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L'histoire se répète: Why the liberalization of the EU vineyard planting rights regime may require another French Revolution. (And why the US and French Constitutions may have looked very different without weak planting rights enforcement)

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Why the liberalization of the EU vineyard planting rights regime may require another French Revolution

(And why the US and French Constitutions may have looked very different without weak planting rights enforcement)

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Abstract

In 2008, the EU voted to liberalize its system of planting rights which has strictly regulated vine plantings in the EU. However, after an intense lobbying campaign the liberalization of the planting right system was overturned in 2013 and new regulations created an even more restrictive system. European wine associations complained about the detrimental effects of the new regulations. There is a precedent in history. In 1726, the French political philosopher and landowner Montesquieu complained to the French King about the prohibition on planting new vines. Montesquieu was not successful in his demands to remove the planting rights. Old and recent history suggests that political forces against liberalization of planting rights are very strong. Only the French Revolution in 1789 led to a fundamental liberalization of planting rights. The "liberal period" of the 19th century was sustained by the combination of the French Revolution's liberal ideology, the thirst for wine of Napoleon's armies and diseases that wiped out most of the French vineyards.

That said, in the past and the present, enforcement of planting rights is a major problem. In fact, despite the official restrictions, Montesquieu managed to plant his vines, allowing him to become a successful wine producer and merchant and to travel and to spend time thinking, discussing and ultimately writing up his ideas which influenced much of the Western world's constitutions.

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[1] History Repeats Itself.

L'Histoire se répète.

Giulia Meloni and Johan Swinnen

"*Let us, therefore, lay down a certain maxim, that whenever the public good happens to be the matter in question, it is not for the advantage of the public to deprive an individual of his property, or even to retrench the least part of it by a law, or a political regulation.*"[2]

Montesquieu, 1748b, XXVI, XV, p.252

I. Introduction

On April 15, 2014, a consortium of all major European wine associations[3] co-signed an urgent letter to all the European Union (EU) governments and the EU Commissioner for Agriculture and Rural Development complaining about the detrimental effects of new proposed regulations and restrictions on planting vineyards:

"*We are extremely concerned that the [proposals] would result in an even more restrictive regime (…) it would fatally jeopardize the competitiveness of the EU wine sector in a context of international competition. It would be just irresponsible to impose (…) arbitrary or discriminatory criteria and restrictions (…).*"

"*We are shocked by the lack of ambition for our sector shown by our national governments. (…) Their requests are not justified on the grounds of protecting the sector against possible oversupply (…) their requests are driven by fear, selfishness and corporatist protectionisms*."

Comité Européen des Entreprises Vins (CEEV), 2014

[2] Translation by the authors."*Posons donc pour maxime que, lorsqu'il s'agit du bien public, le bien public n'est jamais que l'on prive un particulier de son bien, ou même qu'on lui en retranche la moindre partie par une loi ou un règlement politique*." (Montesquieu, 1748b, XXVI, XV, p.252).

[3] The consortium includes the European Committee of Wine Companies (Comité Européen des Entreprises Vins – CEEV) and national wine associations in France, Spain, Italy, Germany, Portugal, Greece and Belgium (i.e., Union des Maisons & Marques de Vin–UMVIN, Fédération Française des Vins d'Apéritif–FFVA, Federación Española del Vino –FEV, Unione Italiana Vini–UIV, Federazione Italiana Industriali Produttori, Esportatori ed Importatori di Vini, Acquaviti, Liquori, Sciroppi, Aceti ed affini–FEDERVINI, Bundesverband der Deutschen Weinkellereien und des Weinfachhandels–BDWW, Associação dos Comerciantes e Industriais de Bebidas Espirituosas e Vinhos–ACIBEV, Associação das Empresas de Vinho do Porto–AEVP, Greek Wine Federation–SEO, Fédération Belge des Vins et Spiritueux–FBVS).

The letter reflects the frustrations and concerns of the European wine associations. In 2014, at the time of the writing, things looked very different than a few years earlier (see Table 1). In 2008, the European Union (EU) had decided to liberalize the EU's vineyard planting rights regime. The decision was in line with reforms in other agricultural markets – such as grains, oilseeds, sugar and dairy – where various regulations which distorted production allocations had been removed and replaced by a more market oriented policy combined with direct income support for farmers (Swinnen, 2014).

Also in the wine sector extensive regulations had led to problems of oversupply, low quality and distorted market. After a series of more timid reforms in the 1980s and 1990s, the European Commission proposed to get rid of the planting rights regime, a system which have been regulating and restricting vineyard planting since 1970, in line with the removal of production quotas in e.g. the dairy and sugar sectors. After two years of discussions, in 2008, the EU Ministers of Agriculture adopted the Commission's proposal to liberalize the planting rights as part of broader reform of the EU wine sector.[4]

However, then an unprecedented development in EU political history occurs. Almost as soon as the liberalization decision was reached in 2008, an intense lobbying campaign starts to reverse the decision. And successfully so: the liberalization of the planting right system was overturned in 2013. Not only was the liberalization decision reversed, a series of new proposed regulations would create an even more restrictive system of planting rights regulations. Facing the proposal to make vineyard planting even more restrictive, the European wine associations wrote their desperate letter to EU governments.

[4] The EU Ministers of Agriculture reached a political agreement in December 2007 on the reform of the EU wine market. The decision was formally adopted by the Council of Ministers in April 2008.

The question is: will this have any effect? If recent history is any guidance, their efforts seem to stand little chance of succeeding. The strength of the lobby of those in favor of vine planting regulations seems more powerful than those opposing them. However also a look at the longer history does not look promising for them. In fact, there is a precedent.

II. An Advocate for the Liberty of Men and Wine

"*The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny. (…) In order to form correct ideas on this important subject, it will be proper to investigate the sense, in which the preservation of liberty requires, that the three great departments of power should be separate and distinct.*

The oracle who is always consulted and cited on this subject, is the celebrated Montesquieu."

James Madison, 1788, Federalist, no. 47, 323–31

"*Every man invested with power is apt to abuse it (…) To prevent this abuse, it is necessary from the very nature of things power should be a check to power."*

Montesquieu, 1748a, XI, IV, p.242[5]

In 1748, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu (1689–1755), published his famous and most influential work "*De l'Esprit des Lois*" (The Spirit of the Laws), where he argued the need to separate the political power in three separate branches: the executive, the legislative and the judicial (Montesquieu, 1748). Montesquieu's work inspired James Madison (the "Father of the United States Constitution") and the American Founders on the separation of powers in the 1787 United States Constitution. In fact Montesquieu is the second most cited source in the period of Constitution writing – only surpassed by the Bible (Lutz, 1984). Montesquieu's

[5] Translation by the authors. "*(…) tout homme qui a du pouvoir est porté à en abuser (…) Pour qu'on ne puisse abuser du pouvoir, il faut que par la disposition des choses le pouvoir arrête le pouvoir*." (Montesquieu, 1748a, XI, IV, p.242).

ideas on the separation of powers also inspired the 1791 French Constitution and many other constitutions in the world (Lane and Ersson, 2000).

However, Montesquieu was more than a political philosopher. He was also a wealthy owner of land and vineyards in France. In this position he wrote a letter in 1726 to Mr. Le Pelletier, the just-appointed French *Controlleur Général* who was in charge of the finances of King Louis XV (1710–1774) of France. In this essay, like today's European wine associations, he bitterly complained about the newly introduced prohibition on planting new vines:

> "*The prohibition on planting vines is useless because the owner knows, much better than the Minister, if the vines suffer economic losses; he calculates accurately; and, as winemaking requires financial anticipation, costs and care, as long as vines do not yield well, he is naturally led to uproot and convert his land into a different kind of revenue, less cumbersome*."[6]
>
> *Montesquieu, 1726, p.267*

Montesquieu argued that the 1725 prohibition was "useless" because winegrowers were much more competent in assessing the needs of the market than public officers ("*il n'y entend rien*"–"they understand nothing about it"). According to Montesquieu, given the high demand for Bordeaux wines (in France and abroad such as in England, Holland and Flanders), it is in the public interest to rely on the winegrowers entrepreneurial skills to invest in the most efficient vineyards:

> "*[The Bordeaux wine region] must provide different kinds of wines to the foreign market, depending on the diversity of its soils. However, the taste of foreigners varies continuously (…). We must therefore follow this inconsistent taste, planting or uprooting accordingly*."[7]
>
> *Montesquieu, 1726, p.267*

[6] Translation by the authors. "*Elle (la défense) est inutile parce que le propriétaire sait, beaucoup mieux que le Ministre, si ses vignes lui sont à charge ou non; il calcule bien exactement; et, comme la manufacture des vignes demande beaucoup d'avances, de frais et de soins, pour peu qu'elles ne rendent point, il est porté naturellement à les arracher, et à convertir sa terre en une autre nature de revenu, moins incommode*." (Montesquieu, 1726, p. 267).

[7] Translation by the authors. "*La Guyenne (…) doit fournir à l'étranger différentes sortes de vins, dépendantes de la diversité de ses terroirs. Or, le goût des étrangers varie continuellement (…). Il faut donc suivre ce goût inconstant, planter ou arracher en conformité*." (Montesquieu, 1726, p.267).

