In Memoriam: Rodolphe Jean Alexander de Seife (1925-1998)

LeRoy Pernell
leroy.pernell@famu.edu

Daniel Reynolds

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IN MEMORIAM: RODOLPHE JEAN ALEXANDER DE SEIFE
(1925 - 1998)

LEROY PERNELL*
DANIEL REYNOLDS**

A current, popular television show proclaims each week that "the truth is out there." But, as followers of the show know and life experience has taught us, the path to the truth is often obscured. Law teaching has certainly not been spared from this phenomena in its attempts to prepare students for a life in the law. It is therefore a singular moment when in our midst we have someone who is both plain speaking and eloquent in his global vision of law and society. Rodolphe J.A. de Seife was such a person and his unique contribution not only to the Northern Illinois University College of Law but to our scholarly appreciation of ourselves in a universal context allowed us to learn more about not only the law but the human condition as well.

Educated at George Washington University and Catholic University, Rudy de Seife was also a graduate of University of Paris Law School, and the College de la Sainte Famille, in Cairo, Egypt. A Fulbright Professor of Law at the National Institute of Juridical Studies, Rabat, Morocco, Professor Rodolphe J.A. de Seife joined the original faculty of Northern Illinois University College of Law in 1975. He began his law teaching career at West Virginia College of Law in 1973 and visited at Howard University in 1980 as well. He spoke six languages including French, German and Italian fluently. However, his accomplishments outside of the traditional academy further separated and elevated this man above his peers.

In 1990 Professor de Seife was appointed a member of the newly created Illinois Supreme Court Alternative Dispute Resolution Coordinating Committee, a committee charged with making periodic reports and recommendations to the court concerning alternative dispute resolution programs and policies. The decision to make de Seife one of only two law professors appointed to the committee was based, according to James Woodard, Associate Director for the Administrative Offices of the Court, on Professor de Seife's recognized expertise in alternative dispute resolution,

* Dean and Professor of Law, Northern Illinois University College of Law.
** Associate Dean and Associate Professor of Law, Northern Illinois University College of Law.
stemming from, among other things, his development in 1976 of one of the first courses in the nation on commercial arbitration.

Professor de Seife was a frequent consultant to the United States government on arbitration and international affairs. His prepared statement, in 1985, on the constitutional problems relating to the Genocide Convention, inspired Senator Orrin G. Hatch, to state on behalf of the Judiciary Committee, his appreciation for the keen analysis and understanding of the treaty.

And in the midst of all his other pursuits, Rudy found time in 1964 to found the United Community National Bank of Washington, D.C. where he served as Director and General Counsel.

When Rudy de Seife died suddenly on June 7, 1998, he was preparing to leave for France and the joint summer program between the law schools of the University of Bordeaux-Montesquieu and Northern Illinois University College of Law. Nothing in his varied career pleased him more than his creation of the NIU summer program in Agen, France.

He was a man of the old school, dignified in carriage, continental in manners and possessed of an image of the lawyer as a central figure in the life and striving of a community. There was a certain bark in his manner that successive generations of law students quickly found was much worse than his bite. He held his students to high standards of professional demeanor and performance but helped them mightily when they faltered in its attainment. As a colleague, he was decorous and principled, if sometimes impatient with the cumbersome processes of collective decision-making. He was, always, loyal to his school and vigilant in asserting its role in the larger University. Here was a man, born in Egypt, raised in France, professionally schooled in the capital of the United States, who became an established figure in the small Midwestern college town where he spent the final 20 some years of his life, a figure regarded with respect and genuine affection.

That town, that college, and the students and colleagues who shared them with Rudy, shall miss his always unique contributions to the mix of things, while happily recalling the special flair he gave to the routines of our academic and community life. And in Agen, France, in a classroom dedicated as the “Salle Rodolphe de Seife” by the University of Bordeaux, future generations of American students will, in their own way, capture some of that diversity and élan that makes the record of a professional life such as Rudy’s truly one of happy memory.
A la mémoire de Rodolphe de Seife

ANTOINE VIALARD*

L’université de Northern Illinois vient de perdre, au mois de juin dernier, l’un de ses membres les plus éminents, le professeur Rodolphe de Seife. L’université Montesquieu-Bordeaux IV, et le centre universitaire d’Agen, de la même façon, perdent un compagnon de route, un véritable ami.

