

ADULTS OR KIDS?

INSPECTING THE RIGHTS, RESPONSIBILITIES, AND PRIVILEGES OF 18-20 YEAR OLDS

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Amid the fervor of discussions on gun control this year, one of the policy recommendations advanced is to require that a person be 21 years old to buy a handgun. In the same vein, the National Gambling Impact Study Commission recommended this year that all legal gambling should be restricted to those who are at least 21 years of age. Wisconsin is already ahead of the curve, having moved to restrict gambling at Indian Casinos in the state to only those 21 and over. Also heard in recent months are suggestions to require a person to be 21 to use credit cards.¹

Whether or not such policies would be effective at reducing gun violence, credit card debt, or compulsive gambling, another important issue is at play. If the vast majority of adults are allowed to engage in these activities, on what basis may the government restrict those privileges from younger adults? This question is one that most policy makers and the general public do not feel obliged to answer.

It is telling that the age of 21 is being offered as the appropriate new threshold for these responsibilities. Obviously there is a



parallel being drawn with the renowned minimum legal drinking age. Ever since the voting age was lowered to 18 in the early 1970s, the drinking age has stood as the locus of the debate over the rights of young adults. But the drinking of alcohol may soon be joined by such perceived vices as credit card use, gambling, handgun ownership, and who knows what else.

Underlying these age-based restrictions is the belief that 18 to 20 year olds are not responsible enough to handle these items, *and* that it is permissible for governments, at the state or national level, to deny these people liberties that are enjoyed by other adults.

Faced in the economic community with the determination of a legal minimum wage, the social community has been grappling with what could be called the legal minimum age. This minimum age is the time of life, marked by one of our celebrated birthdays, at which the rights, responsibilities, and privileges of adulthood are given to individuals. Ask Americans when someone becomes an adult,

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and most will respond when a person turns 18. Yet with adulthood and its corresponding expectations does not always come equal treatment before the law. Instead, there is a staggered process to which adult privileges are allowed, causing people in this age group to find themselves treated as an adult one moment, only to be looked upon as a mere adolescent in another. A more reasonable approach would be to hold a serious discussion on the general expectations and abilities of young adults, and then decide upon a *single* age at which the complete set of adult rights, duties, and privileges are conferred.

Social Expectations and Legal Treatment of Post-Adolescents

There is a legitimate purpose in establishing an age at which individuals assume the rights and privileges of adulthood versus that of simply a juvenile. As a matter of personal development, it is understood that children, for the most part, do not have the capacity to handle the responsibilities of living in an adult world. Therefore, prior to adulthood a person is not considered independent in most of their social and economic interactions, but rather they are dependent on others. This dependence falls mostly to a child's parents, followed by other family members, school personnel, and various community members. Parents can lawfully restrict their child's actions as they see fit, but they also can be held responsible for the misbehavior of their children. In short, common law and statutory law generally reserve to parents and legal guardians substantial control over their children until the time at which they are mature enough to be self-responsible.

When children reach the age of 18 many graduate from high school and move out of their parent's home. Numerous 18 to 20 year olds are in their first few years of post-secondary education, gracing college campuses with a newfound freedom and the short-term surplus of student loans. They party, often work part-time jobs, experiment with various "adult" pleasures, and learn (or fail to learn) how to juggle a schedule. And for those young

adults who do not attend college but go directly into the full-time work force, life's lessons come along even more quickly. These post-adolescents are often still connected by a tether to the parents they lament as constrictors of their freedom, but whom they blissfully know (yet rarely admit) will still be there if they fall flat on their faces. Nevertheless, when this separation occurs there comes a newly created independence that neither law nor direct parental control can effectively monitor. And so comes adulthood.

Adulthood has both legal and cultural components. Policy makers decide when the legal recognition of adulthood falls upon persons through what was traditionally called the age of majority, which today ostensibly stands at 18 (more on that later). Some of the privileges currently conferred upon persons on their 18th birthday are the ability to marry, legally smoke tobacco, buy, sell and trade real-estate and stocks, vote for public officials, and to view sexually explicit materials. Some of the concurrent duties imposed are registration in the selective service for males, which establishes their eligibility to be drafted into the armed services, and the automatic treatment as an adult in the justice system. The cultural component of adulthood is less definitive, but is still manifested by the rights of passage that signify one's transition to adulthood. These comings of age are sometimes just the actual experience of the privileges outlined above. Other times they involve such responsibilities as owning a car, paying rent, or buying insurance.

