

CONSTRAINED SATISFACTION: LEGAL CONSTRAINTS UPON CONSUMER BEHAVIOR IN THE CONSUMPTION OF ALCOHOLIC BEVERAGES AND IMPLICATIONS FOR PUBLIC POLICY

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STATEMENT OF THE PURPOSE OF THIS PAPER

For hundreds of years, studies of consumer behavior have suggested the existence of a fairly universal theory of consumer behavior titled "Diminishing Marginal Utility." Although the theory appears to be reasonably correct for most products, it appears to fall short of the real world in its application to the consumption of alcoholic beverages. Also, changing cultural and legal attitudes are emerging, at least in the United States, which are beginning to be reflected in the courts of the land and in the laws that are being written in its legislatures. The purpose of this paper is: (1) to review quite briefly this theory of "diminishing marginal utility"; (2) to suggest a subtle modification thereof in light of the unique product attributes of alcoholic beverages; (3) to review in some depth the laws which have emerged or are yet emerging which constrain or otherwise impact upon the behavior of consumers and others in the former's consumption of alcoholic beverages; and (4) to develop a slightly modified theory for the consumption of alcoholic products which are affected by the social and legal behavior of consumers dictated in large part by changing laws. It should be noted that the theory as well as these laws will not have universal application inasmuch as the circumstances, values, attitudes, available technology, etc. will differ from one country to the other. The paper will also caution the reader that the expression, "the consumer is king," is only as true as the consumer's rational behavior and the laws of the land(s) will permit.

A BRIEF REVIEW OF MICRO ECONOMIC ANALYSIS OF THE THEORY OF DIMINISHING MARGINAL UTILITY

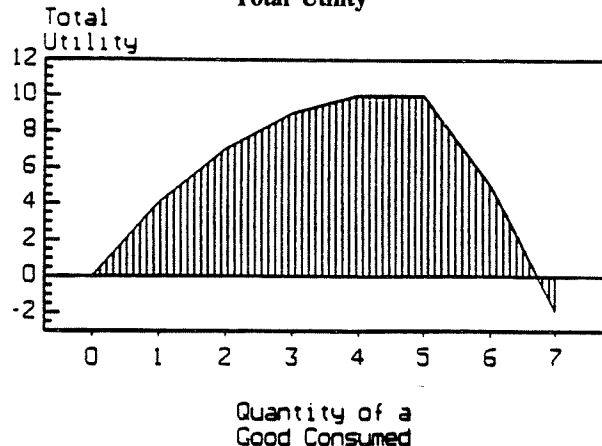
One need only turn to any basic micro economic, marketing, or consumer behavior textbook to appreciate the general theory and, to some degree, the general belief that consumers themselves are best qualified to determine the level of satisfaction they derive from the consumption of various quantities of goods and services. The theory of diminishing marginal utility suggests that as an individual consumer consumes more of a given product in the early stages, the total utility increases, at least psychologically. However, with each additional unit of a particular product one consumes, the net additional or marginal utility decreases. Stated another way, the total utility will continue to increase but at a steadily decreasing rate until a particular quantity of units is consumed at which quantity the last unit consumed contributes no net additional or marginal utility. Consumption beyond this level will only reduce the total utility and, in all probability, at an increasing rate. Finally, most economists agree that the various increments of utility, as

well as the total utility at each level of consumption, are defined, for the most part, psychologically, although they will agree that sometimes this phenomenon can be measured physically as well as psychologically. And, finally, they seem to agree that a level of consumption of a particular product will be reached where the total utility derived from the total number of products consumed will reach zero or less. Stated another way, there appears to be a level of consumption beyond which the consumer is no better off psychologically (and possibly even physically) than had the consumer not consumed any units of the product at all. The total utility curve actually crosses the X-axis from above. Further consumption of the particular product could even result in the total utility curve dropping below the X axis, leaving the consumer worse off than had he never consumed a single unit of the product. (Refer to Table 1 and Graph 1 below.)

