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The relationship between the public institute of higher education and the student: Philosophical issues raised by current alcohol consumption policies

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THE RELATIONSHIP BETWEEN THE PUBLIC INSTITUTE OF HIGHER
EDUCATION AND THE STUDENT: PHILOSOPHICAL ISSUES RAISED BY
CURRENT ALCOHOL CONSUMPTION POLICIES

BY

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Bachelor of Arts, Keene State College, 2004

THESIS

Submitted to the University of New Hampshire
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in

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7.17.08
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DEDICATION

For my mother, whose support, patience and love have made this endeavor possible. She is the one person upon which the successful completion of this thesis has hinged, and whose guidance is immeasurable.
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ABSTRACT

THE RELATIONSHIP BETWEEN THE PUBLIC INSTITUTE OF HIGHER EDUCATION AND THE STUDENT: PHILOSOPHICAL ISSUES RAISED BY CURRENT ALCOHOL CONSUMPTION POLICIES

by

Sarah B. Drucker

Thesis Director Todd DeMitchell

University of New Hampshire, July 2008

This thesis focuses on current issues in public institutes of higher education (IHE) regarding policy and enforcement of alcohol consumption regulations for students. The unique nature of higher education in which some of the students are not of legal drinking age and some are, and the residential aspect of many public IHEs compounds the issue of policy development and enforcement. The challenge of developing a coherent approach to drinking is viewed through the two lenses of law and philosophy. Specifically, how has the legal relationship between public IHE and student developed and how can selected philosophical inquiries inform such alcohol policies?

Historically the relationship between the public IHE and student was simple: the public IHE acted with the same authority that a parent could act to regulate students' behavior; this relationship was called in loco parentis and was based on the presumption that the public IHE was a special place, where students were privileged to attend, and that the public IHE could make any reasonable policies necessary for the control and development of its students much like a parent controls the actions of
their child. The first portion of this thesis follows the evolution of this relationship from the straightforward \textit{in loco parentis} model, to the modern relationship that has been defined through tort liability, the application of the regulations for contractual relationships, and a demand for respect for students' constitutional rights. Included is a discussion on the nature of the conduct process, and how the application of the parental notification letter to students, now permitted by the Family Educational Rights and Privacy Act, have shaped this relationship. These new guidelines have blurred the goals of the public IHE in policy-making because the public IHE is an academic and educational institution; both society and students look to their universities for guidance and educational experiences. The public IHE is no longer acting in place of the parent. Its relationship with its students became complicated through its legal duty under theories of negligence, the rise of the contractual relationship, and the obligation to protect their constitutional rights.

Under the framework of the relationship as it has been shaped through legal precedent, this thesis addresses three major philosophical perspectives. First there is an exploration of Immanuel Kant's enlightenment theory of reason. Using the categorical imperative and practical imperative as guides, the morality of alcohol consumption policies is used as an analytical tool. Jeremy Bentham's utilitarian principles as applied to social learning theory and deterrence theories in criminology are used to explore if the benefits of current policies are outweighing the negatives. Finally, Karl Marx's philosophy of ideological reflexes is used to explore how the cultural values of one code of conduct match up to the cultural influences of society.

Through the legal and philosophical examinations, it is concluded that the public IHE is bound by legal restrictions to maintain codes of conduct that are not
working for a variety of reasons when viewed through the philosophical lens. These restrictions create inconsistencies in policy and enforcement, and run counter to the predominant culture surrounding alcohol consumption. Public IHEs are viewed as a special place for students to learn and grow, but with the obstacles of prevailing cultural norms and legal restrictions, the public IHE alone will be unable to address the problems associated with alcohol consumption through the use of policy. Law defines the duties and obligations the IHE owes to its students. Philosophical views seek to provide coherence of duties and obligations. An analysis of the convergence of these two structures provides a foundation upon which the public IHE can develop coherence for the pursuit of its special mission. Due to concerns about safety and the prestige of the academic environment, the public IHE cannot simply ignore the risks associated with alcohol consumption, but in conclusion, the public IHE is hindered in creating appropriate and/or effective policies.
THE RELATIONSHIP BETWEEN THE PUBLIC INSTITUTE OF HIGHER EDUCATION AND THE STUDENT: PHILOSOPHICAL ISSUES RAISED BY CURRENT ALCOHOL CONSUMPTION POLICIES

Public institutes of higher education are struggling with the problems of alcohol consumption, both in underage students who consume and those of age who exhibit excessive consumption or provide alcohol to minors. This struggle is heightened by the uncertainty and ambiguity of the role of the public institute of higher education (IHE) in the lives of the students and the community. This thesis examines the evolution of this relationship, which began as a strictly in loco parentis model, and how that relationship has been remodeled in the late Twentieth Century. This change occurred through tort liability, the application of contractual obligations, and greater respect for constitutional rights of students. Through the philosophical lens, it is possible to gain an understanding of the new relationship of the public IHE to the student surrounding the issue of alcohol consumption.

It should first be noted that the issues evaluated here are only discussed as pertaining to public IHEs. Private IHEs have significantly different relationships with students, though there are similarities. In private IHEs, this relationship is more strictly contractual, and therefore less ambiguous. "Under state law, the relationship between private schools and students [is] contractual by nature. Students can file claims for breach of contract when a school violates the contract" (Center for Educational and

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1 According to the in loco parentis doctrine, a parent "may delegate part of his [or her] parental authority the tutor of his [or her] child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, that of restraint and correction, as may be necessary to answer the purposes for which he is employed." William Blackstone, Commentaries Vol. I (1769) p. 453.
Employment Law, 2007, p. 3). This discussion focuses on the relationship between the student and the public IHEs. Is the relationship similar to the relationship between parent and child, especially when it comes to the illegal use of drugs and illegal and/or excessive alcohol consumption on campus?

This thesis addresses various issues affecting alcohol consumption policies in public IHEs. First, there is an examination of the role of the public IHE and a discussion of the legal precedents set for these roles. There will then follow an examination of how this relationship functions in of the codes of conduct used to enforce rules and regulations for students, both in policy and practical application. The Model Code of Conduct will be used as the overarching philosophy for the analysis of the more specific code of conduct at the University of New Hampshire, which serves as an example of the utilization of this philosophy (Stoner & Lowery, 2004). There will then follow analyses of the utility and deterrent capacity of the practices of modern codes of conduct in public IHEs. The morality of such codes will be examined using Immanuel Kant's Enlightenment theories of reason, including a discussion on whether or not current models respect students' capacities to reason. Karl Marx's theory of ideological reflexes will serve as the context for analyzing a specific set of values that the Office of Conduct and Mediation at the University of New Hampshire uses as the basis of that system.

There are many policies at public IHEs that are grounded in moral and utilitarian certainty by society. For example, sexual assault, harassment, weapons, verbal and physical abuse and narcotics are not tolerated on campuses across the nation, and there little debate remains over these issues. Alcohol consumption poses the greatest variety of discussions, as alcohol consumption itself lies in a moral and utilitarian gray area, where
there exists a great deal of uncertainty in society as to how to approach these issues. Alcohol abuse has been deemed unacceptable, and yet its consumption lies in a morally ambiguous state. In conclusion, it will be shown that public IHEs are placed in a position where a limited impact can be made on the alcohol consumption culture in America through policies and procedures at this institutional level, and yet they have been charged with solving the problem, and cannot turn a blind eye to it. It will be shown that the public IHE is limited by the prevailing cultural norms of society, and neither a moral nor a utilitarian argument for the current models will produce the solutions to what is a cultural phenomenon that has landed at the doorstep of the public IHE. Society turns to the public IHE for solutions that the public IHE simply is not equipped to provide. The prevailing culture surrounding alcohol consumption finds expression at the public IHE, leaving the institution with a variety of ineffective tools for managing the problem.

I. Legal Precedents

The Role of Public Institutes of Higher Education

Historically the role of the public IHE was one regarded as separate from, and even above, legal institutions. The public IHE was believed to function best on a standard of consensus and tradition; public IHEs were free to follow any internal regulations the administration deemed necessary and appropriate to running the institution, and received little to no interference from the judicial system. The public IHE was revered, as education was viewed as a privilege, and not a right. The administration had regulatory freedom through a public perception of the sanctity of education, and the special capacities of the administration. This notion afforded public IHEs the ability to
override students' constitutional rights. This relationship functioned in much the same
way that a parent is allowed to limit such constitutional rights as freedom of speech, and
protection against unlawful search and seizure. The following case illustrates that
judicial decisions at the time reflected this attitude of reverence and flexibility afforded
the public IHE. The essential relationship was one of parent (the IHE) to the child
(student). This doctrine of *in loco parentis* was firmly established in the public schools
up to the latter half of the nineteenth century (DeMitchell, 2002), and had characterized
the student/college relationship in higher education.

For example, Berea College had banned its students from entering any “place of
ill repute, liquor saloons, gambling houses,” and other such places. J. S. Gott owned a
restaurant near the university in Berea, Kentucky. Such a ban had a negative impact on
his business as most of his business came from university students. He sued the
university for lost revenues, but lost his case. At that time, the university was afforded
the right to prohibit its students from entering such businesses based on the generally
accepted model that it was acting in place of a parent, guiding the morality of the student
body. The court in *Gott v. Berea College* (1913) held that college authorities may make
any regulations regarding their students' behavior that a parent could make for the same
purpose without interference from the courts, unless the regulations violated existing laws
or were counter to public policy. This case makes it evident that the courts had placed a
particular level of trust in the ability of the administration at the public IHE to make
moral decisions on behalf of the student population, and the court had no intentions of
interfering with this personal relationship.

As seen in *Gott*, court cases brought against public IHEs have helped define the
relationship and obligations the public IHE has with its students. Historically this role was an *in loco parentis* model, where the public IHE served in place of the students’ parents with responsibilities including instilling morals and values. *In loco parentis* is a Latin term that conveys the idea that colleges and universities have a parental relationship with students and act in the absence of the real parents to protect the students’ welfare. Over time, *in loco parentis* suggested the notion that most student problems are quietly handled within the university without involving outside authorities, such as the police (Roberts, Fossey & DeMitchell, 2005).

