A Room with a Brew: A Comparative Look at Homebrewing Laws in Japan & the United States

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A Room with a Brew: A Comparative Look at Homebrewing Laws in Japan & the United States

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Following the enactment of Prohibition, it took the United States almost four decades to legalize homebrewing. Subsequently, the nation experienced a booming interest in beer. And not just beer, but good beer. Drinkers found themselves invested in both quality and variety. This interest has matured into the craft beer industry. Even in holdover states, where state laws prohibited homebrewing far past 1979, the craft beer industry has experienced near exponential growth following the legalization of homebrewing. This has resulted in significant economic implications. Given these considerations, nations with restrictive homebrewing laws, like Japan, should consider easing them. When specifically applied to Japan’s declining beer industry, a similar approach could produce similar results.

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INTRODUCTION

When confronted with dwindling church attendance, Reverend Stuart Cradduck, the rector of St. Wulfram’s Church in Grantham, England, found an age-old solution: beer. In hosting the “Land of Hops and Glory” beer festival at the thousand-year-old church (and serving ales such as Black Mass—alcohol content: 6.66%), Reverend Cradduck tapped into eight thousand years of human history. And it seems to have worked. Over the course of three days, 2,000 people (in a town of only about 40,000) drank beneath Gothic arches of Lincolnshire limestone and the church’s 282-foot spire. Despite the strong association between beer and Middle Ages monasticism, throughout the majority of man’s history with the beverage, production was small and intimate, primarily taking place not

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2 See id.


5 See Christopher Barnes, The Brewing Monks: A Brief History of the Trappist Order and Monastic Brewing, I THINK ABOUT BEER (May 9, 2013),
in the house of God, but the home of the profane. While the realities of industrialization and economies of scale may have moved the majority of beer production into factories, the “ancient homespun industry” of homebrewing has experienced a renaissance in the twenty-first century.

Having thus begun in the United Kingdom, this Note seeks to compare the homebrewing laws of two other nations: the United States and Japan. Part I provides the necessary background for properly discussing a subject as serious as beer. Part II reviews homebrewing in the United States, using Florida as a case study for contemporary homebrewing laws. Part III explores the history of beer in Japan and current regulations. Part IV examines the potential benefits of having more lenient homebrewing laws. While these benefits are generally applicable, this Note’s focus is specifically on Japan. Finally, this Note concludes with a brief summation and some closing thoughts.


8 While this Note’s focus is on American homebrewing laws, these are representative of those found in most Western nations. See Homemade Alcohol, ALCOHOLREHAB.COM, http://alcoholrehab.com/alcoholism/homemade-alcohol (last visited Jan. 18, 2017) [hereinafter Homemade Alcohol]. In each, the brewing of beer and wine for personal use is allowed, while the sale is restricted, with some sort of limit on volume per household per year. Id. The exceptions are the U.K. and Poland, where homebrewers can legally produce an unlimited amount of beer. See id. (although British and Polish brewers remain at the mercy of other significant factors such as space, time, and money). In Canada (as in the U.S.), homebrewing is subject to local laws, but those of provinces in place of states. Id. In most of these Western countries, home distillation is illegal. Id. Again, two exceptions exist: home distillers in both New Zealand and the Czech Republic can legally produce a small amount of liquor for personal consumption. See id. (subject to the same additional considerations as British and Polish homebrewers). For an excellent Note advocating for the legalization of home distillation in the United States, see Mark Norris, Note, From Craft Brews to Craft Booze: It’s Time for Home Distillation, 64 CASE W. RES. L. REV. 1341, 1358 (2014).
I. BACKGROUND

This section begins with a brief description of what beer is. It then traces the history of the beverage from its origins as a happy accident in our distant past through the “invention” of modern beer, the commercialization of the brewing industry, and the first forms of government regulation. This section closes with a look at two contemporary methods of producing homebrew (one basic and one advanced).

A. What Is Beer?

Isaac Newton wrote that “[t]ruth is ever to be found in simplicity,” and beer is simple. At its most basic, beer is a combination of four essential ingredients: water, malted barley, hops, and yeast. By immersing the malted barley in water and regulating the temperature, the naturally occurring enzymes within the barley convert the grain’s starches into sugars. In turn, microbial yeast (specifically Saccharomyces cerevisiae and S. uvarum) convert these sugars into carbon dioxide and alcohol through a process known as fermentation. Hops, the green flower of the humulus lupulus plant, serves three purposes: it provides bitterness (balancing the malt’s sweetness); it stabilizes a beer’s foam “head”; and it acts as a preservative, inhibiting spoilage. The resulting combination is, in the words of someone other than Benjamin Franklin, “proof God loves us, and wants us to be happy.”

11 Id.
12 See id. at 13–14; CHARLES W. BAMFORTH, BEER: TAP INTO THE ART AND SCIENCE OF BREWING 141, 144 (2d ed. 2003).
14 Dave Burkhart, Say What? Says Who? Benjamin Franklin on Beer – or Not, ANCHOR BREWING BLOG (Feb. 29, 2012, 8:02 PM), https://www.anchorbrewing.com/blog/say-what-says-who-benjamin-franklin-on-beer-or-not (explaining that while Franklin did enjoy beer, he was primarily a wine drinker, and this popularly-attributed quote likely arose from a mistranslation of a letter Franklin wrote to a friend in 1779, praising, of all things, wine).
B. The Most Humble Origins

While the saying goes that on the eighth day God created whiskey, beer could not have been far behind.\footnote{Assuming we ignore Martin Luther’s famous exultation that “Beer is made by men, Wine by God.” Mark Phillips, Swallow This: The Progressive Approach to Wine 299 (2d ed. 2016).} Among the ancient Egyptians, where no meal (be it a farmer’s or a pharaoh’s) was complete without beer, the agricultural god Osiris was credited with its invention.\footnote{See Bamforth, supra note 12, at 25 (quoting Delwen Samuel, Fermentation Technology 3,000 Years Ago—The Archaeology of Ancient Egyptian Beer, Soc’y For Gen. Microbiology Q., 3–5 (Feb. 1997)). But see Poelmans & Swinnen, supra note 6, at 6 (stating that the Egyptians associated brewing with female domesticity, and considered the goddess Hathor to be the “inventress of brewing”).} Less divine explanations suggest that man’s first consumption of fermented beverages was likely accidental.\footnote{See Ian S. Hornsey, A History of Beer and Brewing 1 (2003).} Several types of fermentable sugars (sucrose, glucose, fructose, and possibly lactose) were available to pre-Neolithic peoples from raw sources including rice, honey, fruits (such as the hawthorn fruit or grape), tree sap, and animal milk.\footnote{See Patrick E. McGovern et al., Fermented Beverages of Pre– and Proto–Historic China, 101 PNAS 17593, 17593 (2004); Hornsey, supra note 17, at 6.} Allowed to spoil, these would have naturally fermented as a result of ever present wild yeast and produced a variety of alcohols, including ethanol.\footnote{Hornsey, supra note 17, at 1, 4.}

As ancient peoples abandoned a nomadic lifestyle in favor of a more settled one, they began the process of cultivating and domesticating wild grasses to produce the wheat, barley, rye, oats, rice, and maize we know today.\footnote{See id. at 8–9.} In doing so, they gained access to a new fermentable sugar: maltose.\footnote{See id. at 8.} The predominating theory suggests a likely connection between bread production and the initial fermentation of these grains.\footnote{See Bamforth, supra note 12, at 26.} Resulting from a combination of rain and inadequate storage, stockpiles of grain may have gotten wet and germinated.\footnote{See id.} During germination, starches found within grain seeds enzymatically broke down into maltose.\footnote{See Hornsey, supra note 17, at 13.} Attempts to dry these...
grains through the application of heat to stop the process of germination would have produced a version of the grain that not only tasted better than the raw form, but was also nutritionally advantageous.\textsuperscript{25}

While initially this “sprouted grain” would have been used exclusively to make dough for bread, it was later discovered that the same dough could be thinned with water and heated to produce a beverage.\textsuperscript{26} One of the earliest recipes for this type of drink was found carved on Mesopotamian clay tablets dating back to 6,000 B.C.E.\textsuperscript{27} This ancient brewing process had few requirements: “a supply of water; a supply of grain . . . ; a means of crushing the grain; a fire, with a supply of fuel; a vessel suitable for mixing crushed grain and hot water . . . ; and containers for collecting, and maybe storing the end product.”\textsuperscript{28} This process was performed in the home.\textsuperscript{29} The resulting beverage would have had an alcoholic content of only 0.5–2%.\textsuperscript{30} By contrast, modern beer has an average strength of 5% alcohol by volume (ABV).\textsuperscript{31}

