

Alcohol and Crime

GAVIN DINGWALL



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Gavin Dingwall
Leicester

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Chapter I

Alcohol and society

This work arose out of a belief that there was a need for a book which introduced readers to the debate about the relationship between alcohol and crime and the way in which the criminal justice system responds to those who offend after consuming alcohol. To many people, the link between alcohol and crime is self-evident. However, research (see Chapters 2 and 3) suggests that the link is far more complicated than is assumed both in popular discourse and in the official response to offences committed after the offender had been drinking. Consequently it is difficult to determine what the appropriate legal response should be. In England and Wales, as in other jurisdictions, the current legal position is controversial and appears in part to be based on assumptions that require, and lack, empirical verification (Dingwall 2003).

It is not the case that there has been a lack of research on the topic. As the references demonstrate, there is no shortage of valuable research but much of it is narrow in focus. What this work seeks to do is critically review this literature and then consider the policy implications that arise from it. The book therefore is not just an overview of existing research. Based on the available evidence, it suggests a principled approach to responding to those who offend after drinking alcohol. Given the variety of attitudes that people have towards drinking, this approach will no doubt lack universal approval. Nonetheless, if the book poses some difficult questions about the current approach and raises the issues that need more careful consideration then it will have served a valuable function.

Certainly, there could not be a more opportune time to consider alcohol and crime. Few could have anticipated the degree of political and media attention that has been devoted to the issue in the past two years. This attention is welcome for, as the next chapter demonstrates, there certainly appears to be a serious problem of alcohol-related crime in this

country. However, the fact that alcohol consumption precedes many criminal events does not in itself prove that the drinking led to the offending. The governmental response to date does deal with some important issues, such as licensing and policing strategies (an overview is found in Department for Culture, Media and Sport *et al.* 2005). One of the arguments in this work though is that some enduring issues require further consideration. To take the two most notable arguments: what effect, if any, should an individual's intoxication have on whether the individual can be held criminally liable and, if he can, should it affect his sentence? The current law has been subject to considerable academic criticism (though practitioners generally find it acceptable: Law Commission 1995) but, in the current political climate, it is unlikely that any government would want to reform the law in a manner which may be seen to be unduly lenient to those who offend whilst intoxicated.

Substance abuse and crime

This work is, in one sense, narrower in focus than some research on this topic. Often work on alcohol and crime is considered as part of broader reviews of substance abuse and crime (e.g. South 2002; Wincup 2005). There are good reasons for adopting such an approach. First, the law is not concerned with whether the defendant's intoxication was caused by alcohol or by another substance (*DPP v Majewski* [1977] AC 443). Much of the legal analysis in Chapters 5 and 6, therefore, is equally applicable to those who offend after becoming intoxicated through the use of a substance other than alcohol. Similarly research shows that many individuals have taken a combination of alcohol and other (usually illegal) drugs prior to offending (see Chapter 2). Limiting the discussion in this book to alcohol does not mean that different substances can always be so neatly compartmentalised in practice or that there are not areas of common ground.

Why then is the discussion in this book limited to alcohol? There are a number of differences between alcohol and other substances which were felt to justify the approach taken. First, despite comparatively high rates of illegal drug use in society, alcohol use remains far more prevalent. Second, the use of alcohol, unlike most other types of recreational drug, is also generally legal. This difference means that research into the link between other drugs and crime have to consider the fact that an illegal market is in operation which, by necessity, involves determining a suitable response. This is obviously an important topic in its own right but not one that has any direct bearing on alcohol and crime. Third, the evidence tends to suggest that different types of offence are associated with the use of alcohol and the use of other drugs (see Chapter 2). Finally, given the government's recent concerns about alcohol-related crime (Department for Culture, Media and Sport *et al.*

2005), it was felt that narrowing the discussion to alcohol was appropriate. Readers who want to find out more about the link between illegal drugs and crime would be advised to consult Bean (2004).