In the United States, courts recognized the concept of *in loco parentis* through the middle part of the last century (Roberts, Fossey, & DeMitchell, 2005). During this period, the courts did not scrutinize the activities of universities very closely. However, while *in loco parentis* was the most prominent feature of the law in this period, the legal rules of *in loco parentis* were just a feature of an overall system protecting colleges. Courts protected universities by drawing upon a variety of legal paradigms from other recognized areas of insularity. Universities were viewed as part family, part charity, part government, part public and part private.

As time progressed, this relationship changed, and the notions of insularity were attacked. Public IHEs first lost their insularity in the civil rights arena; later the layer of insularity for tort claims was removed. The fall of insularity happened quickly. Universities, like other social institutions, have increasingly been asked to come to the legal system and explain their conduct. This new image views the relationship between student and university as one of shared responsibility and a balancing of university authority and student freedom (Bickel & Lake, 1999). The concept of the IHE owing a
duty to students emerged to counterbalance and eventually replace in loco parentis. Tort liability, contracts, and the constitutional rights of students combined to alter the relationship between student and IHE, though vestiges of the in loco parentis relationship have remained.

**Tort Liability**

A major risk to higher education is exposure to tort suits, in particular suits arising from personal injuries. Broadly defined, a tort is a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. The law of torts is primarily judge fashioned (arising out of court cases) and is grounded in the concept of fault (DeMitchell, 2007). Included under the title of torts are miscellaneous civil wrongs, ranging from simple, direct interferences with the person, such as assault, battery and false imprisonment (all crimes but also actionable as torts) to various forms of negligence. The law of torts is concerned with the allocation of losses arising out of human activities. The purpose of the law of torts is to adjust these losses, and to afford compensation for injuries sustained by one person as the result of the conduct of another. An institution owes a duty to someone if the institution can foresee an unreasonable risk of harm arising from its activities.

“Negligence is generally the omission or failure to do something that a reasonable person would do, or the doing of something that a reasonable person would not do” (Sperry, Daniel, Huefner, & Gee, 1998, p. 1068). Stated more specifically, negligence is defined as a breach of one’s legal duty to protect others against unreasonable risks of harm (Keeton, 1984). The act is unintentional. In order to prevail
in a tort for negligence, the plaintiff must prove the four elements of a tort: (1) there
was a duty owed by defendant to plaintiff; a duty to conform to a specific standard of
conduct; (2) the duty was breached by the defendant; failure to conform to the standard
required; (3) the defendant’s conduct was the actual and proximate cause of plaintiff’s
injury; and (4) actual damage to plaintiff resulted (Roberts, Fossey, & DeMitchell,
2005).

*Furek v. University of Delaware* (1991) highlights an institution’s potential for
liability. *Furek* involved a student who was injured in a hazing incident involving alcohol
use. The university had a policy against hazing, but it was not properly implemented.
The campus police were not properly instructed concerning the university’s policy. There
were formal policy statements and announcements regarding fraternity-related disorder
and danger, but the court found there was an insufficient plan for implementation. The
court determined that the university guided many aspects of student life including
housing, food, security, extracurricular activities and student life. Further, the court
stated students are not solely responsible for their safety simply because they are adults.
Finally, the court held the fact that though students may be adults, this did not make
university concerns and efforts related to student alcohol use inappropriate. Basically,
*Furek* established that a university, when undertaking a duty, must do so properly when
people (mainly students) have come to rely on what the university undertook to do.

Colleges and universities are not the insurers of students’ safety or the safety of
guests on their campuses. Nevertheless, published cases from many states illustrate that
higher education institutions may be liable for injuries sustained on their campuses or
associated with their activities if a court finds the institution owed a duty of care to the
injured individual.

The Supreme Court of Utah succinctly described a college’s duty in Beach v. University of Utah. Beach, a 20-year old student, was severely injured during a geology field trip when she fell off a cliff at night while others slept. The faculty members in charge of the expedition knew she had been drinking before the accident and, in fact, had consumed alcohol themselves. The Utah Supreme Court held that neither the university nor the faculty members breached any tort duty by failing to supervise the student’s conduct, failing to enforce laws and school rules against underage drinking, or refraining from drinking themselves. The Court declared that colleges must not be saddled with unrealistic, unenforceable duties of supervision that undermine the educational goals of an academic institution.

In Peterson v. San Francisco Community College District, (1984), a student alleged that the college was responsible for an attack she suffered by a man hiding in the bushes near a college parking lot. The court concluded in that case, “As a general rule, one has no duty to control the conduct of another and no duty to warn those who may be endangered by such conduct,” but also found that “This case presents the question whether a community college district and its agents have a duty to exercise due care to protect students from reasonably foreseeable assaults on campus.” The college was not found responsible for the claim that adequate police protection was available, but was found responsible for the charge that the harm was presented by the lack of maintenance in the vicinity of the parking lot. Previous threats to students at that location required the college to exercise a duty of care and warn students of the potential risks and dangers associated with that area of campus.
Colleges and universities owe a duty to protect students and others on their campuses from foreseeable dangers. This duty can be breached if the university fails to act reasonably in protecting its students and maintaining a safe campus. Parents are typically not sued by their children for injuries they have suffered because of inadequate care. However, universities and colleges are sued by their students for injuries caused by a lack of proper care. Tort liability weakens the *in loco parentis* relationship.

**Contracts**

The current view leaves public IHEs with the duty to act to take reasonable steps in response to known or should have known dangers to protect those with which the IHE has a special relationship. Concerns for exposure to liability erode the more expansive relationship of *in loco parentis* and tend to replace it with the reasonable person standard of tort liability. Another legal concept that has a prominent role in defining the relationship between student and institution is contract law. “A contract is formed between a student and a university when a student enrolls at the university, pays tuition, and attends classes” (*Behrend v. State*, 1977, p. 620). The contract or quasi-contract is found in the IHE catalog that the student was admitted under. A contract is breached when the one party “fail[s] to fulfill its contractual obligations without legal excuse; and the nonbreaching party suffer[s] damages” (*Garafalo v. Chicago Title Insurance Company*, 1995, p. 226).

The relationship between parent and child is not defined by contract. But, the relationship between student and college is defined, at least in part, by contract. This difference of contract adds to the distance between the IHE acting in the place in the
parent and an emerging relationship.

For example, *Gott v. Berea College* sits in stark contrast to the more recent case of *Bradshaw v. Rawlings* (1979). In *Bradshaw v. Rawlings* the university was charged with negligence for an automobile accident that resulted after a college sponsored sophomore picnic where illegal underage drinking had occurred. Bradshaw was rendered a quadriplegic when a car in which he was a passenger struck a parked vehicle on the return trip from a class picnic. The sophomore class advisor participated in the planning of the picnic and also signed a check, drawn on class funds, that was later used to purchase beer. Additionally, flyers announcing the picnic and featuring drawings of beer mugs were prominently displayed on campus. However, neither the advisor nor any other faculty or staff member attended the picnic. The jury found in favor of Bradshaw and awarded damages against Rawlings (the driver of the car), the college, the beer distributor and the Borough of Doylestown, Pennsylvania.

On appeal, the appellate court, in an effort to determine whether a duty existed on the part of the university, proceeded to examine “the competing individual, public, and social interests implicated” in the case (p. 138). Beginning with the oft-quoted statement that the modern American college is not an insurer of the safety of its students, the appellate court reviewed at some length the changes in the student-college relationship from the days of *in loco parentis* through the change in the voting age to 18 and student rights cases in the 1970s (*Dixon v. Alabama State University*, 1961).

The court found that, as a result of this change of relationship and reallocation of responsibilities, society now considered college students to be adults rather than children. The court concluded that students had no special relationship with their university per se;
if a specific duty of care existed, it would have to be proven by some other special interest or relationship. Therefore, the college could not be held liable for Bradshaw’s injuries. In other words, *in loco parentis* as a controlling doctrine in public higher education, started the slide to an interesting but archaic relationship until recently resurrected.

While a parent could discipline their child for drinking alcohol, with various degrees of success, because the parent believed that the alcohol was harmful, an IHE could only enforce its own regulations as part of its contractual relationship with the student. Considerations for the individual morality of a position that a parent may adopt regarding their child’s behavior are typically not as prominent or possible in the standardizing language of a contract for all students.

In *Rabel v. Illinois Wesleyan University* (1987) a university student was injured as a result of a prank at a fraternity party. While this is not a case involving a public IHE, it does show the impact of what documents constitute a contract, and thus define the relationship between student and institution. One intoxicated student was carrying another student on his shoulders and dropped her. The injured student brought a suit against the university, but the court in that case found that the, “university, by its handbook, regulations, or policies, did not voluntarily assume or place itself in a custodial relationship with its students, so as to impose upon it duty to protect plaintiff from type of injury which occurred.” In the *Rabel* decision, the judicial opinion clearly stated that the public IHE is only placed in a custodial relationship when the public IHE states that this is the nature of the relationship. However, a parent always has a custodial relationship unless it is terminated by the courts, thus furthering distancing the IHE from acting in the
place of the parent.

The IHE, the Student, and the Constitution

In the two previous sections, the discussion focused on how tort liability and contracts have impacted the *in loco parentis* relationship. Both liability and contract concerns have required that IHE's act less like parents. The relationship between student and college becomes more formal, and some may argue less caring or nurturing, less concerned for the whole student. But the realities of liability and breach of contract require IHE's to consider the increased liability exposure to acting like a parent as opposed to acting like an institution with a different purpose and mission than parents.

The third area of law that has moved IHE's away from acting in the place of the parent is constitutional law. Parents do not have to afford their children the protection of the constitution, but public IHEs do. The public IHE must protect the constitutional rights of their students because they are the government.

For example, *Moore v. Student Affairs Committee of Troy State University* (1968), helped clarify the relationship of the IHE with students residing in university property, a student filed a claim that a search and seizure of his dormitory residence in which marijuana was found was unlawful. The right against unreasonable search and seizure is guaranteed by the Fourth Amendment of the United States Constitution. Children do not have a right against the unreasonable search of their room by their parents. The judicial opinion is instructive, it states:

College students who reside in dormitories have a special relationship with the college involved. Insofar as the Fourth Amendment affects that relationship, it does not depend on either a general theory of the right to privacy or on
traditional property concepts. The college does not stand, strictly speaking, *in loco parentis* to its students, nor is their relationship contractual in the traditional sense. The relationship grows out of the peculiar and sometimes the seemingly competing interests of college and student. A student naturally has the right to be free of unreasonable search and seizures, and a tax-supported public college may not compel a ‘waiver’ of that right as a condition precedent to admission. The college, on the other hand, has an ‘affirmative obligation’ to promulgate and to enforce reasonable regulations designed to protect campus order and discipline and to promote an environment consistent with the educational process, (1968, p. 5).

