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GENERAL DETERRENCE AND DRUNKEN LIVING

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ACQUISITIONS

GENERAL DETERRENCE

"General deterrence", to speak with Andenaes ¹⁾, "is the ability of the Criminal Law to make citizens law-abiding". This concept, deterrence of potential offenders by threat of punishment and actual penalties has been of great importance in criminal policy for centuries. It served e.g. as a foundation for the ferociousness of the Criminal Law in the Middle Ages, several Penal Codes were explicitly based on it and even in newer legislations it has found its place.

Also when penalties are inflicted one often encounters consideration of a general deterrent nature: in several judgements this aim of punishment is explicitly pointed out, in others it plays a more implicit role (part).

Therefore it is disappointing that only little efforts have been made to prove this concept. Such a lacking interest can easily be explained when one agrees with Kant who states "das die rechtliche Strafe niemals verhängt werden kann blosz als Mittel ein anderes Gut zu befördern für den Verbrecher selbst oder für die bürgerliche Gesellschaft, sondern jederzeit nur darum verhängt werden muss, weil er verbrochen hat" ⁸⁾ It is obvious that in such a conception about the aim of punishment there is no place for research about its effects. However when one holds in view that punishment must also have preventive influence, the lacking interest can hardly be explained.

Yet it would be exaggerated to say that we know nothing of this matter. The situation as described by Michael and Adler some 40 years ago has changed. They stated: "We have no knowledge of the influence of any mode of treatment, existing or proposed, upon the behavior of actual or potential offenders. We do not know whether or to what degree any mode of treatment possessed reformatory or deterrent efficacy We do not know whether, or to what degree any preventive program, existing or proposed, is efficient as a preventive device". ⁹⁾

Since then some progress has been made and specially the effect of the death penalty in relation to lifelong imprisonment has been scrutinized (10, 7, 12).

For various reasons however these studies are not too well suited to give an answer to the "effectiveness-question".

First of all most of them fail methodological preciseness. Often they are based on registered criminality while other factors, being of possible influence on the preventive effect are not taken into account.

Secondly murder and homicide, crimes which are amenable to the death penalty, are not crimes on which threat of punishment seems to have much effect. They are so-called expressive crimes, that are hardly dictated by rational considerations of gain or loss. (4)

Thirdly the question, of what is in this case the severer punishment, has been solved insufficiently until now. As a consequence the results of the above mentioned studies do not tell us too much about the relative efficacy of a heavy sanction in more common circumstances.

Finally the crimes in question are not the most interesting from a quantitative point of view. In the penal system of most civilized countries neither the death penalty nor lifelong imprisonment play an important role.

Therefore we thought it worth while setting up an investigation into the effect of the amount of punishment to try to solve these objections as well as possible.

The investigated delinquency was drunken driving, as it is penalized in art. 26 par. 1 of the Road Traffic Act. This offence seems to be a serious problem in all European countries and at a first glance general deterrence can be of great importance with this crime.

THE INQUIRY

The offence

Drunken driving is a misdemeanour. The maximum penalty on it is three months imprisonment or a f. 10.000,-- fine, supplementary is the withdrawal of the driving licence for at most five years (in case of recidivism ten years). Usually these penalties are rarely inflicted.

Most of time the judge does not go beyond a fortnight's imprisonment and a withdrawal from six months to one year. In large parts of the country however unconditional imprisonment in case of offending paragraph 26 hardly ever occurs.

A fine together or not with conditional imprisonment will do then. When we investigate the most recent C.B.S.-issues on this point it shows that the jurisdictions where imprisonment relatively often is inflicted are the western parts of the Netherlands whereas you will find the "fine-jurisdictions" in the eastern part of the country.

Table 1 pictures the situation over the period 1968-1973 in three eastern and three western jurisdictions.

Table 1. Percentage of convictions for drunken driving (car drivers) in which unconditional imprisonment was imposed

Jurisdiction	1968	1969	1970	1971	1972	1973
Dordrecht	87.5	82.5	87.8	83.6	73.2	95.1
's-Gravenhage	76.9	74.6	59.6	59.6	60.5	73.2
Haarlem	96.2	91.3	87.6	91.8	89.6	83.7
Zutphen	35.0	27.2	16.0	7.2	15.6	15.4
Zwolle	12.0	5.9	21.7	10.0	9.7	8.7
Arnhem	51.2	43.0	33.7	20.3	28.9	33.9

The figures of each jurisdiction show fluctuations, but the general impression is rather consistent; the western jurisdictions showing much more unconditional imprisonment than the eastern ones. As starting point for our investigations we took these conspicuous differences. The main question is now:

Does the relatively severer penal policy in the western jurisdictions lead up to less drunken driving or, in other words, is the amount of punishment a factor which is here and now of importance on the general deterrent effect of the threat of punishment? ⁵⁾

Design of the inquiry

The risk-group. Trying to avoid some important methodological objections made against other investigations we have made a design not based on registered convictions for drunken driving but starting from all poten-

tial offenders.