A note on terminology

In a work which considers the causal link between drinking behaviour and offending behaviour it is important to give some thought to terminology. Many of the expressions commonly used in discussions of the topic are inherently problematic. 'Alcohol-induced' offending clearly states that there is a direct causal link between the consumption of alcohol and the crime; if the offender had remained sober, one is to presume that the offence would not have occurred. 'Alcohol-caused' assault, a term sometimes found in the Australian literature (e.g. Matthews *et al.* 2002; Chikritzhs *et al.* 1999), again denotes a direct causal link between drinking and offending. Terms such as 'alcohol-fuelled' and 'alcohol-related' crime, both of which were used in a recent British government document (Department for Culture, Media and Sport *et al.* 2005) are equally problematic because they imply that alcohol consumption was at least a contributory factor in the crime; the presence of alcohol is deemed to be 'relevant' to the offence.

More thoughtful analyses have sought to address this issue. In her study, Rumgay (1998) adopted the phrase 'intoxicated crime' in preference to the cumbersome 'crimes committed after the offender had been drinking alcohol', even though she recognised that crimes themselves do not become intoxicated. I too will seek to avoid using phrases such as 'alcohol-induced', 'alcohol-related' or 'alcohol-fuelled' crime, unless it is appropriate in the context (e.g. when asking what proportion of crimes committed by offenders who had been drinking alcohol were alcohol-induced). This will often be the case when considering strategies designed by others. For example, the government claim to be targeting 'alcohol-fuelled violence' (Department for Culture, Media and Sport *et al.* 2005) regardless of whether it would be more accurate to describe it as 'violence committed by those who had been drinking alcohol'.

Structure

In terms of structure, this introductory chapter will provide an overview of drinking habits in the UK. This is important for two reasons. First, if there is a link between alcohol consumption and crime, then patterns of consumption are obviously of direct importance. If such a causal link could be established, we could safely predict that crime rates would rise if there was a rise in alcohol consumption and that crime would fall if rates of consumption fell. However, even if such a link cannot be established, patterns of consumption are important. The government have introduced a number of measures designed to combat 'alcohol-

related' crime, and have indicated that other measures are planned (Department for Culture, Media and Sport *et al.* 2005). Some of these measures are far-reaching (for a consideration see Chapters 4 and 7) and will affect all drinkers, whether or not they come into contact with the criminal justice system. It is important that our focus on alcohol and crime does not mask the fact that crime prevention measures in this field impact directly on an activity enjoyed by millions of people in the UK.

After reviewing patterns of alcohol consumption, the next two chapters consider the link between alcohol and crime. Chapter 2 analyses a number of important studies which have considered the extent to which offenders drink prior to offending. Chapter 3 then looks at some of the possible ways in which the consumption of alcohol may increase the likelihood of offending and concludes by considering some of the methodological problems that arise in trying to establish a causal link. Drawing on this, Chapter 4 looks at methods of preventing and policing alcohol-related crime and disorder. Chapters 5 and 6 provide a detailed critique of the legal response to alcohol-induced offending. Chapter 5 deals with substantive criminal liability whilst Chapter 6 is concerned with sentencing. Chapter 7 concludes by considering the government's recent strategy for tackling intoxicated crime and by suggesting areas which still need to be addressed.

Drinking habits in the UK

A considerable amount of data on how people in the UK drink has been published recently due to the government's commitment to provide an alcohol harm reduction strategy (Prime Minister's Strategy Unit 2003, 2004). The figures show that the vast majority of British adults, some 90 per cent, choose to drink alcohol (Prime Minister's Strategy Unit 2003: 6).

Those who do drink consume very different amounts, both generally and on specific occasions. Whilst general levels of consumption have always been a matter of interest to policy makers, the amount consumed on one-off occasions has also become a concern of late due to the increasing realisation that 'binge' drinking is a hazardous activity (Bondy and Rehm 1998; Wichstrom 1998), both because of the health risks that it carries and in terms of crime and disorder.

The data on consumption is based on government guidelines for weekly and daily drinking limits which, in turn, are based on units of alcohol. A unit is roughly equivalent to half a pint of ordinary strength beer, a small glass of wine or one measure of spirits (*ibid.*: 10) but this is far from exact as the alcoholic strength of some drinks, for example beer or wine, varies considerably. In 1992 the government recommended that men drink no more than 21 units per week and that women do not exceed 14 units per week. This advice was amended in 1995 to include recommended daily drinking levels. In addition to the limits set out

above, men were advised not to drink more than three or four units per day and women two or three.

