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Developing American Wine Law – Lessons from European Wine Regulation in the Face of Climate Change and Growing Demand

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**DEVELOPING AMERICAN WINE LAW – LESSONS FROM
EUROPEAN WINE REGULATION IN THE FACE OF
CLIMATE CHANGE AND GROWING DEMAND**

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INTRODUCTION

After a long week of constitutional drafting, George Washington headed to a local bar, The City Tavern.¹ The Constitution was to be signed in two days, and he was to become president. Fifty-five guests, including politicians, troops, friends, and family, joined Washington to celebrate the occasion.² The tab, adjusted for inflation, reached roughly \$17,253.³ According to a receipt found in the First Troop Philadelphia City Calvary Archives, the party consumed fifty-four bottles of Madeira wine, sixty bottles of Bordeaux wine, eight bottles of old stock whiskey, twenty-two bottles of porter ale, eight bottles of hard cider, twelve jugs of beer, and seven large bowls of alcoholic punch.⁴ The sixteen musicians and staff consumed an additional sixteen bottles of Bordeaux wine, five bottles of Madeira wine, and seven bowls of alcoholic punch.⁵ The bill also includes a roughly \$300 charge for broken glass.⁶

One might conclude that where booze was concerned, Washington preferred quantity over quality. But this would be difficult to square with the fact that Washington imported his own Madeira, brewed his own beer, and distilled his own whiskey.⁷ His reputation for moderation and apparent like for the high-quality French wine of Bordeaux would also suggest that for Washington, quality and craft were of greater importance.⁸ In law, it is sometimes asked what the Founding Fathers would have thought of a modern situation. With respect to United States wine regulation, Washington may be disappointed. Quality assurance in American wine regulation is lacking.

¹ Steve Hendrix, *The Epic Bender to Celebrate George Washington and the Newly Finished U.S. Constitution*, WASH. POST (Feb. 22, 2018), <https://www.washingtonpost.com/news/retropolis/wp/2018/02/22/the-epic-bender-to-celebrate-george-washington-and-the-newly-finished-constitution/>.

² Eric Milzarski, *How George Washington Ran Up a \$17,253 Bar Tab 2 Days Before Signing the Constitution*, BUS. INSIDER (Sep. 5, 2018), <https://www.businessinsider.com/george-washington-ran-a-17253-tab-before-signing-the-constitution-2018-9>.

³ *Id.*

⁴ Ella Lee, *George Washington's Hefty Bar Tab; Days Before the Constitution's Signing, Is Real*, U.S.A. TODAY (Jan. 20, 2022), <https://www.usatoday.com/story/news/factcheck/2022/01/20/fact-check-george-washingtons-expensive-bar-tab-real/5947984001/>.

⁵ Milzarski, *supra* note 2.

⁶ *Id.*

⁷ Joshua Malin, *George Washington: A Profile in Wine, Beer & Whiskey*, VINEPAIR (Feb. 16, 2015), <https://vinepair.com/wine-blog/george-washington-whiskey-history/>.

⁸ *Ten Facts About the Distillery*, GEORGE WASHINGTON'S MOUNT VERNON, <https://www.mountvernon.org/the-estate-gardens/distillery/ten-facts-about-the-distillery/#:~:text=George%20Washington%20held%20an%20enlightened,punch%2C%20porter%2C%20and%20whiskey> (last visited Feb. 16, 2022).

Wine has several regulatory schemes in place governing its labeling, production, and more. Some operate on international scales, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the European Union's Protected Designation of Origin, while others are national.⁹ The development of national wine law differs from country to country. The motivations underlying the creation of these laws include maintaining the character of products of cultural importance, maintaining quality, and protecting against fraud. The development of French wine regulation preceded that of most other countries, and it is credited with building the outstanding global reputation of French wine. Many other countries, and eventually the European Union, modeled their own wine regulation around French regulations to also find success. However, many of these regulatory schemes have recently struggled. Rigorous standards imposed on grape growing and winemaking practices have limited producers' capacity to respond properly to global warming challenges.

Recently, the United States started its own wine law experiment with the creation of the American Viticulture Area (AVA). Relative to French and European Union wine laws, the AVA laws are notably hands-off. This paper will give a general background on wine and wine production, and then compare the current AVA regulatory scheme with French and European Union wine regulation. Finally, it will suggest changes to the AVA that could advance American wine in global markets while avoiding the pitfalls presented by global warming other wine regulatory regimes are now confronting.

I. WINE BACKGROUND

A. *Wine International Markets*

In 2020, the estimated global market for wine was valued at \$417.85 billion, and it is expected to grow at a compounded annual growth rate (CAGR) of 6.4%

⁹ See, e.g., *Part II — Standards Concerning the Availability, Scope, and Use of Intellectual Property Rights*, WTO, https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm; *Aims of EU Quality Schemes*, EUR. COMM'N, https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en#pdo (last visited Feb. 16, 2022); *American Viticulture Areas*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, <https://www.ttb.gov/wine/american-viticultural-area-ava#:~:text=An%20American%20Viticultural%20Area%2C%20or,affect%20how%20grapes%20are%20grow>n.

from 2021 to 2028.¹⁰ At this rate, the wine market will reach a size of \$685.99 billion by 2028.¹¹ In the United States, wine sales reached \$67.3 billion in 2020.¹² Total consumption of wine put the United States ahead of France as the world's largest consumer of wine in 2021.¹³ Though individual consumption in the United States is still relatively low, the consumption per person in the United States has increased threefold since 1965.¹⁴ The United States is quickly becoming the largest single market for wine by following the European model of being both a producer and consumer.¹⁵ The rise of the United States as a major exporter of wine has been attributed in large part to the general trend of replacing low-quality wine grape varieties with high-quality international varieties suitable for export and improvements in technology that allow higher yields of grapes to be grown.¹⁶ California led this trend and now accounts for ninety percent of wine production in the United States, making it the fourth largest wine producer in the world.¹⁷ California's continued strides toward quality eventually pushed it to focus on more expensive wines.¹⁸ This trend was prompted by increasing price competition with lower-end imports from Australia and South America.¹⁹ However, France still dominates the production of high-end wines since the number of French wines with prices that move them into the category of luxury goods is far higher than in any other country.²⁰

In the last fifty years, the wine market has broadened enormously, and "quality has improved out of all recognition."²¹ Interestingly, there has been a global surplus of wine relative to demand since at least the mid-1980s.²² This is in part because of changing wine consumption habits in Europe. Since 1960, the average liters of wine consumed per person each year in France has fallen from

¹⁰ *Wine Market Size, Share & Trends Analysis Report By Product (Table Wine, Dessert Wine, Sparkling Wine), By Distribution Channel (On-trade, Off-trade), By Region, and Segment Forecasts, 2021 – 2028*, GRAND VIEW RSCH., <https://www.grandviewresearch.com/industry-analysis/wine-market>.

¹¹ *Id.*

¹² LIZ THACH, OVERVIEW OF 2020 U.S. WINE MARKET STATS AND 10 HOT WINE TRENDS FOR 2021 3 (2021).

¹³ INT. ORG. OF VINE AND WINE, STATE OF THE WORLD VINE AND WINE SECTOR 2021 11 (2022), <https://www.oiv.int/public/medias/8778/eng-state-of-the-world-vine-and-wine-sector-april-2022-v6.pdf>.

¹⁴ BENJAMIN LEWIN, WINE MYTHS & REALITY 197–98 (2d ed. 2017).

¹⁵ *Id.* at 198.

¹⁶ *Id.* at 155, 198, 205 (discussing international wine varieties that all originated in France, including Cabernet Sauvignon, Merlot, Pinot Noir, Chardonnay, Riesling, and Sauvignon Blanc).

¹⁷ *Id.* at 275–77.

¹⁸ *Id.* at 286.

¹⁹ *Id.*

²⁰ *Id.* at 224.

²¹ *Id.*

²² *Id.* at 201.

twenty to close to seven.²³ It is speculated that wine culture in France has changed from drinking lower-quality wine as an everyday event to less frequent but higher-quality consumption.²⁴

B. Wine Production

Wine production can be traced to 540 BCE.²⁵ Currently, there are over 10,000 different types of *Vitis Vinifera*, the vine that produces grapes used for winemaking.²⁶ Within each grape, a unique mixture of compounds can be found. The development of these compounds is influenced by environmental factors such as soil type, weather patterns, sunlight exposure, and more.²⁷ Each grape type tends to develop certain general characteristics, but the unique composition of environmental factors acting on grapes as they grow can further impart subtle characteristics which would not develop had that same grape grown under a different set of environmental conditions.²⁸ Wine grapes begin with high levels of acid, low levels of sugar, and prominent herbaceous flavors.²⁹ As they ripen, the acid levels fall as sugar levels rise and herbaceous flavors decrease.³⁰ In this process, the aromas and flavors of some white grapes change from green fruit to stone and tropical fruit, and black grapes change from fresh fruit to baked fruit.³¹

Generally, when grapes are ready to be harvested, they are picked by either hand or machine. They then are macerated or pressed, creating a mixture called “must” and consists of freshly crushed fruit juice, grape skins, and other grape components.³² Yeasts are introduced to the must to begin the process of alcohol fermentation, where sugar is converted to alcohol.³³ The more sugar in the must, the more alcohol can be created through this conversion. The resulting mixture is filtered and sometimes aged in wood barrels before going into bottles.³⁴

²³ *Id.* at 200.

²⁴ *Id.* at 197–98.

²⁵ *Id.* at 1.

²⁶ *Id.* at 15; JANIS ROBINSON & JULIA HARDING, *THE OXFORD COMPANION TO WINE* 803 (Janis Robinson et al. eds., 4th ed. 2015).

²⁷ See WINE & SPIRIT EDUCATION TRUST, *WINES: LOOKING BEHIND THE LABEL, AN ACCOMPANIMENT TO WSET LEVEL 2 AWARD IN WINE* 14–17 (Cambridge Editorial Ltd. eds., 1st ed. 2019).

²⁸ See, e.g., *Id.* at 51, 54. As an example, Cabernet Sauvignon is usually associated with high tannic levels, flavors of black fruit, black currents, and even bell pepper flavors. In warmer climates the fruit flavors take on a “cooked” character. *Id.*

²⁹ *Id.* at 13.

³⁰ *Id.*

³¹ *Id.*

³² ROBINSON & HARDING, *supra* note 26, at 489.

³³ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 20.

³⁴ *Id.* at 20–25.

Over the course of this process, the unique compounds residing in the grape juice mixture undergo further chemical reactions to create unique arrays of flavors.³⁵ Fundamental wine characteristics, such as tannic level,³⁶ acidity,³⁷ alcohol level,³⁸ and sugar content, are derived from the harvested grapes and can be manipulated with winemaking techniques.³⁹

C. Wine Production – Comparative Example

To pull this discussion from the abstract, it is useful to compare wines made from the Chardonnay grape in Napa Valley, California against those grown in Chablis, a sub-region of Burgundy, France. Chardonnay typically takes four to six months to ripen from May until October.⁴⁰ Over this period, the daytime high in Napa Valley averages 79.3 degrees Fahrenheit.⁴¹ Chablis is cooler, with an average daytime high of seventy degrees Fahrenheit.⁴² Napa Valley gets considerably more sunlight than Chablis and sees just under a fifth of the amount of rain.⁴³ Altogether, this creates an opportunity in Napa Valley for Chardonnay grapes to reach higher levels of ripening. This promotes higher and more developed sugar content that ultimately can give rise to higher alcohol content or sweeter wines. These wines can be heavier bodied (thicker texture) and carry stone fruit flavors like peach, and tropical fruit flavors, like pineapple.⁴⁴ Chablis,

³⁵ See Gustav Styger et al., *Wine Flavor and Aroma*, 38 J. INDUS. MICROBIOLOGY & BIOTECHNOLOGY 1145 (2011).

³⁶ See KAREN MACNEIL, *THE WINE BIBLE* 36–38 (Suzanne Rafer ed., 2d ed. 2015) (stating tannins are responsible for a “drying” sensation that can occur in one’s mouth when ingesting wine. The more tannic the wine, the more this drying sensation will be felt. Some compare this sensation to suddenly feeling like you have the scratchy tongue of a cat).

