN SCANDINAVIA

H. L. Ross, Ph.D.*

SYNOPSIS

"Random" testing of drivers for blood alcohol was introduced in Sweden in 1975 and in Norway in 1981. Denmark, in 1977, and Finland, in 1978, also introduced random testing of drivers as part of general traffic law reforms. This paper presents analyses of the marginal deterrent effects of these reforms in other countries attempting to deal with drinking and driving through deterrence-based measures.

INTRODUCTION

The past decade has been one of ferment in Scandinavian laws relating to drinking and driving. Two general tendencies can be discerned. On the one hand, there has been a liberalization of the laws, as seen in less use of imprisonment as a standard penalty. On the other hand, there has been a rationalization of the laws, as seen in replacement of clinical evidence of impairment by blood-alcohol concentration (BAC) evidence, in "random" testing and similar procedures that simplify the apprehension of suspects, and in efforts to establish proportionality between the severity of punishment and the degree of driving impairment as measured by BAC's. These tendencies have resulted in a shift of emphasis within the deterrence-based approach of Scandinavian law, from severity of punishment to certainty of punishment.

It is significant that these tendencies take place at the same time as much of the North American anti-drunk-driving movement presses for harsh and mandatory punishments, partly on the grounds that these have demonstrated their effectiveness in the Scandinavian countries. The Scandinavians have found that such legislation leads to exhausting drains on their criminal justice systems, produces inequities among different kinds of offenders, fails to affect the behavior of hard-core offenders, and may well be unnecessary for the balance of the population.

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This report surveys legal developments in Finland, Denmark, Sweden, and Norway during the past decade and presents statistical evidence, where available, concerning their impact on measures of drinking and driving.

FINLAND: TO AND BEYOND THE SCANDINAVIAN MODEL

Finland is the last of the Northern countries to have adopted a "Scandinavian-type" drunk-driving law (Ross, 1975), one that defines the offense in terms of BAC and bases prosecution on the readings of scientific instruments rather than clinical observations. Until 1977, the Finnish approach to legislation on drunk driving was based on a "classical" law prohibiting driving "when drunk or under the influence of alcohol" (Law of March 29, 1937). Blood tests were often taken by police and used in the course of prosecution of suspects, but they did not define an offense. If, in consequence, many highly impaired drivers failed to be convicted in Finland, the punishment for those who were convicted was the most severe among Western countries. The maximum penalty was 8 years' imprisonment and sentences of 3 months or more were routine.

The Finnish drunk-driving law was fundamentally changed on April 1, 1977, in the context of a general overhaul of criminal legislation. In a parallel to Swedish law, 2 per se offenses were established: "drunken driving" if the driver's BAC equals or exceeds .05% and "gross drunken driving" if the driver's BAC equals or exceeds .15% "or if his ability to perform correct maneuvers has notably deteriorated and the circumstances are such that the deed could endanger the safety of others...". Drunk driving was removed from the traffic code to the criminal code at this time, a measure believed to symbolize the seriousness with which the offenses were to be regarded. This concern was also noted in criticisms of the new approach on the grounds that it seemed to tolerate driving after drinking so long as BAC levels were low (under .05%). (A Parliamentary Proposal offered in 1980 prohibiting driving with any alcohol in the blood at all was only narrowly defeated by a vote of 95 to 92.)

The penalties for the new offenses were on their face severe: fines or prison for up to 3 months in the case of drunken driving and prison for up to 2 years and a minimum of 60-day fines in the case of gross drunken driving. In practice, however, it soon became evident that Finnish judges, guided by seminars provided by the Department of Justice, were both moderate and measured in the use of these penalties. Prison has very seldom been used for the lesser
offense, and only a minority of those found guilty of the gross offense have been imprisoned. Sarkko, Majama, and Burre-Hägglund (1982) reviewed the penalties meted out in 1978 and 1980. In the former year, 94% of those guilty of the lesser offense were fined and only 2.5% were imprisoned; in the latter year, the figures were 97% and 1.8%. For the greater offense, 25% of violators were imprisoned in 1978 and 22% in 1980; the most common sentence for gross drunken driving was conditional imprisonment (probation), received by 70% of offenders in 1978 and 72% in 1980. For both offenses, the amount of fines and length of imprisonment were functions of the severity of the offense, as measured by the BAC levels reported. (Tables 1 and 2, taken from the Sarkko et. al. report, present the data.) Recidivism is another factor against which the penalties have apparently been measured. Fines only were administered to 95% of first offenders for the lesser offense, compared with 67% of recidivists. Even more striking is the fact that only 3.8% of first offenders were imprisoned for gross drunken driving, compared with 47% of the recidivists. Amount of fines and length of imprisonment were correlated with recidivism. In sum, only 12% of drivers convicted for both offenses were imprisoned in Finland following the new legislation, compared with 3/4 of those convicted under the old legislation in the early 1970's. Drunk drivers today constitute 13% of the Finnish prison population, compared with 25% in 1975, 20 to 25% today in Norway, and 25 to 30% today in Sweden. The change in Finnish law thus is shown to have entailed a moderation in the treatment of offenders, in general, and a rationalization in the sense of adjusting penalties to the degree of risk and hence of presumed culpability in the apprehended behavior.