This case determined that public IHEs have the right to enter students’ dormitory residences in the interests of maintaining health and safety on campus, and stated that the student must assume a lack of privacy when residing on public IHE property. However, it is clear that the student possesses a constitutional right even though that right may be diminished because of the special nature of the college dormitory. For example, in a landmark public school case, *New Jersey v. T.L.O.*, the Supreme Court noted that school officials “in carrying out searches and other disciplinary functions pursuant to such policies, such school officials act as representatives of the State, not merely as surrogates for the parents and cannot claim the parents’ immunity from the strictures of the Fourth Amendment” (1985, p. 741). The High Court said that within the special context of search and seizure the school functions as a representative of the State.

Furthermore, the courts have held that public IHEs must protect a student’s constitutional right to due process before a student’s property rights can be taken away (*Dixon v. Alabama State University*, 1961). Parents have no such restrictions. Thus, tort liability, contracts and constitutional law have an eroding effect on the role of *in loco parentis* in higher education. The next section will address the issue of how the recent changes to FERPA may have moved the IHE back towards the status of *in loco parentis*. 

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II. Codes of Conduct

The Public IHE and Conduct Language

As discussed in the preceding section, public IHEs have a contractual obligation to students, and a variety of suits have been filed against these public IHEs by students. The contractual nature of this relationship has led to universities instituting conduct policies and procedures that safeguard against further law suits, and are more specific in nature than they were formerly. The nature of conduct proceedings now follows more strict guidelines, and rights of students are more clearly defined than previously. The Model Code of Conduct provides generally accepted guidelines for conduct proceedings (Stoner & Lowery, 2004). The modern conduct process will be reviewed with the University of New Hampshire as the main example of how a university provides for students' rights within this contractual relationship, as this particular code of conduct closely follows many of the recommendations of the Model Code of Conduct.

In the student code of conduct at the University of New Hampshire, the procedures used in the conduct process are similar to that of a civil court proceeding and unlike that of a criminal court proceeding. The offices that handle misconduct on campuses have undergone a process of evolution in the choice of language used to refer to them. At the University of New Hampshire, the office that handles student conduct cases was previously referred to as the Office of Judicial Programs, though it is currently referred to as the Office of Conduct and Mediation. There has been an effort on many campuses to tone down the language used to refer to such offices, and legalistic terminology such as “judicial” have been removed, and replaced with language more specific to students' roles in the process. This distinction between public IHE conduct

Students are viewed as individuals who have potentially committed a misconduct against the student code of conduct, not as criminal defendants, and the language attempts to reflect the unique position of a university proceeding that is separate from a criminal proceeding. The code of conduct is referred to as a policy, with rules and regulations, not a law, and as such violations of the code are termed violations and are viewed as “misconducts” not criminal acts. It is in the interest of the public IHE, as an academic institution, and not a legal regulating body, to never place itself in the role of “prosecutor” but rather remain as an educational liaison in this relationship.

Students who are accused of violating the student code of conduct are referred to as respondents, and the community member submitting the charge is termed the complainant. The community members hearing a case are referred to as the hearing officer, or hearing board, though they were formerly termed the University Judicial Officer and Judicial Board. This is in contrast to the terms prosecutor, defense, judge and jury where the language implies legal accusation and the need to defend oneself.

Students are not found guilty or innocent of violations, as in criminal cases, but are viewed as accepting or being found responsible or not responsible for violations that may have occurred. The finding of responsibility is based on a preponderance of evidence, rather than the idea that students are innocent until proven guilty. This is similar to the liability finding in a civil proceeding, where innocence is not being assessed. It is the complainant’s responsibility to prove using a preponderance of evidence that it is more likely than not that the student(s) was in violation of the code of
conduct. A preponderance of evidence is regarded as providing enough evidence that a reasonable person would assume that a violation was occurring, and that there is not enough substantial evidence to create a reasonable doubt that the violation did not occur.

It is under this backdrop that the conduct process itself is then defined by measures of due process. Due process is generally regarded as fair, and it is advisable for any public IHE to take care towards providing due process in conduct proceedings, though only a minimal amount of due process is required by law (Stoner & Lowery, 2004, p. 12). In Dixon v. Alabama State University, (1961), the court found that attendance at a university is voluntary and may require students to follow a code of conduct. Because such attendance is voluntary, and students do not have a constitutional right to a higher education, the school can dismiss students as long as the school follows its own internal due process guidelines.

Despite the discretion IHEs have in the use of due process, there exist guidelines for such policies that have been generally accepted as fair. These include,

1) Use of an impartial decisionmaker; 2) providing notice of the charges and the evidence against the student; 3) an opportunity for the student to appear before the decisionmaker; 4) an opportunity for the student to suggest witnesses; 5) avoiding the imposition of sanctions against witnesses; and 6) permitting the student to either voluntarily accept discipline or the ruling of a decisionmaker, (Center for Educational and Employment Law, 2007, p. 15).

Due process, as stated in the University of New Hampshire’s Student Rights, Rules and Responsibilities: Declaration of Student Rights and Rules, is defined as:

“Students are guaranteed the right of fair hearing and appeal in all matters of judgment of academic performance and personal conduct,” (UNH SRRR 2007-2008, p. 7).

The conduct process itself varies between institutions, though they all contain
similarities. University conduct processes afford students due process rights, and offer an explanation of rights for respondents and complainants. For respondents, more basic rights outlined at the University of New Hampshire include, “fair notice of charges,” the knowledge of the name(s) of the names of the person(s) bringing charges,” a formal hearing, a student advisor, the request of an appeal, and “notice of the results of a formal hearing and appeals,” (UNH SRRR 2007-2008, p. 20-21). More specific rights include the right to: “be assumed not responsible until complainant has demonstrated, through evidence, that the respondent more likely than not violated the rule(s) of conduct, remain silent, and an attorney’s council if criminal charges are pending,” (UNH SRRR 2007-2008, p. 20-21).

In practice, this means that the respondents must hear about a charge within a set time frame and know who is bringing this charge against them. They then have the right to settle the charge at an informal meeting where they accept responsibility and the sanctions issued, or the right to go to a formal hearing where a neutral hearing officer or hearing board will make a determination as to responsibility for charges and sanctions. It is the complainant's responsibility to show that there is a preponderance of evidence that the student had committed the misconduct they are being charged with.

Students may choose not to comment on any questions that may be asked of them, and in cases where criminal charges are pending, may have their lawyer present, but only in order to instruct them on when they should not answer questions or might wish not to comment. When choosing to go to a formal hearing, the student has the right to a student advisor, who is a neutral volunteer at the Office of Conduct and Mediation that does not act as a lawyer or representative to the student, but as a guide through the conduct
process, which can be complicated and difficult for students to understand. The student advisor is also there to make certain that the student is given ample opportunity to present his or her case. Once the formal hearing has concluded, the student is notified of the results of the proceeding in writing within 48 hours, though they more typically know the results once the formal hearing has concluded.

Students who have taken part in both the informal meeting and accepted responsibility at this stage and those that take part in a formal hearing, have the right to an appeal. When appealing the decision from an informal meeting, students petition for a review, which can be on the grounds of an inappropriate sanction, the finding of responsibility, procedural error, or new evidence. Appeals are filed for formal hearings under the same guidelines.

The above outlined procedures are typical of comparator schools of the University of New Hampshire, and it is in this way that conduct processes are attempting to promote fairness and equality in the system. Because the process is internal, and not criminal, it is not based on the idea that students are committing crimes and therefore must defend themselves. Rather, the assumption is that students who commit misconducts or are suspected of committing misconducts, must answer to the University community, have an open dialog with the complainant and explain the circumstances surrounding the alleged misconduct.

Alcohol Policy Enforcement Beyond Public IHE Property

The enforcement of policies on campus that regulate and limit alcohol consumption of students over the legal drinking age are clearly in place as safeguards
against liability suits. As long as a public IHE has a policy that clearly states the expectations for behavior of students, the public IHE is not found liable should students fail to follow such policies. In this way, for instance, it has been accepted that public IHEs may limit the quantities of alcohol a person of legal age to consume alcohol may be in possession of in the interests of health and safety within the community. This interest is represented by the contractual obligation of duty of care, but nevertheless, the policy also appears to have the possibility of leaning towards an *in loco parentis* relationship. This is due to the educational nature of the promotion of positive alcohol consumption behaviors, and the deterrence of the possible negative consequences associated with excessive alcohol consumption. These interests cannot be entirely separated from their moralistic and values oriented nature and placed entirely under the contractual obligations relationship model.

If alcohol policies for students who reside in public IHE housing are intended to promote positive behaviors, then the public IHE should extend policy enforcement beyond the students residing on campus in a more consistent manner. This is currently not the case. At the University of New Hampshire, the jurisdiction applies to all students, and yet no one is enforcing alcohol consumption policies far beyond the greater university and local town in which the university resides. In this way, a student living off campus might act in ways counter to the policies outlined in the code of conduct, but be free from the strict regulation of those policies. In contrast, students residing on campus are highly regulated, and at the University of New Hampshire the sanctions that have been determined both appropriate and most common for violations can be severe. Although policies that heavily regulate students' alcohol consumption on campus may be
necessary to protect IHEs from legal liability for student injuries in alcohol related incidents, these same policies intrude on students’ lives in paternalistic ways that defy IHEs claims to educating moral or responsible behaviors.

An example of such alcohol policies are the regulations imposed on the quantity of alcohol any student residing in university housing may be in possession of, or may have open at any given time. The policy at the University of New Hampshire states that, “A legal age drinker may have just one open alcohol container at a time for personal consumption,” (University of New Hampshire Student Rights, Rules and Responsibilities 2007-2008, p. 92). If a student of legal age was to consume alcohol in an off campus location, or to reside off campus, there would be no restriction on the number of alcohol containers that a student could have open at any given time. The problem with this particular policy is that the purpose of it is unclear. Is this policy attempting to teach responsible alcohol consumption patterns, or is it attempting to regulate alcohol consumption for the safety of the community, and prevent underage alcohol consumption?

