



Alcohol Regulation, Historical Change, and the Contemporaneity of the Non-Contemporaneous: A Non-Linear Story in Four Parts

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This article uses the example of alcohol regulation in England and Wales to explore how historical change can be understood within criminology. Pivoting away from criminology's tendency to understand historical change as occurring in rapid, radical bursts (usually followed by periods of stability), it takes inspiration from the emerging use of historical institutionalist and Koselleckian approaches within historical criminology. Alcohol regulation in England and Wales is complex, overlapping and sometimes even contradictory. It is shown here that this regulatory messiness reflects the plurality of temporalities which, following Koselleck, animate alcohol regulation in the contemporary historical moment. It is further demonstrated that historical institutionalist concepts (e.g. near misses, transformation by accumulation, layering) can be used to help identify and analyse the non-contemporaneous origins and discrete lineages of these currently co-existing temporalities. The article thus provides a new and original account of the historical development and contemporary character of alcohol regulation in England and Wales. Moreover, its theoretical synthesis of Koselleckian and historical institutionalist ideas offers a promising theoretical framework which could be used more widely in criminological studies to examine the connections between historical change and crime or its control in contemporary societies.

Keywords: alcohol – history – regulation – change – continuity

INTRODUCTION

This paper addresses understandings of historical change within criminology. It is an opportune moment to consider this topic as historical criminology is currently booming. In the last ten years, historical criminology groups or networks have been established within the European Society of Criminology, the British Society of Criminology, the Australia and New Zealand Society of Criminology and, most recently, the American Society of Criminology. My shelves are being rapidly populated with books (e.g. Churchill et al., 2021; Kehoe & Pfeiffer, 2021), special issues (e.g. *Journal of Criminal Justice*, *International Journal for Crime, Justice and Social Democracy*) and standalone journal articles (e.g. Vuorela, 2017; Nagy & Rychner, 2021) that either apply a historical criminology approach or reflect upon it. Of course, historical criminology is not new in itself and has been practiced in certain forms for decades. But the proliferation of relevant academic literature and the increasingly self-conscious manner in which researchers now conduct and discuss historical criminology do seem distinct from what came before. So, what can historical criminology, as an exciting and fast-growing approach, tell us about historical change and how it affects crime and social responses to crime?

I will explore this question through a focused examination of the history of alcohol regulation. The study of alcohol is, of course, partly important for criminologists due to the role it seemingly plays in the causation of violence and some other criminal offences (see Felson et al., 2008). But, beyond that, alcohol is a rich and revealing topic because of the ambivalent and complex position it holds in most Western societies (Douglas, 1987; Room & Mäkelä, 2000). It is widely con-

sumed and central to many mainstream cultural practices, but also viewed negatively in many ways and censured. Governments permit and often encourage the legal trade in alcohol while also seeking to reduce or manage consumption through licensing, policing, taxation and public health interventions. They simultaneously follow multiple and sometimes inconsistent objectives, including the control of crime and disorder, the promotion of public health, the generation of tax revenue, the protection of children and the provision of support for businesses. Similarly, alcohol regulation is implemented and enforced by numerous official agencies whose work can be conflicting as well as complementary. In Britain, the situation is particularly complex, verging on paradoxical, in the sense that we have alcohol controls that are – as will become clear – both comparatively strict *and* comparatively lenient. Indeed, in the 2000s a number of criminologists criticised the UK government for pursuing an apparently contradictory policy of both denouncing binge drinking and increasing police powers to suppress alcohol-related crime and disorder while simultaneously relaxing licensing constraints and encouraging the growth of night-time economies that seemingly fuelled said crime and disorder (e.g. Hadfield, 2006; Hayward & Hobbs, 2007). This decidedly messy policy area offers a valuable case study from which to reflect more generally upon how criminologists might approach historical change.

This paper is guided by conceptual and theoretical frameworks that initially developed in history or social science disciplines and have recently begun to shape developments in historical criminology. It will use these frameworks – specifically, historical institutionalism and Koselleckian analysis – to argue that,

beneath the superficial messiness of contemporary alcohol policy lie numerous regulatory logics and techniques that emerged at different points in time, were shaped by different influences and events, and have developed along distinct trajectories. The varying historical origins and discrete lineages of the regulatory forms that govern drinking in contemporary England and Wales point to the existence of a vibrant temporal dimension that underpins how we understand and regulate alcohol today. Understanding the web of plural temporalities that structures this dimension is crucial for making sense of how alcohol regulation has changed through time and why it remains so complex and inconsistent today.

