FAIRNESS OF THE DRINKING AGE LAWS:

YOUNG ADULTS OR OLD CHILDREN?

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# INTRODUCTION

The minimum legal drinking age is a law that was created in the United States as a way to prevent drinking and driving related deaths. This law was meant to save lives and, in order to do so, the politics of that time blamed those who were of the ages 18-20. The law contains characteristics of discrimination and also disrupts the lives of an entire age group. The purpose of the law should be considered along with the effect it has had on preventing alcohol related deaths.

Discrimination is a problem for any society. In order to create a better world, it is important that individuals are given equal consideration under the laws. Discrimination has been identified as a major issue in society with the Civil Rights Act of 1964. The Age Discrimination in Employment Act was also passed to prevent discrimination against people over the age of 40. So if it is not acceptable to discriminate based on race, color, religion, national origin, sex or old age, is it acceptable to discriminate against those of young age? It is important for society to identify discrimination and to protect vulnerable minorities against it.

In this paper, I will discuss the issue of fairness that deals with the minimum legal drinking age act. The overarching idea of fairness that is found across various cultures is important to keep in mind while evaluating the law. Also, it is important to consider the history behind the drinking laws in the United States beginning with the prohibition era. The effects that the law has had on society and the ability of the law to achieve its goal are discussed; along with the role that the scapegoat theory played in the laws development. Finally, alternatives to the minimum legal drinking age law are examined.

# FAIRNESS

Fairness is an idea that is rooted in the primal parts of our brains. Many ethical views and virtues are created under the general guidelines of fairness. Fairness is a universal idea that can be found across a variety of different cultures in some form or another (Henrich et al.,2001). Even with great diversity and many differences, it can be shown that every culture all over the world has some form of the golden rule, also known as the ethic of reciprocity. The golden rule states that you should treat others the way you want to be treated. This is an underlying principle of fairness.

But fairness is more than just a rule of ethics, it is a feeling. Fairness can be felt by the person receiving the most or by the person receiving the least. Decades of research in both psychology and economics have demonstrated that humans respond negatively to inequitable outcomes between themselves and another individual (Brosnan & Waal, 2012). Fairness is a concept that is with us from birth. Infants know the feeling of fairness and even animals have been proven to show contempt when they are handed the short end of the stick. Fairness is a part of what is natural. It shouldn't be something that is denied by institutions such as the government.

Many aspects of the law were created with the idea of fairness in mind. Ideally, laws are made to ensure that citizens are protected from intrusions on their freedoms. Fairness is represented in the law in many forms. Protections for fairness can be found in the due process clause. Due process is meant to protect against practices and policies that violate fundamental fairness, even if the violation is not against explicit rights stated in the Bill

of Rights (Funk, 2016). Due process shows how the law should attempt to follow guidelines that protect a person's right to fairness.

Without fairness our evolution would be stagnant. There would not be motivation to create change and better our society. Fairness has influenced many of man's greatest achievements ranging from revolutions to civil rights movements. Civil rights can be defined as, "Freedom to live without being repressed by the government or private groups because you are part of a minority" (Altman, 2003). This idea has held throughout our history and is continuing to motivate change with the discussion of the minimum legal drinking age. The minimum legal drinking age is a law that has greatly affected the lives of many adults aged 16-21. This age group is part of an underrepresented and very vulnerable minority. Parents, law enforcement officers, judges and young adults themselves have noted the negative social implications created by this law.

In order to understand the value of fairness in the situation regarding the minimum legal drinking age, it is important to understand the motivations behind the law. The minimum legal drinking age was created in an attempt to solve a very popular issue regarding drinking and driving. In order to try and solve a problem, this law has alienated entire generations. While this cause might not seem as noble as other fairness movements like equality for women, or "No Taxation without Representation," it is still a fundamental issue of fairness.
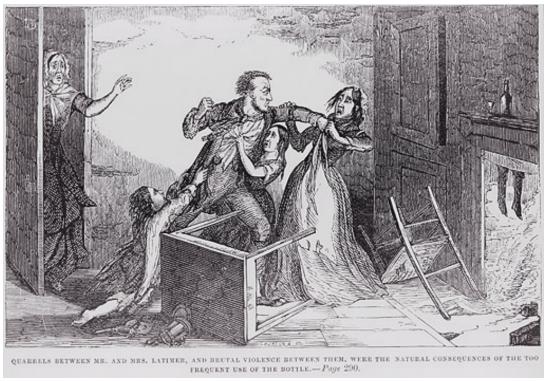
All laws should be held to the ideals of fairness that exists within our society and should be free from discrimination. "In one of its central descriptive senses, 'discrimination' means the differential treatment of persons, however justifiable or

unjustifiable the treatment may be" (Altman, 2003). Targeting someone based on their age is discriminatory. Some would argue that age is not a discriminatory quality, but this is not true. The elderly are protected from discrimination based on their age. The same should be said for the younger minority who are even more vulnerable to exploitation than the elderly, because the youth often lack a voice in government (Grover, 2011). It seems apparent that the minimum legal drinking age laws specifically target a vulnerable age group.

