

# *How Effective is Deterrence in Crime & Motoring Offences?*



*Even though this article makes some reference to crime generally, its primary aim is to consider deterrence in motoring offences. Deterrence is one of the major areas of punishment prescribed by legislation and is a prominent feature of many criminal justice interventions designed to curtail criminal behaviour. Included in this article are the following:*

*Does Punishment fit the Crime?*

- ✓ *The Offender Deserves it!*
- ✓ *Deterrence Theory*
- ✓ *General & Specific Deterrence*
- ✓ *Deterrence & Incapacitation*
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*Harrington  
Driver  
Training  
Services*

# How Effective is Deterrence in Crime & Motoring Offences?

Tom Harrington LL B F Inst. MTD (February 2020)

*“.....in examining the pains of imprisonment as they exist today, it is imperative that we go beyond the fact that severe bodily suffering has long since disappeared as a significant aspect of the custodians’ regime, leaving behind a residue of apparently less acute hurts such as the loss of liberty, the deprivation of goods and services, the frustration of sexual desire, and so on. These deprivations or frustrations of the modern prison may indeed be the acceptable or unavoidable implications of imprisonment, but we must recognise the fact that they can be just as painful as the physical maltreatment which they have replaced. [...] Such attacks on the psychological level are less easily seen than a sadistic beating, a pair of shackles on the floor, or the caged man on a treadmill, but the destruction of the psyche is no less fearful than bodily affliction”. (Sykes 1958: 64) <sup>1</sup>*

## Introduction

In December 2017, A Thai man named Phudit Kittitradilok was convicted of swindling 2,400 people out of 574 million baht (£13 million) in a Ponzi scheme that promised high return investments. He was sentenced to a staggering 13,275 years in prison – an amount of time longer than the entire Neolithic era. But in actuality, thanks to Thailand’s penal code that limits prison sentences, Kittitradilok will end up serving only 20 years. Still, there’s something about the idea of a long prison sentence that gives the impression that justice is being served. And while Kittitradilok’s case was mostly optics, plenty of people around the world really do spend their whole lives behind bars. When a lawbreaker is apprehended, prosecuted and taken to court and when the judge hands down a prison sentence, there are four main criteria that make up the decision:

- **Retribution** – punishing the person for doing something wrong.
- **Rehabilitation** – correcting problematic behaviour.
- **Safety** – keeping threats out of the community and
- **Deterrence** – making sure, both they, and others, are scared off of breaking the law in the future.

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<sup>1</sup> Dr. Ben Crewe. Institute of Criminology, University of Cambridge, UK. *Sykes and ‘The Pains of Imprisonment’* (Sykes 1958:64)

Also, judges have to balance many other factors when making sentencing decisions, generally encompassing the protection of the public, the seriousness of the offence and the personal circumstances of the offender. The personal circumstances of the offender could be that he is married with children. The effect of a sentence or other judicial decisions of people other than the offender are sometimes referred to as “collateral consequences”, “collateral damage” or “third party impact”. There is a wealth of research demonstrating that these decisions can have a significant, even a traumatic impact on the offender’s dependants – especially his children. Have you ever wondered why we legally punish people? There are many possible answers, all under dispute. First, some people favour punishment as a form of deterrence. That is, if I see another member of my community being punished by imprisonment for performing some illegal action e.g. vehicular homicide, dangerous driving or armed robbery, I may think twice about doing the same thing because I don't want to end up in jail. Second, some argue that punishment is justified as an expression of condemnation of the act in question. We as a society punish as a way of saying, in a strong manner, “*We morally disapprove of this action.*” A third justification offered for punishment, closely tied to the second, is that it is a form of moral education. The offender is punished so that he will learn that the action he did was wrong, and then apply this lesson to his life in the future.

### **Does Punishment Prevent Crime?**

Three enduring questions have occupied centuries of scholarship on crime and punishment. Does punishment prevent crime? How does punishment prevent crime? And should punishment be used to prevent crime? In Ireland and the Great Britain, the criminal justice system dispenses justice by apprehending, prosecuting, and punishing individuals who break the law, for example, drunk driving, drug driving, vehicular manslaughter, reckless driving, speeding, breaking and entering etc. These activities may prevent crime by three distinct mechanisms - incapacitation, general deterrence, and specific deterrence. Convicted offenders are sometimes punished with imprisonment. Incapacitation concerns crimes averted by their physical isolation during the period of their incarceration. Deterrence is one of the major areas of punishment prescribed by legislation and is a prominent feature of many criminal justice interventions designed to curtail criminal behaviour. It assumes that crime is a rational decision-making process in which potential offenders weigh the costs and benefits associated with an illegal act. If the anticipated costs are greater than the anticipated rewards, individuals will choose not to engage in the prohibited behaviour.

If there was 100pc certainty of being apprehended for committing a crime - say driving without tax or insurance, speeding etc. - few people would do so. But since many crimes, including serious ones, do not result in an arrest and conviction, the overall deterrent effect of the certainty of punishment is substantially reduced. Clearly, enhancing the severity of punishment will have little impact on people who do not believe they will be apprehended for their actions.<sup>2</sup> Just how effective deterrence is, however, as a strategy to reduce the incidence of crime still remains somewhat unclear. General deterrence and specific deterrence (special) are key concepts in the deterrence literature. General deterrence refers to punishment that discourages members of the public who learn of the sanctions from violating the law. Specific deterrence refers to the effect that punishment has on the criminal behaviour of those who are punished. Punishments associated with specific deterrence may include fines, prison sentences or both and the severity of the punishment typically determines the effectiveness of the deterrence.