**Table 1
Total/Marginal Utility**

(1) Quantity of a Good Consumed	(2) Total Utility	(3) Marginal Utility
0	0	0
1	4	4
2	7	3
3	9	2
4	10	1
5	10	0
6	5	-5
7	-2	-7

**Graph 1
Total Utility**



Unfortunately, for the consumer, he has spent the price of each product times the number of units of the product required to reach such a status. In other words, it is possible that the consumer's level of satisfaction would appear to have been restored to zero; however, this is not quite correct either, for the consumer no longer is in possession of the total revenue required to purchase the quantity of products that exist at that level at which the total utility is reduced to zero -- or less. From a variety of points of view, this might be regarded as a waste of limited national resources since no value (or utility) has accrued to the individual consumer. Macro economists might contend, however, that value has been created since the gross national expenditure -- and product -- has been increased by the amount of revenue spent on such transactions. And, finally, the public policy analyst might contend with the macro economist that the nation is no better off where individual members of that nation are no better off -- or even worse off -- than before. However, this is not the specific focus of this paper.

SUBTLE MODIFICATIONS IN THE THEORY OF DIMINISHING MARGINAL UTILITY TO ACCOUNT FOR THE UNIQUE PRODUCT ATTRIBUTES OF ALCOHOLIC BEVERAGES

Although the authors of such introductory analyses do not contend the absolutely universal application of the theory, these analyses are themselves fairly universal in general texts and courses. (Hyman 1989) Applications of the theory to more specific products usually require some modifications. The purpose of this section of the paper is to provide the reasoning behind the modification of the theory as it might pertain to alcoholic beverages.

Medical knowledge suggests that for nearly all persons of normal bodily functions, the first unit of an alcoholic beverage consumed can generate mixed levels, as well as directions, of marginal utility. For some, the first unit consumed might well generate positive marginal utility inasmuch as the product might be consumed for purposes of quenching one's thirst, or simply be recognized as the first stage in obtaining the ultimate "mellow stage," hence at least some psychological utility has been received. It is undeniable, alcoholic beverages possess this capacity. For other consumers, however, the first unit consumed might well generate negative marginal utility, whether or not they are willing to admit it. Medically speaking, the first contact of alcohol on the mouth, throat, and stomach can generate negative marginal utility inasmuch as the alcohol can actually destroy taste cells, stimulate strong flows of hydrochloric acid both in the mouth and in the stomach, and exacerbate the existence of canker sores in the upper digestive system and ulcers in the middle and lower digestive system. (It should be noted that tobacco products can have the same effect.) Only upon continued consumption of additional units will the possible pain and discomfort from this first consumed unit fade and higher levels of marginal utility be realized, at least psychologically if not physically. Hence, the total utility curve is not C-shaped but, rather, S-shaped, with the earliest stage of the total utility curve appearing below the X-axis.

Further, it might be argued that additional units of

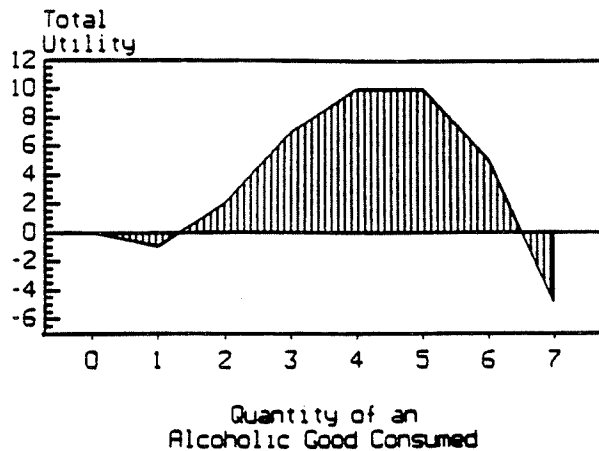
alcohol will eventually begin to dull if not numb the senses in which case the consumer is not reacting physically to additional units of the product to obtain the steadily higher total utility (at decreasing levels of marginal utility) but, rather, is reacting to his or her own sense of higher self esteem, i.e., psychologically, due to possibly reduced inhibitions, which might result from the consumption of the alcoholic product.