La vie a d’étranges mystères. Rien ne permettait vraiment d’envisager la création et le développement d’un programme d’été au profit d’étudiants en droit de l’Université de Northern Illinois dans la ville d’Agen, en France. Rien ne permettait d’imaginer que nous connaîtrions un jour Rodolphe de Seife, ici, dans un petit coin du Sud-Ouest de la France. Rien ne permettait d’imaginer que cet homme construirait un pont intellectuel, et humain, entre une Université de l’Illinois du Nord et une université du Sud de la France. Il a fallu une triple coïncidence: d’abord, un homme exceptionnel, Rodolphe de Seife, qui par son charisme, son dynamisme à toute épreuve (y compris celle de la maladie), a pu soulever les montagnes qui, d’abord, paraissaient rendre inconcevable la réalisation d’un pareil programme; ensuite, son amitié avec Raoul Pandelé, magistrat français habitant à Agen, amitié née au cours d’une mission de longue durée au Maroc, où il était appelé à raison de sa notoriété et de sa compétence professionnelle; enfin, la création d’un centre universitaire à Agen il y a une dizaine d’années.

Pendant trois années, j’ai eu la chance de mieux le connaître, et d’en devenir très proche. Francophone d’une parfaite distinction, il était amoureux de la France; cela seul aurait suffi à lui attirer notre sympathie spontanée. Mais, en outre, c’était un homme qui disposait d’un charme naturel, de l’art d’éveiller immédiatement la sympathie; Rodolphe savait mobiliser toute son énergie, et toutes nos énergies pour faire aboutir les projets qui lui tenaient à coeur. La meilleure preuve en est le succès de ce “Summer Programme” en Agen.

Je me souviens de ce jour où, il y a trois ans, il était venu m’exposer ses idées, ses projets sur la création de ce programme permettant aux étudiants de DeKalb de découvrir (pour la plupart) l’existence de cette petite ville de France, Agen, dans le cadre de leurs études juridiques. L’homme qu’il était, les idées qu’il avait m’ont immédiatement séduit. D’instinct, j’ai su que “cela marcherait, qu’il obtiendrait de votre Université et de l’American Bar Association les autorisations nécessaires, qu’il trouverait les étudiants sans lesquels le projet ne serait resté qu’une coquille vide. Depuis, comme

* Directeur du Centre Universitaire d’Agen

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beaucoup d’autres je suis devenu son ami. Comme pour beaucoup d’autres ici à Bordeaux et à Agen, l’annonce de sa mort a été pour moi un véritable choc émotionnel, un désastre personnel. Et d’autant plus que, je crois, je suis la dernière personne à laquelle il a téléphoné, le jour de sa mort, pour s’inquiéter de l’arrivée de vos étudiants à Agen, où il devait les rejoindre.

Pourtant, nous savons que Rodolphe n’est pas tout à fait mort, n’a pas complètement disparu. Nous savons, maintenant, que le programme qu’il a conçu, rêvé, mis en place, développé, continuera et vivra. Et, pour bien imposer sa marque jusque dans les murs de notre centre universitaire, désormais, et pour toujours, une des salles de cours porte son nom. En lui accordant cet honneur, nous voulons lui rendre l’honneur qu’il nous a fait en nous choisissant comme partenaire dans un projet qui paraissait un peu fou. Les hommes sages, comme Rodolphe, savent bousculer les obstacles qui se dressent sur la route des rêves.

Nous ne sommes pas à vos côtés, pendant ce jour où vous lui rendez hommage. Mais nos coeurs, nos pensées, notre amitié se réuniront aux vôtres, pour accompagner sa famille dans ses moments de recueillement et de mémoire. À sa femme, à ses enfants que nous n’avons pas la chance de connaître, nous vous prions de dire toute l’admiration que nous avons éprouvée pour lui à chacune de nos rencontres, et, à travers lui, toute la sympathie que nous éprouvons pour sa famille en ce temps de deuil.
TRANSLATION*

Last June, Northern Illinois University lost one of its most eminent members, Professor Rodolphe de Seife. At the same time, the University Montesquieu-Bordeaux and the University Center of Agen, lost a comrade and a true friend.