### **The Offender Deserves It!**

Some people advocate abolishing the legal punishment system in favour of a system of restitution. The idea would be that rather than putting a dangerous motorist or criminal in jail for a number of years, he would be legally forced to pay restitution to his victims. This may involve something very similar to prison, but the purpose would be to provide him the opportunity to earn money in order to pay solatium to his victim for the loss they suffered because of his crime. There are many objections to the above accounts, nuanced versions of them, and different justifications altogether, but one last purpose of punishment is that offenders deserve to be punished for the crimes they commit. On this view, we may hope that they learn a lesson, or receive a communication of moral disapproval, or that their punishment deters others from committing the same crime again. But ultimately on this account what justifies punishment is that the offender deserves it. Justice requires that he pay, in some sense, for the crime he committed. This raises several deeper questions. How do we explain this standard of justice? Is it merely a function of human society, or is it grounded in something transcendent? And what role might forgiveness play in all of this?

### **Deterrence Theory**

Does punishment prevent crime, if so, how, and to what extent?

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<sup>2</sup> Wright, Valerie Ph D. November 2010. *The Sentencing Project. Deterrence in Criminal Justice. Evaluating Certainty vs. Severity of Punishment/*

Deterrence – the crime prevention effects of the threat of punishment - is a theory of choice in which individuals balance the benefits and costs of crime. In his 2013 essay – “*Deterrence in the 21<sup>st</sup> Century*”, *Daniel S. Nagin* succinctly summarizes the current state of theory and empirical knowledge about deterrence.<sup>3</sup> The essay printed by the US National Institute of Justice (May 2016) found there are five things about deterrence:

- 1) The certainty of being caught is a vastly more powerful deterrent than even the most draconian punishment.
- 2) Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.
- 3) Police deter crime by increasing the perception that criminals will be caught and punished.
- 4) Increasing the severity of punishment does little to deter crime.
- 5) There is no proof that the death penalty deters criminals.

Deterrence or penology theory says the people obey the law because they are scared of getting caught. If you knew you could get away with a crime, like driving without road tax or insurance would you do it? Example: let's say that you want a bar of chocolate but don't have the money for it. Would you take it if you knew you wouldn't get caught? What about a more serious crime – like drunken driving, burglary or murder? Let's go back to the bar of chocolate above. What if you really wanted the chocolate bar, but if you knew you'd probably get caught stealing it, would you be more or less likely to take it than if you knew you could get away with it? Deterrence theory says people don't commit crimes because they are afraid of getting caught instead of being motivated by some deep moral sense. According to the deterrence theory, people are more likely to be dissuaded from committing a crime if the punishment is swift, certain and severe. For example, in the chocolate bar theft, if there is a low likelihood that you'll get caught or if the punishment for getting caught is just a warning, deterrence theory says you'll be more likely to steal it. Remember, that the criteria for successfully deterring criminals and law breakers who disregard the law, is that the punishment be swift, certain<sup>4</sup> and severe.<sup>5</sup>

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<sup>3</sup> Nagin, Daniel S. “*Deterrence in the 21<sup>st</sup> Century in Crime & Justice; A review of Research*”, vol.42: *Crime and Justice in America: 1975-2025*, ed. M. Torny, Chicago Ill. University of Chicago Press, 2013: 199-264

<sup>4</sup> Certainty refers to the likelihood of being caught and punished for the commission of a crime.

<sup>5</sup> Severity refers to the length of the sentence.

For instance, if you're involved in a crash while over the drink driving limit, and you're found to be responsible for another person's death, you could be hit with 14 years in prison, an unlimited fine and a driving ban of at least two years. You will also need to take an extended driving test to get your licence back. Also, the penalties for drug driving include a driving ban of at least one year, an unlimited fine and six months in prison. Clearly, these sanctions should discourage a driver from indulging in drink or drug driving.

### **General & Specific Deterrence**

General and specific deterrence involve possible behavioural responses. General deterrence refers to the crime prevention effects of the threat of punishment whereas specific deterrence concerns the aftermath of the failure of general deterrence - the effect on reoffending, if any, that results from the experience of actually being punished. Specific deterrence is a type of punishment that is meant to discourage future criminal behaviour in a person being charged with a crime for example, specific deterrence is used to prevent an offender from committing the same crime in the future e.g. drunk driving, dangerous driving, assault etc. This person is known as a recidivist offender. Punishments associated with specific deterrence may include fines, prison sentences or both and the severity of the punishment typically determines the effectiveness of the punishment. The definition of specific deterrence is: "*A punishment aimed at preventing an offender from engaging in criminal behaviour again in the future*".

There are five strands to the purpose of sanctions:

- ***Punishment:*** To inflict some kind of loss on the offender and give formal public expression to the unacceptability of the behaviour to the community.
- ***Incapacitation:*** To restrain the offender so as to limit their opportunities to commit further offences e.g. prison or loss of licence due to drink driving.
- ***Deterrence:*** To impose a penalty either to deter the individual from committing further crimes or to deter others from imitating the criminal behaviour.
- ***Rehabilitation:*** Designed to include measures which might constitute to the person desisting from future offences and to assist in their reintegration into society e.g. recidivist drivers driving without insurance.
- ***Repatriation:*** Penalties can involve direct or indirect compensation for the harm caused to victims by the crime.

