

Ross Homel

# Policing and Punishing the Drinking Driver

A Study of General and  
Specific Deterrence



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*A Study of General and Specific Deterrence*

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Ross Homel  
School of Behavioural Sciences, Macquarie University, Sydney, New South Wales  
2109, Australia

*Series Editors*

Alfred Blumstein  
School of Urban and Public Affairs, Carnegie-Mellon University, Pittsburgh,  
Pennsylvania 15213, USA

David P. Farrington  
Institute of Criminology, University of Cambridge, Cambridge CB3 9DT, England

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# Preface

At one level this book is about the impact of specific drinking-driving countermeasures (random breath testing and punishments imposed by courts on convicted offenders) in a particular place (New South Wales, Australia) at two particular times (1983 and 1972). At another level, however, the research reported herein is concerned with general questions of *deterrence*, with the impact of the criminal justice system on the perceptions and behaviors of a broad cross-section of the population. In contrast to much of the research in the drink-drive field, the research questions are concerned with the psychological and sociological processes whereby behavior is altered in the short term as the result of a massive legal intervention or the routine imposition of legal punishments.

The main significance of the research probably lies, therefore, not in the detailed empirical findings for New South Wales (important as I believe these are), but in the construction of a theoretical framework and research design that allow the casual chains linking legal punishments with short-term behavior changes to be identified and the critical links to be quantified. It is my hope that another researcher could take this theoretical model and research design and apply them, with appropriate modifications, to the effects of, for example, a sudden, publicized change in the law in their own jurisdiction. However, it is unlikely that the kind of research described in this book will be carried out every time something like random breath testing (RBT) is introduced. For one thing it is expensive, since it entails (ideally) longitudinal surveys, and for another it may be seen by some pragmatic officials as unnecessarily complex and theoretical. In many instances traffic crash statistics, which are routinely collected and, therefore, do not constitute a major research cost, will provide data sufficient to enlighten all the important policy decisions. Nevertheless, for those in the field who have wondered just how law enforcement influences the perceptions and behaviors of the target population, or who have struggled with the design of a publicity campaign designed with the intention to reduce alcohol-related traffic accidents, there may be a few leads in this book and some ideas for future research.

Much of the material contained in this book has appeared previously only in technical report format. The research results are the product of about 10 years of work and reflect in part the requirements of a PhD which somehow got done along the way. The book bears the marks of the thesis, since it has a monograph structure with a tight focus on the issue of deterrence and its ramifications. Following Australian practice, but in contrast to common American usage, I have avoided the terms “drunk-driver” and “drunken driver,” preferring instead “drinking driver” or “drink-driver” (together with “drink-drive” and “drink-driving”). The reasons for this preference, which relate to the ways in which the problem is perceived and socially constructed, are explained in Chapter 1. Moreover, as a matter of style, I have adopted the policy of using the masculine form when referring to the drinking driver. This is not due to any antifeminist bias (quite the contrary), but to the fact that (at least in Australia) about 85% of drinking drivers on the road are men, and 95% of all convicted offenders are men. The use of the masculine form serves as a reminder that drink-driving, like most other social problems, can be blamed mainly on males.

The studies were supported financially by the NSW Drug and Alcohol Authority, by Australian National Opinion Polls (ANOP), and by the Federal Office of Road Safety, Australian Department of Transport. I would like to thank Bruce Flaherty of the Authority and Carol Boughton of the Federal Office of Road Safety (FORS) for their encouragement. Obviously, however, the opinions and conclusions expressed in this book are my own and do not necessarily reflect those of the FORS or the Drug and Alcohol Authority. Special thanks are also due to Les Winton of ANOP, who donated resources to cover the shortfall in funds for the first RBT survey. Without Les’ support and expert advice, the study could never have been undertaken. Needless to say, the questionnaires and research design are entirely my responsibility.

