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**Minimum Legal Drinking Age in the U.S.:
A Reasonable Exception to Age of Majority?**

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Abstrakt

Diplomová práce „Minimální věk pro požívání alkoholických nápojů v USA: Oprávněná výjimka z principu plnoletosti?“ se zabývá legální hranicí pro požívání alkoholických nápojů ve Spojených státech jako nástrojem pro snižování počtu obětí dopravních nehod spojených s alkoholem. Tato hranice byla totiž v USA stanovena na dvacet jedna let věku – výše než je věk dospělosti – právě za tímto účelem. Diplomová práce analyzuje různé aspekty této problematiky a dochází k závěru, že tato věková hranice, která závažným způsobem omezuje práva dospělých Američanů ve věku od osmnácti do dvaceti let, nesplnila očekávání, se kterými byla v roce 1984 zavedena. Proto práce představuje alternativy k tomuto způsobu boje s řízením v opilosti a zkoumá, jestli a jakým způsobem jsou používány a co brání jejich častějšímu využití. Diplomová práce má čtyři části: první kapitola představuje základní fakta o roli alkoholu a řízení motorových vozidel v americké společnosti a představuje problematiku řízení pod vlivem alkoholu – včetně toho, jak je vnímána společností. Následující část se zabývá právně-historickým vývojem této hranice a případy jejich soudních napadení kvůli jejich možné protiústavnosti. Třetí část shrnuje výsledky vědeckých výzkumů a navrhuje efektivnější způsoby boje s řízením pod vlivem alkoholu. Poslední kapitola zkoumá, co brání využití těchto alternativ a také jak aktivistická hnutí ovlivňují pohled veřejnosti na tuto problematiku. To je důležité, jelikož právě postoje veřejnosti se v minulosti již několikrát ukázaly být klíčovými pro utváření oficiálních strategií.

Abstract

The MA thesis “Minimum Legal Drinking Age in the U.S.: A Reasonable Exception to Age of Majority?” examines the U.S. legal limit for consumption of alcohol from the perspective of policies aimed at controlling drunk driving because the minimum drinking age was set to twenty-one – higher than the age of majority – in order to reduce drunk-driving fatalities. The thesis analyzes different aspects of this issue and concludes that the high minimum legal drinking, which constitutes a severe limitation of personal freedom of those aged eighteen to twenty, did not fulfill the expectations with which it was introduced in 1984. The thesis suggests alternatives to the high age limit, and examines how and if they are implemented or what prevents their frequent use. The thesis has four parts: one provides basic facts about drinking, driving, and drunk driving in the U.S. society including the attitudes of the public toward the issue. The following part looks into the legal developments of the drinking age limits and legal challenges to the law arranging the age limit for its supposed unconstitutionality. The third chapter looks at the results of scientific research and suggests ways to deal with drunk driving more efficiently. The last part examines what prevents these more effective measures from being widely used and the power the public activist movements have on forming the public view on the issue, which has proven important for creating official policies.

Klíčová slova

Minimální věk pro pití alkoholu, řízení v opilosti, ústavnost, věk dospělosti, práva států, diskriminace, *South Dakota v. Dole*, *Manuel v. State*.

Keywords

Minimum legal drinking age, drunk driving, constitutionality, age of majority, state rights, discrimination, *South Dakota v. Dole*, *Manuel v. State*.

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Prohlášení

1. Prohlašuji, že jsem předkládanou práci zpracoval/a samostatně a použil/a jen uvedené prameny a literaturu.
2. Prohlašuji, že práce nebyla využita k získání jiného titulu.
3. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 17.5.2012

Jana Lokajíčková

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Vedoucí práce:	Mgr. Kryštof Kozák, PhD.
Zdůvodnění výběru tématu práce (10 řádek):	<p>Pro svou diplomovou práci jsem si vybrala otázku, zda je zákon ustavující ve Spojených státech amerických minimální věkovou hranici pro konzumaci alkoholických nápojů na 21 let protiústavní. Toto téma jsem si vybrala na základě projektu na předmět Law and Society in the U. S., který jsem absolvovala na Institutu mezinárodních studií v letním semestru školního roku 2010/2011. V rámci tohoto předmětu jsem zpracovala krátkou prezentaci na toto téma, a tato problematika mě tak zaujala, že jsem se rozhodla tomuto tématu věnovat ve své diplomové práci a zpracovat komplexní práci, která shrne historii této problematiky, současný stav, a představí argumenty, na jejichž základě bude vyvozen závěr, zda je výše zmíněný zákon protiústavní či nikoliv.</p>
Předpokládaný cíl (10 řádek):	<p>Cílem této práce bude komplexně shrnout výše zmíněnou problematiku, tedy pokusit se zjistit, zda zákon ustavující ve Spojených státech amerických minimální věkovou hranici pro konzumaci alkoholických nápojů na 21 let je protiústavní. Cílem práce bude poskytnout teoretický základ k dané problematice, zhodnotit literaturu na toto téma, shrnout vývoj minimální věkové hranice pro konzumaci alkoholu a popsat přesné fungování současného systému, na kterém je dnešní věkový limit založen. Práce také představí vlivné organizace, které se dožadují snížení minimální věkové hranice pro konzumaci alkoholu na 18 let, resp. organizace, které trvají na zachování současné věkové hranice. Práce představí argumenty pro a proti snížení hranice a zejména se pokusí zhodnotit, zda současný zákon odporuje Ústavě Spojených států, resp. jejímu XIV. dodatku, který obsahuje tzv. Equal Protection Clause, Citizenship Clause a Due Process Clause, které mají zaručit rovné zacházení se všemi občany USA.</p>
Základní charakteristika tématu (20 řádek):	<p>Po zrušení prohibice byla stanovena věková hranice pro konzumaci alkoholických nápojů na 21 let, což odpovídalo tehdejší hranici věku dospělosti. V roce 1972 však XVI. dodatek americké Ústavy hranici dospělosti snížil na 18 let. Následně většina států snížila i věk pro konzumaci alkoholu. Na konci 70. let se objevilo mnoho studií, které spojovaly snížení této hranice s nárůstem případů řízení pod vlivem alkoholu a dopravních nehod zaviněných alkoholem. V důsledku toho a tlaku některých organizací, např. Mother Against Drunk Driving, byl v roce 1984 schválen National Minimum Drinking Age Act, který nepřímo donutil státy k posunutí hranice zpět na 21 let. Státy, které by</p>

hranici nepřizpůsobily novému zákonu, by totiž přišly o značné finanční příspěvky na dálnice. Tento mechanismus již byl soudně napaden, a to v případě *South Dakota v. Dole*. V 90. letech dokonce byla soudně napadena samotná podstata zákona, a to posunutí hranice na 21 let za situace, kdy věk dospělosti je již 18 let. Nejvyšší soud v Louisianě o tomto rozhodoval roku 1995 a uznal, že *National Minimum Drinking Age Act* je protiústavní, jelikož odporuje XIV. dodatku k Ústavě, který zaručuje rovné zacházení všem občanům USA. Nejvyšší soud v Louisianě však po několika měsících však své rozhodnutí zvrátil, jelikož Louisiana by tak přišla o část příspěvků na dálnice, což způsobilo poprask. Soud napodruhé rozhodl, že zákon je v souladu s Ústavou, jelikož pomáhá zabránovat nárůstu nehod spojených s alkoholem. V této práci budu argumentovat, že ačkoliv zmíněný zákon může mít pozitivní vliv na počet dopravních nehod spojených s alkoholem, nemění to nic na tom, že zákon je protiústavní a pro vysoký počet případů řízení pod vlivem alkoholu s tragickými následky se má najít jiné řešení než zvyšování minimální věkové hranice pro konzumaci alkoholu.

Předpokládaná struktura práce (15 řádek):

Úvod

Hlavní sporné body

Vývoj minimální věkové hranice pro konzumaci alkoholických nápojů ve Spojených státech

Soudní napadení *National Minimum Drinking Age Act*

a. *South Dakota v. Dole*

b. Nejvyšší soud v Louisianě

Organizace

a. *Mothers Against Drunk Driving*

b. *Amethyste Initiative*

Vyhlídka na uznání *National Minimum Drinking Age Act* za protiústavní

Závěr

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Contents

BIBLIOGRAFICKÝ ZÁZNAM.....	3
PROHLÁŠENÍ.....	5
ACKNOWLEDGEMENTS	6
CONTENTS	1
INTRODUCTION	2
1. DRINKING AND DRIVING IN THE UNITED STATES	6
1.1 DRIVING IN THE UNITED STATES.....	6
1.2 DRINKING IN THE UNITED STATES	9
1.3 DRINKING AND DRIVING IN THE UNITED STATES	15
2 LEGAL ASPECT	22
2.1 MINIMUM DRINKING AGE HISTORY	22
2.2 THE FEDERAL UNIFORM DRINKING AGE ACT	24
2.2.1 <i>South Dakota v. Dole</i>	26
2.2.2 <i>Manuel v. State</i>	29
2.2.3 <i>Other Attempts to Repeal the Federal MLDA</i>	32
3 SCIENTIFIC ASPECT – WHAT REALLY WORKS IN REDUCING TRAFFIC ACCIDENTS?.....	34
3.1 EFFICIENCY OF THE 21 MLDA	34
3.2 WHAT MIGHT HELP? – OTHER MEANS TO REDUCING DUI FATALITIES.....	38
3.2.1 <i>BAC Limits</i>	38
3.2.2 <i>Legal Threat</i>	41
3.2.3 <i>Long-Term Strategies</i>	42
4 DUI FEDERALIZATION AND ENFORCEMENT	45
4.1 FEDERALIZATION + ORGANIZATIONS	45
4.2 LAW ENFORCEMENT.....	49
CONCLUSION	57
RESUMÉ	60
SOURCES	63
PRIMARY SOURCES	63
SECONDARY SOURCES	63
<i>Monographs and Volumes</i>	63
<i>Articles in Scholarly Journals</i>	64
<i>Internet Sources</i>	66
<i>Newspaper Articles</i>	70
APPENDIX: LIST OF ABBREVIATIONS.....	71

Introduction

The minimum legal drinking age in the United States is set at the age of twenty-one and thus is one of the strictest in the world. In the U.S., young people are not allowed to drink alcoholic beverages until they are twenty-one, but they may vote, sign important binding contracts such as mortgage applications or serve in the military and fight in warzones after they reach eighteen years of age, drive when they are sixteen or even less, and engage in sexual activities when they are sixteen to eighteen (depending on the individual states). Why is the legal limit for alcohol consumption so high? What is so special about it? Are young people supposed to be significantly more responsible when they are twenty-one than when they are eighteen? What level should the limit be at? Why exactly twenty-one and not twenty-five if people are considered to be more responsible with increasing age?

This thesis analyses the minimum legal drinking age in the United States from the perspective of policies aimed at controlling drunk driving because the drinking age was set higher than the age of majority in order to reduce drunk-driving fatalities. The thesis will look into different aspects of this issue and it will try to assess if the minimum legal drinking age of twenty-one fulfilled the expectations with which it was introduced, and, if not, what the alternatives to the high age limit are, how and if they are implemented or what prevents their frequent use. Higher drinking age is a severe limitation of personal freedom for all those aged eighteen to twenty, especially to those who would be responsible drinkers, which makes this issue quite important and relevant to wider discussion about freedom in the U.S. society.

Legal age limits tend to reflect the cultural, social and legal values of a specific nation. What is very interesting about age limits in the United States is the big difference between the minimum driving age and minimum drinking age, the former well below the age of majority, and the latter well above. The low minimum driving age seems to reflect the necessity of driving in the U.S. However, if people are not considered to be responsible enough to drink alcoholic beverages until they are twenty-one, is it reasonable to allow them to drive when they are about fifteen? That is to say, drivers' irresponsible behavior, such as speeding or reckless overtaking, may have tragic consequences as well; moreover drivers do not only endanger themselves but also other participants of the road traffic.

In the case of the minimum driving age this connection is unclear. On the one hand, Americans are very careful about their rights being infringed, for example, a law prohibiting any consumption of alcohol before driving seems to be something unimaginable in the U.S. society; on the other hand, laws prohibiting consumption of alcohol in the cars also for non-drivers are tolerated, just as the ban of alcohol consumption for adults under the age of twenty-one, which infringes the rights of millions of young Americans.

The first chapter provides the reader with necessary background to the issue the thesis is dealing with. It summarizes the most important facts about driving, drinking, and drunk driving in the United States including the public attitudes towards the problem. Special attention is paid to underage drinking and binge drinking.

The second chapter deals with the legal aspect of the minimum drinking age. The history of the legal drinking age is summarized, and the main focus of the second chapter is on the controversial aspects of the law that regulates the current drinking age, including attempts to challenge the law as unconstitutional.

The third chapter is devoted to the analysis of existing scientific research on the efficiency of the high minimum legal drinking age in reducing drunk-driving traffic fatalities, and proposes other ways how to deal with drunk driving, which proved successful according to other research.

The fourth chapter looks into the reasons why the suggested alternative successful countermeasures to drunk driving are not used sufficiently in the United States, what are the factors preventing their wide use, what might help to increase their use and what are the ways how to influence official alcohol policies. The last chapter will also focus on public activist movements and their power to influence public attitudes. That is important as it seems that historically, alcohol policies have often reflected the mood in the society.

Drunk driving is a thoroughly researched issue. There are several comprehensive books on the topic. Probably the most elaborate one is a collection edited by Michael Laurence, John Snortum and Franklin Zimring, titled *Social Control of the Drinking Driver*¹. This collection was published in 1988 – at the time when drunk driving was a hot topic and relatively shortly after the minimum legal drinking age of twenty-one was

¹ Laurence M., Snortum J., Zimring F. (eds.), *Social Control of the Drinking Driver* (Chicago: The University of Chicago Press, 1988).

introduced. The collection provides results of different research on drunk driving, both from Europe and from the United States, analysis and evaluation of available methods of control of drunk driving and suggests new ways or technological possibilities. Information contained in this book is presented without any bias and can serve as a valuable source even for current research.

Another book, which provides thorough information about drunk driving in the United States in general, is *Drunk Driving: An American Dilemma*² by James Jacobs published in the mid-1990s. This book is a synthesis of academic research on drunk driving and assessment of official policies aimed at solving the problem. The book has three main parts: first, a section on the anatomy of the social problem of drunk driving; second, an evaluation of the role that criminal law and enforcement play in tackling the problem; and third, a part devoted to various social institutions and their effect on the social control of drunk driving. This book is aimed at the broad public and is recommendable as a source of basic information on the subject of drunk driving as a social problem.

A recent book I found very valuable and interesting is *One for the Road*³ by Barron Lerner, published in 2010. This book, unlike the former two, is not focused on results of scientific research and their analysis, but rather a review of history of drunk-driving, its control, developments within individual activist groups and other groups and movements involved in the issue, their leaders, their views and interactions, and public attitudes. It thus provides a highly interesting view on drunk driving from a different perspective. From the beginning of the book, Lerner (a specialist on public health issues from the Columbia University) is very clear about his personal position on the issue, which is very critical towards drunk drivers and even “responsible” social drinkers, and sometimes the tone of the book is rather emotional. However, this book is still a unique and well-argued volume providing the reader with valuable information.

There is a lot of scientific research that studied drunk driving and also the effects of minimum drinking age laws. In this regard, a very helpful and valuable source is a study by Alexander Wagenaar and Traci Toomey⁴, which reviews and analyzes research on the effect of the minimum drinking age laws published between 1960 and 2000. The

² Jacobs J., *Drunk Driving: An American Dilemma* (Chicago: University of Chicago Press, 1992).

³ Lerner B., *One for the Road: Drunk Driving since 1900* (Baltimore: The Johns Hopkins University Press, 2011).

study contains a table summarizing the quality and results of all studies taken into consideration, and the conclusion is that though the effect of the minimum drinking age laws may seem moderate, it was the most successful measure until that time.

Nevertheless, many studies published after 2000 show that there is no statistically important relationship between the drinking age limits and alcohol consumption and related problems. One of such studies is a study by Jeffrey Miron and Elina Tetelbaum⁵. This study is very convincing as it looks into previous studies and shows why their results were distorted and why the result of their study reflect the reality more accurately, and is surely worth reading by those interested in the debate about the minimum drinking age in the United States.

As to data and statistics, the National Highway Traffic Safety Administration (NHTSA) provides its annual reports and other data and statistics on drunk driving. In 1975, the NHTSA created the Federal Analysis Reporting System (FARS), which has been collecting data about traffic fatalities from individual states and (just as in the case of NHTSA) most of its publications are available on the web. Another useful source of data is the Bureau of Transportation Statistics of the Research and Innovative Technology Administration.

This thesis wants to contribute to the debate about the high minimum drinking age in the United States.

⁴ Wagenaar A. and Toomey T., “Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000,” *Journal of Studies on Alcohol and Drugs*, Supplement, No. 14 (2002), pp. 206-225.

⁵ Miron J., Tetelbaum E., “Does the Minimum Legal Drinking Age Save Lives?” National Bureau of Economic Research, 2007. Available at <http://www.nber.org/papers/w13257>.

1. Drinking and Driving in the United States

The first chapter provides basic facts about driving, drinking, and drunk driving in the United States. This chapter depicts the social and cultural background, which one has to keep in mind when considering the issue this thesis is dealing with.

1.1 Driving in the United States

The United States of America is the country with most registered vehicles in the world. In 2009, there were more than 250 million.⁶ As to the absolute number, no other country has more registered vehicles than the United States where basically everybody has a car (except for the minors).⁷

The U.S. also has by far the greatest size of road network. There are more than 6.5 million kilometers of roads (both paved and unpaved) in the United States, about 2.6 million kilometers more than in China, which ranks second.⁸

In the United States, the car became the icon of the postwar era, when its use started growing rapidly without any interruptions. By providing each car owner with individual mobility, it has played a very important role in American society ever since. It has been “... a symbol of social status and personal lifestyle; for many people it fulfills deep psychological needs for power, aggression, fantasy, and control.”⁹

Also, it is important to realize that the car is the main means of transport as the public transport in the United States is not very well developed (with the exception of some big cities such as the New York City or, to some extent, Chicago). Unlike in Europe, where many cities are “walkable” and distances are shorter, the car is essential

⁶ National Transportation Statistics, U.S. Department of Transportation, Research and Innovative Technology Administration. Available at http://www.bts.gov/publications/national_transportation_statistics/html/table_01_11.html (accessed March 8, 2012).

⁷ As to registered vehicles per capita, there is one country, where there are more registered vehicles per 1,000 people than in the United States, and that is Monaco (836 in Monaco, 809 in the United States). See Motor vehicles (per 1,000 people), The World Bank. Available at <http://data.worldbank.org/indicator/IS.VEH.NVEH.P3> (accessed March 8, 2012).

⁸ Country Comparisons: Roadways. CIA Factbook. Available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2085rank.html> (accessed March 8, 2012).

⁹ Jacobs J., *Drunk Driving: An American Dilemma*, p. xiv.

for the American way of life.¹⁰ If one wants to participate fully in economic, cultural and social life, the car is a virtual necessity. “The societal expectation is that practically everyone can and will own and drive a car.”¹¹ Driving, which was seen as a privilege at the beginning of 20th century, slowly became to be perceived as a fundamental right.¹²

The importance of car as the main means of transport is reflected in the fact that the United States has one of the lowest minimum driving age limits in the world. In the vast majority of European countries, the driving age is eighteen. In the United States, the situation is more complex and there are great differences between individual states.

In the U.S., there are two kinds of licenses – restricted and full (unrestricted) license. The restricted one is issued to new drivers, usually under the age of fifteen. This license owner is restricted by some provisions, which depend on the state, but usually driving at nighttime is restricted as well as the number of passengers in the vehicle (in some states, these restrictions hold only if the young driver is not accompanied by a guardian¹³). The minimum age to be able to obtain a driving license varies from state to state, but in general a restricted license can be obtained between the ages of fourteen and sixteen (for example, the lowest age to receive a restricted license is in North Dakota - fourteen and three month) and a full (unrestricted) license can be obtained between the age of sixteen and eighteen, depending on the individual states’ policies.