### **Deterrence and Incapacitation.**

There is an important distinction between deterrence and incapacitation. Individuals behind bars cannot commit additional crime – this is incarceration as incapacitation. Before someone commits a crime, he or she may fear incarceration and thus refrain from committing future crime - this is incarceration as deterrence. Prison is an important option for incapacitating and punishing those who commit crimes, but the data show long prison sentences do little to deter people from committing future crimes. Viewing the findings of research on severity effects in their totality, there is some evidence suggesting that short sentences may be a better deterrent. However, a consistent finding is that increases in lengthy sentences produce at best a very modest deterrent effect. Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the “chastening” effect, thereby making individuals convicted of an offence less likely to commit crimes in the future. In fact, scientists have found no evidence for the “chastening” effect. Dangerous driving is more serious than careless driving and is classed as driving which “*falls far below what would be expected of a competent driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous.*” If you’re found guilty you could be given an unlimited fine, a driving ban and a jail sentence of up to 14 years. Causing death by drunk or dangerous driving is something that requires a ‘punishment’. Also, justice needs to be done for the family of the individual that was killed. Therefore, should death by dangerous driving be viewed as a specific criminal act, whether the miscreant driver had the *mens rea* element or not? It must be borne in mind that prison sentences give those incarcerated for serious motoring offences time to think and reflect about what they’ve done wrong, and the thought of going back to prison is a motivator to stay on the straight and narrow.

### **Logic in Their Reasoning?**

Research has also found that prison can exacerbate, not reduce, recidivism. If imprisonment is wrong, one has to question the wisdom of Boris Johnson *et al* calling to end the automatic release of serious offenders who can be released after serving just half of their sentence. Also, why has he outlined a plan to create 10,000 new prison places by building new jails and expanding existing sites at a cost of £2.5 billion? Also, the Irish Government’s stated intention is to expand the prison population by providing ‘800 additional new places’. And why has California introduced their ‘3-strikes law’ which gives defendants a prison sentence of 25 years to life if they are convicted of three violent or serious felonies. There must be some justification and logic in their reasoning as their decisions were not taken lightly.

Also, what sanctions should be imposed on a getaway driver who after committing armed robbery kills a 54-year-old woman in his effort to escape? Should imprisonment be a sanction for four men who were armed with a sawn-off shotgun and hammers that terrorised staff of a post office and escaped with approximately €44,500? And what about the driver with 271 convictions who was involved in a high speed 180kph chase and only stopped when a stinger was deployed. Then there was the recent case where the Director of Public Prosecutions (DPP) appealed the High Court sentence of eleven years for a 28 year old man who defiled and raped two 14 years old girls. The DPP felt the sentence was too lenient and sought a 15 year sentence instead. The High Court refused his request. One wonders why the DPP appealed the 11 year sentence in the first instance. It has been purported that prisons may be schools for learning to commit crimes. Yes, that may be so to some extent, but the thought of further incarceration should act as a deterrent as many criminals don't want to lose their liberty again. In 2009, *Nagin et al* published a review on the effect of imprisonment on reoffending.<sup>6</sup> The research concluded:

*“... Compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement. We caution that this assessment is not sufficiently firm to guide policy, with the exception that it calls into question wild claims that imprisonment has strong specific deterrent effects”.*

### **Prison: An Important Option!**

Many studies have been undertaken on how to prevent drunken and dangerous driving, and what they found seems to partially fit the deterrence theory. Also, other studies have shown that increasing the severity of the punishment for dangerous driving is not very effective; but increasing the chance that dangerous drivers will be caught does act as a good deterrent.<sup>7</sup> A prison sentence serves two primary purposes: punishment and incapacitation. These two purposes combined are a lynchpin of sentencing policy, and those who oversee sentencing or are involved in sentencing policy should always keep that in mind. Prison is an important option for incapacitating and punishing those who commit crimes-including serious motoring offences. But research shows long sentences do little to deter people from committing future crimes.

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<sup>6</sup> Nagin, Daniel S. “Imprisonment & Reoffending,” *Crime & Justice: A Review of Research*, vol.38, ed. Michael Tonry. Chicago, University of Chicago Press, 115-200.

<sup>7</sup> Deterrence Theory of Punishment. Definition and Effect on Law Obedience.

Viewing the findings of research on severity effect in their totality, there is evidence suggesting that a short sentence may be a better deterrent. However, a consistent finding is that increases in already lengthy sentences produce at least a very modest deterrent effect. A very small fraction of individuals who commit crimes - about two to five per cent - are responsible for 50pc or more of crimes.<sup>8</sup> Locking up these individuals when they are young and early in their criminal careers could be an effective strategy to preventing crime if we could identify who they are. The problem is in identifying who they are.

### **Imprisonment - Most Severe Sanction**

Organised societies have always imposed sanctions: that is, types of punishment on individuals who breach the norms and laws in place within these societies. The nature of the sanctions has evolved considerably over time. Many types of punishment which were once commonplace such as banishment, forced labour, transportation and corporal punishment are no longer acceptable. In Ireland, as in many other developed countries capital punishment was progressively removed as a form of punishment over the last century, leaving imprisonment as the most severe sanction available. From time to time, the level of penalties applied in individual cases attracts public attention. The emphasis tends to be on the perceived leniency of the penalty, often in connection with sexual assault, vehicular homicide, drunk driving or other violent crimes. At the same time, numerous observers have emphasised that imprisonment needs to be a sanction of the last resort and to be used with restraint. This view was clearly expressed in the *Whittaker Report (Ireland) (1984)*<sup>9</sup> and reflected in the principles underpinning the Department of Justice, Equality and Law Reform's policy and strategy statement – *The Management of Offenders (1994)*. Although, important in the sanction applied in a minority of all cases, the extent of its use continues to be criticized, and has the inadequacy of information on sentencing practice. (*O'Mahony 2002*)<sup>10</sup>

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<sup>8</sup> Mulvey, Edward, P. *Highlights from Pathways to Desistance; Longitudinal of Serious Adolescent Offenders*. Juvenile Justice Fact Sheet. Washington, DC: US Department of Justice, Office of Juvenile Justice & Delinquency Presentation, March 2011, NCJ, 230971.

