Thou Shalt Die Sober

Aaron J Shuler
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ABSTRACT: Federal blackmail precipitated by puritanical overreaction led to yet another example of a lack of proportionality in American law.

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He can walk into a store and buy a handgun, but he cannot walk into a bar and buy a beer. He can be ordered to war to kill or be killed, to “nation build” and to spread democracy, but he cannot order a glass of wine with his entrée.

Who is he? He is American and he is under the age of 21. There are a lot of him, not to mention a significant amount of his female counterparts.

It was not always this way. The legal drinking age of the 50 states is a matter for each particular state to decide in the American system of federalism. The 10th Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States.”

Most of the American states previously set their legal drinking ages at either 18 or 19.

However, in the early 1980’s there were a series of highly-publicized fatal traffic accidents that involved alcohol. These unfortunate incidents were seized upon by a relatively new but highly influential political group called Mothers Against Drunk Driving (MADD).

Under pressure from MADD but lacking the constitutional authority to directly dictate a drinking age to the semi-autonomous states, the Reagan Administration abandoned its typically pro-states agenda and acceded to federal legislation entitled the National Minimum Drinking Age Act (NMDA). Under the NMDA, the states could continue to constitutionally set their own drinking ages, but if they chose an age under 21, the Federal Government would cut off 10% of the state’s interstate highway funds.

The legality of this fiscal blackmail was challenged but the NMDA was upheld as a legitimate exercise of federal power under the Spending Clause in South Dakota v. Dole. The Rehnquist Court found that Congress’ conditional appropriations were permissible inducement as opposed to impermissible coercion.

While 10% may not seem to be a particularly large amount of money, in reality it now amounts to roughly $50,000,000 per annum. As a result, states rapidly capitulated to protect their coffers as opposed to their constitutional sovereignty. Wyoming was the last state to be “induced” in 1988.
And so a group of grieving mothers and puritanical busybodies managed to implement their own particular distrust of the evils of alcohol to every single state in the expansive American Union from Hawaii to Maine. Federalism and democracy, two of the most fundamental pillars of the American legal system, had had finer hours.

The hypocrisy and disproportionate nature of being able to catch a bullet for your country but not catch a buzz in your country is not lost on everyone. Periodically, objections have been articulated but inevitably give way to the necessity of paving roads.

John McCardle, a former college president of Middlebury College in Vermont, is leading the latest national charge to dismantle MADD’s histrionics, although his efforts are based in pragmatism, not federalism.

McCardle’s group, Choose Responsibility, seeks to deflate many of the canards and emotionally-charged-yet-cerebrally-empty tactics MADD has employed.

His group’s arguments are not entirely novel but have grown more persuasive as more time has only provided further evidence of how futile and unwise the NMDA is in reality.

Generally speaking, anyone who tells you that people wait until they are 21 to start drinking are patently naïve or reprehensibly disingenuous. Prohibiting adults—the age of majority in the United States is 18—from engaging in a culturally embedded activity only sows resentment and disdain for law, creates an unhealthy stigma around alcohol that encourages abuse, and wastes state funds by trying to enforce a law that is almost universally ignored.

The law simply, and very nearly absolutely, does not stop a 20-year-old from drinking.

Moreover, with specific regard to MADD’s proffered goal, instead of reducing incidents of drunk driving, a 20-year-old that is drunk is more likely to drive instead of asking for help if the legal drinking age is 21 because he does not want to be discovered already breaking the law.

A law that is so fundamentally flawed in both theory and practice should not be so difficult to change. However, it has been entrenched by two of America’s gold standards: moral sanctimoniousness and money.

MADD continues to parade pictures of children killed by drunk drivers around Washington while states are monetarily cajoled into obedience. It is up to the Federal Government to employ reason over righteousness and voluntarily reduce its own power. That is about as likely as waiting for your 21st birthday to drink a beer.