However, high numbers of accidents and fatal crashes are connected with the wide-spread use of automobiles. As we can see in Figure 1.1, every year between about 30,000 and 45,000 people die in road a accident – which is almost the equivalent of U.S. casualties in the whole Vietnam War, or more than ten WTC attacks. We can also see that since 2005 there has been a significant decrease in the number of road fatalities.¹⁴

¹⁰ Snortum J., “Deterrence of Alcohol-impaired Drivers,” in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), p. 218.

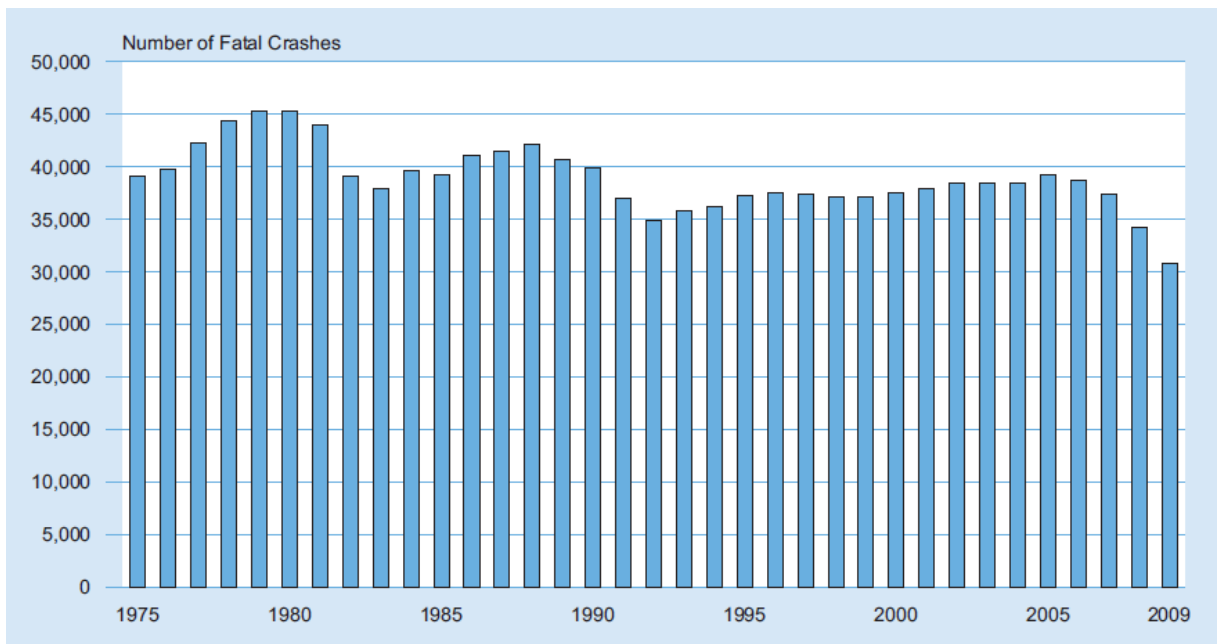
¹¹ Jacobs J., *Drunk Driving: An American Dilemma (Studies in Crime and Justice)*. University of Chicago Press, 1992, p. 15.

¹² Lerner B., *One for the Road: Drunk Driving since 1900*, p. 44.

¹³ In some states, presence of a parent or a guardian is required, in some states, presence of a licensed adult of age 25 or older is sufficient. Requirements and restrictions vary greatly.

¹⁴ Nowadays, the U.S. does not have a very high accident rate, however, the proportion of alcohol-impaired accidents is much higher than in other developed countries.

Figure 1.1: Fatal Crashes in the United States, 1975-2009.

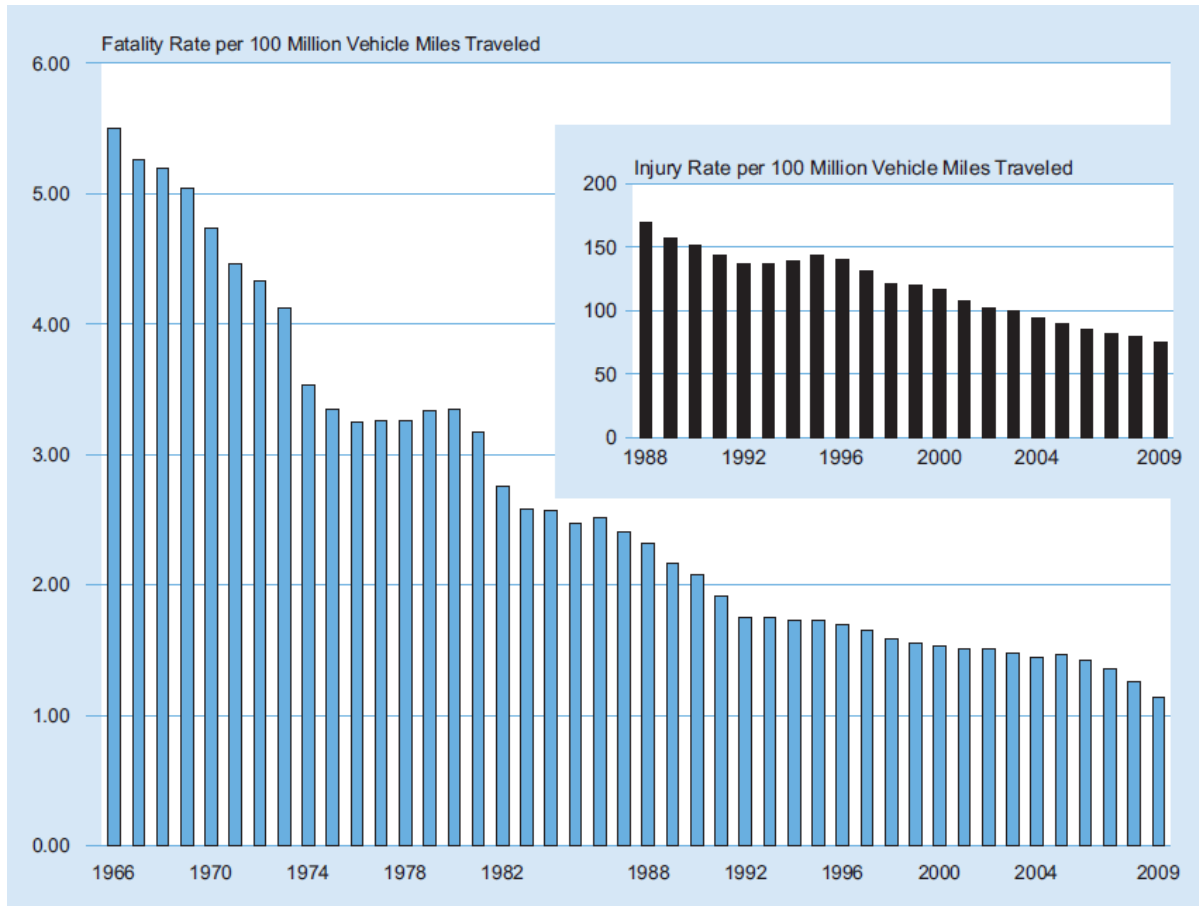


Source: Traffic Safety Facts 2009, National Highway Traffic Safety Administration. Washington, D.C., 2011. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/811402.pdf> (accessed March 9, 2012).

Nevertheless, considering the fact that the population of the United States has been growing at the same time, the fatality rate must have been declining. Figure 1.2, shows the fatality rate in the United States per 100 million vehicle miles traveled (the amount of all miles for which residential vehicles are driven). As we can see, the rate has been declining steadily. The causes of this decline are diverse, for example, the introduction of 55-mile-per-hour speed limit, obligatory use of seat belts, growing use of airbags, improving quality of vehicles in general, better quality of roads, implementation of vehicle safety standards and drunk driving countermeasures, and also advances and developments in the medical and emergency care. These and other factors contributed to the reductions in fatality rates over time.¹⁵

¹⁵ Jacobs J., *Drunk Driving: An American Dilemma*, p. 192.

Figure 1.2: Fatality Rate per 100 Million Vehicle Miles Traveled, 1966-2009.



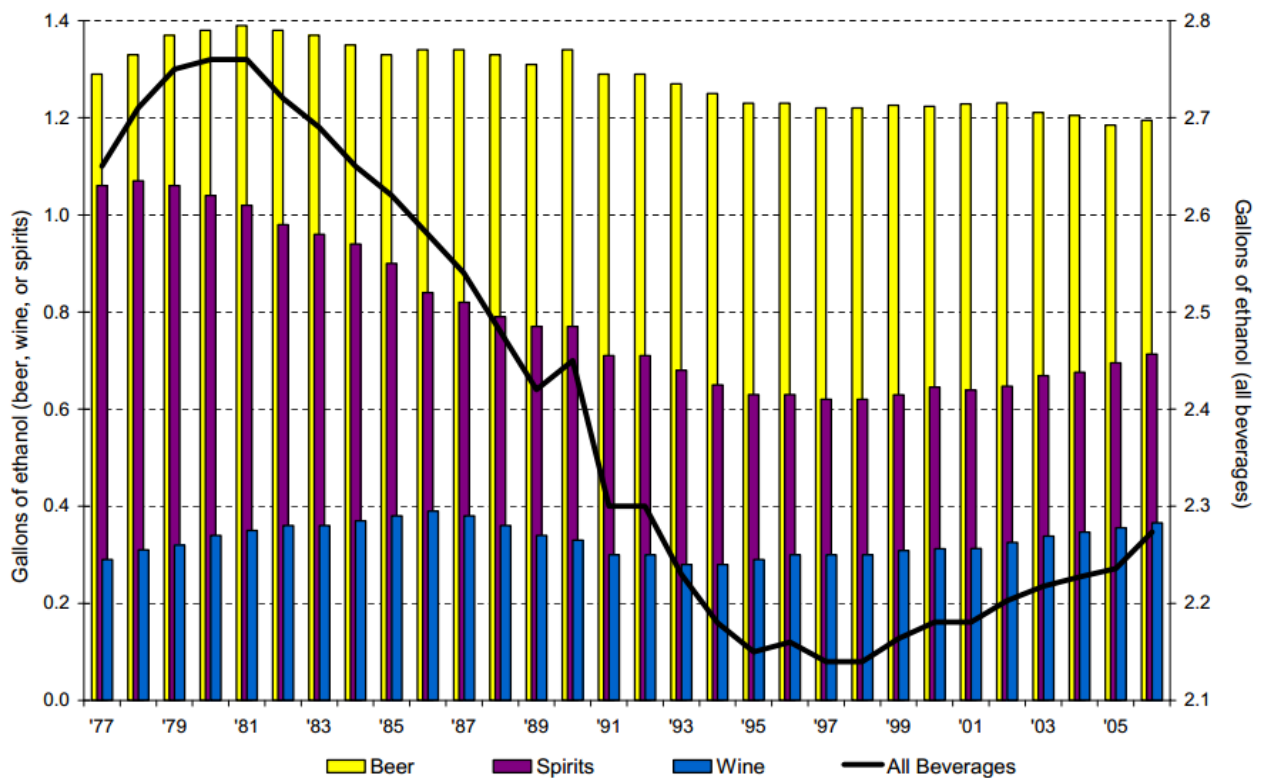
Source: Traffic Safety Facts 2009, National Highway Traffic Safety Administration. Washington, D.C., 2011. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/811402.pdf> (accessed March 9, 2012).

1.2 Drinking in the United States

Consumption of alcohol is a very pervasive and important feature of the U.S. society as well. Alcoholic beverages are inseparable from many celebrations, meetings, religious ceremonies, and other social activities.

From the 1940s until the early 1980s consumption of alcohol per capita was rising steadily in the United States. As we can see in Figure 1.3, from the 1980s until the late 1990s, the per capita consumption of alcohol was in decline, and started to rise again in the late 1990s. This growth in consumption in the last two decades can be attributed mainly to the increase in consumption of wine and spirits while consumption of beer has been stagnating or slowly decreasing.

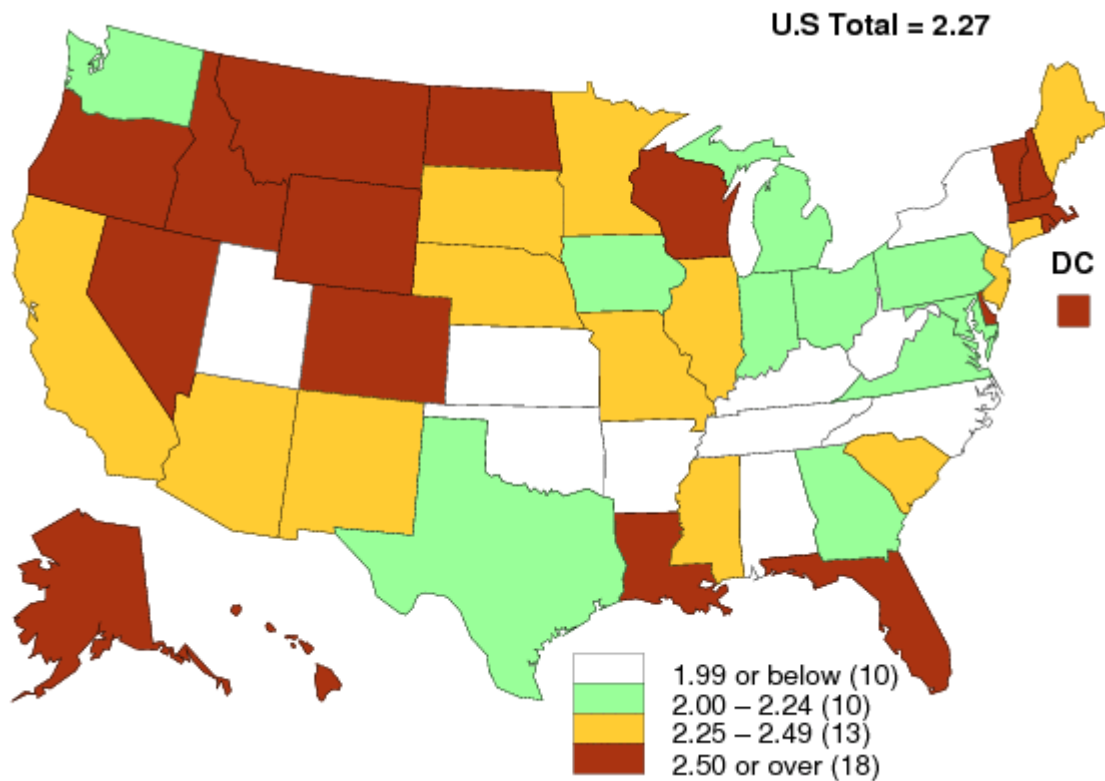
Figure 1.3: Per Capita Ethanol Consumption by Beverage Type in the United States, 1977-2006.



Source: Lakins, N.E., LaVallee, R.A, Williams, G.D., Yi H., *Surveillance Report #85: Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977-2006*. Bethesda, MD: NIAAA, Division of Epidemiology and Prevention Research, Alcohol Epidemiologic Data System, November 2008. Available at <http://www.niaaa.nih.gov/Resources/GraphicsGallery/Epidemiology/Documents/consfigs2.pdf> (accessed March 10, 2012).

There are big regional differences in alcohol consumption within the United States (see Figure 1.4). The western states (except for Utah) and New England show the highest rates of alcohol consumption. On the contrary, the lowest rates of alcohol consumption are in the states of the so called Bible Belt – states in the U.S. South where Evangelical Protestant denominations largely prevail. In the South, only Louisiana and Florida have higher rates of consumption of alcohol. This could be contributed to a smaller proportion of residents who adhere to Evangelical Protestant churches in these two states for research exists that suggests that states with high proportion of Catholics tend to have higher drinking rates than states with high Evangelical adherence rates.¹⁶

Figure 1.4: Total Per Capita Consumption in gallons of ethanol by state, 2006.



Source: Lakins, N.E., LaVallee, R.A, Williams, G.D., Yi H., *Surveillance Report #85: Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977-2006*. Bethesda, MD: NIAAA, Division of Epidemiology and Prevention Research, Alcohol Epidemiologic Data System, November 2008. Available at <http://www.niaaa.nih.gov/Resources/GraphicsGallery/Epidemiology/Pages/consfigs4.aspx> (accessed March 10, 2012).

For the United States, a higher proportion of abstainers in the population is typical. According to the polls, about 33 % of adult Americans are teetotalers.¹⁷ Again, the states with most abstainers are the Bible-Belt states, then Idaho, Utah and Arizona.

Whereas a large part of the American population does not drink at all, approximately 7.5 % of Americans meet the medical criteria for alcoholism or alcohol abuse¹⁸ and it is estimated the heaviest 5-10 % of drinkers who account for more than 50 % of total consumption of alcohol beverages.¹⁹

¹⁶ See Holt J., Miller W., Naimi S., Sui Z., “Religious Affiliation and Alcohol Consumption in the United States,” *The Geographical Review*, Vol. 96, No.4 (2006), pp. 523-542.

¹⁷ Newport F., “U.S. Drinking Rate Edges Up Slightly to 25-Year High,” *Gallup*, July 30, 2010. Available at <http://www.gallup.com/poll/141656/Drinking-Rate-Edges-Slightly-Year-High.aspx> (accessed March 10, 2012).

¹⁸ Alcoholism Statistics, The Alcoholism Guide. Available at <http://www.the-alcoholism-guide.org/alcoholism-statistics.html> (accessed March 10, 2012).

¹⁹ Jacobs J., *Drunk Driving: An American Dilemma*, p. 5.

UNDERAGE DRINKING

In most countries, the consumption of alcoholic beverages is permitted when one becomes an adult. In the United States, although the age of majority, when one is considered mature enough to vote, enlist in the military, go to war and make life or death decisions, or sign binding contracts, is eighteen, the age limit for alcohol consumption is twenty-one. Underage drinking in the United States thus does not only relate to drinking of minors but also to drinking of adults less than 21 years of age.

The minimum legal drinking age in the U.S. is one of the highest age limits for consumption of alcohol in the whole world. Only few countries have stricter limits. As a matter of fact, only several countries have the age limit just as strict as the United States.²⁰ In some Muslim countries, consumption of alcohol is officially prohibited, either for all population or for the Muslim population (for example, Sudan, Pakistan, Saudi Arabia or Brunei). A few countries have the age limit twenty-one, like the United States (for example, Indonesia or Sri Lanka). In India, several states prohibit consumption of alcohol, and in others the age limit varies from eighteen to twenty-five years of age. Neither in Europe nor in Americas, there is a country where the limit is twenty-one or higher.

Nevertheless, there are some exceptions to the age limit in the individual states within United States. For example, in thirty-one states, drinking is allowed with parental consent, in seventeen states with spousal consent on condition that the spouse is over twenty-one. In ten states, underage consumption of alcohol is prohibited with no exceptions.²¹

However, in reality, most young people drink alcohol. According to research, almost 80 % of eighteen-year-olds have drunk an alcoholic drink in their life²² and about 30 % of them admit getting drunk in the past two weeks.²³ According to another

²⁰ Minimum Age Limits Worldwide, International Center for Alcohol Policies. Available at <http://www.icap.org/Table/MinimumAgeLimitsWorldwide> (accessed March 10, 2012).

²¹ See 40 States That Allow Underage (under 21) Alcohol Consumption, ProCon.org. Available at <http://drinkingage.procon.org/view.resource.php?resourceID=002591> (accessed May 3, 2012).