# HISTORY OF THE LAWS

In order to evaluate the current issues regarding the minimum legal drinking age, it is important to understand the background information on alcohol consumption in the United States. This chapter will provide the reader with important details that explain the social and political issues regarding the minimum legal drinking age.

The legal drinking age in the United States has a complicated history. The most drastic of the laws affecting alcohol was passed during the prohibition era in the 1920's. During this time alcohol distributions and sales were completely outlawed in the United States with the passage of the 18th amendment. The amendment stated, "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited" (U.S. Const. amend. XXI). This law was created to decrease the heavy consumption of alcohol in people of all age groups. Alcohol was believed to cause social issues like domestic violence and health problems (Funk, 2016).

QUARRELS BETWEEN MR. AND MRS. LATIMER, AND BRUTAL VIOLENCE BETWEEN THEM, WERE THE NATURAL CONSEQUENCES OF THE TOO FREQUENT USE OF THE BOTTLE.—*Page* 200.

**Source:** Library of Congress Prints and Photographs Division

The heavy influence on the government to create a law banning alcohol was supported by various religious groups, such as the Women's Christian Temperance Union. These groups believed that social issues, like fatherless families and spousal abuse, could be solved if society was free of the evil that alcohol created.

The 18th amendment failed to prevent the buying and selling of alcohol and paved the way for underground drinking establishments. This law also created an underground market supplied by organized crime. The illegal market for selling alcohol gave a lot of power to organized crime bosses and led to many bloody wars between different organized crime groups. The most notorious of these gang bosses was Al Capone. Al Capone was able to use wealth and fear to get control of an entire city (Nigro, 2015). The power of crime bosses and illegal markets created havoc in the lives of ordinary citizens. In the end, the demand for alcohol was too great to conquer. The effects of the law

heavily outweighed the benefits and the 18th amendment was repealed, making alcohol part of the legal market again.

When the prohibition era ended each state was free to set the minimum legal drinking age of its choice. Most states decided on the age of twenty-one. This age stayed as the common drinking age until the Vietnam War. The age restrictions for men called into the draft was lowered from twenty-one to eighteen during World War II. The unpopularity of the Vietnam War led to student protests over their lack of involvement in the political process. Unfairness between the differences of the legal voting age and the draft age sparked controversy. A common slogan for the time period was "Old enough to fight, old enough to vote" (Parkinson, 2013). After years of protests and campaigns, some states lowered the voting age and the legal drinking age to eighteen. Other states kept the legal voting age and drinking age the same.

As time passed new problems with alcohol arose. Young adults living in states with a minimum drinking age of twenty-one would frequently drive to other states where the drinking age was lower. Alcohol related automobile accidents caused by drunk drivers began to claim young lives at an alarming rate. Taking notice of this, Michigan decided to once again raise the minimum legal drinking age to prevent young deaths caused by drinking and driving (Toomey, Nelson & Lenk, 2009). Other states soon followed Michigan's example in an attempt to prevent drunk driving accidents.

The increase in the minimum drinking age was heavily supported by a variety of politically influential groups. MADD or, Mothers Against Drunk Drivers, became one of the main supporters of the law. The organization was founded by volunteers who had

been effected by loss due to drunk driving accidents. The strong emotions felt by the members of MADD fueled their fight against opposition. MADD was able to gather a following and gain support. Important groups that supported the increase in the minimum drinking age included the National Safety Council and the President's Commission on Drunk Driving (Perlez, 1984). These groups were able to directly influence the politics that surrounded the minimum drinking law debates. MADD, the National Safety Council and the President's Commission on Drunk Driving popularized research that found an increase in deaths related to the lowering of the drinking age. These groups were able to use this data to sway popular opinion and make the minimum drinking age issue a part of the presidential campaign.