Apart from the funding agencies, I have been greatly assisted in the research by a large number of people too numerous to thank individually. The advice and criticism of Jeanette Lawrence, Laurence Ross, and Jacqui Goodnow in particular have been invaluable in helping me to get my thinking straight. Andrew Schachtel, June Crawford, Dale Berger, and Peter Homel greatly assisted by proofreading and commenting on versions of the manuscript. Kathie Smith provided valuable advice and assistance in the preparation of diagrams. Paul Ward originally suggested to me the idea of using canonical correlation methods in an analysis of sentencing. I acknowledge with gratitude his contribution to the development of the index of perceived penalty severity in Chapter 7.

The RBT advertisement in Figure 4.1 is reprinted by the kind permission of John Bevins Pty. Limited and the NSW Department of Motor Transport. Extensive material from a report by the author on random breath testing in New South Wales has been reused in this book by

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Finally, I owe an enormous debt to my families, both nuclear and extended. My wife Beverley suffered nobly through the completion of a project that seemed simple to start with, but became (as she predicted) a marathon to complete. My children, who were really too young to understand, also suffered many weeks without Daddy as the manuscript was typed and revised many times.

I have dedicated this work to my nephew, who died on his motorcycle as this book was being born.

New South Wales, Australia

Ross Homel

# Introduction

This book is concerned with the impact of the criminal justice system on the behavior of drinking drivers and potential drinking drivers. Specifically, the book is about *deterrence*.

Deterrence is at the heart of the criminal law (Morris, cited in Zimring and Hawkins, 1973), and the criminal law is the primary tool for road accident prevention. The theory of deterrence through criminal law enforcement has determined the major system of public responsibility for road safety in the United States and in countries with a similar cultural heritage, like Australia (Gusfield, 1981b). The major objective of this study is to test the claims for the deterrent effectiveness of two aspects of the criminal justice system by investigating the processes whereby deterrence may take place. The aspects of the criminal justice system which are the focus of attention are, first, the enforcement of drink-drive law by police using what is known in Australia as random breath testing (RBT), and second, the punishments routinely imposed by magistrates (judges) on convicted drinking drivers. The theoretical focus is *the process of deterrence*—the ways in which RBT or punishments succeed or do not succeed in influencing the drinking and driving behaviors of motorists. This book contains the results of two empirical studies, one concerned with *general deterrence* (how RBT in New South Wales deters potential offenders), and one concerned with *marginal specific deterrence* (the study of whether heavy penalties imposed on convicted offenders in New South Wales are better deterrents than light penalties).

## Deterring the Drinking Driver

### The Value of Studying Drinking and Driving

The research in many ways is the result of an attempt to follow the agenda set by Zimring and Hawkins (1973) and by Andenaes (1974) in their pioneering studies of deterrence. Zimring and Hawkins suggest four



criteria for determining research priorities in the field of crime control: the social importance of the problem to be studied, the social benefits that could flow from correct hypotheses about the deterrence process, the amenability of the issue to reliable assessment, and the significance of the issue to deterrence theory as a whole. They assert that the problem of the drink-driver "scores close to the top on all four of our criteria for according research priority" (p. 345). That there has not been more research of the type described in this book is perhaps due to the common perception of drinking and driving as "junk crime"—routine and ordinary (Ross, 1984a, p. 24). Moreover, as Ross observes, the strongly applied focus of much of the literature and its relative inaccessibility in the form of narrowly circulated government reports may have encouraged the gatekeepers of the sociological literature to overlook it or to dismiss it as of no theoretical consequence.

Apart from the social and theoretical importance of the problem, one of the chief advantages of drink-driving over other offenses as a vehicle for research is the ready availability of data. The incidence of the offense is validly and cheaply indexed by publicly available accident statistics. Extensive statistics on police and court enforcement practices are frequently collected as a matter of routine practice and are made available free of the restrictions which sometimes attend the release of information on more serious offenses. Likewise in surveys, respondents will probably be more willing to discuss their drinking and driving practices than, for example, their recent attempts to burgle neighboring houses or to injure their spouse in a domestic brawl.

A further very significant advantage of studying drinking and driving is that sudden, publicized changes in law enforcement methods occur from time to time, making it possible to use quasi-experimental techniques to evaluate the impact of the change (Ross & McCleary, 1983). Random breath testing in New South Wales was introduced in this way. However, the design of the present study differs from the designs commonly employed in quasi-experimental research, in that the emphasis is on the social and psychological *processes* involved in deterrence, rather than on an analysis of fluctuations in crash statistics.