Using the criteria outlined above, men who drink up to 21 units a week are classified as low to moderate drinkers as are women who drink up to 14 units. Men who drink between 21 and 50 units a week and women who drink between 14 and 35 units a week are classified as moderate to heavy drinkers. Finally, men drinking in excess of 50 units and women drinking in excess of 35 units per week are classified as very heavy drinkers.

The government also adopt a unit-based approach to classify 'binge' drinking. Drinking at least double the daily guidelines – six units for women and eight for men – is classified as 'binge' drinking (Prime Minister's Strategy Unit 2003: 11). It was recognised that this definition was somewhat arbitrary and that 'binge' drinking is a problematic concept:

[Binge] drinking is a debated term. Since alcohol will affect different people in different ways, there is no fixed relationship between the amount drunk and its consequences. So although many people understand 'bingeing' to mean deliberately drinking to excess, or drinking to get drunk, not everyone drinking over 6/8 units in a single day will fit this category. Similarly, many people who *are* drinking to get drunk, will drink far in excess of the 6/8 units in the unit-based definition. (ibid.: 11)

Using these classifications, the majority of British adults who use alcohol are low to moderate users. However, it is estimated that 6.4 million adults are moderate to heavy drinkers and an additional 1.8 million adults are classified as very heavy drinkers (ibid.: 12). On top of this, an estimated 5.9 million adults had been 'binge' drinking in the past week. So, despite the fact that most people drink within sensible limits, a significant minority of British adults drink in excess of both the suggested weekly and daily amount.

The statistics suggest that frequency of drinking varies according to income (Office of National Statistics 2004: Table 9.7). Fifty per cent of individuals (59 per cent of men, 45 per cent of women) with a gross weekly household income of less than £200 per week had drunk in the previous week compared to 81 per cent of people with household incomes of more than £1,000 a week (85 per cent of men, 76 per cent of women). Similarly 13 per cent of people who earned less than £200 a week (17 per cent of men, 10 per cent of women) drank on five or more days in the last week compared to 26 per cent of people (30 per cent of men, 21 per cent of women) with an income in excess of £1,000 per week.

This pattern is less marked with regards to 'binge' drinking. Those in the lowest income bracket (less than £200 per week) remain the group

least likely to 'binge' drink regardless of gender (ibid.: Table 9.7) whilst the highest incidence of 'binge' drinking for both men and women is found in the top income brackets (ibid.: Table 9.7).

When the net is widened to include those who do not work, the proportion of 'binge' drinkers unsurprisingly reduces: 23 per cent of British men and 9 per cent of British women had done so on at least one occasion in the past week according to 2003 data (Office for National Statistics 2003). These figures hide notable national and regional variations. Scottish men were more likely to 'binge' drink than the British average (26 per cent as opposed to 23 per cent) and Scottish and Welsh women were slightly more likely to do so as well (10 per cent as opposed to 9 per cent). Within England, London had the lowest 'binge' drinking rates for both men (18 per cent) and women (5 per cent) whilst the Northwest and Yorkshire and the Humber had the highest rates for both men (28 per cent) and women (13 per cent). The next two sections will consider gender differences in more detail.

Drinking and women

Writing in 1902, Charles Booth was clear about why drinking had increased (though he offered no evidence to substantiate either the claim or the explanation):

The increase in drinking is to be laid mainly to the account of the female sex. This latter phase seems to be one of the unexpected results of the emancipation of woman. On the one hand she has become more independent of man, industrially and financially, and on the other more of a comrade than before, and in neither capacity does she feel any shame at entering a public house. (cited in Waterson 1996: 176)

This statement is illuminating in two respects. Firstly it is an early example of a commonly held, chauvinist view of drinking – here the pub implicitly was the man's domain. Research suggests that male and female drinking are still perceived differently (Ettorre 1997). Drinking is seen as part of the male construct but contrary to standard notions of feminine behaviour. Women are thus stigmatised if they drink at home as this conflicts with widely held beliefs about female family responsibilities (Waterson 1996). Drunken, aggressive behaviour is deemed 'unfeminine' and is therefore seen as especially troubling when the aggressor is female (Robbins and Martin 1993). It is no coincidence that females who act in this way are popularly referred to as 'ladettes'.