Another example of an intrusive policy is what has been labeled hosting at the University of New Hampshire. Hosting at the University of New Hampshire is defined as, “having a gathering consisting of one or more individuals who are not the assigned residents of a University Housing residence hall room or apartment where the gathering is occurring,” UNH SRRR 2007-2008, p. 10). This specific hosting violation refers to common sources, defined as, “All common sources of alcohol, including but not limited to kegs, punch bowls, beer balls, or excessive amounts of alcohol in bottles or cases, are

11 Hereafter UNH SRRR
strictly prohibited in undergraduate residence halls and apartments,” (UNH SRRR 2007-2008, p. 23). The violation of the hosting policy can carry severe sanctions. The student code of conduct states that, “The host(s) of such activity will likely receive a sanction of eviction or greater,” (UNH SRRR 2007-2008, p. 23).

The hosting policy applies regardless of the age of the student hosting the gathering, and regardless of whether or not all individuals attending the gathering are of legal age to consume alcohol. In one sense, this might constitute the university accepting an *in loco parentis* relationship with the student, by attempting to teach and maintain appropriate alcohol consumption behaviors. In another sense, the hosting policy limits any liability that might result for the public IHE from actions of students who are injured after attending such a gathering. The student has the obligation to follow the code of conduct at the university attended, and as such this may include regulations on freedoms of choice granted to citizens who do not attend a public IHE.

reside in university housing. When these students are over the legal age to consume alcohol they are at liberty to host any form of gathering they might choose, with as much alcohol present as they might desire. Public IHEs may face contractual or constitutional impediments to extending the reach of hosting policies beyond their on-campus and housing facilities. As a result, hosting policies seem reasonably well suited to protecting IHEs from liability for student injuries, but they appear to be poorly designed to promote the end of instilling “right” behavior.

Parental Notification for Students Under the Age of 21
The Family Educational Rights and Privacy Act of 1974 (FERPA) was originally used as a federal guideline for handling students' educational records. Most pertinent to this discussion is that FERPA made it impossible for any students' parents to have access to any records held by the public IHE without written consent from the student, including academic, financial and conduct related materials. Through FERPA, the student was in complete control of the amount of access and forms of information the student would wish any parent to have access to, regardless of how much or how little financial assistance the student might be receiving from the parent(s). Under these guidelines, it is foreseeable that a student could get into a great deal of trouble on campus, and the parent(s) might be completely unaware of how their student was actually spending the time that should be devoted to an academic career. This would come to an end because in 1995 the Family Educational Rights and Privacy Act was revised to include a clause that allowed for parents of students under the age of 21 to be informed of misconducts involving illicit drugs or alcohol consumption. This clause does not include other misconducts such as illegal use or possession of weapons or sexual or physical assault or harassment. The University of New Hampshire's official parental notification policy states,

The University may notify parents when their son or daughter is charged with a violation of the University's alcohol or other drug policies, including violation of local, state, or federal law regarding use or possession of alcohol or other drugs that are also violations of institutional policy. Only parents of financially-dependent students under age 21 will be notified, unless the student's health or safety is jeopardized, (UNH SRRR 2007-2008, p. 23).

In practice this means that every parent whose child is under the age of 21 and is alleged

13 See appendix for official University of New Hampshire parental notification letter, current as of May 2008
to be in violation of the university’s drug or alcohol policies receives a letter stating that there has been a misconduct involving drugs or alcohol. These letters generally disclose no specifics of the misconduct without written consent from the student. Federal regulations permit the disclosure to a parent regarding a student’s violation of any federal state or local law or of any rule or policy of the IHE governing the use or possession of alcohol or drugs if the student is under 21 at the time of the violation and the IHE has determined that its conduct code has been violated (Family Educational Rights and Privacy Act 34 C.F.R. §99.31 (a) (15)). This regulation does not require the IHE to determine whether or not a student charged with misconduct is in fact dependent on financial assistance from a parent, but rather alcohol and drug notification letters are sent out to every student’s parent(s) upon determination of the age of the student charged with the violation. These letters may be sent upon the determination by an educational official, before a student’s adjudication and appeal rights have been fully exercised. Students may contest their financial independence, but by the time such a claim has been made the notification has probably already been sent out. Consequently, the IHEs who utilize this legislation may well have inadvertently reinstituted in loco parentis, though under the regulations of a contractual obligations model, in which the institution acts as the parent at the college and notifies the other parent at home of the student's/child's behavior. Though this is in part an effort at deterrence, with the assumption being that students would fear a negative reaction from parents, it is also this level of interference with students' actions that causes the public IHE to act in a role that is far beyond the normal basic requirements of a contractual obligation alone.

The parental notification policy is the same for underage students who are
involved in violations of alcohol policies as it is for students involved in violations of
drug policies. Alcohol consumption is illegal until the age of 21, while drug possession,
use and distribution are always illegal. And yet, these very different conduct issues are
treated the same way, and if a student is 21 years or older, their parents are not contacted.
What is it about the age of 21 that the school automatically assumes that the student has
become independent, when at the age of 20 they are still considered dependent on
parents? Through the use of parental notification letters, it can be inferred that students
are expected to be financially dependent on parents until they are 21, but at age 21 they
are then paying their own way.

Parental notification policies have serious implications for the *in loco parentis*
relationship that emerges when policy becomes practice. When utilizing the parental
notification letter, the IHE is taking the responsibility to involve parents and chooses to
acknowledge a moral obligation to involve parents in the lives of their students. But once
a student is 21, because this letter is no longer sent out and parents are not immediately
involved, the IHE must default to the contractual relationship with the student where the
student is mature enough to address misconducts that are a breach of the student code of
conduct. Policies of this nature make the goal of the IHE, and what form of relationship
the IHE is pursuing with the student, unclear. This lack of clarity is enhanced by
regulations that are contradictory, and possibly arbitrary. If the public IHE is required to
exercise a duty of care, and yet can only pursue parental notification for a percentage of
the student population, the public IHE then becomes entangled in the struggle to create
policies that are effective, and permitted under federal guidelines. When public IHEs
utilize the parental notification allowance in FERPA, which they have no obligation to

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utilize, but then must exist under other regulations that speak to contractual obligations, the relationship between the public IHE and the student becomes more ambiguous.

**Philosophical Perspectives and Theories in Criminology**

**Utilitarianism**

The above discussions on the two models of public IHE relationship to the student body, contractual obligations and *in loco parentis*, as well as the analysis of due process and the conduct process, should be taken as a backdrop for the more pressing concerns of what the conduct policies for alcohol consumption truly mean. The ambiguities in the modern public IHE relationship with students have begun to obscure the very problems which alcohol consumption policies serve to address. These issues will be discussed from a variety of philosophical perspectives, including the utility and morality of alcohol consumption policies.

If taken from a utilitarian perspective, the lack of effectiveness, or utility, of any alcohol consumption policy to reach the idealistic goals its proponents have set for it, makes it the wrong policy for public IHEs. In practice, utilitarianism is concerned with two main factors: is a policy effective in promoting the greatest good for the greatest number of people, and does that policy create the least amount of unhappiness for the greatest number of people. Applying this broad idea to the specific terms of alcohol consumption policies in public IHEs, are these alcohol consumption policies effective in promoting or creating lower levels of underage alcohol consumption and legal age excessive consumption, and are the costs of such policies reasonably outweighed by the benefits associated with the policies? This section will examine the utilitarian aspect of
alcohol consumption policies using current theories in criminology on deterrence.

In a 1999 essay in *The Humanist*, Julie Wilkins raised a valuable point regarding the potential nature of policies based on deterrence and discipline. She stated,

If instilling discipline is the aim, then it makes sense to follow the lead of the two most discipline-instilling institutions: prison and the military. Of course, if the aim is to be able to teach students to think for themselves and acquire skills needed to direct their own behavior based on informed choices and personal decision making (something prohibited in both prisons and the military), then maybe we should reconsider, (Wilkins, 1999).

Though she is referencing the use of mandatory uniform policies in public institutes of education at the primary and secondary levels, this is a valid point about the possible outcomes of alcohol consumption policies in public IHEs, and one that has yet to be addressed in the research literature. An alcohol consumption policy may have the desired effect on alcohol consumption on college campuses, but the greater question to be asked is to what end? Are students who attend schools with strict alcohol consumption policies less prone in their lives proceeding the public IHE to carry forward as members of a community that have an overall lowered level of alcohol consumption, or are lowered levels of alcohol consumption simply a means of controlling students that does not bear any significance for them in their adult lives? It is possible to control the behavior of students through policies, but as these students move into adulthood, do these policies prepare them for the realities of a world without such strict regulations?

It is necessary to seriously evaluate the potential harm that might result from students as young people not being granted a practice forum to make personal decisions about alcohol consumption, as once a student leaves the controlled environment, there is a larger community and standards of behavior to uphold that a highly regulated student
might not have experience with.

The Deterrent Nature of the Code of Conduct

Public IHEs have student codes of conduct to regulate students’ behavior, and deter students from conduct that is either illegal, or the academic community has deemed unacceptable for its members. Alongside the precarious and competing in loco parentis v. contractual obligation models, public IHEs have yet another precarious relationship with students; public IHEs are both state organizations and learning facilities. These public institutes have an obligation to uphold state and federal law, just as any other institute of higher education, though often they are more compelled through state obligations to uphold them more strictly. Despite IHEs having a duty to uphold state laws, the enforcement of such policies is not required, as shown in Beach v. University of Utah 726 P.2d 413 (Utah 1986). As a whole, there is a confusing array of methods for dealing with the specific issue of underage alcohol consumption, and as such the goal of these specific policies is unclear.

Methods of Policy Enforcement

Methods of enforcing alcohol consumption policies speak to the utilitarian perspective. The reasons for any regulating institution to enforce, or not enforce, policies is based on an evaluation of the effectiveness of the policies alone, and the benefits and costs of enforcement. The methods of enforcing the student code of conduct are determined by the public IHE, and there is no standardization across institutions for how strictly policies should be enforced or how severely violations should be punished.
Public IHEs have the ability to choose how to enforce policies, and cannot be held liable in a contractual relationship for not enforcing their own stated policies. The simple adoption of a policy makes the assumption that students are expected to follow the policy. The only obligation a public IHE has in regards to its own policies is creating an environment that follows the duty of care guidelines outlined earlier.