<sup>9</sup> Irish Penal Reform Trust. The Whittaker Committee Report 20 Years on: *Lessons Learned or Lessons Forgotten*. 25 July 2007. [iprt.ie](http://iprt.ie) *A review of the findings of the 1985 Whitaker Committee Report in light of present-day debates on criminal justice and prisons in Ireland with eighteen contributions from the ranks of politics, academia, law, human rights, the community/voluntary sector and the Prison Service.*

<sup>10</sup> O'Mahony, P. (ed.) (2002) *Criminal Justice in Ireland*. Dublin: Institute of Public Administration

Whittaker and his colleagues found that it was “*difficult to find convincing proof that imprisonment operates as a major or universal deterrent*” to crime and found incarceration a poor crime prevention strategy, noting that any such effect is “*a temporary one since it lapses on the prisoner’s release*”. While supporting the concept of rehabilitative programmes, the committee concluded that “*imprisonment cannot be justified merely on the grounds that it can be used to reform and rehabilitate*”.

### **Harsher Criminal Punishment**

Many people aren’t fearful of being prosecuted for drink driving offences. Severe penalties should be in place as a deterrent. The probability of a death occurring as a result of drink driving increases every time a person drink drives. For the full wrath of the legal system to be felt and known, it must be used to its full advantage. Offenders should be made an example of and harsher criminal punishment should be given for first offences. The law should not be sympathetic towards those who injure others while under the influence of alcohol or drugs. With all the anti-drunk driving announcements appearing regularly on television, radio and in the press, initiatives often supported by insurance companies, car manufacturers and even the liquor industry against drunken driving, one can hardly claim to be unaware that drink driving is illegal. In general, deliberate and intentional crimes are regarded as more unethical and immoral than those which are not premeditated or unforeseen. A person who, when sober knows the dangers and potentially deadly consequences of drunk driving, gets in their car despite knowing the potential consequences and kills innocent people while behind the wheel is culpable. The drink driver cannot claim he didn’t know that he could kill someone by driving in an intoxicated state. The common-law rule is that a person who intentionally inflicts grievous bodily injury is guilty of murder; if death results, so, if death or serious injury is certain or even highly probable as a result of a defendant’s actions then there should then be a conviction for murder or at least manslaughter. As Lord Elwyn-Jones in *Director of Public Prosecutions Respondent v Majewski Appellant [1977]* succinctly stated:

***“It is no excuse in law that, because of drink or drugs which the accused himself had taken knowingly and willingly, he had deprived himself of the ability to exercise self-control, to realize the possible consequences of what he was doing”.***<sup>11</sup>

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<sup>11</sup> *Director of Public Prosecutions Respondent v Majewski Appellant [1977] A.C. 443*. Held: Voluntary intoxication is no defense to offences of ‘basic intent’ such as assault.

### **Prisoners Rights**

Article 40 (Fundamental Rights) of the Constitution of Ireland, guarantees that you have a right to liberty and freedom, except in accordance with the law. This means that, in general, you are entitled to your own personal freedom but legislation may provide for your arrest and detention in certain circumstances. The State may only breach your right to personal liberty in circumstances that come within a law that provides for your arrest and/or detention. However, if you believe that you are being detained or held unlawfully you can make an application of *habeas corpus* to the High Court and they may order that you be released. Whilst incarcerated, prisoners have the right to be treated with dignity and respect for their rights. They have the right to safety and security of the person, the right to be treated humanely and be free from torture, degrading or inhuman treatment. Other rights include: legal education, clothing, food and water, health care, bail, right to counsel, exercise of religion, freedom of speech, vocational activities, etc. Clearly, not only have prisoner's significant rights but sometimes enjoy certain privileges that many poorer people on the outside of prison would be glad to have. It is the sentence of deprivation of liberty in itself that is the core punitive sanction and the conditions and treatment while in prison should not be used as additional punishment.

### **Mala Prohibita**

Debate on the topic of drink driving as a criminal offence is intense, divided and passionate. Some scholars like *Thomas Aquinas*<sup>12</sup> believed that intoxication was to some extent a defence, whereas *Aristotle*<sup>13</sup> thought the punishment should be quite harsh. While a drunk driver may not be evil-minded or to intentionally set out to kill anyone, the irresponsibility and capriciously disregard for human life by driving while intoxicated, knowing all along while sober of the deadly potential consequences.<sup>14</sup> Drink driving is a criminal offence and is dealt with in the criminal courts. It is a breach of a criminal statute (RTA 1988) and it would show on your criminal record as well as your licence. Drink driving laws date back to 1872, when the Licensing Act dictated that it was an offence to be in charge of carriages, cattle and steam engines while intoxicated. Back then, the penalty was a fine not exceeding 40 shillings (two old pounds) or imprisonment with or without hard labour. It is generally considered that drink driving offences do not elicit the same moral condemnation as more traditional crimes such as murder, rape or breaking and entering.