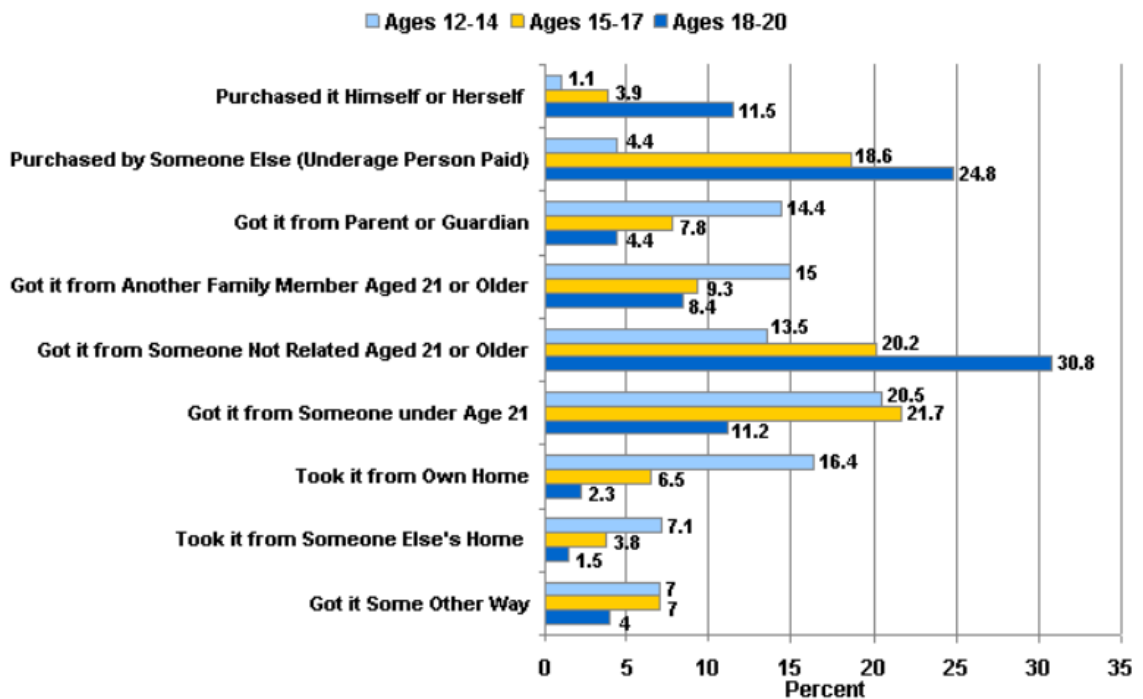
²² The Surgeon's General's Call to Action To Prevent and Reduce Underage Drinking. U.S. Department of Health and Human Services, 2007, p. 3. Available at <http://www.niaaa.nih.gov/AboutNIAAA/NIAAASponsoredPrograms/Documents/EducatorGuide.pdf> (accessed March 10, 2012).

²³ Underage Drinking in the United States, Pennsylvania Liquor Control Board. Available at http://www.lcb.state.pa.us/portal/server.pt/community/resources/17515/underage_drinking_in_the_united_states/612006 (accessed March 10, 2012).

statistics, people of age twelve to twenty consume almost 20 % of alcohol sold in the United States.²⁴

More than 90 % of eighteen-year-olds also say that alcohol is “fairly easy” or “very easy” to get.²⁵ As we can see in Figure 1.5, the most common source of alcohol is acquiring it from a peer, either more than twenty-one years old, or also from somebody under age twenty-one. Research also shows that underage drinking primarily occurs at a private residence and includes three or more drinkers. “This conclusion is consistent with research that has found that underage drinking parties, where large groups of underage persons gather at private residences are high risk settings for binge drinking and associated alcohol problems.”²⁶

Figure 1.5: Source of Last Alcohol Used Among Past-Month Alcohol Users Ages 12 to 20, 2008-2009.



Source: Report to Congress on the Prevention and Reduction of Underage Drinking. U.S. Department of Health and Human Services, 2011, p. 49. Available at <http://store.samhsa.gov/shin/content/SMA11-4645/SMA11-4645.pdf> (accessed March 10, 2012).

²⁴Statistics, [dontletthemdrink.com](http://www.dontletthemdrink.com), Pennsylvania Liquor Control Board.

<http://www.dontletthemdrink.com/reportsresearch/stats.shtml> (accessed March 10, 2012).

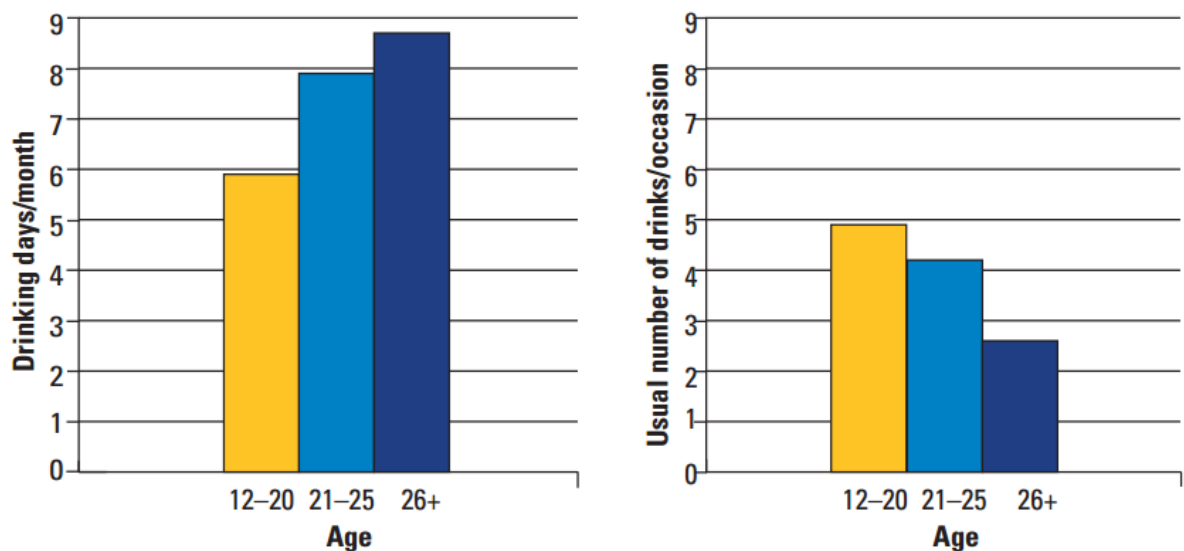
²⁵Johnston, L., O’Malley, P., Bachman, J., Schulenberg, J., “Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2006,” National Institute on Drug Abuse. Available at <http://monitoringthefuture.org/pubs/monographs/overview2006.pdf> (accessed March 12, 2012).

²⁶Report To Congress on the Prevention and Reduction of Underage Drinking. U.S. Department of Health and Human Services, 2011, p. 12. Available at <http://store.samhsa.gov/shin/content/SMA11-4645/SMA11-4645.pdf>.

BINGE DRINKING

Binge drinking is defined as episodic excessive drinking, and is often associated with traffic accidents, especially among youth.²⁷ There is no consensus on how many drinks one has to have for it to be considered binge drinking. In the United States, usually, binge drinking is defined as consumption of five or more standard drinks for men, and four or more standard drinks for women, in one setting²⁸ with the aim of becoming drunk. A standard drink in the United States is considered a 12-ounce (355ml) bottle or can of typical (5% ABV²⁹) beer, a 5-ounce (148mL) glass of typical (12% ABV) wine and a 1.5-ounce (44ml) shot of 80-proof (40% ABV) liquor.³⁰

Figure 1.6: Number of Drinking Days per Month and Usual Number of Drinks per Occasion for Youth (12-20), Young Adults (21-25), and Adults (26 and older).



Source: The Surgeon's General's Call to Action To Prevent and Reduce Underage Drinking. U.S. Department of Health and Human Services, 2007, p. 6. Available at <http://www.niaaa.nih.gov/AboutNIAAA/NIAAASponsoredPrograms/Documents/EducatorGuide.pdf> (accessed March 10, 2012).

²⁷ Stolle M., Sack P., Thomasius R., "Binge Drinking in Childhood and Adolescence." In *Deutsches Ärzteblatt International*, Vol. 106, No.19, pp. 323-328.

²⁸ A "setting" or an occasion is not defined more precisely, for example, in terms of length of time or similarly.

²⁹ ABV - alcohol by volume.

³⁰ Stolle M., Sack P., Thomasius R., "Binge Drinking in Childhood and Adolescence," pp. 323-328.

In the United States, binge drinking accounts for about 75 % of all alcohol consumed in the United States and in the case of those under age 21 it is astonishing 90 % of all drinks consumed.³¹ That is to say, adolescents do not have as many opportunities to drink, therefore, they drink less often than adults (on average, those under twenty-one drink six times a month, whereas those over twenty-one drink about eight or nine times a month) but once they *do* drink, they drink more than adults. As we can see, in the second part of Figure 1.6, adolescents would drink about five drinks per occasion, whereas with increasing age the amount of drink consumed at one occasion decreases.

This combination of widespread consumption of alcohol (and especially binge drinking), its wide availability and an ambivalent attitude towards alcohol in the American society (discussed below), and the necessity to use one's vehicle to be able to move around often results in driving under the influence (DUI, or driving while intoxicated – DWI).

1.3 Drinking and Driving in the United States

Although the number of fatalities from drunk driving has been decreasing over time, as we can see in Figure 1.7 drinking under the influence (DUI) continues to be a serious problem in the United States. "...there are still between 13,000 and 17,000 deaths attributed to drunk driving each year. Furthermore, it is estimated that more than 90 million automobile trips still occur annually with a driver at blood alcohol content (BAC) of 0.08% or greater."³² Blood alcohol level (BAC) of 0.08 % is the current legal limit (see chapter 3.2.1).

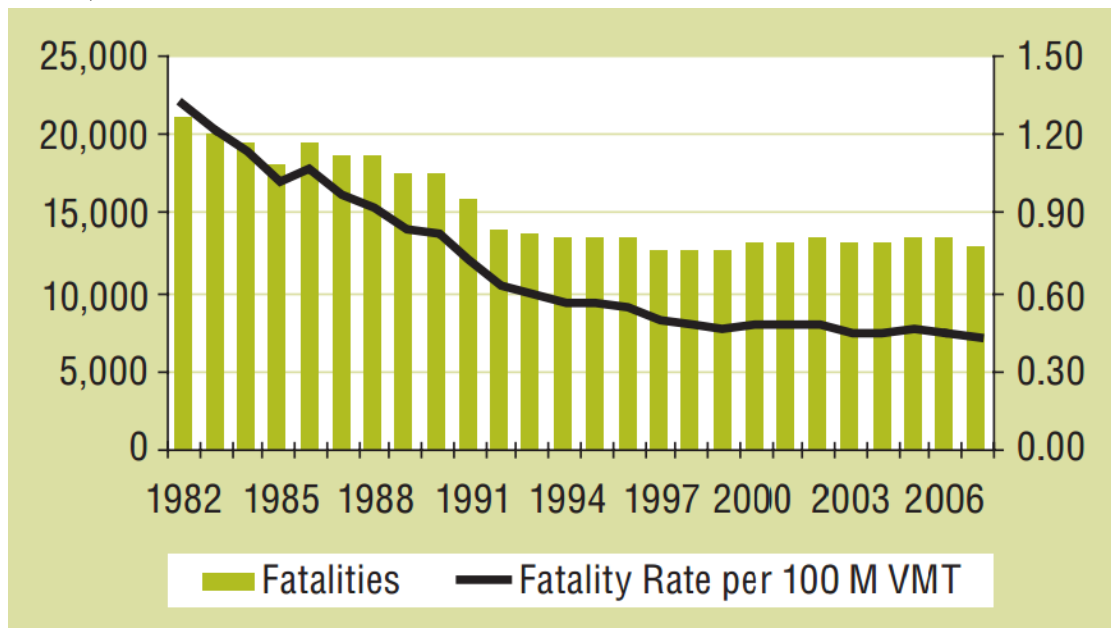
It is important not to confuse alcohol-related and alcohol-impaired accidents. These two terms seem alike, however, their meanings are very different and their misuse can cause distortions in statistics or their interpretation. In the United States, alcohol-related accidents are defined as those where a driver, motorcycle rider, pedestrian, or bicycle rider has BAC of 0.01 % or higher. That means that if there is an accident where two cars crash, injuring a passing-by pedestrian who has been drinking, it is counted as an alcohol-related accident even though none of the drivers was under the influence of alcohol. However, alcohol-impaired accidents are defined as those involving drivers or motorcycle riders whose BAC is 0.08 % or higher. In this case, at

³¹ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 139.

³² *Ibid.*, p. 166.

least one of the drivers had to be driving under the influence but it does not mean that the driver who was intoxicated *caused* the accident – alcohol-impaired accidents only mean that there was some association with higher intake of alcohol, not that alcohol was the cause of the accident.³³ On the other hand, statistics presenting alcohol-impaired fatalities do not involve fatal accidents where drivers did not reach the 0.08 % level but their driving abilities were impaired nonetheless.

Figure 1.7: Alcohol-Impaired Driving Fatalities and Fatality Rate Per 100 Million Vehicle Miles Traveled, 1982-2007.

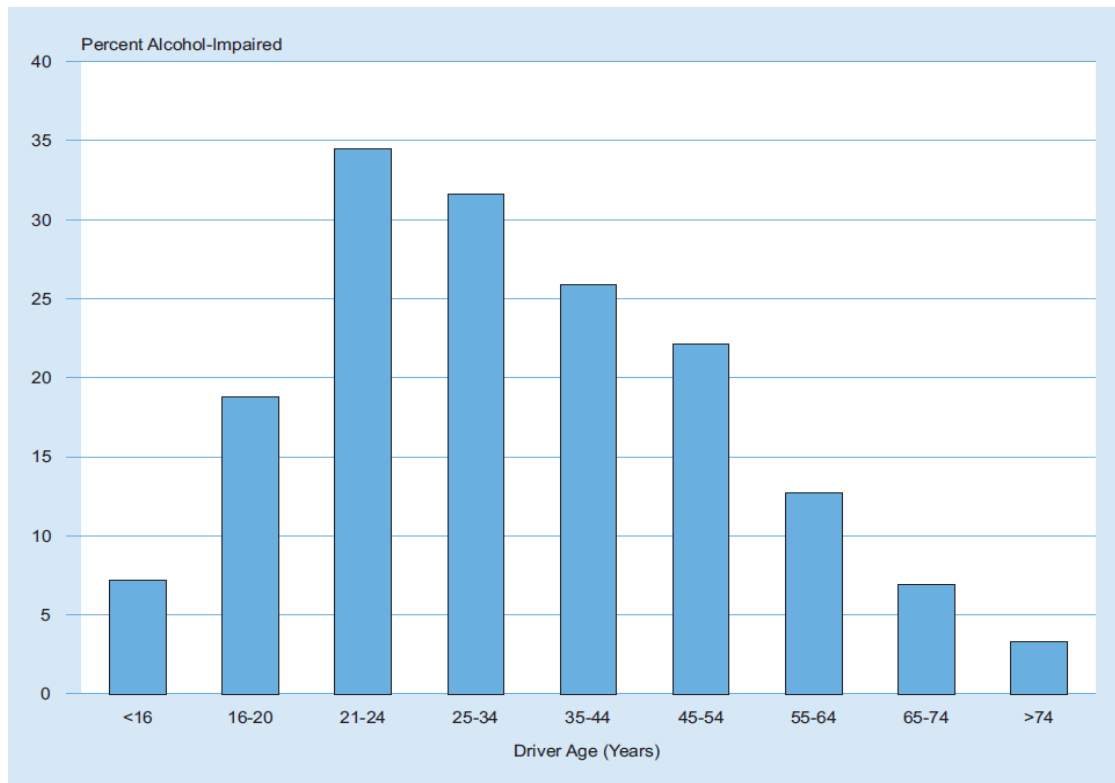


Source: 2007 Traffic Safety Annual Assessment – Alcohol-Impaired Driving Fatalities. National Highway Traffic Safety Administration, 2008.
 Available at <http://www-nrd.nhtsa.dot.gov/Pubs/811016.PDF> (accessed March 14, 2012).

³³ National Highway Traffic Safety Administration, Traffic Safety Facts: 2007 Data. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/810985.pdf> (accessed March 17, 2012).

In the 1980s, alcohol-related fatalities accounted for between 49 and 60 % of all accidents. In the 2000s, the ratio was lower, around 40 %.³⁴ In 2009, 38 % of all accidents were alcohol-related, and almost one third, 32 % of all accidents were alcohol-impaired.³⁵ The age group with the highest ratio of alcohol-impaired fatal crashes is 21-24 as we can see in Figure 1.8.

Figure 1.8: Percent Alcohol Impairment (BAC .08 or Higher) for Drivers and Motorcycle Riders Involved in Fatal Crashes, by Age.



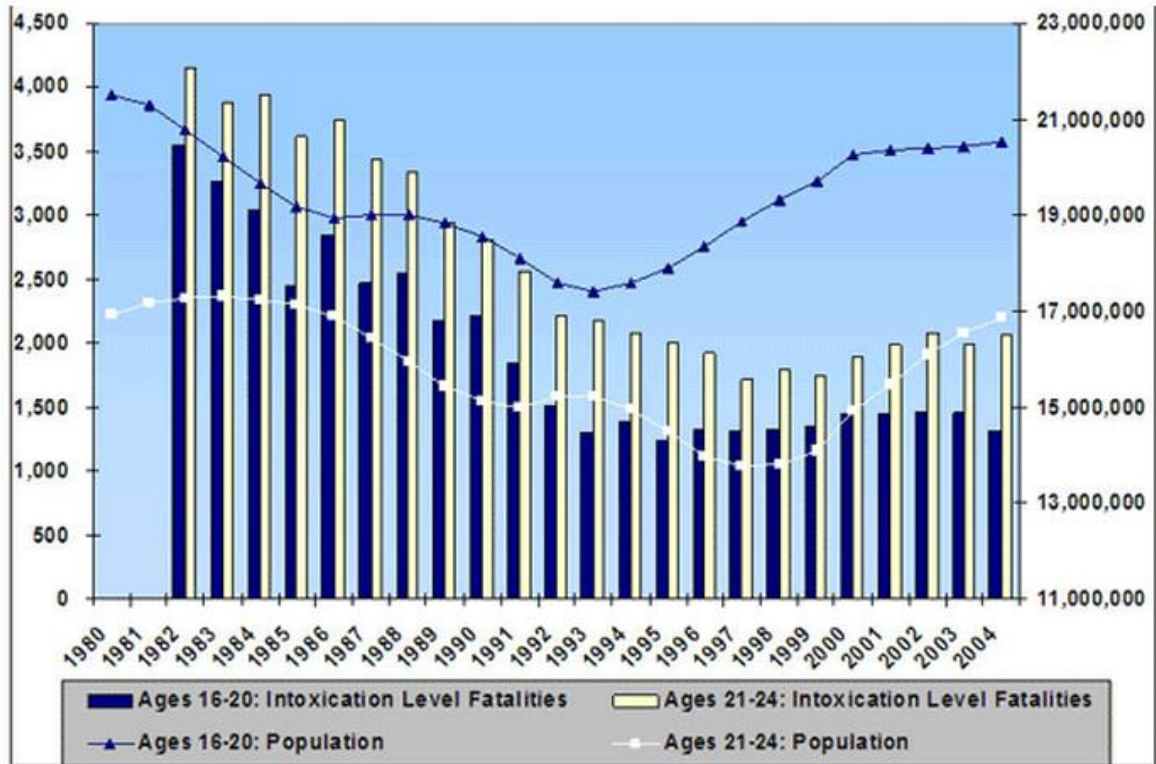
Source: Traffic Safety Facts: 2009 Data. National Highway Traffic Safety Administration, p. 115. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/811402.pdf> (accessed March 17, 2012).

³⁴ AlcoholAlert.com, 2009 Drunk Driving Statistics. Available at <http://www.alcoholalert.com/drunk-driving-statistics.html> (accessed March 14, 2012).