While Montesquieu may have inspired the United States Constitution, he was not able to convince the French King (or his advisors) to get rid of planting rights. Actually, he may have made things worse when he complained that partial planting rights would only induce other regions to plant more. In fact, this was his only argument that was taken up by King Louis XV. In 1731, the King extended the prohibition to plant vines to the entire kingdom of France. The outcome was the opposite of Montesquieu's intention.

Montesquieu would not see the end of the planting rights anymore. He passed away in 1755. Four years later there was some relaxation in the planting rights system, but it is only in 1789, 34 years after the death of Montesquieu and 64 years after they were introduced, that planting rights are removed and wine production is liberalized. The thing that made it happen was … the French Revolution. Only a dramatic political change sufficiently shifted the political equilibrium to allow a liberalization of planting rights.

What does this imply for today? As Montesquieu, the European wine associations want to remove the restrictions imposed by the planting rights regime. So the question is: what would make liberalization of the EU planting rights system possible? In the rest of this paper we document many similarities between Montesquieu's time and now in terms of the motivation for the introduction of the planting rights, their extension to other regions and problems of implementation. This comparative analysis suggests that, as planting rights were ultimately abolished and plantings liberalized only after a major political change in the 18th century, it may require another (type of) French Revolution this time again.

III. Planting Rights Restrictions in 18th Century France

"*In France the anxiety of the proprietors of the old vineyards to prevent the planting of any new ones, seems to (…) indicate (…) that this superior profit can last no longer than the laws which at present restrain the free cultivation of the vine. In 1731, they obtained an order of council prohibiting both the planting of new vineyards and the renewal of those old ones (…).*"

Adam Smith, 1776, p.217

As Meloni and Swinnen (2013, 2014) show, many wine regulations are political responses to excessive supplies of wine, which are, in turn, often triggered by earlier periods of shortage. The regulations in France during Montesquieu's time are no exception. The domestic oversupply of wine in the early 18th century followed earlier shortages caused by the destruction of many vineyards through extreme weather conditions and an increase in wine consumption with economic growth.

An exceptionally cold winter in Europe in late 1708 and early 1709, the Great Frost ("*Le Grand Hiver*"), resulted in the destruction of many vineyards and in an increase in wine prices (Labrousse, 1933; Le Roy Ladurie, 1960). At the same time, demand was growing due to an increase in wine consumption in the rural areas of France. Until the beginning of the 18th century, wine consumption was much lower in the rural areas than in the cities, where wine was consumed on a daily basis. This changed during the early 18th century as France recovered from the constant wars of King Louis XIV of France (between 1661 and 1715). The increased well-being in the rural areas led to an increase in wine consumption. As peasants drank more wine, wine prices increased (Dion, 1959, p.597).

The increased demand and higher prices, attracted investments in vineyard plantings. The extension of new vineyards was most important in the regions of Touraine, Anjou and Bordeaux. Martin (1907, p.19) notes that King Louis XV was informed that: "*in the best areas of the Bordeaux province, the residents abandoned (…) the cultivation of arable land, to engage in (…)*

the planting of vineyards in the hope of finding a substantial profit in wines that the foreigners are in the habit of buying."[8]

It was also pointed out to King Louis XV that these vineyard plantings occurred *"without reflecting on the disadvantages that result from too great abundance*".[9] French wine production increased strongly around 1720 as farmers and landowners started to plant vines instead of grain (since winegrowing was more profitable), and because new (younger) vines are more productive than older ones.[10] Not surprisingly, wine prices declined significantly with production growth.

With their returns from the market declining, the owners of existing (older) vineyards in the renowned and established wine regions turned to the government to support them.[11] Many belonged to rich and influential families.[12] They pressured both the Council of State (*Conseil d'Etat*)[13] and the local administration (*intendant*)[14] to intervene (de Tocqueville, 1856; Smith, 1776; Unwin, 1991). In France, two institutions were in charge of the local administration: the "*parlements*" (regional courts) which were the highest juridical organizations and the "*généralités*"

[8] Translation by the authors. "*Le Roy étant informé que dans les meilleurs cantons de la généralité de Bordeaux, les habitants ont depuis plusieurs années abandonnés la culture des terres labourables, pour se livrer par préférence à la plantation des vignes, dans l'espérance de trouver un profit considérable dans les vins que les étrangers sont dans l'habitude d'enlever (…)*." (Extract from the edict of the Council of State on the prohibition to plant vines in Bordeaux without permission from the King – February 27, 1725. In: Martin, 1907, p.19).

[9] Translation by the authors. *"(…) sans faire réflexion aux inconvénients qui résultent de la trop grande abondance (…)*." (Extract from the edict of the Council of State on the prohibition to plant vines in Bordeaux without permission from the King – February 27, 1725. In: Martin, 1907, p.19).

[10] In the first three years of life, vines do not yield (almost) any wine. Then it takes another three years (on average) before vines reach their fixed limit of expansion and their yield stabilize before decreasing again. The consensus is that older vines make better wine; and that younger vines are more productive but of lower quality (Robinson, 2006, p.740).

[11] This is consistent with political economy mechanisms that influence agricultural protection and price policy (see Anderson et al., 2013; Swinnen, 1994).

[12] In 1755, three-quarters of their income was deriving from wine sales (Brut-Moncassin, 2006, p.196)

[13] From the 15th to the 18th century, the Council of State was part of the French's state administration, in charge of advising the King on judicial matters (Brink, 1986).

[14] The key person of the local administration was the *intendant* who represented the King in each of the provinces (or *généralités*) and reported directly to the *Controlleur Général* ("Intendant", 2014).

(provinces) which governed the police and the economy of the area. Membership of both institutions was limited to clergy and nobles (Brink, 1986).

The lobby efforts were successful: between 1722 and 1731, various regulations were introduced to reduce the supply of wine. For example, in Guyenne, an historic region in southwestern France which corresponds to the present-day Gironde department and which includes the Bordeaux wine region, the existing owners of vineyards were nobles or magistrates.[15] They typically owned vineyards on the slopes in the traditional Médoc region, situated north of Bordeaux.[16] In contrast, the "fury of plantings" concerned mostly vineyards in the vast plains south of Bordeaux (Enjalbert, 1953; Johnson, 1989, p.256–58). The existing vineyard owners lobbied Mr. Boucher, the *intendant* of Guyenne, who wrote to Mr. Dodun, *Controlleur Général* in charge of the King's finances. In his letter, the *intendant* of Guyenne proposed to uproot at least one third of the vines planted since 1709 (Montesquieu, 1726).[17] Successively, Mr. Dodun wrote a report to the King of France, Louis XV on the overplanting of vines in the Bordeaux area.

In 1725, the Council of State forbade planting of new vines in the Guyenne province (the Bordeaux wine region) without an "*express permission*" of the King of France.[18] The mentioned

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[15] A century before, when Olivier de Serres (1600) writes his famous agricultural treatise, he analyzes the vineyards of Bordeaux and the involvement of the upper class in winemaking. He concludes that the quality of wine is related to the quality of the winegrower: "*The esteemed man produces good wine*" [Translation by the authors: "*Que celui est estimé homme de bien, qui a de bon vin*"] (Serres, 1600, p.200).

[16] The most influential and wealthy magistrate was Nicolas-Alexandre, Marquis de Ségur (1695–1755) known as the *Prince des Vignes* (Prince of Vines) who owned various properties near Bordeaux, including the renowned Castles of Lafite, Latour and Mouton. The *Prince des Vignes* managed to lower his taxes by lobbying Mr. de Tourny (the *intendant* of Guyenne) after a bad vintage of 1744 (Johnson, 1989, p.257).

[17] "*(…) it was hoped to uproot, at least, one third of those [the vines] who had been planted since 1709*" [Translation by the authors: "(…) *qu'il auroit été à souhaiter qu'on arrachât, au moins, un tiers de celles [les vignes] qui avoient été plantées depuis 1709*"] (Montesquieu, 1726, p.264).

[18] "*The King (…) orders (…) that it shall be no new planting of vines in the province of Bordeaux without express permission of Her Majesty, under penalty of three thousand livres of fine and more (…)*." [Translation by the authors: "*(…) oui le rapport du sieur Dodun, conseiller ordinaire au conseil royal, controlleur général des finances, le Roy (…) ordonne (…) il ne sera fait aucune nouvelle plantation de vignes dans l'étendue de la généralité de Bordeaux sans une permission expresse de Sa Majesté, à peine de trois mille livres d'amende et de plus grande (…).*"] (Extract

reason for the edict was "*to provide for the best interests of the inhabitants of Bordeaux*",[19] which in reality were the best interests of the existing vineyard owners. Yet, the Council of State did not follow the proposed "uprooting" plan and only prohibited new plantings.

Other provinces, including Champagne (the Châlons province), also issued royal edicts forbidding the planting of new vines.[20] And some regions did introduce uprootings: the regional court of Metz (located in the northeast of France) forbade the planting of new vines and ordered the uprooting of all vines planted before 1700 (Denis, 1995; Dion, 1959, p.598).

IV. Regulations Breed More Regulations

"*Moreover, this prohibition is pernicious because either it is general for the whole kingdom, or not. (...) This prohibition is pernicious by being too narrow-minded: as the other provinces can indiscriminately and freely plant their vines*"[21]

Montesquieu, 1726, p.267

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from the edict of the Council of State on the prohibition to plant vines in Bordeaux without permission from the King – February 27, 1725. In: Martin, 1907, p.19).