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<sup>12</sup> Philosopher & Theologian. Saint Thomas Aquinas was born circa 1225 in Roccasecca, Italy.

<sup>13</sup> Aristotle was a Greek philosopher and polymath during the Classical period in ancient Greece. He was founder of the Lyceum and the eripatetic School of Philosophy and Aristotelian tradition.

<sup>14</sup> *Driving while intoxicated*. Law Teacher. 2 February 2018. lawteacher.net

Drink driving is prohibited in most countries not because it is an act that is inherently wrong or against the moral code of society, but because alcohol consumption significantly increases the driver's risk of incurring an accident and thus constitutes a behaviour that is a threat to public safety. Accordingly, drink driving tends to be classified in criminal law terms as a *mala prohibita* offence,<sup>15</sup> or according to *Zimring and Hawkins (1973)* terminology – an instrumental offence.<sup>16</sup> Drink driving is more common than most other types of criminal behaviour. In Australia, just over 15pc of drinkers aged 14 years or over report having driven a motor vehicle whilst under the influence of alcohol the previous year. Thus many people who might never contemplate other illegal behaviours still decide to drive home after a 'night out' drinking. Surveys suggest that one reason for this is the belief among offenders that drink driving is widespread and is viewed by many drivers as a violation of social conventions.<sup>17 18</sup>

### **Successful Prosecution – Far From Certain!**

The origins of most modern theories of deterrence can be traced back to the work of the Enlightenment-era legal philosophers, *Beccaria 1986 [1764]*<sup>19</sup> and *Bentham 1988 [1789]*.<sup>20</sup> The motivation for their work was their mutual abhorrence of the administration of punishment without constructive purpose. For them the constructive purpose was preventing crime. As Beccaria observed “*it is better to prevent crimes than punish them.*” Beccaria and Bentham argued that there are three key ingredients to the deterrence process—the severity, certainty, and celerity of punishment. These concepts, particularly the certainty and severity of punishment, form the foundation of nearly all contemporary theories of deterrence. The enduring impact of their thinking is remarkable testimony to their innovation. The theory of deterrence is predicated on the idea that if state-imposed sanction costs are sufficiently severe, criminal activity will be discouraged, at least for some.

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<sup>15</sup> The Latin phrase *mala prohibita* translates to mean “wrong because it is prohibited” as used in modern times—refers to actions that are wrong simply because laws have been passed prohibiting them. Acts *mala prohibita* are contrasted by acts that are wrong or evil; in themselves. These evil acts are considered *mala in se*, which translates as “wrong in itself.”

<sup>16</sup> Zimring, F.E. & Hawkins, G.T. (1973), *Deterrence: The legal threat in crime control*. University of Chicago Press, Chicago.

<sup>17</sup> Corbett, C.& Simon, F. (1992) ‘*Decision to break or adhere to the rules of the road. Viewed from the rational choice perspective*’. *British Journal of Criminology*. Vol. 32, No. 4, pp.537-549.

<sup>18</sup> Baum, S. (2000) ‘*Drink driving as a social problem: Comparing the attitudes and knowledge of f drink driving offenders and the general community*’. *Accident analysis and prevention*, vol. 32, pp.689-694.

<sup>19</sup> Beccaria, Cesare 1986 [1764]. *On crimes and punishment*. Translated by Henry Paolucci, New York. Macmillan Publishing. [www.jstor.org](http://www.jstor.org) (last accessed 10 March 2020)

<sup>20</sup> Bentham, Jeremy 1988 [1789]. *An introduction to the principles of moral and legislation*. Amherst, New York: Prometheus Books. [www.jstor.org](http://www.jstor.org) (last accessed 10 March 2020)

Thus, one of the key concepts of deterrence is the severity of punishment. *Beccaria* and *Bentham* argue that severity alone, however, cannot deter. There must also be some possibility that the sanction will be incurred if the crime is committed. Indeed the argument that the probability of punishment, not severity, is the more potent component of the deterrence process goes back to *Beccaria* who observed: “*One of the greatest curbs on crime is not the cruelty of punishments, but their infallibility.... The certainty of punishment even if moderate will always make a stronger impression.*” In the lifetimes of *Beccaria* and *Bentham* there was no criminal justice system as we know it. Punishment for lawbreaking was almost certainly less regular and more haphazard than it is today. Punishment in contemporary society, however, still remains far from guaranteed. In order for a formal sanction—whether moderate or severe—to be imposed, the offender must first be apprehended, usually by the police. He must next be charged and successfully prosecuted, and finally sentenced by the judge. Successful passage through all of these stages is far from certain, sometimes due to a technicality. The most important set of actors affecting certainty is the police—with absent detection and apprehension, there is no possibility of conviction or punishment. For this reason special attention is given to discussing what is known about the deterrent effect of police activities and presence.

### **Speed and Certainty of Penalty?**

Deterrents closely related to the communication of society’s censure of the offence is the desire to send a message to act as a deterrence either to the offender in question or to others contemplating similar criminal behaviours such as dangerous or reckless driving or wanton or furious driving likely to seriously kill or seriously injure various road users. Most would agree with the deterrent of criminal sanctions therefore, more people would not risk committing a crime. Furthermore, any perception that crime goes unpunished threatens to undermine community morale and crime prevention efforts. What is not clear, however, whether marginal increases in penalties will lead to increased deterrence? One major UK review of international research on this topic concluded that there was no basis for making a strong causal connection between variations in sentencing severity and the deterrent effects. (*Von Hirsch et al 1999*)<sup>21</sup> There are a number of likely reasons for this, including the possibility that many offenders will simply be aware of variations in the law, or will dismiss the prospects of being apprehended or convicted, or may be willing to take the risk anyway because of impulsiveness desperation or for psychological reasons.