Life has strange twists and turns. There was no reason to envisage the creation and development of a summer program for the benefit of Northern Illinois law students in the town of Agen, in France. There was no reason to imagine that we would one day get to know Rodolphe de Seife, here, in a small corner of the South East of France. No reason to imagine that this man would build a bridge, an intellectual and personal bridge, between a university in the northern part of Illinois and a university in the south of France. It required a triple coincidence:

First, an exceptional man, Rodolphe de Seife, who, through his charisma, his dynamism in facing every test (including the test of failing health), was able to surmount the obstacles which at first seemed to make the realization of such a program inconceivable;

Next, his friendship with Gilberte Pandé, a French judge living in Agen, a friendship born during an extended stay in Morocco, where Rodolphe had been invited because of his professional reputation and expertise.

Finally, the fact that for some 10 years there had been a University Center in Agen.

For three years I had the opportunity to get to know him better and to become very close to him. A French speaker of perfect refinement, he was in love with France: this alone would have been enough to attract our immediate liking for him. But beyond that, this was a man who had at his command a natural charm, a talent for kindling an immediate fondness: Rodolphe knew how to mobilize all his energy, and how to mobilize all our energies, to successfully bring about the project which he held so close to his heart. The greatest proof of this is the success of the Summer Program in Agen.

I recall that day, three years ago, when he came to lay out his ideas to me, his proposals for creating this program permitting students from DeKalb to discover this little town in France, Agen, as part of their legal studies. The sort of man he was, the ideas he held, all immediately won me over.

I instinctively knew that this would work; that he would obtain the necessary authorizations from your University and from the American Bar Association; that he would find the students without whom the project would

* Translation by Daniel S. Reynolds, Associate Dean and Associate Professor of Law, Northern Illinois University College of Law.
remain an empty shell. Later, like so many others, I became his friend. And, as for so many others here, at Bordeaux and Agen, the news of his death came as a terrible emotional shock, a personal tragedy. All the more so, as I believe I may have been the last person he spoke with on the telephone, the day of his death, when he called to inquire about the arrival of your students in Agen where he was going to join up with them.

Even so, we know that Rodolphe is not completely gone forever. We know, now, that the program he conceived, dreamt of, put in place and nurtured will continue on and will thrive. And, to firmly place his mark on the walls of our University Center from this moment on and for all days to come, a classroom there now bears his name. In honoring him this way, we wish to return the honor he paid to us in choosing us as his partner for this project — a project which once might have seemed a little crazy. But wise men, like Rodolphe, know how to surmount the obstacles that confront them on the road to realizing their dreams.

We are not able to be alongside you today as you memorialize Rodolphe. But our hearts and our thoughts and our friendship are one with yours, joining us with you and his family in these moments of memory and reflection. To Rodolphe's wife and his children, whom we have not had the chance to meet, we ask you to convey all the admiration which we felt toward him every time we met and, on account of his memory, all the sympathy we feel for his family in this time of mourning.
Natalie Loder Clark*

On June 7, 1998, Professor de Seife suffered a heart attack at his daughter's home in Pennsylvania and died. He had been filled with eager anticipation over the third year of his summer law program in Agen and impatience with the heart ailment, discovered a few days earlier, which threatened his leadership of the program in France. Those of us who knew Rudy are not at all surprised that he defied his doctors and prepared to travel to Europe.

Rudy de Seife was born in Cairo, Egypt, to French parents. His father was a Cairo businessman whose family was from Alsace-Lorraine, where the original spelling of the family name, deSeyve, was changed during some long past century to de Seife—a not uncommon event in that politically troubled area. His stories of life in Cairo were a delight to all who heard them, and he was formidable in bargaining with Arab merchants. His early education in Jesuit schools gave him both traditional values and a sharpened intellect expressed with precision and style—in seven languages.

After military service in World War II, he finished his A.B. in Cairo and came to the United States where he began law school at Columbia University. Rudy later completed his legal education at Catholic University of America School of Law in Washington, D.C., and earned an LL.M. in international law and taxation at George Washington University Law Center. For seventeen years, he practiced law in Washington, D.C., Paris, France, and Rockville, Maryland. Then, in 1973, he decided to change careers. Making a major change in his life and taking a substantial salary reduction, he began teaching law at West Virginia University School of Law. Two years later, he came to the new school of Lewis University, which became the Northern Illinois University College of Law in 1979. He pursued his second career for twenty-five years, including teaching as a Fulbright Professor in Morocco and as a visiting professor at Howard University, publishing four books and nearly twenty articles, creating an NIU summer law study program in France, and serving as a consultant for many government agencies and service organizations. His guiding principle was that law was a learned profession in which membership was a gift and a privilege and that those fortunate enough to be lawyers must give back to the world whatever public service there was opportunity to perform. He lived that principle.