There is a level of consumption at which the consumer is no longer capable of enjoying higher total utility. Total inebriation exists. The consumer is on the verge of experiencing declining total utility as the consumer becomes steadily further out of control and more socially offensive. Unfortunately, the consumer might be the last to realize this. Should this behavior continue, i.e., should the consumer continue to consume additional units of alcohol, total utility derived from all units consumed could be reduced to zero or less where the consumer has become unconscious, has experienced reverse peristalsis, has become disoriented, or -- in the social welfare context -- has become a hazard to society, especially if the consumer expects to drive himself or herself home. (See Table II and Graph II below.)

**Table 2
Total/Marginal Utility**

(1) Quantity of a Good Consumed	(2) Total Utility	(3) Marginal Utility
0	0	0
1	-1	-1
2	2	3
3	7	5
4	10	3
5	10	0
6	5	-5
7	-5	-10

**Graph 2
Total Utility**



It is in this last context that increasing legislation has emerged to address the problem of consumers driving under the influence of alcohol (DUI) or driving while intoxicated (DWI). New laws are emerging as a result of growing lobbying (by such groups as Mothers Against Drunk Driving, Students Against Drunk Driving, etc.), and new expressions are emerging on the records of the police and the courts, e.g., homicidal DUI. Distillers and brewers are adopting public relations advertising campaigns such as "Know when to say when," and the courts of the land are even beginning to hold hosts and hostesses at cocktail parties and bar tenders in taverns and bars liable for contributing to the alcoholic condition of a person who subsequently breaks DUI or DWI laws.

THE PERCEIVED OR REAL NEED FOR SUPPLIER INTERVENTION OR CONSTRAINT IN DEMAND SIDE BEHAVIOR THROUGH LEGISLATION

Contrary to the behavior of consumers under conditions of consuming most conventional products, the behavior of consumers when consuming alcoholic products becomes steadily less rational (beyond a certain number of units of the given alcoholic product), less predictable (within a given range of behavior), and less desirable (at least from the point of view of growing numbers of social onlookers, not to mention law enforcement officers).

Given that the more one consumes of alcoholic beverages, beyond a given number of units consumed, the less rational one's behavior, laws are emerging in various states around the United States indicating that bar and tavern personnel are being held steadily more responsible for denying customers quantities of alcoholic beverages beyond certain levels of consumption as defined by law. A growing part of their training is the identification of behavior on the part of patrons that is symptomatic of approaching inebriation. Bar and tavern personnel are obliged, under law, to refuse those patrons of any additional alcoholic beverages and are under penalty of that same law should they ignore or reject such law.

The time has arrived, at least in U.S. society, where the law is permitted to dictate when a consumer has maximized his or her satisfaction although consumers might argue their satisfaction has been constrained and their constitutional rights infringed upon. Some would argue that the consumer has lost his or her crown and no longer presides over his or her shopping basket as ultimate monarch. Who would have thought just a decade or so ago that the law would be permitted to come into effect that would supplant the consumer in the determination of satisfaction maximization under the law? It is within this context that some consumer dissatisfaction is emerging and that certain consumer groups might be expected to emerge to bring forth formal complaints of the consumer's loss of the monarchy in the marketplace. It might not be beyond reason to expect the American Civil Liberties Union to represent such a group in the latter's complaining charges that the Constitutional guarantee of the "pursuit of happiness" has been usurped by the State. Only time and the courts under the American system of precedence and trial by jury of one's peers will tell what the future will hold for those who seek to maximize their satisfaction within a relatively free enterprise marketplace.

The regulation and control of the sale of alcoholic beverages has resided, and continues to reside, primarily in each state. This was due, in large part, to the Eighteenth Amendment to the U.S. Constitution which prohibited "the manufacture," sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes. Ratified in 1919, and implemented in 1920, this amendment opened up a period of lawlessness in the nation. The ultimate result was its repeal in 1933 by the Twenty-First Amendment which states: "The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." Thus, the sale of alcoholic beverages became a privilege that had to be granted by the individual states.

