Quick fixes aren't the answer, alcohol and violence have a complex relationship

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Abstract
The NSW Sentencing Council is considering proposals to change the laws designed to address alcohol-related violence, including whether people who commit crimes while intoxicated should always be treated as more culpable when being sentenced. Like many attention-grabbing quick fixes to society’s ills, this is a really bad idea. If adopted, the reform could lead to even tougher sentences for crimes committed by people affected by alcohol. Although it’s tempting to think of such crimes as new problems requiring novel solutions, debates about the relationship between alcohol and violence, including how it should be dealt with by criminal laws, are anything but new. Australian researchers, politicians and judges have been grappling with these issues for decades.

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The effects of alcohol vary considerably between different people. Mario Antonio Pena Zapater/Flickr, CC BY-SA

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The NSW Sentencing Council is considering proposals to change the laws designed to address alcohol-related violence, including whether people who commit crimes while intoxicated should always be treated as more culpable when being sentenced. Like many attention-grabbing quick fixes to society’s ills, this is a really bad idea.

If adopted, the reform could lead to even tougher sentences for crimes committed by people affected by alcohol. Although it’s tempting to think of such crimes as new problems requiring novel solutions, debates about the relationship between alcohol and violence, including how it should be dealt with by criminal laws, are anything but new. Australian researchers, politicians and judges have been grappling with these issues for decades.

**A complex relationship**

Scientific understandings of the relationship between alcohol and violence have improved over time. But policymakers haven’t paid enough attention to experts or evidence when it comes to developing legal responses to alcohol-related violence. They seem to prefer the attention-grabbing headlines about dramatic changes to criminal law. The result is that we can end up with laws that are ineffective or unfair, or both.

The relationship between alcohol and violence is complex. A large body of epidemiological evidence suggests that, across the population, violence goes up with more drinking, and down with less drinking. At this level, rates of violence can be reduced by policies that limit the availability of alcohol or structure when and how people drink.

But the picture is much more nuanced at the individual level. The effects of alcohol vary considerably between different people. It’s shaped by cultural understandings and expectations about how we are “allowed” to conduct ourselves when we’re drinking.
Reactions to drinking are shaped by cultural understandings and expectations about how we’re ‘allowed’ to conduct ourselves when we’re drinking. Daniel Lee/Flickr, CC BY-ND

Even though epidemiological research may suggest alcohol as a cause of violence, it doesn’t follow that, in any particular case, we can attribute violence to drinking. It would be great if the link between alcohol and violence were simpler because simple problems are easy to solve. But that’s not the case. Any sound response to alcohol and violence must grapple with the “complex interaction of variables” including social and environmental factors, and the impacts of masculinity and culture.

The dilemma for politicians is that complex problems require sophisticated solutions. These take time to develop and implement, and they don’t sound very impressive in a 30-second media grab. Lawmakers are attracted to responses that gloss over complexity and focus on isolating one risk and “fixing” it in criminal law as an aggravating factor.

In New South Wales, for instance, the offence of assault causing death (the “one-punch” law introduced in the aftermath of the tragic deaths of Thomas Kelly and Daniel Christie) does this by imposing a mandatory minimum sentence for fatal assaults committed by people who are drunk. And the current proposal before the NSW Sentencing Council aims to make drunkenness a mandatory aggravating factor in sentencing, leading to even tougher sentences.

Unfortunately, both these approaches suffer from a serious flaw: they assume a simple, causal relationship between alcohol and violence. Neither is sufficiently sensitive to individual context or to the complexity and conditionality of alcohol’s role in violence.

**Getting it wrong – and right**
Politicians may claim that increased penalties for offences involving alcohol are still useful because they have a deterrent effect. But given that we know the threat of higher penalties rarely produces the deterrence effect promised, and that the cognition-impairing effects of alcohol diminish our perceptions of its effects, there’s little reason to believe tough messages will change behaviour.

By focusing only on alcohol consumption, we’re diverting attention from other factors that interact with intoxication in situations of drunken violence. Bymtheu/Flickr, CC BY-SA

And by focusing only on the aggressor’s alcohol consumption, we’re diverting attention from other factors that interact with intoxication in situations of drunken violence. These include: individual factors specific to the offender, such as poor anger management skills; contextual factors such as poor management of drinking establishments; and societal factors including the place of drinking and violence within ideas of masculinity.

Tough criminal laws can also produce unfair results. Laws that assess criminal responsibility and punishment based on a fixed, simplistic and moralising account of the relationship between alcohol and violence invite us to always regard the drunk aggressor as more culpable than the sober aggressor.

As well as disregarding the fact that drinking alcohol can diminish a person’s capacity to assess situations and understand the risk of what they’re doing, such an approach risks leaving victims dissatisfied (“why should my attacker get off more lightly because he was sober?”). Public confidence in the criminal justice system may be dented.
It may not be very palatable to politicians and many members of the wider community but the complexity and conditionality of the relationship between alcohol and violence means it’s difficult to make general conclusions or sweeping recommendations for changes to criminal offence definitions or sentencing rules.

But if we want to take the idea of evidence-based law reform seriously, we need to listen to what science tells us. The nuances and complexities we’ve identified suggests it would be a mistake to tie judges’ hands with mandatory sentences and other overly prescriptive laws.

The law must be flexible and sensitive to complexity, in keeping with existing scientific knowledge. Better policy and law reform outcomes are possible if politicians, policymakers and judges pay greater attention to what non-legal experts know about alcohol and violence.