Overall though, the meaning of adulthood seems predominately that of social and economic independence — the autonomy of an individual both before the law and fellow people on the streets. Quite literally, it means that a person no longer has to get their parents' permission to engage in the more serious aspects of life.

Yet while post-adolescents experience the control of increasing details in their life, that control is not coupled with certain responsibilities and experiences that are denied by law. They cannot drink alcohol; they cannot even

enter a drinking establishment after certain hours. Now its possible they will not be allowed to own handguns, go with their older friends to the casino, or maybe even run a balance on a credit card. This situation creates a dangerous mixture of expectations, along with an inability to maintain a coherent system of encouragement and discipline for the current youth culture. On one level we expect them to act like adults, yet on another we do not let them. And we do not let them by making it illegal.

When it comes to translating the various social expectations of 18 to 20 year olds into their legal treatment, a person's view on this topic typically falls into one of two categories. First, there are those who conclude that 18-20 year olds are, in general, immature and dangerous; so much so that they should not, for practical reasons if not principled ones, be allowed certain privileges of adulthood that require higher levels of responsibility (such as drinking alcohol, gambling, or credit cards). Accordingly, it is better to let these youths mature some more before they are allowed these responsibilities. To support this view, proponents showcase instances of excessive teenage exuberance, maybe even the violence, accidents, and other dangers they tend to create. The destructive events of Woodstock 99 would likely be a prime example.

The second view contends that once a person reaches the age of 18 they should be granted all the rights and privileges of other adult citizens. If society labels them adults, let them be adults. The rallying cry is often framed with the understanding that if one "is allowed to die for their country" then he or she should be allowed to partake in the other elements of adulthood, including popping open a beer if they so please. Some in this camp also see a

social benefit from the inherent compelling of maturity that comes along with granting these privileges at age 18 — the classic "learning the hard knocks of life" sentiment.

Not surprisingly, both perspectives offer cogent insights. Those fearful of the late adolescent mentality and proclivity to danger remind us of the risks posed by many 18 to 20 year olds. Those more willing to give this population adult privileges remind us of the American traditions of freedom and individual responsibility. As a result, few people on either side of the debate completely dismiss the merit of the other's concern. Instead, the disposition on this matter is based on a value judgment

over which concern is more substantial and thereby trumps the other in cases when they conflict. Is it better to restrict freedom to protect the young and those they contact from the impact of potentially dangerous activities? Or is it better to risk these negative consequences in order to allot freedom equally to all adults? These are the different value judgments that drive the issue.

An insightful look at these opposing views shows that the first has a definite outcome-orientated, or utilitarian emphasis, while the second is focused on questions of civil rights and civil liberties. Given this understanding, it becomes apparent why there have developed two stages at which adulthood's privileges are given. First, in matters where evidence can show that a disproportionate amount of harm occurs when people in that age group partake in an activity, then those privileges will generally be granted at a later age, usually 21. Here the utilitarians win. The tragic accidents that occur while teenagers drove under the influence led many to say that a social benefit would arise from raising the drinking age. Do underage adults still drink and drive?

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Certainly. But that age group can statistically be shown to do it less than when they could drink legally. Likewise, instances of violence among that age group are being used to support the recommended policy of setting 21 as the minimum age to own a handgun: if gun violence will go down from such a restriction (a yet unproven assumption), that alone would justify such a change.

A different dynamic happens when the activity involved is framed more as a right of adult citizens, instead of merely a privilege. The ability to marry, own real estate, and vote are some of the responsibilities that have fallen into this category. Any aggregate social harm that may indirectly result from having those younger than 21 being involved with these matters is usually difficult to substantiate. For example, the young adults who vote (of which there are few) cannot be said to bring about any harm to society. In these cases, the burden falls more on those trying to restrict that age group from the activity. Therefore, a policy towards equal treatment prevails as the natural tendency.