There are two important questions. First of all: who are these potential offenders and where can we find them? Potential offenders are all possible road-users who are in a situation to become under the influence. In this inquiry we limited ourselves to potential drunken car-drivers.

As already mentioned not all drivers belong to this group but only those for whom threat of punishment in general and "in concreto" could have influenced their decision whether to drink or not and to drive or not.

Drivers who never use alcoholic beverages are generally excluded from what we call the risk-group. Whether anyone does belong to this risk-group depends on the real situation in which he finds himself. If he is a driver (does he drive) than he belongs to the risk-group as soon as he gets the opportunity to drink alcoholics. Threat of punishment starts playing a role then at the decision whether to drink or not. If there is no possibility to make a choice then again the possible influence of threat of punishment is irrelevant.

We may conclude that the risk-group for drunken driving consists of people who have got a driver's licence, had a car at their disposal and had the opportunity to drink alcoholics. According to their possible reaction on threat of punishment they can show different attitudes. When they have decided not to drink you will meet them on the road as passengers of public transport, of a car or as pedestrians. You can find them also (not on the road) at home or at overnight staying addresses. If they have decided to drive home (and probably to drink less) you meet them as car-drivers. It is this last group on which we concentrate in this paper.

The required data. To get a sensible answer to the question that is centred in our inquiry we need three categories of data.

First of all we must be able to determine whether a person belongs to the risk group or not. Besides it is necessary to check whether there are more differences between east and west than in the amount of punishment only.

If it would show for instance that in one part of the country the chance to be arrested is much bigger than in another part, then it is no longer possible to determine if possible differences in drinking/driving behavior are due to differences in the amount of punishment or to differences in what could be called the "detection-rate".

Further on we must be able to conclude if a person has been drinking and if so, how much.

To gather information about the first two categories we used a questionnaire. Whether the people concerned had used alcoholic drinks, we tested by means of a so called "Omicron-Intoxilyzer", a very trustworthy breathalyzer.

Procedure. The procedure followed for the gathering of this information was that in both areas with different penal policy but comparable in other respects (at least we hoped so) samples were drawn from cardrivers. By means of the questionnaire we decided whether the people sampled belonged to the risk group while at the same time this form gives evidence about the comparability of the samples regarding possible disturbing variables.

Organization. We choose three jurisdictions in the eastern as well as in the western part of the country and in each jurisdiction three towns of medium size. These towns could be compared two by two as well as possible qua number of inhabitants and town structure.

So we got three pairs Haarlem and Nijmegen, Delft and Deventer, Dordrecht and Zwolle.

The average percentage of unconditional imprisonment was for the western jurisdictions 83 and for the eastern 24.

In consultation with the local police we selected in each of these towns four registration points, where we intended to stop cardrivers. Two of these points were near or almost in the centre, two others were situated at the outskirts of the town. Together they were supposed to cover the greater part of all traffic in that town, local as well as leaving traffic.

It seemed reasonable to choose the points of time for registration to those days and hours in which you can expect relatively many drunken drivers.

The nightly hours during the weekends seemed to be the most suitable (Friday, Saturday and Sunday evenings). It appeared afterwards that Sunday evening was less suitable, because there was not much traffic. On the registration spot a policeman is situated so that he has a good view on the passing traffic.

When everything is ready he begins stopping cardrivers at random from the traffic till the research team is booked up. This team consists of a recruiter, who introduces the inquiry with the cardriver who was stopped and asks whether he/she is willing to cooperate.

Whenever they do agree the recruiter shows the cardriver a place where to park his car and accompanies or shows him the way to a building or a caravan where the investigation will take place.

A second member of the team (a hostess) welcomes him there and offers him coffee and a cigaret.

She is also taking care that he is interviewed and she arranges the distribution of the cardrivers over the six interviewers who complete the team.

After finishing the questionnaire the interviewer brings his testee to the room where the breath analysis apparatus is placed and after the breath-test the person is shown to his car.

All these tasks were performed by senior students of the State University of Groningen under the supervision of a staff member from the Criminological Institute. We found lodging in existing buildings on the spot (school, municipal buildings, etc.)

In some cases we used caravans, when nothing else was available.