Ronald Reagan won the presidential campaign and had promised to raise the national drinking age during his campaign as a way to gain popularity. When he won the election, voters expected him to keep his promise to them. Lobbyists and independent interest groups were able to put pressure on Congress and President Reagan to deal with the minimum legal drinking age. The national government was concerned about the deaths caused by drunk driving and wanted to appeal to the lobbyists and interest groups. The only problem was that the legal drinking age was part of the state's rights under the Constitution of the United States. Unable to directly declare a national minimum drinking age, a set of ten recommendations were created to solve the problem. Of the ten solutions that were proposed, raising the drinking age was the proposal that was highly supported by the public and lobbyist groups. This pressure led to the creation of the National Minimum Drinking Age Act of 1984.

This act required all states to raise the drinking age to 21. If the states failed to do so they would lose 10% of their highway funding that was provided by the national government. States didn't want to accept a budget cut so they complied. All of the states were allowed to make their own individual laws. Alcohol related laws vary by state and have slight differences from each other. Some states that did not want to raise their minimum drinking age put in rules that allowed minors to drink in a private setting or with parental permission. Despite small differences between the states, the laws have the same general age requirement and the National Minimum Drinking Act of 1984 remains in place.

EFFECTIVENESS

Many of the occurrences of the past have begun to repeat in the present. The debate over the drinking age still surrounds the same issues. As with prohibition, illegal drinking has made its way underground and the dangers of this could outweigh the benefits. It is important to weigh the proposed benefits of the law to the actual outcome. The benefits were the reduced number of fatalities caused by drunk drivers.

Not only have those under the age of 21 continued to drink, but they have continued to drink in secluded environments. Instead of being able to drink in a public area, surrounded by bartenders, bouncers, and police officers, those under twenty-one are forced to find secluded places to socialize with alcohol. These secluded areas are usually tucked away and hard to find so that those under the age of twenty-one can drink without worrying about law enforcement. Unfortunately, in their attempt to avoid the law those under twenty-one put themselves in more danger. The underground parties they attend are unsupervised and hard to find in case of emergencies. Although, even in emergencies people under twenty-one who have been drinking always fear calling for help.

Julia Gonzales was only 16 years old when her body was found in Pedretti Park by a passer-by. Her cause of death was unknown for three entire months. In the end, her death was ruled as alcohol poisoning. Out of fear, none of her friends called for help. Julia was left in the park to die alone. Even after her death, investigators were not able to get information from Julia's friends who attended the party with her (Shea, 2008). The consequences of underage drinking have led to silence. Julia's family will never know the

events that led up to her death and her friends will be traumatized for the rest of their lives.

Sadly, stories like Julia's are not uncommon. "An estimated 5.4 million people, ages 12–20 engaged in binge drinking, 15.8 percent of males and 12.4 percent of females, in 2013 and 4,358 people under age 21 die each year from alcohol-related car crashes, homicides, suicides, alcohol poisoning, and other injuries such as falls, burns, and drowning" (Underage Drinking, 2016). It should also be noted that the rational basis test states that, "The question is whether the classification bears a rational relationship to a state objective that is sought to be advanced by the law," (Reed v. Reed, 404 U.S. 71 (1971)). Does the classification of those under the age of twenty-one bear a rational relationship to the states objective and is that objective advanced by the law? Considering these facts it is important to question whether the discrimination against an entire class of American citizens is worth the results that the law has created.

# SCAPEGOAT THEORY

The scapegoat theory can be used to explain many instance of discrimination in cultures all over the world. Some of the most notorious cases of human degradation can be attributed to the scapegoat theory. The scapegoat theory is defined as a way that people deal with problems or emotions by placing the blame on someone else, who usually is unable to defend himself or herself. The blame is often put onto a minority, or a group that is vulnerable to others.

The minimum legal drinking age act can be directly linked to the scapegoat theory. The Medias portrayal of the drinking and driving problem put the nation in an uproar. The youth were blamed for the problems that drinking and driving created even though adults were also contributors to the problem. It was easier for society to blame it on the younger minority than to develop a method to stop all drunk drivers. The idea that the minimum legal drinking age law has serious discriminatory qualities is not new.

Before the passage of the law many protestors fought against it. During a congressional hearing an opponent of the minimum legal drinking age stated "In no time flat, the political bandwagon for a minimum drinking age of 21 became a steamroller. Members of Congress and the Reagan administration found it much easier to cut off an entire age bracket of adults from a freedom enjoyed (and abused) by all the other adults than to say no and to focus instead on drinking and driving by anybody"( 131 Cong Rec H 3803, 131 Cong Rec H 3803). Students organized marches, citizens wrote letters, the Washington Post published articles against the law, and average citizens lined up to speak in opposition to the law.  The forces were not great enough though. The MADD

organization and their partners did a better job at creating propaganda in support of the law. It was later noticed that one of the huge factors that had been used to gain support for the minimum legal drinking age was slightly misleading.