³⁷ See *id.* at 35–36 (discussing how it impacts the sensation of tannins, but acidity is what causes your mouth to water).

³⁸ ROBINSON & HARDING, *supra* note 26, at 159 (stating that chaptalization is the process by which sugar is introduced to increase alcohol content during fermentation).

³⁹ See WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 22–25 (discussing how winemaking techniques can significantly influence taste. Aging a wine in Oak barrels for example will impart flavors like vanilla, toasted marshmallow, and butterscotch).

⁴⁰ *A Key Stage in the Life of a Wine*, CHABLIS, <https://www.chablis-wines.com/explore/the-life-of-a-wine/the-harvests/the-harvests,3230,15304.html?> (last visited Jan. 15, 2022).

⁴¹ *Climate and Average Weather Year-Round in Napa, California*, WEATHER SPARK, <https://weatherspark.com/y/615/Average-Weather-in-Napa-California-United-States-Year-Round> (last visited Jan. 15, 2022).

⁴² *Climate and Average Weather Year-Round in Chablis, France*, WEATHER SPARK, <https://weatherspark.com/y/49412/Average-Weather-in-Chablis-France-Year-Round> (last visited Jan. 15, 2022).

⁴³ Compare *id.*, with *Climate and Average Weather Year-Round in Napa, California*, *supra* note 41.

⁴⁴ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 38 (describing “less sweet” or “low sugar” as “dry”).

on the other hand, sees less ripening, and the grapes contain less sugar, leading to lower alcohol or less sweet wines that have delicate notes of green fruits, such as apple, and citrus fruits, like lime.⁴⁵

The soil in these places is also considerably different. Napa Valley soil developed from volcanic activity and significant tectonic plate movement, which has churned the soil. As a result, the region finds an array of different soil types.⁴⁶ Chablis, on the other hand, sits in a sedimentary basin that was once covered by the ocean.⁴⁷ As a result of this particular geologic history, the subsoil consists of gray marl with bands of limestone that can be rich in fossils of *Exogyra virgula*.⁴⁸ These fossils are of small oysters that were very populous during the period Chablis was underwater.⁴⁹ It is said this soil composition imparts a unique salinity to Chardonnay produced in Chablis that cannot be found among the Chardonnays produced in Napa Valley.⁵⁰

After harvesting the grapes, winemakers in Napa typically choose to age the wine in oak barrels, which contribute to its buttery texture and vanilla flavor. Further, malolactic conversion may be used to add more butter-like flavors and textures by converting malic acid into lactic acid.⁵¹ Winemakers in Chablis are much more conservative in the application of these techniques in response to French government regulation.⁵² As a result, the Chardonnay wines in Chablis are less fruit-forward, higher in acid, lighter in body, with greater mineral flavors when compared to Chardonnay produced in Napa Valley, which is sweeter or higher alcohol, more buttery and bready in texture, and richer in terms of described complex sugar flavors.

⁴⁵ *Id.*

⁴⁶ *Soil and Geology, NAPA VALLEY VINTNERS*, https://napavintners.com/napa_valley/soils_and_geology.asp (last visited Jan. 15, 2022).

⁴⁷ *Chablis: Wines in a Sedimentary Basin, CHABLIS*, <https://www.chablis-wines.com/explore/terroir/special-soil/special-soil,1824,7666.html?> (last visited Jan. 15, 2022).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 24. Lactic acid is found in dairy products like milk, butter, etc. This trend however is falling out of favor in Napa Valley which is now opting for far smaller amounts of malolactic fermentation or none. Another winemaking technique involves the use of lees which gives the wine a nutty, creamy flavor reminiscent of warm brioche. *Id.*

⁵² *Id.* at 38.

D. Winemaking Techniques – Natural Product or Artificial Beverage?

While some winemaking techniques are more standard, others can draw controversy. As noted by Master of Wine Benjamin Lewin, “[W]ithout intervention, wine rapidly becomes vinegar. Since some intervention is essential, and given that some means of intervention are hallowed by tradition, it’s not always clear where to draw the line between artisanal winemaking and industrial process.”⁵³ For example, winemakers have a range of tools available to them to adjust wine alcohol content.⁵⁴ Reverse osmosis and evaporation sous vide can be used to remove water from the wine to achieve a higher percentage of alcohol content.⁵⁵ Some producers claim this gives a more natural result, such as when it has rained just before harvest, causing perfectly ripe grapes to become slightly dilute.⁵⁶ While this ostensibly is used to increase alcohol content, it also has the effect of concentrating the other compounds existing in the wine.⁵⁷

Saignee is a process where some wine juice is reserved at the start of fermentation of black grapes, increasing the ratio of skin to liquid in the vat, resulting in a more concentrated red wine.⁵⁸ While this is commonly used with varieties such as Pinot Noir that have less intense color, depending on the use of the process, it can be viewed by many with skepticism for its ability to alter the natural balance of the wine.⁵⁹ A particularly controversial process builds on saignee by adding water back to the must.⁶⁰ Adding water back to the must “is illegal in Europe, where it is regarded as fraudulent,” but the process is used in California.⁶¹ Some California producers will add acid to must with high Brix before diluting it with water.⁶² Brix is a measure of the potential alcohol content of wine, which, as discussed, is a function of sugar content.⁶³ As grapes mature, acid levels decline, and sugar levels rise.⁶⁴ Many growers in the high temperature environment of California bring grapes to very high levels of ripeness, resulting in very low acid levels and high sugar. If the Brix of a must is too high, producers will add water to bring the sugar level down to a level that will result in

⁵³ LEWIN, *supra* note 14, at 125.

⁵⁴ *Id.* at 127.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 128.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 127.

⁶² *Id.* at 128.

⁶³ *What is Brix? Winemaking Secrets*, WINE FOLLY, <https://winefolly.com/deep-dive/brix-secrets-wine/>.

⁶⁴ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 13.

successful fermentation and then remove some of the juice as fermentation begins to mitigate the effects of dilution.⁶⁵ This process is sometimes pejoratively referred to as “the acid whip.”⁶⁶ To adjust acidity, some producers will introduce tartaric acid to the must.⁶⁷ This process is legal in only the hottest parts of Europe.⁶⁸

The spinning cone is the most sophisticated system for manipulating wine.⁶⁹ The wine is poured into a series of rotating and stationary cones that, through centrifugal force, thin the wine against walls where it encounters nitrogen gas.⁷⁰ The process removes volatile aroma and flavor. Volatile means the substance has a high vapor pressure at room temperature such that it can be perceived.⁷¹ These compounds are condensed and reserved to be added back to the resulting wine, which, through this process, has been reduced in alcohol content.⁷² By adjusting the conditions, individual volatile flavor compounds can be extracted.⁷³ The process can thus be used to artificially concentrate specific flavors in the wine.⁷⁴

The addition of sugar to wine can occur. After fermentation is complete, there is always a small amount of residual sugar left in the wine.⁷⁵ Residual sugar makes a wine taste both sweeter and richer.⁷⁶ The legal definition of “dry wine” is a wine with less than four grams per liter of residual sugar, but some exceptions are made for wines with high enough acidity.⁷⁷ It is a well-known fact that market surveys show consumers usually claim to drink dry wines, but in blind tastings, they prefer wines with more residual sugar than dry wine.⁷⁸ Many leading brands self-described as “dry” have some sweetness which is achieved by adding sugar after fermentation is complete—a process that is illegal in Europe.⁷⁹ Several large American brands, such as Franzia’s “Chablis,”

⁶⁵ LEWIN, *supra* note 14, at 128.

⁶⁶ *Id.* (posing the question of whether this process begins to look like manipulation).

⁶⁷ *Id.* at 132.

⁶⁸ *Id.*

⁶⁹ *Id.* at 129.

⁷⁰ *Id.*

⁷¹ *Id.* at 130.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* (questioning how far this process should be taken and where the line is between natural product and industrial fabrication).

⁷⁵ *Id.* at 132.

⁷⁶ *Id.* at 133.

⁷⁷ *Id.* at 132.

⁷⁸ *Id.*

⁷⁹ *Id.*

have up to 11 grams per liter.⁸⁰ This would be classified as “medium dry” in Europe, and it would be illegal to represent it as “dry” in European markets.⁸¹

As mentioned, it is common to age wine in oak barrels to impart further characteristics onto the wine.⁸² Cheaper ways of achieving this include the addition of oak staves or chips to the wine, which are later removed.⁸³ However, as far as mimicking actual oak barrels goes, one manufacturer of oak cubes finds they leave wines with a disjointed flavor profile and give a harsh and bitter mouth feel.⁸⁴ More controversial, however, is the addition of oak powder or oak extract flavoring compounds that dissolve into the wine.⁸⁵

Perhaps the most controversial wine adulteration method is the application of Mega Purple.⁸⁶ Mega Purple is an additive made from grape juice concentrate “widely known to winemakers but kept as obscure as possible to the consumer.”⁸⁷ One winemaker in California claims “[v]irtually everyone is using it. In just about every wine up to \$20 a bottle anyway.”⁸⁸ Interestingly, the product is not listed in the product catalogs of its manufacturer.⁸⁹ The substance is an extract made from grapes of Rubired, which produces a wine “with little character or body, and is used to increase the color of generic or varietal table and dessert wines,” states the University of California—the hybrid grapes inventor.⁹⁰ This is an interesting description of a grape that represents five percent of the total crushed grapes for wine production in California.⁹¹ The extract from Rubired is “very deeply colored, very high in sugar, and because of its hybrid origin, has a slightly foxy aroma. It’s most commonly used as an additive to give red wines a bit more color, but it also gives them a touch of residual sugar.”⁹² The substance is used to overcome deficiencies in wine because it adds enough flavoring to hide vegetal notes and other defects.⁹³

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 22–25.

⁸³ LEWIN, *supra* note 14, at 141.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ LEWIN, *supra* note 14, at 134; VANESSA PRICE & ADAM LAUKHUF, *BIG MACS & BURGUNDY: WINE PAIRINGS FOR THE REAL WORLD* 121–22 (2020).

⁸⁷ LEWIN, *supra* note 14, at 134.

⁸⁸ *Id.* at 132.

⁸⁹ *Id.* at 134.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 135.

⁹³ *Id.*

“[The] homogenizing effect it has on wine flavor may partly explain the general similarities in style between many lower-priced red wines.”⁹⁴ As this extract comes from hybrid grapes, it is illegal to use in Europe.⁹⁵

E. Wine as Having a “Sense of Place”

As previously alluded to, the unique geological and environmental conditions of a plot of land are believed to contribute one-of-a-kind characteristics to the wine produced in its borders. These unique characteristics are collectively part of the land’s “*terroir*.”⁹⁶ *Terroir* can be difficult to define as many sources have suggested there is no suitable direct English translation.⁹⁷ But these two definitions below serve as good starting illustrations:

Vitivinicultural ‘terroir’ is a concept that refers to an area where the collective knowledge amassed from, on the one hand, the interactions between the identifiable physical and biological environment, and on the other hand, applied vitivinicultural practices, imparts distinctive characteristics on the products originating from that area.⁹⁸

A *terroir* is a specific geographical area where production takes its originality directly from the specific nature of its production area. *Terroir* is based on a system of interactions between physical and biological environment, and a set of human factors within a space which a human community built during its history with a collective productive knowledge. There are elements of originality and typicality of the product.⁹⁹

In the case of Chablis, the *terroir* is said to be in part the oyster-rich soil, which can contribute saline-like minerality, and the cooler weather, which provides the described delicate fruit flavors. The specific winemaking techniques required to emphasize these unique characteristics became important and widely practiced because of the developing demand for wines with these one-of-a-kind qualities specific to the region.

⁹⁴ *Id.*

⁹⁵ *Id.* at 136.

⁹⁶ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 38.

⁹⁷ See, e.g., Elizabeth Barham, *Translating Terroir: The Global Challenge of French AOC Labeling*, 19 J. RURAL STUD. 127, 128 (2003).

⁹⁸ Int’l Org. of Vine and Wine [OIV], *Definition of Vitivinicultural “Terroir”*, Res. OIV/VITI 333/2010 (June 25, 2010) (stating the official definition of *Terroir* as adopted by the General Assembly of International Organization of Vine and Wine).