The ancient Egyptian version of this process involved mixing one part flour to ten parts water, heating the mixture for twenty-four hours and then allowing it to ferment for another twenty-four hours.\textsuperscript{32} A variety of plants—such as dates, mandrake, safflower,
and additional spices—would have been used as flavoring agents.\textsuperscript{33} The resulting drink would have been opaque, frothy, and (as a result of the simultaneous growth of yeasts and lactic acid bacteria) highly carbonated, containing minimal amounts of alcohol.\textsuperscript{34} As such, it was unlikely to cause intoxication.\textsuperscript{35} A similar process was likely used by other ancient peoples.\textsuperscript{36}

\section*{C. From Monasticism to Mercantilism: Beer in the Middle Ages}

Throughout the Middle Ages, brewers experimented with a variety of flavoring agents, including bog myrtle, coriander, rosemary, and yarrow.\textsuperscript{37} More exotic ingredients included caraway, pepper, pine, potato leaves, spruce, and tobacco.\textsuperscript{38} Though hops had been cultivated since the second century C.E.,\textsuperscript{39} Germans did not begin to use it as a flavoring agent until the eighth century.\textsuperscript{40} From there, the idea caught on. By 1268, French brewers were using hops.\textsuperscript{41} Not long after, the first hopped-beer reached the British Isles by way of a consignment ordered by a group of Dutch merchants unable to accustom themselves to the overly sweet English ale.\textsuperscript{42}

Prior to the introduction of hops into Medieval brewing, brewers relied on a combination of high concentrations of alcohol and sugar to inhibit the growth of microorganisms.\textsuperscript{43} Due to its strong antiseptic properties, hops allowed for a thinner and weaker beer.\textsuperscript{44}

\begin{flushleft}
\textsuperscript{33} See id. at 65 (quoting Eugen Strouhal, Life of the Ancient Egyptians 128 (1992)).
\textsuperscript{34} Id. at 8.
\textsuperscript{35} Id.
\textsuperscript{36} See id. at 117–18 (“Among those ancient peoples known to be beer-drinkers were the Hittites, Cilicians, Hebrews, Philistines, Thracians, Illyrians, Armenians, Pannonians, Phrygians, Syrians, Urartians, and Scythians.”).
\textsuperscript{37} See Bamforth, supra note 12, at 109.
\textsuperscript{38} See id.
\textsuperscript{39} See id.
\textsuperscript{40} See Hornsey, supra note 17, at 304.
\textsuperscript{41} See id. at 294 (quoting Louis IX, “Nothing shall enter into the composition of beer but good malt and hops.”).
\textsuperscript{42} Id. at 303–04.
\textsuperscript{43} Bamforth, supra note 12, at 110.
\textsuperscript{44} Id.
\end{flushleft}
At the same time, brewing began moving from the home to the public sphere. Under Charlemagne, a loose confederation of Germanic tribes living in the area of modern Belgium and France expanded throughout Italy, Germany, and Spain, building monasteries along the way. Large monasteries were “nearly always” centers of brewing. Consequently, “monastic brewing” spread throughout the British Isle, Germany, Scandinavia, and Switzerland. As many as 500 monasteries were involved in brewing beer, though the process was especially popular among the Benedictines. These monks brewed beer not only for their own consumption, but also to provide to pilgrims and the poor. Even so, “[m]ost beer was undoubtedly still made at home.”

The wide-scale fourteenth century disruption of the Black Death (1347–52 C.E.) gave way to the economic growth of the fifteenth century and a subsequent increase in demand for beer. A growing public awareness of the dangers associated with drinking polluted water contributed to a preference for beer. As a result of this in-

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47 Unger, supra note 45, at 26.
48 Poelmans & Swinnen, supra note 6, at 7.
49 Bamforth, supra note 12, at 34.
50 Id. See Barnes, supra note 5; Unger, supra note 45, at 27–28 (describing St. Gall, a monastery featuring three separate breweries: “[o]ne brewery produced beer for the guests, a second for the brothers in the monastery, and the third for pilgrims and the poor. The guests, noblemen, and royal officials got a better beer, made from wheat and barley, while the others had to be satisfied with beer made from oats. The design of the three brewhouses was essentially the same, but there were differences in size. The brewery for the pilgrims and paupers was only a little more than half of the size of that for the brothers.”).
51 Unger, supra note 45, at 27.
52 Poelmans & Swinnen, supra note 6, at 10.
creased demand, commercial breweries began to displace monasteries as the center of the brewing industry. With this shift, it is perhaps not surprising that this period also saw a rise in widespread government regulation of the brewing industry.

D. “Legalizing” Beer

Some of the earliest beer laws sought to regulate the composition of the brew. Bavaria’s beer law (which later evolved into Germany’s famous “Reinheitsgebot” or “purity law”) is one of the oldest-known food laws. Under that decree, beer could contain only barley, hops, and water. The law made no mention of yeast because at the time it had yet to be discovered. In his piece on the Reinheitsgebot, economist Frank van Tongeren argues that in addition to regulating composition, this law served several other purposes:

1. Consumer protection: it kept beer free from additives and often unhealthy ingredients, such as rushes, roots, mushrooms, and animal products.
2. Price regulation: it set maximum prices depending on the season (a low price between 23 April and 29 September, and twice that price during the rest of the year).
3. Guild protection: it created an entry barrier into the sector by setting a potentially cost-increasing standard.
4. Agricultural policy: it had direct as well as indirect market effects on grain prices by diverting wheat into bread making, in combination with setting maximum prices in the downstream beer industry.

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54 See UNGER, supra note 45, at 36.
55 See Poelmans & Swinnen, supra note 6, at 10–11.
56 See id. at 10–11.
59 See id.
This kept overall demand for the relatively expensive wheat lower and reduced wheat prices.\textsuperscript{60}

Other laws fixed the price of beer and levied a variety of taxes.\textsuperscript{61} Still, throughout the next several hundred years, homebrewers remained free to carry on their craft without government regulations.\textsuperscript{62} Among those Americans who chose to exercise this freedom were several men well known for their exercise of freedom: George Washington, Thomas Jefferson, and Benjamin Franklin.\textsuperscript{63}

E. \textit{Contemporary Homebrewing}

The exact process of brewing can be as simple, or complex, as desired by the individual homebrewer.\textsuperscript{64} As two illustrative examples, this section outlines one method of homebrewing appropriate for the beginner and another appropriate for homebrewers interested

\textsuperscript{60} Frank van Tongeren, \textit{Standards and International Trade Integration: A Historical Review of the German `Reinheitsgebot,' in THE ECONOMICS OF BEER} 51, 52 (Johan F.M. Swinnen ed., 2011) (numeration added).

\textsuperscript{61} See Poelmans & Swinnen, supra, note 6, at 10–11.


\textsuperscript{63} See Brad Jackson, \textit{George Washington: Founding Father, Savior of Freedom, Home Brewer}, FEDERALIST (Sep. 23, 2016), http://thefederalist.com/2016/09/23/george-washington-founding-father-savior-freedom-home-brewer/. As a part of his article, Jackson includes a hand-written recipe for beer by Washington currently in the possession of the New York Public Library: “Take a large Siffer [Sifter] full of Bran Hops to your Taste. Boil these 3 hours then strain out 30 Gall[ons] into a cooler put in 3 Gall[ons] Molasses while the Beer is Scalding hot or rather draw the Melasses [sic] into the cooler & St[r]ain the Beer on it while boiling Hot. [L]et this stand till it is little more than Blood warm then put in a quart of Yea[s]t if the Weather is very Cold cover it over with a Blank[et] & let it Work in the Cooler 24 hours then put it into the Cask—leave the bung open till it is almost don[e] Working—Bottle it that day Week it was Brewed.” \textit{Id.} Jackson further notes that Franklin was particularly known for brewing spruce beer, and Jefferson first brewed at Monticello in 1812. \textit{Id.} Washington’s cousin, entrusted to manage Mount Vernon during the Revolutionary War, left notes on brewing a persimmon beer. Stanley Kaminski, \textit{The Complete History of Homebrew}, HOME BREW SUPPLY, https://www.homebrewsupply.com/learn/the-complete-history-of-homebrew.html (last visited July 3, 2017).