Underage alcohol consumption policies provide a good example of this lack of obligation to enforce conduct policy. An institution may have a policy that bans all underage consumption of alcohol on campus, and therefore be upholding and reinforcing state laws. This same institution is not required to sanction students who are in violation of this policy, which is also a law, and how much effort is made to deter students from underage alcohol consumption is a decision that the individual public IHE community makes for itself. One public IHE might in practice go out of its way to find underage alcohol consumption policy violators in an attempt to curtail such activity on campus. Another institution has the discretion to turn a blind eye to underage drinking on campus because the community has decided that it is safer to allow students to party on campus than encourage them to go off campus and enter into potential situations of driving while intoxicated.

Rational Choice and Deterrence in IHE Code of Conduct Policy

Rational choice and deterrence theories provide criminology theories that are based on the utilitarian philosophy in policy creation and enforcement. In utilizing these theories, public IHEs appear to be making an effort at weighing the benefits and risks associated with alcohol consumption policy enforcement. The policies of public IHEs
assume that students are making a rational choice when committing misconducts because the ultimate aim of public IHEs that strictly enforce alcohol consumption policies is that of deterrence. Deterrence theory asserts that people who commit crimes, or in this instance misconducts, are capable of weighing the costs and benefits of their actions in such a way that appropriate punishments suffice to deter potential offenders from committing the offense. Deterrence theory would state that in order for a punishment policy to be most effective, punishment would have celerity, certainty and severity.

Celerity would mean that the punishment must be swift, and therefore occur soon after the misconduct has taken place. Due to the nature of the conduct process in many public IHEs, the hearing for the case where charges of misconduct are brought against a student can occur in some instances long after the original incident. The process at the University of New Hampshire is such that a complainant arranges an informal meeting with a student, which involves scheduling a meeting time, the scheduling of which can be time consuming. Then, if the respondent chooses to go to a formal hearing and does not wish to settle the incident informally, paperwork must be filed and arrangements made for the formal hearing, which also takes more time as more people and paperwork become involved in the process. When the actual hearing occurs, it can be up to a month after the initial incident. The complainant also has up to 12 months to bring charges against a student, and therefore the complainant might choose to wait on scheduling until a more convenient and later time, leaving the respondent waiting, or possibly unawares that charges will be pending at all, (UNH SRRR 2007-2008, p. 14).

Certainty in punishment is also unclear for students. If students knew that they would definitely be caught drinking underage, they might be deterred from committing
such misconduct, but as there is obviously no way of monitoring students every moment of every day, there are always opportunities for underage alcohol consumption to occur. Public IHEs are also not in the role of babysitter, and students are expected to have the ability to follow the code of conduct and IHE policy. It is assumed that students are able to make the rational decision not to violate this policy, and are aware of the implications of their actions when they choose to commit misconducts. It is also possible in many housing situations to have more lenient residence hall staff, who might not enforce policy strictly, or to have gatherings where the students are quiet enough that underage alcohol consumption goes undetected.

The last component of a deterrent policy is that the punishment is appropriately severe for the misconduct committed. The problem with the severity of punishment between public IHEs is the lack of continuity in the sanctions administered for various offenses. Some schools have a policy where a student found responsible for first alcohol offense is given a disciplinary warning and a probationary period, where at other institutions such an offense is grounds to evict the student from housing immediately. Though most students may be clear on how various offenses are generally handled at their public IHE, it is unclear to students why one institution might administer more severe sanctions and another would choose not to, even within the same state. In this way, students might have a perception that one institution is unnecessarily harsh in sanctioning, and another institution is lax.

The punishment can also be unclear and hence uncertain because the university attempts to synthesize competing goals in punishment. At the University of New Hampshire, the goal of sanctioning is generally to include elements of punishment,
education for the student, restitution to the community and a promise that such misconduct will not occur again. For example, a standard sanction for a first offense alcohol policy violation defined as hosting would include eviction from university housing, taking an alcohol education course, writing a letter of apology to the community or people who may have been inconvenienced by the misconduct, and probation. The rationale behind this kind of punishment is to create a well-rounded approach, but in doing so it is unclear what the actual purpose of the sanctioning is.

Students generally feel that all of these elements are punishment, as they are called sanctions and are required. There might not be a recognition of the restitutinal, educational and promissory aspects of sanctioning at all, since all such sanctions can be completed by the student without any individual processing of what the sanction truly means and what the purpose behind any sanction is. The problem with such sanctioning is that although the intentions are just and noble, the application more than likely is thrown into the mix of confusion and frustration a student might be feeling at having sanctions issued at all.

Social Learning Theory: Cultural Influences and Deterrence

Deterrence as an element of utilitarian perspective can also take into account cultural and social influences on alcohol consumption behaviors. Social learning theory states that behaviors are learned through an aggregate of peers, parents, community associations and can include the wider influence of the media. Students are bombarded with social images in the media, and through friends, that show that drinking is a normal activity for college students. Advertisements for alcohol, especially the less expensive
brands that are easier for students to purchase in larger quantities, generally depict younger college-age people consuming the alcohol. It has become so normal to expect that college students will consume alcohol, that in personal experience, sometimes even parents will encourage such behavior. Recently a parent was helping his eighteen year old freshman son move in, and brought the student beer. The parent didn’t understand what was wrong in this situation, and if the parent has learned that drinking is associated with attending school, then that message was presumably given to the student as well.

Another problem with using rational choice and deterrence theory to construct a system of punishment is that the misconducts committed by students have been socially learned, and the misconducts are not considered wrong, but rather have been deemed normal. The students committing the misconducts are not viewing themselves as offenders, and though they know that they are breaking university policy and state law by drinking underage, the law itself is counter to what they have been taught is acceptable behavior. When placed in situations where alcohol is present, and they have been socially taught that it is acceptable for them to consume alcohol underage, there is no possibility for rational choice or deterrence to take effect.

As previously discussed in regards to the conflicting nature of the relationship that public IHEs have to students, in 1995 the Family Educational Rights and Privacy Act included a clause that allowed for parents of students under the age of 21 to be informed of misconducts involving illicit drugs or alcohol consumption (Family Educational Rights and Privacy Act 20 U.S.C. § 1232g; 34 CFR Part 99). Due to the nature of the practices at public IHEs who utilize this allowance, the deterrent nature of the practice also becomes questionable.
One of the intentions of this practice are to involve parents in the lives of their students, and to deter students from misconduct because the idea is that contacting their parents can be more threatening than the idea of some of the university imposed sanctions. This might be true for some, but for others it may not be true at all. The impact of these letters is unknown, and can vary from student to student. Some parents might be very upset about their student’s misconduct and become involved in helping prevent any future misconduct, while other parents might believe that the misconduct is not such a severe problem. With the varying degrees of parental upset that might be caused by the letters, the deterrent nature is uncertain.

The deterrent nature of these letters also would seem only to be effective as a method of preventing recidivism, and only in cases where parents became involved in deterring students from further misconduct. If the parent letter alone might have a deterrent nature to it, there should be a reduction of underage alcohol consumption on campuses that have instituted such a policy. It has not yet been shown that such a policy is entirely effective, and such policies tend to be instituted alongside other deterrent methods, making it difficult to judge which method was actually effective. More than likely, students continue to commit misconducts regardless of whether or not their parents will receive such notification because the issues of celerity, certainty and severity still remain, though this time in regards to the parental reaction to misconduct rather than that of the public IHE.

The Morality of Policy and Practice: Are Alcohol Consumption Policies Moral?

Moral philosophy provides another approach to the analysis of the modern
relationship between public IHE and students. In the *in loco parentis* relationship to students, public IHEs were responsible for instilling moral values in students, and in part do so by providing moral education through the policies and procedures of the code of conduct. The modern code of conduct represents a set of moral guidelines, not simply in upholding the morals and values of society, but also where those policies fall outside the basic upholding of legal standards, such as in alcohol consumption policies for students of legal age to consume alcohol. Public IHEs have the discretion to create policies that are stricter on alcohol consumption behavior than the actual laws. This section will examine the morality of the code of conduct using the Enlightenment philosophy of Immanuel Kant as the basis for examining whether or not the code is respectful of students' capacities to use reason. Kant's enlightenment philosophy concludes that human beings are capable of becoming enlightened through the use of reason, and that morality can be analyzed by whether or not any action, or inaction, is respectful of the human capacity to use reason. In this analysis, the author is also making the assumption that respecting individuals' abilities to use reason is in and of itself moral.

Immanuel Kant provides useful guidelines for the evaluation of morality. One of the tools used by Kant that can easily be used to examine the morality of any policy is the categorical imperative. The categorical imperative states, “act only in accordance with that maxim through which you can at the same time will that it become a universal law;”(Gregor, 1997). This means that an action is morally correct only if it is the right action in all situations, regardless of any outside conditions. Morality is not conditional under these terms; it is not relative to circumstances but universal and applicable to every situation. The categorical imperative states that what is morally wrong in one situation is
wrong in all situations, as well as that what is morally correct in one situation is morally correct in all such similar situations.

For Kant, in issues of morality, there is only one choice; something cannot be both right and wrong at the same time. The sky is blue on a clear sunny day. There is no chance of waking up on any given day and finding that the sky will be green, it is a matter of fact. Moreover, to Kant, this certainty can be applied to morality as well as observable phenomena.

A moral relativist would try to counter with the notion that what might be morally correct for some, might be morally incorrect for others. A relativist would argue that there is no right or wrong, it is all subject to matters of taste, cultural convenience and personal, societal and religious indoctrinations. A moral relativist would argue that there is no real truth. However, the relativist argument is in and of itself disprovable by its very assertion that there is no truth. To state that there is no truth is claiming a truth - the truth that nothing can be true. This is a completely irrational approach to moral values. Of course there is a truth, just as the sky is blue there is right and wrong. If public IHEs are upholding a law that states that underage consumption of alcohol is not moral, and takes on the responsibility to teach students these values, the public IHE must not be ambiguous or relativist in its approach to alcohol consumption policy and policy enforcement.

According to Kant, because we are enlightened beings, it is our responsibility to act upon what we know to be the truth. When applied to the issue of alcohol consumption policies at public IHEs, the question then becomes, are alcohol consumption policies the correct policies in all situations at all times? Are these alcohol policies
respectful of students' capacities to use reason? The problem here is that, as previously discussed, society remains ambiguous about this particular moral question. Public IHEs want to treat students as adults who have entered into a contractual relationship, while at the same time takes on responsibilities that possibly subvert students' capacities to make personal choices, even when the law itself might allow the individual student to make those choices in other situations.