³⁵ National Highway Traffic Safety Administration, Traffic Safety Facts: 2009 Data, p.32. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/811402.pdf> (accessed March 17, 2012).

It seems that population change was another important factor – as we can see in Figure 1.9, the decrease in drunk-driving fatalities tracks the population trends of the two age groups.

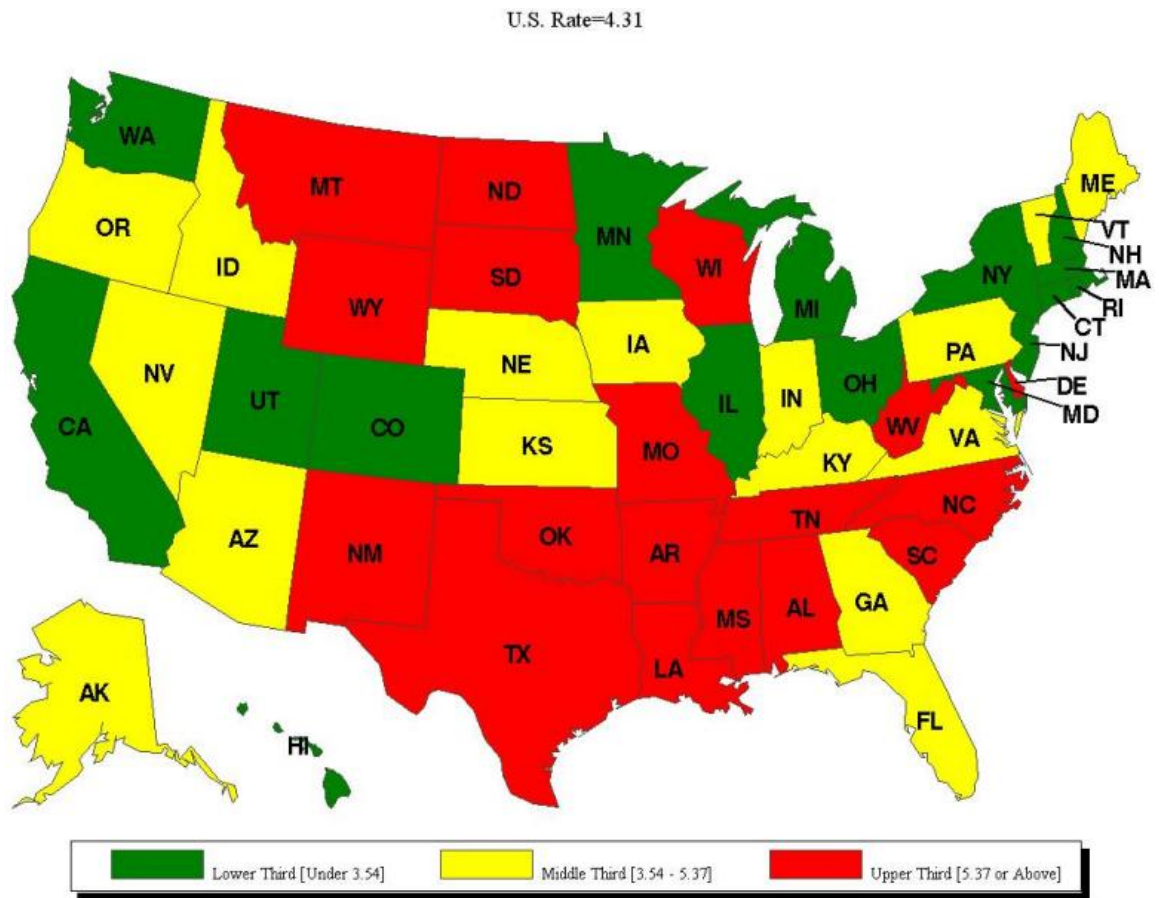
Figure 1.9: Population Change and Drunk-Driving Fatalities.



Source: Drunk Driving Fatalities and Population Change. Choose Responsibility, Available at http://www.chooseresponsibility.org/fatality_change_c/ (accessed March 17, 2012).

If we look at the geographical distribution (see Figure 1.10), the states with most alcohol-impaired road fatalities per capita are the mountain states Montana, Wyoming, North and South Dakota, and, quite interestingly, most states of the Bible Belt, where alcohol consumption per capita is lower than in other states.

Figure 1.10: Alcohol-Impaired Driving Fatalities per 100k Population.



Source: Alcohol-Impaired Fatalities. National Center for Statistics & Analysis, SAE Meeting, February 6, 2009. Available at <http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Public%20Paper/SAE/2009/Subramanian%202009%20SAE.pdf> (accessed March 17, 2012).

PUBLIC ATTITUDE TOWARD DRUNK DRIVING AND MLDA

One more important thing to mention in this chapter is the attitude of Americans toward drunk driving. Many authors point out the ambivalent attitude towards alcohol and also towards driving under the influence, in the American society.³⁶ Already in the 1970s, punishing alcoholics for drunk driving was considered counterproductive, probably a result of attempts of academia and Alcoholics Anonymous, who were pushing through a paradigm of alcoholism as a disease. This point of view then generated a degree of sympathy and stressed the need of rehabilitation programs, which

³⁶ See, for example, Gusfield J., "The Control of Drinking-Driving in the United States: A Period in Transition?" in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), pp. 118-119, or Jacobs J., *Drunk Driving: An American Dilemma*, p. 13.

have become the preferred tool in dealing with alcoholics behind the wheel. In a similar way, social drinkers were tolerated in the society. The term “social drinker” was used to describe people who did not use alcohol to get inebriated, but who used alcohol as a part of some social activities, such as eating out, attending sporting events etc. That is to say, this term had a rather positive connotation, “...suggesting that such an individual was both sociable and harmless. It followed that if he or she caused some type of disturbance, it was surely a one-time mistake.”³⁷ This attitude often made bringing both alcoholics and social drinkers to justice more difficult. The tendency to legally exonerate or tolerate social drinkers, which was reflected in the high BAC limit (see chapter 3.2.1), carved out an exception “...that persists today for nonalcoholics who wished to drive and drink (ostensibly in moderation) as part of their social lives.”³⁸

In the 1980s, when the drunk-driving fatality rate was at its peak in the United States, a very interesting research was conducted, comparing attitudes toward drunk driving in the U.S. and in Norway. The results were striking. Interviewees were asked to assess the rate of compliance by other drivers at drinking occasions. When asked to respond what proportion of drivers abstain from drinking when they are driving, 75 % of Norwegian drivers answered “almost all”, whereas in the U.S., 60 % answered “almost none.” When asked to answer what proportion of groups appoint one person to stay sober in order to be able to drive the group home, 76 % of Norwegian drivers answered “almost all”, compared 42 %, “almost none.” According to the research, although non-driving Norwegians consume more alcohol on one occasion than Americans, they expressed higher rates of moral disapproval of drunk driving and had much better knowledge about BAC limits, the role of per se laws, or potential sanctions.³⁹ “In contrast, Americans responded at a level of accuracy that could be obtained by random guessing among alternatives.”⁴⁰

Nowadays, American public perceives drunk driving as something that should not be tolerated: 75% of drivers in the U.S. see it as a very serious threat to their safety and 97% of drivers say it is unacceptable. At the same time, however, 14% admit having driven close to or above the legal limit at least once in the past year.⁴¹ Very

³⁷ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 23.

³⁸ *Ibid.*, p. 29.

³⁹ Snortum J., “Deterrence of Alcohol-impaired Drivers,” in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), pp. 207-213.

⁴⁰ *Ibid.*, p. 211.

⁴¹ “2011 Traffic Safety Culture Index,” AAA Foundation for Traffic Safety. Available at <http://www.aaafoundation.org/pdf/2011TSCPR.pdf> (accessed May 6, 2012).

likely, this number is even higher, as not everybody is willing to admit such behavior. It seems that more realistic results would be those based on a research such as the one mentioned above, where drivers were asked to assess other drivers' behavior, not their own.

According to a Gallup poll from July 2007, 77% of Americans oppose lowering drinking age because they attribute declines in teen traffic alcohol-related fatalities to the minimum legal drinking age being twenty-one.⁴² Only 1% has no opinion and 22% favor lowering MLDA. Naturally, among adults aged 18 to 34 the percentage of advocates of lowering the drinking age was much higher than in the other age groups (40% among those aged 18-34, 17% among those aged 35-54 and only 15% among those 55 years and older).⁴³

To conclude, in the U.S., where most people are reliant on their cars, driving plays a very important role, which is reflected in one of the lowest minimum driving ages in the world. Traffic fatalities rates are not extraordinarily high in the United States; however, the proportion of both alcohol-impaired and alcohol-related traffic accidents is higher than, for example, in Western Europe, where consumption of alcohol is higher. A great number of alcohol-related fatalities is also among drivers younger than 21, which is the minimum legal drinking age in the United States, which is among the highest in the world, and was introduced with the aim of reducing DUI fatalities among youth. However, the minimum drinking age is not respected, and nourishes binge drinking, which is often connected with traffic accidents. Moreover, among those under twenty-one, the incidence of drunk driving is not the highest, which means that the MLDA of twenty-one does not fully address the existing problem.

⁴² Parks P., *Drunk Driving (Compact Research: Current Issues)*. ReferencePoint Press, 2010, p. 75.

⁴³ Carroll J., "Most Americans Oppose Lowering Legal Drinking Age to 18 Nationwide," Gallup, July 27, 2007. Available at <http://www.gallup.com/poll/28237/Most-Americans-Oppose-Lowering-Legal-Drinking-Age-Nationwide.aspx> (accessed May 6, 2012).

2 Legal Aspect

In the second chapter, the legal development of the current MLDA of twenty-one will be depicted. A special emphasis will be put on legal challenges to the *National Minimum Drinking Age Act*. Information from this chapter will be important for assessing how the MLDA of twenty-one meets the expectations it was introduced with.

2.1 Minimum Drinking Age History

In the 19th century many temperance movements emerged in the United States. Among the most politically powerful there were the Women's Christians Temperance Union (founded in 1874) and the Anti-Saloon League (founded in 1893). They gained major political influence and called for nationwide prohibition. These movements exerted pressure on legislators citing various reasons for the need of enacting prohibition, such as the need to reduce domestic violence or the will to reduce the political power of the German brewing industry during World War I. Their efforts culminated in 1917 when a resolution proposing an amendment to the U.S. Constitution was passed, which prohibited the manufacture, sale, and transportation of "intoxicating liquors". This resolution was ratified with an overwhelming support on January 19, 1919 as the Eighteenth Amendment to the Constitution and came into force one year after its ratification.⁴⁴

However, a decade later, much of the appeal of Prohibition disappeared and the groups which played a major role in introducing it had broken up.⁴⁵ It became clear that enforcement of Prohibition was impracticable and, moreover, at the time of the Great Depression, tax revenues from the sales of alcohol were seen as a convenient source of finances for the stimulation programs of the New Deal.⁴⁶ The Amendment was repealed by the Twenty-first Amendment in 1933, becoming the only Amendment in the history of the United States which was passed and later repealed.

After the Twenty-first Amendment came into effect, states had a free hand to legalize, regulate or prohibit alcohol according to their preferences. Table 2.1 shows the

⁴⁴ Enforcement of the 18th Amendment was enabled by the Volstead Act which was passed in October 1919. This highly technical piece of legislation provided definition of intoxicating liquors and provided penalties.

⁴⁵ See Munger M., Schaller T., "The prohibition-repeal amendments: A natural experiment in interest group influence," *Public Choice*, Vol. 90, No. 1/4 (1997), pp. 147-159.

⁴⁶ *Ibid.*, pp. 158-159.

minimum legal drinking age (MLDA) set in individual American states after the repeal of Prohibition. As we can see, the age limit varied from state to state, beginning with Alabama, where prohibition was maintained at the state level, through Ohio, setting the minimum age at sixteen years of age, ending with Colorado, where no minimum age was set at all. Most states set the limit between the age of eighteen and twenty-one. A slight majority (thirty-two states) chose the age limit of twenty-one – at that time the age of majority – and seventeen states set a lower age limit. In the West and the Southwest, most states set the limit at twenty-one, in the Northeast, Southeast and Midwest there were several states where a lower limit was introduced. However, no clear pattern can be seen.

Table 2.1: Minimum Legal Drinking Age Levels in States After Repeal of Prohibition

AL	Prohibited	KY	21	ND	21
AK	18	LA	21	OH	16
AZ	21	ME	18	OK	21
AR	21	MD	21	OR	21
CA	21	MA	21	PA	21
CO	None	MI	18	RI	21
CT	21	MN	21	SC	18
DE	21	MS	18	SD	18
DC	18	MO	21	TN	21
FL	21	MT	21	TX	21
GA	21	NE	20	UT	21
HI	20	NV	21	VT	18
ID	20	NH	21	VA	18
IL	21	NJ	21	WA	21
IN	21	NM	21	WV	18
IA	21	NY	21	WI	18
KS	18	NC	18	WY	21

Source: Miron J., Tetelbaum E., “Does the Minimum Legal Drinking Age Save Lives?”, p.21.

In 1970, during Richard Nixon’s Presidency, the age limit for voting in federal elections was lowered from twenty-one to eighteen⁴⁷ and there was a big pressure on the Congress to pass an amendment to the Constitution, which would lower the age limit for

⁴⁷ At first, the law was supposed to be binding also for state and local elections but this provision was ruled unconstitutional, therefore it was only applied for federal elections.

elections at all levels. This pressure was mainly due to engagement of soldiers younger than twenty-one in the Vietnam War. The underlying logic was to enable the men sent to fight in a war to influence decisions of people who were sending them there. “Old enough to fight, old enough to vote” was a frequently used slogan. In March 1971, the Congress, almost unanimously, voted in favor of the Twenty-sixth amendment, which limited the minimum voting age to no less than eighteen years of age. After ratification in state legislatures, it came into force.

These legislative changes coincided with those in policies of individual states: between 1969 and 1976 most states lowered their MLDA from twenty-one to eighteen or nineteen, probably also influenced by the student activism against the Vietnam War and the decrease in voting age.⁴⁸ “Whatever the reasons, the lower MLDA’s ‘enfranchised’ over five million 18-20 year olds to buy alcohol.”⁴⁹

2.2 The Federal Uniform Drinking Age Act

In the early 1970s many states decreased the minimum drinking age. However, after these reductions in the MLDA in the majority of the states, studies showing increases in alcohol-related fatalities among those aged between eighteen and twenty started to emerge. Some states, often urged by anti-drunk driving groups, reacted by moving their minimum drinking age upward as it was expected that the restriction in access of youth to alcohol will lead to smaller consumption of alcohol and youth will get intoxicated less often. Also it was supposed that this restriction should have a spillover effect, meaning that not only it would restrict access of those between eighteen and twenty-one years old but also of teenagers of one and two years below the minimum age, who very often acquire alcoholic beverages from their older friends.⁵⁰

Another argument of citizen groups was that differences in MLDA laws led to youth seeking out bars in the lower minimum-age jurisdictions and thus to drive over state borders drunk. Therefore citizens movements started to call for a national uniform minimum drinking age of twenty-one in order to get rid of the differences.

There was also much critique of this policy proposal. There were counter-arguments claiming that establishing a minimum drinking age this high is too large a cost for prevention of drunk driving – “It limits the rights, opportunities, and social life

⁴⁸ Miron J., Tetelbaum E., “Does the Minimum Legal Drinking Age Save Lives?”, p. 3.

⁴⁹ Ibid.

of millions of responsible citizens in order to prevent drunk driving by a small percentage of irresponsible persons... If taken to its logical extreme, this strategy would lead us back to a program of prohibition....”⁵¹

Another point of critique was that according to the Constitution, it was the responsibility of individual states, not the federal Government, to regulate the sale of alcoholic beverages.

In spite of this critique, demands of the citizen movements that the minimum drinking age should be increased fell on a fertile ground. In 1982 President Ronald Reagan established a commission to study the drunk driving problem. The result of their activity was a report recommending a nationwide drinking age of twenty-one and in July 1984 the *National Minimum Drinking Age Act* of 1984⁵² was enacted.⁵³ with what majority?

This piece of legislation is included in the Title 23 of the U.S. Code. This title has 189 sections and deals with federal highways in general. One of the sections, the 158th, deals with the drinking age. It does not explicitly force states to introduce a minimum drinking age of twenty-one, as one could suppose. Instead, it “motivates” states to enhance interstate highway safety by introducing this age limit by the provision that a state that does not make illegal “the purchase and public possession... of any alcoholic beverage by a person who is less than 21 years of age”⁵⁴, will not receive 5 per cent of its calculated annual federal highway apportionment allocated to the state by the federal government after fiscal year 1987. Beginning from the following fiscal year (1988) the reduction in federal highway funds increased to 10 per cent.⁵⁵

After the introduction of the new legislation in 1984 and the threat of the reductions in highway funding, most states adjusted their laws and by 1986 all but eight states increased the minimum drinking age to twenty-one.⁵⁶ Out of these eight states five were states in the Rocky Mountains or Northern Plains (Colorado, Idaho, Montana, South Dakota and Wyoming), then Ohio, D. C., and Louisiana.⁵⁷

⁵⁰ Jacobs J., *Drunk Driving: An American Dilemma*, p. 174.

⁵¹ *Ibid.*, pp. 198-199.

⁵² National Minimum Drinking Age Act of 1984 (23 U.S.C. § 158).

⁵³ The bill passed with a vast majority of votes 297-73 in the House of Representatives.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Laurence M., “The Legal Context in the United States,” in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), p. 149.

⁵⁷ State MLDA and Zero Tolerance Law History, National Highway Traffic Safety Administration. Available at <http://www.nhtsa.gov/people/injury/research/FewerYoungDrivers/appendix.htm> (accessed January 8, 2011).

The five states in the Rocky Mountains and Northern Plains had already refused other initiatives of the federal government such as mandatory seat belts or the speed limit of 55 miles per hour. “The strident debate over the drinking age issue has surprised almost no one in the West, where emotions tend to run strong over Federal involvement in state affairs and where anti-government sentiment is often much in evidence.”⁵⁸ The law was seen as an intrusion into the rights of individual states and South Dakota even sued the federal government claiming that the law violates the Twenty-first Amendment to the Constitution, which ended Prohibition and authorized states to regulate conditions of sale or consumption of alcohol. This will be discussed in more detail later in this chapter. However, the Supreme Court upheld the *National Minimum Drinking Age Act* and by 1988 all states established the age limit of twenty-one so that they would not lose any finances from the highway funds. In Louisiana, however, a loophole in the law was found, and also its citizens aged eighteen to twenty continued to be able to purchase alcohol (see chapter 2.2.2).

2.2.1 South Dakota v. Dole

The *National Minimum Drinking Age Act* indirectly attempted to achieve increase in the minimum drinking age in all states by withholding 5 %, resp. 10 % of federal highway funds to state which would not enforce the limit of 21 years of age. However, a few states strongly opposed, seeing it as an intrusion into their rights and powers, because the Twenty-first Amendment gave them the right to regulate the sale and consumption of alcohol beverages but also the importation and transportation of alcohol into the state.

South Dakota, where nineteen-year-olds and older were allowed to drink beer containing up to 3.2 per cent of alcohol, was in opposition. It claimed that its laws encouraged temperance and safety by providing nineteen- and twenty-year olds with legal access to alcohol and thus avoiding surreptitious drinking, which, in their opinion would inevitably occur.⁵⁹ Hence, South Dakota decided to sue Elizabeth Dole, the

⁵⁸ Knudson T., “Drinking Age Is Fiery Issue in West.” *New York Times*, March 10, 1987. Available at <http://www.nytimes.com/1987/03/10/us/drinking-age-is-fiery-issue-in-west.html?pagewanted=all&src=pm.aid-to-get-states-to-raise-drinking-age.html?scp=4&sq=supreme%20court%20drinking%20age&st=cse>. (accessed January 8, 2012).