The next section will provide an overview of the theoretical and conceptual underpinnings of the paper. Following that, I will pick out four historical episodes or processes which help to untangle the messiness of alcohol regulation. Each has had some enduring impact over how alcohol is understood and/or regulated in England and Wales today, and most relate to some of the features of British alcohol regulation that might be surprising or anomalous from a comparative perspective. I will be focusing on England and Wales as the jurisdictions that I tend to research, but I will be making connections with the histories of other Western countries where the evidence supports this and the extent of my knowledge permits it. Beyond seeming interesting, the four parts of this story were selected because each exemplifies a concept that can be used more widely to make sense of historical change. I hope, therefore, that the paper will provide an entertaining jaunt through British history and also offer some insight into how we can make sense of historical changes to crime and social responses to crime more widely.

HISTORICAL CHANGE AS RUPTURE

Historical change is commonly studied in social science as something contained within moments of rapid and radical transformation – or ruptures. A preoccupation with ruptures is certainly evident in criminology. As several insightful scholars point out, many prominent analyses of contemporary penalty and policing are premised on the idea that a rupture or paradigm shift has led to old or traditional arrangements swiftly ceasing to exist and being replaced by new ones (e.g. the ‘new penology’, ‘late modern penalty’ etc., see Hutchinson, 2006; Goodman et al., 2015; Rubin, 2016; Churchill, 2017). Such accounts routinely consider neo-liberalism, late modernity or post-modernity as macro-level transformations that have severed the connection between present and past, often identifying a key watershed moment in this process such as the electoral victories of the ‘new right’ in certain countries in the late 1970s and early 1980s or a ‘punitive turn’ in the 1990s. In some studies, this concern for rupture is extended into stadial accounts of historical change (Churchill, 2019) in which the past is separated into discrete stages arranged in a linear sequence, each begun and ended by a rupture (e.g. the welfare phase, the justice model, etc.). These accounts further resonate with wider interest within the social sciences in paradigm shifts or punctuated equilibria as models for understanding historical change, both of which construct linear timelines consisting of long periods of stasis or stability that are interrupted by ‘critical junctures’ or brief moments of formative turbulence in which rapid, radical change occurs and creates new equilibria (Capoccia & Kelmen, 2007).

Of course, historical change can be rapid and radical and it might occasionally be appropriate to explain some changes using stadial

views of time. But this single conception of historical change is not sufficient as there are other forms of both historical change and continuity that are apparent within certain areas of criminal justice and behavioural regulation. Alcohol regulation is one such area. As already described, it is a volatile entanglement of actors, objectives and regulatory interventions that possesses none of the purity of a paradigm nor the stability of an equilibrium. Several leading historical accounts point to the importance of shifting constellations of public issues and the interaction of government departments and interest groups in making sense of the complexities and inconsistencies within alcohol policy (Thom, 1998; Greenaway, 2003, 2008). Alcohol policy certainly crosses the remit of multiple government departments (e.g. Home Office, Treasury, Ministry of Health), relies on various agencies for enforcement (e.g. licensing bodies, tax authorities, police) and, outside the formal machinery of the state, is fiercely contested by opposing interest or campaign groups (including public health groups and drinks industry lobbyists). My argument here is that, while it may derive in part from conflict between contemporaneous actors or the interplay of important issues at certain points in time, the contemporary messiness of alcohol regulation also results from how it has developed *through* time.

This paper is informed and inspired by two theoretical approaches that are becoming popular within historical criminology. The first is historical institutionalism, which developed primarily within economics, sociology and political science. As Ashley Rubin (2023) explains, historical institutionalism is now beginning to make inroads into criminology and, with more publications pending, the further spread of this approach is likely. While historical institutionalists recognise

that rapid and radical change can occur (especially during ‘critical junctures’ – see Capoccia & Kelemen, 2007), leading figures have explored how historical change is instead often slow and incremental (Mahoney & Thelen, 2010). They characteristically emphasise that, although it can be instigated by large and obviously significant events (e.g. wars, revolutions), change can also be occasioned by sequences of occurrences initiated by small, unanticipated events (Mahoney, 2000). As well as broadening understandings of how and why historical change happens, historical institutionalists have created a range of concepts that can usefully help to examine change and continuity in their more varied forms, including the concepts of ‘layering’ (Thelen, 2003) and ‘near misses’ (Capoccia & Kelemen, 2007) which will be used here.