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<sup>21</sup> Von Hirsch *et al* (1999) *Criminal deterrence and sentence severity: An analysis of recent research*. Oxford. justice.ie

The same research review has however, found stronger deterrent effects arising from a higher expectation of detection and conviction. Speed and certainty of penalty seems to have a greater bearing in criminal behaviour than the possible range of penalties.<sup>22</sup> Many believe that mandating interlockers on vehicles for all offenders including first-timers will have the greatest impact. In fact, a recent report by Mothers Against Drunk Driving (MADD) showed that interlock devices stopped on average 1,945 would-be drunk drivers with an illegal .08 BAC from starting their vehicle every month. Another one million with BACs exceeding .25 are left without a ride, thanks to the interlock devices.<sup>23</sup>

### **Police Enforcement**

Alfred Hitchcock (1889-1980) once said: “*I’m not against the police, I’m just afraid of them*”.<sup>24</sup> It is always been recognised that prevention is better than cure. It is argued that the guardian role, not the apprehension role of the police is the most effective source of their effectiveness in crime prevention. It is recognised that the two distinct crime prevention functions of the police are, that of apprehension agents following the commission of a crime or motoring offence and their role as sentinels/guardians. In their sentinel role the police are acting as “capable guardians”.<sup>25</sup> From a crime control perspective like drunk driving, the apprehension agent function protects public safety by apprehending and incapacitating sometimes dangerous and reckless repetitive offenders – like motorists who continually disregard the law. However, as yet, there is no evidence that the apprehension agent role results in a material deterrent effect. By contrast, the evidence on police presence suggests that in their sentinel/guardian role, police can have a very large deterrent effect. It is generally accepted that traffic law enforcement influences driver behaviour through two processes: general deterrence and specific deterrence.<sup>26 27</sup> Strategies that increase the probability of detection, apprehension and convictions, aim to influence the perceived risk of punishment for drunk driving and in doing so, operate to deter an individual from committing the offence.

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<sup>22</sup> (Kleinman, Mark, A.R. (2009) “*When Brute Force Fails*”. Princeton. Princeton University Press. justice.ie

<sup>23</sup> drugabuse.com

<sup>24</sup> Anglo-American filmmaker. Quoted in: New Society, London, May 10 1984.

<sup>25</sup> Crime & Justice, vol.42: *Crime & Justice in America: 1975-2025*. Edited by Michael Tonry. Books.google.ie

<sup>26</sup> Zaal, D. (1994) *Traffic Law Enforcement: A Review of the Literature. Report No. 53*. Monash University, Accident Research Centre, Clayton, Victoria. ec.europa.eu

<sup>27</sup> Makinen, T. *et al* (2003) *Traffic Enforcement in Europe: Effects and Measures, Needs and Future*. Final Report of ESCAPE, VTT, Espoo.

Increasing the perceived probability of detection for drink driving offences can be achieved by increasing the number of police allocated to the task of enforcement or by adopting strategies such as roadblocks, sobriety checkpoints or random breath testing (RBT). The probability of apprehension and conviction can also be increased through legislation that allows police to conduct preliminary breath tests of drivers at the roadside and/or allows the BAC of motorists to be used as sufficient proof of drink driving offences. General deterrence can be defined as the impact of the threat of legal punishment on the public at large whereas specific deterrence can be seen as the impact of the actual legal punishment on those who are apprehended. Thus, general deterrence results from the perception of the public that traffic laws are enforced and that there is a risk of detection and punishment when traffic laws are violated. Specific deterrence results from actual experience with detection, prosecution and punishment of offenders. The general assumption underlying police enforcement is that it should primarily aim at general deterrence, which is first and foremost achieved by increasing the subjective risk of apprehension. The subjective risk of apprehension, and hence the effectiveness of police enforcement is accompanied by significant publicity continued over a longer period of time, and unpredictable and difficult to avoid a mix of highly visible and less visible activities.<sup>28</sup> The following extract is from the London Metropolitan's Police Sentencing Guidelines:<sup>29</sup>

***“For some offences causing death by careless or inconsiderate driving or causing death whilst unlicensed, disqualified or uninsured where the offender is not considered to pose a danger of re-offending and the level of fault is low, a community sentence may be deemed a more effective form of punishment and rehabilitation than imprisonment . In some cases where the level of fault is very low the offender may be fined”.***

### **Statistics & Research**

When European traffic statistics are published, Portugal usually tops the charts on accident and mortality figures. In 1995, Portugal ranked first among 25 EU countries in fatalities by population on motorways.<sup>30</sup>

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<sup>28</sup> Goldenbeld, C. (1995) *Police Enforcement: Theory and Practice*, in: *PTRC, Traffic Management and Road Safety. Proceeding of Seminar G Held at the PTRC European Transport Forum*, University of Warwick, England, 11-15 September 1995.

<sup>29</sup> *Death by dangerous driving (on most occasions) should not result in a prison sentence.* changeaview.com (24 June 2019)

<sup>30</sup> CARE (EU Road Accidents Database) (2006). *Road Safety Evolution in the EU: European*. Directorate General Energy and Transport.