⁹⁹ *PDO-AOC*, INSTITUTE NATIONAL DE L’ORIGINE ET DE LA QUALITE (Oct. 25, 2021), <https://www.inao.gouv.fr/eng/Official-signs-identifying-quality-and-origin/PDO-AOC>.

This concept of *terroir* is a foundational idea that guided French-winemaking regulatory development.¹⁰⁰ In several French regions, growers came to believe over centuries that certain grape varieties developed better than others on their land.¹⁰¹ They further determined that certain winemaking practices bring out the best qualities of the grapes to reveal uniquely powerful flavors and characteristics. As these practices became customary in the regions, they increasingly produced high quality wine with uniform yet unique characteristics.

Soon, international demand grew for wines from these regions, and their geographic names became synonymous with a specific high quality and distinct wine. Wines from Bordeaux, France, became popular among the British elite, and even Thomas Jefferson made mention of a unique classification for French wine that merchants had developed.¹⁰² Against this backdrop and the historical events to follow, French wine law was born.

II. FRENCH WINE LAW DEVELOPMENT

In the mid-nineteenth century, a parasitic aphid called Phylloxera swept through Europe and decimated nearly a third of all vineyards.¹⁰³ European wine production fell by seventy-three percent.¹⁰⁴ The significant decline in production created a gap in the market between available supply and the high global demand for French wine. This instability precipitated a sequence of reactions that slowly established the first French wine laws.

In response to the market gap, the price of French wine skyrocketed. The French government turned to importing large amounts of foreign wine to ensure that the tastes of the French population did not move away from wine while the French vineyards recovered.¹⁰⁵ To increase wine production, producers began to adulterate wine and include artificial substrates.¹⁰⁶ This included producing wine from dried grapes, adding plaster or coloring to correct flawed wines, and adding water or sugar to grape skins.¹⁰⁷

¹⁰⁰ LEWIN, *supra* note 14, at 44.

¹⁰¹ *Id.* at 50.

¹⁰² *History*, CONSEIL INTERPROFESSIONNEL DU VIN DE BORDEAUX, <https://www.bordeaux.com/us/Our-know-how/History> (last visited Oct. 25, 2021).

¹⁰³ Giulia Meloni & John Swinnen, *The Political Economy of European Wine Regulations*, 8 J. WINE ECON. 244, 259 (2013).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 259.

¹⁰⁷ *Id.* at 258–59.

Many producers experimented with rootstocks of American species that were resistant to pests like Phylloxera by crossbreeding two or more vine species.¹⁰⁸ These types of “hybrids” allowed for much higher yields but produced wine that was considered of poor quality, strange taste, and low alcohol content.¹⁰⁹ Producers began to blend this wine with imported wine that had higher alcohol content.¹¹⁰ Simultaneously, fraudulent bottles entered the market, claiming to be from prominent French winemaking regions like Bordeaux.¹¹¹ French wine producers were forced to lower prices to compete with the cheaper imported wine that had become fixtures for French consumers.¹¹² Starting in 1905, the French government responded to overproduction and fraud by implementing measures that controlled how much wine a producer could make based on their declared harvest size and narrowed the definition of wine as being exclusively made from water, alcohol, and dry extracts.¹¹³

During this time, growers in certain regions formed associations that worked to guarantee the authenticity of their products in an environment wrought with fraudulent wine.¹¹⁴ The French government responded by implementing a series of regulations protecting the practices of these organizations such that only wines made from specified areas and according to local custom could place the region’s name on produced bottles.¹¹⁵ Quality was believed to be regulated implicitly by “introducing an explicit link between the ‘wine quality,’ its production region (the *terroir*), and the traditional way of producing wine.”¹¹⁶

As seen, these early regulations had a variety of goals: combating fraud, controlling market supply, recovering French wines’ international reputation, and protecting the historical winemaking traditions that have consistently allowed wines to showcase the *terroir* of the region they are from.¹¹⁷ In 1935, the French government consolidated existing laws into a larger regulatory scheme known as the Appellation d’Origine Contrôlée (AOC).¹¹⁸ In the same year, the French government established the Institut National de L’Origine et de

¹⁰⁸ *Id.*

¹⁰⁹ ROBINSON & HARDING, *supra* note 26, at 296.

¹¹⁰ Meloni & Swinnen, *supra* note 103, at 259.

¹¹¹ *History*, *supra* note 102.

¹¹² Meloni & Swinnen, *supra* note 103, at 260.

¹¹³ Jeffrey Munsie, *A Brief History of the International Regulation of Wine Production*, DIGIT. ACCESS SCHOLARSHIP HARV. (Mar. 2002), <http://nrs.harvard.edu/urn-3:HUL.InstRepos:8944668>.

¹¹⁴ *Id.*

¹¹⁵ Meloni & Swinnen, *supra* note 103, at 259–60.

¹¹⁶ *Id.* at 259.

¹¹⁷ *Id.* at 260.

¹¹⁸ *Id.*

la Qualite (INAO) to oversee the AOC.¹¹⁹ The AOC created labeling requirements that restricted production to a specific region and also mandated production criteria such as grape variety, minimum alcohol content, and maximum vineyard yields.¹²⁰ This regulatory scheme would go on to inform the development of wine labeling regulations for the European Union and other countries around the world.¹²¹

III. MODERN FRENCH WINE LAW AND THE EU GEOGRAPHICAL INDICATION FRAMEWORK

French wine is now largely regulated by the Appellation d'Origine Protégée (AOP).¹²² The regulatory scheme superseded the existing Appellation d'Origine Contrôlée (AOC) in response to EU legislation launched in 2008.¹²³ This EU legislation launched the Geographic Indications and Designations of Origin framework and sets production and labeling standards for cheese, butter, wine, and more products of EU member country origin.¹²⁴

Following the French example, the stated aim of the EU quality scheme is to “protect the names of specific products to promote their unique characteristics, linked to their geographical origin as well as traditional know-how. . . . The GI [geographical indication] recognition enables consumers to trust and distinguish quality products while also helping producers to market their products better.”¹²⁵ These “names” are almost always geographic and are usually also the name of the products themselves.¹²⁶ Herein lies an important distinction between most French (and European) wines and wines from the U.S.¹²⁷ In EU countries, most wine labels will say the name of a geographic location instead of the name of a

¹¹⁹ ROBINSON & HARDING, *supra* note 26, at 369 (translating to National Institute of Origin and Quality).

¹²⁰ Meloni & Swinnen, *supra* note 103, at 260.

¹²¹ *Id.*

¹²² ROBINSON & HARDING, *supra* note 26, at 540; *see generally* Thomas Matthews, *The 1855 Bordeaux Classification*, WINE SPECTATOR (Mar. 27, 2019), <https://www.winespectator.com/articles/the-1855-bordeaux-classification-3491> (distinguishing the current AOP regulatory scheme from the Bordeaux Wine Classification of 1855, in which Emperor Napoleon III ranked the wine of subregions by submitting a hierarchy of estates or “châteaux”).

¹²³ ROBINSON & HARDING, *supra* note 26, at 540.

¹²⁴ *The National Institute of Origin and Quality – Institute National de L’origine et de la Qualite (INAO)*, INSTITUTE NATIONAL DE L’ORIGINE ET DE LA QUALITE, <https://www.inao.gouv.fr/eng/The-National-Institute-of-origin-and-quality-Institut-national-de-l-origine-et-de-la-qualite-INAO> (last visited Oct. 25, 2021).

¹²⁵ *Geographic Indications and Quality Schemes Explained*, EUROPEAN COMM’N, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en#geographicalindications.

¹²⁶ PRICE & LAUKHUF, *supra* note 86, at 24.

¹²⁷ *See id.*

wine type.¹²⁸ It might surprise Americans to learn this is not as unusual as they may think. For example, Brie and Gouda cheese are from towns with those names.¹²⁹ Additionally, Champagne is named after the region of Champagne, France, where the wine is made, and Champagne, itself, is made from Chardonnay, Pinot Noir, and several other grape varieties.¹³⁰ Chianti wine, which perhaps you've ordered in an Italian restaurant, is from Chianti, a sub-region of Tuscany; the grape used to make it is Sangiovese.¹³¹

With respect to wine, GI regulations broadly define the geographic boundaries of winemaking regions, set grape sourcing standards from those regions, and set production requirements associated with those regions.¹³² Geographic sourcing, meaning that the grapes used to make the wine come from a specific area, combats fraud by preventing others from passing off their wine as being sourced from somewhere it is not.¹³³ Production requirements work to guarantee that the wine is produced in accordance with practices that guarantee a level of quality and that the wine has “typical” characteristics held by wine traditionally produced in the region that brought the wine to fame in the first place.¹³⁴ Together, these requirements serve as gatekeepers that use special tiers of government-protected labeling to indicate genuineness and particular quality. If each of these requirements is met, a wine producer may use the protected label, which usually entails giving the wine the name of the geographic region in question.¹³⁵

The geographical indications framework created three categories for products to fit into.¹³⁶ The two relevant to wine will be evaluated here – protected designation of origin (PDO) and protected geographical indication (PGI).¹³⁷ The PDO category is akin to the described historical French AOC, while the PGI category is akin to the historical French Vin de Pays. The differences between these categories “are linked primarily to how much of the product’s raw

¹²⁸ *Id.* (“The types of grapes that can be grown in an identified geographical area, called an appellation, are strictly regulated in the Old World, so putting the name of the grape on the label becomes redundant.”).

¹²⁹ *Brie*, ENCYC. BRITANNICA (Feb. 8, 2021), <https://www.britannica.com/topic/Brie-cheese>; *Gouda*, ENCYC. BRITANNICA (Feb. 12, 2021), <https://www.britannica.com/topic/Gouda-cheese>.

¹³⁰ *Champagne*, ENCYC. BRITANNICA (Mar. 24, 2016), <https://www.britannica.com/topic/champagne-alcoholic-beverage>.

¹³¹ PRICE & LAUKHUF, *supra* note 86.

¹³² Meloni & Swinnen, *supra* note 103, at 249.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 259–60.

¹³⁶ *Geographic Indications and Quality Schemes Explained*, *supra* note 125.

¹³⁷ *Id.*

materials must come from the area, or how much of the production process has to take place within the specific region.”¹³⁸ PDO wines are those that “have the strongest links to the place in which they are made.”¹³⁹ PGI wines are those that emphasize “the relationship between the specific geographic region and the name of the product, where a particular quality, reputation or other characteristic is essentially attributable to its geographic origin.”¹⁴⁰ As such, the PDO category is regarded as a higher standard than the PGI.¹⁴¹

EU countries under the scheme have implemented the framework by creating their own national framework that mirrors the EU scheme. In France, the existing regulatory system was updated to create three different tiers of labeling that can be achieved: Appellation d’Origine Protégée (AOP)—the PDO category, Indication Géographique Protégée (IGP)¹⁴²—the PGI category, and Vin de France—an additional French specific category not required by the GI framework.¹⁴³

There are 363 AOP designated geographical areas and seventy-four IGP designated regions in France.¹⁴⁴ As of the early 2010s, forty-six percent of French wine production gained AOP labeling, twenty-eight percent gained IGP, and approximately ten percent gained Vin de France labeling.¹⁴⁵ Vin de France broadly refers to any French wine that cannot earn a more specific geographical labeling indicator.¹⁴⁶ The only guarantee the French government makes about wines with the Vin de France label is that the grapes were sourced from French grapes.¹⁴⁷ Wines typically fall into the Vin de France category because they are not sourced from an AOP or IGP designated geographic region, or they may involve production methods that do not meet the requirements of the higher categories.¹⁴⁸

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ ROBINSON & HARDING, *supra* note 26, at 540.

¹⁴² Previously called Vin de Pays and loosely translates to “country wine.” ROBINSON & HARDING, *supra* note 26, at 784.

¹⁴³ Translates to “Wine of France.” Previously called Vin de Table translating to “table wine.” ROBINSON & HARDING, *supra* note 26, at 783.

¹⁴⁴ *AOC Code: Decoding French Wine Classifications*, WINE FOLLY, <https://winefolly.com/deep-dive/what-is-aoc-wine/>.

¹⁴⁵ ROBINSON & HARDING, *supra* note 26, at 290–91.