The sale of alcoholic beverages involves a substance that is given to deleterious tendency, and the states may regulate or suppress such products, and still not be regarded as having interfered with any inherent rights of U.S. citizens. (*Nevada vs. Rosenthal* 1977) One only needs to drive through different states to encounter the differing laws about sales and purchases of alcoholic beverages. The sale of alcoholic beverages, whether wholesale, retail package, or "pouring" sales, carries with it considerable legal responsibilities. This substance, alcohol, is a unique product in the market place. Despite the appearance that the sale of alcoholic beverages is completely left up to the states, it is not so. Because of the inability of some consumers to control, and the industry to regulate, themselves and their products, drunken drivers are killing over 25,000 persons per year in the United States, injuring over 600,000 more, and costing society an estimated 20 billion dollars per year in medical, burial and other costs. (Strate 1988) How each state directs its alcoholic beverage industry is not as independent as one might perceive. The most recent federal encroachment into the traditionally state-controlled arena is Public Law 98-363. This enactment allowed the U.S. Congress to cut off highway funds to states that did not raise their legal drinking age to 21. These measures were aimed at curbing drunk driving by teenagers. States that did not change the minimum drinking age to 21 would have 5% of their federal highway funds cut in 1987, and 10% in 1988. In *South Dakota v. Dole* (86-260), a Supreme Court case involved South Dakota, Colorado, Idaho, Louisiana, Montana, Ohio, Tennessee and Wyoming all of whom refused to abide by the law and challenged the constitutionality of the law, claiming that the 21st Amendment, which ended prohibition, gave the states the sole right to set drinking standards. The Supreme Court heard the case on June 23, 1987 and held that even in view of the 21st Amendment, the Congress might lack the power to impose directly a national minimum drinking age (a question not decided in this case); however, the Act's indirect encouragement of state action to obtain uniformity in the states' drinking ages is a valid use of its spending power. Following this decision, Wyoming, the last state to change its minimum drinking age, agreed to abide by the law.

The sale of alcoholic beverages is a multi-billion

dollar business and one that can be quite profitable. However, such sales carry with them considerable legal responsibilities and, certainly, legal dangers. It is the dangerous side to alcohol that society has determined to regulate. Pressures are being exerted by groups around the United States who are expending massive efforts directed at the removal of the intoxicated driver from the American highways. This movement, which has been gaining momentum nationally, has had an effect upon the states, their courts and legislatures. The legislation that is enacted is for the protection of society and, therefore, makes it illegal for people who are intoxicated to drive. Such a violation may result in suspension of a driver's license, a fine and/or a jail sentence. One view is that in order to make more of an impact, the drunken driving laws must be toughened. This has occurred across the United States within the last five to ten years. "In recent years, many states have made penalties against drunken drivers much harsher, and numerous organizations have been formed to make people more aware of the drunk driving problem." (Las Vegas Review Journal, 1982) Some examples of these organizations include MADD (Mothers Against Drunk Driving), SADD (Students Against Drunk Driving), and RID-USA (Remove Intoxicated Drivers, USA).

Clearly, the drug of choice is alcohol, for joy or for heartache. One estimate is that there are 12 million alcoholics in the United States. Another study has estimated the loss in revenue because of reduced productivity at \$65.6 billion. Does this mean that consumers must be left alone to their own devices, or poisons? Obviously not. Society has superimposed an involved set of restrictions and restraints on the alcoholic beverage industry, on dispensers of the product, and on the consumers themselves. It is not a joy, though many utilize it at weddings, wakes, promotions, tailgate parties, etc. Indeed, it is still chemically a substance that is a poison, and varying amounts will induce certain negative reactions.

It has become readily apparent that many consumers are unable to restrain themselves, or control their desires and/or to be responsible parties. Despite the states' power to regulate the sale of alcoholic beverages, this power to regulate has also proven not to be as effective as it could be. There has been a movement toward enacting more stringent laws regarding drunken driving. Court cases have also been changing how this should be observed.