The conflict between the rights-based and utilitarian emphases has never quite reached a critical mass in the debate over the minimum legal drinking age. But that tension will likely become more evident in debates over age-based ownership restrictions on handguns, and as even more and more liberties become restricted in the name of social benefit.

Drawing a Consistent, If Imperfect Line

The preceding discussion explains why different ages are currently required for certain adult responsibilities, but it goes nowhere towards justifying the situation. It only illustrates that the American culture and its political system are having a dandy of a time deciding what are the appropriate responsibilities and privileges that should be conferred upon 18 to 20 year olds. Why can someone legally marry at age 18, but cannot play blackjack at the local casino? Or imagine a 20 year old individual who works full-time, pays rent, and votes for members of government. This same

person cannot go down to the corner pub, decide if Budweiser is better than Miller, and buy a beer? Clearly, people in this age group are allowed to handle some serious adult responsibilities, but by legal restraint they are denied other responsibilities that their fellow adults carry. The obvious hypocrisy created by the overlap of these policies is disturbing, if not laughable.

Sometimes the hypocrisy is even found *within* a single type of activity — like gambling. Beginning this year, Wisconsin's state government has decided that someone has to be 21 years old to gamble at Indian casinos in the state. Such a law implies that the state believes gambling is particularly dangerous for those younger than 21. Think again. An 18 year old can still plop down as much money as he or she wishes on the state lottery system, which is an arguably equally "dangerous" form of gambling. Why the differential treatment?

The schizophrenic nature of these policies generates an important series of questions: First, what are we really protecting with laws that keep people under 21 from drinking alcohol, gambling, owning a credit card, or owning a handgun? Second, why is that protection needed for these younger adults, but not other adults? Finally, on what basis we can defend unequal treatment before the law between people who are otherwise considered adults?

What are we protecting with laws that deny people under age 21 these products?

Unlike most actions restricted by law, drinking alcohol, owning a handgun, and so forth are not socially detrimental in and of themselves. Few people would argue that when an adult (whether 18 or 30) drinks a beer it automatically constitutes a threat to public safety. The threat only comes if and when that person drinks alcohol to the point of intoxication, and then commits a crime. In other words, the danger seen in these products are the consequences of their use being combined with flawed human action, like irresponsible judgment, malice, or addiction. It only becomes manifested when these other crimes

are committed. But we already have laws which punish those who drink and drive, commit assault or battery, and so forth. And they apply to 18 year olds as much as 30 year olds.

The true basis for the discrepancy is really an ingenuous concern for "public health," which pines that since the young adult population is generally not very risk-averse, the government must protect society from the possible harm some in this age group may cause. Or so the story goes. At the root of these age-based restrictions is a prototypical paternalism. These adults are told, just like children, that they have to wait until they are older to do what they see other adults doing all the time. Why? Because we need to protect them. It is based solely on reasoning that harks back to the outcome-orientated perspective of those who support later age restrictions.

But what effect do these age-based restrictions really have? The evidence is mixed. Certainly some studies have shown that the number of alcohol-related traffic accidents involving teenagers goes down when the drinking age is raised to 21. But these decreases are not large, and a number of other studies found equivocal results.² Beyond drunk driving, the types of crime that decrease with the raising of the drinking age are generally the least violent, such as vandalism and disorderly conduct, while assaults and aggravated assaults do not decrease at all.³ In addition, one would need to have their entire head in the sand to say that underage drinking does not go on, especially on college campuses. In fact, the 21 year old drinking age has had no effect on binge drinking, as college students are drinking to get drunk even more than before the drinking age was raised to 21.⁴ Likewise, 18-20 year olds gamble, if not in

state-regulated casinos then elsewhere.