⁵⁹ Taylor S., “Justices Back Use of Aid to Get States to Raise Drinking Age.” *New York Times*, June 24, 1987. Available at <http://www.nytimes.com/1987/06/24/us/justices-back-use-of-aid-to-get-states-to-raise-drinking-age.html?scp=4&sq=supreme%20court%20drinking%20age&st=cse> (accessed January 21, 2012).

Secretary of Transportation in the years 1983-1987. The case was considered by the Supreme Court presided by William Rehnquist in 1987.⁶⁰

The main issue the Supreme Court had to deal with was the question if the *National Minimum Drinking Age Act* violated limitations on congressional exercise of the taxing and spending powers and if it violated the Twenty-first Amendment to the U.S. Constitution.

Traditionally, Congress passed most of its regulatory legislation under the Commerce Clause as a source of constitutional authority, and the Spending Clause was used only occasionally.⁶¹ The First Article of the U.S. Constitution states the Congress shall have the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”⁶² From the mid-1930s until the mid-1950s, the Supreme Court interpreted the clause very widely and gave Congress broad powers in legislating under the Commerce Clause, referring to the supposed considerable economic effect on commerce between the states.⁶³ However, it was during the Rehnquist Court, in 1995, when these wide powers of the Congress to legislate under the Commerce Clause were reduced, giving more space to federalist principles.⁶⁴

While the use of the Commerce Clause for legislation of regulatory laws was declining, the scope of use of the Spending Clause was on the rise. The Spending Clause⁶⁵ (also the Taxing and Spending Clause) gives Congress the power to “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and General Welfare of the United States, but all Duties, Imposts and Excises shall be uniform throughout the United States.”⁶⁶

Before 1936 the interpretation of the Spending clause was quite narrow but after the Court’s ruling on certain New Deal legislation, the interpretation loosened – the Court decided that as long as a law “...is for a lawful end and the state has the right to refuse the conditions, the law is a constitutional use of the spending power.”⁶⁷

⁶⁰ William Rehnquist served as the Chief Justice from 1986 until 2005.

⁶¹ Bull R., “The Virtue of Vagueness: A Defense of *South Dakota v. Dole*,” *Duke Law Journal*, Vol. 56, No. 1 (2006), p. 281.

⁶² U.S. Const., art. I, §8, Cl. 3.

⁶³ Bull R., “The Virtue of Vagueness: A Defense of *South Dakota v. Dole*,” p. 281.

⁶⁴ In 1995 the Rehnquist Court held that the Congress did not have the power to pass the Gun-Free School Zones Act under the Commerce Clause, which was aimed to criminalize gun possession in school zones.

⁶⁵ U.S. Const., art. I, §8, Cl. 1.

⁶⁶ *Ibid.*

⁶⁷ Quick A., “Legal Limits on Conditional Spending including Recent Challenges to No Child Left Behind,” *Briefing Paper* No. 19, Harvard Law School, 2006, p. 5. Available at http://www.law.harvard.edu/faculty/hjackson/NoChild_19.pdf (accessed January 20, 2011).

In *South Dakota v. Dole*, the current interpretation of the Spending Clause was laid out. The Court considered the requirement that the spending in question be for the general welfare, which was confirmed. In addition, the Court set other criteria for determining the constitutionality or unconstitutionality of the conditions imposed. The Court claimed that the challenged law is in accordance with all restrictions on the use of the Congressional exercise of the spending power, that is, first, that the law is clear and unambiguous, enabling the States to exercise their choice knowingly, aware of the consequences; second, that conditions on federal grants are related to a national concern (in this case safe interstate travel); and third, that the inducement is “relatively small” so that it is not “so coercive as to pass the point at which pressure turns into compulsion.”⁶⁸

Finding all conditions met, the Supreme Court ruled that “Here Congress has offered relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose. But the enactment of such laws remains the prerogative of the States not merely in theory, but in fact. Even if Congress might lack the power to impose a national minimum drinking age directly, we conclude that encouragement to state action found in § 158 is a valid use of the spending power.”⁶⁹

That was the ruling expressing the opinion of seven Justices. The remaining two, Sandra Day O’Connor and William J. Brennan each filed dissents. O’Connor agreed that conditions may be attached on the receipt of federal funds and that the Twenty-first Amendment does not constitute a bar to attaching conditions. However, she did not agree that the condition imposed was reasonably related to the purpose for which the funds were expended, which was federal highway construction. “When Congress appropriates money to build a highway, it is entitled to insist that the highway be a safe one. But it is not entitled to insist as a condition of the use of highway funds that the State impose or change regulations in other areas of the State’s social and economic life because of an attenuated or tangential relationship to highway use or safety. Indeed, if the rule were otherwise, the Congress could effectively regulate almost any area of a State’s social, political, or economic life on the theory that use of the interstate transportation system is somehow enhanced.”⁷⁰ She also criticized the fact that the law is “far too over- and under-inclusive” - over-inclusive because also teenagers who are

⁶⁸ *South Dakota v. Dole*, 483 U.S. p. 211 (1987).

⁶⁹ *Ibid.*, pp. 211-212.

⁷⁰ *Ibid.*, p. 215.

not going to drive on interstate highways are prevented from drinking, and under-inclusive because teenagers constitute just a small portion of the drunk driving problem in the United States. Therefore, failing the reasonable relation restriction, it is outside the scope of congressional power, according to O'Connor.⁷¹

Justice Brennan shortly expressed agreement with Justice O'Connor seconding her reasoning and adding that states have the right to regulate the minimum drinking age according to the Twenty-first Amendment and therefore Congress cannot condition a federal grant in a way that would abridge this right.⁷²

Nevertheless, South Dakota lost the case and all the remaining states changed their minimum legal drinking age to 21, last being South Dakota and Wyoming in 1988.⁷³

2.2.2 Manuel v. State

Louisiana was also very reluctant in raising the minimum drinking age. Nevertheless, facing the loss of millions of dollars in federal highway funds, it decided to raise the age to twenty-one.⁷⁴ However, the beer lobby pushed through its version, which prohibited purchase of alcohol for those younger than twenty-one, but it did not explicitly prohibit the sale of alcohol to those under twenty-one, and thus created a loophole which gave citizens between the age of eighteen and twenty access to alcohol. Moreover, private consumption was not prohibited. In addition to this, lobbyists also managed to prevent passing of a bill aiming to ban the same age group from entering bars, which made control of underage drinking almost impossible.⁷⁵ So although de jure the drinking age was twenty-one, de facto it remained eighteen.

However, there were attempts to do away with the loophole referring especially to Louisiana being the only state where it was de facto allowed to drink from the age of eighteen. This fact was supposed to attract youth from neighboring states, who drove to

⁷¹ Ibid., pp. 212-218.

⁷² Ibid., p. 212.

⁷³ State MLDA and Zero Tolerance Law History, National Highway Traffic Safety Administration. Available at <http://www.nhtsa.gov/people/injury/research/FewerYoungDrivers/appendix.htm> (accessed January 21, 2011).

⁷⁴ Estimates were Louisiana would lose somewhere between fourteen and nineteen million of dollars every year, counting with the 10% reduction in funding.

⁷⁵ Wilke J., "Louisiana Lobbyist Keeps State Laws On Drinking Loose." *Wall Street Journal*, December 1, 2003. Available at <http://online.wsj.com/article/SB107023335616367200.html> (accessed January 21, 2011).

Louisiana bars and then back intoxicated and often being involved in serious traffic accidents.⁷⁶ After a few years, in 1995 the loophole was closed when the Louisiana Legislature passed the Act 639, prompted by the possibility of losing federal highway funding.⁷⁷ This act amended the original act adding the ban of the sale of alcohol to eighteen-, nineteen- and twenty-year-olds, and creating sanctions for retailers and purchasers of alcoholic beverages (in addition to the already prohibited purchase and public possession of alcohol).

In reaction to that, four Louisiana citizens (two retailers of alcoholic beverages and two citizens of Louisiana under the age of twenty-one) filed suit in Evangeline Parish challenging the state laws that raised the minimum drinking age as unconstitutional age discrimination. They claimed it was in violation of Article I, section 3 of the Louisiana Constitution of 1974, resp. the Individual Dignity Clause.⁷⁸

Before 1974 Louisiana law provided “no express guarantee to equal protection of laws.”⁷⁹ The only means of preventing violations of equal protection was the Fourteenth Amendment to the U.S. Constitution. However, trying to provide its citizens with greater protection of individual rights and to “eliminate the perceived failings of the United States Supreme Court,”⁸⁰ the right to individual dignity was explicitly provided in the Louisiana Constitution of 1974.⁸¹

The clause states that “No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs or affiliations. No law shall arbitrarily, capriciously or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations...”^{82 83}

⁷⁶ Bragg R., “Louisiana Stands Alone on Drinking at 18.” *New York Times*, March 23, 1996. Available at <http://www.nytimes.com/1996/03/23/us/louisiana-stands-alone-on-drinking-at-18.html?src=pm> (accessed January 21, 2011).

⁷⁷ Redman A., “Recent Development: Manuel v. Louisiana: The Supreme Court Determines that Raising the Legal Drinking Age to Twenty-One Is Not Age Discrimination under Louisiana’s Equal Protection Clause,” *Tulane Law Review*, Vol. 71, No. February 1997.

⁷⁸ Johnson V., “Manuel v. State: Blurring the Line between Federal Equal Protection and Louisiana Individual Dignity,” *Loyola Law Review*, Vol. 43, No. 1 (1997), p.135.

⁷⁹ *Ibid.*, p.137.

⁸⁰ *Ibid.*, p. 138.

⁸¹ *Ibid.*, pp. 138-139.

⁸² Louisiana Const., Article I, §3.

⁸³ Louisiana Constitution’s explicit reference to protection of human dignity is very unique. Montana is the only other U.S. state which also has a similar provision in its Constitution. See Jackson V., “Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse,” *Montana Law Review*, Vol. 65, No. 15 (2004), p. 21.

In comparison to the federal protection of individual rights, the Constitution of Louisiana provides for more thorough scrutiny of laws that could be considered discriminatory. In this case of possible age discrimination, the legislation is presumed unconstitutional and the proponent of the legislation has the burden of proving “that the classification is not arbitrary, capricious, or unreasonable because it substantially furthers an appropriate governmental objective.”⁸⁴

The trial judge enjoined enforcement of the statutes on August 15, 1995 and nine days later the trial court decided in favor of the plaintiffs and held that statutes in question constituted arbitrary age discrimination and the enforcement of the statutes was prohibited throughout the state.

The State appealed to the Louisiana Supreme Court.⁸⁵ The Court had to consider the same question, i.e., if the law substantially furthered some legitimate governmental objective, or if it constituted unreasonable discrimination under the Individual Dignity Clause of the First Article of Louisiana Constitution. The Supreme Court affirmed the decision of the trial court in a 4-to-3 decision claiming the state was not able to prove that the law substantially furthered an important governmental purpose.⁸⁶ The State immediately requested rehearing.

The ruling caused uproar and was criticized by several groups. For example, by those calling for tougher action against drunk driving, by those who feared it would push the problem to high-school level from the colleges, or by those concerned about the loss of millions of dollars from federal highway funds.⁸⁷

Under pressure, the Supreme Court reconsidered its decision, and in May it vacated its original opinion. One of the Justices switched sides and a judge who was serving in March as a temporary appointee was not on the court any more, and the court’s new judge joined the new majority.⁸⁸ Thus, in a 5-to-2 vote decision it was ruled that the minimum drinking age of twenty-one furthered a legitimate governmental purpose – highway safety and thus was constitutional.⁸⁹⁹⁰

⁸⁴ Johnson V., “Manuel v. State: Blurring the Line between Federal Equal Protection and Louisiana Individual Dignity,” p.139.

⁸⁵ Ibid., p.136.

⁸⁶ Supreme Court of Louisiana, Manuel v. State, No. 95-CA-2189.

⁸⁷ Some state legislators were even planning a statewide vote on an amendment to constitution that would raise the drinking age in case the Supreme Court did not change its opinion. See “Louisiana Court Upholds Drinking Age of 21.” *New York Times*, July 3, 1996. Available at <http://www.nytimes.com/1996/07/03/us/louisiana-court-upholds-drinking-age-of-21.html> (accessed January 21, 2012).

⁸⁸ Ibid.

⁸⁹ Manuel v. Louisiana, 677 So., 2d, 116-118 (La. 1996).

Nevertheless, some exceptions including drinking in private residence exist until today making Louisiana one of the most liberal U.S. states in this regard.

2.2.3 Other Attempts to Repeal the Federal MLDA

South Dakota and Louisiana have not been the only states where minimum drinking age laws have been challenged. In 2008, two magistrate judges in South Carolina dismissed charges against citizens under the age of twenty-one for possession of alcohol. They claimed that in light of a recent decision of the South Carolina Supreme Court, which dealt with the right to bear arms, the statutes making possession of alcohol by a person under the age of twenty-one a criminal offense, are unconstitutional.^{91,92}

Some other states have considered lowering the minimum drinking age for military personnel, in Missouri a ballot initiative was planned to allow everyone eighteen and older to drink alcohol.⁹³ However, the threat of withholding ten per cent of the federal highway funds (which, depending on the state, can mean a loss of about 6 million up to 150 million dollars for any single state⁹⁴) remains to be a costly obstacle.

Nevertheless, the debate about lowering the drinking age continues and the most significant advocates of lowering the minimum drinking age are more than one hundred presidents of American colleges and universities assembled in the organization called Amethyst Initiative (see chapter 4.1).

To conclude, in the 1970s the federal voting age was lowered from twenty-one to eighteen, and in most states also the minimum drinking age was lowered. After reported increases in traffic fatalities among young drivers, states started to return the drinking age back to twenty-one and, in 1984, the *National Minimum Drinking Age Act* was passed, which was supposed to reverse this negative trend, by . The law encouraged

⁹⁰ The second decision blurred the difference between the federal and state standard of legal review. See Johnson V., "Manuel v. State: Blurring the Line between Federal Equal Protection and Louisiana Individual Dignity," p.135-150.

⁹¹ The Constitution of South Carolina only allows restriction of *sale* of alcohol to those under twenty-one, not the possession or use.

⁹² Johnson C., "The Minimum Age to Possess Alcohol in South Carolina: Are State Statutes Prohibiting Individuals Eighteen to Twenty Years Old from Possessing Alcohol Unconstitutional?" *Charleston Law Review*, Vol. 4, No. 4 (2010), pp. 813-828.

⁹³ Keen J., "States Weigh Lowering Drinking Age." *USA Today*, April 1, 2008. Available at http://www.usatoday.com/news/nation/2008-03-20-drinkingage_N.htm (accessed January 28, 2012).

states to set the MLDA to twenty-one or face loss of federal highway funds. A few states strongly opposed claiming that the law constituted an intrusion into the rights of individual states; however, in 1987 the Supreme Court in *South Dakota v. Dole* held that the law was constitutional. The law was challenged at court again in 1995 and the Louisiana Supreme Court had to decide if the regulation was in violation with the Individual Dignity Clause of the state's Constitution. The court held that the law was unconstitutional but after a few weeks it reversed its decision and upheld the existing law. Attempts to lower the MLDA continue until today.

The *National Minimum Drinking Age Act* has been disputed and called unconstitutional. It was introduced based on the assumption that it will reduce drunk driving, but current research shows that this connection is much weaker than was supposed (see the third chapter). As we saw in the first chapter, the law is impossible to enforce effectively and, as is going to be discussed in the following chapter, there are other, more efficient measures how to deal with drunk driving and reduce alcohol-related fatalities.

⁹⁴ Federal Highway Funding by Program and Type of Roadway, with Related Safety Data. United States General Accounting Office. Available at <http://www.gao.gov/new.items/d01836r.pdf> (accessed January 28, 2012).

3 Scientific Aspect – What Really Works in Reducing Traffic Accidents?

The third chapter analyses results of scientific research on effectiveness of decreases in the minimum legal drinking age and other measures used to combat drunk driving.

3.1 Efficiency of the 21 MLDA

Promotion of highway safety was the main argument of the U.S. Supreme Court when it decided in the case *South Dakota v. Dole*. The Court claimed that promotion of this goal is a sufficient reason for the federal government to use its spending power on an issue perceived as something to be dealt with by individual states in the name of general welfare. However, many scientific studies have emerged showing that increasing the MLDA might not have had as significant effects on drunk driving as had been assumed.

After the minimum legal drinking age was lowered in most states by the mid-1970s, studies emerged showing that the number of alcohol-related fatalities was increasing. Groups such as MADD seized the initiative and pressured the federal government to pass the *Federal Uniform Drinking Age Act* (or the *National Minimum Drinking Age Act*)⁹⁵, which made states set the age limit back to twenty-one. The introduction of the bill was also followed by publication of many research studies assessing the efficiency of the new piece of legislation. However, many factors make this research very complex. For example, the raise in drinking age was different in individual states – in some, the age limit changed only by the difference of one year, from twenty to twenty-one years of age, whereas in others, the change was from eighteen to twenty-one.⁹⁶

Another important factor making the evaluation of the effect of higher drinking age more complicated is that just as other legislation it does not emerge in a vacuum. In 1983, just one year before the drinking age was raised to twenty-one, the state of Maine introduced zero tolerance statutes which made any measureable amount of alcohol in

⁹⁵ The names *Federal Uniform Drinking Age Act* and *National Minimum Drinking Age Act* will be used interchangeably.

⁹⁶ After the Twenty-sixth amendment came to effect, not all states lowered the drinking age to eighteen, in some of them the age of nineteen or twenty was chosen, and in some states the age limit was lowered to eighteen and a few years later raised, either back to the original limit or just a year or two higher.

blood of persons under the age of twenty-one illegal.⁹⁷ By 1998, all states and the District of Columbia had introduced such legislation, and a maximum legal blood alcohol concentration (BAC) limit of 0.02% was set for drivers under twenty-one. The exact limit depends on the states. Research conducted on this issue confirmed major decreases in the nighttime single vehicle injury crashes (that is those which are most often alcohol-impaired) and recommended 0.00 BAC limit for youth.⁹⁸ That means that raising the minimum drinking age was not the only measure which could have had some influence on decreases in traffic fatalities.

Alexander C. Wagenaar and Traci L. Toomey reviewed literature dealing with effects of minimum drinking age laws published between 1960 and 2000.⁹⁹ In their analysis they concluded that although the effect of minimum drinking age laws may seem moderate, they appeared to have been the most successful measure until that time. However, Wagenaar and Toomey admit that studies focusing on college students did not show a statistically inverse relationship between the minimum legal drinking age limit and alcohol consumption or related problems.¹⁰⁰

However, already in the 1980s studies were published which suggested that drinking age does not have any measurable effect on fatality rates. For example, Mike A. Males showed that rise in the drinking age had no effect on young drivers¹⁰¹ and "...demonstrated that the most influential empirical study of the issue (Williams et al. 1983) is not replicable when the data from a slightly longer time frame are utilized."¹⁰² Males found out that decreases in fatal accidents occurred both in states where the drinking age was raised and in those where the drinking age was not raised. Changes in MLDA only changed the age distribution of fatalities adding more in the age group 21-24, where the inexperience with drinking and driving surfaced.¹⁰³

⁹⁷ Hingson R., "College-Age Drinking Problems," *Public Health Reports*, Vol. 113, No. 1 (1998), pp. 52-54.

⁹⁸ "Zero Tolerance for Youth Four States' Experience with Zero Tolerance Laws." National Highway Traffic Safety Administration, 2000. Available at <http://www.nhtsa.gov/About+NHTSA/Traffic+Techs/current/Zero+Tolerance+For+Youth+Four+States'+Experience+With+Zero+Tolerance+Laws> (accessed April 1, 2012).

⁹⁹ See Wagenaar A. and Toomey T., "Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000," pp. 206-225.

¹⁰⁰ *Ibidem*, p. 219.