### Deficiencies in Previous Research on the Deterrence of the Drinking Driver

There are a number of deficiencies in existing research on the deterrence of drink-driving. Although often of very high quality, the research on the general deterrent impact of innovations in drink-drive law and its enforcement has generally not attempted to trace the assumed causal chain linking objective legal activities with drink-driving behavior. In other words, the process of deterrence has not been examined explicitly, and deterrent

effects have been inferred from variations in crash statistics. For example, it has often been argued without direct evidence that declines in traffic crash rates coincident with changes in the law have been caused by increases in subjective arrest probabilities (Ross, 1982). A specific objective of the present study is to remedy this defect by measuring perceived arrest certainty, and relating it to other elements in the assumed causal chain.

The research on the specific deterrent effects of penalties has likewise failed to pay sufficient attention to perceptual variables, since the perceived severities of the punishments inflicted on convicted offenders have seldom been measured. This omission is surprising, given that perceived severity is at the heart of the concept of specific deterrence (Brody, 1976; Gibbs, 1979). Consequently, a major objective of the penalties research reported in Chapters 7 and 8 was to develop a measure of perceived severity of penalties among convicted offenders. However, unlike the study of RBT, which is based on interviews with motorists, the penalties study was restricted to official statistics, so the measure of perceived penalty severity is indirect.

A further deficiency of the literature on penalties is that effects have usually been analyzed as if all offenders were the same. Although the need to investigate the possibility of differential deterrability has often been recognized (Brody, 1976), in practice few researchers have tested for interactions between penalties and offender characteristics, and even fewer have attempted to interpret their results in terms of a typology of offenders. Therefore, another major objective of the research was to develop from the penalties data an offender typology which integrated the information on offender characteristics and reactions to penalties, thus laying the foundation for an understanding of why some offenders may be deterred by certain penalties while others remain relatively unaffected.

In summary, the emphasis in this book is on understanding the deterrence process. The study of the causal chain which is assumed on theoretical grounds to link police RBT activity with drink-drive behavior is one way of studying the process of general deterrence. Similarly the focus on perceived severity of penalties and the development of an offender typology are ways of improving the understanding of how offenders react to punishment and how deterrent potential may vary between offender subgroups. In these respects the studies reported in this book go beyond previous research.

## The Deterrence Model

To study the deterrence process, it is necessary to develop a model of how the deterrence of the drinking driver is supposed to take place, and to make explicit the causal sequence linking law enforcement with drinking and driving behavior. Such a model, developed from the general literature

on deterrence and from the drink-drive literature, is explained in general form in Chapter 2, and then applied to the RBT study (Fig. 2.2) and to the penalties study (Fig. 2.3). This model is the basis for the analyses reported in Chapter 6 (RBT) and Chapter 8 (penalties). The major purpose of the data analyses is to test the adequacy of the deterrence model as a description of the impact over a 3-year period of severe compared with less severe punishments, and its adequacy as a description of the impact of RBT within 4 months after its introduction.

A fundamental assumption of the model is that general and specific deterrence are one and the same phenomenon, and that it is appropriate to consider them together within a single theoretical framework. As Zimring and Hawkins (1973) observe, specific deterrence is really a special effort to make individuals more sensitive to general deterrence. For Walker (1979), the only difference between the two processes is that one depends on memory and the other on imagination. At the level of theory this statement is fairly accurate, but complications arise when nondeterrent properties of punishment are considered (for example, the sense of injustice). Moreover, because two different populations are involved (potential offenders and those who have been convicted and punished), studies of general and marginal specific deterrence require rather different research designs. Nevertheless, in outlining a model of the deterrence process, it seems appropriate to encompass both phenomena within the same general framework.

If drink-drivers, whether convicted or not, stop committing the offense because they fear legal punishments, they may be said to have been deterred. This phenomenon is often referred to as *simple deterrence*, to distinguish it from more subtle and long-term effects of legal sanctions (Ross, 1982). Simple deterrence is the focus of the present research. Nevertheless, the studies of Gusfield (1981a, 1981b) and Norström (1981) remind us of the broad social context within which drink-drive laws operate and of the many ways in which law enforcement may affect drink-drive behavior in the short term. A very real possibility is that legal innovations like RBT may make it easier for some people to resist peer pressure to drink, thereby reducing the level of drinking and driving by a mechanism other than fear of punishment. This possibility is allowed for in the model and is tested in the RBT study.