To end we want to summarize again the principal question of our inquiry. Does severer punishment cause a firmer reduction of the threatened behavior than a milder sanction?

If this is the matter we may expect that in the western parts of the country fewer drunken drivers will occur than in the eastern parts, or formulated more technically. It is to be expected that the average blood alcohol concentration will be lower there or that the distribution of the b.a.c. will be on an lower average level.

RESULTS.

Alltogether about 3000 mororists were stopped, of whom nearly 1600 belonged to the risk group. From 1556 persons a blood alcohol concentration was established.

As table II shows there was not much difference in the b.a.c.-distributions between east and west.

Table II. Distribution of blood alcohol concentrations in the western and eastern part of the country.

b.a.c.	west		east	
		%		%
0.0 - < 0.1.	399	50,7	392	51.0
0.1 - < 0.5	246	31.2	229	29.8
0.5 - < 0.8	76	9.7	74	9.6
0.8 - < 1.5	58	7.4	67	8.7
1.5 - < 2.0	7	0.9	6	0.8
> 2.0	1	0.1	1	0.1
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	787	100.0	769	100.0

As can be seen from table II in both areas more than 50% of the motorists had a blood alcohol concentration of zero, they were sober so to speak. 30% stays under 0,5‰ , nearly 10% is between 0,5 and 0,8‰ and the rest of about 10% has 0,8‰ or more.

At first one is inclined to conclude from these data that the severity of the threat of punishment is absolutely irrelevant for the deterrent effect. And yet a conclusion like this is not to be justified, because of the following reasons. At first we must try to determine whether both samples do not differ on other variables which, besides the threat of punishment, might influence the blood alcohol level. To illustrate this we give an example. Suppose for instance that people in the western part of the country do estimate the chance of being arrested by the police far less than those in the eastern part. Let us also assume that this arrest - or detection - rate is related to the height of the blood alcohol level.

That being the case one may not conclude from the above mentioned results that the amount of punishment does not influence the b.a.c. It is quite right possible that the bigger amount of punishment caused the equalization of these b.a.c.'s. If in the western part of the country no severer punishment had been given the distribution could have been on a higher level because the chance to be caught was considered to be smaller there.

Besides this there are a lot of other factors which might give deviations of the same kind. We must be very careful therefore. 13)

A second condition to be fulfilled if you want to be sure of the above conclusion is that the actual difference in penal policy between east and west is known to the public. It is only then that you can expect differences in behavior. 14)

To get an impression of the perception of the public on this point (in 1973 in the western part in 83% of the cases an unconditional imprisonment was imposed while in the eastern part in only 24%) people were asked to indicate which one of the penalties or combinations of penalties they considered as most likely being convicted for drunken driving. It became obvious that in the western part unconditional imprisonment was mentioned in 13% of the cases against 4% in the east This indicates that only to a small extent people are aware of the actual penal policy in their district.

Besides it means that the original design of our investigation is doomed to fail.

The differences in perception of the measure of punishment (the independent variable) have grown far too small to have any substantial influence on the behavior (The dependent variable). The difference in perception between east and west (9%) deviates so much from the actual differences that no longer any effect on behavior as expressed in blood alcohol level can be expected. As a consequence fulfillment of our first condition - comparability of the samples - also has become irrelevant.

If we still want to answer our question we have to look for another opportunity. Fortunately our data offer such an opportunity. As a matter of fact we can split up our data about the perception of punishment into two groups. The one consisting of people expecting imprisonment when caught by the police the other composed by those supposing to get a fine. By comparing the b.a.c.'s of these two groups we can still reach our primary aim. Such a comparison is shown by table III.

Table III. Distribution of b.a.c. of people whether or not expecting imprisonment when convicted for drunken driving.

b.a.c.	imprisonment		no imprisonment		total
		%		%	
0.0-<0.1	67	51.9	720	51.1	787
0.1-<0.5	30	23.3	438	31.0	468
0.5-<0.8	14	10.9	135	9.6	149
0.8-<1.5	15	11.6	106	7.5	121
1.5-<2.0	3	2.3	10	0.7	13
≥ 2.0	-	-	2	0.1	2
	129	100.0	1411	100.0	1540

$X^2 = 8,97, df=4, p < 10$

As can be seen from table III, again the both distributions appear to be fairly alike. Indeed there are some slight differences but they are not significant on the .05 level. Moreover it has to be taken in account that with such a large number of persons, significant differences, being present in our material, can be shown statistically fairly quick. The two groups appearing to be comparable on possible confounding variables, we may conclude that the measure of punishments has no influence on the blood alcohol concentration. Thus from a general deterrent point of view there seems to be no reason for punishing drunken drivers with imprisonment.