\textsuperscript{64} See generally PAPAZIAN, supra note 10, at 11–292 (providing sets of instructions for the beginner, intermediate, and advanced homebrewer).
in exerting greater control over their finished product. Either can produce excellent beer.\textsuperscript{65}

1. \textbf{Extract Brewing}

According to Charlie Papazian, a recognized authority on homebrewing, “[b]rewing your own beer is as easy as opening a can of ingredients and boiling water.”\textsuperscript{66} At its most basic, contemporary homebrewing requires only a few pieces of equipment.\textsuperscript{67} Likewise with ingredients. Brewing beer requires just four ingredients: (1) five to six pounds of hop-flavored malt extract; (2) water; (3) ale yeast; and (4) corn sugar.\textsuperscript{68}

The key ingredient is malt extract.\textsuperscript{69} While more advanced brewing may involve malting barley and “mashing” grains at specific temperatures to allow for the conversion of starches to sugars, a beginner can avoid these steps through the use of malt extract.\textsuperscript{70} Malt extract is “simply malted barley that has been processed into a sweet malt ‘soup’” before having “70 to 80 percent of the water . . . carefully evaporated, leaving for the homebrewer a concentrated syrup.”\textsuperscript{71} Many times, this syrup comes with the hops already added, as in the ingredients list above.\textsuperscript{72}

The actual brewing process is similarly straightforward.\textsuperscript{73} All of the equipment that will come into contact with the beer is sanitized

\textsuperscript{65} See id. at 15. Anyone interested in learning more about the process of homebrewing should not hesitate to read Papazian’s book. While some of the information presented is somewhat outdated, it is still considered by many to be the “Bible” of homebrewing and has likely introduced scores of homebrewers to the hobby.

\textsuperscript{66} Id. at 11.

\textsuperscript{67} See id. at 15–16 (Extract brewing requires (1) a three to four-gallon pot; (2) a fermentation chamber (with lid); (3) a plastic bucket (or even trash pail) used for bottling the beer; (4) plastic hose, with hose clamp; (5) a rubber stopper; (6) an airlock; (7) a thermometer; (8) a bottle capper; (9) sixty empty twelve-ounce beer bottles; and (10) bottle caps.).

\textsuperscript{68} Id. at 17.

\textsuperscript{69} See id. at 14–15.

\textsuperscript{70} See id.

\textsuperscript{71} Id. at 15. A typical five-gallon recipe may call for between three and a half and twelve pounds of malt extract depending on the style and desired ABV. See id. at 154–65.

\textsuperscript{72} Id. at 15.

\textsuperscript{73} See generally id. at 18–35.
in a weak solution of bleach and water.\textsuperscript{74} Using a large pot, the malt extract is dissolved in a gallon and a half of water and boiled for forty-five minutes.\textsuperscript{75} The mixture of malt extract and hot water is added to a fermentation chamber along with enough cold water to make five gallons of total volume.\textsuperscript{76} This unfermented beer is known as “wort.”\textsuperscript{77} The temperature is allowed to cool to below seventy-five degrees Fahrenheit before the yeast is added.\textsuperscript{78} A rubber stopper and airlock are used to seal the fermentation chamber (to avoid contamination), and the beer is allowed to ferment for one to two weeks.\textsuperscript{79} Once fermentation is complete, the plastic bucket, hose, bottles, and caps are sanitized.\textsuperscript{80} The fermented beer, along with a small amount of “priming” sugar, is siphoned into the plastic bucket.\textsuperscript{81} This small addition of sugar allows the remaining yeast to carbonate the beer.\textsuperscript{82} The beer is then siphoned into the individual bottles before being capped and allowed to age for ten days.\textsuperscript{83} And then you have beer.

2. \textbf{ALL-GRAIN BREWING}

The most important distinction between all-grain brewing and the simpler extract brewing described above is, as the name implies, the exclusive use of grains in place of malt extract.\textsuperscript{84} The brewer relies on the naturally occurring enzymes found within the ingredi-

\textsuperscript{74} \textit{Id.} at 18–20 (a solution of one to two ounces of bleach for every five gallons of cold water is sufficient for this purpose).
\textsuperscript{75} \textit{Id.} at 18.
\textsuperscript{76} \textit{Id.} at 18, 20.
\textsuperscript{77} \textit{Id.} at 46.
\textsuperscript{78} \textit{Id.} at 18, 20.
\textsuperscript{79} \textit{Id.} at 18, 24–26.
\textsuperscript{80} \textit{Id.} at 18, 26.
\textsuperscript{81} \textit{Id.} at 18, 26, 29.
\textsuperscript{82} \textit{Id.} at 18, 26–28.
\textsuperscript{83} \textit{See id.} at 18, 29, 31, 33. It’s also possible to avoid bottling entirely by kegging the beer. \textit{See An Introduction to Kegging Homebrew, AMERICAN HOMEBREWERS ASS’N,} https://www.homebrewersassociation.org/how-to-brew/an-introduction-to-kegging-homebrew (last visited July 1, 2017).
\textsuperscript{84} \textit{See PAPAZIAN, supra note 10,} at 242. A typical five-gallon recipe may call for between six and ten pounds of grains, depending on the style and desired ABV. \textit{See id.} at 292–314.
ents to break down proteins into nutrients for the yeast, and the soluble starches into both fermentable and unfermentable sugars.\(^{85}\) This process is known as “mashing.”\(^{86}\)

As might be expected, this additional process requires more equipment.\(^{87}\) Regarding ingredients, all-grain brewing needs: (1) the malted barley which will make up much of the grain bill; (2) adjunct starches, such as barley, oats, rice, rye, or wheat (used to achieve “certain characteristics such as flavor, visual appearance and stability” in the finished beer);\(^{88}\) (3) hops; (4) water; and (5) yeast.\(^{89}\)

Though multiple processes are available for mashing malted barley to produce wort,\(^{90}\) the infusion mash, arguably the most straightforward, will be discussed. For every pound of grain in the recipe, one quart of water is heated to approximately 168 degrees.\(^{91}\) The barley and adjunct starches are added, causing the overall temperature to drop to between 150 and 158 degrees, the temperatures at which the enzymatic reactions occur.\(^{92}\) This temperature is maintained for thirty to sixty minutes, allowing the available starches to convert to fermentable and unfermentable sugars before the temperature is raised to 170 degrees in order to deactivate the enzymes.\(^{93}\) A “lauter-tun” then functions as an oversized sieve, separating the spent grain from the wort.\(^{94}\) The wort is then brought to a boil,\(^{95}\) hops are added, and the mixture is boiled for an hour.\(^{96}\) The wort is then chilled as quickly as possible (so as to avoid contamination) by

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\(^{85}\) See id. at 242.

\(^{86}\) See id. at 243.

\(^{87}\) See generally id. (All-grain brewing requires: (1) a larger pot to accommodate the larger volume of water associated with this form of brewing; (2) a container to hold the grain during mashing (known as a “mash-tun”); (3) a system for separating the spent grain from the sweet liquid (known as a “lauter-tun,” or sparging system); and (4) a “wort-chiller” to quickly cool the hot wort.).

\(^{88}\) Id. at 251.

\(^{89}\) See id. at 251–64.

\(^{90}\) See id. at 280.

\(^{91}\) See id. at 282 (This ratio of water to grain accounts for volume lost due to grain absorption, evaporation, and sediment accumulation.).

\(^{92}\) Id. at 282–83.

\(^{93}\) Id. at 282, 286.

\(^{94}\) See id. at 286.

\(^{95}\) Id. at 294.

\(^{96}\) Id. at 294.
passing it through a portion of copper tubing (the wort-chiller) submerged in cold water on its way to the sanitized fermenter.97 Yeast is then pitched and fermentation and bottling occurs as with extract brewing.98

II. HOME BREWING IN THE UNITED STATES

This section begins with an examination of the history of brewing in this nation, a history which (as discussed above) predates its founding.99 From there, this Note traces the development of larger scale commercial breweries, and the disaster that was the “Noble Experiment” of Prohibition. It then goes on to discuss the legalization of homebrewing in the United States, with a look at the federal excise tax exemption for homebrew, and concludes using Florida as a case study for contemporary American homebrewing laws.