Despite being comparatively high, accident and injury rates have recently begun to decrease both in absolute and relative terms. In 2000, Portugal trailed Latvia and Greece with the third highest road fatality rate per one million inhabitants. Portuguese authorities have already proudly claimed credit for this decrease, since stricter legislation was enacted in the late 1990s. Were Portuguese drivers deterred by the increase in the certainty, severity and celerity of punishment policies for traffic violations? Or, in other words, to what extent are these policy changes associated with a reduction in the accident rate resulting in death and injury? <sup>31</sup> In 1999, the Institute of Criminology at Cambridge University was commissioned by the British Home Office to conduct a review of research on major studies of deterrence. The report concluded that: “... *the studies reviewed do not provide a basis for inferring that increasing the severity of sentences generally is capable of enhancing deterrent effects.*” In addition, in reviewing macro-level studies that examine offence rates of a specific population, the researchers found that “*an increased likelihood (certainty) of apprehension and punishment was associated with declining crime rates*”. Two classic studies are **Ross's (1973)** studies <sup>32</sup> of the effects on drunk driving of the British Road Safety Act and of Scandinavian style drunken driving laws. Most studies in this group examine the effects of police crackdowns on drug markets, disorderly behaviour, and drunk driving. Excellent reviews of these studies are available in **Sherman (1990)** <sup>33</sup> and **Ross (1982)**. <sup>34</sup> Both **Sherman** and **Ross** conclude that the interventions were generally successful in generating an initial deterrent effect. For instance, in drunk-driving interventions this was evidenced by a reduction in fatalities in which the driver was intoxicated or in drug market crackdowns by reduced dealing. However, they also concluded that the effect was generally only transitory: the initial deterrent effect typically began decaying even while the intervention was in effect.

### **California's 3-Strikes Law**

Existing evidence does not support any significant safety benefit of the practice of increasing severity of sentences by imposing longer prison terms. In fact, research findings imply that increasing lengthy prison terms are counterproductive.

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<sup>31</sup> CARE (EU Road Accidents Database) (2006). Road Safety Evolution in the EU: European. Directorate General Energy and Transport.

<sup>32</sup> Ross, H. Laurence. (1973) “*Law, Science & Accidents: The British Road Safety Act 1967.*” Journal of Legal Studies. 2:1-78

<sup>33</sup> Sherman, Lawrence W. (1990). *Police Crackdowns: Initial & Residual Deterrence.* In *Crime and Justice: A Review of Research,*” vol. 12, edited by Michael Tonry. Chicago: University of Chicago Press.

<sup>34</sup> Steven, P. Lab. *Crime Prevention: Approaches, Practices and Evaluations.* books.google.ie

Overall, the evidence indicates that the deterrent effect of lengthy prison sentences would not be substantially diminished if punishments were reduced from their current levels. Thus, policies such as California's 'three strikes law'<sup>35</sup> or mandatory minimum sentences that increase imprisonment not only burden state, but is a sentencing scheme that gives defendants a prison sentence of 25 years to life if they are convicted of three violent or serious felonies. The '3 strike laws' are also referred to as 'habitual offender laws'. The purpose of the laws is to drastically increase the punishment of those convicted of more than two serious crimes. '3 strikes law' also doubles the prison sentence for people convicted of any California felony that have two violent felonies or felony priors.<sup>36</sup> Research investigating the deterrent effects of legal sanctions is that deterrence is just one of several mechanisms by which legal sanctions can serve to prevent offending.<sup>37</sup> *Gibbs (1975)*<sup>38</sup> identifies at least nine other 'preventative consequence' or 'preventative mechanisms' of punishment in addition to deterrence. Three of these are: retribution (exacting vengeance through legal means to prevent acts of revenge), rehabilitation, (changing an offender's motivation to commit crimes) and incapacitation, (physically preventing an offender from committing further crime).

### **Get What They Deserve!**

Without a doubt, crime and our response to it are serious and often highly emotive topics. Many people are directly and indirectly affected by crime each year, the worst crimes plunging entire families into devastating loss. However, as a society we are in control of our response to crime and the way in which we punish it. In the process, the conception of prisoners as people unattached to anyone can be replaced by a realization that they are far-reaching ripple effects when a person is sent to prison. More often than not, innocent and overburdened family members – especially children - suffer for crimes of their loved one. While this may be true, prisoners should stop and think about the consequences of their criminal actions before embarking on criminal activity. After all, prisoners who break the law by committing serious motoring offences or other serious crimes presumably '*get what they deserve*'. Do you think the four men in Delhi, India who in 2012 gang-raped a 23-year-old woman on a bus and who died shortly afterwards from her injuries got what they deserved? They were all hanged recently – the first hanging in India for five years.

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<sup>35</sup> The expression "*three strikes and you're out*" is derived from baseball, where a batter against whom three strikes are recorded strikes out.

<sup>36</sup> Wright Valerie, Ph D (November 2010) *Difference in Criminal Justice Evaluating Certainty vs. Severity of Punishment*. sentencingproject.org (Last accessed 22 February 2020)

<sup>37</sup> Gibbs, J.P. (1975) *Crime. Punishment & Deterrence*. Elsevier Scientific Publishing Co. Ney York.

<sup>38</sup> Jack, P. Gibbs (1975). *Crime, Punishment & Deterrence*. New York, Elsevier, 1975, Pp. xi 259.