Table 1: Fines for Drunken Driving in Finland:
Percent of Offenders by BAC

<table>
<thead>
<tr>
<th>Blood-alcohol concentrations (percent)</th>
<th>Day Fines</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>06-10</td>
</tr>
<tr>
<td>.05-.089</td>
<td>1.1</td>
</tr>
<tr>
<td>.09-.119</td>
<td>1.1</td>
</tr>
<tr>
<td>.12-.149</td>
<td>8.3</td>
</tr>
<tr>
<td>.15-.189</td>
<td>-</td>
</tr>
<tr>
<td>.19 and above</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
</tr>
<tr>
<td>(n)</td>
<td>(88)</td>
</tr>
</tbody>
</table>

Source: Sarkke, Mayama, and Buure-Hägglund, 1982; Table 4, p. 602.
Table 2: Prison Time for Gross Drunken Driving in Finland:
Percent of Offenders by BAC

<table>
<thead>
<tr>
<th>Sentences</th>
<th>Blood-alcohol concentrations (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>.05-.149</td>
</tr>
<tr>
<td>14 da. - 1 mo.</td>
<td>15.2</td>
</tr>
<tr>
<td>1 mo. - 15 da.</td>
<td>8.7</td>
</tr>
<tr>
<td>3 mo.</td>
<td>30.4</td>
</tr>
<tr>
<td>3 mo.</td>
<td>21.7</td>
</tr>
<tr>
<td>2 mo.</td>
<td>15.2</td>
</tr>
<tr>
<td>5 mo. &amp; more</td>
<td>8.7</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
</tr>
<tr>
<td>(n)</td>
<td>(40)</td>
</tr>
</tbody>
</table>

Source: Sarkke, Mayamaa, and Buure-Hägglund, 1982; Table 5, p. 602.

The new Finnish law also permits the use of random breath testing of drivers in roadblocks, a measure likely to increase the objective certainty of apprehension for drinking drivers. The number of tests performed in roadblocks was limited at first by shortages of equipment but it has risen dramatically over time. In 1977, fewer than 9000 tests were administered; in subsequent years, the numbers were 17,000, 80,000, 125,000, 150,000, and, in 1982, 164,000. However, even the last figure represents an objective testing risk of only about 1 in 200,000 vehicle-kilometers, a risk that may be regarded as negligible.

The provision for random testing has permitted Finnish scholars for the first time to estimate the extent of the drunk-driving problem. Penttilä and Pikkarainen (1983) arranged for a systematic sampling of drivers in the Helsinki region on Tuesdays, Saturdays, and Friday nights during 1979. Among 40,389 drivers tested, only 186 were found to have BAC's equal to or exceeding .05%. This represents less than 1 violator among 200 drivers. The figure compares favorably with those reported in Norway and Sweden despite the higher per capita consumption of alcohol in Finland.

DENMARK: TWO RETREATS FROM IMPRISONMENT

Like Finland, Denmark adopted a Scandinavian-type law only in the mid-1970's. Until that time, Danish law prohibited driving "by any person who is unable to drive in a safe manner while under the influence of alcohol" (Law of
July 1, 1932). Beginning in the 1950's, Danish police obtained BAC data and courts took evidence of .10% BAC as presumptive that the law had been violated. (However, police reports including clinical evidence concerning the defendant's behavior retained their place in prosecutorial procedure.) Although the law provided for a year's imprisonment as a maximum penalty, the Minister of Justice in 1971 instructed prosecutors to press for steep fines rather than imprisonment for drunk drivers as a general rule and stipulated that, if prison were sought, the sentence should be 14 days rather than the traditional sentence of 20 days. Thus, Danish criminal procedure was in practice moving towards the use of BAC as a criterion for drunk driving and away from unconditional prison sentences as punishment for the offense.