¹⁴⁶ *Id.* at 291.

¹⁴⁷ *Id.*

¹⁴⁸ *Vin de France (Formerly Vin de Table)*, WINE SEARCHER (Apr. 6, 2020), <https://www.wine-searcher.com/regions-vin+de+france+-+vin+de+table>.

A. *IGP Wines – Pays d’Oc Example*

IGP wines fall into three categories: regional, departmental, and those named after some locally specific historical or geographical phenomenon.¹⁴⁹ The most important IGP is the regional IGP Pays d’Oc which encompasses the large Languedoc and Roussillon regions in southern France.¹⁵⁰ Requirements to gain an IGP label vary but are less strict than those of AOCs.¹⁵¹ Pays d’Oc IGP, for example, requires the following, among other requirements, to gain use of the Pays d’Oc IGP label:

1. Wine that is still, sparkling, or from overripe grapes.¹⁵²
2. Made from one of sixty-three different listed grape varieties.¹⁵³
3. Still wines have a minimum alcohol strength of ten percent, and no specific maximum.¹⁵⁴
4. Main grape varieties must make up more than fifty percent of its volume. Any secondary varieties used must account for less than fifty percent of the volume, and novel varieties may not account for more than fifteen percent.¹⁵⁵
5. If a single grape variety is on the label, the variety in question accounts for at least eighty-five percent of the composition.¹⁵⁶
6. Maximum production yields:¹⁵⁷
 - a. Red and white wines ninety hectolitres per hectare of vineyard
 - b. Rosé, gris, and gris de gris wines one hundred hectolitres per hectare of vineyard
7. Submission to a tasting panel (not typical for an IGP).¹⁵⁸

The IGP regulations are meant to be more flexible to give winemakers the opportunity to innovate while keeping some measures in place to guarantee a

¹⁴⁹ ROBINSON & HARDING, *supra* note 26, at 368–69.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Commission Regulation 150/18, art. V, 2020 O.J. (C 150) 1, 4 (EU).

¹⁵³ *Id.* at 24.

¹⁵⁴ *Id.* at 19.

¹⁵⁵ *Id.* at 20.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 21.

¹⁵⁸ Andrew Howard, *Understanding IGP Pays d’Oc*, DECANTER (July 25, 2020), <https://www.decanter.com/learn/understanding-igp-pays-doc-wines-439997/>.

certain quality.¹⁵⁹ The flexibility has allowed some of France's most unique and sought-after wines to come to market.¹⁶⁰ If a producer wishes for their IGP wine to become an AOP wine, they can file to do so but must show that it meets the higher viticultural and production standards of the more stringent AOP criteria explained below.

B. AOP Wines – Burgundy Example

Burgundy¹⁶¹ consistently produces some of the most expensive wines in the world. Currently, thirty-four of the top fifty most expensive bottles in the world are from Burgundy.¹⁶² Within Burgundy, there are eighty-four recognized AOP appellations.¹⁶³ Wines that have earned the AOP label have generally met more rigorous production and grape sourcing standards than those with the IGP label. These standards include requiring that only a specific small group of grape varieties be used, dictating when the grapes can be harvested, specifying how much residual sugar can be in the wine as well as defining the maximum alcohol content, minimum alcohol content, use of chaptalization,¹⁶⁴ use of specific yeasts for fermentation, density of vines per acre, total volume of wine produced per acre, and other winemaking techniques.¹⁶⁵ Finally, the wines must be submitted to a tasting panel and go through chemical analysis to ensure the wine is representative of unique characteristics historically associated with quality wine from the particular AOP region in question.¹⁶⁶

Larger AOP regions may further classify contained AOPs into increasingly smaller geographic categories of regional, sub-regional, commune/village, and special classifications.¹⁶⁷ Special classifications operate outside the AOP and are structures unique to each winemaking region. Generally, they are a codified

¹⁵⁹ *Vin de Pays – IGP Wine*, WINE-SEARCHER (Jan. 6, 2021), <https://www.wine-searcher.com/regions-vin+de+pays+-+igp>.

¹⁶⁰ Howard, *supra* note 158.

¹⁶¹ Burgundy is the English word for the region. In French (and on the bottles themselves) the word Bourgogne will appear.

¹⁶² *The Most Expensive Wines of The World*, WINE-SEARCHER (Feb. 2, 2022), <https://www.wine-searcher.com/most-expensive-wines>.

¹⁶³ *Bourgogne Wines: Decoding the AOCs*, VINS DE BOURGOGNE, <https://www.bourgogne-wines.com/our-wines-our-terroir/decoding-the-aocs/bourgogne-wines-decoding-the-aocs,2467,9263.html> (last visited Oct. 23, 2022).

¹⁶⁴ Chaptalization is the process of adding additional sugar to the wine during fermentation to increase the possible alcohol content.

¹⁶⁵ ROBINSON & HARDING, *supra* note 26, at 29. See, e.g., INAO, CAHIER DES CHARGES DE L'APPELLATION D'ORIGINE CONTROLEE "CHAMBERTIN" Version no. 2.2.2, at 1 (Oct. 29, 2011).

¹⁶⁶ MACNEIL, *supra* note 36, at 1799.

¹⁶⁷ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 14.

version of a previously existing historical hierarchical order. In the case of Burgundy, the special classifications derived from the categorization of parcels of land by Cistercian monks in the fourteenth century. These monks arranged the plots of land by their perceived ability to make exceptional wine, and some exceptional plots were placed into additional special classifications of Premier (1er) Cru and the highest tier, Grand Cru.¹⁶⁸ In the case of Grand Cru's, these areas can be as small as a specific vineyard itself.¹⁶⁹ Regional (and sub-regional), Commune/Village, Premier Cru, and Grand Cru produce fifty-two, thirty-seven, ten, and one percent of the wine from the Burgundy region, respectively.¹⁷⁰ What differentiates the geographic areas placed in these categories is their perceived potential to create high-quality wine based on their soil composition, sun exposure, and mineral content—in other words, based on the perceived quality of its *terroir*.¹⁷¹

Many of these appellations are contained within each other, and to be able to say a wine is from a particular AOP, all of the grapes used to make the wine must have been sourced within that AOP.¹⁷² Writing Bourgogne AOP on a label would mean that all of the grapes used to make this wine came from the area designated as Bourgogne AOP (which is the entire Burgundy region).¹⁷³ In theory, this kind of wine would be the least distinct in terms of its qualities because it is a blend of the grapes of so many different sub-regions within the broader Burgundy region so that a more generic wine would result. Contained within the Bourgogne AOP are four smaller sub-regions, one of which is Bourgogne Côte d'Or AOP.¹⁷⁴ If all of the grapes are sourced from this more specific sub-region, it may be labeled as Côte d'Or AOP.¹⁷⁵ Within the Côte

¹⁶⁸ See *History of Burgundy*, BOURGOGNE PANORAMA (2011), <https://www.bourgogne-panorama.com/home/history-of-burgundy> (last visited Sept. 17, 2022). To extend the example, wines from Bordeaux can also be similarly sub-categorized. Bordeaux AOP has a sub-regional AOP called the Medoc AOP, which contains the village/commune Pauillac AOP. Within Pauillac there is a winery called Chateau Latour, which has the special classification of "Premier Cru" (translating to first growth). The Bordeaux region, in response to a directive by Napoleon, created a hierarchal list of wineries (or Chateaus) according to quality which became known as the Official 1855 Classification. Five tiers were created by merchants that included Premier Cru (5 Chateaus), Deuxiemes Crus (14 Chateaus), and so on until the fifth tier. Matthews, *supra* note 122.

¹⁶⁹ ROBINSON & HARDING, *supra* note 26, at 332.

¹⁷⁰ A *Simple Guide to Burgundy Wine (With Maps)*, WINE FOLLY (Dec. 2, 2020), <https://winefolly.com/deep-dive/guide-to-burgundy-wine-with-maps/>.

¹⁷¹ MACNEIL *supra* note 36, at 378–83.

¹⁷² *Id.* at 1799.

¹⁷³ See GUILD OF SOMMELIERS, STAFF TRAINING MODULE, BURGUNDY 4, <https://www.guildsomm.com/webupload/burgundy.pdf> (last visited Sept. 22, 2022).

¹⁷⁴ See *AOC Code: Decoding French Wine Classifications*, *supra* note 144.

¹⁷⁵ See GUILD OF SOMMELIERS, *supra* note 173, at 8.

d'Or AOP is the commune/village appellation of Côte de Nuits-Villages AOP.¹⁷⁶ This is one of five smaller sub-regions that comprise the larger Bourgogne AOP.¹⁷⁷ This village appellation is one of two that make up the Côte d'Or AOP (the other is the Côte de Beaune-Villages AOP).¹⁷⁸ Beyond the village's designation, special classifications are awarded to specific vineyards or "climats," as they are called in Burgundy.¹⁷⁹ Within the general region of the Côte de Nuits-Villages AOP is the Appellation Gevrey Chambertin Premier Cru AOP¹⁸⁰ and the prestigious Grand Cru Appellation Le Chambertin AOP.¹⁸¹ Grand Cru designations are given to specific vineyards directly as opposed to an area where several vineyards may overlap.¹⁸² For reference, the Le Chambertin Grand Cru AOP is close to thirty-five acres in size,¹⁸³ while the enveloping Cote de Nuits Villages AOP is close to 410 acres.¹⁸⁴

Using any of these AOPs on the label requires winemakers to meet a generally stricter standard than those for IGP wines. The Gevrey-Chambertin AOP, for example, includes these production requirements among many more:

1. Gevrey-Chambertin is reserved for still red wines.¹⁸⁵

¹⁷⁶ *Id.* at 9.

¹⁷⁷ *Id.* at 2.

¹⁷⁸ *Id.* at 9.

¹⁷⁹ ROBINSON & HARDING, *supra* note 26, at 184.

¹⁸⁰ *A Simple Guide to Burgundy Wine (With Maps)*, *supra* note 170. Another helpful analogy is to see this as a geographic archery target. The concentric circles each contain one another in the same way that Greenwich Village is contained within Manhattan, which is contained within New York. Chambertin AOC is effectively equivalent to a bullseye, with Bourgogne AOC being the entire dartboard itself. Theoretically, a producer who sourced all the grapes from Chambertin AOC (and followed all the other requisite procedures) can call their wine Bourgogne AOC instead of Chambertin AOC. No producer is interested in doing this, however, because the bottle can sell for a much higher price by indicating the grapes all came from the smaller, more prestigious AOC of Chambertin. The analogy falls short in that there are multiple "bullseyes," such as the Grand Cru Charmes Chambertin AOC, which is also within the Gevrey-Chambertin village.

¹⁸¹ *Chambertin*, VINS DE BOURGOGNE, <https://www.bourgogne-wines.com/our-wines-our-terroir/bourgogne-and-its-appellations/chambertin,2458,9253.html?&args=Y29tcF9pZD0yMjc4JmFjdGlvbj12aWV3RmljaGUmaWQ9MjY0Jnw%3D> (last visited Sept. 18, 2022).

¹⁸² ROBINSON & HARDING, *supra* note 26, at 118 (noting that special classifications of Grand Cru and Premier Cru were originally established by monks in as early as the fourteenth century).

¹⁸³ *Spotlight on – Le Chambertin, Grand Cru*, WINE ACADEMY (Aug. 1, 2014), <https://www.wineinvestment.com/learn/magazine/2014/08/spotlight-on-le-chambertin-grand-cru/>.

¹⁸⁴ *Cote de Nuits-Villages*, VINS DE BOURGOGNE, <https://www.bourgogne-wines.com/our-wines-our-terroir/the-bourgogne-winegrowing-region-and-its-appellations/cote-de-nuits-villages,2458,9253.html?&args=Y29tcF9pZD0yMjc4JmFjdGlvbj12aWV3RmljaGUmaWQ9Mjk5Jnw%3D> (last visited Feb. 16, 2022).

¹⁸⁵ INAO, CAHIER DES CHARGES DE L'APPELLATION D'ORIGINE CONTROLEE "GEVREY-CHAMBERTIN" Version no. 2.2.2, at 1 (Oct. 20, 2010).