Many other subtle variations in the model are considered, particularly with respect to the effects of sociodemographic variables such as age, sex, and alcohol consumption. However, the model does not specify in any detail the ways groups may differ in the extent to which they are deterable. There is simply not enough known about the causes of drink-driving or the composition of the drink-drive population to allow such theoretical specification. The typology of offenders, developed from the data of the penalties study, is designed to facilitate theoretical developments of this kind.

## A Summary of the Research Objectives

The major objectives of the study are:

1. to assess the evidence for the general deterrent effectiveness of RBT in New South Wales, and the evidence for the marginal specific deterrent effectiveness of penalties imposed on convicted offenders, by developing from the literature a general model of the deterrence process and testing it against the data; and
2. to develop from the penalties data a typology which identifies the kinds of convicted offenders for whom legal punishments may be expected to have greater or lesser deterrent effects.

The study addresses three weak points in the literature on the deterrence of the drinking driver:

1. the failure to study in detail the nature of the causal mechanisms linking police enforcement of drink-drive law with drinking and driving behaviors;
2. the failure to focus on the severity of penalties as perceived by offenders experiencing the punishment; and
3. the failure to develop a typology of the convicted drinking driver adequate as a framework for the study of specific deterrent effects.

## The Research Designs

Although addressed to the same fundamental question (do people reduce or curtail their drinking and driving in response to the perceived risk and fear of legal punishments?), the different populations referred to in the general deterrence hypothesis and in the marginal specific deterrence hypothesis necessitate rather different research designs.

The RBT study is based on interviews with randomly selected residents of New South Wales. The study was conducted in two stages. The first stage (February 1983) involved a sample of 400 Sydney residents, and was conducted 10 weeks after the introduction of RBT (December 17, 1982). The second stage (April 1983) involved 200 Sydney residents and 400 residents in other parts of New South Wales, and was conducted 6 weeks after the first stage. In addition, in the second stage 185 drinking license holders from the first stage were re-interviewed, making the study longitudinal, and towns and cities outside Sydney were selected so as to ensure maximum variation in intensity of enforcement of RBT over the Easter period. Interviews in both surveys included questions on perceptions of sanctions, exposure to RBT, and behavioral responses to RBT.

The study of penalties reported in this book is limited to the use of data available in official records. However, a method of sampling was devised, described in detail in Chapter 7, which allowed a measure of the relative severity of the penalty. Offender/offense and penalty variables available

for all 15,054 PCA (prescribed concentration of alcohol) offenders convicted in New South Wales in 1972 were entered into a canonical correlation analysis, and measures of *entitlement for punishment* and *severity of penalty* were constructed. The basic idea was that the offenders for whom the severity score was markedly higher than predicted from the entitlement score could be assumed to evaluate their penalty as being tough.

The method is based on the assumption that offenders form an idea of the penalty which they can expect, and that the severity of the expected penalty can be estimated statistically on the basis of the average behavior of all magistrates toward offenders with a given set of characteristics (blood alcohol concentration, previous convictions, and so on). Evidence for this proposition is presented in Chapters 2 and 7. Although offenders may regard a just penalty as one which has a calculable relationship with the gravity of the offense (measured, perhaps, by blood alcohol concentration), they are also aware, by and large, that magistrates take into account other aspects of the case (such as previous convictions and things like age). Therefore, the inclusion of these kinds of variables in the statistical analysis seems justified.

A sample of 1,000 offenders was selected from the population of 15,054 offenders convicted in 1972, using the framework described above, and reconvictions over 3 years for drink-drive, criminal, or traffic offenses recorded. The analysis of the relationship between penalties and reconviction rates was carried out in terms of the measure of perceived severity of penalty and also in terms of the actual penalties imposed. The marginal impact of penalties is summarized in the offender typology.