The switch to a Scandinavian-type law in Denmark came with the Road Traffic Act of July 1, 1976. A major impetus for this legislation was the fact that, although the use of imprisonment for drunk drivers was discouraged, imprisonment was so little used in Danish criminal justice generally that two-thirds of all prison sentences pronounced were for drunk driving, which was thus strongly implicated in a crisis in available prison space. Moreover, officials felt the need to formalize and render uniform the evolving changes in the treatment of drinking drivers.

The 1976 Danish law established per se offenses at BAC's of .08% and .12%. The former offense was labeled "pro mille driving." Although prison sentences were prescribed for the latter offense, "drunk-driving", it was generally understood that they were not to be used for offenders with BAC's lower than .15%. The law was therefore in practice a 3-tiered one, with fines and conditional licenses at the bottom, fines and unconditional license suspension in the middle, and prison with unconditional license suspension prescribed at the top. The expectations of Danish drunk-driving experts were that the legislation would "undoubtedly" reduce the number of people going to prison (Waaben, 1978).

Following passage of the 1976 law, to the surprise of many of these experts, arrests of drinking drivers rose considerably, and the numbers of prisoners did not decline. Although it might have been claimed that the relatively liberal .08% BAC floor of the prohibition and the lack of harsh punishments up to .15% BAC were responsible for reducing the deterrent effect of the law, more careful analysis of the Danish situation noted that the increases in
arrests were due to greater activity on the part of the police (Koch, 1980). The simpler procedure for handling drunk-driving charges, involving less police investigation and paperwork, resulted in more hours being spent on drunk-driving patrol and a greater proportion of arrests being made as a result of patrol rather than as by-products of the investigation of crashes. Furthermore, although in some ways the new law reduced the punishment for alcohol-impaired driving and official sources claimed that it neither increased nor decreased the penalties, survey data showed that 46% of drivers viewed the penalties as more severe than before the Road Traffic Act and 71% thought that the risk of apprehension had increased (Otergaard, 1982). If the intent of the authors of the legislation to reduce imprisonment was frustrated, increased and more effective police activity rather than increased drunk driving seems the best explanation.

Be that as it may, continued pressure on limited prison facilities resulted in replacement of the 1976 law by even more liberal legislation in July of 1981. Since that date there have been 5 penalty levels corresponding to BAC's. For BAC's between .08 and .12%, fines and restricted licenses are prescribed. Between .121 and .15%, fines are accompanied by a year's license suspension. Between .151 and 2.0%, fines are accompanied by 2 year's license suspension. Only at the extraordinarily high BAC of .201% is prison mandated: 14 days along with 2 1/2 years' license suspension for BAC's up to .25 and 20 days along with 2 1/2 years' license suspension for BAC's above .25%.

Danish law has provided for random testing of drivers by the police since 1976; however, this permission has not been systematically employed. No studies have been made using roadside surveys to estimate the magnitude of the drunk-driving problem. The probability of apprehension for an impaired driver does not seem to have been addressed with roadblocks; it is informally estimated at about 1 arrest per 1,000,000 impaired kilometers. However, polls taken in October 1981 and January 1982 found more than 50% of drivers saying that the probability of apprehension is greater than it was a couple of years ago (compared with fewer than 10% saying that it is less). Moreover, an increase in the perceived level of punishment was reported by 31% of drivers in 1981 and 40% in 1982, whereas a decrease was reported by only 22 and 17% respectively (Otergaard, 1982). The preconditions for deterrence seem to be met better under the newer, liberalized, and rationalized Danish law than under any of the prior formulations.
Sweden has had a 2-level per se law since 1941. It has been illegal to drive with more than .08% BAC since that date (lowered in 1957 to .05%) but in general only fines have been prescribed for violators whose BAC is less than .15%. For those with higher BAC's, prison for a month has been the routinely prescribed penalty.

Exceptions to the prison requirement have always been allowed, however, and the number of categories in which exceptions are permitted has increased over time. There are currently 7 conditions that will excuse an offender from the normal prison sentence, even though evidence is presented that he drove with a BAC over .15%:

1) Demonstration of the presence of "mitigating circumstances" results in day-fines only.

2) If "special circumstances" exist--less exculpatory than "mitigating circumstances"--the defendant may be fined and placed on probation.