2. One hundred percent of the grapes used must be sourced from Gevrey-Chambertin.¹⁸⁶
3. The wines are made from the following grape varieties:
 - a. Main grape variety: pinot noir
 - b. Accessory grape varieties: chardonnay B, pinot blanc B, pinot gris. Accessory grape production is limited to fifteen percent of each plot.¹⁸⁷
4. The vines have a minimum density at planting of 9,000 vines per hectare, with a spacing between the rows that cannot be greater than 1.25 meters and a spacing between vines on the same row that cannot be less than 0.50 meters.¹⁸⁸
5. To preserve the characteristics of the soil, which constitute a fundamental element of the terroir, the permanent grassing of the headlands is obligatory. Any substantial modification of the morphology, the subsoil, the topsoil, or the elements structuring the landscape of a parcel intended for the production of the controlled designation of origin is prohibited.¹⁸⁹
6. Average maximum plot load is limited to 9,000 kilograms per hectare. When the name of the appellation is supplemented by the name of the climat of origin or the words “premier cru” or both for wines from climats classified as premier cru, the yield referred to in Article D of the Rural Code (fifty hectoliters per hectare) is set at forty-eight hectoliters per hectare.¹⁹⁰ Volumes harvested in excess of authorized yield are destroyed and documentation required.¹⁹¹
7. The wines have a minimum natural alcoholic strength by volume of 10.5%.¹⁹² When the name of the appellation is supplemented by the name of the climate of origin or the words “premier cru” or both for wines from climates classified as premier cru, the wines have a natural alcoholic strength by volume of at least eleven percent. After enrichment, wines do not exceed a total alcoholic strength by volume of 13.5%. When the name of the appellation is supplemented by the name of the climat of origin or the words

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 5.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 6.

¹⁹⁰ *Id.* at 7.

¹⁹¹ *Id.*

¹⁹² *Id.*

“premier cru” or both for wines from climats classified as premier cru, the wines do not exceed, after enrichment, a total alcoholic strength by volume of fourteen percent.¹⁹³

8. Finished wines ready for consumption within the meaning of Article D of the Rural Code have a maximum content of fermentable sugars (glucose and fructose) of two grams per litre.¹⁹⁴
9. Oenological Practice — The use of pieces of wood is prohibited.¹⁹⁵
10. The wines are aged at least until June 15 of the year following that of the harvest.¹⁹⁶
11. Product Control¹⁹⁷
 - a. Packaged: Analytical and organoleptic examination before or after packaging
 - b. Unpackaged: Analytical and organoleptic examination at the transaction
 - c. Unpackaged wine intended for shipment outside national territory: Analytical and organoleptic examination of all batches.

The logic behind this narrowing system is entrenched in the concept of *terroir*.¹⁹⁸ As the regions become smaller and more specific, the idea is the grapes therein will more closely bear the same nuanced quality produced from the specific *terroir* in which they grew.¹⁹⁹ As such, wines produced exclusively from these increasingly smaller plots should, in theory, hold a particularly unique quality and can be representative of a very small special area.²⁰⁰ With increasingly stringent and standardized production standards, other aspects of winemaking are held more constant such that the *terroir* of a given plot of land can be better showcased as a distinguishing element in the quality of wines.

¹⁹³ *Id.* at 7–8.

¹⁹⁴ *Id.* at 8.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 9.

¹⁹⁷ *Id.* at 14.

¹⁹⁸ David Ballantyne, Nic S. Terblanche, Benoît Lecat & Claude Chapuis, *Old World and New World Wine Concepts of Terroir and Wine: Perspectives of Three Renowned Non-French Wine Makers*, 30 J. WINE RSCH. 2, 128 (2019).

¹⁹⁹ PRICE & LAUKHUF, *supra* note 86, at 30.

²⁰⁰ *Id.*

An astute observation of this regulatory system and its goals is provided by Karen MacNeil:

While it may seem that such detailed rules are unfairly strict . . . a majority of French wine producers support such regulations (as do their counterparts in other European Countries). Why? The answer can be summarized this way. By holding all the variables constant, French and other European producers are able to determine which vineyard plots consistently produced the greatest wines. In other words, since all producers make essentially the same kind of wine in essentially the same way from the same grapes grown in essentially the same manner, the only thing left that might account for quality differences is the exact plot of land where the grapes were grown. The French/European approach highlights the *terroir* of the place where the grapes were grown.²⁰¹

Although rigid, by standardizing viticultural and winemaking practices and defining winemaking geographic regions, the French regulatory system can implicitly guarantee a quality wine, prevent fraud, highlight *terroir* in accordance with tradition, and ultimately make greater quality assurance to consumers.

C. Creating PDO or PGI Labeling – The Filing

Filing to gain PDO or PGI protection of a particular wine mirrored the same requirements for filing to establish a new protected label in France and requires showing, among other things, these prominent requirements reproduced below in relevant part according to the definitions.

Definitions²⁰²

- A. ‘a designation of origin’ means the name of a region, a specific place or, in exceptional and duly justifiable cases, a country used to describe a product . . . fulfilling the following requirements:
 - i. the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
 - ii. the grapes from which the product is produced come exclusively from that geographical area;

²⁰¹ MACNEIL, *supra* note 36, at 1799.

²⁰² 2013 O.J. (L 347) 720.

- iii. the production takes place in that geographical area; and
 - iv. the product is obtained from vine varieties belonging to *Vitis vinifera*;
- B. 'a geographical indication' means an indication referring to a region, a specific place or, in exceptional and duly justifiable cases, a country, used to describe a product referred to in Article 92(1) fulfilling the following requirements:
- i. it possesses a specific quality, reputation, or other characteristics attributable to that geographical origin;
 - ii. at least 85% of the grapes used for its production come exclusively from that geographical area;
 - iii. its production takes place in that geographical area; and
 - iv. it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.

Fling to gain a PDO or a PGI requires the following²⁰³:

- A. the name to be protected;
 - B. the name and address of the applicant;
 - C. a product specification, as referred to in paragraph 2; and
 - D. ...
2. The product specification shall enable interested parties to verify the relevant conditions of production relating to the designation of origin or geographical indication. The product specification shall at least consist of:
- A. the name to be protected;
 - B. a description of the wine or wines:
 - i. in respect of a designation of origin, the principal analytical and organoleptic characteristics;
 - ii. in respect of a geographical indication, the principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics;

²⁰³ *Id.* at 720–21.

- C. where applicable, the specific oenological practices used to make the wine or wines, as well as the relevant restrictions on making them;
- D. the demarcation of the geographical area concerned;
- E. the maximum yields per hectare;
- F. an indication of the wine grape variety or varieties that the wine or wines are obtained from;

IV. CLIMATE CHANGE AFFECTING THE FRENCH REGULATORY SYSTEM²⁰⁴

Each grape varietal has a temperature range it must grow within to be viable.²⁰⁵ For example, Pinot Noir grows best when its surrounding average annual temperature is between 57-61 degrees Fahrenheit²⁰⁶ where Cabernet Sauvignon grows best between 61-68 degrees Fahrenheit.²⁰⁷ Other grapes prefer even warmer temperatures.²⁰⁸ As discussed, European regulations can be rigid in mandating what grapes a producer must grow in a particular region to earn a GI label.²⁰⁹ However, the benefit of the regulation is predicated on the idea that the grapes that one is permitted to grow are those that grow best in this region and so would result in quality wine of this varietal type.

If temperatures continue to rise, the grapes mandated by GI production requirements will decline in quality.²¹⁰ As a result, the quality of the wines with the geographic label will decline, thus damaging the reputation of the label as an indicator of quality.²¹¹ If winemakers are forced to use a different grape type that can better survive the heightened temperatures, they will lose the ability to use these special labels and thus lose the label as a powerful marketing tool.²¹² The

²⁰⁴ For an excellent overview of this subject, see Raz Barnea, Comment, *Appellations and Adaptations: Geographical Indication, Viticulture, and Climate Change*, 26 WASH. INT'L L.J. 605 (2017).

²⁰⁵ WINE & SPIRIT EDUCATION TRUST, *supra* note 27, at 14-17.

²⁰⁶ Gregory Jones, *Climate, Grapes, and Wine*, GUILDSOMM (Aug. 12, 2015), https://www.guildsomm.com/public_content/features/articles/b/gregory_jones/posts/climate-grapes-and-wine?CommentId=8e6b0cd5-1f30-4922-ad27-538cfe8704cf.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ MACNEIL, *supra* note 36, at 55.

²¹⁰ *Climate Change is Affecting Wine Flavors*, THE ECONOMIST (Jul. 17, 2021), <https://www.economist.com/europe/2021/07/15/climate-change-is-affecting-wine-flavours>.

²¹¹ *Id.*

²¹² Eric Asimov, *How Climate Change Impacts Wine*, N.Y. TIMES (Oct. 14, 2019), <https://www.nytimes.com/interactive/2019/10/14/dining/drinks/climate-change-wine.html>; Lettie Teague, *What Climate Change Might Do to Your Favorite Wine*, WALL ST. J. (Apr. 12, 2021), <https://www.wsj.com/articles/what-climate-change-might-do-to-your-favorite-wine-11628778962>.

winemaking techniques required of these growers are also extremely restrictive and limit the winemakers' ability to alter the growing/winemaking processes to adapt to rising temperatures.²¹³

The French INAO lists several new grape varieties that will be allowed under the AOP standards for winemakers to experiment with.²¹⁴ A ten-year evaluative period and concluding assessment has been implemented to determine whether the grapes are of suitable quality for the particular AOP that experimented with them.²¹⁵ Within the French region Bordeaux itself, winemakers have already begun to experiment with new grape varieties.²¹⁶ These include grapes that were historically used in the region but fell out of favor because the growing temperatures required for them were too high. The AOP Bourgogne is more resistant to experimenting with new grape varieties out of fear their wine will lose its renowned character.²¹⁷ Producers here prefer to experiment with old varieties that were historically used in Burgundy but require higher temperatures to ripen than were available in the past.²¹⁸ Winemakers are concerned with maintaining the existing *terroir* and prefer to look to the older varieties because they are sometimes closely related clones of currently used varieties that have a higher heat tolerance.²¹⁹

V. FRANCE AND EUROPEAN WINE REGULATION CONCLUDING OBSERVATION

A. *Quality Assurance and Fraud Prevention*

Having built one from the other, the parallels between these French and EU regulatory systems are apparent. To gain PDO or PGI protection, the

²¹³ MACNEIL, *supra* note 36, at 1799.

²¹⁴ Melissa Godin, 'The Taste of Bordeaux Is Going to Change.' *Under Threat From Climate Change and Coronavirus, French Winemakers Try Experimenting*, TIME MAG. (May 22, 2020), <https://time.com/5777459/france-wine-climate-change/>.

²¹⁵ *Id.*

²¹⁶ Bordeaux Wine Council (CIVB), *Climate Change – How the Bordeaux Vineyards are Planning Ahead*, VINS DE BORDEAUX (July 2019), <https://www.bordeaux.com/media/wp-content/uploads/2019/07/Climate-change-in-Bordeaux-compress%C3%A9.pdf>; *Bordeaux Receives National Approval to Introduce Six New Red and White Grape Varieties in 2021*, SOMM J. (Jan. 29, 2021), <https://www.sommjournal.com/bordeaux-receives-national-approval-to-introduce-six-new-red-and-white-grape-varieties-in-2021/>; Arabella Mileham, *INAO to Allow AOC's to Trial Climate Change Varieties*, DRINKS BUS. (Nov. 15, 2018), <https://www.thedrinksbusiness.com/2018/11/aocs/>; *Bordeaux Introduces Six Grape Varieties*, WINE INDUS. ADVISOR (Jan. 26, 2021), <https://wineindustryadvisor.com/2021/01/26/bordeaux-introduce-six-grape-varieties>.

²¹⁷ Jacopo Mazeo, *Burgundy Embraces New Varieties to Combat Climate Change*, WINE ENTHUSIAST (Apr. 14, 2021), <https://www.winemag.com/2021/04/14/burgundy-grape-varieties-climate-change/>.