¹⁰¹ See Males M., "The Minimum Purchase Age for Alcohol and Young-Driver Fatal Crashes: A Long-term View," *Journal of Legal Studies*, Vol. 15, No. 1 (1986), pp. 181-211.

¹⁰² Jacobs J., *Drunk Driving: An American Dilemma*, p. 5.

¹⁰³ Males M., "The Minimum Purchase Age for Alcohol and Young-Driver Fatal Crashes: A Long-term View," pp. 181-211.

In 1987, Peter Asch and David T. Levy examined a theory that “...*inexperience* in drinking creates a traffic fatality hazard that is independent of age.”¹⁰⁴ Unlike Williams, Asch and Levy focused on long-range implications. They concluded that MLDA is not a significant, even a perceptible, factor in explaining traffic fatalities of young drivers and that new drivers pose increased traffic safety risk because of their inexperience in drinking whether they reach the drinking age sooner or later. That means that raising the drinking age from eighteen to twenty-one may result in reduction in fatalities aged eighteen to twenty, but will result in an increase in fatalities of drivers aged twenty-one and more.¹⁰⁵ They thus confirmed Males’ results and stated that effects of changing drinking age had been overstated, and the emphasis on raising MLDA misdirected.¹⁰⁶

In most cases, either cross-sectional data from one year or time-series data in one state were used for the analyses. In 1999, Thomas Dee used another method. He used state-level panel data and took more factors such as state trends into account. His conclusion was that higher legal drinking age reduced traffic fatalities by at least 9 %.¹⁰⁷

In 2007, Jeffrey A. Miron and Elina Tetelbaum took on data in Dee’s research and conducted an even more complex research using state-level panel data from the previous 30 years. Unlike Dee, they also include variables: vehicle miles traveled and a dummy indicating if a state has a separate BAC 0.08% law. Miron and Tetelbaum show that Dee’s results were driven by a few states, which increased their MLDA before the *Federal Uniform Drinking Age Act* was adopted and that even in early-adopting states, the impact of the increase did not last much more than one year after it was introduced. Their conclusion then is that, in defiance with previous studies, the MLDA of 21 does not reduce traffic fatalities because it only has a minor effect on teen drinking (as we could see above, studies confirm that it is easy for teenagers to acquire alcoholic beverages), and, consequently, on teen drinking and driving as well.¹⁰⁸ In their study they also observed a similar trend of fatality rate among general population and among young drivers, as we can see in Figure 3.1.

¹⁰⁴ Asch P., Levy D., “Does the Minimum Drinking Age Affect Traffic Fatalities?” *Journal of Policy Analysis and Management*, Vol. 6, No.2 (1987), p. 181.

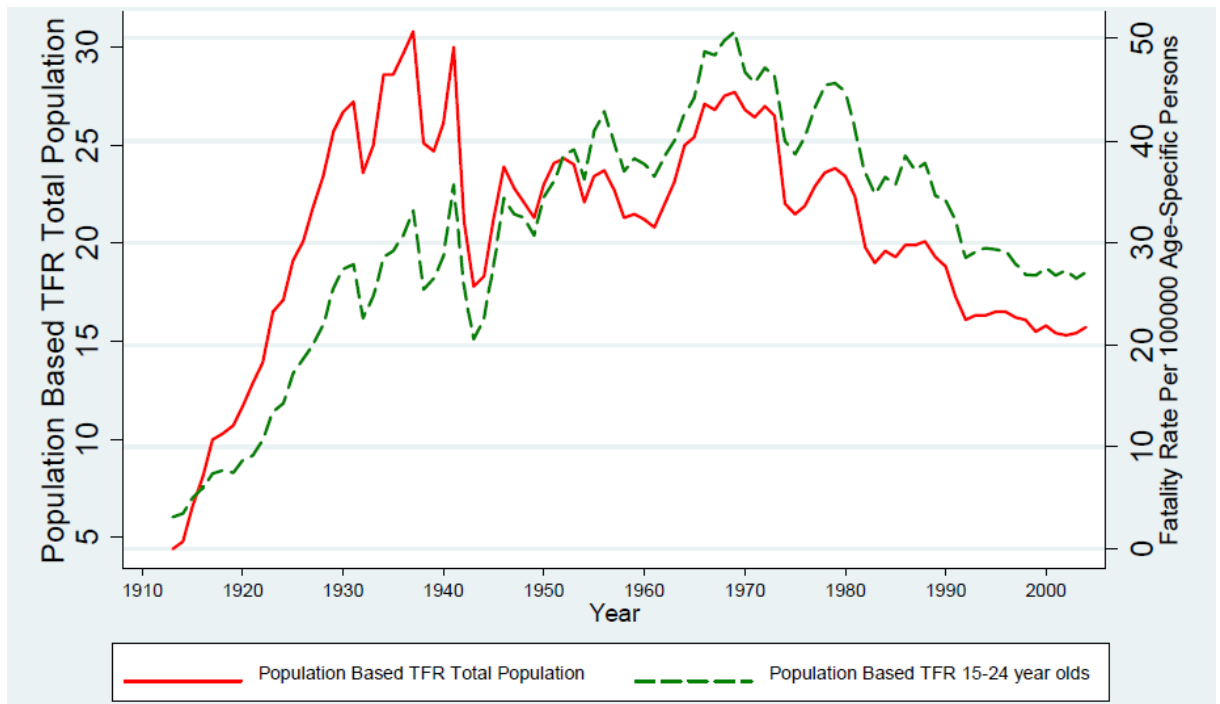
¹⁰⁵ Asch P., Levy D., “Young Driver Fatalities: The Roles of Drinking Age and Drinking Experience,” *Southern Economic Journal*, Vol. 57, No. 2 (1990), p. 514.

¹⁰⁶ See Asch P., Levy D., “Does the Minimum Drinking Age Affect Traffic Fatalities?”, pp. 180-192 and Asch P., Levy D., “Young Driver Fatalities: The Roles of Drinking Age and Drinking Experience,” pp. 512-520.

¹⁰⁷ Miron J., Tetelbaum E., “Does the Minimum Legal Drinking Age Save Lives?” p. 5.

¹⁰⁸ See Ibid.

Figure 3.1: Population Based Fatality Rate, 1913-2004. Total Population and 15-24 Year Olds.



Source: See Miron J., Tetelbaum E., “Does the Minimum Legal Drinking Age Save Lives?”, p. 32.

There is growing evidence of limited influence of the MLDA on fatality rates of young people. It is supposed that decrease in fatality rates among young drivers were only reflecting the general decline in fatality rates for all drivers.¹⁰⁹ Moreover, drivers of age between 16 and 20 have lower rates of drunk driving than those aged 21 to 24.¹¹⁰ If arguments which had led to introduction of an MLDA of 21 were to be used consistently, should not the minimum drinking age be twenty-four? Would that be implausible? Why the MLDA of twenty-one *is* plausible? If we know that women drivers make up only a few per cent of all drunk-driving accidents, should not the drinking age of twenty-one be only applied to men? Is it not the driving age that should be increased? (Because young drivers are more likely to be involved in accidents even when they are sober.) These are all complex questions related to the issue of driving fatalities which do not get enough attention.

¹⁰⁹ Jacobs J., *Drunk Driving: An American Dilemma (Studies in Crime and Justice)*. University of Chicago Press, 1992, p. 173.

¹¹⁰ *Ibid.* p. 177.

3.2 What Might Help? – Other Means to Reducing DUI Fatalities

If the MLDA does not play a big role in reducing DUI fatalities, what does? Measures which seem to be more effective than the high MLDA will be examined because these measures could be used as an alternative to the MLDA of twenty-one and fulfill the original aim – reducing DUI fatalities.

3.2.1 BAC Limits

Scientists started to study the connection between alcohol and road accidents already in the 1930s but rather than conducting a systematic methodological research, they were often trying to dramatize the issue and mobilize public opinion accordingly.¹¹¹ The blood alcohol concentration has become an important instrument in this research.

BAC levels are influenced by many factors such as the amount and concentration of the consumed beverage, or the amount and type of food in the stomach, but also one's sex, body weight and amount of body fat. Moreover, at the same BAC level, people have different behavior and signs of impairment. The biological effects of alcohol impairment are generally known. With regard to drunk driving, the main effects of alcohol are impairment of concentration (already from 0.03% BAC), impairment of reasoning and peripheral vision (from 0.06% BAC) and impairment of reflexes, reaction time and gross motor control (starting at 0.10%).¹¹² Generally, a level of 0.05 %, is considered the beginning of impairment for most people.¹¹³ However, there is no clear definition of impairment, which is why legal BAC limits were introduced in many countries (in Norway, for example, already in the 1930s). In this context it means that driving with a BAC above a certain limit is illegal without regard to other circumstances such as lack of knowledge of legal BAC limits or one's ability to pass a field sobriety test¹¹⁴. No evidence that the accused actually is impaired is required.¹¹⁵

¹¹¹ Donelson A., "The Alcohol-Crash Problem," in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), p. 3.

¹¹² It is interesting that very small amounts of alcohol actually lead to a lesser risk of being involved in an accident. See *Ibid.*, p. 17.

¹¹³ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 13.

¹¹⁴ Field sobriety tests are administered to obtain indicators of impairment and thus establish probable cause for arrest. In 1981, the NHTSA created a standardized model for this testing, which uses three tests in combination: Horizontal Gaze Nystagmus test (HGN), Walk-and-Turn test (WAT) and One-Leg Stand (OLS). For details, see Standardized Field Sobriety Testing, National Highway Traffic Safety Administration. Available at http://www.nhtsa.gov/people/injury/alcohol/sfst/appendix_a.htm (accessed May 3, 2012).

¹¹⁵ Voas R., "Technologies for Controlling the Drunk Driver," in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), p. 353.

In the United States, in the 1930s the American Medical Association and the National Safety Council studied the problems of traffic accidents and testing for intoxication. In 1939 they published a report providing guidelines, which were later codified by the National Committee on Uniform Traffic Laws and Ordinances and then also adopted by all states. The guidelines defined three situations: first, if a driver has a BAC level lower than 0.05%, he shouldn't be prosecuted. Second, if a driver has a BAC level of more than 0.15%, he should be prosecuted as under the influence. Third, if a driver's BAC level is in the zone between 0.05% and 0.15 %, he should be prosecuted only if his/her physical examination by the police confirms such influence.¹¹⁶

The lower limit of 0.05% was chosen in order to exonerate temperate drinkers (i.e. social drinkers, here one can see the beginnings of the tolerance toward social drinkers, which has already been mentioned in this paper) in spite of the fact that Herman Heise, the chairman of the committee had demonstrated impairment for levels even lower than 0.05%. The upper limit of 0.15% was chosen even though the report cited research which suggested that even BAC levels approaching 0.15% result in much higher risk of accidents. A level of 0.15% is generally reached after consuming six to eight drinks on an empty stomach.¹¹⁷ Originally, a level of 0.11% was chosen, however, in the end the committee decided to go for the higher limit because "...BAC testing had a margin of error and because 'somewhere some person might be found who was still more tolerant than any seen by American experimenters,'"¹¹⁸ (as Heise himself remarked). Ironically, in the same report the committee states: "...'driving a car is such a hazardous occupation, even in the best of circumstances, that no driver should have the legal or moral right to lower his driving ability deliberately to any extent.'"¹¹⁹

In the 1950s and 1960s, there was another wave of scientific research and the view on DUI was changing – it started to be seen as a serious public health problem. This resulted in changes in the National Safety Council's (NSC)¹²⁰ Committee on Alcohol and Drug's BAC limits recommendations. It was recommended that states adopt a 0.10% BAC level of impairment rather than 0.15%. However, it was up to states

¹¹⁶ Lerner B., *One for the Road: Drunk Driving since 1900*, pp. 28-29.

¹¹⁷ "Estimating Your BAC." Virginia Tech, available at

<http://www.alcohol.vt.edu/Students/alcoholEffects/estimatingBAC/index.htm> (accessed April 8, 2012).

¹¹⁸ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 29.

¹¹⁹ *Ibid.*, p. 20.

¹²⁰ The national Safety Council (founded in 1917) is a nonprofit nongovernmental public service organization which devotes its activities to protecting life and promoting health.

to decide about any changes in their legal limits and it was as late as in 1984 that all states had introduced 0.10% laws.¹²¹

During the 1990s many studies appeared proving driving impairments already at BAC levels of 0.08% and suggesting positive effects of lowering BAC limits from 0.10% to 0.08%. This research led to the introduction of a piece of legislation which withheld federal highway construction funds from states which did not lower the BAC limit to 0.08%. Research on early adopting states suggests that lower BAC limits are effective in reducing alcohol-related fatality rates – according to research only that small change (compared to the first change from 0.15% to 0.10 %) in BAC limits led to a 7% reduction in alcohol-related crash fatalities.¹²² By 2004, all states had lowered their legal BACs to today's level of 0.08%. Thus the limit is set closer, though not exactly at, the BAC level of 0.05% at which, as has been already mentioned, impairment starts.¹²³ In some states, though, the BAC limit enforced is even lower.

It is not surprising that measures introducing zero tolerance for young drivers have been proven successful and the National Highway Traffic Safety Administration even recommended a 0.00% BAC limit for young drivers. If we consider that drivers aged 21-24 are involved in more alcohol-impaired fatal accidents, it might work just as well if zero limit was extended to these drivers, or even to all drivers without regard to their age.

However, just setting a BAC limit is not enough. There are still more than 90 million alcohol-impaired trips in a year but only 1.4 million arrests.¹²⁴ Some literature even suggests that only 2 of every 1,000 occasions of illegal drinking by drivers under the age of 21 result in arrest.¹²⁵ Moreover, even if the driver is arrested, the majority of prosecutions are resolved by negotiating guilty pleas, and sentences then become more lenient than the statutory maximum.¹²⁶ The awareness that there are ways how to reduce the punishment or even avoid its strictest components¹²⁷ downplays the perceived danger of a DUI arrest.

¹²¹ Ibid., pp. 57-89.

¹²² Hingson R. and Winter M., "Epidemiology and Consequences of Drinking and Driving," *Alcohol Research and Health: the journal of the National Institute on Alcohol Abuse and Alcoholism*, Vol. 27, No.1 (2003), pp. 63-78.

¹²³ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 13.

¹²⁴ Ibid., pp. 149-166.

¹²⁵ Wolfson M., Wagenaar A. and Hornseth G., "Law Officers' View on Enforcement of the Minimum Drinking Age: a Four-State Study," *Public Health Reports*, Vol. 10, No. 4 (1995), p. 429.

¹²⁶ Jacobs J., *Drunk Driving: An American Dilemma*, pp. 98-99.

¹²⁷ Drivers whose licenses are suspended often get a provisional license that allows them to drive to work.

3.2.2 Legal Threat

In the United States, legal threat is often the applied solution to complex social problems. Legal threat has three main aspects: certainty, severity and celerity of punishment.¹²⁸ Research suggests that the severity of punishment is not that crucial, that means there is no such need of harsh punishment such as heavy fines or incarceration. Studies show that the important factor is the probability of apprehension. More specifically, not the objective probability but the perceived probability of apprehension plays the key role. "...measures designed to increase the objective certainty of apprehension and punishment for drunk driving can, with adequate publicity, attain at least short-term increments of deterrence."¹²⁹ The perception of risk can be created by frequent road-checks or media campaigns. However, this perception enhanced by the publicity can only be maintained if the objective risk is not too small.¹³⁰

One of the few sanctions that have some effect is license revocation. Some studies attribute an up to 9 percent decline in alcohol-related fatal crashes to administrative license revocation.¹³¹ License suspension is perceived as a harsh punishment in the American society, where inability to drive a car excludes a person from economic, social, or cultural life and becomes one of the harshest punishments even in monetary terms.¹³² License revocation has a potential to be a very effective countermeasure to drunk driving, however, it is very difficult to enforce and its deterrent effect is mitigated by the perception that it cannot be enforced effectively. Although hundreds of thousands of driving licenses are revoked each year, drivers often ignore it and drive even without their license. Although driving without a valid license is, in some jurisdictions, an aggravated offense, the probability of being caught is very small and the chance of receiving a considerable punishment is negligible, too.¹³³ The only way how to detect a driver without a valid license is to stop him/her for some reason, e.g. for having committed a traffic offense, or at a checkpoint.¹³⁴ The probability is thus very low and even if one is caught there is no guarantee that the person will be

¹²⁸ Snortum J., Deterrence of Alcohol-impaired drivers. In Laurence M., Snortum J., Zimring F. (eds.), *Social Control of the Drinking Diver*. The University of Chicago Press, 1988, pp. 199-204.

¹²⁹ Ross L., Deterrence-based Policies in Britain, Canada, and Australia. In Laurence M., Snortum J., Zimring F. (eds.), *Social Control of the Drinking Diver*. The University of Chicago Press, 1988, p. 64.

¹³⁰ Snortum J., "Deterrence of Alcohol-impaired drivers," p. 201.

¹³¹ See Zador P., Lund A., Fields F., Weinberg K., "Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," *Journal of Public Health Policy*, Vol. 10, No. 4 (1989), pp. 467-485.

¹³² Jacobs J., *Drunk Driving: An American Dilemma*, p. 119.

¹³³ *Ibid.*, p. 25, pp. 119-120.

¹³⁴ Voas R., "Emerging Technologies for Controlling the Drunk Driver," p. 364.

prosecuted, let alone punished.¹³⁵ According to several studies, about two thirds of drivers with a suspended license continue driving their cars, though they drive less often, less far, and less drunk.¹³⁶

Research suggests that sobriety checkpoints deter drunk drivers very effectively, especially those accompanied by increased publicity and coverage in the media, because they increase the perceived risk of apprehension.¹³⁷ However, they still remain underused. In twelve states they are not used at all (ten states outlawed them as they would violate their constitutions, two states do not use them even though they are not considered illegal) and in some jurisdictions they are not used often enough in spite of the evidence of success in many countries such as Australia or Scandinavian countries.¹³⁸ The reason why random breath tests are considered unconstitutional in some states is that they supposedly violate the Fourth amendment to the U.S. Constitution, which protects persons from unreasonable searches. This point will be discussed in more detail in the fourth chapter below.

3.2.3 Long-Term Strategies

Although high perceived probability of apprehension is more important than sanctions themselves, escalating legal threats is seen by some scientists as a way how to create long-term deterrence by demonstrating that "...a particular behavior is worse and more serious than previously thought. In time, general attitudes may come to redefine that behavior as more serious and more culpable."¹³⁹ This then might lead to new societal norms and internal inhibitions against driving under the influence. This theory is based mainly on the Scandinavian experience, for which harsh penalties and at the same time strong moral inhibitions against drunk driving (but also other crime) are typical. However, it is not clear if strict laws changed behavior of society or if the strict laws are only reflection of the wide-spread inhibition against driving under the influence. As sanctions in Scandinavia do not tend to be as high as in the U.S., it is more probable that differences between Scandinavian and American rates of drunk driving

¹³⁵ Jacobs J., *Drunk Driving: An American Dilemma*, p. 120.

¹³⁶ See Snortum J., "Deterrence of Alcohol-impaired drivers," p. 198 or Jacobs J., *Drunk Driving: An American Dilemma*, p. 152.

¹³⁷ Voas R., "Emerging Technologies for Controlling the Drunk Driver," p. 346.

¹³⁸ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 146.