A. The History of American Brewing

The Incas had been fermenting a native beverage using malted corn long before Spanish settlers founded a brewery near Mexico City in the mid-sixteenth century.100 The Dutch settlers of New Amsterdam were not far behind, with Adrian Block founding a brewery comprising of “little more than a log hut” in 1613.101 By 1632, Governor Peter Minuit of New Netherland had opened the first public brewery.102

When King Charles II seized New Amsterdam in 1664, renaming it New York, he promulgate a set of laws which came to be known as “the Duke of York’s Laws” (“the Duke’s Laws”).103 These

97 Id. at 278.
98 See id. at 294.
100 BAMFORTH, supra note 12, at 35.
101 Id.
102 KEITH KRAWCZYNKSI, DAILY LIFE IN THE COLONIAL CITY xvi (2013). It would be two more years until Samuel Cole opened the first tavern in British North America. Id.
103 See BAMFORTH, supra note 12, at 35–36.
laws sought to regulate (in alphabetical order) many aspects of colonial life.\footnote{See generally THE HIST. SOC’Y OF THE N.Y. CTS., THE DUKE OF YORK’S LAWS, 1665–75, http://www.nycourts.gov/history/legal-history-new-york/documents/charters-duke-transcript.pdf (last visited Dec. 21, 2016).} Perhaps not surprisingly, this included brewing.\footnote{See id.} Under the Duke’s Laws, the production of beer for sale was limited to “only such as are known to have Sufficient Skill and knowledge in the art or Mistery [sic] of a Brewer.”\footnote{Id.} The Duke’s Laws further provided a civil cause of action for recovery against anyone selling inferior beer.\footnote{See id.}

Despite increases in commercial brewing from the Middle Ages onward, and the accompanying regulation, during the American Revolution brewing still occurred primarily within the home.\footnote{See id. at 139. (citing WADE BARON, BREWED IN AMERICA: A HISTORY OF BEER AND ALE IN THE UNITED STATES 31 (1962)).} Only the wealthiest colonists were able to afford heavily taxed beer imported from England.\footnote{Id. (citing WADE BARON, supra note 108, at 31).} Even with this limited market, beer became embroiled in revolutionary politics.\footnote{See Hannah Jeppsen, Comment, Let My Brewers Go! A Look at Home Brewing in the U.S., 10 J. FOOD L. & POL’Y 137, 139 (2014) (citing STANLEY WADE BARON, BREWED IN AMERICA: A HISTORY OF BEER AND ALE IN THE UNITED STATES 31 (1962)).} As a result of growing colonial discontent over English taxation, boycotts of beer (as well as the growing popularity of other beverages including coffee, tea, rum, wine, and whiskey) led to reduced demand.\footnote{See id. at 139. (citing WADE BARON, supra note 108, at 90).} By 1810, yearly per capita consumption of commercially brewed beer was less than a gallon, with only 132 operational breweries in the newly formed United States.\footnote{Id. at 139 (citing WADE BARON, supra note 108, at 56–122).} This trend proved short-lived.\footnote{Beer History: The American Beer Story, CRAFTBEER.COM, http://www.craftbeer.com/the-beverage/history-of-beer/the-american-story (last visited Jan. 10, 2017) [hereinafter Beer History].} The nineteenth century ushered in a huge growth for the American beer industry.\footnote{See id.} By 1873, the number of breweries increased to a staggering 4,131.\footnote{See id.}
The turn of the century saw a reduction in the number of small-town breweries, as a few industry revolutionaries took advantage of technological advances, such as the railroads, to focus on nationwide distribution. These extremely wealthy “beer barons” came to dominate the market. Their names remain familiar today: Anheuser, Busch, Miller, Coors, and Pabst. However wealthy, the beer barons were unable to contend with the social pressures of the Temperance Movement, and the resulting Eighteenth Amendment to the United States Constitution, by which the federal government sought to dismantle what was then the nation’s sixth largest industry.

Under the Eighteenth Amendment, the “manufacture, sale, or transportation of intoxicating liquors” within the United States, as well as the importation and exportation of said beverages, became illegal. The Amendment, as implemented through the Volstead Act, defined intoxicating liquors as those containing .5% ABV or


116 Jeppsen, supra note 108, at 140 (citing WADE BARON, supra note 108, at 257–58). Particularly, the invention of ice cars on trains helped shift the beer industry from the local to the national.

117 Id. (citing WADE BARON, supra note 108, at 287–88).

118 Id. (citing WADE BARON, supra note 108, at 287–88).

119 See AMY MITTELMAN, BREWING BATTLES: A HISTORY OF AMERICAN BEER 85–86 (2008); see also Beer History, supra note 112.

120 U.S. CONST. amend. XVIII, repealed by U.S. CONST. amend. XXI, § 1.
more. In separate cases, both this definition and the constitutionality of the Eighteenth Amendment were challenged in court. In 1920, the Supreme Court upheld both.

Perhaps unsurprisingly, Prohibition had a positive effect on homebrewing. Over the decade of the 1920s, beer consumption rose by 25%. By 1929, the Prohibition Bureau estimated homebrewers were brewing almost 700 million gallons of beer a year, almost as much as had been produced legally in 1919. The necessary ingredients for making beer remained readily available to homebrewers. While prior to Prohibition only 500 to 600 stores sold malt extract (ostensibly a “baking” ingredient), eight years into the “Noble Experiment” that number had flourished to over 100,000. Among these were recognizable names such as Atlantic and Pacific (A & P), Kroger, and Piggly-Wiggly grocery stores.

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121 See National Prohibition (Volstead) Act, Pub. L. No. 66-66, tit. 1, § 1, 41 Stat. 305, 305 (1919), repealed by U.S. Const. amend. XXI. “Brewers and beer drinkers alike bristled at the low limit, which, according to one frustrated observer, was ‘less than the alcohol content of sauerkraut.’” Carl Miller, We Want Beer: Prohibition and the Will to Imbibe - Part 1, http://www.beerhistory.com/library/holdings/prohibition_1.shtml (last visited July 1, 2017).

122 See Ruppert v. Caffey, 251 U.S. 264, 281 (1920) (involving a challenge to Congress’ power to regulate “intoxicating liquors” in cases where they contain so little alcohol so as to be “not in fact intoxicating”); Nat’l Prohibition Cases, 253 U.S. 350, 351 (1920) (representing a consolidation of “seven cases here given one name for convenient reference involv[ing] the validity of the Eighteenth Amendment and of certain general features of the National Prohibition Act designed for its enforcement”).

123 See Nat’l Prohibition Cases, 253 U.S. at 386. The Court concluded that while “there are limits beyond which Congress cannot go in treating beverages as within its power of enforcement,” Prohibition, “as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article V of the Constitution.” Id. at 386–87.


125 Id.

126 See Miller, supra note 121.

127 See Jabloner, supra note 124.


129 Jabloner, supra note 124.
Of the 450 million pounds of malt extract produced in 1927, an estimated 90% went toward the production of over 800 million gallons of beer. A further 25,000 stores, including Woolworth’s, sold homebrewing equipment.

On paper, the legal consequences for homebrewing were somewhat severe. Under the Volstead Act, the penalty was a fine of up to $1,000, up to one year in prison, or both. Enforcement was another issue entirely. Courts were unwilling to issue warrants for the search of private homes suspected of being used for homebrewing unless there was evidence that on-site sales were also occurring. As a result of these legal difficulties, and a policy of targeting large-scale beer producers and those engaged in the more dangerous practice of home distillation, Prohibition agents largely ignored the activities of homebrewers.

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130 Kaminski, supra note 64. This number was up from 438 million pounds the prior year. Id. Similarly, 13 million pounds of hops were sold for “home baking” during a single year of Prohibition. Id.