3) On presentation of a doctor's certificate that the defendant has an alcohol problem and is successfully undergoing treatment and that to serve the prison term would interfere with the treatment, the defendant may be sentenced to probation with treatment. He is also fined but not imprisoned.

4) For those with severe alcohol problems, the sentence may be to a treatment institution rather than to prison.

5) Under 1981 legislation, if the BAC was very close to .15% and the offense caused little danger to traffic, the defendant may be sentenced to prison for 14 days rather than the usual month.

6) Again under the 1981 legislation, if the license suspension severely interferes with his livelihood, the defendant may receive a reduced prison sentence or probation with or without treatment for alcoholism.

7) The defendant may plead for mercy on the basis that the prison sentence is unfair.
In 1979, prior to the 1981 legislation that increased the opportunities for probation, the proportion of sentences involving probation rather than prison for drivers exceeding .15% BAC was found to be as high as 50% in some courts. Moreover, there was enormous and apparently irrational variation in the proportions given probation among the courts in various jurisdictions (Justitiedepartementet, 1983: Appendix 2). The contrast between the retributive treatment of drunk drivers and the general trend to humanitarian, therapeutic treatment of other law violators in Scandinavia, in general, and Sweden, in particular, has also been apparent.

Proposals for formal modification of the routine prison sentence were entertained in the Swedish government beginning in the early 1970's under Minister of Justice Lennart Geijer but they were not pressed in recognition of the power and determination of the temperance movement in Parliament. However, in 1983, Geijer's successor and former colleague, Ove Rainer, submitted a memorandum proposing replacement of the 2-level offense by a single offense with graduated penalties. Prison would be the ordinary penalty only for drivers who repeatedly or recklessly drove with BAC's exceeding .15%. In order to merit imprisonment, the crime would have to be regarded as serious, all things considered. (At the time of this writing, the memorandum is making the rounds of commentaries by interested groups, as is usual for proposed Swedish legislation, and its enactment is uncertain. The proposed legislation represents a formalization of developments already in progress. Whether or not its passage comes at this time, prison is no longer the routine sentence for drunk driving in Sweden, for reasons considered good and sufficient to many policymakers.)

The Swedish approach to drunk driving has shifted towards emphasizing certainty of punishment through legislation permitting random testing of motorists at roadblocks. Proponents of random testing in other countries in the 1960's and early 1970's assumed they were copying a Swedish model, but in the roadblocks that so impressed foreign visitors a Swedish policeman would have to develop a reasonable suspicion that the driver was impaired by alcohol before he could demand a BAC test. Surprisingly, the proposal in 1974 to permit the Swedish police to demand a breath test without suspicion of a violation was met with considerable opposition, including that of the principal labor organization. The law of October 11 of that year took the unusual form of provisional legislation, valid in a
limited number of jurisdictions for a limited time. (There are only a couple of parallels for this: one concerned the sale of beer in ordinary retail shops and the other concerned civil commitment for certain drug users; neither of these has been made permanent.) Random testing in roadblocks was introduced in 5 counties on February 1, 1975, extended to 10 on May 2, to 15 on September 1, and to the entire country on January 1, 1976. Under its provisions, 364,000 breath tests were requested in roadblocks, compared with 42,000 requests of drivers involved in crashes and 17,000 requests of drivers involved in law violations. The provisions were made permanent in the law of March 4, 1976, again with opposition from those who were disturbed by an apparently large number of false positive results (breath tests indicating violations not confirmed by subsequent blood tests) and by the relatively brief experience between the inception of the new practices and the proposal for their permanent institutionalization. This opposition probably enhanced the public knowledge of the provisions for random testing and may have triggered some deterrent forces. Public opinion polls in March, April, and November 1975, during the temporary legislation, and November 1977, following the permanent legislation, showed declining proportions estimating the chances of apprehension for drunk drivers behaving "normally" as "very little" or "little" and increasing numbers estimating the risk to be at higher levels (Klette, 1978; see Table 3). (Of course, all answers other than "very little" exaggerate the actual risk of apprehension.) The random test now seems institutionalized in Sweden but its use is restrained. This is especially the case in Stockholm where police sources indicate the frequency as about once a month, their enthusiasm tempered by concern for relations between the police and the driving public.