This body of research reaches similar conclusions to feminist research in criminology which has found that female offenders are perceived to be 'doubly deviant': not only do they breach commonly accepted

standards of behaviour, but their behaviour conflicts with gender stereotypes as well (Heidensohn 1985; Walklate 1995).

Booth also alleged that female drinking had increased by the early 1900s due to a combination of greater financial independence and a change in perceived gender roles. The link between greater female financial independence and alcohol consumption has been made again more recently.

Data suggests that women still drink considerably less than men (Office for National Statistics 2004; on female drinking see generally Breeze 1985; Department of Health and Royal College of General Practitioners 1992; Institute of Alcohol Studies 2005a; McConville 1995; Plant 1990, 1997). Women are both more likely not to drink than men (Lader and Meltzer 2002) and are less likely to drink above sensible limits (Waterson 1996: 171). At the same time, the average female drinker is drinking more than a decade ago whilst rates of heavy drinking by females are slowly rising (*ibid.*: 171). In 1988, 10 per cent of women were drinking in excess of the recommended 14 units per week. By 2002 this had risen to 17 per cent of women (Office for National Statistics 2004). Three per cent of women were drinking in excess of 35 units of alcohol per week, a level that can be classified as dangerous (*ibid.*: Table 9.12). There are marked regional variations in female drinking patterns: Scottish women are more likely to 'binge' drink than English women, but are less likely to exceed the recommended weekly limit (*ibid.*: Table 9.10). To what extent this difference can be explained on economic grounds and to what extent it is due to cultural and social differences is difficult to ascertain.

If one moves away from the data on 'binge' drinking to consider instead aggregate levels of consumption, women who drink heavily do not generally conform to the popular 'ladette' stereotype:

[Heavier] women drinkers have a high income, live in a professional/managerial household, probably work (particularly in an occupation associated with heavy drinking), move in a social milieu where heavy drinking is a shared norm, have leisure pursuits which involve drinking and are less likely to be influenced by any health norms about restricted drinking. (Waterson 1996: 183)

According to data from the Office for National Statistics (2004), women from managerial/professional households were both more likely to drink regularly and to drink more frequently than women from routine/manual households: 71 per cent of women from professional households had drunk alcohol in the last week and 18 per cent had drunk on five or more days that week compared to the 51 per cent of women from unskilled households who had drunk in the past week and the 9 per cent who had drunk on five or more days.

Age is also a significant factor in female drinking patterns. Women aged between 16 and 24 are more likely to 'binge' drink than older women – 28 per cent of women aged 16 to 24 had drunk over six units on at least one day in the previous week (ibid.: Table 9.3). This, in tandem with gendered stereotypes about 'acceptable' drinking behaviour (Ettorre 1997; Neve *et al.* 1997; Robbins and Martin 1993), may well give rise to the misleading perception that heavy female drinking is associated with a 'ladette' lifestyle.

Drinking and men

Unlike female drinking trends, alcohol consumption by adult males has remained reasonably constant since the early 1990s (Office for National Statistics 2003). Although, as men are still considerably more likely than women to drink excessively, it is important that the rise in female consumption does not disguise the fact that male problem drinking remains a significant issue (Alcohol Concern 2005).

In common with women, patterns of consumption vary markedly according to age. Younger men drink considerably more than older men (Harnett *et al.* 2000; Office for National Statistics 2004). There has, however, been a noticeable fall in heavy drinking by men aged between 16 and 24 between 1988 and 2002, despite the aggregate trend for men remaining constant (Office for National Statistics 2004: Table 9.2).