State statutes generally indicate that there are restrictions upon purchasers in terms of age. In every state, statutes indicate which is "legal age" or "capacity." Since the passage of Public Law 98-363 in 1987, the age is 21. Additional statutes restrict the sale to, use or consumption by, or furnishing of alcoholic beverages to anyone who is not of majority age. This established, among other things, a "standard of care." In legal terms, this standard of care is termed the "reasonable standard," and that simply means what a group of the same or similar people would do under given circumstances. Failure to observe this common law rule of negligence has been used in the courts of the land successfully time and again to recover damages from the distributors of alcoholic beverages where the one who consumed the alcoholic beverage subsequently caused injury to him or

herself or to third parties. So the standard of care is applied, not only to the person drinking, but is also applied to the distributors of alcoholic beverages.

In this situation, the standard of care says that one does not serve minors and, likewise, serving alcoholic beverages to a person who is visibly intoxicated does not meet the standard. If a bartender serves such a person and if the bartender should have known that the patron was intoxicated or a minor, then the jury may determine that in similar circumstances, it would have refused service, then the bartender (and the tavern) was "negligent." (Rapport 1959)

A variety of statutes exist in the United States. What this paper has described is common law liability based upon the adoption of common law. But there are others, and they have been developed in order to make the people responsible for accidents to be held more accountable.

Alcoholic Beverage Control Laws

One method of control is through administrative agencies. In states that permit the wholesale, retail and "pouring" sales of alcoholic beverages, one will find alcohol control agencies charged with the regulation of such sales, and this is carried out by county-level control boards. The primary control mechanism is the requirement of a license before alcoholic beverages can legally be sold.

In this manner, the issuance of a license initially, and the subsequent retention of it, are subject to initial investigation, close supervision and subsequent investigation by the licensing authorities. Transgressions of the control laws can result in the loss or suspension of such license, plus possible fines.

Alcohol control laws have a variety of requirements that must be met by each license applicant and licensee, including the posting of required notices at the place of sales (New York Alcoholic Beverage Control Law, 1982), the reporting of changes in ownership and management, abiding by the rules that prohibit the employment of minors, and the training of employees in alcohol-awareness programs. Such state and other legal regulations must strictly be complied with or one may face the loss of the privilege to engage in the legal sale of alcoholic beverages. (Strate 1988)

The Development of Dram Shop Statutes

Dram shop laws are relatively recent developments in the area of tort law. One possible means of deterring drunk driving is to impose penalties on the person who sells or provides alcoholic beverages to a driver who subsequently causes an accident. This is done through the "dram act." The first Dram Shop Statute adopted in the United States was passed in Wisconsin in 1849. It required tavern owners to post a bond indicating that they were prepared to "support all paupers, widows and orphans, and pay the expenses of all civil and criminal prosecutions growing out of or justly attributable to...traffic in alcoholic beverages." Indiana passed its own dram shop statutes in 1853; Ohio and Pennsylvania in 1854; New York in 1857; and Maine in 1858. These were passed during the temperance movement, interrupted

by the Civil War and reactivated after the conflict. By the mid-1870's, some 11 states had dram shop liability statutes. Dram Shop acts were named after the word meaning "a small portion of something to drink." Currently, dram shop acts hold servers and owners liable if they sell alcoholic beverages to an intoxicated person who then injures a third party. For example, Arizona's statute reads: "A licensee is liable for property damage or personal injuries or is liable to a person who may bring an action or wrongful death pursuant to 12612 . . ." if a court or jury finds the defendant guilty of selling alcoholic beverages either (1) to an obviously intoxicated person or (2) to a minor.

Dram shop laws place legal responsibility for injury or loss to third persons caused by intoxicated persons upon those who served or sold the alcoholic beverages. In other words, these laws extend the duty of care which the bartender owes to the drinker, to others who are injured by the drinker. In a 1965 law suit, the following statement was made:

"At the time of the enactment of the Dram Shop Act of 1873, the automobile had not been invented and modern highway traffic was a figment of imagination. The rural inn and small town tavern were patronized by the local citizenry or by travelers in horse-drawn vehicles. Today, the hazards of travel by automobiles on modern highways has become a national problem. The drunken driver is a threat to the safety of many, and responsibility of the tavern keeper for contributing to the intoxication of the patron has long been regulated by statute (ABC laws). It is understood that early cases did not recognize any duty of the innkeeper to the traveling public because a serious hazard did not exist. Through lack of necessity, this phase of negligence liability did not develop. However, there did exist general common-law rules of negligence liability based upon foreseeability and proximate cause. Under the skillful interpretation of the courts, it has been adapted to changing times and conditions of our civilization." (Berkeley vs. Park 1965)