Table 3: Risk of Apprehension perceived in Sweden for Someone Legally Impaired but Driving Normally

<table>
<thead>
<tr>
<th>Date of Poll</th>
<th>Very Little</th>
<th>Little</th>
<th>Risk of Detection</th>
<th>Rather Little</th>
<th>Rather Great</th>
<th>Great</th>
<th>Very Great</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept/1974</td>
<td>34%</td>
<td>40%</td>
<td>14%</td>
<td>3%</td>
<td>1%</td>
<td>8%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Mar/1975</td>
<td>32</td>
<td>38</td>
<td>17</td>
<td>4</td>
<td>1</td>
<td>8</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Apr/1975</td>
<td>30</td>
<td>39</td>
<td>18</td>
<td>6</td>
<td>-</td>
<td>6</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Nov/1975</td>
<td>34</td>
<td>32</td>
<td>23</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Nov/1977</td>
<td>34</td>
<td>28</td>
<td>25</td>
<td>6</td>
<td>2</td>
<td>5</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Data from roadblock experience in 1975-1977 have been utilized to obtain estimates of the proportion of drivers with illegal BAC's in Sweden. Of approximately 1,000,000 million drivers tested between 1975 and 1977, the proportion with positive breath tests was 2.1 per 1,000 (Jagefors, 1982). Figures from Friday and Saturday nights were higher, between 1 and 2%. These proportions (considered high by some critics) conform to expectations based on previous, less systematic surveys (Persson, 1978; Ross, 1975) and show that the general level of alcohol-impaired driving in Sweden is comparable to that of Norway and Finland, and considerably lower than that in many other countries.

Analysis of BAC's demanded under the new law from drivers experiencing crashes found that the proportion of illegal BAC's among crash-involved drivers was considerably higher than in the broader driving population. Many of these BAC's were quite elevated, supporting the view that a considerable part of the alcohol-crash linkage can be traced to problem drinkers and alcoholics (Goldberg, 1981).

Claims have been made of a deterrent effect for the new legislation. Goldberg (1981) has noted a reduction in the number of drunk-driving charges based on police suspicion (other than in the new roadblocks) and has attributed it to the effect of the roadblocks themselves. He added:

Another indication of a possible effect is the lowered incidence of apprehended drivers when tests are repeated over time under the same conditions at the same sites. The widespread knowledge that any driver today can risk to have his possible alcohol "condition" tested at any time by a random test, not only if he drives in an erratic way, is a potent deterrent to the majority of conscientious drivers... (Goldberg, 1981; pp. 858-859).

Ernst Nilsson, a consultant whose firm is evaluating the current Swedish efforts concerning drunk driving, has interpreted other data as favoring deterrence. Although, his initial report (Nilsson et. al., 1982) suggested that the change from probable-cause to random testing might not be noticed by the average driver, in a forth coming report he presented evidence for deterrence in the higher distribution of BAC's found among crash-involved drivers following the new legislation. Nilsson expressed his belief that there may be fewer drivers with BAC up to .15% on the road.
NORWAY: "BLIND CONSERVATISM"

Only one Scandinavian country has in recent years proved nearly totally resistant to pressures for liberalization and rationalization in the legal treatment of drunk drivers. This is Norway, where imprisonment as the ordinary punishment for all drivers on the road with BAC's of .05% or above has been in effect since 1936. As noted by critics, this is not because Norway escapes the dilemmas that have stimulated change elsewhere. The treatment of drunk drivers in Norway stands in stark contrast to the treatment of virtually all other violators of the criminal law; accordingly, drunk drivers make up a disproportionate share of the caseload of the criminal justice system. Moreover, the Norwegian law embodies no relationship between the degree of punishment and the relative harmfulness of the behavior, since the minimum 21-day prison sentence applies to violations as low as .05% BAC, a level that entails a relatively minor increase in crash risk and that may be attained by moderate drinkers.

According to Andenaes (Andenaes & Sorensen, 1982), the key to understanding this paradox lies in the importance of the temperance movement in Norwegian politics. Maintenance of the present law fills a symbolic function for the movement. Condemnation of the drinking driver is a proxy for condemnation of alcohol. The argument that safety considerations are not particularly well served by rigid preservation of the 1936 law is irrelevant, for safety is not what the law is about to many of its defenders. In addition, Andenaes and Sorensen pointed out, the longevity of the legislation itself has made change more difficult; prison for the drunk driver has become a distinctive Norwegian social institution. These authors referred to the warning of Frederik Stang, a Conservative Party leader, against accepting what exists only because it exists.