Despite the fact that consumption by men has remained constant while female consumption has increased, there are a number of similarities between male and female drinking patterns. As is the case with female drinkers, men in managerial or professional occupations consume more alcohol than those who have routine/manual occupations (Alcohol Concern 2005), though the discrepancy is not as marked as it is with females. Again in common with females, men who work in managerial or professional occupations drink more frequently than those in routine/manual occupations (Office for National Statistics 2004: Table 9.5). 'Binge' drinking is more common amongst those in routine/manual occupations, which may explain why those in lower socio-economic groups are significantly more likely to suffer from a range of alcohol-related harms (Harrison and Gardiner 1999; Makela 1999; Thom and Francome 2001).

Thom and Francome (2001) have found that there are a number of common predictors of alcohol misuse, crime and other risk-taking behaviour in men. These predictors include a disrupted family background, poor social skills, educational problems, having a risk-seeking personality, involvement with 'delinquents' and 'macho' cultural norms about drinking and subsequent behaviour (see also Andreasson *et al.* 1992; Neve *et al.* 1997).

Recently a considerable body of research has focussed on the values and practices which are commonly associated with 'masculine' behav-

our (see e.g. Bowker 1998; Collier 1998; Connell 1995; Jefferson 1997; Messerschmidt 1993). There is an awareness that there are a variety of diverse forms of masculinity, and that each form displays different values and practices; some masculine identities, for example, engage in more criminality than others (Bowker 1998). Messerschmidt (1993) has argued that race and class interact with masculinity in that behaviour is justified with reference to norms within that race, class and gender. To some men, criminal activity would conform to their expectations of masculinity whilst, for others, such behaviour would be seen as unacceptable. Similarly, other forms of behaviour, such as 'binge' drinking, would be acceptable to some groups of men but not to others. Hobbs *et al.* (2003) have argued that some men who lack power in society may compensate for this by indulging in other activities, such as crime and excessive drinking, which increase their feelings of masculinity. Yet this behaviour would not be acceptable to all marginalised groups of men. For example, men from ethnic minority groups where abstinence is prized would be likely to find other forms of compensatory behaviour (see generally O'Donnell and Sharpe 2000). The next section considers drinking and ethnicity further.

Drinking and ethnicity

Rates of alcohol consumption vary considerably amongst different ethnic groups in the UK. Nazroo (1997) found that most ethnic minority groups reported far higher rates of abstinence than average: 40 per cent of the Chinese sample, 60 per cent of the Indian sample and more than 90 per cent of the Pakistani sample did not drink alcohol. Those with strong religious beliefs are most likely to abstain (Heim *et al.* 2004). As well as reporting higher rates of abstinence, studies have shown that members of ethnic minority groups who do drink tend to drink less than the British average (Erens *et al.* 2001; Heim *et al.* 2004; National Centre for Social Research and Department of Epidemiology and Public Health at the Royal Free and University College Medical School 2001; Purser *et al.* 1999).

There are also marked differences in alcohol consumption between drinkers from different ethnic minority groups. Although generally drinkers from ethnic minorities consume less alcohol than average (Cochrane and Howell 1995; Erens *et al.* 2001), Afro-Caribbean drinkers appear less likely to misuse alcohol than some South Asian drinkers (McKeigue and Karmi 1993; Wanigaratne *et al.* 2001). It has also been reported that, although comparative rates of consumption remain lower, there have been increases in alcohol consumption by ethnic minority young people in recent years (Denscombe and Drucquer 1997).

Researchers have warned that there are particular difficulties associated with measuring alcohol use amongst ethnic minority populations

(Subhra 2002; Wanigaratne *et al.* 2001). Many studies have limited samples which may be geographically-specific, making it potentially misleading to try and draw general conclusions (Subhra 2002). There is also the problem that members of ethnic minority groups may be unwilling to disclose alcohol use due to their religious beliefs or due to a sense of having shamed their family (Heim *et al.* 2004). Nonetheless, even allowing for these methodological difficulties, it would appear safe to conclude that most ethnic minority groups consume less alcohol than average.

Drinking and young people

It has already been mentioned with regard to both men and women that drinking patterns vary greatly according to age. This section considers alcohol use by young people in the UK. Before doing so, however, it is necessary to consider the legal framework for drinking. Although drinking is common amongst teenagers, and hardly exceptional amongst those younger, the law supposedly restricts the sale of alcohol to those below a certain age. The age is context-specific.