²¹⁸ *Id.*

²¹⁹ *Id.*

requirements fundamentally evaluate whether specific quality, reputation, or characteristics of a product exist and whether those things stem from a specific geographic environment for PGI or the geographic environment and its natural and human factors for a PDO.²²⁰ In other words, regulation inquires as to what degree the *terroir* of a geography and the specific viticultural and winemaking practices contribute to the uniquely reputable and characteristic wine product. If the connections are demonstratable, a PDO or PGI can be earned thus codifying the winemaking practices and geographic sourcing.

Each system appears to advance the same goal of consumer protection by implicitly guaranteeing quality and preventing fraud. By mandating grape geographic sourcing standards and the grape varietal composition, fraud is eradicated in that wine labels cannot claim to be sourced from a region they are not and cannot misrepresent their grape composition. By controlling production to achieve certain labels, particular quality can be better guaranteed in wines bearing the label. Ultimately, the systems work towards giving consumers a more meaningful and informed choice. The range of labels available to producers gives them the ability to produce a variety of wines. Producers may take advantage of the more stringent PDO labels or the more flexible PGI labels should they choose to create wine for another purpose, such as lower-cost accessibility. Should producers make wine outside these categories all together, they can still take advantage of the Vin de France label in the case of France or an equivalent label in other countries.²²¹ Ultimately, quality is advanced, fraud is prevented, and consumer protection is improved.

B. Climate Change – Regulations as a Stifling Force

Responding to climate change requires innovation in either law, winemaking techniques, or both.²²² The French wine regulatory system is being strained by global warming.²²³ Mandating strict winemaking practices and the use of specific grape varietals to gain labeling that guarantees quality and typicity has proved a stifling force on producers responding to climate change.

²²⁰ 2013 O.J. (L 347) 720.

²²¹ For example, Italy has a “Vino da Tavola” and Germany has a “Deutscher Wine”—both are akin to discussed Vin de France label. ROBINSON & HARDING, *supra* note 26, at 796.

²²² Sarah E. Daniels, *Climate Change is Rapidly Altering Wine as We Know It*, WINE ENTHUSIAST (Feb. 3, 2020), <https://www.winemag.com/2020/02/03/wine-climate-change/>.

²²³ *Id.*

VI. MODERN AMERICAN WINE LAW – THE AMERICAN VITICULTURE AREA

The American Viticulture Area (AVA) wine regulation started in 1976, the same year American wine exploded onto the international stage during a wine tasting has been famously termed “The Judgement of Paris.”²²⁴

Steven Spurrier, a British wine merchant and educator living in Paris, invited nine distinguished French wine experts to a Parisian hotel to conduct a blind tasting between Californian wine and French wine.²²⁵ The idea came from his associate, Patricia Gastaud-Gallagher, who visited Californian wineries and was so impressed by the rising quality of the wine that she suggested the tasting. In the spirit of the revolution she saw coming, Gastaud Gallagher suggested the tasting take place on the bicentennial of the 1776 American Revolutionary War. This was a competition – the bottles remained unidentifiable to the judges, and each was to score the tasted wines.²²⁶ The competition pitted Californian chardonnays against the best four French white Burgundies and California cabernet sauvignon against the most prestigious cabernet dominated wine from Bordeaux. Only one reporter (from TIME Magazine) came to the tasting who had turned down the invitation initially.²²⁷ In his words, “[e]veryone knows that French wines are going to win, so why waste a day? It’s the giant and the little guy. Nobody took it seriously.”²²⁸

The tallied scores revealed the unthinkable. Californian wines dominated the white category with an outright winner and three other American wines in the top five.²²⁹ In the red category, a 1973 Cabernet Sauvignon from Stag’s Leap took first.²³⁰ The Californian wines were significantly cheaper and younger.²³¹ Stag’s Leap, founded only six years earlier in 1970, edged out the French

²²⁴ RICHARD MENDELSON, *WINE IN AMERICA LAW AND POLICY* 249 (Vicki Been et al. eds., 1st ed. 2011) [hereinafter MENDELSON, *WINE IN AMERICA*].

²²⁵ Jacopo Prisco, *Judgement of Paris: The Tasting That Changed Wine Forever*, CNN (Sept. 24, 2021), <https://www.cnn.com/travel/article/judgment-of-paris-wine-tasting-cmd/index.html> (noting the judges included an editor of a prestigious wine magazine and the director of Domaine de la Romanee-Conti—a winery in Burgundy that to this day makes some of the most sought after and expensive wine in the world).

²²⁶ *Id.*

²²⁷ Katy Steinmetz, *How America Kicked France in the Pants and Changed the World of Wine Forever*, TIME MAG. (May 24, 2018), <https://time.com/4342433/judgment-of-paris-time-magazine-anniversary/>.

²²⁸ *Id.*; See *Modern Living: Judgement of Paris*, TIME MAG. (June 7, 1976), <https://content.time.com/time/subscriber/article/0,33009,947719,00.html>.

²²⁹ *Id.*

²³⁰ *Id.* This bottle of Stag’s Leap now sits in the Smithsonian Museum. *Id.*

²³¹ *Id.*

Chateau Mouton-Rothschild wine that had over three centuries of winemaking history.²³²

The French judges were not as excited as their American counterparts.²³³ One judge unsuccessfully demanded her scorecard back so that her scores would not become public.²³⁴ Spurrier “was kicked out of cellars where he was once a welcome customer, blamed for organizing France’s humiliation, and several of the judges were asked to resign from positions of honor and recognition.”²³⁵ While the tasting aroused suspicion in France and drew heated inquiry, the “Judgement of Paris” has been replicated many times with “remarkably similar results.”²³⁶

The significance of this event put California on the map as a major wine producer, along with countries like France, Italy, and Spain.²³⁷ Of course, regulation of wine in the U.S. started earlier than this point, and its remnants have greatly influenced the position of wine in the U.S. today.

Prohibition formally ended with the adoption of the 21st Amendment by the United States Congress in 1933. Shortly thereafter, wine in the United States became regulated by the provisions of the Federal Alcohol Administration Act (FAA) adopted by Congress in 1935.²³⁸ Under Section 213, labeling is to keep the American public informed of the dangers of alcohol consumption, provide clear reminders of these dangers in a nationally uniform way, and prevent impedance on interstate commerce that conflicting messages about these dangers would present.²³⁹

Administrative authority over the FAAA was transferred to the Bureau of Alcohol, Tobacco and Firearms, but, after the Bureau’s dissolution, administrative authority over the act was transferred to the Alcohol and Tobacco Tax and Trade Bureau (TTB), a subdivision of the treasury department.²⁴⁰

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Steinmetz, *supra* note 227.

²³⁶ Prisco, *supra* note 225.

²³⁷ *Id.*

²³⁸ Federal Alcohol Administration Act, 27 U.S.C. §§ 201-219(a) (2006).

²³⁹ 27 U.S.C. § 213 (2006).

²⁴⁰ MENDELSON, WINE IN AMERICA, *supra* note 224, at 248, n.152.

As the U.S. wine industry began to rejuvenate between the 1930s and 1960s, vintners did not commonly place wine appellations on their labels.²⁴¹ In the 1970s, this practice began to change, and wineries increasingly included the names of regions that did not have clear boundaries on their wine labels.²⁴² In 1978, after significant debate,²⁴³ the TTB passed the AVA²⁴⁴ regulation to prevent both confusion among consumers and unfair competition among wine producers. The TTB defines an “American Viticultural Area” as a “delimited grape-growing region with specific geographic or climatic features that distinguish it from the surrounding regions and affect how grapes are grown.”²⁴⁵ Producers may now label their wine as being from an appellation of two types, either politically defined regions such as states or counties, or from within an approved American Viticultural Area, an AVA. To petition for the creation of an AVA, an interested party must file a petition with the TTB that includes the following information:²⁴⁶

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

²⁴¹ *Id.* at 249.

²⁴² *Id.*

²⁴³ RICHARD MENDELSON, FROM DEMON TO DARLING: A LEGAL HISTORY OF WINE IN AMERICA 144–45 (1st ed. 2009) [hereinafter MENDELSON, FROM DEMON TO DARLING].

²⁴⁴ MENDELSON, WINE IN AMERICA, *supra* note 224, at 249.

²⁴⁵ *American Viticultural Area*, TTB (Sept. 21, 2020), <https://www.ttb.gov/wine/american-viticultural-area-ava#:~:text=An%20American%20Viticultural%20Area%2C%20or,affect%20how%20grapes%20are%20grown.>

²⁴⁶ Alcohol & Tobacco Tax & Trade Bureau, 27 C.F.R. Part 9 (2021).

Geographic and climatic features include but are not limited to soil composition, sun exposure, relative latitude, and average temperature.²⁴⁷ After a petition is submitted, the TTB commences the notice-and-comment rulemaking procedure to ultimately implement a final rule on the formal creation or rejection of the proposed AVA.²⁴⁸ Like the described AOP system, AVAs may be contained within one another or within a politically established appellation.²⁴⁹

The first AVA was granted to Augusta, Missouri, in 1980.²⁵⁰ As of August 2021, there were 258 established AVAs in the United States, with 142 of those in California.²⁵¹ Currently, there are sixteen which have been approved by the TTB but must now go through the administrative law process of public notice-and-comment for completion.²⁵² Once an AVA has been established, several rules apply to include the name of this now registered AVA on the wine bottle label:

Requirements for use. A wine may be labeled with a viticultural area appellation if:

...

(ii) Not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticultural area;

(iii) In the case of foreign wine, it conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin; and

(iv) In the case of American wine, it has been fully finished within the State, or one of the States, within which the labeled viticultural area is located (except for cellar treatment pursuant to § 4.22(c), and blending

²⁴⁷ MENDELSON, FROM DEMON TO DARLING, *supra* note 243, at 144–45.

²⁴⁸ MENDELSON, WINE IN AMERICA, *supra* note 224, at 252.

²⁴⁹ For example, Napa Valley AVA contains several AVAs within it. Oakville, for example, a popular sub-AVA of the broader Napa Valley AVA, would allow a producer who sources all their grapes from Oakville to put both Napa Valley and Oakville on the label. To extend the example further, this winemaker could also claim his grapes were from Napa County, a political appellation. *Oakville Data*, APPELLATION AMERICA.COM, <http://appellationamerica.com/wine/data/Oakville--Napa-Valley.html>.

²⁵⁰ *History and AVA*, MISSOURI WINES (OCT. 25, 2021), <https://missouriwine.org/about-us/history-and-avas1>; 27 C.F.R. § 9.22 (2020).

²⁵¹ MENDELSON, FROM DEMON TO DARLING, *supra* note 243, at 144–45.

Established American Viticulture Areas, ALCOHOL & TOBACCO TAX & TRADE BUREAU (Aug. 25, 2021), <https://www.ttb.gov/wine/established-avas>.

²⁵² *Id.*

which does not result in an alteration of class and type under § 4.22(b)).²⁵³

As indicated, these requirements may also apply to foreign wine imports for sale in the United States.

To use a politically defined American regional appellation on a wine label, the winemaker must meet the criteria below:²⁵⁴

1. At least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated;
2. it has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)) in the United States, if labeled “American”; or, if labeled with a State appellation, within the labeled State or an adjacent State; or if labeled with a county appellation, within the State in which the labeled county is located; and
3. it conforms to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such place.

States reserve the ability to create wine laws that are stricter than those imposed by the federal government in the context of politically defined appellations of origin. However, only California, Oregon, and Washington have elected to do so.²⁵⁵ California regulations prohibit the use of added sugar in wine production.²⁵⁶ The regulations also require that 100% of the grapes used to produce a wine must come from California if the California appellation or a state county appellation is used on a wine label.²⁵⁷ Oregon requires that all appellations within the state, including AVAs, derive one hundred percent of their grapes from the indicated area on the label.²⁵⁸

²⁵³ 27 C.F.R. 4.25(e)(3)(ii-iv) (2021).

²⁵⁴ 27 C.F.R. 4.25(b)(1)(i-iii) (2021).

²⁵⁵ MENDELSON, WINE IN AMERICA, *supra* note 224, at 95; *Winery FAQ*, WASH. STATE LIQUOR & CANNABIS BD., <https://lcb.wa.gov/enforcement/winery-faq#:~:text=If%20the%20label%20states%20E2%80%9CWashington%E2%80%9D%20and%20the%20name%20of%20an,have%20been%20grown%20in%20Washington> (last visited Feb. 16, 2022).