[19] Translation by the authors. *"(…) à quoy Sa Majesté désirant pourvoir pour le propre intérêt des habitans de ladite généralité de Bordeaux* (…)." (Extract from the edict of the Council of State on the prohibition to plant vines in Bordeaux without permission from the King – February 27, 1725. In: Martin, 1907, p.19).

[20] *"(…) many Council's edicts were issued to this purpose, by which all new planting of vines have been forbidden without express permission of Her Majesty, in the généralités of Tours, Bordeaux, Auvergne, Châlons, Montauban and in the province of Alsace (…)*" [Translation by the authors. "*(…) il auroit esté rendu différents arrests du Conseil, par lesquels toutes nouvelles plantations de vignes ont esté défendues sans une permission expresse de Sa Majesté, dans les généralités de Tours, Bordeaux, Auvergne, Châlons, Montauban et dans la province d'Alsace (…)*"] (Extracts from the edict of the Council of State extending to the whole kingdom the prohibition to plant vines without permission – June 5, 1731. In: Martin, 1907, pp.27–29).

[21] Translation by the authors. "*D'ailleurs, cette défense est pernicieuse: car, ou elle est générale pour tout le royaume, ou non. (…) cette défense est pernicieuse en ce qu'elle est trop bornée: car, les autres provinces étant dans la liberté de planter, elles le font indifféremment.*" (Montesquieu, 1726, p.267).

In his petition against the authorities, Montesquieu not only declared that the 1725 prohibition to plant vine was "useless" but also that it was "pernicious" and "narrow-minded", unless it would be applied to the entire kingdom. If limited to a certain region (i.e., the Bordeaux wine region), the neighboring areas could still freely plant their vines and produce cheaper wines prices that could undermine the reputation (and prices) of Bordeaux wines. Hence local planting rights have negative effects: "*if the same precautions are not taken in neighboring provinces, the remedy would be a very poor one*".[22]

Montesquieu made these arguments because he was against state intervention.[23] His assessment on the effects of the prohibition on planting vines turned out to be visionary – but not his anticipation of the policy response.

As Montesquieu had predicted, these restrictions were "pernicious" in that they just resulted in substitution of wine from other regions. The neighboring areas of Bordeaux (as Quercy, Languedoc, Saintonge, Aunis and Poitou) planted more vineyards and flooded the Guyenne region (Martin, 1907).

However, instead of following Montesquieu's proposal to liberalize, King Louis XV decided to do the opposite. Once again, the existing vineyard owners lobbied the French administration. And again they were influential. In 1731, following three years of good grape harvests, his "*remède*" ("remedy") was to extend the prohibition to plant new vines to the entire French kingdom. The 1731 edict stated that:

[22] Translation by the authors. "*(…) si l'on ne prenoit pas les mesmes précautions dans les généralitez et provinces voisines, le remède ne procureroit qu'un bien médiocre (…)*." (Extracts from the edict of the Council of State extending to the whole kingdom the prohibition to plant vines without permission – June 5, 1731. In: Martin, 1907, pp.27–29).

[23] In the French edition of *The General Theory of Employment, Interest and Money*, John Maynard Keynes provocatively described Montesquieu as "*the real French equivalent of Adam Smith. The greatest of your economists, head and shoulders above the physiocrats in penetration, clear-headedness and good sense (which are the qualities an economist should have).*" (Devletoglou, 1963).

"*there shall be no new planting of vines in the provinces of the kingdom, and that those who have been two years without being cultivated cannot be replanted without express permission of Her Majesty*".[24]

The edict clearly indicated that the measure was driven by the interests of the existing vineyard owners producing "high quality" wines: "*over-abundance of vines in the kingdom that occupies a large amount of land suitable to grow grain or pastures (…) multiplied the quantity of wine to the extent that the value and reputation in many places was destroyed*".[25]

In summary, Montesquieu's only argument that was taken up by the French King was that local planting rights are inefficient. However, instead of liberalization, the outcome was more regulations as planting rights were introduced in the French kingdom and restrictions were extended to the old vines (and not only on the new vines). Vines abandoned for more than two years could not be replanted without an express authorization from the King.

V. Planting Rights Liberalization after 1789

"*(…) the Revolutionaries appeared ready to sweep through grandiose measures which would not only liberate men, but also the landed property of France*."

Plack, 2009, p.35

[24] "*Her Majesty wanted to stop the new planting of vines and overcome the disadvantages that result from it (…) there shall be no new planting of vines in the provinces of the kingdom, and that those who have been two years without being cultivated cannot be replanted without express permission of Her Majesty, under penalty of three thousand livres fine (…)*." [Translation by the authors: "*Sa Majesté voulant faire cesser ces nouvelles plantations de vignes et remédier aux inconvénients qui en résultent (…) il ne sera fait aucune nouvelle plantation de vignes dans l'estendue des provinces et généralités du royaume, et que celles qui auront eslé deux ans sans estre cultivées, ne pourront estre restablies sans une permission expresse de Sa Majesté, à peine de trois mille livres d'amende (…)*."(Extracts from the edict of the Council of State extending to the whole kingdom the prohibition to plant vines without permission – June 5, 1731. In: Martin, 1907, pp.27–29).

[25] Translation by the authors. "*Sur les représentations qui avoient esté faites au Roy depuis longtemps, que la trop grande abondance des plants de vignes dans le royaume occupoit une grande quantité de terres propres à porter des grains ou à former des pâturages (…) et multiplioit tellement la quantité des vins qu'ils en détruisoient la valeur et la réputation dans beaucoup d'endroits*." (Extracts from the edict of the Council of State extending to the whole kingdom the prohibition to plant vines without permission – June 5, 1731. In: Martin, 1907, pp.27–29).

While there were significant problems with their enforcement (see further), the planting rights introduced by King Louis XV lasted for almost 70 years. They were abolished only in 1789, as part of a major political, institutional and economic transition: the French Revolution. The French Revolution started with the assault on the Bastille on 14 July 1789. It promoted liberty of Men (*Liberté*) and destroyed all previous privileges. Three weeks after the assault on the Bastille, a series of decrees abolished feudalism, serfdom, seigneurial and royal privileges in place during the previous “Ancien Régime”. However, it would take “*over one hundred decrees and four more years until the seigneurial regime was completely dismantled*” (Plack, 2009).

The liberty principle of the French Revolution also implied vines could be planted anywhere in France. It not only removed the planting rights, it also proved to be a turning point in the political equilibrium on planting rights for the next century and a half. There was considerable lobbying by vineyard owners in the rich wine regions in the 19th century but it was not successful in reintroducing the planting rights regime. They (unsuccessfully) pressured the French government during Consulate (1799–1804), the First Empire (1804–1814) and the Restoration (1814–1830) (Dion, 1959, p.600).[26]

The French governments in the 19th century refused to introduce planting rights because they were inspired by the principles of the French revolution, favoring the rights of new winegrowers and of the masses to access cheap wines. However, they also feared popular discontent if they would reduce the supply of wine, since the French wine market in the 19th

[26] Already in 1800, a report from the Commission on Agriculture stated that in 30 years vines had multiplied by five, taking over arable land suitable for the cultivation of grain – a “*radical vice*”. In 1808, the Empire's representative (*préfet*) of the Aube (Champagne region) was wishing that “*vines were uprooted from the plains*”. Again, in 1813, the *préfet* of the Moselle claimed that “*a wise foresight had dictated the measure [planting restrictions]. It would be desirable that it was renewed*” (Dion, 1959, p.602).

century was mostly characterized by high demand. In the first decades of the 19th century, the demand for wine was very high in France due to the Napoleonic wars that lasted from 1803 to 1815.[27] The wars required a continuous supply of food and drink for an army of many hundreds of thousands of soldiers.[28] Demand for wine was high since wine was still a safer drink compared to water and it was used to "fuel" the soldiers in the battles. Many witness accounts describe drunk soldiers' actions in the battles. During the French invasion of Spain in 1808, a senior commissary officer observed that: "*In the end Villafranca was literally plundered, and the drunkenness that prevailed ... led to the most shameful incidents*" (Fremont-Barnes and Fisher, 2004, p.206).

Later in the 19th century two major vine diseases reduced the supply of wine (and thus any demand for planting restrictions). About 30 years after the end of the Napoleonic wars, the outbreak of two vine diseases ravaged France's vineyards. The first wave of vine fungal disease in France (oidium or powdery mildew) showed up in 1846. In seven years, from 1847 to 1854, wine production collapsed from 54 million to 11 million hectoliters, an 80% decline. However, the discovery of sulfur to tackle the vine disease allowed a rapid recovery. French wine production was back at 54 million hectoliters in 1858 (Insee, 1935; Paul, 1996, p.12).

Six years later, another vine disease, *Phylloxera*, appeared. It also had dramatic consequences and destroyed many vineyards in France.[29] One-third of the French vine area was destroyed, and the remaining (infected) vineyards produced little wine. French wine production declined by about 70% in the 1870s and 1880s (Augé-Laribé, 1950; Lachiver, 1988).

[27] In this twelve years' war period, Napoleon won 53 battles and lost 7 – with the 1815 Battle of Waterloo as one of the biggest and final defeat (Roberts, 2014).