Save in the case of sickness or on prescription, it is an offence to give alcohol to a child under five years of age (Child and Young Persons Act 1933, s.5). Above the age of five there are a variety of offences designed to deal with particular issues. The Licensing Act 2003, not all of which is yet in force, is designed in part to simplify what is a confusing licensing system in England and Wales. Before the Act comes into force, the main offences were to be found in different statutes, most notably the Licensing Act 1964 and the Licensing (Young Persons) Act 2000.

The Licensing Act 2003 provides a number of offences relating to underage drinking. Section 146 makes it an offence for a person to sell alcohol to a person under 18. It is also an offence to knowingly allow the sale of alcohol to an individual under 18 if the individual works in a capacity that authorises him to prevent the sale (s.147).

An offence is also committed by someone under 18 who buys or attempts to buy alcohol in licensed premises (s.149) – unless the individual does so at the request of a police officer or a weights and measures inspector acting in the course of his duty. Additionally, there is an offence of buying or attempting to buy alcohol on behalf of an individual aged under 18 (s.149(3)) unless the purchaser is 18 or over, the drink was bought for a 16 or 17 year old, the alcohol is beer, wine or cider and it is purchased for drinking with a meal. An individual under 18 also commits an offence if he knowingly consumes alcohol on licensed premises (s.150) unless it is consumed with a meal and the conditions outlined in s.150(4) apply.

Provided that alcohol is not given to a child under 5, an adult commits no offence by supplying a young person with alcohol in the confines of

the home. The legislation is primarily designed to regulate licensed premises. Similarly a young person will commit no offence just by drinking alcohol, though there are, of course, offences related to drunkenness with which they could be charged. However, this general position coexists with provisions in the Confiscation of Alcohol (Young Persons) Act 1997 which made it an offence for someone under 18 in a public place, or some other place to which he has gained unlawful access, to fail to surrender alcohol to a police officer without reasonable excuse. The Act does not make it an offence for a young person to drink alcohol in a public place (unless specific restrictions apply; see Chapter 4) – the offence is triggered by the failure to hand over alcohol – yet, in practice, the Act clearly is aimed at restricting drinking in public by those aged under 18.

Despite having a legal framework designed to restrict drinking by young people, research shows that many young people in the UK drink (Harrington 2000; Honess *et al.* 2000; Newburn and Shiner 2001). The data also suggests that young people are drinking more than they did a decade ago. Clearly there is need for empirical research into the effectiveness of current law enforcement strategies designed to curb underage drinking (Hafemeister and Jackson 2004). Goddard and Higgins (1999) report that, on average, 11–15 year olds drank 0.8 units of alcohol per week in 1990 but that this had doubled to 1.6 units per week by 1998 (although it is worth bearing in mind that this is still less than a pint of average strength beer or lager). Of far more concern is the apparent rise in ‘binge’ drinking among young people. Hibell *et al.* (2000) found that the proportion of 15–16 year old people who ‘binge’ drink had increased from 22 per cent in 1995 to 30 per cent in 1999.

A large study funded by the Rowntree Foundation, which drew on a sample of more than 14,000 secondary school students in England, Wales and Scotland, found that a small minority of pre-teen children drank regularly. Nine per cent of 11 and 12 year old boys and 5 per cent of 11 and 12 year old girls classified themselves as ‘regular drinkers’ (Beinart *et al.* 2002). With 15 and 16 year old students, the percentages rose to 39 per cent of boys and 33 per cent of girls. Fifty-nine per cent of boys and 54 per cent of girls aged 15 or 16 claimed to have taken part in ‘binge’ drinking in the previous month. The significant rise in consumption since 1990 by 11–15 year olds, particularly amongst girls, has coincided with the introduction onto the market of ‘alcopops’ (Becher *et al.* 2001), which has led the British Medical Association (2004) to call for more research into whether the introduction of ‘alcopops’ has encouraged more young people to start drinking, whether ‘alcopops’ have led to an increase in consumption and whether ‘alcopops’ act as a gateway to more traditional alcoholic drinks.

As with adults, rates of consumption by young people vary across the country. In one study (Anderson and Plant 1996), it was found, for