The second theoretical stimulus arises from the work of the historian Reinhart Koselleck, whose ideas around the plurality of time have been recently imported into criminology – principally by David Churchill (2019; also Churchill et al., 2021). Rather than seeing time as linear or cyclical, Koselleck proposed that time is usefully understood as sedimented. Echoing Fernand Braudel, he identified plural forms of time, including a fast-paced, singular time evident in events that are experienced as new or unprecedented; a recurrent time apparent in happenings that are regular or cyclical; and a deeper, slow-moving time that encompasses biological characteristics, cultural frameworks or other durable structures that outlast individuals or generations (Koselleck, 2018, p. 3-9). For Koselleck (2018), this means that any one historical moment is comprised of plural temporalities, of multiple events or processes with different historical origins, which are unfolding at various speeds (also Churchill,

2019). It is rarely accurate, therefore, to say that a period of time can be captured by a single descriptive term or characterised simply by the practical application of one model within a specific paradigm. Equally, it is likely insufficient to describe historical change as the linear succession of different models or stages of crime or criminal justice, each separated by the clean break of a rupture. Models of criminal justice are much more likely to overlap, either conflicting with each other, co-existing separately within delineated remits, or mingling together to produce hybridised forms.

A Koselleckian understanding of the plurality of time discourages scholars from looking for ruptures. Historical change is usually more complex than the notion of a rupture suggests and, importantly, we can start to unpick these complexities by identifying the plural temporalities – the differing origins, speeds and directions – of the events and processes that animate the present or any other historical moment (Churchill, 2019). The remainder of this paper uses this understanding of historical time as plural, as well as the conceptual vocabulary of historical institutionalism, to specifically examine some of the historical features and discrete processes that comprise alcohol regulation in contemporary England and Wales. This is not an attempt to provide a total history or macro narrative of alcohol regulation in England and Wales; such exercises sit uneasily next to the generally meso-level focus of historical institutionalism and the concern for plurality that runs throughout Koselleck's work. Instead, this paper takes the form of a partial, non-linear history which will be narrated in four parts.

¹ Belgium and Hungary also prohibited alcohol but the measure was short-lived in both countries. Turkey prohibited alcohol from 1920-1924 (Schrads, 2010, p. 5).

A NON-LINEAR STORY

The 'Near Miss' of Prohibition

While unusual, it has already been noted that rapid and radical historical changes do occur. Prohibition is the obvious example of a rupture within alcohol regulation and some scholars have analysed it as such (e.g. Schrads, 2007). Russia, Iceland, Norway, Finland, Estonia, Canada and the USA are among the countries who implemented prohibition in the 1910s and retained it for a time after the First World War.¹ Wherever it was implemented, alcohol prohibition entailed swift and significant changes to the laws relating to alcohol. It also had important, wider implications. In the US, for example, the implementation of alcohol prohibition from 1919 to 1933 has been credited with reducing overall alcohol consumption (Blocker, 2006) as well as stimulating the growth of illicit markets, increasing violence and murder rates (Miron, 1999; Gerritsen, 2000) and paving the way for the 'war on drugs' by establishing governmental institutions and ideological tropes which later came to be directed at the trade in other psychoactive substances (McGirr, 2016). The situation in the US was probably a little more extreme than in other prohibitionist countries, but it is common for alcohol prohibition to be connected to a general growth in smuggling, illicit distillation and organised crime (e.g. Johansen, 2013; Herlihy, 2017). The degree of legal change and social impact show that, where it was implemented, a rupture was instigated by alcohol prohibition (as well as, for that matter, its repeal).

In England and Wales, however, alcohol prohibition was never implemented. It amounts to an example of what Capoccia and Kelemen (2007) call ‘near misses’ – major reforms or paradigm shifts that could have happened, but did not (see also Dudai, 2023; Kaufman, 2023). These occur during moments of critical juncture – moments when the normal constraints on action are suspended and what has hitherto been considered unthinkable becomes thinkable and doable (Capoccia & Kelemen, 2007). The First World War was the catalyst for the critical juncture that produced prohibition in many countries. The need to conserve grain supplies, the spectre of military indiscipline and a desire to maximise industrial productivity all prompted governments to look afresh at alcohol regulation. There was also a sense in some quarters that prohibition could improve collective moral capital and make nations somehow more worthy of victory (Yeomans, 2014). Russia moved first, implementing national prohibition in 1914, and ten countries, all of which were involved in or affected by the war, followed before the end of the decade (Schrad, 2010). Britain was heavily involved in the First World War and, like several newly prohibitionist countries, had also been home to an active temperance movement which, since the mid-nineteenth century, had included a prohibitionist strand. The prohibitionist movement had developed fairly close links with the Liberal Party which dominated British politics across the 1910s (Greenaway, 2003). By the middle of the decade, then, many British prohibitionists felt like their time had come (Yeomans, 2014). But, ultimately, alcohol prohibition was not implemented. Nor, beyond experimentation in select local areas, was the ‘Gothenburg Scheme’ of nationalising the drinks industry pursued. The window of opportunity for rapid, radical change to alcohol regulation in

Britain closed without the enactment of anything constituting a rupture.