Those who knew Rudy de Seife, however, saw much more than an accomplished lawyer, teacher, and world citizen. Rudy cared passionately about many things. He is one of the few people I have known who would say in the course of discussion, outrageous things which he truly did not mean. I can still hear him saying, "I was not arguing with him, I was just telling him." His methods of motivating students and colleagues were often blunt and brusque, but those who failed to see beyond that exterior missed a lot. Rudy's dedication to public service and to law as the servant, creator, and preserver of what is good and right in society introduced generations of students to values all too rare in the modern legal profession. He reminded colleagues and university administrators of those values at critical points in this law school's creation and growth.

Rudy was one of only three tenured faculty for the first several years of this school's history, and he used well the job security provided by tenure to speak and act according to his principles when the school's struggles led to proposals that he thought wrong or foolish. This law school, which he loved, bears many signs of his role in its creation and is an accomplishment of which he was justly proud. Rudy and I taught here together for twenty-three years, and when I heard that he had died I was profoundly shaken. This law school is still young; it has moved from one university and location to another, struggled for and attained full accreditation, undergone much turnover in deans, faculty, and staff, and survived internal crises and external attacks. But Rudy's death, not any of those important events, marks for me "the end of the beginning."
"For what shall it profit a man, if he shall gain the whole world, and lose his own soul?"¹

"S'il Faulait tolerer aux autres ce qu'on permet à soi-même, la vie ne serait plus tenable."²

Fortunately, most of us only rarely find ourselves being asked to speak in memory of someone who has passed away. It is a profound and revealing experience, however, and it is to be recommended to anyone who has lost someone who has been important to them. When a person is alive, it is easy to get caught up in the day-to-day, mundane aspects of a relationship; at the end of most of those days, the tendency is to focus on the still unresolved disputes, the annoyances, the normal frustrations. Then, suddenly, there's a loss and you begin to find yourself reflecting upon someone who, until that point, had been driving you "crazy" on a regular basis. The epiphany comes after some time, of course, once you become aware of the true enormity of the good that can be said, more good than you ever recognized or acknowledged when he or she were alive.

Rudy de Seife was my closest friend. From time to time during the many, many years I knew him, he was my mentor, confidant and counselor. He was unfailingly supportive not only during the best of my times, but the worst of my times. He was unique in this regard from almost everyone else I knew. His nature and character would not allow him to do otherwise.

To those of us who knew him, it became obvious quite soon that his personal views, his values, could not easily be discerned from his customary bearing or presentation. There was a measure of cognitive dissonance in the man; his true nature was often directly at odds with the imperious veneer most people saw. One might say that Rudy was filled with ironies, with contradictions. He was an existentialist, for example, but at the same time he was a "counter-existentialist."³ A Quixotic individual, he sincerely believed he could make a difference in public life; and on occasion, even against the odds, he actually did. Yet he stood ready his whole life to throw personal or

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¹ St. Mark 8:36; see also St. Matthew 16:26.
² Duc de la Rochefoucauld (1613-1680) ("If we had to tolerate in others that which we permit ourselves, life would be unbearable.").
³ I mean this in the sense that while Rudy was obviously capable of "infinite commitments of faith," at the same time he was clearly an individual who could not constitutionally accept his own insignificance in the grand scheme of things.
professional ambition by the wayside for principle. Notwithstanding years of service as a high-ranking military reservist, and his decidedly authoritarian demeanor, he was actually an extreme egalitarian, believing that authority should command no privileges. Obedience to the rule of law in all contexts, and by all equally, was crucial to his world-view.

Being a lawyer is a rare privilege, a high honor, and Rudy never let anyone—students or colleagues—forget it. Since the earliest days of his career, he saw and responded to the higher civic obligations of the profession. He incorporated and represented the first African-American-owned bank in Washington, D.C. He ran for office as a Maryland State Representative (promising the voters he would be “your man in Annapolis”). He served on committees with purposes as diverse as advancing ADR in Illinois and restoring Egyptian antiquities. He was an active member of the Arab-American Lawyers Association, having been born in Cairo, Egypt, who never failed to take the opportunity to remind me that he was “an African.”