131 See Jabloner, supra note 124.

132 Id.


134 Id. (declaring that “[a]ny . . . place of any kind where intoxicating liquor is sold, manufactured, kept for sale, or bartered . . . is hereby declared to be a public and common nuisance, and any person who maintains or assists in maintaining such public and common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $100 nor more than $1,000, or be imprisoned for not less than thirty days or more than one year, or both.”). A $1,000 fine at the time Prohibition went into effect has an equivalent purchasing power to roughly $13,000 today. CPI Inflation Calculator, BUREAU OF LABOR STAT., U.S. DEP’T OF LABOR, https://www.bls.gov/data/inflation_calculator.htm (last visited May 1, 2018).

135 See Jabloner, supra note 124.

136 See United States v. Berkeness, 275 U.S. 149, 153–156 (1927); Carroll v. United States, 267 U.S. 132, 145–147 (1925); Bartos v. United States Dist. Court, 19 F.2d 722, 728 (8th Cir. 1927) (Kenyon, J., concurring) (emphasis added) (explaining that “under the National Prohibition Act warrants to search a private dwelling cannot be issued except by the filing of an affidavit that such residence is being used for the sale of intoxicating liquor. Therefore a party having intoxicating liquor in his home is protected under the National Prohibition Act from any search thereof unless there is evidence of sales.”).

137 See Jeppsen, supra note 108, at 141.
For those caught in the act of homebrewing, the consequences were often relatively minor.\textsuperscript{138} For example, Nebraska lawyer Frank Bartos was disbarred after he was caught with seven hundred quarts of beer he had produced in his basement, ostensibly for his family’s consumption.\textsuperscript{139} Bartos appealed his subsequent disbarment.\textsuperscript{140} In his concurrence, Judge Kenyon wrote that “[i]t is a matter of general knowledge . . . that intoxicating liquors are made in many of the homes of the country for the use of the family and guests” and labeled homebrewing a mere “technical” violation of the law.\textsuperscript{141} He noted that “[t]he offense of Bartos was possibly the mildest that could be committed under the National Prohibition Act, were it not for the large quantity of beer[.]”\textsuperscript{142} He did, however, concede that “seven hundred quarts of beer would indicate considerable capacity on the part of [Bartos’] family” to drink beer.\textsuperscript{143} The court ruled in favor of Bartos who was subsequently readmitted to the Nebraska bar.\textsuperscript{144}

Prohibition remained the law of the land for another thirteen years before finally being brought to an end by the Twenty-first Amendment.\textsuperscript{145} Beer historian Amy Mittelman argues that these two amendments are unique in American history: “[t]he first outlawed a legal industry and deprived thousands of business people of their livelihood”; and the second is the only amendment to ever repeal another.\textsuperscript{146} Though the Twenty-first Amendment legalized the commercial production of beer, it did not legalize homebrewing.\textsuperscript{147} While homemade wine was legalized, “through a stenographer’s omission, the words ‘and/or beer’ never made it into the Federal Register.”\textsuperscript{148}

\begin{footnotes}
\item[138] See Jabloner, supra note 124.
\item[139] Bartos, 19 F.2d at 722–723.
\item[140] See id. at 723.
\item[141] Id. at 728 (Kenyon, J., concurring) (emphasis added).
\item[142] Id.
\item[143] Id.
\item[144] Id. at 727.
\item[145] See U.S. CONST. amend. XXI, § 1.
\item[146] MITTELMAN, supra note 119, at 1.
\item[147] PAPAZIAN, supra note 10, at 2.
\item[148] Id.
\end{footnotes}
Again unsurprisingly, the passage of the Twenty-first Amendment, and the repeal of Prohibition, proved to be bad for the home-brewing industry.\textsuperscript{149} The number of commercial breweries quickly recovered, and within a year, more than 700 breweries were in operation.\textsuperscript{150} This was, however, to be a limited trend, as larger breweries leveraged economies of scale and bargaining power to force their smaller rivals out of business.\textsuperscript{151} By 1950, the number of breweries had shrunk by roughly half, with only 230 remaining a decade later.\textsuperscript{152} Along with a reduction in the number of breweries came a reduction in the number of styles of beer produced.\textsuperscript{153}

The industry had shifted to account for the growing preference of the American consumer for a light, pale lager.\textsuperscript{154} British beer historian Ian Hornsey quipped that “[a] beer drinker in the 1970s could have been forgiven for thinking that there were only about half a dozen styles of beer brewed in Great Britain . . . ”\textsuperscript{155} In the U.S., there were even fewer.\textsuperscript{156}

Amidst this bleak landscape, a change in homebrewing laws was about to kick off a renaissance in the American beer industry.\textsuperscript{157} In February 1979, President Jimmy Carter signed into law a bill repealing federal restrictions on homebrewing beer.\textsuperscript{158} The passage of the Twenty-first Amendment left the regulation of the beverage industry largely to the states.\textsuperscript{159} The new federal homebrewing regulation embodied the same principle through deference to local laws concerning the legal drinking age.\textsuperscript{160}

Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult

\textsuperscript{149} See Jeppsen, supra note 108, at 142.  
\textsuperscript{150} Beer History, supra note 112.  
\textsuperscript{152} Beer History, supra note 112.  
\textsuperscript{153} See id.  
\textsuperscript{154} See Lam, supra note 151, at 202–03.  
\textsuperscript{155} HORSEY, supra note 17, at 485.  
\textsuperscript{156} See Beer History, supra note 112.  
\textsuperscript{157} See PAPAZIAN, supra note 10, at 2–3.  
\textsuperscript{158} See H.R. 1337, 95th Cong. § 2(e) (1978).  
\textsuperscript{159} See Jeppsen, supra note 108, at 144; see also Lam, supra note 151, at 205.  
\textsuperscript{160} See 27 C.F.R. § 25.205 (2016).
is any individual who is 18 years of age or older. If
the locality in which the household is located re-
quires a greater minimum age for the sale of beer to
individuals, the adult shall be that age before com-
mencing the production of beer. This exemption does
not authorize the production of beer for use contrary
to State or local law.161

Under the new federal regulations, households with two or more
adults could produce up to 200 gallons of beer annually.162 House-
holds with a single adult could produce only 100 gallons.163

Beyond developing a taste for “good beer,” homebrewers soon
discovered they had the unique opportunity “to brew any style of
beer ever brewed in the world . . . .”164 The commercial beer industry
quickly expanded to meet this new demand, and the early 1980s saw
the advent of the first microbreweries.165 While many of these early
microbreweries have since outgrown that particular classification,
they continue to produce quality beer in a variety of styles.166 By
2015, small and independent craft breweries had grown to a 21%
share of the entire beer market, with a 13% rise in volume over the
previous year.167 Consequently, state and federal governments have
benefited from the millions of dollars in annual tax revenues gener-
ated by the craft beer industry.168 In this way, the repeal of the fed-
eral excise tax on homebrewing has had a significant effect on the
national economy and has resulted in the birth of an entirely new

161 Id. § 25.205(a).
162 Id. § 25.205(b)(1).
163 Id. § 25.205(b)(2). This is just under half the amount Frank Bartos was
cought with. See Bartos v. United States Dist. Court, 19 F.2d 722, 728 (8th Cir.
1927) (Kenyon, J., concurring).
164 Papazian, supra note 10, at 3–4.
165 See id. at 3 (explaining that “[b]reweries that commercially brew beer in
quantities of less than fifteen thousand barrels per year are defined as microbrew-
eries”).
166 See id. at 3–4.
167 Press Release, Brewers Ass’n, Small & Independent Brewers Continue to
Grow Double Digits (Mar. 22, 2016), https://www.brewersassociation.org/press-
releases/small-independent-brewers-continue-grow-double-digits.
168 See Norris, supra note 8, at 1358.
beer industry. As one expert put it: “most craft breweries get their start in someone’s home.”

B. Modern Homebrewing in the United States

While 1979 marked the end of the federal ban on homebrewing beer, individual states remained free to regulate homebrewing within their borders. Today, every state has chosen to legalize the practice (although Alabama waited until May 9, 2013 to finally join the rest of the nation). Individual state laws, however, vary widely and employ a wide range of specificity and vagueness. Some states choose to regulate homebrewing based on volume caps.  