If anything, by making these activities socially taboo, irresponsible actions may become more prevalent, or at least less controllable. It is surely much easier to regulate and police a public tavern than a private party. Yet it is at these private residence parties where a majority of underage drinkers find greater access to alcohol. Research has shown that the minimum drinking age of 21 deters drinking in controlled environments (e.g.; bars, night clubs, public sporting events) but has no significant effect in uncontrolled locations (e.g.; residences, dormitories, homes of relatives).⁵

It is rare to find many people who have grown up under the 21 year old drinking age who have not consumed an alcoholic beverage under situations which were classified as illegal. Some of these folks are caught, but the vast majority are never sanctioned. Only an estimated 2 out of every 1,000 occasions of illegal drinking by youth under 21 end in an arrest.⁶ There is also evidence that enforcement of the drinking age is lax because police officers see a gener-

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al acceptance of youth drinking, and claim that they do not receive significant encouragement from community members to increase enforcement efforts. It is difficult enforcing a law that is not taken seriously and deals little with direct harm to the public. Nevertheless, whether caught or not, a massive population is breaking the law. Are we really prepared to legally sanction otherwise law-abiding citizens for simply drinking a beer or laying down a bet at the blackjack table? Given the current enforcement of the minimum drinking age, that is unlikely.

And for good reason. Many of these laws

simply turn common malfeasance into crimes. Keep in mind that those goods and services being restricted from people under the age of 21 are not dangerous and harmful in such a way as to be inherently unlawful. Otherwise the government would not allow anybody, no matter what age, to partake in these activities. As with the universal prohibition policy of the 1920s, prohibition on the 18 to 20 year old age group produces similar phenomena of concealed distribution and consumption, which is widely known and even accepted. Such social apathy towards enforcing the law exhibits its weakness, just as what happened with prohibition. We can only expect similar experiences surrounding the other activities that would be restricted from 18 to 20 year olds.

Why is protection needed for these young adults, but not other adults?

The activities looking to be restricted from those under 21 are of a nature that many people may think are base and morally repugnant. Be that as it may, that point does not change the reality that these activities and products are legal for most of the adult public to enjoy. It is a moral issue more than a legal one, and we should not confound the two lines of argumentation. It may be contested that because these things are "immoral" and potentially dangerous that someone must be older before they can assume the responsibilities that go along with such activities. But if that is the case, then we have to look to the other types of responsibilities that are given to 18 year olds and assess their relative level of danger. It would be difficult to argue that the temptations and dangers of drinking alcohol are substantially greater than many actions that are permitted at age 18.

The intersect between one's age and the ability to act responsibly is to a large degree mutually dependent. In other words, the age at which people will be responsible enough to handle certain duties and privileges in society will be reflective of the age at which segments of society assign that ability, either through cultural expectations or by law. Both on a family level and the much wider societal level, the more we tell (and treat) post-adolescents that

they are immature and irresponsible, the more they are encouraged to act as such. Conversely, the more that they are given the opportunity to act with adult-level maturity, the more reason and need they will have to do so.⁷

Certainly there are great differences between the attitudes and actions of young adults versus those who are older. But these natural distinctions also exist between 35 and 65 year olds. The pivotal question therefore is not whether 18 to 20 year olds are as mature as those older than 20, but rather whether they are sufficiently mature to handle adult responsibilities well *enough*, even if not as well as their elders. After all, if the argument is based on relative levels of maturity, it would be difficult to set any age, since maturity generally increases throughout one's life, if only marginally at some points. Additionally, maturity is not only a function of age, but also of experiences, personal character, physical development, and knowledge. Deciding what quantum of these various measures is sufficient for adulthood is a certain exercise in hubris. The temptation to use age as a proxy is founded solely on its tangible nature, as compared to the other components of maturity. It is by no means an absolute measure.

On what basis can we defend unequal treatment from the law between adults?

Twenty-one and older laws are in the peculiar category of status-based laws, in which a person cannot lawfully do something that another is allowed to do, based solely on a personal trait. With respect to the current discussion, it is not the act of doing a certain activity which is unlawful, it is doing that act *and* being younger than 21. Not all status-based laws are without merit. As discussed earlier, it is imperative that children under the age of majority are treated in some manners that would not be acceptable for treating adults. Likewise, most released felons are not allowed to legally own handguns even though other citizens are allowed. But the status of a being released felon is much different than that of being a 19 year old. The former status is based upon willful action of the individual, which generates a meaningful connection

between that person's action and the likely dangerous use of a handgun. The nineteen year old's status is purely a matter of life — everyone who lives to the age of 20 will at some time be 19 years old — and it is not their fault.