Presently, thirty-three states have statutory liability for illegal serving of liquor; 17 states have common law liability; and 11 states have no commercial server liability. (National Alcoholic Beverage Control Association, Inc. 1987) In the last two legislative sessions, at least one-half of all the states have introduced bills that directly impact dram shop statutes, while at least 20 states have amended or enacted dram shop statutes. (Colman, et al, 1988)

Social Host Liability

The most recent form of liquor liability is one called "social host liability." Presently, approximately 10 states have enacted such legislation. Social host liability enacted in Iowa and Indiana has ruled that a social host can be held civilly liable for giving alcoholic drinks to someone who then injures or kills another in a drunk driving accident. The Connecticut supreme court ruled recently that adults who serve alcohol to minors can be responsible for injuries. In this decision, Justice Alfred V. Covello cited legislative support for his decision in a civil suit

against a man who threw a party for 400 high school students. The majority of states have either not enacted social host liability statutes, or, like California, have repealed their enacted laws.

A closely related question is whether the "social host" will have any kind of insurance protection. There has been some discussion that a standard homeowner policy should provide such protection, but there is no agreement on that point. It is certain that insurance companies will oppose any interpretation that places such a burden on homeowners policies. If the courts or legislatures begin to force these policies to assume responsibility for social host liability, it is certain that the costs of homeowners policies will increase sharply.

Alcoholic Awareness Programs

Some states have moved even further along the road of consumer regulation through such programs as education of the problems associated with the sale or furnishing of liquor. Some cities have done so without state urging. These particular programs seem to have found a solid arena for their existence. Madison, Wisconsin was the first municipality to mandate training in 1981. (Peters 1986) Oregon was the first state to pass legislation mandating training statewide for all servers and managers. (Peters 1986)

In 1985-1986, Utah, Maine, and Arizona enacted regulator/ server training programs. In 1987, a number of states introduced server training bills including Texas, Vermont, California, Kansas, Rhode Island, Illinois, Florida, New York and Minnesota. Nevada's entry into educational programs is limited to Clark County and the City of Las Vegas, which enacted mandatory training programs. For example, in Southern Nevada, it was estimated that some 60,000 individuals would be trained in: (1) the clinical effects of alcohol on the human body, (2) methods of identifying intoxicated persons, (3) knowledge of the liquor laws of the state of Nevada, County of Clark and the City of Las Vegas, (4) methods of preventing fights and disruptiveness of the peace, and (5) methods of preventing entry of minors into taverns and preventing sales to and drinking of alcoholic liquor by minors.

The earliest forms of server intervention concentrated upon server training, emphasis on ways of identifying minors and intoxicated customers, and on methods of cutting off service to inebriated patrons. There has been a positive impact on the industry.

There is a rational concern about the point where alcohol is sold or served logically leading to the employee's activities, and not to the consumer's activities, especially where research has shown that one-half of the drunken drivers in the United States did their drinking in a licensed establishment. (O'Donnell 1985)

The time has arrived -- at least in U.S. society -- where the law dictates when a consumer has reached an unacceptable level of consumption, and that is when he/she is in violation of intoxication statutes, particularly when one out of every two Americans drink at a drinking establishment. Every state restricts service to protected categories of persons, e.g., minors and inebriated persons. But, every business may sell, or a person may consume,

until that latter point is reached. While ordinary consumer satisfaction modes are used, this is not an ordinary product. This is a product with legal responsibilities as it is a dangerous drug. How simple this whole thing could have been if consumers really knew when to say when...and would practice it.