²⁵⁶ Cal. Code Regs. Tit. 17, §17010 (2009).

²⁵⁷ Cal. Code Regs. Tit. 17, §17015 (2009).

²⁵⁸ OR. ADMIN. R. 845-010-0920 (2010).

Unlike the European systems, the U.S. appellation system does not endorse the quality of the wine produced from an AVA.²⁵⁹ In reviewing the criteria to establish an AVA, the TTB does not require petitioners to make any claims describing the taste, character, or quality of the wine.²⁶⁰ Similarly, to use an established AVA or political appellation on the bottle, there is no requirement that the finished wine demonstrates particular qualities beyond the rudimentary characteristics that define a wine.²⁶¹ As indicated in the TTB's standard approval definition language for an AVA:

[viticultural area] designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.²⁶²

In short, despite this language, "U.S. wine appellations indicate grape origin only and do not involve or imply any quality controls."²⁶³

VII.AVA CONCLUDING OBSERVATION

With the national explosion of AVA petitions and the rising production of wine globally, it is important that U.S. wine regulation develops accordingly to maintain or advance its position in international markets. Looking to the success of the French system that led EU wine development and the recent difficulty it has encountered, both reveal important lessons for American wine regulatory development.

A. *Quality Assurance Measures are Absent*

In many ways, the current state of wine in the United States resembles the period in France around the time vineyards were destroyed by Phylloxera. Just as certain regions of France found international acclaim, certain regions of the United States have gained international attention for the quality of wine they can produce. Perhaps the most notable region is Napa Valley, California, for the

²⁵⁹ MENDELSON, WINE IN AMERICA, *supra* note 224, at 254.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Establishment of the Palos Verdes Peninsula Viticultural Area, 86 Fed. Reg. 32189 (July 19, 2021).

²⁶³ MENDELSON, WINE IN AMERICA, *supra* note 224, at 254.

quality of its Cabernet Sauvignon.²⁶⁴ Willamette Valley, Oregon, produces highly sought-after Pinot Noir.²⁶⁵ Washington has a number of recently created AVAs and is finding greater attention for its Cabernet Sauvignon and Syrah.²⁶⁶ Consumers have come to associate certain qualities with the wines produced in these areas.²⁶⁷ As in Europe, wine regions have started to become legally defined with the AVA system, but unlike Europe, the system does not set standards for winemaking or grape-growing practices.

Measures to guarantee quality permeate each step of French and EU wine regulation. In filing to create a PDO or PGI, applicants may have to indicate specific varietals to be grown, viticultural practices to be followed, winemaking techniques used, and organoleptic qualities in the finished product.²⁶⁸ These requirements operate on top of broader EU wine regulations that sets baseline requirements for wine production.²⁶⁹ By codifying widely held customary practices that gave France an international reputation for outstanding wine, quality was implicitly guaranteed.²⁷⁰ By mandating grape sourcing standards for production, fraud was prevented.²⁷¹ Between these two forces, consumers in Europe can look to a label and expect a wine to be of higher quality and hold specific, unique characteristics.

To establish an AVA, the only required measure remotely relating to wine quality is demonstrating that some percentage of grapes sourced to make a wine are from a defined area of land with geological and environmental distinctiveness. Ultimately, it is up to producers in these regions to provide consumers with some predictability when buying wines labeled with their AVA, but it is certainly not guaranteed. This uncertainty begs the question of whether producers will take advantage of the strong Napa Valley brand to start charging

²⁶⁴ ROBINSON & HARDING, *supra* note 26, at 493.

²⁶⁵ *Id.* at 523.

²⁶⁶ *Id.* at 809.

²⁶⁷ *Napa Valley Nested AVAs, NAPA VALLEY VINTNERS*, https://napavintners.com/napa_valley/appellations.asp (last visited Feb. 2, 2023).

²⁶⁸ 2013 O.J. (L 347) 720–21.

²⁶⁹ Commission Delegated Regulation (EU) 2019/934 of 12 March 2019, Supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as Regards Wine-Growing Areas Where the Alcoholic Strength May be Increased, Authorised Oenological Practices and Restrictions Applicable to the Production and Conservation of Grapevine Products, the Minimum Percentage of Alcohol for By-Products and Their Disposal, and Publication of OIV Files [2019] OJ L149/1; Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 Establishing a Common Organisation of the Markets in Agricultural Products and Repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [2013] OJ L347/671.

²⁷⁰ Meloni & Swinnen, *supra* note 103, at 259.

²⁷¹ *Id.* at 249.

more for wine that is lower quality. Can the strong brand that Napa Valley and other American wine regions built suffer by not maintaining certain mandated quality standards, just as the French regions experienced after Phylloxera? Will American consumers notice?

Based on the earlier discussion on permitted winemaking techniques in the United States, and their apparent lack of controls, wine in the United States can by some standards blur the line between an artificial substance and a naturally produced beverage. On this point, Sommelier Vanessa Price presents the troubling path a winemaker in the United States can take:

Imagine you've used all the fruit you harvested and ended up with a thin, watery concoction, because to keep volume up you didn't sort any of the subpar fruit out. So, you just filter everything out of it, make it as neutral as possible, and then add the cosmetic colors, aromas, and flavors that you think will sell best. Since sugar and 'oak' (the adjunct kind like chips, shavings, or even powder, not real oak barrels) can hide a lot of flaws, you can essentially put a fake wine out into the market with the average consumer having no idea how heavily adulterated it is.²⁷²

B. The AVA and Climate Change

AVA requirements are not nearly as stringent or broad-reaching as French wine regulations. The AVA only mandates grape sourcing requirements, which are generally less strict than those in France and the EU.²⁷³ Since the AVA does not require that an appellation grow a specific grape type, winemakers in these regions will be able to continue to use the appellation on their labels while experimenting with new grape varieties. As seen, the lack of standards for grape growing and winemaking practices has the benefit of providing great latitude to American producers in combating climate change. If their production becomes threatened, it will not be because of regulatory inflexibility as may be the case in France.

This should remain the same. Any standards the TTB may impose on grape-growing or winemaking production should not limit producers' capacity to adapt. It is unclear whether the TTB has the authority to mandate grape varietal

²⁷² PRICE & LAUKHUF, *supra* note 86, at 121.

²⁷³ 27 C.F.R. § 4.25(b)(1)(i) (2022); 27 C.F.R. § 4.25(e)(3)(ii) (2022).

use.²⁷⁴ If they have the capacity, it would be unwise to exercise this power, as innovation in grape usage is going to be essential for winemakers to continue to produce quality wine in the face of rising temperatures.

VIII. RECOMMENDATIONS FOR AVA DEVELOPMENT

Two measures should be implemented to close the gap between European wine and U.S. wine, which both aim to protect consumers by assuring quality. First, the control of wine regulation should fall under the auspices of the Food and Drug Administration (FDA). Second, the creation of a label akin to the EU PGI should be implemented.

A. *Wine Regulation Should be Regulated by the Food and Drug Administration*

It should surprise many people to learn that there is more nutritional information on the back of a Cheetos bag than on a bottle of wine in the United States. To some, this might seem rational, reasoning that Cheetos are artificial and wine is natural. Unfortunately, as discussed, in the United States, this is hardly true. As mentioned, the FDA regulates Cheetos, but wine is the territory of the TTB.

The FAHA has two subchapters. The first subchapter, “Unlawful Business,” seeks to “regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages.”²⁷⁵ The second subchapter concerns alcoholic beverage labeling and states that its purpose is keeping the public informed of the dangers of alcohol consumption, providing clear reminders of these dangers in a nationally uniform way, and preventing impedance to interstate commerce that conflicting messages about these dangers would present.²⁷⁶

When the Homeland Security Act of 2002 transferred authority of wine regulation, its decision to give it ultimately to the Treasury department’s TTB instead of the FDA is telling.²⁷⁷ The priorities of these two organizations are not the same. The quality and labeling of wine have fallen short of the standards

²⁷⁴ MENDELSON, WINE IN AMERICA, *supra* note 224, at 249 n.169.

²⁷⁵ Federal Alcohol Administration Act, 28 U.S.C. § 201–212 (1935).

²⁷⁶ 28 U.S.C. § 213–219 (1935).

²⁷⁷ Homeland Security Act of 2002, Pub. L. No. 107–296 (2002).

wine consumer protection has under the EU. The TTB's treatment of wine regulation appears centrally focused on the prohibition era's emphasis on taxes, commerce regulation, and alcohol fright rather than consumer protection and quality. This is unsurprising considering the TTB's broader agency goals and its lack of experience in food regulation. With the TTB's focus directed elsewhere and its lack of experience in regulating this space, unusual problems have plagued them.²⁷⁸

In 2014, at least eight liquor makers were sued in multiple consumer class action lawsuits filed across the country.²⁷⁹ Plaintiffs took issue with label descriptors such as "handcrafted," "hand-made," and "small-batch," calling the labels "deceptive." Defendants, Fifth Generation (makers of Titos Vodka) and WhistlePig Whiskey (makers of WhistlePig), claimed that they were protected from these state consumer claims because the TTB had pre-approved their labels.²⁸⁰ Courts in both instances found these arguments insufficient and denied motions to dismiss. In *Hoffman v. Fifth Generation*, the court found that although the defendant claimed that the TTB specifically investigated and approved the "hand-made" claim, those facts were not properly presented before the court and could not be considered at that stage.²⁸¹ Moreover, from the regulations Fifth Generation provided to the court and the apparent absence of any guidance from the TTB regarding the meaning of the word "hand-made," it was not clear that such representations were necessarily within the TTB's regulatory purview.²⁸² Thus, it is currently not clear that the TTB's approval of the labels is sufficient to invoke this pre-approval "safe harbor."²⁸³

In the case of *Aliano v. WhistlePig*, the court was not convinced that the TTB approval process was stringent enough to warrant dismissal of the claims on the basis of a TTB pre-approval "safe harbor."²⁸⁴ The court specifically found that "there is no evidence that the TTB affirmatively investigated or confirmed the

²⁷⁸ *But see* MENDELSON, WINE IN AMERICA, *supra* note 224, at 250.

²⁷⁹ Christine A. Scheuneman & Elaine Y. Lee, *The Label on Your 'Handmade' Whiskey Is Causing More Problems Than You Think*, PILLSBURY (June 15, 2015), <https://www.pillsburylaw.com/en/news-and-insights/the-label-on-your-handmade-whiskey-is-causing-more-problems.html>.

²⁸⁰ Hofmann v. Fifth Generation, Inc., No. 14-cv-2569, 2015 U.S. Dist. LEXIS 6539819, at 16 (S.D. Cal. Mar. 18, 2015); Fratelli, Inc. v. WhistlePig, LLC., No. 14 C 10148, 2015 U.S. Dist. LEXIS 64401, at 3 (N.D. Ill. May 18, 2015).

²⁸¹ Hofmann v. Fifth Generation, Inc., No. 14-cv-2569, 2015 U.S. Dist. LEXIS 6539819 (S.D. Cal. Mar. 18, 2015).

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Fratelli, Inc. v. WhistlePig, LLC., No. 14 C 10148, 2015 U.S. Dist. LEXIS 64401, at 26 (N.D. Ill. May 18, 2015).

validity of the ‘hand bottled’ representation, or that it even has established criteria for evaluating the use of that term.”²⁸⁵ It is also not clear “that the TTB label approval process is akin to those in the highly regulated tobacco, food, and drug industries.”²⁸⁶

In *Salters v. Beam Suntory*, the federal court grappled with the question of whether a reasonable consumer would be deceived by labeling describing the contained liquor as “handmade” and turned to the plaintiff to articulate a definition of “handmade.”²⁸⁷ The court went so far as to consider dictionary definitions of the term, ultimately deciding that Makers Mark had articulated sufficient facts to find under any articulated definition of “handmade” before the court to meet that criterion.²⁸⁸ Regardless of the outcomes of these cases, it would seem odd that anyone outside the TTB is deciding how these words, with an important impact on consumer decision-making, are actually defined. Beyond these terms, several others that commonly appear on liquor labels remain undefined by the TTB, including “single barrel,” “small batch,” and “single malt.”²⁸⁹ For terms that many liquor stores use to literally organize spirits into quality classes, it is difficult to conclude these do not lead customers to believe certain production quality standards attach. Considering the stated TTB mission of enforcing a labeling prohibition on “any statement that...directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression,” these Federal cases coupled with basic consumer experiences indicate the TTB is remiss in its responsibility.²⁹⁰

Released in 2012, the American Viticultural Area (AVA) Manual for Petitioners states in its introduction that “The [FAAA] provides that any such regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and provide the consumer with adequate

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Salters v. Beam Suntory, Inc.*, No. 4:14cv659, 2015 U.S. Dist. LEXIS 62146, at *1 (N.D. Fla. May 1, 2015) (“But the plaintiffs have been unable to articulate a consistent, plausible explanation of what they understood ‘handmade’ to mean in this context. This is understandable; nobody could believe a bourbon marketed this widely at this volume is made entirely or predominantly by hand.”).