## Overview of the Chapters

Chapter 1 sets the scene for the whole study. It is focused on ways of researching the interaction between the criminal justice system and the drinking driver, and on the social and cultural context of drinking and driving. An important question considered in this chapter is the identity of the drinking driver. Discussion of this question helps set the context for the deterrence analyses and for the offender typology developed in Chapter 8. This discussion also entails a consideration of the role of young men in drinking and driving, and prepares the way for an examination of whether they are more or less deterrable than other groups, a consistent subtheme of the data analyses.

Chapter 2 contains a description of the deterrence model and how it can be applied to the study of RBT and to the study of penalties imposed on convicted offenders. The model is related to the theoretical literature on deterrence, and an attempt is made to go beyond utility theory as a description of how the decision to drink and drive may take place.

Empirical research on deterrence is reviewed in Chapter 3, with particu-

lar emphasis being placed on drink-drive research, reconviction studies, and studies which have employed perceptual measures. The aim of the literature review is not so much to cover exhaustively all extant studies (although the coverage should be fairly complete), but rather to identify the major unanswered questions as well as the most troublesome methodological problems. A description of random breath testing as it operates in Australia, and especially in New South Wales, together with a review of the literature on the effectiveness of RBT, are reserved until Chapter 4. This chapter also contains some general information on how drink-drive law is enforced in Australia. This information should be particularly useful to non-Australian readers who wish to understand the results of the empirical research reported in this book.

Chapter 5 contains the research questions for the RBT study, as well as the research methods. It is paralleled by Chapter 7, which serves the same purpose for the penalties study. Results of the evaluation of the impact of RBT in New South Wales are reported in Chapter 6, using a model of the deterrence process developed in Chapter 2 as the framework for the analysis. Selected aspects of the study of penalties are in Chapter 8, with a particular focus on the surrogate measure of perceived penalty severity and the typology of offenders.

In Chapter 9 the implications for the deterrence model of the results of the analyses are considered and directions for future research discussed. The chapter includes a brief examination of the policy implications of the study. These policy issues are foreshadowed in Chapter 1, and bear on the principles of sentencing, police enforcement procedures, the effects of severe penalties, the appropriateness of particularly punitive measures directed at young men, and the role of publicity in enforcement. The chapter concludes with a discussion of the behavioral impact of law and the value of deterrence-based policies.

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# 1

## Drinking Drivers and the Criminal Justice System

In all developed countries, the criminal justice system is assigned a key role in the fight against drinking and driving. The problem is construed not as one of car design (constructing a crash-proof vehicle), or of the regulation of big business (reconciling profits from the sale of alcohol with public safety), or as one of the roadside environment (making it more forgiving of the inebriated motorist). Responsibility is placed squarely on the shoulders of the individual driver. If he cannot be educated or persuaded to separate drinking and driving, then reliance must be placed on the heavy hand of the law to deter, or in the case of the convicted offender, to punish and incapacitate as well. Therefore, to speak of *drink-drive countermeasures* as they currently operate is, by and large, equivalent to discussing the operation of the police, courts, licensing agencies, and prisons. This is particularly the case in Australia, which has a greater commitment to mass breath testing of motorists than almost any other Western nation.

A major purpose of this book is to report the evaluation of the effectiveness of some of the tough legal measures adopted in New South Wales to deter the drinking driver. Specifically, the focus is on the general deterrent effectiveness of random breath testing (RBT) and on the marginal specific deterrent effectiveness of severe versus lenient penalties imposed on convicted offenders. Random breath testing is a particularly important legal measure to evaluate, since it gives police power to carry out preliminary breath tests on randomly selected groups of motorists at arbitrarily selected checkpoints, regardless of whether those motorists have committed an offense.

This chapter is designed to provide a framework both for the theoretical model of the deterrence process proposed in Chapter 2, and for the data analyses in Chapters 6 and 8. In the first section of this chapter, ways of studying the interaction of drinking drivers with the police and the courts are examined briefly. The traditional approach (the approach adopted in this study) is to focus on the impact of the criminal justice system on the behavior of offenders and potential offenders. The second approach, which is usually called *interactionist*, is to focus on the definition of drinking and