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169 See PAPAZIAN, supra note 10, at 3.
172 Ala. Code § 28-4B-1 (2016); see also Homebrewing Rights: Statutes, AMERICAN HOMEBREWERS ASS’N, https://www.homebrewersassociation.org/homebrewing-rights/statutes (last visited Jan. 16, 2017) [hereinafter Homebrewing Rights: Statutes]. Alabama was only slightly behind its more progressive neighbor, Mississippi, who legalized homebrewing on March 19, 2013. Homebrewing is Legal in Alabama!, AMERICAN HOMEBREWERS ASS’N, https://www.homebrewersassociation.org/news/homebrewing-is-legal-in-alabama (last visit June 29, 2017). In fairness to the Heart of Dixie, while the Mississippi law was passed first, that law did not go into effect until July 1, 2013. See id. The Alabama law went into immediate effect, making Mississippi the last state to legalize homebrewing. See id.
173 See Homebrewing Rights: Statutes, supra note 172.
Others regulate whether or not the beer can be transported or shared.\textsuperscript{175}

C. \textit{Florida: A Case Study of American Homebrewing Laws}

As an illustrative example, this section provides a brief overview of Florida's homebrewing law, one of the most comprehensive in the nation.\textsuperscript{176} Under Florida Statute section 562.165 (last amended in 1983), any person twenty-one years of age or older “may produce beer for personal or family use, and not for sale, in the amounts provided . . . without payment of taxes or fees or without a license. The aggregate amount of such beer permitted to be produced” mirrors the federally allowed amounts.\textsuperscript{177} Further, section 562.165 states that homebrewed beer “may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions, or competitions, such as homemakers’ contests, tastings, or judgings.”\textsuperscript{178}

Section 562.165 is permissive.\textsuperscript{179} While states are free to set lower limits on the amount of homebrew that can be legally pro-

\textsuperscript{175} See, e.g., \textit{Homebrewing Rights: Alabama}, supra note 174 (explaining that Alabama law “allows for transport of homemade beer . . . in amounts of no more than 10 gallons and only for organized events of homebrew competitions and judgings licensed by the Alcoholic Beverage Control Board as a special events retail license”); \textit{Homebrewing Rights: Kentucky}, supra note 174 (explaining that Kentucky law does not allow for homebrew to be shared or gifted to anyone outside of the family).


\textsuperscript{177} FLA. STAT. § 562.165(1) (2017); 27 C.F.R. § 25.205(a) (2016).

\textsuperscript{178} Id. § 562.165(4).

\textsuperscript{179} Cf. ARK. CODE § 3-5-202(3) (limiting homebrew to 5% by weight); HAW. REV. STAT. § 281-3 (limiting production to the head of the family, for family use only); MICH. COMP. LAWS § 436.1207(c) (limiting production to twenty gallons per year); MINN. STAT. § 340A.101(12)(a) (defining “Home Brewing Equipment” as “portable equipment designed for use in home manufacturing of malt liquor in quantities of ten gallons or less”); OKLA. STAT. tit. 37, § 37-520A (requiring a permit from the Oklahoma Alcoholic Beverage Law Enforcement Commission); 3 R.I. GEN. LAWS § 3-1-3 (limiting “manufacture . . . for domestic use”); UTAH CODE § 32B-11-202 (limiting transportation from the home to 72 ounces “for each individual who is 21 years of age or older residing in the household” or, in the case of organized events where “fermented alcoholic beverages are judged as to
duced, Florida has opted instead for the federally allowed maximum.180 Likewise, while some states place additional restrictions on the gifting, transportation, and locations in which homebrew can be consumed, Florida does not.181

III. RISING SUN, SETTING SUDS: HOMEBREWING IN JAPAN

Heading 7,461 miles east, we next focus on Japan. This section begins with an examination of the history of brewing in Japan. It starts with a review of early attempts at brewing European-style beer and the heavy influence played by the German brewing tradition. It then discusses the growing dominance of a few Japanese mega-brewers that produce a very limited range of beer styles. Finally, it concludes with a study of homebrewing laws in Japan, which are primarily tax laws, and the reality of life for Japanese homebrewers.

A. The History of Japanese Brewing

Though more traditionally associated with sake, a beverage enjoyed since at least the third century,182 the Japanese have come to enthusiastically embrace beer.183 The Japanese would have likely first encountered beer from Dutch merchants in the early nineteenth century.184 Japanese homebrewing followed shortly after.185 In his

taste and quality," 72 ounces per category entered, with a limit of three categories).
183 See Bryan Harrell, Beers all round!, JAPAN TIMES (Jun. 30, 2002), https://www.japantimes.co.jp/life/2002/06/30/food/beers-all-round; see also Atsuko Fukase & Megumi Fujikawa, Japan’s Beer Industry – The Numbers, WALL ST. J. (Aug. 31, 2016), http://blogs.wsj.com/briefly/2016/08/31/japans-beer-industry-the-numbers [hereinafter Japan’s Beer Industry]. Japan was the world’s seventh largest beer consumer in 2014. Perhaps unsurprisingly, China is the world’s largest consumer, with the United States behind them. Id.
185 See id. at 8–9.
comprehensive book about beer in Japan, historian Jeffery Alexander recounts the earliest Japanese attempt at brewing beer:

Dutch wine, and beer were shipped to Japanese consumers in the country’s urban centres, and adventurous Japanese began to consume Dutch bier after meals, in order to aid digestion. Soon, a few pioneering Japanese attempted brewing beer for themselves. The first was a scholar of Dutch medicine living in Sanda, Hyōgo prefecture. Kawamoto Kōmin (1810–71) reportedly found a reference to the brewing process in a Dutch book on new Western science, which he translated into Japanese. Eager to attempt the process himself, Kawamoto is said to have built a kettle in his home for brewing beer.\(^{186}\)

While the history of Japanese homebrewing may have its roots in curiosity, the history of commercial beer in Japan has its roots in illegal immigration.\(^{187}\) In 1865, Japan was still under the Shogun-era Sakoku Edicts, which forbade Japanese citizens from traveling abroad.\(^{188}\) Nonetheless, a seventeen-year-old Japanese boy by the name of Seibei Nakagawa emigrated to Germany.\(^{189}\) There, he studied at the Berliner Brauerai.\(^{190}\) In 1876, one of Japan’s first two breweries opened as a part of a government-directed plan for industrial development of the northernmost island of Hokkaido.\(^{191}\) Nakagawa was hired as brewmaster, and the following year the company sold its first batch of beer to the public.\(^{192}\)

\(^{186}\) Id. at 8–9.


\(^{189}\) See The Making of the Legendary Biru, supra note 187.

\(^{190}\) See FODOR’S JAPAN 649 (Josh McIlvain, Alexis Kelly & Deborah Kaufman eds., 18th ed. 2007).

\(^{191}\) See ALEXANDER, supra note 184, at 6.

Many of Japan’s early brewers worked for companies such as Kirin and Asahi and received similar training under brewmasters in Germany before returning to Japan to ply their trade domestically.\(^{193}\) As a result of this strong German influence, Japanese brewmasters rigidly adhered to German recipes and brewing processes with often questionable results.\(^{194}\) While German lager became the definitive beer style, Japan’s anemic agricultural base struggled to supply brewers with the quality ingredients they required.\(^{195}\) Similarly, the underdeveloped infrastructure and lack of access to adequate supplies of ice made shipping the finished product across the nation’s mountainous terrain difficult.\(^{196}\) As such, European imports continued to dominate the East Asian beer market even after the advent of domestic alternatives.\(^{197}\)

The First World War changed this.\(^{198}\) As European brewers pulled out of the market, local brewers filled the void.\(^{199}\) A price war started throughout the 1920s and culminated in the early 1930s with the creation of a domestic beer cartel.\(^{200}\) It was not until the Second World War that Japanese breweries realized technical and material independence.\(^{201}\) This was the result of a total industry reorganization undertaken by the Ministry of Finance to transform the Japanese beer industry into “a brandless, revenue-generating arm of Japan’s wartime command economy.”\(^{202}\) The Ministry of Finance would remain involved in negotiating pricing and production regimes throughout the 1980s, with a market still largely dominated by just two breweries: Kirin and Asahi.\(^{203}\) While the Japanese government

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\(^{193}\) See ALEXANDER, supra note 184, at 7.

\(^{194}\) See id.

\(^{195}\) Id.

\(^{196}\) Id.

\(^{197}\) See id. at 55. Interestingly, the East Asian beer market was divided into spheres of influence among the European powers. China and India were dominated by the English. Indonesia and Malaysia were dominated by the Dutch. South China, Shanghai, and Hong Kong were shared by the English and Germans. See id. at 58.