¹³⁹ Jacobs J., *Drunk Driving: An American Dilemma*, p. 123.

can be explained by deep-seated cultural differences.¹⁴⁰ Scandinavians also have more knowledge of local drunk-driving laws, including BAC limits, potential sanctions etc.¹⁴¹

Another strategy which is hoped to have some long-term effect are education programs in schools, especially those affect- and behavior-based. Affect-based programs try to arouse emotions by showing accident scenes etc. and engage students in analyzing decision-making processes etc. Behavior-based programs seek to provide students with skills and responses which are necessary to avoid driving under the influence.¹⁴² These two programs are seen as more beneficial, especially in the long term, than solely information-based programs.¹⁴³

As to rehabilitation programs (education and treatment programs), research does not provide clear conclusions. It seems that one condition to benefit of such programs is that it is not used instead of another sanction but rather as a supplement to one. Another condition is that the offender is assigned to an appropriate kind of program.^{144,145}

To conclude, the *Federal Uniform Drinking Age Act* was based on the assumption that increasing the drinking age limit would decrease traffic fatalities; however, recent research shows that this connection is at least arguable if not erroneous. Moreover, even if there were some reductions due to the raise of the MLDA, apparently, the decrease is not so significant to be the basis of a law or argument for declaring this law constitutional. The cost of this measure, which was supposed to be in the interests of the society, was high – severe limitation of rights of millions of young adults in the U.S.

Reductions in drunk-driving fatality rates may have been helped more by measures such as lowering BAC limits and introduction of zero tolerance for drivers under twenty-one, or just reflecting the general trend in fatality rates.

Scientists suggest several ways how to reduce drunk-driving fatality rates. Most experts agree on the fact that increased sanctions do not have significant effects, which

¹⁴⁰ Ibid., 124-125.

¹⁴¹ Snortum J., "Deterrence of Alcohol-impaired drivers," p. 191.

¹⁴² Programs focus, for example, focus on improving skills such as peer pressure resistance skills, decision-making skills, values clarification, or self-esteem building.

¹⁴³ Mann R., Vingilis E. and Stewart K., "Programs to Change Individual Behavior," in *Social Control of the Drinking Diver*, eds. Laurence M., Snortum J., Zimring F., (Chicago: The University of Chicago Press, 1988), pp. 252-257.

¹⁴⁴ Rehabilitation programs vary largely, ranging from provision of reading materials through short-term structured treatment to long-term treatment, sometimes individually oriented.

¹⁴⁵ For more information, see Mann R., Vingilis E., Stewart K., "Programs to Change Individual Behavior," pp. 259-268.

is contrary to the prevalent attitude in the American society. For Americans escalating legal threats is attractive and the response to persisting unwanted behavior is making sanctions even stricter. “These dynamics are evident in the way American society deals with problems as diverse as street crime, illicit drugs, and political corruption.”¹⁴⁶

Instead, experts agree that increased probability of apprehension leads to less alcohol-impaired drivers behind the wheel. That can be achieved by frequent use of sobriety checkpoints accompanied by media coverage.¹⁴⁷ Other suggested measures are introduction of general zero-tolerance laws, increased use of random sobriety checks or education programs in schools.

¹⁴⁶ Jacobs J., *Drunk Driving: An American Dilemma*, pp. 106-107.

¹⁴⁷ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 147.

4 DUI Federalization and Enforcement

In the third chapter, alternatives to high minimum drinking age were discussed. Increased perceived probability of apprehension and zero alcohol tolerance laws are considered to be the most effective ways how to reduce drunk. The fourth chapter looks into gradual federalization of the drunk-driving problem and emergence of activist movements fighting DUI on the federal level. Special attention is paid to factors impeding the use of the two supposedly most efficient instruments for enforcement of drunk-driving laws – license revocation and sobriety checkpoints – which may lead to increased probability of apprehension and effective enforcement of zero tolerance laws, and thus become a functioning alternative to the MLDA of twenty-one.

4.1 Federalization + Organizations

In regard to traffic control, historically, most emphasis was put on construction of safe roads and protection of pedestrians. With the development of a mass consumer market, however, the priority shifted from traffic safety to smooth traffic flow. After the World War II, basic research on traffic safety focused on car design and led to introduction of the padded dashboard, collapsible steering wheel, and seat belts. In 1966, the Department of Transportation was established, and within it (among other agencies), the National Highway Traffic Safety Administration was set up in 1970. The NHTSA's main tasks were oversight of the automobile industry and mandating safely designed automobiles. For the first time, major governmental agencies focusing particularly on automobile safety appeared on the national level. Since then, the Federal Government has been able to influence substantially even areas, which were traditionally under jurisdiction of local governments and individual states. For example, in the 1970s, the Congress recommended a 55-mile per hour speed limit on highways in response to high oil prices and supply disruptions during the 1973 oil crisis, and threatened to reduce highway funds to states which did not comply with the recommendation.^{148,149}

¹⁴⁸ Gusfield J., "The Control of Drinking-Driving in the United States: A Period in Transition?", pp. 113-115.

¹⁴⁹ The law setting this limit was repealed in 1995 and speed limit setting authority was returned to individual states.

The federal government started to play an important role in control of drunk driving as well. In 1968, the Department of Transportation carried out the first comprehensive study on alcohol and traffic safety and issued a report, which reviewed the history of drunk driving, attempts to control it and relevant scientific studies. It also proposed plans to fight the problem and called for more research into causes and actual rates of drunk driving in the United States.¹⁵⁰ Since then much of the research on drunk driving in the United States has been funded by the Department of Transportation or the National Institute of Alcohol Abuse and Alcoholism.

In the 1970s, a new federal initiative was launched – the Alcohol Safety Action Projects (ASAP). This initiative funded different programs designed to reduce alcohol-related crashes.¹⁵¹ The programs mostly followed the traditional law-and-order model, provided funds for training police in identification and arresting drunk drivers. Some programs included sobriety checkpoints and administrative license suspension. Just as specific programs varied, the results varied, too. Although arrests increased by as much as 100%, there was no evidence of success in reducing accidents or fatalities caused by driving under the influence. This may have been caused by insufficient public visibility and failure in increasing the perceived risk of apprehension.

The ASAP left some legacy, though - DUI offenders started to be sent to educational programs as a probation requirement, and the need to analyze the ASAP programs led to the creation of the Fatality Analysis Reporting System (FARS) in 1975, which has been collecting and analyzing data on fatal crashes from individual states ever since.¹⁵²

The increased amount of DUI arrests, however, led to more cases of plea bargaining. Although there was a consensus in the society that drunk driving was a serious crime, by the judicial system it was still often treated as a regular traffic offense with a higher fine.¹⁵³ “This discrepancy between the public drama of criminal violation and the routine enforcement of a minor offense characterizes the DUI situation in the US toward the end of the 1970s.”¹⁵⁴

¹⁵⁰ 1968 Alcohol and Highway Safety Report to the U.S. Congress. U.S. Department of Transportation. (1968). Washington, DC: U.S. Government Printing Office.

¹⁵¹ In most states, the initial total budget was between one and three million dollars, in California about six million dollars. See Grimm A., “Alcohol Safety Action Project Bibliography,” Highway Safety Research Institute, The University of Michigan, 1976. Available at <http://deepblue.lib.umich.edu/bitstream/2027.42/731/2/35890.0001.001.pdf>.

¹⁵² Lerner B., *One for the Road: Drunk Driving since 1900*, pp. 70-71.

¹⁵³ Gusfield J., “The Control of Drinking-Driving in the United States: A Period in Transition?”, p. 123.

¹⁵⁴ Ibid.

After the drinking age was lowered in most states during the 1970s and research showed increases in alcohol-related traffic fatalities, drunk driving became a hot topic. Many organizations fighting drunk driving were established at that time, most important Remove Intoxicated Drivers (RID), Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD).

RID was established in 1978 and has devoted its activity primarily to preventing plea-bargaining in DUI cases and promoting revocation of driving licenses for DUI offenders and use of sobriety checkpoints. The organization managed to achieve considerable public visibility and became a court watchdog putting pressure on legislators, judges and attorneys. RID's chapters were established in most states and RID achieved great success especially in New York state where many new laws designed to combat drunk driving were introduced from a big part owing to their pressure as well as lobbying efforts.¹⁵⁵

MADD was founded in 1980 by Candy Lightner whose daughter was killed by an impaired driver. Lightner became a well-known public figure thanks to her symbiotic relation with the media, of the importance of which she was very well aware. Her organization was very successful; by 1985 it had more than 300 local chapters and 600,000 volunteers and donors nationwide.¹⁵⁶ MADD attracted not only attention of the media but also corporate support, and, for example, Anheuser-Busch was one of the main contributors. This major brewing company promoted safe and responsible drinking in order to improve its PR image, which was being attacked by groups trying to curb marketing and sales of alcohol.¹⁵⁷ Nevertheless, this fact did not damage credibility of MADD as Lightner was always clear that she was fighting not alcohol consumption per se, but specifically drunk driving, encouraging stricter DUI enforcement and trying to mobilize the public. This was also the main reason why she left the organization in 1985 – MADD was heading in a much more neo-prohibitionist direction than she had originally envisioned.¹⁵⁸

Another organization that emerged at that time to fight DUI was Students Against Drunk Drivers (SADD), which was founded in 1981. SADD approach has been

¹⁵⁵ Lerner B., *One for the Road: Drunk Driving since 1900*, pp. 64-92.

¹⁵⁶ *Ibid.*, p. 85.

¹⁵⁷ Jacobs J., *Drunk Driving: An American Dilemma (Studies in Crime and Justice)*, pp. 104, 162.

¹⁵⁸ "MADD struggles to remain relevant." *The Washington Times*, August 6, 2002. Available at <http://www.washingtontimes.com/news/2002/aug/6/20020806-035702-2222r/> (accessed April 29, 2012).

based on peer programs trying to raise awareness of drunk-driving problem through high schools and community activities.¹⁵⁹

These organizations, MADD being the largest and most visible, achieved important successes on local and state levels, switching the focus from federal to state governments, which became important arenas for legislative change in the 1980s.¹⁶⁰ However, they also contributed considerably to the pressure imposed on the federal government. The MADD drafted a petition calling for creating a presidential commission on drunk driving and obtained more than 200,000 signatures. As a result, in April 1982, the Presidential Commission on Drunk Driving was established. The commission had thirty members including Candy Lightner and other public activists, and was headed by John Volpe, former Secretary of Transportation. The Commission made many recommendations and, consequently, in the fall of the same year, the Congress passed the Alcohol Safety Traffic Act. This act provided grants from the Highway Trust Fund to states that accepted certain countermeasures to drunk driving.¹⁶¹ In 1984, the MLDA was increased to twenty-one, a measure also favored by the Commission.

In 1983, the Presidential Commission called for creating a follow-up group, which resulted in the founding of the National Commission Against Drunk Driving (NCADD), which was run by the National Safety Council and funded by the NHTSA. The Commission advocated traditional law-and-order measures and the deterrence model. Activists from the Presidential Commission were not appointed; instead there were members representing beverage or automobile industries, and the Commission was funded by as much as 20% by the alcohol industry, which became a source of complaints by activist movements. Nevertheless, differing views on the best approach to prevent drunk-driving issue resulted in disputes within the Commission, which was dissolved in 2003.¹⁶²

¹⁵⁹ Gradually, SADD broadened the scope of its activities (drug use, teen pregnancy, etc.), and in 1997, the organization's name was changed to Students Against Destructive Decisions.

¹⁶⁰ Gusfield J., "The Control of Drinking-Driving in the United States: A Period in Transition?", p. 126.

¹⁶¹ In order to comply with the conditions, states had to introduce a minimum 90-day license suspension for arrested drunk drivers (in the case of a repeated offense, a license suspension of one year), and a minimum 2-day imprisonment or a 10-day community service for driving under the influence more than once in a 5-year period. States had to set a per se illegal BAC limit of 0.10 and increase enforcement and also the publicity of enforcement efforts.

¹⁶² Lerner B., *One for the Road: Drunk Driving since 1900*, pp. 64-92.

¹⁶² *Ibid.*, pp. 112-115.

By 2004, the legal BAC in all states had been lowered to 0.08%, however, there have been no significant attempts on the federal level to lower the limit to 0.05%, which is the impairment level for most people according to scientific studies. Even MADD has not officially called for a 0.05% limit although some of the group's leaders supported this measure and although MADD favors zero tolerance for drivers under twenty-one. The reason for this might be the fear from losing public support.¹⁶³

In 2007, a non-profit organization Choose Responsibility was founded by John McCardell, a president emeritus of Vermont's Middlebury College. This organization focuses on increasing awareness of dangers connected with excessive alcohol consumption by young adults and its main goal is lowering the MLDA. Choose Responsibility points to studies showing that other industrial countries with a MLDA less than 21 have more responsible drinking habits than Americans. The organization funds a project launched in 2008 called the Amethyst Initiative, which joins more than 130 college presidents and chancellors who appeal for reconsideration of and an open debate about the MLDA of 21. They refer to disrespect for the 21 MLDA by youth and to pervasiveness of binge drinking on college campuses and related problems, which they also connect with unnecessarily high MLDA.

4.2 Law Enforcement

Enforcement of DUI laws depends on federal, state and local authorities. The states determine the structure and content of traffic laws including those regarding drunk driving, but the federal level has a strong secondary influence by setting financial incentives to promote the use of desired drunk-driving policies. Law enforcement is the responsibility of local agencies. There are policing authorities on the state level usually to enforce traffic laws on interstate highways or to coordinate investigation of state-wide law enforcement. However, local authorities (county sheriffs and local police forces) determine which drivers will be stopped or sanctioned. Once an offender enters the criminal justice system, prosecutorial actions are local and sentences are pronounced by local judges within the range of the state legislative.¹⁶⁴

¹⁶³ Taylor L., "MADD Retreats in Face of 'Zero Tolerance' Backlash," *DUI Blog*, October 27, 2005. Available at <http://www.duiblog.com/2005/10/27/madd-retreats-in-face-of-zero-tolerance-backlash/> (accessed May 8, 2012).

¹⁶⁴ Laurence M., "The Legal Context in the United States," pp. 138-149.

ADMINISTRATIVE LICENSE REVOCATION

Among the most successful strategies of enforcement of DUI laws are administrative license revocation and sobriety checkpoints.

Administrative license revocation is a sanction imposed if a driver refuses to submit to chemical testing or if his or her BAC is tested with a result showing a level higher than 0.08% - the legal limit. As of 2012, nine states do not have a law imposing such a sanction.¹⁶⁵ License revocation causes great inconvenience to the driver, especially in the U.S. society where people are dependent on the use of cars. Even in monetary terms, license revocation represents one of the harshest punishments for drunk driving.¹⁶⁶

However, the problem with the license revocation is that while it is easy to impose as a binding legal norm, it is very difficult to enforce in practice. As the probability of detection is very low, most drivers continue driving without their licenses.¹⁶⁷ A study conducted in California revealed that two thirds of drivers continued driving although their driving licenses had been revoked or suspended. At least they drove less often, less far, and less impaired.¹⁶⁸

Although license revocation has a potentially great deterrent effect, the fact that it is very difficult to enforce due to the low probability of detection – largely decreases its effectiveness.

SOBRIETY CHECKPOINTS

Sobriety checkpoints (or DUI roadblocks) were launched in the United States, in the early 1980s as a part of the campaign against drunk-driving. Their main purpose is both removing drinking drivers from the traffic flow, and deterring all drivers from driving drunk. Sobriety checkpoints are very often accompanied by high publicity in the media in order to maximize their deterrent effect.

At sobriety checkpoints, the police either stop all vehicles, or a systematic selection of them – to see if their drivers show signs of impairment, which would provide the police with probable cause to investigate them further, usually by conducting a BAC test.

¹⁶⁵DUI/DWI Laws, Insurance Institute for Highway Safety. Available at <http://www.iihs.org/laws/dui.aspx> (accessed April 29, 2012).

¹⁶⁶ Jacobs J., *Drunk Driving: An American Dilemma*, p. 119.

¹⁶⁷ Snortum J., "Deterrence of Alcohol-impaired Driving," p. 198.

¹⁶⁸ Jacobs J., *Drunk Driving: An American Dilemma*, p. 150.

In the United States the use of roadblocks has been controversial because of their intrusive character and because of the problematic use of breath tests used to discover the BAC level of the driver, which supposedly forces the driver to provide incriminating testimony against himself or herself. Critics claim that this all is in violation of the Bill of Rights of the U.S. Constitution (the Fourth and Fifth Amendment, in particular).

Measuring drivers' BAC has been the most important instrument in prosecuting or convicting drivers who drive under the influence but its use has been disputed. The Fifth Amendment to the U.S. Constitution states that no person "...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..." As every person has the right not to incriminate himself or herself, one has the right to refuse a BAC test. Nevertheless, many states have legislation which provides strict sanctions such as license revocation for the refusal to take a breathalyzer test at the scene, and in all states there are penalties for refusing to undertake a blood or urine test, so although one has the right to refuse such tests, he or she faces strict sanctions.

In 1957, the Supreme Court considered this issue in *Breithaupt v. Abram*. Blood was taken from a driver, who probably caused an accident in which three people died, when he was unconscious and the BAC test showed a level of intoxication. Consequently, the man was convicted of voluntary manslaughter. However, his lawyers appealed claiming that the fact that blood was taken from him when he was unconscious, deprived the man of his right of due process. The Supreme Court upheld previous conviction claiming that the evidence found was used lawfully and its use is in the interests of society. "Moreover, since our criminal law is to no small extent justified by the assumption of deterrence, the individual's right to immunity from such invasion of the body as is involved in a properly safeguarded blood test is far outweighed by the value of its deterrent effect..."¹⁶⁹ Two justices, William O. Douglas and Hugo L. Black, opposed and called for a more libertarian approach which should not allow BAC tests under such circumstances (e.g. when the driver is unconscious) for they maintained it represented an assault by the police.¹⁷⁰

The libertarian opposition on this issue became even more evident in another Supreme Court case in 1966. In *Schmerber v. California*, a case was considered where a physician took a blood sample from a driver involved in an alcohol-impaired accident

¹⁶⁹ *Breithaupt v. Abram*, 352 U.S. 432 (1957), pp. 439-440.

¹⁷⁰ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 47.

while he was hospitalized, in spite of his refusal. A police officer who smelled alcohol on his breath and noticed other signs of intoxication already at the scene placed the driver under arrest, informed him about his rights and directed the physician to take a blood test in spite of the driver's refusal. After the evidence was admitted in the trial and the driver was convicted, he complained that he had been denied due process and privilege against self-incrimination, and that he had been subject to unreasonable searches and seizures.¹⁷¹ The Supreme Court upheld the decision of lower courts and held that the Fifth Amendment protects from being forced to provide incriminating testimony, not from being coerced to provide physical evidence such as blood or urine.¹⁷² This time the opposition was even stronger when four justices (again Black and Douglas, joined newly by Abe Fortas and also Chief Justice Earl Warren) shared the opinion that involuntary blood collection violated the right against self-incrimination contained in the Fifth Amendment, and such libertarian objections became prominent in the 1990s.¹⁷³ "It might be argued that this libertarian viewpoint, when applied to cases in which the accused turned out to have a high BAC, came remarkably close to declaring drunk driving a constitutional right for those who were drunk enough to have passed out."¹⁷⁴

Not only acquisition of a driver's blood sample in order to determine his or her BAC to serve as evidence in a potential trial, but also sobriety checkpoints as such have become a point of controversy. Americans are protected from unreasonable searches and seizures in the Fourth amendment to the U.S. Constitution. This amendment says: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The key question in interpreting this statute is what "unreasonable" means and what exactly a "seizure" is. "Traditionally, a search without probable cause has been per se unreasonable."¹⁷⁵ In practice this means, for example, that the police do not have the right to search all homes to find evidence of crime, or search everybody at a square for drugs etc without a warrant. Nevertheless, in 1968, the Court held in *Terry v. Ohio*, that

¹⁷¹ *Schmerber v. California*, 384 U.S. 757 (1966).

¹⁷² *Ibid.*, p. 384.

¹⁷³ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 47.

¹⁷⁴ *Ibid.*, 2011, pp. 47-48.