The use of discretion in the code of conduct at various levels of conduct enforcement and hearings for cases can lead to violations of the categorical imperative. For example, the University of New Hampshire has a set of standard sanctions for alcohol policy violations, though at the same time hearing officers are permitted to use reasonable discretion when issuing sanctions. It is partly this discretion that keeps this particular university from having a zero-tolerance policy towards alcohol consumption, combined with the fact that the University of New Hampshire does not issue the most severe sanctions possible for every occasion of alcohol policy violations. But this discretion also leaves open the possibility for students who are in similar situations to receive different sanctions based on mitigating factors in the case. In fact, those in the position to bring forward cases may exercise a great deal of discretion. In university residential housing, such discretion is usually afforded to the residential assistants or residence hall directors. Due to this discretion, the policies may be enforced differently by different staff members, and students may or may not be brought forward based on personal evaluations of their overall character.

The categorical imperative also places new light on both the in loco parentis relationship model and the contractual obligations model for public IHEs where these
relationships would lead to policies that infringe on and even diminish students' legal rights. Though alcohol consumption is not a constitutional right, in states that have made the legal age for alcohol consumption 21 years, policies that inhibit students' legal rights to consume alcohol under those laws are contradictory. Students are taught by society that they will be allowed to consume alcohol at the age of 21, and yet many schools, including the University of New Hampshire, place strict limitations on the use, possession and consumption of alcohol of these students. Using Kant's method, this would mean that one or the other of these situations is incorrect – either the law is moral or the policy is moral, but it cannot be both. There might be an argument against this analysis that would state that the student at the university is not the same as the individual outside of the university, but this argument is relativist in nature.

Another of Kant's guidelines that can be used for evaluating the morality of policies is the practical imperative, which states that people must “Never treat someone merely as a means, but rather always as an end.” (Gregor, 1997). Alcohol consumption policies also violate the practical imperative, which becomes a more complicated issue when dealing with students, who are at a pivotal juncture in their development. What this means is that people should not be treated in a way that uses them for their functional properties alone, but treat them in a way that honors them as dignified and rational agents deserving of respect, regardless of the outcome of such treatment. The problem with current ideas of justifying the use of strict alcohol consumption policies is that it is fundamentally utilitarian in application. The only reasons such strict policies have been used is with the goal of treating students as a means, and not an ends. The ideas behind alcohol consumption policies are to maintain order on college campuses, prevent liability
issues, and deter students from negative behaviors later in life. According to Kant, this treatment is immoral, because these policies only exist to perform a function – these policies exist to better the goals of the public IHE. The students' have an inherent dignity that should be respected, and they cannot be used in this way, as nothing more than a tool to incorporate order.

Another issue raised by this violation of the practical imperative is that there are other options for addressing alcohol consumption problems, creating a safe academic environment and teaching students acceptable alcohol consumption standards that they can then take with them into adult life. Stricter alcohol consumption policies have generally been used in conjunction with other community based education and alcohol consumption related programs, such that it has been shown, as mentioned previously, that it is not the alcohol consumption policies at public IHEs that have an effect on the alcohol consumption culture, but other community based actions that take precedence in shaping a new alcohol consumption culture. Hence, it is not that educators and policy-makers have been backed into a corner and are out of options for any other possible alcohol consumption policies they might use; they can make the rational decision to treat students as a means in lieu or in conjunction with other policies and reforms that do honor students' dignity. The problem under the current model is that the public IHE is now placed in the role of unlearning what students' have learned through a lifetime of social and cultural norms and values being instilled, many of these conflicting. It is not the public IHE who can make up for these years of learning if society demands change, the change must occur at the societal level with a lack of ambiguity about the role of alcohol in the culture.
When are Students Capable of Reason?

The problem with using the practical imperative, that individuals capable of reason should never be used as a means, is that there is no bold line drawn as to when students should be treated as dignified rational individuals, and when they are too young to be any more than what their society is shaping them to be. Proponents of strict alcohol consumption policies at public IHEs are implying that students are not rational beings until they leave the public IHE and are completely free to make individual choices, while proponents of more lenient or flexible alcohol consumption policies are placing the age of reason at an undefined point in time between secondary education and higher education, and at the same time potentially placing the academic community at greater risk for alcohol related misconducts.

If students are allowed to experiment with freedom of expression in primary and secondary education, operate motor vehicles around the age of 16, and both join the military and vote at the age of 18, at what age is it appropriate to allow students freedom to experiment with alcohol consumption? Many of the above examples involve the use of a great deal of reasoning abilities, so why is it that alcohol consumption is restricted to the age of 21? It is legally accepted that individuals in this country can be held legally responsible for their actions at 18 years of age, but could that age be arbitrary, and worse yet, could that age be too young? If a 17 year-old high school student is considered incapable of rationalizing, what makes an 18 year-old college student so much different? And, if college students are not capable of rationalization, why would a 22 year old graduate be capable of such reason? Why not ban alcohol consumption completely,
although history has shown that was a failed effort? Or, should we simply weed out those who we find incapable of rationalizing, and restrict only those individuals? We could possibly restrict only those people at a risk of making a bad decision, which might mean that minorities in urban centers who have lower socioeconomic status might never legally consume alcohol. Though this may be discriminatory, maybe it does not matter because they might not be capable of rationalizing either, and in the interests of keeping society safe, it might be a good idea to prevent alcohol consumption to prevent crime on a societal level.

It is hoped in the use of this extreme example, when taken on a more societal level, exemplifies the problem inherent to the alcohol consumption laws, and therefore the policies at public IHEs, when applied to university level students. There is no concrete age to define when a person becomes capable of rationalizing and using reason, and it is a possible predicament for society to address – that the laws surrounding many of the privileges afforded citizens might be arbitrary. Some people may never have the ability to use reason, but a society that assumes that its citizens are not rational beings is a very restrictive and discriminatory society at its core.

What this has been used to show is that rationalization is a process, it is not a state that can be defined by an exact age, nor something that an individual simply wakes up one morning and rolls out of bed with. Reason is acquired, and the proper use of such reason is a process that requires education and the ability to make the choice to use it, or not use it. It is the responsibility of the community and the academic environment to teach students how to use reason to make decisions, and grant them the opportunities to exercise such reason. The current ambiguous relationship of the public IHE to the
student only serves to make it abundantly clear that society needs to address alcohol consumption on a cultural level, not simply drop the problem into the hands of the public IHE.

Values in the Code of Conduct: A Marxian Analysis

In concert with the complicated relationship to students the public IHE must maintain, public IHEs must choose values to base their policies and procedures upon. It is not required that these values are stated directly, though each institution should take care to address values. At the University of New Hampshire, the Office of Conduct and Mediation overtly states that the values used as the basis for the University conduct system are community, fairness and responsibility. This section will address these values as issues of cultural influences from a Marxian perspective, though will remain guarded in attributing such values to capitalism alone. Marxian perspective offers a compelling argument for cultural influences, even when taken out of the strict sphere of an economic analysis. It is doubtful that holding these values is purposefully instilling the values of capitalism, but the economic system may play a large part in shaping cultural values. This analysis is based on the author's assumption that capitalism - and in fact any economic system - plays a large role in defining the culture, and therefore the values of a society. It is in this way that this analysis is addressing the dichotomous relationship between alcohol consumption policies and cultural values; this sheds further light on problems that arise as public IHEs address alcohol consumption, which is a cultural phenomenon, through policy.

The philosophy of Karl Marx states that every superstructural element of society,
for example the education system, the criminal justice system, the prison system, each of these individual superstructural elements is a supporting element of the structure of the economic system. The economic system is the overarching system, the structure, that every other system supports. This support exists in a variety of ways, but the most fundamental of these supporting roles of structural elements is in the indoctrination of the citizens into the values and beliefs that most benefit the economic system. These values and beliefs are all inclusive: they are not simply the overt ideas of wealth, power and industry, but as fundamental as the basic principles of freedom, equality, and morality. According to Marx, all values that the citizens hold are functions of the economic system, labeled ideological reflexes.

In his Materialist Conception of History, Marx states, “Life is not determined by consciousness, but consciousness by life,” (McClellan, David., 2000, p. 181). This sweeping statement encompasses the totality with which Marx philosophized that the indoctrination into the economic system leads to; human beings are no longer capable of creating values, but the values of society are reflections of the values necessary to the perpetuation of the economic system. “The same men who establish their social relations in conformity with their material productivity, produce also principles, ideas, and categories in conformity with their social relations,” (McClellan, David, 2000, p.220).

If Marxist philosophy is to be accepted in its entirety, then there is a valid counter-argument that potentially we, as human beings, are capable of reasoning ourselves out of the belief in our own ability to reason. If all ideological reflexes are nothing but methods of enforcing the superstructure of economics, then any analysis or critique is inherently indoctrination in and of itself. This poses a broader range of frightening possibilities in
any discussion of ideological reflexes. Therefore, if human beings are capable of reason, then these ideological reflexes are best viewed as influences, rather than means of total indoctrination.

It is undeniable that the economic system does influence the values of any culture. For example, history has shown that individuals living under a communist system place higher value on the success of the group, as opposed to the success of the individual, such as in China. In contrast, individuals living in the United States, under capitalism, value personal success and individuality. These values are elements of the economic system, and are ingrained in the cultural fabric of each of those societies. For Marx, these values represent the ideological reflexes of the society.

One institution that instills these ideological reflexes is the public IHE. Though a vast amount of time can be given to studying the beginnings of ideological reflexes in the earliest years of education, including the tenets of meritocracy, competition and intelligence, the system continues to instill values in its students even at the highest levels of education available.¹⁴ This would seem so counter to the idea that those attending institutes of higher education are independent agents capable of reason and rational choice, but reason and rational choice fail to address how it is that different cultures produce different values. It is in this shortcoming that reason and rational choice may fail to address the alcohol consumption culture, and the problems that have arisen with underage and excessive alcohol consumption. Problems with alcohol consumption may not simply be attributed to poor decision making, but may also speak to the cultural

influences that effect students’ decisions.