[28] Napoleon's army was called "*La Grande Armée*" (The Great Army) and reached a total of about 680,000 soldiers by 1812 (Houdecek, 2012).

[29] *Phylloxera*, a parasite that lives on the vines' root systems and eventually kills the plant, originated in North America and arrived in Europe in 1863 (Augé-Laribé, 1950; Lachiver, 1988).

In summary, in the 19th century planting rights did not return to France due to a combination of the dominant liberal philosophy of the French Revolution and the limited pressure to restrict supplies during several periods of excess demand caused by the high demand for wine to satisfy Napoleon's armies thirst in the first half of the century and two major diseases that crippled French wine production in much of the second half.

However, as in the early 18th century, the shortage of wine due to the devastation of the vineyards in the late 19th century forebode a future surplus problem – and pressure to reduce supply.

VI. *L'Histoire se répète*. Planting Rights Regimes in the 20th Century

"*This is a law of a very exceptional nature ...*
We believe it is, since the French Revolution, the legislation with the largest government intervention in the economy.
This is... a planned economy."[30]

Mr. Jean-Ch. Leroy, General Counsel of the Wine Appellations of Origin, 1932

The 'liberal' wine regime (without planting rights) would last 150 years. Planting restrictions were (re-)introduced in 1931 in France (exactly 200 years after King Louis XV's 1731 planting prohibitions) and after France's integration in the European Economic Community (EEC), the precursor of the European Union (EU), planting rights would spread across Europe in the second half of the 20th century.

The outbreak of *Phylloxera* and the collapse of French wine production in the late 19th century induced major investments in vineyards in Algeria, a colony of France. The crisis induced

[30] Translation by the authors. "*Il s'agit ici d'une loi d'un caractère très exceptionnel. On peut dire, croyons-nous, qu'elle constitue, depuis la Révolution française, la mesure législative la plus importante consacrant l'intervention de l'état dans le domaine de la vie économique. C'est, suivant l'expression à la mode, de l'économie dirigée au premier chef*" (In: Société de législation comparée, 1932, p.96).

an inflow of skills in wine-making through the migration of many broke French winegrowers to Algeria, and it caused an increase in the demand for Algerian wine. Algerian wine exports to France increased rapidly (Meloni and Swinnen, 2014).

By the beginning of the 20th century, French vineyards had gradually been reconstructed thanks to the planting of hybrid grape varieties and the use of grafting, and production recovered. The combination of many new high productive vineyards and growing imports from Algeria caused a major surplus crisis on the French wine market. With the growing surplus, the pressure on the French government to intervene grew. This time pressure came from winegrowers located in the Midi region in southern France, organized in the *Confédération Générale des Vignerons du Midi* (General Confederation of Midi Winemakers–CGVM). The destructions of World War I temporarily reduced wine supplies. However as production recovered and wine prices declined in the 1920s, the pressure on the government to intervene grew. When protests turned into violence, the French government gave in and introduced a series of laws aimed at restricting the wine supply (Meloni and Swinnen, 2013).

In 1931, vine planting restrictions were (re-)introduced in France, again to protect existing vineyard owners from increased production by new and cheaper wine producers. The planting rights were part of the *Statut Viticole*,[31] the new French wine policy regime introduced to protect established French producers from increased production in Algeria and other regions of France (JORF, 1931, Article 3). In 1935, another law restricted production of certain wines to specific regions (through areas' delimitation) and to specific production criteria such as grape variety, minimum alcohol content, and maximum vineyard yields –as part of the creation of *Appellations d'Origine Contrôlées* (AOC) (Meloni and Swinnen, 2013, 2014).

[31] Laws were issued in 1931, 1933, 1934, and 1935 (JORF, 1931, 1933, 1934, 1935).

World War II caused a temporary break in the restrictions. French production declined from 60 million hectoliters in 1938 to 29 million hectoliters in 1945 due to massive vineyard destruction. As a result, the *Statut Viticole* was suspended in 1942. After the war, wine demand grew rapidly and supply was still low. This resulted in high prices, which encouraged vineyard replantings. Wine prices in 1946 were approximately three times those in 1939 (INAO, 1943, p.35; Insee, 1966, p.190).

As in the 18th century and earlier in the 20th century, wine production increased strongly in the following years, because young vines were more productive than older ones, and because of increased wine imports from Algeria. The increase in wine production reduced prices again and soon resulted in new pressure for political intervention. In 1947, the French government decided that winegrowers could only plant new vines if they had grubbed up the equivalent surface area. However, the 1947 regulation was hardly enforced and winegrowers continued to plant "illegal" vines.

In 1953, a new planting rights regime was introduced in France. The new wine policy (the *Statut Viticole*) was reintroduced under the name *Code du Vin*. The law reestablished planting restrictions and "replanting rights", subsidies to uproot vines, as well as surplus storage,[32] compulsory distillation,[33] and penalties for high yields (JORF, 1953; Milhau, 1953; Warner, 1960, p.174).

The restrictions in the Code du Vin are linked to production regions – based on the French "terroir" principal which through regulations links "quality" with location and which today is present in many Geographical Indications (GIs) – and grape varieties. First, the 1953 Code

[32] In years of overproduction, aid for private storage for their wine surplus was given to winegrowers.

[33] Wine distillation is the process by which wine is transformed either into raw alcohol and spirits or into industrial alcohol.

identifies which regions are qualified for viticulture. All “other regions” are not qualified for viticulture according to the government. If there are vineyards there, then they are “regions of reconversion” and the vineyards need to be uprooted (JORF, 1953).

Second, inside the regions officially qualified for viticulture, the restrictions are different for table wines (“low quality” wines) and AOC wines (“high quality” wines) (see Figure 1). AOC wines are (by AOC-definition) only produced in specific (sub-)regions (such as Bordeaux or Champagne) and new plantings are allowed under the specific AOC regulations.[34] For table wines the general principle is that no new plantings are allowed.[35]

Third, there are further distinctions within the table wines with more restrictions. New (additional) plantings were prohibited for all table wines but replanting, after vineyards had been uprooted, was allowed under strict conditions. The lowest category of grape varieties were the “prohibited” (mainly hybrids, as Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont) who needed to be grubbed up and its wine distilled. The second category was the “temporarily tolerated” who could not be replanted. The third category was the “authorized” varieties. If these varieties were used, the producer had to reduce the area with 30% when replanting. The fourth category was the “recommended” grape varieties. If producers planted these grapes, they could go for the same (100%) area as they had grubbed up. Finally it should be noted that these “replanting rights” could not be transferred to other producers or landowners (JORF, 1953, Article 30).

The impact of the introduction of planting restrictions and subsidies to uproot vines was sizable. From 1953 to 1957, around 120,000 hectares of vines were uprooted, representing 7% of

[34] The AOC wines restricted production not only to specific regional origins (through delimitation of specific areas) but also to specific production criteria such as grape variety, minimum alcohol content, and maximum vineyard yields. AOC wines could only be produced with specific grape varieties listed in the so-called cahier des charges (“book of specifications”). For instance, for the AOC Champagne, only 7 grape varieties can be planted within the delimitation: Chardonnay, Pinot Noir, Pinot Meunier, Pinot Blanc, Pinot Gris, Arbane and Petit Meslier.

[35] In 1953, 87% of wine in France was produced as table wine and only 13% as AOC wine (Humbert, 2011).

the total vineyard area. As a consequence, French wine production declined by about 10% in the same period (Insee, 1966, p.190). Moreover, due to the policy of replanting of vines to “better vine varieties”, in the next 10 years (1958–1968), the share of the “recommended” grape varieties increased from 58% to 90% of the planted grape varieties in France (Durbiano, 1975).

Regulations breed more regulations – again

Economic integration in the European Economic Community (EEC) during the 1960s and 1970s required the integration of different policy regimes in one EEC wine policy (the Common Market Organization (CMO) for wine). The most important producers, Italy and France, held different positions (see Table 2). While France’s wine market was highly regulated through government intervention, including prohibitions on new vineyards and price supports, Italy had more liberal wine policies: there were no price interventions or planting restrictions.

The Treaty of Rome (1957) fixed a “transitional period” for a common policy to be negotiated and introduced. The initial EEC regulatory steps toward a Common Wine Policy was taken in 1962. It was far from a common policy and only required that each member state established a viticultural land register; the notification of annual production levels to a central authority (harvest and stock declarations); the annual compilation of future estimates of resources and requirements; and stricter rules on “quality wines”.[36] There was no agreement on stronger regulations such as planting rights (Council Regulation No. 24/1962). The transition period was supposed to end in 1969 and, by 1969, wine was the last major agricultural product that was still

[36] EU “quality regulations” are based on the “appellation” system and include policy instruments such as the geographical delimitation of a certain wine area, winegrowing and production rules, and rules on labeling (Meloni and Swinnen, 2013).

subject to national regulations. Italy and France had to reach an agreement on a common policy by the end of the year (Niederbacher, 1983; Spahni, 1988).[37]

In the absence of common EEC regulations, national wine policies continued. In 1964 there was some relaxation of planting rights restrictions in France. The main reason was the fall in Algerian wine imports. After Algeria achieved independence in 1962, France imposed import restrictions and tariffs on Algerian wine causing a dramatic decline in imports of Algerian wine and therefore in the total wine supply in France. A second factor was a decrease in Italian wine production due to a decrease of mixed crop vineyards and to the Italian *miracolo economico* (economic miracle) that led to massive exodus from the rural areas into the cities (Bartoli et al., 1987, p.23; Meloni and Swinnen, 2014; Niederbacher, 1983).