¹⁷⁵ Jacobs J., *Drunk Driving: An American Dilemma*, p. 92.

the Fourth amendment allows some limited seizures even if a police officer does not have probable cause to arrest but only a reasonable suspicion that a crime has been or is about to be committed or that a person is armed.^{176,177}

The Supreme Court and lower federal courts upheld some police practices which seemed to violate the constitutional protection from searches and seizures without probable cause by referring to a doctrine of “general reasonableness”.¹⁷⁸ These exceptions were carved out in *United States v. Martinez-Fuerte*¹⁷⁹ in 1975 and in *Delaware v. Prouse* in 1979. In 1975, the Supreme Court upheld permanent roadblocks near the border with Mexico, which were supposed to detect illegal immigrants. It was argued that public interest outweighed inconvenience to the motorist and that the stops were reasonable. In *Delaware v. Prouse*¹⁸⁰, the Supreme Court rejected random stops to check if drivers had valid licenses and vehicle registration. However, it suggested that roadblocks (which eliminate police officers’ subjective decision who to stop or not, and thus are considered more fair) could be used in order to achieve the same goal. The Supreme Court stated that reasonableness of a particular law depends upon a “balance between the public interest and the individual’s right to be free from arbitrary invasions of privacy.”¹⁸¹

A landmark decision in regard to sobriety checkpoints was made by the Supreme Court in 1990. After the Michigan Supreme Court found the DUI roadblocks to be in violation of the Fourth amendment, the case was taken up by the Supreme Court. The Court held in *Michigan Department of State Police v. Sitz* that properly conducted sobriety checkpoints were constitutional. It was admitted that the checkpoints constitute a minor infringement on a constitutional right, but at the same time it was argued that this is outweighed by the state’s interest in curbing drunk driving and that roadblocks constituted an exception as there is no other way to achieve the interest of society.¹⁸² Nevertheless, dissenting justices Brennan, Marshall and Stevens – articulated a strongly-worded dissent where they pointed to small effectiveness of such roadblocks in

¹⁷⁶ Terry v. Ohio 392 U.S. 1 (1968).

¹⁷⁷ Glantz C., “‘Could’ This Be the End of Fourth Amendment Protections for Motorists?” *The Journal of Criminal Law & Criminology*, Vol. 87, No. 3, (1997), p. 867.

¹⁷⁸ Jacobs J., *Drunk Driving: An American Dilemma*, p. 93.

¹⁷⁹ Camara v. Municipal Court, 387 U.S. 523 (1967).

¹⁸⁰ Delaware v. Prouse, 440 U.S. 648 (1979).

¹⁸¹ Brown K., “Sobriety Checkpoints: Statutory Guidelines to Clear the Roadblocks to Constitutionality,” *Washington University Journal of Urban and Contemporary Law*, No. 40 (1991), p. 145.

¹⁸² Michigan Department of State Police v. Sitz 496 U.S. 444 (1990).

the sense of arresting drivers driving under the influence.¹⁸³ However, it is important to realize the impact of sobriety checkpoints on deterring drivers from DUI. Research suggests that well publicized sobriety checkpoints with high public visibility are successful in deterring impaired driving. Studies throughout the 1980s and 1990s have confirmed that frequent, highly publicized checkpoint programs reduce alcohol-related accidents by as much as 10-15%.¹⁸⁴ Therefore, it may not be so important how many drivers are actually arrested for DUI.

The Supreme Court let states decide about the guidelines for a “properly” conducted sobriety checkpoints, however the National Highway Traffic Safety Administration (NHTSA) then issued a report containing guidelines to provide states with a standard and also some other court decisions outlined some standards. For example, decision about conducting a sobriety checkpoint must be made at a supervisory level, not in the field, the choice of location should be based on identification of areas with high incidence of drunk-driving accidents, there must be a neutral formula for selecting vehicles (the decision should not be left to officers in the field), etc.¹⁸⁵

However, as of 2012, ten states¹⁸⁶ do not allow use of sobriety checkpoints as they have found DUI roadblocks in violation of their own state constitutions – “Although state courts are obliged to follow the *Sitz* decision as a matter of federal constitutional law, state courts may still find a sobriety checkpoint invalid as a matter of state constitutional law.”¹⁸⁷ Alaska and Montana have not outlawed sobriety checkpoints but they do not use them at all. In the remaining states, sobriety checkpoints are used, but in most jurisdictions they are underused.¹⁸⁸

DUI roadblocks have been criticized as measures typical for authoritarian regimes, i.e. inconsistent with American legal and cultural values, and as introducing a

¹⁸³ The dissenting justices referred to the fact that the Michigan police conceded that the arrest rate at sobriety checkpoints was low. See Brown K., “Sobriety Checkpoints: Statutory Guidelines to Clear the Roadblocks to Constitutionality,” p. 152.

¹⁸⁴ Fell J., Ferguson S., Williams A. and Fields M., “Why are sobriety checkpoints not widely adopted as an enforcement strategy in the United States?” *Accident Analysis and Prevention*, Vol. 35, No. 6 (2003), p. 897.

¹⁸⁵ See The Use of Sobriety Checkpoints for Impaired Driving Enforcement, DOT HS-807-656, Nov. 1990. Available at <http://www.nhtsa.gov/people/injury/enforce/pub/checkpt.pdf> (accessed April 21, 2012).

¹⁸⁶ These states are Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas, Washington, Wisconsin and Wyoming.

¹⁸⁷ Brown K., “Sobriety Checkpoints: Statutory Guidelines to Clear the Roadblocks to Constitutionality,” p. 153.

¹⁸⁸ Lerner B., *One for the Road: Drunk Driving since 1900*, p. 146.

police state. "...the state agencies have ignored the presumption of innocence, assuming that criminal conduct must be occurring on the roads and highways, and have taken an 'end justifies the means' approach..."¹⁸⁹

Critics also claim that sobriety checkpoints are rather costly and that police resources could be used in a more efficient way. They maintain that because of the strict guidelines, extensive surveying of sites of checkpoints and training of police officers is necessary – or that it's logistically complex and a high number of police officers is needed.¹⁹⁰ However, a study which examined reasons why sobriety checkpoints are underused affirmed that checkpoints are an effective enforcement tool (reducing alcohol-related crashes by 10-15%) and opposed this criticism by proving that sobriety checkpoints operated by 2-5 police officers are just as effective as those where 15 or even more police officers are deployed.¹⁹¹ The study also showed possibilities of individual states to get sufficient federal funding for such programs in case they do not spend their own financial resources. In the study the researchers observed differences between the states where DUI roadblocks were used frequently and those where they were used infrequently. In the former they noticed more officers who understood the deterrent effect of checkpoints with regard to arrest rate, more active citizen activist groups such as MADD, more publicity, recognition and public support for stricter enforcement of DUI laws and the use of sobriety checkpoints, whereas the latter had few of these elements. The study concluded: "Some of the barriers to checkpoints can be overcome through education and training. Enlightened task forces and citizen activist groups can provide the motivation to use this effective enforcement tool."¹⁹²

To conclude, the federal government has the power to influence considerably measures used to combat drunk driving. However, activist movements have the power to influence public attitude towards drunk driving and compel politicians to introduce new legislation either on state or federal level. The changed public attitude might also lead to persuading task forces to increase the use of sobriety checkpoints or automatic license revocation in spite of the concerns over constitutionality of these measures. That should increase the perceived probability of apprehension and provide effective ways

¹⁸⁹ As in Jacobs J., *Drunk Driving: An American Dilemma*, p. 95.

¹⁹⁰ See Voas R., "Emerging Technologies for Controlling the Drunk Driver," pp. 346-347.

¹⁹¹ See Fell J., Ferguson S., Williams A. and Fields M., "Why are sobriety checkpoints not widely adopted as an enforcement strategy in the United States?," pp. 897-902.

¹⁹² *Ibid.*, p. 901.

how to enforce zero tolerance laws, or at least enhance respect for BAC limits, and thus reduce drunk driving.

Conclusion

Drunk driving is a serious problem in the United States. Whereas traffic fatalities rate is not significantly higher in the U.S. compared to the rest of the world, the proportion of both alcohol-impaired and alcohol-related accidents is alarming and – considerably higher than in West European countries where alcohol consumption per capita is greater.

The ratio of DUI accidents is significant (though not the highest) also among those aged sixteen to twenty. In theory, there should not be any drunk-driving accidents in this age group because the minimum legal drinking age in the U.S. is twenty-one. However, most young people do not respect this legal limit and drink alcoholic beverages anyway; moreover, studies demonstrate that acquiring alcoholic beverages is easy for them. In this age group in particular, binge drinking is common, and many specialists in the field claim that the high MLDA (in fact, one of the strictest in the world) only nourishes this dangerous drinking habit. Binge drinking as well as other forms of drinking, is often associated with traffic accidents. That is caused by the combination of two facts: first, in the U.S., the car is the most common means of transport and almost everybody (except for minors) owns a car and is reliant on it as it is often the only possible way of getting around. This situation is reflected in the minimum driving age, which is one of the lowest in the world (ranging, depending on individual states, from fourteen to sixteen). Second, most Americans do not abstain from drinking when they are driving. The reason for that (apart from drivers' convenience) is that drivers are aware of the fact that the probability of being caught is very low.

As to the MLDA, when states received the right to set their own legal limits after Prohibition was repealed in 1933, the majority of states set the age of twenty-one, at that time the age of majority. Many states set the limit lower, mostly eighteen or twenty. In the 1970s, coinciding with lowering of the federal voting age to eighteen, most states lowered also their minimum drinking age. When evidence emerged that the number of traffic fatalities among young drivers was increasing, most states returned to the age limit of twenty-one, and the *Federal Uniform Drinking Age Act* was introduced in 1984, which threatened to reduce federal highway funds to state that would not enforce the age limit of twenty-one.

Several states opposed and the *Federal Uniform Drinking Age Act* was challenged at the Supreme Court in 1987, when South Dakota sued Elizabeth Dole, then

the Secretary of Transportation, claiming that the law constituted intrusion to the states' rights and thus violated the Twenty-first Amendment (which gave states control over regulation of alcoholic beverages), and that the threats over federal funding crossed the limitations on congressional exercise of the taxing and spending powers. The Supreme Court ruled that the Congress only used a small incentive in order to promote general welfare (i.e. reduction in drunk-driving fatalities). In 1995, the law was challenged at court again, this time at the Louisiana Supreme Court, which had to assess if the law was discriminatory of persons aged eighteen to twenty and thus violating the Individual Dignity Clause of Louisiana's Constitution. The court decided that the law constituted arbitrary age discrimination. However, the decision caused uproar and the case was reconsidered. In the repeated trial the Court changed its original decision. Nevertheless, attempts to lower the MLDA continue until today, and the Amethyst Initiative, in particular, succeeded in promoting an open debate about the minimum drinking age. Members of this organization, U.S. college presidents and chancellors, draw upon their experience from campuses and insist that the high age limit is not working and has not resulted in constructive behavioral changes among students. Therefore the organization calls for a discussion about new methods that would prepare young adults to make responsible decisions about alcohol.

The *Federal Uniform Drinking Age Act* was introduced as a reaction to increases in teen traffic fatalities with the aim of reversing this trend. However, research suggests that the MLDA is not by far as sufficient in reducing drunk-driving fatalities as had been expected, and that the decreases which followed the increase in the drinking age were only reflecting the general decreasing trend in all age groups, and also the population change. Studies show that the MLDA does not have much influence on fatalities rates. Instead, the inexperience with drinking and driving seems to be the most important factor. Therefore, lowering drinking age only leads to changes in distribution of traffic fatalities, adding more in the next older group, where the inexperience will surface.

Research suggests that the most efficient ways of dealing with drunk driving are increased probability of perceived apprehension, which can be achieved by frequent use of sobriety checkpoints accompanied by media coverage, and zero alcohol tolerance laws. Whereas use of sobriety checkpoints has some support in the society, zero alcohol tolerance laws for all age groups are not a favored measure. From the long-term perspective, educational and rehabilitation programs also seem to have a positive effect.

For the enforcement of the drunk-driving laws, the most effective instruments are administrative license revocation and sobriety checkpoints. However, the license revocation is very difficult to enforce, and sobriety checkpoints are underused in most states. Nevertheless, it seems that in states with active citizen activists groups and public support of these measures and strict enforcement of DUI laws in general, sobriety checkpoints are used more frequently, which results in considerable reductions in DUI fatalities.

To sum up, the MLDA of twenty-one did not fulfill the expectations it was introduced with – reducing drunk-driving fatalities. It only addressed a part of the drunk-driving problem, among the youngest age group concerned. The minimum drinking age of twenty-one has not been respected, and scientific research shows it is not very effective in reducing DUI fatalities. Research is quite clear on the ways how drunk driving (and consequently drunk-driving fatalities) can be reduced, so why does the age limit for drinking alcohol continue to be twenty-one? Apparently, the official policy reflects the position of the majority in the U.S. society, which is in favor of keeping the age limit at the current level. That is probably because the public actually believes that the high age limit is an efficient strategy in fighting drunk driving. This position might be the result of the successful PR of the MADD and other organizations, and their high publicity. The MADD took the credit for reducing DUI fatalities already at the end of the 1980s, when the decreases became obvious, and since then has been persuading the public about the usefulness of the high minimum drinking age and has been warning about lowering this age limit, which, according to them, would only lead to the extension of this problem to the lower age group. This role of the MADD and other organizations may have been partly made easier by the fact that alcohol is often stigmatized in the U.S. society. This is perhaps reflected in the high percentage of teetotalers (compared to other developed countries) in the U.S. society, and the perception of alcohol as the root of social ills, which is not unusual in the population. A way how to achieve lowering the MLDA might then be an open debate in the society about the consequences of current alcohol policies (which is already underway mainly due to the activities of the Amethyst Initiative), and informing and persuading the public about the low effectiveness of the high MLDA. The changed attitude of the society then might result in a change in official policies.

Resumé

Spojené státy mají jeden z nejpřísnějších limitů na světě pro požívání alkoholických nápojů. Tato věková hranice byla stanovena na dvacet jedna let v roce 1984 a měla zastavit rostoucí počet obětí dopravních nehod spojených s alkoholem u mladých řidičů. Takto stanovená hranice však omezuje osobní svobodu dospělých osob mladších jedenadvaceti let.

Automobil je nezbytnou součástí amerického způsobu života a je často jediným způsobem dopravy. Odrazem této nepostradatelnosti je jeden z nejnižších věkových limitů pro řízení na světě. Míra nehodovosti není v USA nezvykle vysoká, ale procento dopravních nehod spojených s alkoholem je podstatně vyšší než např. v zemích západní Evropy, kde je přitom spotřeba alkoholu na hlavu vyšší. Nehod spojených s alkoholem je mnoho i u řidičů mladších jedenadvaceti let. Vzhledem k hranici pro požívání alkoholických nápojů by k takovým nehodám nemělo docházet, ale stanovený věkový limit je velice často ignorován, jelikož je velice obtížné ho vynucovat. Většina řidičů všech věkových kategorií navíc nepřizpůsobuje konzumaci alkoholu případnému následnému řízení. To vše má za následek vysoký počet obětí nehod spojených s alkoholem.

V 70. letech byla v mnoha amerických státech snížena hranice pro požívání alkoholických nápojů a brzy na to se objevily výzkumy ukazující nárůst nehod způsobených řidiči pod vlivem alkoholu. Federální vláda na to pod tlakem různých občanských hnutí jako např. Mothers Against Drunk Driving zareagovala v roce 1984 na tento nárůst vydáním zákona, který státům, jež by měly hranici pro konzumaci alkoholu nižší než dvacet jedna let, hrozil stržením deseti procent z federálních příspěvků. Několik států zákonu odporovalo a Jižní Dakota dokonce napadla v roce 1987 zákon u Nejvyššího soudu s tím, že jde o federální zásah do jurisdikce států. Nejvyšší soud však rozhodl, že zákon byl jen drobným stimulem v zájmu společnosti. Zákon se ocitl před soudem ještě jednou, a to v Louisianě. V roce 1995 měl Nejvyšší soud Louisiany rozhodnout o tom, zda je zákon v rozporu s ústavou tohoto státu a zda diskriminuje občany ve věku osmnácti až dvaceti let. Soud nejprve rozhodl, že zákon je diskriminující, a tudíž v rozporu s louisianskou ústavou, ale po nátlaku veřejnosti soud své rozhodnutí změnil. Jak je tedy patrné, zákon lze pokládat za sporný. Navíc k tomu je obecně známo, že zákon není dodržován a hlavně, že řeší jen část existujícího problému

– zákon se zabývá jen skupinou řidičů do jedenadvaceti let, ačkoliv i v jiných věkových kategoriích je řízení v opilosti vážným problémem.

Vysoká věková hranice pro konzumaci alkoholu se nezdá být nejlepším způsobem, jak bojovat s problémem řízení pod vlivem alkoholu. Z vědeckých studií vyplývá, že jedním z neúčinnějších způsobů, jak odradit řidiče od řízení v opilosti je zvýšení pravděpodobnosti, že řidiči budou náhodně otestováni na přítomnost alkoholu v krvi. Nejlepšími nástroji pro dosažení tohoto cíle jsou náhodná kontrolní místa, pokud možno doprovázená mediálními kampaněmi, a zabavování řidičských průkazů. Dalším doporučovaným způsobem pro boj s řízením v opilosti je nulová tolerance. Ta dnes již platí pro řidiče pod dvacet jedna let a zdá se, že opravdu přispívá k úbytku obětí nehod spojených s alkoholem.

Proč se tato opatření nezavádějí, přestože je známo, že by mohla mít kýžený účinek? V případě nulové tolerance je to patrně proto, že tento postup nemá velkou podporu ve společnosti. Na druhou stranu, náhodné kontrolní body mají podporu větší, v některých státech se používají poměrně často a také to přináší úspěchy. Ve většině států se však nepoužívají dostatečně a v deseti amerických státech se nepoužívají vůbec. V případě zabavování řidičských průkazů je hlavní problém to, že toto opatření je ignorováno a lidé řídí i bez průkazů, protože vědí, že nebezpečí jejich odhalení je jen velice nízké. Otázkou je, zda by pomohlo razantní zvýšení trestů za takové jednání, protože zvyšování trestů se obecně nepokládá za účinné řešení. Nicméně se ukazuje, že ve státech, kde mají silný vliv aktivistická občanská hnutí zasazující se o přísnější postihy řízení pod vlivem alkoholu, se tato opatření používají častěji a vedou ke značnému snížení počtu obětí nehod spojených s alkoholem.

Hranice jedenadvaceti let pro požívání alkoholických nápojů nespĺnila očekávání, se kterými byla zavedena – snižování počtu dopravních nehod zaviněných alkoholem. Věková hranice totiž postihuje totiž jen část problém v rámci nejmladší věkové skupiny řidičů, i když se problém řízení v opilosti týká i ostatních věkových skupin. Navíc tato hranice často není respektována a vědecké výzkumy ukazují, že nevede k významnějšímu snížení počtu obětí nehod. Proč je tedy věková hranice pro konzumaci alkoholu stále dvacet jedna let, přestože studie jasně prokazují, že existují podstatně účinnější metody pro snížení počtu nehod zaviněných řidiči pod vlivem alkoholu? Zdá se, že oficiální vládní strategie odrážejí pozici většinové společnosti, která v současné době podporuje se zachováním této hranice. Způsob, jakým docílit snížení této věkové hranice by mohla být otevřená celospolečenská debata

o důsledcích současné situace a informování a přesvědčování veřejnosti o nízké účinnosti tohoto opatření. Změna v náladě ve společnosti by poté mohla vyústit ve změnu v zákoně.

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Appendix: List of Abbreviations

ABV	alcohol by volume
ASAP	Alcohol Safety Action Projects
BAC	blood alcohol content, also called blood alcohol concentration / blood alcohol level
DUI	driving under the influence
DWI	driving while intoxicated
FARS	Federal Analysis Reporting System
MADD	Mothers Against Drunk Driving
MLDA	minimum legal drinking age
NCADD	National Commission Against Drunk Driving
NHTSA	National Highway Traffic Safety Administration
NSC	National Safety Council
RID	Remove Intoxicated Drivers
SADD	Students Against Drunk Driving (today Students Against Destructive Decisions)