It had been said that the age group from 18-21 had represented a larger part of drunk drivers than the other age groups, but women of that age group were statistically not more likely to be involved in a DUI than older drivers (131 Cong Rec H 3803, 131 Cong Rec H 38030). A reason for leaving out this fact is that it would create a law that discriminated based on age and gender if women were excluded, and that would have been too obvious of a discrimination. Also left out was the fact that a large portion of that age group had no involvement in driving under the influence or any other alcohol related deaths (Craig v Boren 429 US 190). Let us not forget that the minimum legal drinking age was passed in order to combat deaths. It was estimated that 700 lives could be saved every year if the legal drinking age was increased to 21 (131 Cong Rec H 3803, 131 Cong Rec H 38030). Using this rational, a greater number of deaths would be avoided if the legal drinking age were increased to 25 or to 30. Restricting the drinking age to just 21 and younger would prevent over 85-90% of alcohol related deaths. If the main goal were to prevent fatalities it is clear that targeting older age groups would have been more effective.

As the scapegoat theory shows though, it is harder to target older age groups. An example of this can be found with the seatbelt law. A law that would have saved a larger amount of lives than the minimum legal drinking age law. The National Safety Council Estimates that mandatory seat belt laws would save 13,000 lives, compared with the 700 predicted for the drinking age hike" (131 Cong Rec H 3803, 131 Cong Rec H 3803).

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Despite this fact, the mandatory seatbelt requirement was always fought with opposition and claims of government infringement on individual rights. At the time that the minimum legal drinking age was passed, the law for seatbelt requirements had not been because of its unpopularity. Another factor to consider is that this law was created in 1984 for an entirely different generation of young people. It is unfair that over twenty years later, drivers under the age of twenty-one are still being affected by the decisions made for a completely different group of people.

Even though other alternatives were available and very obviously known and presented to Congress by many protestors, the political process is dominated by political lobbyist groups such as the MADD group and its partners. It is politically acceptable to target those under the age of 21 because they represent so little of the voting group that it would not affect elections or political campaign contributions.

## ALTERNATIVES

Other alternatives to reach the laws true goal, of preventing deaths caused by drunk drivers, should be taken into consideration. New solutions to the problem of drinking and driving have developed since 1984. New methods of transportation and the implementation of other safety laws have helped prevent drunk driving related accidents.

Uber and Lyft offer cheap alternatives to the traditional taxi. These new companies are convenient and appeal to customers through their availability using apps. A study conducted by MADD found that Uber reduced drunk driving arrests by 10% (PR, 2015). Alternatives like these help prevent people of all age groups from drinking and driving. It should not be forgotten that the original purpose of the drinking age laws were to combat drunk driving related deaths. Uber and similar companies have begun to fulfill that role.

Another alternative can be found with Google. Google is making huge leaps in the creation of its self-driving car. With this technology, the government would no longer have a use for the minimum legal drinking age. Drunk driving would be eradicated completely if government were to focus on funding and distributing the self-driving cars to the public. Google and other automobile manufacturers are hopeful for the future, but the reality of self-driving cars is expected to take years to fully implement (MONTICELLO, 2016). Although self-driving cars would be the ultimate solution to drinking and driving related deaths, the technology would take a while to implement and is not a realistic solution to current problems, but would be the solution for the future.

Other advancements to combat drunk driving have already occurred. After the passage of the minimum legal drinking age, new laws have been developed to solve the problem of drunk driving. DUI laws and the implementation of seatbelt laws have contributed to the decrease in drunk driving related fatalities (Mastrofski & Ritti, 2006). These laws were necessary even after the minimum legal drinking age law was passed, because the minimum legal drinking age was not adequate. Stricter DUI laws and seatbelt laws are able to combat drunk driving without targeting a specific age group.

## CONCLUSION

Alcohol related issues can be traced back to the prohibition era where they affected people of all ages. In 1984, the minimum legal drinking age law was created as an attempt to prevent drunk driving related fatalities. It was passed as a way to quickly fix a problem that the greatly concerned the public. Unfortunately, the law has not been as successful as one would have hoped. Instead, the law has pushed people to once again, drink underground. This has only put more lives at risk.

Alternatives to the minimum legal drinking age act are available and would be able to achieve results without discriminating against citizens based on age. Young age should make citizens a protected group instead of a scapegoat. It is unfair of the national minimum drinking age to continue to affect the lives of young adults. The issues with the law and available alternatives should be considered for future generations.

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