\(^{198}\) Id. at 55.

\(^{199}\) See id.

\(^{200}\) See id. at 56.

\(^{201}\) See id. at 2.

\(^{202}\) Id.

\(^{203}\) Id. at 3.
eased restrictions on small breweries in the 1990s, the overall limited availability of choices has affected the Japanese pallet, which continues to favor lagers. This style currently accounts for 95% of beer sales in Japan.

B. Homebrewing Laws in Japan

Japan’s earliest era of beer consumption saw the promulgation of laws making homebrewing illegal. The vestiges of these laws can be found in the contemporary statutes governing the home fermentation of alcoholic beverages. Under the Japanese Liquor Tax Law, liquor is defined as any beverage containing 1% or more ABV. Production of liquor requires a manufacturing license obtained from the director of the relevant tax office. Obtaining a manufacturing license requires, at a minimum, an annual production volume of just under 16,000 gallons (down from the previous requirement of about 528,000 gallons).

This license system purportedly serves two public policy considerations: “to secure liquor tax revenue and, at the same time, to guarantee the quality of liquor.” In meeting the first, the system subjects manufacturers to about $7.50 per gallon in taxes paid.

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205 Yui, supra note 204.
207 See id.
209 Id.
210 See Bryan Harrell, Craft Brewing in Japan, 31 ALL ABOUT BEER MAG. (May 1, 2010), http://allaboutbeer.com/article/craft-brewing-in-japan. The actual statutory floor is 60,000 liters, down from the previous 2 million liters annual requirement. Conversion to U.S. customary units is done for the sake of comparison.
211 HANDBOOK OF JAPANESE TAXES, supra note 208, at 190.
monthly.\textsuperscript{212} In meeting the second, the system subjects manufacturers to “strict inspection and control . . . , including investigation.”\textsuperscript{213}

Consequently, homebrewers (who are exceedingly unlikely to invest in the industrial equipment necessary to produce the minimum volumes necessary for licensure)\textsuperscript{214} can legally produce beer only by brewing a beverage not meeting the legal definition of liquor (i.e. with less than 1% ABV).\textsuperscript{215} The penalties for creating a more alcoholic beer are harsh: a “fine not exceeding ¥1,000,000 (approximately $8,700), penal servitude not exceeding ten years, or both.”\textsuperscript{216}

Given the near-impossibility of policing homebrewing, the government largely relies on voluntary compliance.\textsuperscript{217} Homebrewing supply stores are required to include warnings within their catalogs and instruction manuals explaining the law.\textsuperscript{218} However, given that fermentation is a biological process dependent on variables such as the coarseness of the barley grind, temperature (both of the water during brewing and the ambient air during fermentation), mineral content of the water, and yeast strain, it is entirely possible to accidentally exceed 1\% ABV.\textsuperscript{219}

\textsuperscript{212} See id. at 193–94. The actual tax is assessed based on the amount of barley malt used during fermentation, with greater amounts of barley being more heavily taxed. For this Note, we will use the category corresponding to beverages containing between 50\% and 100\% barley. For this category, taxes are assessed at a rate of ¥220,000 per kiloliter. Id. at 193.

\textsuperscript{213} Id. at 192.

\textsuperscript{214} The smallest capacity commercial system, a one-barrel (31-gallon) system, can be purchased used for $100,000, but is unlikely to be able to produce enough beer to meet the statutory minimum. See Steve Nicastro, \textit{How to Start a Craft Brewery}, NERDWALLET (Mar. 11, 2016), https://www.nerdwallet.com/blog/small-business/how-much-does-it-cost-to-start-a-craft-brewery/#costs. A new 30-barrel (930-gallon) system can cost up to a million dollars. See id.


\textsuperscript{216} \textit{HANDBOOK OF JAPANESE TAXES}, supra note 208, at 190 (currency conversion added).

\textsuperscript{217} See Dames, supra note 215.

\textsuperscript{218} See id.

\textsuperscript{219} See id.
Given the legal restrictions, Japanese homebrewers require creativity in sourcing their materials.\(^{220}\) As of mid-2009, only one major retail store (the Shinjuku branch of Tokyu Hands) sells homebrewing supplies, with two additional online domestic retailers.\(^{221}\) Alternative sources for brew pots and sanitizer are available in the form of discount chain stores, such as Don Quijote, while copper fittings, water filters, and various containers are available from do-it-yourself stores, such as Super Viva Home.\(^{222}\)

Japanese homebrewers also have the option of at least one “brew on premise” beer club.\(^{223}\) At this location, customers pay a flat rate, dependent upon the style of beer that they wish to brew, to rent the equipment, space, time, and assistance necessary to brew their own beer according to proven recipes.\(^{224}\) Within three weeks, the customer receives approximately twenty-five liters of personalized beer.\(^{225}\)

### IV. Hopping on the Bandwagon: Considering the Impact of Overly Restrictive Homebrewing Laws

Overly restrictive homebrewing laws have a real economic impact on a national scale. Currently, the Japanese beer industry is in decline.\(^{226}\) The stringent limit only allowing for the production of homebrew containing less than 1% ABV has contributed to restricting “local people from gaining the experience and exposure to small-batch, craft-style beer, which has in turn slowed the progress of the industry by lessening the opportunity for people to hone their skills and practice their craft . . .”.\(^{227}\)


\(^{221}\) See id.

\(^{222}\) See id.

\(^{223}\) Dames, supra note 215.

\(^{224}\) An average price amounts to approximately $100 for five gallons of beer. See id.

\(^{225}\) See id.

\(^{226}\) See Japan’s Beer Industry, supra note 183.

\(^{227}\) See Jordan, supra note 206.
This has resulted in a population grown bored with its stale options. While in 2001 Japanese people were buying 1.3 billion gallons of beer a year, by 2015 that number had shrunk to just 718.5 million gallons annually. This equates to a decline of nearly 45% in just fifteen years. During the same period, the United States beer industry remained relatively stable. By easing their overly restrictive homebrewing laws, nations such as Japan would likely benefit from the industry-wide growth experienced in countries like the United States following the legalization of homebrewing and the growth of public interest in good beer, available in a wide variety of styles.

In the United States, the removal of the federal excise tax on homebrewing birthed the craft beer industry and its subsequent exponential growth. When the federal excise tax was lifted, there were only eighty-nine breweries in the United States. By December 2016, that number had surpassed the 7,100 mark. By 2016, Florida, with its permissive homebrewing laws, had almost 200 craft breweries, accounting for a $2 billion economic impact. Nevertheless, room for growth exists even at this level.

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228 See Japan’s Beer Industry, supra note 183.
229 Id. This is true even though the Asia-Pacific beer market had a compound annual growth rate (in value) of 5.6% between 2010–2014. MARKETLINE, MARKETLINE INDUSTRY PROFILE: BEER IN THE UNITED STATES 7 (2015). Further, beer consumption (in volume) was forecast to grow by 4.8% every year between 2011–2016. Id.
231 See e.g., MARKETLINE, supra note 229, at 16.
232 See Norris, supra note 8, at 1357.
233 Id.
236 See Timothy G. Taylor et al., Economic Contributions of the Florida Craft Brewing Industry to the Florida Economy ii (2014).
the University of Florida estimate that Florida’s population can support almost 550 craft breweries, employing more than 40,000 workers and contributing $2.5 billion to the state’s economy.\textsuperscript{237}

While these numbers are significant, homebrewing has been legal in Florida for many years.\textsuperscript{238} A more apt comparison to potential gains in the Japanese industry requires looking at states which only recently legalized homebrewing. In 2012, Mississippi had a single craft brewery.\textsuperscript{239} The following year homebrewing was legalized.\textsuperscript{240} Today, Mississippi is home to at least fourteen craft breweries.\textsuperscript{241} While this is hardly an impressive number, it is significant within the context of state history and represents significant industry growth.\textsuperscript{242}

That same year Alabama also legalized homebrewing.\textsuperscript{243} The corresponding growth in the craft beer industry was both evident and staggering.\textsuperscript{244} Between June 2014 and June 2015, Birmingham’s

\textsuperscript{237} Id. These estimates are based on capita-per-brewery data from states with a mature craft beer industry, such as California, Colorado, Oregon, and Washington.