IMPLICATIONS FOR THE THEORY OF DIMINISHING MARGINAL UTILITY

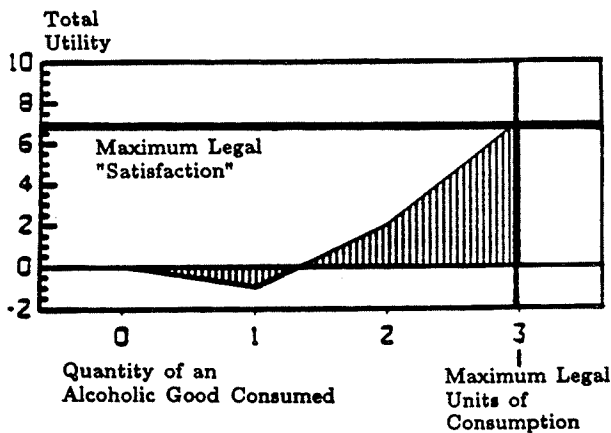
Under the present laws of the United States, maximum limits are being placed on the quantity of alcohol beverages one is permitted to consume in a public and even certain private drinking facilities. Similar to other graphs wherein selected constraints are superimposed, a vertical line appears parallel to the Y-axis demonstrating the maximum legal limit one is permitted to reach per unit of time. Theoretically, that limit will be defined as the maximum amount one will be permitted to consume and still function responsibly should one still have to drive home. Also appearing on the graph is a horizontal line (parallel to the x-axis) demonstrating the maximum legal "satisfaction" one is permitted to enjoy per unit of time. Table 3 and Graph 3 below demonstrate such a superimposition.

**Table 3
Total/Marginal Utility
As Defined By Law**

(1) Quantity of a Good Consumed	(2) Total Utility	(3) Marginal Utility
0	0	0
1	-1	-1
2	2	3
3	7	5

Maximum Legal Consumption

**Graph 3
Total Utility As Defined By Law**



What one might expect to encounter in future public drinking places (if they are not already there) are charts posted on the walls informing patrons of the maximum number of units the law permits them to drink, according to the particular drink such as beer, wine, liqueurs, or other alcoholic beverages, and according to one's height, weight, etc. The patron will then become partially responsible for acting accordingly, but under the watchful eye of the bar tender who has now become an extension of public policy. One might further expect that some enterprising consumers will visit one pub or bar and reach the limit there only to move on to the next establishment and begin anew, unbeknownst to the next bar tender. Perhaps people will begin to behave in the United States as they behaved under Prohibition with behavior of the consumer relatively undetected but still illegal. Who knows? Perhaps the consumer might very well restore his or her claim to the throne? Or perhaps not?

IMPLICATIONS FOR GLOBAL ANALYSIS AND APPLICATIONS

The primary concern within the United States is not the fact that consumers may exceed reasonable limits in the consumption of alcoholic beverages but, rather, that they will do harm to themselves and/or members of society in the process, perhaps not necessarily in that order. Homicide DUI is truly unfortunate because the one who usually receives the greater harm is the victim, not the intoxicated driver. This would hold true for drivers of any motorized vehicle ranging down to but also including small motorized vehicles such as Mopeds. U.S. citizens are so dependent -- by choice -- upon privately-owned motorized vehicles, and, in most instances, public transportation is either not available or available but in such limited supplies. Many major urban centers within the United States have no reliable or integrated mass public transportation network or system and consumers have little or no choice as to their means of transportation but to rely upon their own privately owned and operated vehicles. But in many countries of the world, excellent mass transportation networks or systems are available such as those in London, the United Kingdom; Rotterdam, the Netherlands; etc. Persons who, for reasons known only to themselves, become intoxicated where they might not be able to handle their own means of transportation, are still able to resort to the mass public transportation system(s) available. For such countries or urban centers, these laws might not pertain. Nor would they pertain in countries where urban infrastructure simply has not yet been developed or where ownership of private means of transportation is not wide spread. However, in those countries enjoying rapid economic growth, emerging modern infrastructure, and wealth sufficiently wide spread to warrant the purchase of privately owned and operated vehicles -- as in the case of Japan, South Korea, or certain other Pacific Basin countries -- these laws might well need to be considered. It is, therefore, quite evident that a universal law will not be required but, rather, small pockets of the law will become steadily more necessary and apparent.