It is perplexing how acceptable is the differential treatment of 18 to 20 year olds from other adults. From a rights-based perspective, having differential legal treatment for 18 to 20 year olds is as unjust as doing it for 38 to 40 year olds. If we are willing to maintain that citizens become adults after their 18th birthday, then regardless of what statistics show of the nature of that age category, these people are adults. If the data demonstrate that the level of risk-taking and immaturity in this age group is so pervasive and frightening, then perhaps we should move back the age when adulthood is recognized. Some argue, and maybe correctly, that 18 to 20 year olds are currently incapable, emotionally or mentally, to handle the rights of adulthood. There are certainly ample cases of people in this age group exhibiting questionable levels of maturity. But if this is the case, then move back all the public policy-based responsibilities of adulthood, including military service.

The classic argument used to encourage the lowering of age restrictions for adult privileges is that one may be drafted to fight in the military for their country at age 18. There is no greater duty than to possibly give up one's life in battle, especially if that service is imposed through conscription. The best manifestation of this reasoning was the enactment of the 26th Amendment to the US Constitution in 1971, which mandated that the voting age be 18. The common sense idea was that if the State can coerce 18 year olds to die for their country, then these people should be able to vote for

those who make the decisions that may put them into harms way.

Yet there is another element to the discussion of age and military service that seems overlooked. A person in the military is deemed able to handle the responsibilities of operating weapons of destruction, and is expected to understand the serious ramifications in the failure to fulfill those responsibilities. Granted, these abilities are acquired and performed under the heavy supervision of military life, but the capacity of 18-20 year olds in this regard is rarely challenged. This reality begs the question of how someone who is expected to be responsible enough to fire a gun or oper-

ate a tank, is not responsible enough to down a beer at the local pub? If we are willing to put 18 to 20 year olds in military combat situations and expect them to, quite literally, make life and death decisions, then there is little reason to believe they are incapable of handling responsibilities with no more (and probably much less) serious consequences.

But the minimum age game has rarely been an exercise in rights-based

logic and has been more a child of utilitarian social thought. According to advocates of the 21 year old drinking age, because underage drinking is related to public health concerns, there is no need to worry about the military age/drinking age disparity. In defense of this difference they cite how "different activities have different ages of initiation" and that "these restrictions are based on the requirements of the specific activities."⁸ That last point is certainly accurate, but it completely avoids applying its own logic, which if done would cast doubt on the fairness of this discrepancy. After all, the skills needed for military service (such as discharging a weapon and maintain-

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ing discipline in combat environments) are certainly no less demanding than that needed to drink a beer (such as determining the effects of this drug on your abilities and health).

If someone is a legal adult then they should be treated as an adult. The status-based nature of these new age restrictions heedlessly accepts as legitimate the ability of the state to restrict rights from some while allowing those rights to others when both groups should be treated as equals under the law. From a policy standpoint, it necessitates a blind eye to an otherwise apparent form of discrimination. The inherent danger in justifying the prohibition of certain activities to younger adults on these utilitarian grounds is that it would not take much for the same reasoning to allow similar restrictions to other populations. Any discrete population whose members, as a group, disproportionately cause a social harm could be singled out for special legal treatment, if the same logic of these 18 to 20 year old policies carry the day.

Discussions on both cultural and political levels must turn to a comprehensive assessment of the issue of adulthood and its legal treatment. Above all, the goal of consistency should be overriding when answers are made as to the appropriate rights, responsibilities, and privileges due 18 to 20 year olds. After all, if these individuals are not responsible enough to own a handgun, gamble, or drink alcohol, then are they really responsible enough to vote, purchase real estate, and serve in the military?

Therefore, building on the two competing schools of thought on 18 to 20 year olds, there emerges a third perspective. It simply espouses the view that any age may be picked for conferring these "adult" privileges, but that age should be the time at which *all* these privileges are acquired. This policy explicitly accepts the somewhat arbitrary nature of any age cut off, but does not give credence to having multiple ages at which privileges are conferred. Obviously a person in this camp must still decide what age is appropriate and wrestle with the issues discussed above. It may be

at age 18, 19, 20 or 21, but the overriding goal is coherence and a resultant social justice. That justice is found in treating all adults equally before the law.