This near miss gives rise to two questions. The first, of course, concerns why Britain did not implement prohibition. It is tempting to attribute this outcome to a fiscal form of path dependence. Britain derived a huge amount of tax revenue from the drinks industry in the decades prior to the First World War (Yeomans, 2019) and so would have found alcohol prohibition to be extremely costly. However, the same is true of the countries that did alcohol prohibition; the US federal government lost around a quarter of its revenue after banning alcohol (Gerritsen, 2000) and Russia lost approximately a third (Herlihy, 2017). As I have argued elsewhere, the variant of moral politics that held sway in Britain at the time may be more important (Yeomans, 2014). In some countries – notably the USA – the temperance movement effectively became a campaign for prohibition (Schrad, 2007) but, in Britain, other strands of temperance remained prominent into the twentieth century. Notably, there were moral suasionist temperance groups who, instead of seeking to use prohibition to force sobriety upon the nation, sought instead to persuade people to take a teetotal pledge, thereby committing them individually to voluntary abstinence from intoxicating drinks (Harrison, 1972; Greenaway, 2003). This group argued vociferously that voluntary abstinence possesses greater moral value than the sort of abstinence that is, in theory at least, forced upon drinkers by prohibition (Yeomans, 2014). The views of moral suasionists chimed with the strong libertarian current that existed within British politics. Proposals to toughen alcohol laws during this period were routinely met with the rebuke that ‘you cannot make a man sober by Act of Parliament’

(Yeomans, 2014). Although a full explanation of this near miss is beyond the scope of this paper, a concern for personal liberty and a suspicion of state intervention, coupled with the continuing prominence of suasionist temperance, did help incline British governments away from prohibition.

The second logical question is: what did Britain do instead? The drinks industry was nationalised in three, strategically important areas but, despite government consideration, this radical measure was not adopted more widely (Fahey, 1997). The largest of these areas surrounded Carlisle, and here the drinks industry continued to be owned and managed by the state as an ongoing concern until the 1970s. On a national scale, the British government banned people from ‘treating’ soldiers and sailors to drinks, greatly increased alcohol taxes and reduced the legally permitted opening of public houses. While the ban on ‘treating’ was scrapped after the war and restrictions on opening times were relaxed, other wartime measures were retained. Alcohol taxes did not return to their pre-war levels and the afternoon closure of public houses from 3pm-5:30pm remained in place until 1988 for the days from Monday through to Saturday and until 1995 for Sundays (Yeomans, 2014). The British response to alcohol during the First World War thus entailed a series of fairly moderate restrictions, some of which had remarkable longevity and endured for decades afterwards.

The near miss of British prohibition is, therefore, quite revealing. It demonstrates that once we look beyond the occurrence of ruptures, a swathe of historical changes come into focus which were incremental in their context but which did still make notable – and, in some instances, lasting – alterations to how drinking was regulated. To put it another way, once we stop obsessing over the

big changes, it becomes easier to identify small changes and appreciate their importance. Secondly, this near miss points towards some important factors that helped produce incremental change rather than rupture. In particular, the politics of moral reform and the wider political culture within British society have been flagged as stabilising influences that helped tip the scales of history away from rupture and towards gradual change.

Transformation by Accumulation

Across the eighteenth and much of the nineteenth century, it was usual for the problems of excessive drinking to be attributed singularly to the consumption of alcoholic spirits. Mounting concerns over public drunkenness prompted increases in spirits taxation in 1729, 1736 and other points in the eighteenth century (Yeomans, 2019), while the artist William Hogarth famously contrasted the orderliness and prosperity of ‘Beer Street’ with the poverty, violence and sickness of ‘Gin Lane’ (see Borsay, 2007). Further concerns about rising spirits consumption in the 1820s were part of the reason why the government sought to liberalise the beer trade with the Beer Act 1830. By repealing beer duty and abolishing the need for beer-sellers to be licensed by a magistrate, the Government hoped to improve the quality of beer and lower its price, thus helping to wean drinkers off gin and onto beer (Harrison, 1972). In all instances, government action was underpinned by a clear problematisation of spirits drinking and a positive, or at least neutral, view of beer. This dominant governmental model was fundamentally challenged in the nineteenth century and has become decreasingly tenable ever since. However, there is no obvious moment of rupture around which this

transformation occurred. Instead, a series of incremental reforms implemented over a period of decades, perhaps centuries, led to the dominance of a different way of thinking about alcohol and how to regulate it in British society.