In 1964 two laws, on "the wine production and organization of the wine market" and on "the organization of the vineyard and improving the quality of wine production", eased rules on market intervention and especially on planting rights (JORF, 1964a and 1964b).[38] First, the 1964 law allowed the transfer of wine "replanting rights" from one winegrower to another. Second, the planting of new vines was extended to table wines (and not only to AOC wines) and was allowed if justified by "*favorable economic prospects and trade opportunities*" or by "*improving the geographical distribution of the vineyard or the structure of farms*" (JORF 1964a).[39]

[37] Also in other agricultural commodities, such as grains, dairy, and oilseeds, there was a transition period of approximately ten years after the signing of the Treaty of Rome (in 1957) before a common market organization was fully implemented.

[38] The relaxation of the 1953 legislation allowed, for instance, producers were given more freedom to plant and irrigate their vineyards.

[39] "*Within the limit of a maximum amount of areas planted with new vines (...), authorizations for planting new vines may be granted for the production of table wines (...) the granting of these authorizations may however take place only if is justified by economic prospects, especially by those of foreign trade and future opportunities, or by improving the geographical distribution of the vineyard or by improving the structure of farms*." [Translation by the authors. "*Dans la limite d'un montant maximum de superficies plantées en vignes nouvelles (…), des autorisations nouvelles de plantations de vignes pourront être octroyées en vue de la production de vins de consommation courante et de raisins de table (…) l'octroi de ces autorisations ne peut toutefois avoir lieu que s'il est justifié par les perspectives économiques, et notamment par celles du commerce extérieur et des débouchés futurs, et s'il doit aboutir à une*

However, restrictions were not fully removed. For example, replanting with authorized varieties was still restricted at 70%,[40] the transfer of wine "replanting rights" was subject to authorization by the *Institut des Vins de Consommation Courante* (IVCC)[41] and new planting of table wines was allowed only if the "recommended" grape varieties were used within the regions qualified for viticulture (JORF 1964a, Articles 1 and 3).[42]

During the 1964–1970 period, this "more liberal" French planting regime helped to facilitate the negotiations between France and Italy. In 1970, a compromise between the positions of Italy and France formed the basis of the European Common Wine Policy (CWP).[43] The 1970 CWP introduced restrictions on vine plantings for the entire EEC. The structure of the EEC planting rights regime strongly resembled the French system, but in a weaker version of implementation. First, as in the French system a distinction was made between "table wines" and "quality wines produced in a specific region" (often abbreviated to "quality wines psr" or simply "quality wines", as AOC in France or *Denominazione di Origine Controllata* (DOC) in Italy). Second, within the table wine regime different grape categories were introduced. Vines were classified as "recommended," "authorized," and "provisionally authorized" varieties – with

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amélioration tant de la répartition géographique du vignoble sur le territoire que de la structure des exploitations agricoles."] (JORF 1964a, Article 3).

[40] This restriction is still in place in the latest French Rural Code: "*If, when planting, authorized varieties are used, replanting rights are reduced by 30%*" [Translation by the authors. "*Si, lors de la plantation, des variétés classées autorisées sont employées, les droits de replantation subissent un abattement de 30%*".] (Code Rural 2008, Article R665-16).

[41] The *Institut des Vins de Consommation Courante* (Institute of the Wines of Current Consumption–IVCC), a government branch, was established in 1953 to administer table wines and to classify grape varieties (Loubère, 1990, p.132).

[42] "*In addition, new planting rights for wine production are granted only if recommended varieties are used and in the regions qualified for viticulture*" [Translation by the authors. "*En outre, les droits de plantation nouvelle de vigne destinée à la production du vin ne sont accordés que s'il s'agit de cépages recommandés et dans les terroirs viticoles*".] (JORF 1964a, Article 3).

[43] See Meloni and Swinnen (2013) for a discussion of the other CWP regulations.

"recommended" as the highest quality level, resembling the French 1953 classification (Council Regulation No. 1388/70, Article 6).[44]

Restrictions were introduced on the new planting and replanting of vines to "better vine varieties" – the so-called "*rules designed to improve vine-stock selection*". Also in this aspect the CWP structure resembled the French system but under Italian pressure the implementation was weakened. In the EEC, new plantings in "quality wines" (e.g., AOC and DOC) regions was allowed for both "recommended" and "authorized" grape varieties. Similarly, "authorized" varieties were also allowed for new plantings of table wines under EEC rules. However, France applied more restrictive national regulations (as allowed under EEC rules) and still imposed only "recommended" grape varieties for AOC regions and the "70% replanting rule" for table wines (Council Regulation Nos. 816/70 and 817/70; JORF, 1972).[45]

However, the compromise on the planting rights regime did not last very long. There was continued pressure from France for a more interventionist approach and this pressure grew stronger with increasing imports of Italian wine. A full-blown "wine war" exploded in 1974, when increasing grape harvests in 1973 and 1974 and a devaluation of the Italian lira lowered prices of exported Italian wines. French growers physically blocked Italian wine imports at the French ports. In 1976, under growing pressure from French producers, who feared that cheaper Italian wine would swamp the French market and cause a collapse in prices, the European Council of Ministers

[44] The EEC system of notification was similar to the French "authorization" system. Winegrowers wishing to plant/replant vines had to notify the relevant authority. Member states had to document these notification by "*issuing a licence prior to the planting or replanting*". The implementation of this was left to member states (Council Regulation No. 816/70, Article 17).

[45] As in France, there was a ban on the "provisionally authorized" varieties. The wine made from vines not included in the classification was eliminated from the market and distilled (Council Regulation No. 816/70, Articles 15 and 16).

introduced stricter measures to control the supply of wine through more stringent planting rights restrictions and other policies such as subsidized grubbing-up (i.e., uprooting).[46]

The 1976 regulation on vineyard plantings, contrary to the 1970 regulation, not only restricted the replanting of vines to "better vine varieties"– but imposed a total ban on all new plantings for table wines.[47] Furthermore, member states had to uproot hybrid grape varieties by 1979 and to uproot "provisionally authorized" grape varieties by 1983 (Council Regulation No. 1160/76).

The tighter regulations of planting rights were initially perceived as a temporary measure and only affecting "low quality" wines. In fact, the 1976 regulation stated that "*All new planting of vine varieties (...) shall be prohibited during the period from 1 December 1976 to 30 November 1978*" (Council Regulation No. 1162/76, Article 2). However, since then the system has been continuously re-confirmed and it has been continued over the years (becoming a permanent one) and even expanded to include also "high quality" wines in 1984 (Council Regulation No. 1208/84).

Hence, by the mid-1970s, instead of being liberalized, the French wine policy with its extensive regulations and heavy government intervention in markets had become the official European wine policy. As during the reign of King Louis XV, instead of loosening regulation to solve problems of market distortions, the opposite happened: politicians introduced more restrictions and extended them to other regions to control supply there as well.

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[46] The EU provides grubbing-up premiums to winegrowers who permanently (and voluntarily) abandon existing vineyards. Under this scheme, wine-growers can decide, on a voluntary basis, to eliminate "*all vine stocks on a parcel planted with vines*" and replace them with other agricultural crops and apply for funding for abandoning their vineyards (the grubbing-up premium) (Meloni and Swinnen, 2013).

[47] "*Member states shall no longer grant authorizations for new plantings*" with three exemptions to the general ban. The three exceptions were: (a) *new planting intended for the production of quality wines psr in Member States whose production of quality wines psr was less than 50 % of the total wine production*; (b) *new planting carried out under development plans*; (c) *new planting carried out in Member States which produce less than 5 000 hi of wine annually using grapes harvested on their territory* (Council Regulation No. 1162/76, Article 2).

VII. Enforcement Problems

"A*s France was divided into an infinity of small lordships, which recognized feudal dependency rather than political dependency, it would have been very difficult for a single law to have authority: indeed, one could not have seen to its enforcement*."[48]

Montesquieu, 1748b, XXVIII, IX, p.297

An important problem with the implementation of planting rights restrictions (and with quantitative restrictions on output and input use in general[49]) is the enforcement of the regulations. Major problems of enforcement of the EU planting rights system received a lot of publicity in 2012 when the European Commission fined Greece, Italy and Spain for a total of 250 million euros because of 120,000 hectares illegally planted vineyards, around 8% of total vineyard area. For instance, in Italy more than 24,000 hectares (equal to about 34,000 soccer fields) of illegal vine planting were found (73% of them were found in the Puglia region, in southern Italy) (Corsentino, 2012).

Given that technologies have improved so much over the past two centuries it is not surprising that enforcement was even more problematic in the 18th century. Martin (1907) argues that the 1731 edict did not restrict plantings effectively, and that they were more planted vines in the 1750s than in 1731.[50]

The edict was weakly enforced for two main reasons. The first reason was the "freedom of interpretation" of the *intendants* in charge of controlling and enforcing the restrictions on the vine

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[48] Translation by the authors."*D'ailleurs, la France se trouvant divisée en une infinité de petites Seigneuries, qui reconnaissoient plutôt une dépendance féodale qu'une dépendance politique, il étoit bien difficile qu'une seule Loi pût être autorisée*." (Montesquieu, 1748b, *XXVIII, IX*, p.297).