As students choose to attend public IHEs, the values of merit, competition and intelligence are still being taught in the classroom structure, but a unique dynamic emerges. In many public IHEs, the institution has been charged with the task of maintaining the safety of the university community. The communities are not simply places to spend a few hours a day and attend classes, but are places where the student body also lives. Because the academic environment may also be a housing environment, values that are beyond the scope of education alone are taught.

Through its own declaration, the conduct system at the University of New Hampshire strives to create a conduct system that emphasizes community, fairness, and responsibility. In using the ideological reflexes of community, fairness and responsibility as the basis of the conduct system, the system itself becomes a mechanism for promoting basic and fundamental cultural values. These particular values, when viewed critically, contribute to a lack of clarity within the system. The more specific code of hosting at the University of New Hampshire poses the most direct threat to these values. The University of New Hampshire defines hosting as, “...having a gathering consisting of one or more individuals who are not the assigned residents of a University Housing residence hall room or apartment where the gathering is occurring,” and the specific violation of this policy is listed as, “Hosting a gathering where prohibited drinking has occurred/common sources,” (UNH SRRR 2007-2008, p. 10, 12).

The Office of Conduct and Mediation describes community as the following,

*Community...a unified body of individuals; an interacting population of various kinds of individuals in a common location; a group of people with a common characteristic or interest living together within a larger society.*
All students come to the university for academic and social experiences that will teach them valuable lessons about being part of a community. Students learn that an individual’s behavior often affects the well being of others in the community. Our community expects civility and respect at all times, while upholding an individual’s right to engage in meaningful debate about ideas. Our community created and adopted the Student Code of Conduct, which sets the standard for behavior, (http://www.unh.edu/ocm/philosophy.htm, 2008) [emphasis added]

This notion of community is based on the assumption that when groups of people come together with similar interests and goals, they are automatically members of a group of people who are linked in values and expectations, hence limiting the individuality of each member. In fact, people may be grouped into a community simply by physical proximity, and therefore, though they may be vastly different in cultures, values, and beliefs, these proximity communities may serve to limit the individuality of its individual members. In limiting the individuality of the specific members, the notion of community gains an authority to ostracize those who violate the code of conduct and hold them in contempt as deviants from the will of the community expectations. Due to the tenuous role of the public IHE, there is a necessity to emphasize the role of the student as a member of the community.

The Student Rights, Rules and Responsibilities at the University of New Hampshire emphasizes the student's role as a community member in many instances, and in fact this notion of community is fundamental to the code of conduct. In the opening letter of the Student Rights, Rules and Responsibilities, the Vice-President for Student and Academic Services states, “Of course, as with any community, we do have rules to guide you,” (UNH SRRR 2007-2008, p. 1), while in the Civic Standards of the University of New Hampshire and the Town of Durham, it is stated,
“A sound community is based on the principles of respect for individual integrity, respect for individual rights, responsible stewardship in the care of the physical environment, respect for law, and cooperation and service. All members of the community should make a conscientious effort to live by the following standards based on these principles,” (UNH SRRR 2007-2008, p.3).

This standard then goes on to express ways in which the community members are expected to exhibit this respect. In its emphasis on the academic environment as a community, the institution attempts to teach the guiding principle that when the student leaves the academic community, that same student has those same community obligations to society at large. Public IHEs use the code of conduct and conduct systems as methods of indoctrination into the ideological reflex of community, mainly through the emphasis on personal responsibility and community responsibility that will be discussed later.

Though hosting is but one example of a policy that protects the community against excessive or illegal alcohol consumption, every policy in the code of conduct speaks to this notion of community. If the code of conduct is teaching students about responsibility to the community, the necessity to be respectful of others, work collaboratively, and maintain order, what is the academic community but a model of the cultural environment that students will enter upon leaving the university?

Through the use of the hosting violation, the University of New Hampshire holds students accountable for the community space that they live in, the activities held therein, and the actions of the individuals invited into that space. The hosting policy holds students accountable for holding events that include other violations of University policy. It also serves as a reinforcing policy for other “misconducts” that are viewed as less severe in and of themselves, such as small quantities of underage drinking. The
University of New Hampshire has expressed concern about high-risk alcohol consumption practices for all members of the student body, of age or not, and the hosting policy is a means of community reinforcement of the community concern for that particular behavior.

The hosting policy is in many ways ineffective in upholding the standard of respect for community, as this value is lost in the individual student's concern for themselves. This concern arises out of the severe sanctions that may accompany a finding of responsibility for hosting; if found responsible for violating this policy, the student may face eviction from university housing as the sanction. This sanction is entirely punitive. It could be argued that the experience of eviction and being held responsible alone might serve educational purposes as the student reflects on the situation, but it does so while ostracizing and removing that student from the residential community. Eviction can be sanctioned in conjunction with other more clearly educational sanctions, but the student is so overwhelmed with coping with the more punitive sanction that any educational value can be lost. In this way, the ideological reflex of community is lost in implementation, as the university simultaneously emphasizes community and hinders students from meaningful involvement in that community.

The Office of Conduct and Mediation defines fairness as the following,

Fairness…free from favor toward either or any side; elimination of personal feelings, interests or prejudices so as to achieve a proper balance of conflicting needs, rights or demands; equity.

Our system is designed to respect the rights of students, and to provide a fair process for resolving allegations involving student misconduct. Fairness mandates
that the judicial system safeguard the *due process rights* of accused students. “Due process” ensures that the student’s constitutional rights are protected and requires the decision-maker to *weigh carefully the interests of the accused student as well as the interests of the community*. Students are always afforded written notice of the charges and the identity of the complainant, an opportunity to present his/her story, and a guarantee that no disciplinary action will be taken unless the complainant proves by preponderance of evidence that the accused student is responsible for the charges. Understanding due process principles enables us to *act justly while upholding the community's expectations and standards of behavior*, [emphasis added](http://www.unh.edu/ocm/philosophy.htm, 2008).

In the above definition, fairness is defined as protecting the due process rights of the accused student, and also makes the assumption that fairness includes a defense of constitutional rights. But this is all based on assumption: is affording due process truly fair? What is fairness under this definition?

The above definition begs the question, are fairness and justice equivalent? For a comprehensive examination of the terms justice, fairness and equality, and the interactions between these terms, see John Rawls' work entitled “Justice as Fairness.” Rawls' analysis includes a discussion on how equity in treatment can be morally just, and how inequalities can be just if those inequalities are beneficial to all affected by the inequality. In his examination, which applies directly to the above definition of fairness, there remains a gap in the applications of both terms, as he can only rectify inequalities through utilitarianism. In the above definition of fairness, and as this definition is used, an application of justice would hold that the appropriate outcome occurs in every individual case, which is based on philosophical morality. Concurrently within this definition, the application of fairness would hold that all cases that are of equal merit are treated equally; in doing so, it is possible to treat an individual unjustly for the benefit of...
The other issue raised by the above definition is: fairness to who, the student or the community? The statement above reflects a desire to be fair to both the individual student and the community, providing a balance between the two interested populations, and yet, what is best, ideal or fair for one of these parties is not necessarily equally so for the other. In attempting to provide a definition of fairness that emphasizes fairness as a balance of interests, this reinforces the cultural value of community. The students are taught that they should feel as though they were treated fairly because their interests were taken into account in the conduct process, and the simple act of considering and balancing those interests, in the above definition, negates the potential for the actual outcome to stand completely in favor of the community position.

In the context of the hosting policy at the University of New Hampshire, the policy itself is viewed as just, and the act of punishing for violations of that policy is then just so long as the punishment is distributed equally across all similar cases. The problem with this practical application of fairness is that the punishments sanctioned for the violation of the policy might not be "just" under this definition, but if this unjust punishment is given out equally, it can automatically be construed as fair. In this definition of fairness, the value of community provides insulation against attack and a rationale for discrepancies in individual situations and outcomes. In this way, the entire system can be fair-just, and the public IHE can insulate itself from the attacks from individuals who feel slighted by the system, those who are not thriving under it. These individuals can be viewed as mere inconsistencies, but not representative of the whole.

In the hosting policy, students who are in violation of this policy may face
eviction from residential housing, but this is also not a guarantee. It is not definite, and allows for discretion on the part of hearing officers, who determine responsibility and sanctions for potential violations of the code of conduct. Discretion allows the hearing officer to hear the student's side of the story, and make a judgment as to whether or not eviction is warranted. The basis for warranting eviction is also a balancing of standardization. The university cannot actually hear each case on individual merit alone, and determine sanctions only on the individual merit of the student involved; a certain care must be taken regarding fairness as equality, which dispenses with fairness as justice. This leaves a great deal of room for students to feel condemned by the institution, while at the same time the institution emphasizes that the individual student is responsible for those actions. This creates a tension of unclear messages, and attempts to teach students that they are individually responsible for their actions. This view of individuals being unable to justify their circumstances as anything beyond their personal control leads directly into the ideological reflex of responsibility.

The Office of Conduct and Mediation defines responsibility as the following,

Responsibility...moral, legal, or mental accountability; trustworthiness.

The judicial system teaches students about choices and consequences. When students make choices to violate the Student Code of Conduct, they must accept responsibility for their actions. Our system requires honesty - an honest explanation of the incident and an honest acknowledgment of responsibility. As members of the community, we must be willing and able to hold one another accountable for unacceptable behavior, (http://www.unh.edu/ocm/philosophy.htm, 2008) [emphasis added]

First, it should be mentioned that this author finds the use of the term “trustworthiness,” in the above definition of responsibility to be incorrect. To be responsible for one's actions does not impart an inherent inability to commit deceits, lies
or other misrepresentations of the self; it only connotes the ability to accept accountability for those actions. Being accountable for an action does not mean the action was not deceptive. Due to those inconsistencies in the above definition, the notion of trustworthiness shall be overlooked in this analysis.²⁰

As previously discussed, this level of responsibility is not only for the individual to be responsible for herself and her actions, but is a reflection of a responsibility owed to the community and the community standards. When discussing responsibility in the above definition, the key buzz words of responsibility as a form of accountability are referenced: choices and consequences. In the cultural environment influenced by the capitalist system, personal responsibility makes an individual accountable for their success and for their failure. As much as one might claim they have succeeded due to their own personal achievements, all failures must too be taken into consideration.