When, on occasion, he assumed the role of advocate, he accepted each challenge with discipline, tenacity, and a palpable commitment to do what needed to be done. Rudy had la coeur du lion. He demanded as much from others as well, no matter how unreasonable it might have seemed coming from anyone else. Several years ago, for example, frantic neighbors awakened him late one night. It seemed that notwithstanding months of community protests, construction workers had just arrived, clandestinely, to destroy the “Old Post Office,” one of DeKalb’s historic treasures. Rudy awakened a local judge (bruskly, no doubt) and demanded a hearing on his request for a temporary restraining order. Somewhere around midnight, he left a message on my answering machine, apparently before heading for court. I only retrieved the message the next morning. “G’demmet,” the message said, “how can you be so lazy as to be sleeping; there’s work for you to do!” To this day, I have never felt guiltier about a good night’s sleep.

Rudy’s attitude, his supreme confidence, put people on whose behalf he spoke at ease. He gave them confidence. They felt not only represented but protected as well. One day, during the very early, often strange days of the law college, I unexpectedly (and reluctantly) found myself Shanghai’ed into being a “witness” in what was to be a surprise discharge “hearing” for one of our colleagues. The victim-to-be was able to convince the then-Dean to allow him his one phone call, to Rudy, with whom I was only slightly acquainted at the time. Rudy arrived, and was unprepared of course, but he quickly took

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4. A word that one mispelled in faculty minutes or committee reports (as “principal”) at enormous risk of his substantial wrath.
careful measure of the situation, martialed several surprisingly persuasive arguments, and through force of his personal will soon reversed the momentum in that hotel room. It became clear by the end of the episode that Rudy brought courage and skill to any cause, that he could be counted on to do what needed to be done, and that one would be safe and secure in his advocacy.

This strong “personal will” of his, incidentally, was his signature. It was an overarching characteristic which can perhaps best be described through the parable of “Rudy and Sysiphus.” One day, the story might go, Rudy was walking down a road and came upon Sysiphus. He stopped for awhile and watched as Sysiphus struggled again and again to move a huge boulder up the side of a mountain, only to have the rock come sliding down each time. Suddenly, in disgust, Rudy wrests the rock from Sysiphus. Already perspiring from this effort, Rudy now makes ready to push the boulder up the mountain. Looking at him, obviously weakened from arthritis and certainly not in great health, it seems clear that he can not accomplish his task; yet by the same token something about him makes it equally clear that he will reach the top. Sure enough, he does, and when he does he turns to look down dismissively at Sysiphus. “You see,” he says, “this is how it is done, you whining, incompetent turkey!”

No less than any other aspect of his life, Rudy’s teaching and scholarship also had paradoxical qualities. He could be an intimidating and demanding teacher, to put it mildly, yet he was so loyal to his former students that he would angrily disparage any suggestion that I was going to refer legal matters that came to my attention to anyone other than his former students. Although Rudy was committed to traditional values, at least to the best of traditional values—civility, personal responsibility, institutional loyalty, the importance of family—he could still write passionately in support of rather radical notions. He argued, for example, that any governmental immunity from civil liability could no longer be justified, and that there should be separate commercial courts, ideas clearly outside the mainstream.

No matter how old, ill or tired Rudy became, he never lost his intellectual energy or his capacity for vision. Throughout his career he persisted in the belief that the future success of our students required broader education in alternative dispute resolution and in comparative and


international law. While many of us were quite content to see our law school becoming a national rather than a regional institution, Rudy insisted we become a "global" law school. Energized by his unrepressible nature, he strove to make his dream come true, publishing scholarship on the Shar'ia and the relevance of Islamic culture,\(^7\) writing informatively on European arbitration,\(^8\) organizing international trade conferences, teaching seminars on international human rights law, and founding our highly successful Foreign Studies Program in Agen, France. Actually, I shared much of that first summer in Agen with Rudy and I came away with the fascinating "discovery" that he really was a Frenchman! I was enormously impressed with the love our French hosts had for him and the strong devotion he had to the success of the program.

Rudy de Seife was one of the most interesting and erudite individuals I have ever met, a man with whom I could speak endlessly on practically any subject. He was a scholar, an officer, and a gentleman. I admired much about him. I always strove to emulate his discipline, his self-confidence, his strength of purpose, and his resourcefulness. He was a thoroughly decent and compassionate man, a loyal friend, and I will miss him greatly.

Professor de Seife was a very memorable part of my law school experience and that of many of my fellow graduates. To reduce such a man to a few words of brief description is impossible. Professor de Seife really had to be experienced to be appreciated. As to the man himself there are many impressions that a student had.