[49] Problems of enforcement is an important reason why production quota have been implemented in the EU dairy and sugar sector but not in e.g. grains and oilseeds (Swinnen, 2014).

[50] In 1756, Mr. de Tourny (the *intendant* of Guyenne) wrote a letter to Mr Moras (the Controller General) where he stated that they were more planted vines than in 1731 and where he confirmed the need of maintaining the planting rights system (Martin, 1907, p.136).

planting. Initially, the municipalities inspected whether new vines were planted. This changed during the 1740s. Independent persons were appointed. They were in charge of preparing reports on the existence of new planting of vines. Based on these reports, the *intendant* issued the sentences. If new vines were found, the vineyard owners were sued in court and legally punished with fines of three thousand *livres*.[51] However, in 1737, the 1731 edict was adjusted so that vines could be planted if the winegrower was able to prove that the land was not suitable to grow grain. In practice this implied that the edict could (and did) have different effects depending on whether the *intendant* in charge of enforcing the edict was willing (or not) to accept the arguments of the winegrower. Dion (1959, p.599) argues that this led to a gradual erosion of the 1731 edict.

Another reason was the different interests of wine producers in regions such as Bordeaux and those located in the Midi region in southern France. After the end of the wars with France that lasted from 1689 to 1713, Britain decided to impose high tariffs on French wines in 1714.[52] Volume tariffs on wine (and not ad valorem) hurt especially the export of cheap wines to Britain. It allowed the upper British class to continue to consume "high quality" wines while the lower class moved to beer (Nye, 2007). Therefore, the British tariffs encouraged landowners in Bordeaux to produce "higher quality" (price) wines to continue to export them to England. The landowners were supervising the entire wine making process and planting lower yielding grapes on the slopes. On the contrary, in the Midi, the landowners were not exporting their wines nor aiming at increasing their quality. They just wanted more wine to increase their profits and therefore wanted

[51] For instance, in 1748, Mr. de Tourny (the *intendant* of Guyenne) enforced 13 fines of three thousand *livres* based on the reports of Mr. Duval (Martin, 1907, p.88).

[52] For an extensive analysis on the political economy of Anglo-French trade, 1689-1900, see the work of John Nye (2007).

to plant higher yielding and more grapes (Dion, 1959, p.598; Enjalbert, 1953; Lacouture, 2003, p.134).

Problems of implementation continue today. In their study of the current EU planting rights, Montaigne et al. (2012) point out that "*the lack of efficient controls and the non-compliance by winemakers*" as a major problem. Without appropriate enforcement, the aim of a planting rights regime (i.e., restricting supply) is undermined.

The enforcement of the regulation is, in the first place, the responsibility of the member states. They have to manage "appropriate control systems", i.e. a vineyard register, a planting rights register and the associated controls. If the member states discover "unlawful" or "illegal" plantings (i.e., areas planted with vines without a corresponding planting right), they must order the uprooting of these plantings and punish the winegrowers with fines of 12,000 euro per hectare per year until the grubbing-up is done (European Commission, 2012).

An additional control is made by the European Commission who can fine growers for illegal vine planting. The last control was made after the 2008 CMO reform, where winegrowers could "regularize" the illegal plantings planted before 1998 against the payment of a fee. However, as the 2012 fines illustrates, many illegal plantings remain.

VIII. Attempts to Reform the EU Planting Rights

> "*It took three years of hard work with ups and downs, but in the end the sector scored the winning goal (...): the Europeans gods heard our prayers or so to say*."
>
> *European Federation of Origin Wines's blog*[53]

[53] EFOW, the European Federation of Origin Wines, was established in 2009 to lobby against the liberalization of planting rights. EFOW includes the French Organisation of Appellation of Origin Wine Producers (CNAOC), the Italian Association of Geographical Indication Wine Consorzi (FEDERDOC), the Spanish Conferencia Española de

There have been several proposals to reform the EU wine policy and the planting rights system. The most serious attempt –which initially appeared successful– occurred in the second half of the 2000s.

Liberalization of the EU current system of planting rights was widely discussed since 2006, when the European Commission proposed a set of bold reforms, which included the elimination of planting rights. The European Commission proposed that planting rights restrictions should be removed by 2013, allowing producers to freely decide where to plant. The reform proposals were in line with the abolishment of production quota in the dairy and sugar sectors and reforms in other agricultural sectors which had been decided earlier.

In 2008, the EU leaders approved this major reform of the Common Wine Policy.[54] A key component was the abolishment of the planting rights system. However, the Council of Ministers decided to allow a long transition period: the member states wishing to continue the restrictions could do so until 2018.

Although the reform was approved by a qualified majority[55] –significantly more than a simple majority of votes– in the Council of Ministers, interest groups opposed to the liberalization immediately started to re-organize and launched a new lobby campaign. They succeeded in changing many member states' position. The first countries to express their wish to overturn the

Consejos Reguladores Vitivinícolas (CECRV), the Portuguese Port and Douro Wines Institute (IVDP) and the Hungarian Hegyközségek Nemzeti Tanácsa (HNT). In 2010, EFOW created a blog to debate the end of planting rights scheduled for 2016.

[54] See Meloni and Swinnen (2013) for more details on the 2008 CMO reform.

[55] Most decisions in the Council of the European Union (often referred to as the Council of Ministers) are taken by qualified majority – a system of weighted votes. The number of votes given to each member state is weighted according to its size and population. For instance, France, Germany, Italy and the United Kingdom have 29 votes each and Malta has 3. The total number of votes is currently 352 and to adopt a proposal 260 votes are required (e.g. the qualified majority) instead of a simple majority of votes (Council of the European Union, 2014).

decision were Germany and France in 2010. Since then, all EU member states that produce wine joined in asking for a continuation of planting rights (Deconinck and Swinnen, 2013, EFOW, 2012). This led to a creation of a High Level Group (HLG) on Wine Planting Rights[56] and a joint decision by the European Parliament and the Council of Ministers in 2013 to extend the planting rights system until 2030 with a new program of authorisations for new plantings starting in 2016 – effectively overturning the 2008 decision to liberalize (Gaeta and Corsinovi, 2014).[57]

Moreover, the new planting rights system is even more regulated than the existing one. A new EU-wide "authorization" system will be (once more) based on the French authorisation system.[58] The major difference between the "planting rights" system (as it was implemented in many other EU countries) and the "authorisation" system (as applied in France) is the tradability of the rights. In many EU countries, the "planting rights" can now be traded whereas the "authorisations" will be individual and non-transferable. In addition, these authorisations for new plantings have an annual maximum percentage of growth (corresponding to 1% of the member states total area planted with vines). Member states will be able to establish a lower threshold at national or regional level (see Table 3; Regulation No. 1308/2013).[59]

Moreover, a series of rules for implementing this new system appears to create further restrictions.[60] Fourteen EU wine producing countries have requested for new implementation

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[56] The HLG was created to make recommendations on the future EU regulation on vine plantings by the end of 2012.

[57] There is an interesting question to what extent the institutional reform which introduced "co-decision" on the wine policy (as on other CAP issues) was a crucial factor in the reversal of the decision. Co-decision implies that the European Parliament has to approve the decision together with the Council. For discussions on the impact of co-decision, see Crombez et al. (2012) and Knops and Swinnen (2014).

[58] In France, in addition to the "planting rights", winegrowers also need an "authorisation" to plant vines.

[59] The decision was a compromise between the European Parliament that wanted a longer scheme (until 2030) but a lower limit for large vineyards (0.5%) and the Council of Ministers that wished for a higher maximum yearly increase (2%) but a different end-date (2024 and not 2030) (AGRA FACTS, 2013).

[60] This occurred during the 2013 Common Agricultural Policy (CAP) negotiations (through the so-called delegated and implementing acts).

criteria, such as the possibility to increase the restrictions for replanting on grape varieties or on the "*immediate geographical neighbourhood areas to existing vineyards*" (CEEV, 2014).

These developments triggered the open letter of the European wine associations fearing that the recently agreed vine planting authorisations system could result in "*an even more restrictive regime*" than the former planting rights scheme (CEEV, 2014). In their open letter, the CEEV claims that these "technical details" and "implementations rules" for applying the new system from 2016 are a "*shopping-list of disparate requests*" that would lead to a regime "*more restrictive than the previous one, in clear contradiction with the spirit and the letter of the reform*". The European wine associations are "shocked" by this back-door mobilization and believe that these requests are only justified on the grounds of protecting "*a bunch of privileges driven by domestic narrow interests*".

The final rules are still being negotiated as part of the Delegated act on vine planting authorisations at the European Parliament and the Council. The political debate will also continue at national level. For instance, in France, in the first meeting between the French government and representatives of the sector, the wine merchants' seat "*est resté ostensiblement vide*" ("remained ostentatiously empty")[61] as a protest against the new "authorization" system (Abellan, 2014; European Commission, 2013).