The beginnings of this chronologically-extended process of radical change were inauspicious. In August 1832, seven men in the Lancashire town of Preston, led by the social reformer Joseph Livesey, took a teetotal pledge (Shiman, 1988; McAllister, 2014). While temperance groups already in existence widely promoted abstinence from alcoholic spirits, the ‘seven men of Preston’ pledged to abstain from *intoxicating liquors of all kinds* – meaning beer, wine and cider as well as spirits. This event attracted little attention at the time; the first teetotal pledges were not reported by the press and had no impact on alcohol policy for some years. But, by the end of the 1830s, teetotalism had come to dominate the British temperance movement. By the 1850s, the idea that all alcoholic drinks – including beer – are essentially problematic was being debated widely in public forums (see Yeomans, 2014). Between 1864 and 1872 a series of legal reforms restricted the drinks trade, most notably by reinstating the system whereby sellers of all alcoholic drinks – beer as well as spirits – must possess a licence granted by magistrates. While this reform reinstated an arrangement that had been abolished in 1830, it entailed a rejection of the dominant logic that excessive drinking was to be blamed on spirits, which had underpinned the 1830 reform and earlier legislation (Yeomans, 2014). This tightening of legal controls continued and the Licensing Act 1902 required that shops selling wine must also be licensed by a magistrate (Greenaway, 2003). This intensifying alignment of the licensing rules applied to beer, wine and

spirits reflected the problematisation of all forms of alcoholic drinks initially advanced by Livesey and other teetotalers.

Historical institutionalists James Mahoney and Kathleen Thelen assert that ‘incremental shifts often add up to fundamental transformations’ (2010, p. 2), and the problematisation of alcohol within British society is a case in point. It occurred slowly, beginning with Livesey’s pledge in the early 1830s and being affected within law from the 1860s onwards. Despite its slow and piecemeal nature, the historical change engendered by the problematisation of alcohol has significantly altered alcohol regulation – especially licensing – in Britain. Indeed, the once-dominant idea that excessive drinking can be tackled by encouraging beer drinking is likely to elicit laughter from contemporary audiences. In some respects, the process may be still unfolding today. While licensing rules have applied evenly to alcoholic drinks for over a century, alcohol taxes have continued to be levied at different rates for different drinks. In 2021, Chancellor Rishi Sunak announced plans to overhaul these taxes and move towards a system of greater parity in which the level of taxation is connected to alcoholic strength (BBC News, 27/10/21). The problematisation of alcohol has also unfolded in different ways and at varying speeds in other countries. Russia, for example, imposed few restrictions on the trade in beer until recently, preferring instead to concentrate upon vodka and other spirits, which were seen as more problematic in Russian society. This situation shifted in 2012 when licensing laws were fully applied to all drinks containing more than 0.5% alcohol by volume for the first time (Radaev, 2017). The problematisation of alcohol therefore remains an ongoing process.

Drink Driving Limits and Embodiment

Historical change can therefore be fast or slow and much that appears static may actually be in a state of chronologically-protracted movement. Nevertheless, there are forms or features of regulation that remain stable, even while processes of change shape and reshape much that surrounds them. An apt example here is England and Wales' laws on drink driving, which are centred around a legal blood alcohol content limit of 80 mg per 100 ml, or 0.08%. This drink-drive limit is conspicuous when viewed from a comparative perspective. England and Wales sit within a fairly small group of countries internationally who set the drink-drive threshold as high as 0.08% and, along with only Liechtenstein and Armenia, have the highest blood alcohol content (BAC) limit in Europe (see ETSC, 2019). This situation is actually doubly conspicuous as general alcohol controls in the UK are amongst the strictest in Europe, as becomes evident when comparing, for example, legal ages of purchase or alcohol excise duties (Karlsson & Osterberg, 2009). Perhaps unsurprisingly then, there are regular calls for England and Wales' BAC driving limit to be lowered to at least 0.05% in order to bring it into line with European norms (e.g. Alcohol Change, 2022).

The explanation for this anomalous regulatory situation lies in its history and the manner in which England and Wales' drink driving restrictions embody the time of their creation. The 0.08% threshold was created by the Road Safety Act 1967. While there had been criminal offences relating to drunkenness and driving since the 1870s, this was the first piece of British legislation to establish a BAC limit above which it is illegal to drive. Parliament set the limit at 0.08% following advice from the British Medical Association

(House of Lords, 18/4/1967). The Government were aware that many people's ability to drive is impaired by blood alcohol concentrations of 0.05%, but they were concerned about the prospect of criminalising those drivers who accidentally exceeded this level and those hardened drinkers who could apparently drive safely with higher BAC levels (House of Commons, 10/2/1966; House of Lords, 18/4/1967). Keen to protect the liberty of these motorists, the Government arrived at 0.08% as a compromise.

