Wine is not an alcoholic beverage like any other.

Ronan Raffray*
*Professor at the University of Bordeaux
Head of the Master's degree course Open Wine Law
IRDAP

A legal expert's defense of the special identity of wine.

As the controversial issue of Dry January has shown, wine remains a central theme in public discussion, in particular with regard to its relationship with other alcoholic beverages. Should it retain its specific status within that category of beverages? Should its specificity be diluted into that category on the grounds that it contains alcohol?

By constantly maintaining that wine is an alcoholic beverage like any other, the health authorities have patiently constructed a discourse that denies the singular nature of wine production, a discourse that is often supported by doctors and sometimes propagated by journalists. Fortunately, many voices are being raised against this idea, especially in the academic world, fighting back against a slogan which, in an astonishing oversimplification, gets lost between the legitimacy of the public health argument – the fight against alcoholism – and the obscurantism of the means employed – negating the identity of wine. What can a legal expert bring to this discussion? Should they content themselves with regretting the attempts to demonize the sector? Should they not, instead, contribute to the debate by pointing out that the law can inform the discussion in relevant ways and that the legal identity of wine is one clear element of proof, among so many others, of the unique nature of wine production?

In line with the famous "Griffe Law" (Law of 14 August 1889, Art. 1), the French Wine Code (enacted in 1936 and repealed in 2003) and the very similar definition adopted by the OIV (International Organization of Vine and Wine) in a resolution dating back to 1973, wine is defined in European Union law (see N. Olszak, "Histoire de
la définition du vin. Aux origines du Code communautaire des pratiques et des traitements œnologiques", in Mélanges en l'honneur de Georges Wiederkeher, Dalloz, 2009, p. 600ff.) as the product obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape musts (Regulation No. 1308/2013 of the European Parliament and the Council of 17 December 2013, Annex VII, Part II). Based on this alcoholic content, it has become commonplace and facile, in putting across the public health message, to reduce wine to its status as an alcoholic beverage, which has led to the appearance of the slogan purporting that wine is an alcoholic drink like any other, a slogan driven by a dual intention to denormalize the consumption of alcohol (deemed to be harmful from the first glass) and to include wine in the sights of this policy (if wine is an alcoholic drink and the consumption of alcohol is harmful from the first glass, then wine is also harmful from the first glass - the syllogism is unassailable).

This amounts to a vicious attack on the sector, for the deliberate expunction of the singularity of wine in fact constitutes a denial of its very identity, which is confirmed by the type of language used. By specifically targeting the winegrowing sector, by referring to it as an "industry" which forms the "alcohol lobby", public health actors have taken the extreme step of misrepresenting wine, presenting it as nothing more than an industrial phenomenon, and at the same time reducing it to one of its negative externalities, in total disregard of its richness, complexity and economic and social usefulness. This leads the legal expert to note that the stark confrontation of legitimate public health ambitions with the equally legitimate interests of the winegrowing sector do not do justice to the subtlety of the legal aspects of the matter. Following in the footsteps of the agronomist, they offer a precise and carefully constructed response, identifying wine as a particular type of alcoholic beverage whose nature cannot be reduced merely to that alcoholic component. To understand the response provided by the law, we need to follow the path proposed by Gény. From the 'given' to the 'construct' (Fr. Gény, Science et technique en droit privé positif, I, Sirey, 1914, no. 33, p. 97), the route is quite clear.

The "real" or "natural" given reminds us that wine is a fermented alcoholic drink, which differentiates it from "spirits" legally designated as "spirit drinks" (Regulation (EU) No. 2019/787 of the European Parliament and of the Council of 17 April 2019) generally produced by distillation. According to the agronomist (B. Grandchamp, "Le vin est-il un alcool comme les autres", in R. Raffray (dir.), Vin, Droit & Santé, Les Études Hospitalières, 7th ed., 2018, p. 9), wine contains alcohol, but is not itself "an alcohol", that
is to say a beverage obtained by an entirely human, physical process without any transformation, generally by distilling a fermented sweet juice. As a fermented alcoholic drink, like cider, beer or perry, wine sometimes benefits from a separate status. Although in France the Evin Law subjected all alcoholic beverages to the same rules on advertising, fermented drinks, on the other hand, remain the only ones allowed in the workplace (Labor Code, Art. R. 4228-20, par. 1), aggregated in the same group in the Public Health Code (CSP, Art. L. 3321-1) and subject to specific excise duties (Goods and Services Tax, Art. L. 313-20). Even when the alcohol content is the very reason for the rule, alcoholic drinks are therefore not always placed on the same footing.