IX. Why liberalization may require another French Revolution

The previous section explained how – similar to the EEC decision-making on wine during France's integration into the EEC in the 1970s – even a qualified majority vote in favor of planting

[61] The strategy of the "empty seat" appears similar to a strategy followed by France in the 1960s in the design of the EU's agricultural policy (see, e.g., Knudsen, 2009).

rights liberalization in the 2000s ultimately was only a temporary (and non-effective) step towards liberalization. Opposition to the liberalization overcame even this ‘obstacle’, successfully using the political strategy of emphasizing member states’ “*fear of oversupply*” and of “*significant devaluation of a PDO/PGI*”.[62]

In historical perspective these arguments are very similar to the 1731 edict of King Louis XV which stated that the planting rights measure was driven by an “*over-abundance of vines in the kingdom (...) to the extent that the value and reputation in many places was destroyed*”. Another remarkable point of similarity is the discussion regarding production on hill slopes versus production in the plains.[63] The final document of the High Level Group on Wine Planting Rights (2012, p.16) states that: “*there is a risk that production would move from that kind of fragile areas [areas in slopes] to lower cost production areas in the plains where higher yields could be obtained*.” The similarity to the 1725 edict is remarkable as it protected the vineyards on the slopes by forbidding vine plantings in the “*uncultivated part, commonly called the swamps or the 'moors of Bordeaux'*”, the vast flat plains south of Bordeaux.[64]

In summary, one can only conclude that the political forces against liberalization of planting rights are very strong. Old and recent history suggests that planting rights liberalization is possible but only under exceptional political and economic conditions. Major economic events (the destruction caused by World War II which caused a 10 year break in the planting rights restrictions in 1942–1952 and the dramatic fall in Algerian wine imports which contributed to a

[62] The 1970 EEC classification (“quality wines” and “table wines”) was replaced in 20008 with two other subcategories: Protected Designation of Origin (PDO) wines and Protected Geographical Indication (PGI) wines, with PDO as the highest quality level (Meloni and Swinnen, 2013).

[63] Interestingly, the Romans were also aware of the “hills versus plains” production. Vergil, in his Georgics (first century B.C.), states that: “*apertos/Bacchus amat colles*” (“Bacchus loves open hills”) (Book II, lines 112–113).

[64] Translation by the authors. “(…) *partie non cultivée, vulgairement appelée landes ou Bruyères de Bordeaux*.” (Montesquieu, 1726, p. 267).

relaxation in 1964–1970), major institutional changes (France's integration in the EEC which resulted in a temporary compromise in 1970–1975) or political decisions (an EU qualified majority vote in favor of liberalization which was turnover before it could be implemented) only caused short periods of liberalization and proved not strong enough to effectively overcome the strong opposition in the long run.

Only the French Revolution led to a fundamental liberalization of planting rights at the end of the 18th century (after being in place for almost 70 years). The "liberal period" of the 19th century was sustained by the combination of the French Revolution's liberal ideology, the thirst for wine of Napoleon's armies and diseases that wiped out most of the French vineyards. Even for those in favor of the liberalization, these condition must be a frightening prospect.

X. Epilogue

"*But I believe that my old castle and my vats will soon call me to the country; for since the peace*[65] *my wine becomes more and more in vogue amongst the English, much more so than even my book.*"

Letter of Montesquieu to the Grand Prior Solar, 1749

"*The Code is more like 'guidelines' rather than actual rules*."

Captain Hector Barbossa[66]

[65] The war of the Austrian Succession (1740–48) followed a period of peace in Europe.

[66] Quote from the "*Pirates of the Caribbean: The Curse of the Black Pearl*", 2003 British-American film directed by Gore Verbinski.

Montesquieu, differently from other writers and philosophers that depended on the generosity of wealthy patrons, maintained his financial independence thanks to the profits he made out of wine trade (Brut-Moncassin, 2006, p.191; Lacouture, 2003, p.10).[67] At the time of the 1725 edict, Montesquieu already owned 216 hectares of vines in the Bordeaux wine region: 11 hectares of vines in La Brède,[68] 75 hectares of vines in Rochemorin (Martillac), 60 hectares of vines in Raymond, 70 hectares of vines in Montesquieu (where he produced Armagnac), and a few vines in Clairac (Brut-Moncassin, 2006, p.208).[69]

Since his wine constituted the wealth of his estate, Montesquieu wanted to plant more vineyards. Despite the 1725 regulation, in 1726 he acquired lands (about 10 hectares) in Pessac in the district of Pujeaux-de-Péougran (6 km south from Bordeaux) because of the higher expected value of the wines (Martin, 1907, p.6; Perceval, 1935, p.30). It was close to one of the most well-known and wealthy wine producers –Château Haut-Brion. Montesquieu acquired the lands in Pessac for an amount of 60 *livres* (currency of France until 1795). As he wrote, his intention was to transform it into a land that would be worth 500,000 *livres*, thereby increasing its value by around 8,000 times (Montesquieu, 1726, p.271). A huge expected gain, provided the land was planted with vines. However, with the 1725 prohibition he could not plant vines on the new acquired lands.

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[67] "*I have not wanted to make my fortune by means of the Court; my design has been to make it by improving my lands*" [Translation by the authors. "Je n'ai pas aimé à faire ma fortune par le moyen de la cour; j'ai songé à la faire en faisant valoir mes terres"] (Montesquieu, 1720/1835, p.621).

[68] Franck, (1845, p.143) states that: "*In the municipalities of La Brède (…) vineyards give only ordinary wine*" [Translation by the authors. "*Dans les communes de La Brède (…) les vignobles ne donnent que des vins ordinaires*"].

[69] Montesquieu expanded invested in land throughout his entire life. It was said that: "*There is no house, field, vineyard, tuft of grass in that area that does not belong to Mr. de Montesquieu*" [Translation by the authors. "*Il n'est pas une demeure, un champ, une vigne, une touffe d'herbe dans cette région qui n'appartienne pas à Monsieur de Montesquieu*"] (Brut-Moncassin, 2006, p.209).

Faced with these (costly) restrictions he first sent a letter to his friend, M. Lamoignon de Courson, the previous *intendant* of Guyenne (1709–1720), Counsellor of State and brother-in-law of Mr. Le Pelletier, the just-appointed French *Controlleur Général*. Montesquieu explained the issue to him and tasked for "*a permission to plant vines*" (Brut-Moncassin, 2006, p.226). Montesquieu then wrote his essay to Mr. Le Pelletier, the just-appointed French *Controlleur Général*, arguing the need to remove the restrictions on economic ground. When his arguments did not lead to a change in policy, Montesquieu changed tactics. Besides being a political philosopher, writer of economic ideas and wine producer, he was also a wealthy and influential noble, involved in the highest juridical organizations in France. At the time, he was *président à mortier* (magistrate) in the "*parlement*" (regional court) of Bordeaux (inherited from his uncle Jean-Baptiste de Secondat). These appeal courts were politically influential and only nobles could purchase or inherit these posts (Dast Le Vacher de Boisville, 1896; Richter, 1977).

While it remains unclear how ("*on se sait comment*"), Montesquieu ultimately obtained the permission to plant his vines. In fact, Mr. Boucher, the *intendant* of Guyenne, reported himself that "*the prohibitions were overridden on all sides, and Montesquieu himself planted his vineyard*".[70]

Based on these plantings, Montesquieu became a successful wine producer and merchant,[71] with his wines exported to England (Lacouture, 2003). In many of Montesquieu's letters, reference

[70] Translation by the authors. "*De fait, on passait outre aux interdictions, de toutes parts, et Montesquieu lui-même planta sa vigne*" (Montesquieu, 1726, p.264).

[71] Montesquieu never used merchants as intermediaries; he cultivated his commercial relationships with the influential high society in England (as Lord Elibank) and in France (as the president of the *Parlement* of Paris, Mr. Marie-Jean Hérault de Séchelles), believing that "*I have always had the principle of never having another do what I could do by myself*" [Translation by the auhors. "*J'ai eu pour principe de ne jamais faire par autrui ce que je pouvais par moi-même*"] (Montesquieu, 1720/1835, p.620).

is made to the 'purity' of his wine,[72] to the exports to England (his main market)[73] and its increased reputation.[74] His wine was found "*extrêmement bon*" –extremely good (Vian, 1879, p.161).

The wine trade, and his success in overcoming the planting rights restrictions, allowed him to travel and to spend time thinking, discussing and ultimately writing up his ideas which influenced much of the Western world. In 1726, he sold his magistrate office and he leased his wine properties in order to have a comfortable rent. He then spent over a year in Paris before travelling to Europe, mainly to England (Richter, 1977, p.14; Walckenaër, 1835, p.xi). After Montesquieu visited many European countries, he returned to France in 1732 and retired to his Castle at La Brède that he considered to be "*the most beautiful country retreat that I know of anywhere*" (Montesquieu, 1777). After two years he published the book "*Considérations sur les causes de la grandeur des Romains et de leur décadence*" (Considerations on the Causes of the Grandeur and Decadence of the Romans) and, after 16 years, in 1748, he published his famous "*De l'Esprit des Lois*" (Walckenaër, 1835, p.xiii-xiv).

Hence, ultimately for Montesquieu, political philosophy, excellent wine and (imperfect enforcement of) planting rights reinforced each other. Montesquieu was so successful in the wine trade that he claimed that his wine was more popular in England than his book ("*De l'Esprit des*

[72] "*I have sent the pipe of wine to Lord Elibank (…). Pray let him know, that he may keep it as long as he pleases (…) but it must not be mixed with any other wines. He may be assured that he has it in the same state of purity in which I received it from the deity. It has not passed through the adulterating hands of wine-merchants*." Letter to Abbé de Guasco, June 27, 1752 (In: Montesquieu, 1777).