Despite being constrained by concerns for personal liberty, the new BAC limit of 0.08% was actually quite radical in its time. Comparatively speaking, it was in step with most Western countries at the time. Norway created the world's first legal BAC driving limit in 1936 and, by the 1960s, was operating a legal limit 0.05%, as were Sweden and Poland (House of Lords, 18/4/1967). But most Western countries who had set a BAC limit had opted for 0.1% (e.g. Denmark, Finland, Switzerland, Belgium) or even 0.15% (e.g. USA, Western Australia, West Germany) (House of Lords, 18/4/1967). The introduction of the 0.08% limit in England and Wales in 1967 therefore encapsulated something of a median point between these more radical contemporaneous limits. The 1967 legislation also markedly toughened the enforcement of drink-driving laws, replacing a convoluted and often lenient enforcement process with something more straightforward. Driving with a BAC level above 0.08% became a strict liability criminal offence, meaning it was illegal regardless of the intent of the driver, and, in the same year, police were authorised to use breathalysers (Yeomans, 2014). Additionally, reading sources from the time, it is striking how much alcohol people generally believed they could consume without exceeding the new limit. Notably,

Transport Secretary Barbara Castle estimated that, with the new limit introduced, some drinkers might still be able to legally drive after consuming as much as 6 pints of beer or 6 large whiskies (House of Commons, 10/2/1966) – a laughably high estimate when viewed through a contemporary lens. Clearly, these understandings of impairment and alcohol tolerance were set to be challenged by the 0.08% limit.

While fairly radical in the 1960s, the crucial point here is that the BAC limit in England and Wales has not changed since it was created. Most Western countries reduced their BAC limits for driving to below 0.08% in the 1980s (e.g. New South Wales, Queensland), the 1990s (France, Spain) or the 2000s (Italy, Switzerland). Scotland diverged from England and Wales in 2014 by lowering its limit to 0.05%. These moves have generally been consistent with developing evidence about, for instance, the positive impact of lowering BAC limits on road traffic fatalities (see Killoran et al., 2010). Such evidence has been available to policy-makers in England and Wales too, and hence the non-occurrence of reform in this jurisdiction is puzzling. Perhaps the absence of a strong campaign of moral entrepreneurship (e.g. Mothers Against Drunk Driving) is relevant; or maybe lobbying on behalf of motorists' organisations (which were mentioned repeatedly during parliamentary debates on the Road Safety Act 1967) or the drinks industry (see Hoe et al., 2020) has engendered positive policy feedback, reproducing the status quo and making it difficult for policy-makers to deviate from the path set in the 1960s. Equally, it is worth considering whether the potential benefits from tighter drink driving controls are still there to be gained. Road traffic fatalities in Great Britain fell by 79% between 1979 and 2017 (Haghpanahan et al., 2019)

and, at around 16%, the proportion of road traffic fatalities in the UK constituted by drink-driving deaths is comparatively low (Killoran et al., 2010). Haghpanahan et al.'s (2019) evaluation of the 2014 introduction of a lower BAC limit in Scotland found no positive effects on road traffic accidents. In light of this situation, it may be that policy-makers in England and Wales see only limited potential gains from further legal reform.

Whatever the precise explanation for this regulatory stability, it is clear that drink driving laws in England and Wales have solidified over the last five decades while equivalent laws in other Western countries have remained malleable. The current law thus embodies the extent of scientific knowledge and regulatory norms at the time of its creation as well as a specific political compromise that was struck in order to advance road safety while guarding against a perceived threat to the liberties of motorists. Unlike elsewhere, this arrangement in England and Wales has not moved with the times; it has been somehow caught in the historical amber and remains stuck in a political, legal and scientific moment that has passed. It exists anachronistically, both embodying the 1960s while also continuing to regulate drinking behaviours in the here and now.

Young People and the Layering of Regulation

In some instances, the occurrence of varying forms of historical change and continuity can produce what is known as layering. The concept was coined by Kathleen Thelen, who uses it to describe situations where institutional change does not entail the replacement of one set of rules or norms with another, but the renegotiation of some existing arrangements or the addition of new rationalities,

policy instruments or actors while others remain in place (Thelen, 2003; also Mahoney & Thelen, 2010). It is valuable as a means to describe and explain historical change that is slower, more incremental and more nuanced than can be captured by the concept of a rupture or by associated paradigm shift or punctuated equilibrium models. Layering has recently been used to excellent effect in some criminological research (Rubin, 2016; Hamilton, 2023). I will here explore its value for making sense of restrictions on drinking by children and young people.