Nonetheless, proposals for change in the Norwegian law have surfaced at relatively high levels during the past decade. In 1975, a work group in the Department of Justice proposed that imprisonment be replaced by fines up to BAC's of .12%. Although no action followed, Andenaes and Sorensen's general critique (1982) has been endorsed by the Norwegian Bar Association in a letter to the Ministry of Justice requesting a new study group. A 1976 Gallup Poll showed that the public rejects imprisonment, regardless of BAC level, by a 48% to 41% margin. Although recognizing the tremendous inertia of the Norwegian political situation, liberal critics of the present law are optimistic about change in the long run. To quote these authors:
One may be tempted to cite Wergeland's despondent outburst: "Why does mankind advance so slowly?" To persist in criticism can seem to be a waste of time and effort. But a certain legitimation of persistence may be found in the words of another poet, this time Bjornson: "One time said is said, but ten times said is heard." (Andenaes & Sorensen, 1982; p. 27)

Although the penalty provisions have been unchanged, the procedure for apprehending drunk drivers in Norway was recently revised by adopting random testing. Initially proposed in 1974, the change was discussed for several years before it was enacted on April 10, 1981. Norway, the first country to adopt BAC testing for the control of drinking and driving, was thus the last of the Scandinavian countries to rationalize this approach by providing the opportunity for eliminating police judgement in administering the test. Various commentators speculate that the delay may have been due in part to police fears of public disapproval (although the 1976 Gallup Poll found the public supporting random testing by 72% to 27%).

To date, the only use that has been made of the provision for random testing in Norway has been in conjunction with a study by the Institute of Transport Economics to determine BAC levels among a representative sample of drivers. The study has had the cooperation of the police and, as of May 1983, 70,000 drivers had been tested in 8,000 randomly chosen locations. There were 144 illegal BAC's recorded, a fraction less than 1/2 of 1%, comparable to findings elsewhere in Scandinavia.

As noted in conjunction with such innovations elsewhere, random testing provides the opportunity for deterrence based upon the perception of increased certainty of punishment. However, it is not clear that the Norwegian experience provides a reasonable test of this opportunity. Although government officials claim there was considerable publicity, this is denied by academic commentators, and the use of the new legal provision has been very restricted, limited by the needs and funding of a single study. Neither the national police nor the local police have otherwise engaged in random testing. As of mid-1983, no detailed specifications for the setting up of roadblocks had been issued to the police by the relevant governmental bureaus.

CONCLUSION: THE SCANDINAVIAN PARADOX

From the humanitarian viewpoint, there is much to be commended in the developments of the last decade in the Scandinavian approach to drunk-driving law. The
liberalization inherent in this approach has resulted in considerably less misery being foisted on the citizens of these countries, with no evidence of negative effects on the level of the drunk-driving problem.

However, this liberalization and rationalization take place on the ground of commitment to a criminal-law approach to the traffic safety problem. This rests on the fundamental assumption that the behavior in question is culpable and blameworthy. A high BAC is a sign not only of increased risk of crashes, but of increased moral turpitude meriting more severe punishment.

The appropriateness of this assumption is contradicted in Scandinavian experience. Unlike the case in many other countries, drunk drivers in the Scandinavian countries are a very small percentage of the population, and much of this fraction consists of individuals with severe alcohol-related health problems. Klette (1977) has reported that two-thirds of known violators of the first-degree Swedish prohibition, and half of those violating the lesser prohibition, have previously been treated by the authorities for alcohol problems. The very high BAC's of those drivers who are apprehended for violating the drunk-driving laws in all these countries in itself attests to the strong probability of alcohol pathology among the bulk of them. It is paradoxical to reserve the most stringent criminal penalties for a group consisting largely of those whose culpability may well be mitigated on the grounds of illness, and whose condition is acknowledged as indicating the need for medical help.

That so few drivers tested in roadblocks are found to have illegal BAC's may testify to the success of the Scandinavian approach -- in custom as well as law -- in keeping the less dangerous moderate drinkers off the highway. That so many serious crashes nonetheless involve alcohol, often in very high concentrations (cf. Ross, in press; Snortum, 1984) may testify to the failure of the Scandinavian approach to remove the more deadly alcoholic from behind the wheel. It may also testify to the failure of treatment programs currently available to help individuals with alcohol problems.

I have argued in addressing American legislature that it is misleading to treat drunk driving as a problem involving a small criminal minority when scientific data show that huge numbers of people engage in the prohibited behavior. The recent Scandinavian experience suggests that it may be a comparable error to base the main approach to drunk drivers on the criminal law when the violators are only a small minority.
REFERENCES