It should also be noted, furthermore, that wine is also not a fermented alcoholic drink like the others. There is that specific link to the land: made from a perennial plant, the vine, which has to find its terroir (meaning a unique combination of the soil, the climate and the grape variety), wine is different from beer, for cultivation of barley does not involve the same constraints. What is more, grapes cannot be stored as cereals can, which means that exposure to the vagaries of the climate constitutes a particular challenge in winegrowing. Finally, while the grape is naturally fermentable, this is not the case for cereals, which have to undergo a process of hydration, "malting", so that the starch can be converted into sugar and the fermentation take place (B. Grandchamp, prev. art.). Since the debate that preceded the Griffe Law, wine has been presented to legal experts as a "natural" product (J.-M. Bahans and M. Menjucq, Droit de la vigne et du vin, aspects juridiques du marché vitivinicole, LexisNexis, 3rd ed., 2020, p. 69) unlike the artificial wines made at the time by industrial processes (O. Serra, "L’édification de la catégorie juridique de vin naturel", in J.-M. Bahans and N. Hakim (dir.), Le droit du vin à l’épreuve des enjeux environnementaux, Histoire et actualités du droit vitivinicole, Féret, 2015, p. 39ff.). This understanding echoes the requirements of canon law concerning the serving of a "natural wine" (M. Bassano, "Le vin d’embarras. Les juristes face à la nature du vin (XIIe-XVe siècles)", in J.-M. Bahans and N. Hakim (dir.), op. cit., p. 11ff.), which are themselves based on Biblical texts which promote the idea that wine - which becomes the blood of Christ by transubstantiation - is the "fruit of the vine", which leaves little room for external, chemical or industrial intervention.

This link to "nature" is also consistent with the definition of agricultural activity in the French Rural and Marine Fisheries Code (CRP). The "real" given in actual fact reminds us that wine originates with an agricultural activity, that it is a produce of the
soil, whereas spirits lean more towards the industrial. The winegrower is necessarily a farmer since they control the biological cycle of the vine (CRPM, Art. L. 311-1) and remains so when they transform their grapes into wine, since that transformation, a process as commonplace as that of turning milk into butter or wheat into flour (R. Saint-Alary, "Essai sur la notion juridique d'entreprise agricole", RTD civ. 1950, p. 129ff., no. 16) is an extension of the act of production. This amounts to an indictment of the use of the term "industry" in French as this devalues the nature of wine production or, at least, should lead to a different understanding of the concept when it is used to refer to the agricultural sector. In English, the term wine industry is not pejorative. In French, it is ambiguous.

The "historical" given, a mixture of raw elements of the real given and legal elements from the past and "acquired legal heritage" (Fr. Gény, Science et technique en droit privé positif, II, Sirey, 1927, no. 168, p. 377), puts the spotlight on the characteristics of the product, which have been consistently integrated by the legal system: agricultural produce; sacred aspect; rich agricultural resource and/or luxury product; taxed product; precise quality rankings; product of the terroir (D. Denis, "Éléments pour une histoire du droit de la vigne et du vin", Rev. dr. rur. 1995, no. 238, p. 529ff.). Is there any need to recall the important role played by winegrowing in the construction of the geographical indications system and the specific nature of the treatment of wine brands, which are attached to the domain? The law of the vine and wine unmistakably constitutes a branch in its own right, which within the divisions of the law (Fr. Grua, "Les divisions du droit", RTD civ. 1993, p. 59ff.) can be analyzed as a division based on a specific object, which establishes with some force the particular status of wine, a product that is singular enough to benefit from a dedicated body of legislation. This is known in French as the "droit de la filière" or the law of the sector, a term that expresses the idea of vertical integration, a thread running through that is tied to the product's itinerary. This is therefore also the law of the wine market, which irradiates through all the production and marketing operations.

The "ideal" given, which Gény refers to as the "ambient atmosphere of any debated question of law" (Science et technique en droit privé positif, II, op. cit., no. 170, p. 385), invites us to take account of the way the French perceive of the sector. Studies have shown that they see wine as having a particular status taking into account its multiple dimensions and that they are perfectly aware of the risks linked to its consumption. In these days of mindful drinking, this balanced representation is in line with this complex given.
Conversely, the representation put across by the health authorities, which is inclined to refer to wine only in terms of its alcoholic content, is moving away from it.

So what can we say about this essential part of the construct that is the legal definition of wine? On the deontic function of the definition, it is worth remembering that the first legal definition of wine was intended to reserve the use of the word for wines made from fresh, "natural" grapes, as opposed to "artificial wines" made by industrial processes. Although essential, the alcoholic component did not take precedence. The impossibility of reducing wine solely to its alcoholic dimension is also found in the technical function of the legal definition, which must attach it to "a similar type in order to then separate it from it based on the specific difference that marks the individuality inherent in the object be defined" (Science et technique en droit privé positif, I, op. cit., no. 52, p. 153). The law distinguishes wine from other beverages by reference to the method, fermentation, then to the material, fresh grapes. Thanks to these specific traits, wine becomes a legal category with its own attachment criteria. We should think about this. Is this particular status only the consequence of the actions of interest groups? Is it not more simply evidence of the identity of wine, which we find, unsurprisingly, in the legislation? Far from being a response to the concerns of the alcohol lobby, the law here is relying on the nature of things, which it can sometimes be useful to recall.