The first statutory restriction on the age of drinkers was included within the Metropolitan Police Act 1839 and it prohibited the consumption of alcoholic spirits on licensed premises by persons under the age of 16 in London (Jennings, 2011, p. 118-119). Following this legislation, developments in the regulation of young people's drinking were dominated by reforms to the legal purchase age for alcoholic drinks for more than a century and a half. Firstly, the implementation of age thresholds was expanded in application and scope. The 1839 ban on sales of spirits to under-16s for consumption on licensed premises was extended from London to the rest of England and Wales in 1872. Meanwhile, an 1886 reform created a separate restriction that proscribed on-premises consumption by under-13s of any alcoholic drink, not just spirits. Secondly, the age at which these thresholds applied was increased. The Intoxicating Liquors Act 1901 increased the age at which people could consume alcoholic drinks on licensed premises from 13 to 14 years, before a further reform in 1923 harmonised the rules applying to spirits and other drinks and set the on-premises drinking age for both at 18. Finally, the Licensing Act 1961 applied this threshold of 18 years to shops as well as the more traditional target of

pubs and other on-premises drinking establishments. By the 1960s, therefore, it was illegal in England and Wales for pubs, shops and other licensed premises to sell any form of alcohol to under-18s for consumption anywhere (see Yeomans, 2014). There have subsequently been no significant attempts to reform the legal age for alcohol purchase and so this fairly linear historical process, in which the age threshold increased and its application broadened, has ceased.

However, alternative ways of regulating young people's drinking have continued to be created. The New Labour administration, which held power from 1997-2010, was particularly innovative on this front, giving police heightened powers to surveil licensed premises (through 'test purchasing') and amending criminal offences to better facilitate the prosecution of bar or shop staff who make sales to under-18s. Notably, New Labour also created a range of civil orders that have been used to regulate young people's drinking. The Criminal Justice and Police Act 2001 allowed local councils to create Designated Public Place Orders (DPPOs) that demarcate a geographic area within which police can order people to stop drinking and arrest them if they refuse. A Conservative-led government replaced DPPOs with Public Space Protection Orders (PSPOs) in 2014 and, with regard to alcohol, these operate in a similar way. PSPOs can include restrictions on various activities that are deemed to impact negatively upon 'quality of life', although public drinking is a common target (see Local Government Association, 2018). Equally, while they can constrain the actions of people of all ages, the enforcement of DPPOs and PSPOs has not been necessarily impartial. Indeed, the whole suite of civil orders created by New Labour and subsequent Conservative governments have, in

practice, been principally employed in efforts to discipline or control young people (see Crawford, 2009; Jamieson, 2012; Hendry, 2019). Importantly, these new legislative provisions and the disciplinary practices they propagate did not modify or replace the age threshold of 18 and other existing legal controls on youth drinking but, instead, were added to them.

The creation of these civil orders in the twenty-first century has confirmed the dominance of a punitive approach to the regulation of youth drinking. Earlier restrictions on young people's drinking were mostly justified through welfarist concerns. Stella Moss (2009) has shown that the ban on under-14s from entering bar rooms in the Children's Act 1908 was (partly) motivated by a desire to protect young people from drunkenness, sexual impropriety, swearing and other apparently bad habits that might be encountered therein. The increase in legal purchase age to 18 in 1923 was primarily the work of Nancy Astor MP, the first woman to sit in the House of Commons. Astor advocated for the measure in a distinctly maternalistic fashion, speaking of raising her own children and the need to protect Britain's national future by keeping young people 'morally straight' during the trying period of adolescence (Yeomans, 2014, p. 136). However, the 1960s reforms occurred within a different discursive context. In an era of spiralling concerns about young people's behaviour, as evidenced within the contemporaneous moral panic about Mods and Rockers so famously studied by Stanley Cohen (1972), the extension of the age purchase threshold of 18 to off-licences was justified in a more punitive fashion. Young people were no longer seen as a valuable resource that must be protected, but as a threat which the rest of society needs to be protected from (Yeomans, 2014). A similar

punitive ethos continues to be apparent in the twenty-first century and is evident in how, as already mentioned, governmental efforts to suppress anti-social behaviour or protect quality of life have been largely constituted by regulatory actions that discipline and punish young people (Crawford, 2009; Jamieson, 2012; Hendry, 2019).

The measures used to regulate youth drinking thus comprise multiple layers, including restrictions on purchasing age, which accrued between 1839 and 1961, and a separate strata of civil orders created in the twenty-first century. The situation is similarly stratified with regard to regulatory rationalities. The welfarist motivation for regulating young people's drinking has lessened in importance in recent decades, but it has not disappeared. For example, the prevention of harm to children is one of four objectives which, under the Licensing Act 2003, continue to underpin the whole licensing system in England and Wales. Lingering welfarist sentiments thus continue to have some influence over the regulation of young people's drinking, albeit from beneath a thick layer of punitive political discourse and disciplinary restrictions that has formed over the last 60 years. Thus, as for both the techniques and rationalities of regulating youth drinking, the new has not entirely replaced the old, but has, instead, been layered on top of it.