\textsuperscript{238} See Homebrewing Rights: Florida, supra note 176.


\textsuperscript{240} MISS. CODE § 67-3-11 (2017); Stevens, supra note 239.


\textsuperscript{242} Mississippi enacted state-level prohibition thirteen years prior to the passage of the Eighteenth Amendment. This hundred-year legacy lingers: to this day almost half of Mississippi’s counties are dry. See Stevens, supra note 245. By comparison, Oregon, a state with a mature craft beer industry, currently supports three breweries within Portland International Airport, Hopworks, Deschutes Breweries, and Laurelwood Brewing. See Matthew Korfhage, Two New Breweries Are Coming to PDX Airport . . . and One Is Leaving, WILLAMETTE WEEK (Aug. 14, 2017), http://www.wweek.com/bars/beer/2017/08/14/two-new-breweries-are-coming-to-pdx-airport-and-one-is-leaving.

\textsuperscript{243} See ALA. CODE § 28-4B-1 (2016); Homebrewing Rights: Alabama, supra note 174.

craft beer sales grew at a rate faster than that of any other metropolitan area in the country. There, craft beer sales as a percentage of total beer volume grew 63.1%, outpacing the nationwide increase of 13.8%. This growth, when coupled with a desire for locally-sourced ingredients, results in economic growth across related industries. Similar results are possible in Japan, where craft beer currently makes up only 1% of total sales—the public just needs the freedom to develop their tastes and explore their choices.

This position is supported by the homebrewing laws of other East Asian nations. Prior to 2000, homebrewing was illegal in Singapore. At that time, the law was amended to allow individuals eighteen and older to brew thirty liters of beer per household, per month. Since then, the city-state has become home to a dozen craft breweries, with four opening in 2015 alone. Interest in craft beer has grown to the point where Singapore now supports a craft beer and cider festival, along with a “Craft Beer Week.”

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245 See id. (this corresponds to more than twice the growth rate experienced in the next highest metropolitan area).

246 See Paul Hollis, State’s Burgeoning Craft Beer Industry Could Profit Crop Producers, ALA. FARMER’S FED’N (Dec. 20, 2016), http://alfafarmers.org/stories/news-detail/states-burgeoning-craft-beer-industry-could-profit-crop-producers#.WZ7xQSiGOUk. According to one industry expert, feed barley currently sells for between $3 and $4 per bushel. A similar quantity of malted barley sells for up to $15. Id. Likewise, though labor intensive to produce, hops sells for between $15 and $20 a pound. Id.


249 See Customs (Home-Brewing of Fermented Liquors) (Exemption) Order, c. 70 § 13(1) (Sing. 2009).

For Singapore, the economic impact has been significant.\footnote{253} Between 2002 and 2006, revenues grew at a compound annual growth rate (“CAGR”) of 3.6%.\footnote{254} Notwithstanding a predicted slowdown in growth,\footnote{255} between 2009 and 2013 revenues grew at an even higher CAGR of 4%.\footnote{256} A driving force behind this growth was an increased demand for craft beer.\footnote{257} While craft beer only occupied a 9.2% share of the 2006 market, by 2015 it had grown by over 23%, accounting for 11.4% of all national beer revenue.\footnote{258}

Conversely, while homebrewing remains illegal in Thailand, the minor penalties render the ban functionally meaningless.\footnote{259} In a country where the average domestic beer purchased from a supermarket or convenience store costs between forty and fifty baht (approximately $1.15 to $1.45),\footnote{260} the penalty for brewing your own beer amounts to less than the cost of a six pack.\footnote{261} While the Thai domestic beer market has traditionally been dominated by just two brewers, Singha and Chang, the introduction of Western-style homebrewing for private consumption has found fertile ground among the relatively lax laws.\footnote{262} The public has responded with a


\footnote{254} \textit{PROGRESSIVE DIGITAL MEDIA}, \textit{supra} note 253.

\footnote{255} \textit{See id.}

\footnote{256} \textit{FLANDERS, supra} note 253, at 2.

\footnote{257} \textit{See PROGRESSIVE DIGITAL MEDIA, supra} note 253; \textit{PROGRESSIVE DIGITAL MEDIA, BEER IN SINGAPORE} (2015) [hereinafter \textit{BEER IN SINGAPORE}].

\footnote{258} \textit{BEER IN SINGAPORE, supra} note 257.

\footnote{259} \textit{See} Brian Spencer, \textit{Thai Brewing: Rebel Microbreweries Thirst for Change in the Law}, CNN (Dec. 19, 2017), http://www.cnn.com/travel/article/illegal-homebrewed-beers-thailand/index.html. Under Thailand’s 1950 Liquor Act the penalty for homebrewing is a “nominal” fine of 200 baht (approximately $5.70). Those caught selling their homebrew face harsher punishment: a fine of 5,000 baht (approximately $140), and/or up to six-month jail time. \textit{See id.}


\footnote{261} \textit{See Spencer, supra} note 259.

\footnote{262} \textit{See id.; see also HOME BREW THAILAND FORUM, HOME BREW ASIA} (last visited Feb. 4, 2017), http://www.homebrewasia.com/forum (an internet forum exclusively dedicated to homebrewing in Thailand with over 1300 members and
“growing demand for a wider range of beers,” and demand for craft beer is on the rise.

Arguably, the general unenforceability of the current Japanese homebrewing laws also renders them functionally meaningless. However, voluntary compliance and a general unwillingness to flaunt the law likely remain high in a nation like Japan where the overall crime rate is extremely low. In his treatment of the subject of Japan’s low crime rate, Nobuo Komiya, a former Research Officer of the Ministry of Justice in Japan, concludes:

In Japan, a great number of rules must be meticulously observed. Even when one cannot find a concrete rule, one sticks to the personalistic rule that one must submit oneself to one’s seniors, and not deduce behaviour from universalistic principles. The Japanese tend to be nervous about whether or not their behaviour is in conformity with the rules.

The liberalization of laws concerning homebrewing would also likely be in line with other sets of Japanese norms and values. According to one British transplant who runs a pub and brewery in Japan, the country has a “love affair with craftsmanship and [a] deep culture of perfectionism,” as well as a “real interest in hand-made, unique products. For nihonshu, or Japanese sake, the idea of having a very small-scale unique sake brewery is quite common.”

almost 10,000 individual posts); THAI BREW SHOP, https://www.thai-brewshop.com (last visited Feb. 4, 2017) (one of several websites, many of them exclusively Thai, that openly sell homebrewing supplies to Thai consumers).


266 Id. at 380–81.

267 See Jordan, supra note 206.

268 Id. (quoting James Williams of Campion Ale, a British-style pub and brewery).
Japanese public rightly deserves the opportunity to apply this very same ethos to beer particularly on the smallest scale: in the home.

V. CONCLUSION

Following the legalization of homebrewing, the craft beer industry has experienced near exponential growth and significant economic implications. Though it is beyond the scope of this Note, the reasons why countries choose to regulate the household production of beer varies. For some, the consideration is primarily religious in nature.269 For others, the principal concern is taxation.270 Through analyzing the historical homebrewing jurisprudence of two disparate countries with different concerns and approaches, this Note has hopefully provided a look at two very different ways in which homebrewing is regulated.

Following Prohibition, the United States waited until the 1970s to again legalize the millennia old process.271 This resulted in a widening national interest in beer, with beer drinkers becoming invested in both quality and variety.272 Over the course of subsequent decades, this interest blossomed into consumer demand and led to the birth of the craft beer industry.273 In holdover states, where local law continued to prohibit homebrewing subsequent to the federal legalization, the craft beer industry has experienced significant growth following the legalization of homebrewing, resulting in significant economic implications.274 Given these considerations, other nations with restrictive homebrewing laws should consider easing them. To energize Japan’s sagging beer industry, a similar approach could yield the opportunity for Japanese beer drinkers to expand their palates beyond relatively flavorless lager.

269 See Homemade Alcohol, supra note 8 (noting that homebrewing is illegal in both Malaysia and Iran).
270 See HANDBOOK OF JAPANESE TAXES, supra note 208, at 190.
271 See U.S. CONST. amend. XXI, § 1.
273 See id.
274 See e.g., Stevens, supra note 239; Tapped In, supra note 244; Hollis, supra note 247.