DISCUSSION

It is always a rather delicate affair to translate the results of scientific research in useful conclusions. As a matter of fact these results seldom (produce) the inquestionable proof of something. They are often of a conditional nature that deprives them part of their usefulness for practice. The person who is best aware of these limitations is the researcher himself. He knows the difficulties and the methodological and statistical shortcomings of the project.

In this world however very little is certain and if a research-project has been planned and carried out with thoroughness it is, in our opinion unreasonable to be too scrupulous. The importance of the results than is lightly loosed in the relativity of them and that is especially the case for a study which has as main intention to inform "the policymakers" on certain matters.

Therefore we shall summarize once again the above presented results and with the aforementioned restrictions in mind - try to find what conclusions can be drawn. The results are:

1. There is no difference between the b.a.c. in the eastern and western part of the country.
 2. The differences in sentencing-policy regarding part. 26 of the Road Traffic Act are hardly noticed by the (general) public.
 3. No relation can be shown between perception of punishment and b.a.c.
- The first result - as we have seen already the same distribution of b.a.c.'s in East and West - may, not lead us to all too extreme conclusions. The public as a whole is quite unaware of the actual differences in sentencing policy between these areas and therefore these differences can not be related to the b.a.c.'s.

In the mean time this second result shows that there is no sound basis for whatever considerations that may be responsible for the differences in penal policy. Of course one can contend that relative heavy sentences

are apt to keep drunken driving within limited boundaries - and perhaps in certain circumstances this assertion holds - but when the public is totally unaware of this policy it is no longer suitable for general deterrent purposes and therefore can hardly be defended.

Quite natural one can try to improve communication between "penal authorities and the public, for instance by better information about what is actually going on. It has to be doubted however whether such a procedure would have much effect. As our third results shows even people who do expect a relative heavy sentence do not have lower b.a.c.'s than people with more moderate expectations about the penalty to be inflicted.

From this result one is easily tempted to draw extreme conclusions on the effects of penal policy - especially the usefulness of heavy sanctions in general. As we have already mentioned one has to be careful on this point.

First it cannot be concluded from the results that a more heavy sentence can never have some extra-effect. With other crimes for instance essentially other results can be obtained.²⁾ Especially one can imagine that in case of crimes with a more rational nature, e.g. a bank robbery, the potential offenders - before carrying out their offence - carefully inform themselves about the possible punishment in case they are detected. A second factor restricting the aforementioned results is the possible detection. The results presented above only hold for the actual perception of the chance of detection. When, in other situations those chances were significantly greater, quite a different relation between b.a.c. and penal policy could be found. It might be the case that at a so moderate perception of the "detection-chance" as was found in our study - 67% of the people questioned thought it was less than 10% - neither imprisonment nor a fine is of great importance to people's behavior. At a far greater chance of being caught by the police however the difference between imprisonment or fine may become a matter of interest. Such a change of the picture may also occur if not, as in our case, a relatively low fine is compared with a relative short term of imprisonment but when the absolute level of punishment was much higher, for instance 3 months imprisonment and a fine of about 3000 guilders. The same may hold when a new heavy punishment would be introduced e.g. confiscation of the car.

Are therefore the results of our study only of limited importance for penal policy in general, regarding to the punishment of offenders under par. 26 of the Road Traffic Act they are of great interest. We only have to deal here with that offence which cancels out the considerations made above about other crimes. Also the possibility that at a higher "detection-rate" the results may have been different is not important while the police manpower needed to change this perception on the long run simply is not available. Concerning other-heavier-penalties- we are in the same situation: a drastic raising of the level of punishment is inconceivable because of the public opinion regarding the punishment of traffic offenders.

All this means that we may conclude that a fine has to be the "normal" punishment for drunken-drivers.

It was found in former studies that from a special-preventive point of view no diminishing returns were found while inflicting a fine 3).

Now also imprisonment as a general deterrent appears to have lost its importance and therefore can be abolished. The advantages of a fine need hardly be discussed here and the disadvantages can easily be exposed¹¹⁾

A preponderant position for the fine would coincide very well with the point of view of the Dutch Minister of Justice stating that he would agree with the proposals of the Commission on Property Sanctions which aims were to repel imprisonment. Quite unlike the situation in Germany reaching this aim is not tried by a new legislation prohibiting the judge to impose imprisonment but by giving assignments to the public prosecutor. Since 1975 such assignments have been operative and, as the first figures show, they are an effective means to reach a further repel of prison sentences.

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