DISCUSSION: The Contemporaneity of the Non-Contemporaneous

Alcohol regulation is, therefore, an eclectic tapestry patterned with the involvement of multiple public issues, various political actors, governmental rationalities and legal interventions. But it is also richly textured by the diverse historical influences bequeathed

by different time periods. The present moment of alcohol regulation is, therefore, an example of what, in Koselleckian terms, can be called the contemporaneity of the non-contemporaneous (see: Koselleck, 2018, p. 91; also Churchill et al., 2019, p. 45-46). In regulatory terms, it consists of several historical times. It has contemporaneity in that it is live and unfolding in the now, but the various regulations that constitute and shape current happenings have their own temporalities. Each has been made and remade over long periods of time; they have discrete origins, differing durations and are unfolding along varying trajectories. The present moment simultaneously contains the legal legacies of the problematisation of alcohol that accumulated from the mid-1860s onwards; owes a formative debt to the rejection of prohibition in the 1910s and the governmental decision to implement more moderate wartime controls instead; contains a punitive politics of youth crime and a BAC drink-driving limit that were both laid down in the 1960s; and comprises more recent regulatory measures, especially the civil orders that have been applied to young people's drinking in the twenty-first century. Some of these historical legacies and processes are still in a state of some flux (e.g. the problematisation of alcohol), while others have ossified and proved resistant to reform (i.e. the BAC limit). All continue to co-exist as non-contemporaneous features of this one contemporary moment.

Viewing the present in this way helps make sense of the inconsistencies and contradictions that characterise contemporary alcohol regulation in England and Wales. Alcohol is legal but heavily regulated because British governments rejected prohibition in favour of restriction in the 1910s. Licensing laws are fairly stringent in England and Wales be-

cause of the legal legacy of Victorian teetotalism and the problematisation of alcohol that it advanced, while drink driving laws are simultaneously lax because of the preservation of a specific political settlement from the 1960s. The specific and apparent contradiction of British government policy in the 2000s mentioned in the introduction can be similarly understood. Statutory constraints on licensing were indeed relaxed in this period (e.g. on opening hours), but these liberalising reforms did not halt or slow the continuation of the pre-existing accumulation of restrictions on young people's drinking, which began in the nineteenth century. The messiness and complexity of alcohol regulation today is likely to result partly from the variety of actors involved and the friction of different interests and agendas, as the scholars mentioned in the introduction have argued. However, it also results from the plurality of temporalities that underpin how we currently understand and seek to regulate drinking in England and Wales.

More generally, this paper has demonstrated that the concept of rupture is a fairly limiting way of viewing historical change. It has shown that there are lessons to be learnt from the near misses that happen when conditions favourable to rapid, radical change pass without its occurrence. It has demonstrated that meaningful and significant historical change can happen slowly, including through the accumulation of incremental shifts. It has explored how some forms of regulation can become ossified, meaning existing arrangements are reproduced rather than reformed (in either a slow or fast way). It has also illustrated how the new does not always replace the old and, in some circumstances, becomes layered on top of it. This more heterogeneous approach to the nature of historical change and continuity brings the connections of the

contemporary and the historical into sharper focus. Past and present are not simply separated and differentiated by ruptures; many historical pasts still have a presentness and endure within the ideas, values, rules and institutions that constitute regulation in contemporary societies.

Of course, this reality is not confined to alcohol regulation. Scholars have recently begun to use historical institutionalist frameworks more extensively to analyse a range of criminological topics, including change and continuity within penal policy (Burciu, 2023; Hamilton, 2023; Guiney & Yeomans, 2023; Wilenmann & Gambardella, 2023) and penal practice (Rubin, 2023; Kaufman, 2023; Dudai, 2023). Although more tentatively, Koselleckian approaches are also being adopted within criminology (e.g. Churchill et al., 2021; Molloy & O'Donnell, 2022). In a subject area animated by a reformist impulse (Channing et al., 2023) and often marked by frustration at the durability of ineffective interventions and the persistence of systemic injustices, there is clearly analytical value in greater application of the sort of nuanced view of change and continuity valorised by both theoretical approaches discussed here. I would like to propose, furthermore, that there is additional mileage in the loose coupling of historical institutionalist concepts and a Koselleckian emphasis on the plurality of time that has been developed here. Specifically, historical institutionalist concepts (near misses, transformation by accumulation, layering) have provided a set of linguistic terms and heuristic devices that have aided in the identification and analysis of multiple co-existing temporalities (which, following Koselleck, are present in any historical moment). As well as offering a new perspective on alcohol regulation, I therefore hope that

this paper can encourage further criminological usage of historical institutionalist and Koselleckian theory as either separate analytical frameworks or as a combined, mutually supportive set of tools for studying historical change in a plural, non-linear fashion.

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