[73] "*You must know, my dear Abbé, that I have received very large commissions from England, for the wine of this year (…)*." Letter to Abbé de Guasco, June 27, 1752 (In: Montesquieu, 1777).

[74] "*It is to my friends, but especially to you, who are at any time worth ten others, that I owe the spreading reputation which my wine has acquired through Europe for these three or four years past*." Letter to Abbé de Guasco, November 3, 1754 (In: Montesquieu, 1777).

Lois"): "*my wine becomes more and more in vogue amongst the English, much more so than even my book.*" [75]

[75] Nowadays, many of his estates became highly-prized and renowned wines. The Castle at La Brède is nowadays owned by Dominique Haverlan and produces wine sold as AOC Graves under Montesquieu's quote "*I am busy here producing nectar*" [Translation by the authors: "*Je suis occupé ici à faire du nectar*"]. Another Montesquieu's vineyard, the Castle Rochemorin, the dependency of the Castle at La Brède, is owned by André Lurton and sold as Pessac-Léognan appellation wines (Coates, 2004; Parker, 2013).

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TABLES

Table 1: Chronology of Plantings Restrictions in France and the EU, 1725–2030

Time	*Decision-making institutions*	*Decision/proposal*
1725	*King Louis XV*	- Prohibition to plant vines in the Bordeaux wine region
1731	*King Louis XV*	- Prohibition to plant vines was extended to the entire French kingdom
1789	*National Constituent Assembly*	- Abolished privileges and the feudal regime "Freedom of planting"
1931–35	*French government*	- The *Statut Viticole* introduced planting rights regime
WWII	*French government (“Vichy regime”)*	- The *Statut Viticole* was suspended "Freedom of planting"
1953	*French government*	- *Code du Vin* (re-)introduced planting rights regime
1964	*French government*	- The 1964 law eased rules on market intervention and on planting rights
1970	*European Economic Community (EEC)*	- Regulations introduced restrictions on the replanting of vines for EEC
1976	*European Economic Community (EEC)*	- Complete ban on all new plantings for table wines
1984	*European Economic Community (EEC)*	- Regulations introduced restrictions on planting rights for “high quality” wines
2006	*European Union (EU)*	- The European Commission proposes to liberalize the planting rights regime
2008	*European Union (EU)*	- EU Ministers of Agriculture adopted the Commission’s proposal to liberalize the planting rights by 2016/2018
2013	*European Union (EU)*	- The earlier agreed liberalization of the planting right system was overturned Decision to extend the planting restrictions until 2030
2016	*European Union (EU)*	- A new program of “authorisations” for new plantings starting in 2016 and ending in 2030

Source: Author’s calculations.

Table 2: Plantings Restrictions in France and in Italy, 1950s–1970s

Time	*France*		*Italy*	
	High quality	*Low quality*	*High quality*	*Low quality*
1953	**Yes**[1]	**Yes**	**No**	**No**
	− AOC rules (specific varieties) − *New plantings* allowed (only for rec. var.)[2]	− *New plantings* not allowed − *Replanting* allowed for rec. (100%) and auth. (70%) var.		
1964	**Yes**	**Yes**	**Yes**	**No**
	− AOC rules (specific varieties) − *New plantings* allowed (only for rec. var.)	− *New plantings* allowed (only for rec. var.) − *Replanting* allowed for rec. (100%) and auth. (70%) var.[3]	1963: DOC rules (specific varieties)	
1970[4]	**Yes**	**Yes**	**Yes**	**Yes**
	− AOC rules (specific varieties) − *New plantings* allowed (only for rec. var.)	− *New plantings* allowed (for rec. & auth. var.) − *Replanting* allowed for rec. (100%) and auth. (70%) var.	− DOC rules (specific varieties) − *New plantings* allowed (for rec.& auth. var.)	− *New plantings* allowed (for rec. & auth. var.) − *Replanting* allowed (for rec.&auth. var.)[5]
1976	**Yes**	**Yes**	**Yes**	**Yes**
	− AOC rules (specific varieties) − *New plantings* allowed (only for rec. var.)	− *New plantings* not allowed − *Replanting* allowed for rec. (100%) and auth. (70%) var.	− DOC rules (specific varieties) − *New plantings* allowed (for rec.& auth. var.)	− *New plantings* not allowed − *Replanting* allowed (for rec.&auth.var.)

Notes:
[1] Yes/No refers to whether there are planting restrictions.
[2] "rec. var." stands for "recommended varieties" and "rec.& auth. var." for "recommended and authorized varieties".
[3] Restrictions on replanting rights were included in the French Rural Code (see Article R665-16).
[4] From 1970, the Common Wine Policy applied to both countries but more restrictive national regulations could be introduced.
[5] "Allowed" means replanting rights for 100%, unless explicitly indicated.

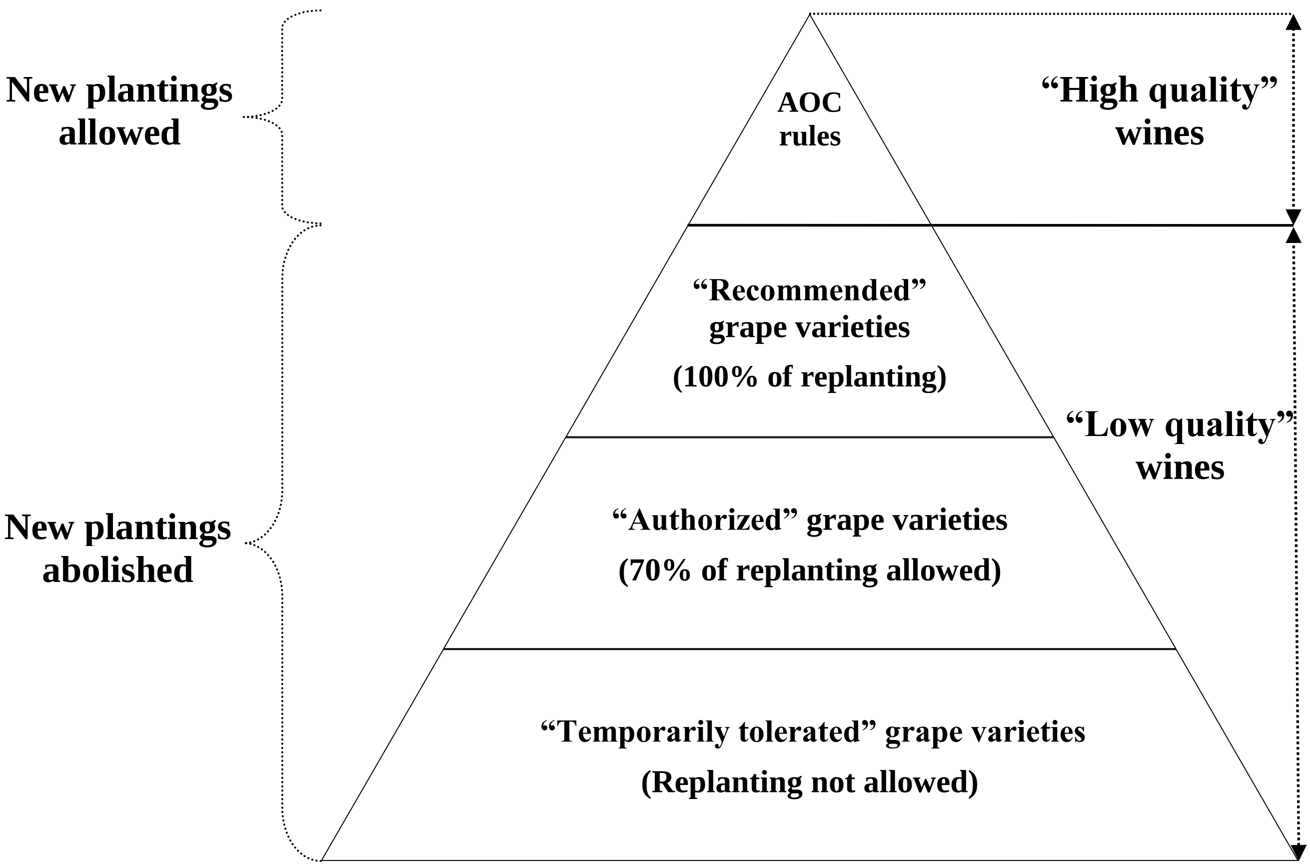
Table 3: Planting Rights and Authorisations, a Comparison

	Planting Rights	*Authorisations*
Time Frame	Until December 31, 2015	From January 1, 2016 to December 31, 2030
Vineyard expansion	No growth possible	Growth possible: annual maximum percentage of growth corresponding to 1% of the member states total area planted with vines
Mode of delivery	Issued on the basis of national and regional priorities	– Issued automatically if the number of available authorizations is higher than the total demand. – Otherwise, issued proportionally or through a priority criteria
Acquisition	Not freely granted	Freely granted
Tradability of the rights	Possible	Impossible

Source: Author's calculations.

FIGURES

Figure 1: The French 1953 Classification of Vine Varieties and the "Quality" Pyramid



Source: Author's calculations.