²⁸⁸ *Id.*

²⁸⁹ Sku, *TTB Proposal Leaves Some Terms Undefined*, K&L SPIRITS J. (Dec. 17, 2018), <https://spiritsjournal.klwines.com/klwinescom-spirits-blog/2018/12/17/ttb-proposal-leaves-some-terms-undefined>.

²⁹⁰ 27 C.F.R. § 5.42(a)(1) (2022).

information as to the identity and quality of the labeled product.”²⁹¹ In the approval form for an AVA, the TTB further states, “[viticultural area] designations allow vintners and consumers to attribute a given quality, reputation, or other characteristics of a wine made from grapes grown in an area to the wine’s geographic origin.”²⁹² It is difficult to find that the current form of the AVA accomplishes these ends. To the extent the AVA combats fraud, it does serve to guarantee that wines are sourced largely from where they claim to be sourced from. However, the discussed eighty-five percent and seventy-five percent grape sourcing standards for AVAs and political geographies, respectively, fall short of the requirements the EU places on PDO designated wines which require that one hundred percent be from the designated region.²⁹³ As noted earlier, no criteria for establishing an AVA requires showing appellation-specific grape varietal use or oenological controls.²⁹⁴ The TTB has set some standards for allowed chemicals and techniques used in winemaking, but these are far less stringent than those existing under EU regulations.²⁹⁵ As shown, several tiers of the EU wine classification system require the employment of specific winemaking practices to guarantee a certain typicality of organoleptic character and quality.²⁹⁶ The TTB expressly denies such a guarantee in approving an AVA, so it is difficult to conclude that U.S. wine production requirements are geared toward this end.²⁹⁷ The result is winemakers in these areas have broad discretion to employ an arsenal of production practices that could completely obscure any effect the uniqueness of an AVA’s *terroir* may have imparted on the wine. Any “quality, reputation, or characteristic” a consumer might come to associate with an AVA would strictly be a function of winemakers within the AVA working towards this end and not because of any standards maintained by the TTB.²⁹⁸

As we are far removed from the fears and cultural circumstances that gave rise to prohibition, the focus of wine regulation also needs to shift. Giving control of wine regulation to the FDA would at least place the system under the purview of an organization with consumer protection as a central focus.²⁹⁹ In

²⁹¹ *America Viticultural Area (AVA) Manual for Petitioners*, ALCOHOL & TOBACCO TAX & TRADE BUREAU (2012), https://www.ttb.gov/images/pdfs/p51204_ava_manual.pdf.

²⁹² *Id.*

²⁹³ 27 CFR 4.25(e)(3)(ii-iv) (2021); 2013 O.J. (L 347) 720.

²⁹⁴ MENDELSON, WINE IN AMERICA, *supra* note 224, at 254.

²⁹⁵ ROBINSON & HARDING, *supra* note 26, at 59.

²⁹⁶ 2013 O.J. (L 347) 720–21.

²⁹⁷ Establishment of the Palos Verdes Peninsula Viticultural Area, 86 Fed. Reg. 32189 (July 19, 2021).

²⁹⁸ MENDELSON, WINE IN AMERICA, *supra* note 224, at 254.

²⁹⁹ 21 U.S.C.S. § 393.

this position, the goals of the TTB can still be achieved – tax, commerce regulation, and health warnings.³⁰⁰ However, under the FDA, new perspectives from an organization more familiar with food regulation can better facilitate the advancement of wine in the United States and promote its position in a growing international market.

A. *“Judgment of Paris” Label Creation*³⁰¹

Considering the lessons pulled from history and other wine regulatory systems, there appears to be an opportunity to improve consumer protection through a higher labeling standard of assured wine quality. A special label should be created that can attach to wine if certain winemaking standards are met. These standards should work to bring the baseline American production standards closer to those of Europe. This solution can take two different forms: a public solution through the TTB or a private solution.

1. *Public Solution*

Certain winemaking practices are aimed at increasing the quality of the produced wine. A number of those mandated in the review of European and French wine labeling standards work towards this end. Should the TTB require wine producers to follow certain winemaking practices to gain special labeling, the agency should consider the flexibility required by winemakers to navigate climate change. Overly stringent standards would not be helpful. Considering regional practices in the United States are not as entrenched as those of Bordeaux or Burgundy, the proposed regulation cannot mirror France in mandating quality standards that are customary to each AVA. Though French regional customary standards have differences, it cannot be a stretch to assert that there are winemaking practices that encourage the creation of better wine regardless of what region it is made in. The TTB should consider requiring producers to follow these practices to use special labeling.

This label could operate on a national basis and simply provide that if a certain set of baseline quality assurance standards are met, the winemaker can make use of the label on their wines as a signal to consumers. A potential avenue towards this end already exists in American law as applied to distilled spirits – the “Bottled-in-Bond” label.

³⁰⁰ 27 U.S.C. §§ 203, 205, 213 (2006).

³⁰¹ I would propose the “Judgment of Paris” as the name of the label.

The Bottled-in-Bond Act of 1897 is considered the first consumer protection law for alcoholic beverages.³⁰² At the time, food coloring, formaldehyde, glycerin, tobacco, and other indigestible chemicals were being used to give bootleg whiskey the taste and character of high-end whiskey.³⁰³ Pressure from legitimate distillers pushed the federal government to set a standard producers can meet to earn a label that guarantees to consumers that certain production techniques were used while other techniques were avoided.³⁰⁴ The bottled-in-bond designation mandates that brands clear numerous hurdles. The spirit must be aged for at least four years and bottled at precisely one hundred proof (50% alcohol by volume). It must be made by one distiller at a single distillery in one season, then aged in a bonded warehouse.³⁰⁵ This production practice “reflects what many distillers believe to be the best criteria for excellence in whiskey, and the criteria are unchanged from 1897 . . . Behind each bonded label, there is an assurance of quality and the achievement of drinking bitterness of American heritage.”³⁰⁶

The sentiment that surrounds the bottled-in-bond label as a symbol of quality whiskey can also surround winemaking. As stated, any created standards to earn the wine “Judgement of Paris” label should not be stringent. They instead could require that winemaking techniques, which are known to alter wines aggressively, may not be used or that certain yield limitations are exercised in the production of the wine. Of course, winemakers would not be required to meet this labeling standard, but gaining the label could help them signal to consumers that they employ production techniques with quality as an aim. Ultimately, consumers can make more informed decisions about the wine they are purchasing by seeing wines with this label on the shelf.

2. *Private Solution*

If governmental bodies cannot mandate such a label, it is still possible for the private sector to advance such a solution. By creating and registering a logo as a trademark, winemakers associations can license the trademark’s use on the condition that certain viticultural or winemaking techniques are employed. This solution could even be more appellation specific, and some winemakers

³⁰² Kate Dingwall, *What are “Bottled-In-Bond” Spirits and Why Should I Care?*, WINE ENTHUSIAST (Oct. 15, 2019), <https://www.winemag.com/2019/10/15/what-is-bottled-in-bond/>.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Jonah Flicker, *What Are Bottled-in-Bond Spirits, and Why Are They Suddenly Everywhere?*, VINEPAIR (Jan. 9, 2019), <https://vinepair.com/articles/what-is-bottled-in-bond-whiskey/>.

³⁰⁶ Dingwall, *supra* note 302.

associations have already experimented with it. The Napa Valley Vintners trade association (NVV), with over 400 members located in the appellation, registered a certification mark that took the form of a logo that, by their standard, could only be used on bottles that are made in the Napa Valley AVA and made from one hundred percent Napa Valley grapes.³⁰⁷ Any winery that met this specification could make use of the mark.³⁰⁸

Another example with more stringent standards comes from Mendocino County, California, where the group Coro Mendocino created a protocol for the production of wine distinct to the region.³⁰⁹ To use their brand, winemakers must make wine that is comprised of between forty and seventy percent Zinfandel, with the remaining portion being from among nine varietals that are not to exceed the amount of Zinfandel in the bottle.³¹⁰ An additional ten percent can be from any varietal of the winemaker's choosing.³¹¹ Certain analytical and organoleptic qualities are required, and details of cooperage and aging are prescribed.³¹² The wine is then subject to a blind tasting panel, and if it passes, it can bear the trademark on the bottle.³¹³ Lodi, also in California, took this concept in another direction and created a trademarked label a winemaker can use on their bottle if they employ certain sustainable and eco-friendly farming practices.³¹⁴

Perhaps the most established example of this practice belongs to the VDP Federal Association in Germany.³¹⁵ The organization's stated purpose is to ensure that it can "effectively stand up for high-quality standards in German wine."³¹⁶ The organization is national, and it has regional branches across Germany. They hold a trademark called the "VDP.Adler" Eagle, which can adorn bottles of wine that meet the standards of the organization.³¹⁷ These standards include environmentally friendly cultivation methods, hand harvesting of grapes, reduced yields of wine per hectare of vines, and more.³¹⁸ Within these

³⁰⁷ MENDELSON, *WINE IN AMERICA*, *supra* note 224, at 275.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at 277.

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ MENDELSON, *WINE IN AMERICA*, *supra* note 224, at 278.

³¹⁵ *Why VDP. Wines Always Are So Special: Passion. Tradition. Origin. Sustainability.*, VDP MAG., <https://www.vdp.de/en/the-wines/philosophy-of-quality-1>.

³¹⁶ *The Association*, VDP MAG., <https://www.vdp.de/en/der-vdp/the-association>.

³¹⁷ *Id.*

³¹⁸ *Why VDP. Wines Always Are So Special: Passion. Tradition. Origin. Sustainability.*, *supra* note 314.

standards, the organization has created its own classification system to organize wines into different levels depending on the production standards met, which are then awarded different levels of the eagle trademark.³¹⁹

As mentioned at the outset of this section, several wine regions in the United States are gaining attention for the unique yet typical character of their best wines. To advance their wines further and to encourage other winemakers in the region to prioritize the quality of the wine over the quantity produced, winemakers' organizations in these regions should consider this type of private solution.

CONCLUSION

American wine regulation has addressed the issue of wine fraud, but there is room to expand its consumer protection capacity by promoting a more transparent labeling system. In addition to advancing consumer protection, the proposed labeling standard could advance quality in United States wine production while avoiding obstacles presented by climate change.

American wine production has existed for a moment in time relative to the centuries-old practices of the European countries. France is steeped in winemaking tradition, and its population takes pride in preserving these practices, as evidenced by their law. Ultimately, how American wine develops depends greatly on U.S. consumers. At present, the U.S. wine industry has little reason to produce high-quality wine if it is not asked for. With growing consumption in the United States and no winemaking traditions rooted in quality, American producers have more incentive to emphasize quantity over quality, low-cost production over high, and even the artificial over the natural. Demand from U.S. consumers can change that. American wine tradition roots itself in the outstanding wine quality that overcame that of leading French wines in the Judgement of Paris. That choice is up to you. So put down the seltzer and pick up the wine list. Ask questions about what you see, and consider, would George Washington pick an American bottle with its unpredictability over a virtually guaranteed Bordeaux AOP wine? I think not. But that can change.

KYLE AMENDT SHIMOMURA

³¹⁹ VDP. *Classification: Origin is Everything*, VDP MAG., <https://www.vdp.de/en/the-wines/classification#c80>.