Under a Marxist analysis, personal responsibility loses all meaning, and any system based on individual accountability is based indoctrinations into the economic system. Any economic system that requires adherence to the idea that every person makes a choice based upon free will to succeed or fail, must also have a judicial system that holds individuals accountable, and hence a conduct system at the level of higher education that mirrors such indoctrination.

With the hosting policy, students are held accountable not only for their own actions, but for the potential actions of others. A student might presumably host a gathering where no alcohol is intended to be present, but due to the unforeseen actions of

others, alcohol might be brought into the situation. This policy requires every student in that situation to act in an assertive manner and have the alcohol removed from the environment immediately, though the alcohol might be present without any knowledge on the part of the host. Is this then teaching personal responsibility or is this teaching that no matter what a person does, they are held accountable for circumstances out of their control?

Through this analysis it has been shown that the fundamental values held by the office charged with the responsibility of administering the code of conduct at a mid-sized public IHE can be analyzed as representations of the cultural values of a society. It does bear mentioning that one should be mindful of the level of criticism given to such ideological reflexes, for it does not seem possible to organize any group of people under any conditions and institute a standard of behavior without such values as community, fairness, and responsibility. A system that lacks these core values appears to be lacking efficacy, and ultimately legitimacy, as any such system must be accepted by those who are ruled by it. It is very easy to wave criticisms at these values, and analyze their origins, and yet it is undeniable that they speak to both the utility of a system as well as the morality.

For an alternative view of how students might selectively internalize the values taught by institutes of higher education, Bayo Ninalowo offers an interesting analysis that proposes that institutes of higher education might also serve to subvert generalized cultural values by providing both a platform and the proper tools for critically analyzing the culture. This particular argument lends itself to a larger discussion of institutions of higher education and the responsibilities of such institutions to instill any moral values at
all. Indeed, it seems apparent in the Kantian sense that a particular function of the university as an institution might be subversive in many ways, as it is an institution that promotes the cultivation and utilization of reason, (Derrida, J., Porter, C., & Morris, E. P. 1983, pp. 3-20). In turn, any analysis of ideological reflexes as presented by Marx also presents the difficulty that his philosophical perspective is one of totality; there is no thought outside of ideology. This would make any analysis by any author subject to the author's personal indoctrinations into the very ideological reflexes under criticism, and hence presents the problematic void in Marx's argument where any critical analysis is potentially invalid, (McClaren, 1988).

Underlying this critique, the reader should know that the author possesses a healthy skepticism of any judicial or judicial minded system, in education and beyond, that fails to recognize the fundamental values of community, fairness and responsibility in its construction. Though they may be used to perpetuate the superstructure of capitalist ideology, it remains unclear that these values are not of worth to society despite this tendency. This potential for worth leaves this author wondering if it truly matters that the values can be used for capitalist purposes, or where those values came from, so long as those values also contain within them the positive potential to also be used in the creation of a more just system. It does not seem that actually having values to base a system on is inherently wrong, because any system must base itself upon something, and a system lacking values lacks unification.

The Future of Alcohol Consumption Policies at the Public IHE

Because underage alcohol consumption is a socially learned form of acceptable behavior, the public IHE is powerless to institute methods of deterrence that will ever be entirely effective. The real power lies in society's communication of values and students' perceptions of what is normal behavior. Just as the values of community, fairness and responsibility are honed, not created, at the public IHE, so such norms of alcohol consumption should be approached with societal reform. Through the application of utilitarian principles and moral philosophy, this author posits two possible methods for discouraging underage alcohol consumption. The first method is more radical in approach, while the other involves a great deal of time, effort, energy and money. In this way, the first approach appears to be the more obtainable, though the second approach might appear more desirable; both present the possibility for solutions to what is a societal problem.

The first method would be to reduce the legal alcohol consumption age to 18 nationwide, as it formerly existed. In this way, the public IHE will have the ability to institute more uniform alcohol consumption policies on campus for all students, and clarify its relationship with students. If society has generally accepted that people under the legal age to consume alcohol will be doing so anyway, and in fact generally seems to either promote such behavior or be willing to turn a blind eye to it, then the amount of time, effort, energy and money being used to enforce campus policies, and the law in general, would be greatly reduced. A moral basis for why this law exists as it does currently proves precarious, as it assumes students lack the capacity to address issues of morality. More conservative factions might prefer to keep the drinking age where it is, but the general public would benefit greatly from its reduction, both in utilitarian and
moral implications.

The second method would be to attempt to undertake changing society's view of underage alcohol consumption, or alcohol consumption at any age, and in some manner instill the idea that it is wrong and unacceptable behavior in students from an early age. There could be programs educational programs for students starting at a very young age that focus on the dangers of alcohol consumption. The media could be more highly regulated to stop advertising alcohol to a younger audience. The perception of the "positive" effects of intoxication could be diffused systematically throughout society, and in some way maybe public perceptions might shift. This seems an unlikely circumstance, and the underlying problem with this method is that it still lacks the fundamental ability to explain why underage alcohol consumption is wrong. If consuming alcohol comes with such great risk, why is it acceptable for people over the age of 21 to take this risk, and not those under that age? There is still no explanation for the fact that people are allowed to vote, serve in the military, purchase cigarettes and pornography at the age of 18, and yet are not allowed to make an informed decision about alcohol consumption.

Because both of these methods are societal methods, this appears to leave any public IHE in a predicament as to what kinds of policies to institute under the current legal restrictions, and how to enforce them. The key for the public IHE as it currently exists, is that it simply must have a policy in its code of conduct in order to be in line with state law, but the enforcement of alcohol policies, and the philosophical approach to alcohol consumption, still lies in the power of the public IHE. It might be more to the benefit of any institution to have a basic policy against underage alcohol consumption so as to cover itself against any negligence suits, and yet choose not to enforce such a policy.
very strictly, or highly regulate students who are otherwise legally permitted to consume alcohol without strict regulation. Public IHEs are not limited in decided how to enforce the policies, but are simply required to have a policy

The attempts of public IHEs alone to control students' behaviors in regards to alcohol consumption will always be fruitless. Deterrence is a hefty goal for any public IHE when ideas about alcohol consumption have been so ingrained in students' minds, and society's at large, that the policies created run counter to what is considered normal and acceptable behavior. The ideas about alcohol consumption have been learned through a variety of social methods, and though it is possible to address public perceptions of alcohol consumption, this solution does not begin at the public IHE. This makes deciding an alcohol consumption policy for any public IHE a difficult task, but the easiest solution would simply be to maintain a strictly contractual relationship with students, and provide only basic contractual duty of care that does not tread onto the shaky ground of instilling values about alcohol consumption.

If taken from another perspective, as a purely utilitarian policy, the practice of instating and enforcing such strict policies could be abandoned and more community and society based agendas to obtain these goals should be explored. This argument hinges on the lack of substantial evidence that strict policies and enforcement have any impact on student behavior. When deciding on the morality of such policies, it becomes apparent that alcohol consumption policies are flawed in how they individuals as means, and do not respect the capacity of students to grow into adults capable of using reason. When applying the concept of an alcohol policy to society, the idea of strict alcohol consumption policies and enforcement becomes apparently flawed and outrageous. It is
consumption policies were proven effective, their application to older students is immoral. The feeling of great urgency to enact such policies is not only a reflection on the state of our public schools, but is an indicator of larger societal problems that would not be solved by outlawing alcohol for the entire population, just as strict alcohol consumption policies in public IHEs does not solve these issues in that specific context.

College administrators will have their hands tied until society makes clearer decisions on the role of alcohol consumption in society: it is impossible to maintain a policy that is clear when the culture has become ambiguous about expectations. Safety is important, but it cannot coexist with the promotion of high risk alcohol consumption culture.
References


Beach v. University of Utah 726 P.2d 413 (Utah 1986).


Bradshaw v. Rawlings 612 F.2d 135 (3d Cir. 1979)

Carr v. University System of Georgia WL 2753046 (11th Cir. (Ga.))


Commonwealth v. McCloskey 272 A. 2d 271 (1971)


*Dixon v. Alabama State University* 294 F.2d 150 (5th Cir. 1961)


*Gott v. Berea College* 161 S.W. 204, 206 (Ky. 1913)


*Moore v. Student Affairs Committee of Troy State University* 284 F.Supp. 725 (1968)


*People of the State of New York v. Cohen* 292 N.Y.S. 2D 706 (1968)


*Peterson v. San Francisco Community College District* 205 Cal. Rptr. 842 (Cal. 1984)

*Piazzola v. Watkins* 442 F.2d 284 (5th Cir. 1971)


*Schneider v. Plymouth State College* 744 A.2d 101 (1999)


Dear Mr. and/ or Ms. <insert name> 

The University of New Hampshire is concerned about the illegal use of alcohol and the effects that it has on students’ health, their academic performance, their relationships with others, and their future. The University is making special efforts to address such behavior. One of these efforts involves contacting parents and guardians when their students’ have been charged with violating University alcohol policies.

Recently, we received information that your <son/daughter>, <insert name>, was charged with a violation of a University of New Hampshire Student Code of Conduct Rule regarding inappropriate possession and/or use of alcohol.

Why are we contacting you? Although we understand students are adults and need to assume responsibility for their actions, we know that parents play a very important role in their development. Thus, we want to involve parents early in the process, when their student’s behavior begins to impact their daily routine and before the behavior leads to a crisis. We ask that you express your concerns and your expectations calmly and openly, listen actively, and try to understand each other’s point of view.

The University offers programs and services that are designed to assist students who might be misusing or abusing alcohol. Violations of University alcohol policies may result in education, assessment and basic intervention by a counselor in the University of New Hampshire’s Office of Health Education and Promotion, Health Services. Enrollment in one of these programs may be included as an educational opportunity given to students who violate University alcohol policies, so they can reflect upon their actions and learn from their decisions. For more information on these programs, please contact the Office of Health Education and Promotion, Health Services at (603) 862-3823.

We are asking you to partner with us in addressing the increasing use and abuse of alcohol by college students. The enclosure included in this mailing briefly describes the alcohol problem at colleges and universities and gives helpful information you may want to share with your student. We ask that you talk with your student about the use of alcohol and its effects and discuss how you can work together to address the inappropriate behavior. Should you have questions regarding this communication please contact George O’Connell, Program Coordinator, Office of Conduct and Mediation at 862-2509.

Sincerely Yours,

Esther Tardy-Wolfe, J.D.
Director of Office of Conduct and Mediation