A person who commits vehicular manslaughter, which is the serious crime of causing death of a human being due to illegal driving of a vehicle including gross negligence, drunk driving, reckless driving or speeding, deserves to be punished. By increasing certainty of punishment, potential offenders may be deterred by the risk of apprehension. For example, if there is an increase in the number of police patrolling roads on a holiday weekend, some drivers may reduce their speed in order to avoid a speed ticket or even attending court. Secondly, the severity of the punishment may influence behaviour of potential offenders with the consequences of their actions and conclude that risks of punishment are too severe. This is part of the logic behind California's "3 strikes law" and "truth in sentencing policies", to utilize the threat of very severe sentences in order to deter some persons from engaging in criminal behaviour. Another problem with the current prison system is that too many freedoms are given to the prisoners which sidetrack the whole reason of being there. As the UK's Justice Secretary, Chris Grayling put it: "*Prison is not meant to be a place that people enjoy being in. I don't (want to) see prisoners in this country sitting in cells watching the Sunday afternoon match on Sky Sports.*"

### **Conclusion**

Deterrence is one of the major areas of punishment prescribed by legislation and is a prominent feature of many criminal justice interventions designed to curtail criminal behaviour. It assumes that crime is a rational decision-making process in which potential offenders weigh the costs and benefits associated with an illegal act. If the anticipated costs are greater than the anticipated rewards, individuals will choose not to engage in the prohibited behaviour. Just like the rehabilitation issue, prisoners are not just locked up to be locked up, but there's a reason why they're there. If they are given too many luxuries then they won't reflect on what they did wrong and they'll come out of prison as the same person they were when they committed the crime. It is important for prisoners to understand that they're in prison because they committed a crime and are there to reform. Legislation alone is unlikely to deter road users from engaging in risky behaviours, but to be effective; it must be rigorously enforced and must strongly deter unlawful behaviour by generating awareness and fear of the consequences of breaking the law. This in turn depends on the degree of traffic surveillance, the severity of the penalty issued and the swiftness with which it is imposed. Public awareness campaigns can make legislation more effective. Despite existing laws, road traffic offences are still extremely high. For the past five decades or so, our criminal justice systems have relied nearly exclusively on punishment as the mechanism for reducing crime and recidivism.

It is argued that the tough on crime era produced overcrowded prison populations and the highest incarceration rates in Europe and was an increased financial burden on the state. But what are the authorities supposed to do - let these reptilian offenders off scot free, so they can continue on their 'merry way' committing further crime. The goal was to punish more and more individuals and to punish them more severely. The mantra was intuitive and logical – “*do the crime, do the time*” and “*lock ‘em up and throw away the key.*” Tough on crime is the brand, and we certainly delivered on the promise.<sup>39</sup> What has often happened in the past is that people have threatened punishment but have failed to carry it out. It’s imperative in any initiative that is undertaken in sentencing, that the truly dangerous offenders - the recidivists motoring offenders and career criminals – be put away and serve their time. These offenders clearly lack the *je-ne-sais-quoi* qualities and it is this writer’s contention that the punishment should fit the crime. The certainty of punishment even in moderation will also make a stronger impression. Today, much crime – including motoring offences - is dealt in the courts with the ‘kid glove’ treatment and some judges are ‘soft’ on crime and punishment. Sometimes, recidivist motoring offenders who have numerous convictions are given suspended sentences or even a modest monetary fine. What message does this send out to the general public, especially to the motoring public? The benefits of crime prevention and rehabilitation is to be acknowledged and commended, but when a person deliberately (one who has the *mens rea/premeditation* ) breaks the law and perhaps kills an innocent person by drunken or reckless driving or terrorises shop staff when committing armed robbery then he/she should bear the full brunt of the law. In these cases, a non-custodial sentence for these miscreants would be inappropriate and would not act as a significant deterrent. They should face retribution, incarceration and incapacitation – similar to Phudit Kittitradilok (above) and suffer the pains of prison life. These pains include the deprivation not only of liberty, but deprivation of autonomy, security, goods and services, heterosexual relationships and sexual frustration. Most right-minded people wouldn’t condone incarcerating those who commit motoring offences or those found guilty of minor crimes be condemned to notorious rat-infested and disease ridden prisons like Sabaneta Prison in Venezuela, San Pedro Le Paz in Ecuador or Bang Kwang Prison in Thailand where the daily food ration is a small bowl of watery soup, and where in many cases leads to death due to malnutrition and starvation.

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<sup>39</sup> Kelly, William, R. Ph D Psychology Today. *Why punishment doesn’t reduce crime.* psychologytoday.com

Prisoners in Europe today are spared the many types of punishment which were once commonplace such as banishment; forced labour, transportation and corporal punishment that are no longer acceptable. Even though Beccaria (above) observes that it is better to prevent crimes than punish them, people who knowingly break the law must be held accountable and face any sanctions handed down by the courts. Specific deterrence is meant to discourage future criminal behaviour. Criminals whilst in prison should be punished appropriately but have their rights respected. They are fully entitled to adequate food and water but high tea in the afternoon coupled with a selection of mouth-watering confectionery may be a step too far. Or perhaps a few tins of chilled lager to quell their thirst on a hot day. Also the benefits of other luxury treatments and benefits should be curtailed. Finally, whilst incarcerated and punished, recidivist motoring offenders and other serious criminals will then have ample time to reflect on their reckless and lawless deeds hoisted on society and will be less inclined to repeat the same offence when they have completed their sentence and are eventually released from prison. However, incarceration was deemed too lenient for the four men (above) for their brutal rape and they paid the ultimate price. Was their punishment just? You decide. Hopefully, when an offender is imprisoned and punished, he will learn that the action he did was wrong, and will then apply this lesson on release, to his life in the future.