SUMMARY AND RECOMMENDATIONS

This paper began with a very brief review of the theory of diminishing marginal utility, moved quickly to a proposed modification in the theory to account for the consumption of alcoholic beverages, and then turned to an analysis of the numerous laws, regulations, legislation, etc., that have been imposed upon the market place in general and the consumer in particular, resulting in constrained consumer satisfaction. Unfortunately, as in the case of many laws and regulations, they are enacted to deal with those who violate their freedom of responsible choice in the marketplace rather than with those who are fairly responsible in their behavior. Unfortunately, these laws and regulations are imposed upon them all. A future might be envisioned similar to those portrayed in books and films in which some "big brother" begins to dictate all levels of satisfaction, not just the few. Laws and regulations have already been imposed in the United States in the area of tobacco consumption, dictating not only the minimum age of the consumer, but also the consumer's access to information (advertising) concerning the product, the price to be paid (effected by so-called "sin taxes"), and where the consumer may or may not be allowed to consume the product e.g., "non-smoking areas," etc. Now the law has turned its attention to alcoholic beverages. Where next? In 1985, the Federal Trade Commission considered whether to impose stringent limits on alcohol advertising similar to those on tobacco, but it decided for the present at least, not to do so.

In a democratic society, legislators constantly debate the issue of how much regulation is too much. In the 1970's, citizens of the U.S. believed that the banking and airline industries were over-regulated. Today, these same citizens may believe that the U.S. has gone too far in the direction of de-regulation. In contrast to consumer attitudes toward alcohol and tobacco products, consumers still choose to strengthen certain regulations such as prohibition of the use of specific products as in the case of hard drugs.

A closely related question is, who is to be regulated? Is it realistic to shift liability, at least partially, from the drinker to the bar tender or bar owner? Will there be more cases where a policeman (and/or the city for which he works) will be liable because he warned the intoxicated person rather than arrest him, only to have the former involved in an accident a few hours later? If a rapist claims he was driven at least in part by looking at pornographic magazines, will the seller of the magazines have responsibility for the rape? Democratic societies seldom arrive at final answers to such questions. They adjust their responses to the times, as the U.S. did in the case of Prohibition, and to societal circumstances.

In the consumer's attempt to maximize consumer satisfaction -- within this growing complicated legal and societal context -- fear and growing reservations might emerge to become critical variables in the consumer decision making process. This alone might have the effect of constraining the level of consumer satisfaction. In turn, this could possibly lead to an outcry reminiscent of that heard during Prohibition as consumers express their complaining behavior against the law rather than against the product.

REFERENCES

- Berkeley vs Park*, 47 Misc. 2d 381, 262 N.Y.S. 2d 290 (Sup. Ct. Otsego Co. 1965).
- Colman, Victor J., and Curtis C. Christy, "Major Legislative Trends Emerge in Dramshop Liability Statutes," *National Journal*, Vol. 10, No. 21, February 1, 1988, p.18.
- Hyman, David N., *Economics*, Richard D. Irwin, Inc., 1989 pp.146-148.
- Las Vegas Review Journal*, December 6, p.13, 1982.
- National Alcoholic Beverage Control Association, Inc., *Alcohol Server Liability*, 7th Edition, August, 1987.
- Nevada vs. Rosenthal*, 559 p.2d 830 (1977), 40-41.
- New York Alcoholic Beverage Container Law, section 65(c) McKinney Supp. 1982.
- O'Donnel, M., "Research on Drinking Locations of Alcohol-Impaired Drivers: Implications for Prevention Policies". *Journal of Public Health Policy*, 6:514-515, December, 1985.
- Penrose, Matt R., *Pots O' Gold*, 1925.
- Peters, James E., "Beyond Server Training, an Examination of Future Issues", *Alcohol Health and Research World*, Summer, 1986, Vol. 10, No. 4, pp.24-26.
- Rapport v. Nichols*, 31 J.J. 188, 156, A. 2d 1 (1959)
- Strate, Larry, et. al., "Alcohol Abuse and the Tavern -The Legal Background", *Hotel and Casino Law Letter*, Volume 4-2, May, 1988, p.1-8.