Adults or Kids?

Is there really some magical epiphany that occurs to someone on their 21st birthday, which allows them to better understand drinking alcohol, credit card use, or handgun safety? Should someone really need to be 21 to play 21? Of course not. Even those who support restricting privileges from younger adults will admit that they are only concerned for whatever marginal social benefit results from the change, and not what the effects may be on civil liberties and rights. They have few qualms with age-based limitations on 18 to 20 year olds that unfairly penalize most youths for the behaviors of a few.

So are 18 to 20 year olds still adolescents, who have yet to reach the age of majority? Or are they young adults who should be accorded the full rights and privileges of other adult citizens? Currently, policy makers in American answer "it depends." The absurdity of these laws is again found in the fact that no direct harm is done if young adults, aged 18 to 20, violate these age restrictions. A better policy is to make up our minds, end the current unjust state-sanctioned age discrimination, and decide on one age. The drinking age is not just about drinking alcohol. Games of social engineering, such as what is being done with the personal liberties of 18-20 year olds, are very dangerous games. Individual rights are sacrificed in the name of social benefit, without anyone questioning this unequal treatment before the law.

Notes

1. The Consumer Federation of America has urged Congress to require that people under 21 get parental approval or demonstrate sufficient income before obtaining credit cards, and to curtail credit card marketing to people under the age of 21. In September of 1998, the US Senate considered a measure on the marketing issue, only to have it defeated largely out of concern for its effect on those younger than 21 who work full-time.

2. Ever since the mid 1980s, the federal government has devised a system that denies all-important federal highway funds from states that do not have a 21 year old drinking age. This policy creates a de facto federal mandate taking away the option from states, who otherwise have the option ensured to them under the 21st Amendment, which guarantees States' rights to regulate alcohol. A common support offered for this policy is that in its absence, 18-20 year olds will drive across state lines to drink where it is legal, and thereafter drive home drunk causing terrible, even fatal accidents. This perspective uses logic that is disturbingly circular to support its position, because while the result is most likely true, it in no way is directly supportive of a *21 year old* drinking age, just a *uniform* drinking age. Clearly if all states had an 18 or 19 year old drinking age there would also be no incentive to drive across state lines to drink.
3. Joksch, Hans C. and Ralph K. Jones. Changes in the Drinking Age and Crime. Journal of Criminal Justice Vol. 21, (1993). pp. 209-221.
4. Smith, Michael Clay, and Margaret D. Smith. Lowering the Drinking Age. The Chronicle of Higher Education Vol. 45, No. 27, March 12, 1999, p. B8.
5. Mooney, Linda A. The Differential Effects of the Minimum Drinking Age Law. Sociological Inquiry Vol. 63, No. 3, Summer 1993, pp. 330 - 338.
6. Wolfson, Mark; et al. Law Officers' Views on Enforcement of the Minimum Drinking Age: a Four State Study. Public Health Reports. Vol. 110, No. 4, July-August 1995. pp. 428 - 438.
7. Granted, there are a number of teenagers younger than 18 who may be mature beyond their years, to such a degree that they could also handle adult responsibilities. Is it fair to not allow them legal freedoms under the same logic just expressed? Possibly not. But the key difference is that, almost universally, those younger than 18 are still living at home and through the means of their parents. This condition is important. The ability and legitimacy of parents to control the behavior of their children when they live at home is strong. Most parents who recognize a child who is exceedingly mature will accord that child greater freedom and responsibilities without the need for law to intervene. This sentiment is even reflected in the law. For example, Wisconsin law recognizes the ability of underage persons to drink alcohol when accompanied by a parent. Likewise, if a parent decides to allow their child to undertake other adult activities, even if others may think it questionable, the law has little force in that regard. And while occasional instances of indiscretion will occur on the part of parents, for the most part we should recognize the system as just.
8. Rosenfeld, Carolyn. The Public Debate Over the MLDA. In Toomey, Traci, et al. The Minimum Legal Drinking Age: History, Effectiveness, and Ongoing Debate. Alcohol Health and Research World Vol. 20. No. 4, 1996, pp. 213 - 218.