I will always remember his very gruff manner and feigned discouragement of our presence in his. Exposure to this, of course, prepared many of us for the tentative method approach one uses with some judges or senior partners. I remember his continental appearance, continental accent, and continental name—all hallmarks that Professor de Seife was not your typical American law professor. These reminded us that the law and lawyering were issues of worldwide importance and not merely local concerns. His varied background, as reflected in his resume, reminded us that he had worked more places, New York, Cairo, Paris, Washington, and London, than we were likely to see in our careers. His list of achievements, like the United States Department of Justice Honors Program, the Fulbright scholarship, the distinguished service awards, and the many committee memberships and consultancies, reminded us of all one could do in a legal career if one were bold.

The sense one develops about a person is often the result of small and seemingly unimportant incidents. Let me share just a few such encounters with Rudy that capture the source of my great fondness for the man. I hope they will stir in you some memory of Professor de Seife that brings back fondness for him, too. I remember his absolute formalism. Coming as I did, from a doctoral program in Adult Education, this formal manner came as something of a shock to me. A former boss of mine approached the professor one day and said, "Patrick has been complaining that Rudy gave him a low grade." To that allegation, Professor de Seife answered grandly, "Rudy? Rudy? Who does he think he is? To my students, I am Professor de Seife!"

I remember his passion for getting students to think about alternatives to our ingrained American way of thinking. I remember him challenging us in class with anecdotes about the private American health care system and that of nationalized health care in Europe. I always will remember that Professor de Seife's pills cost only fifteen dollars in France but were more than one hundred dollars in the United States. He often pointed out the faults in the


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adversarial system of the common law as compared with the civil law system. For those of us who encountered his lectures late in our third year, he opened our minds to the fact that the American system did not have all the answers. He wanted us to see that there were other ways of looking at the world.

I remember his dedication to teaching ethics to soon-to-be lawyers. He was, in fact, rather ill the semester I spent in the Moot Court room with him. And yet, he was there everyday, ill or not, in a personification of professional commitment. He had to sit down at times to deliver his lectures, as he was too uncomfortable standing the whole period. When each lecture was completed, he would be drenched in perspiration from the exertion. Still, he carried on because he believed in convincing these third year students, most of us bored with law school and interested only in graduation a few weeks away, that lawyering was a serious business. He not only explained the rules of ethics, he imbued them with the spirit of ethical behavior. He cajoled and questioned us on the rules and their application in the letter of the details but also, and especially, in their spirit.

Perhaps the fondest memory of Professor de Seife is of him giving a lecture on the nobility of the law. He firmly believed that law was a noble calling. He wanted us to believe that too. He stood up that day as if transfixed by the subject and extolled the nobility of the profession. He rather reminded me of an evangelist in a tent revival. He was a figure aflame with passion, sweating from his exertions, trying to convert as many souls as possible. His sermon was built upon the theory that the written rules of ethics were of limited use to a good lawyer because they only outlined the bare minimum of ethical behavior. True ethics lie in understanding the great trust that was given to each of us when, as lawyers, a client came to us with a problem. With eyes flashing and a voice made strong by his absolute conviction, we could tell that he was giving us then and there his heart and soul. He wanted us to believe. Maybe he needed us to believe.

Au revoir, Professor de Seife. Rest easy, for we believed.
Regulating Quality Wines in European and French Law

ANTOINE VIALARD

[Professor de Seife loved law, the good life, and all things French. As a special tribute to Professor de Seife, the Editors are pleased to present an essay introducing American readers to the regulatory law of wine in France and the European Union. The author, Dean Antoine Vialard, is an internationally recognized expert on this subject. His moving personal tribute to Professor de Seife appears earlier in this Memorial Section.]

INTRODUCTION

France is champion when it comes to regulating the wine industry. The French regulatory regime predates that of the European Union, which it has strongly, if somewhat heavy-handedly influenced, taking pins to safeguard the exceptionalism of the French regulatory system. Other European Union states that produce wine are not as concerned with wine industry law as France, and limit themselves to implementing European regulation. Therefore, if there is a law of winemaking, it is in a sense, diffuse and dissimilar according to the country-producer. These special laws are concerned only with the vine and wine. Why does this product merit such special legislation?

To better understand wine’s importance in the socioeconomic scheme and the justifications for these special regulations, it is useful to put wine law into its historic context. Throughout centuries, wine has been partly nourishment, and partly a cultural treasure.

There are certain elements to winemaking laws that are found almost systematically throughout the ages. These could be called constants. It is on these constants that winemaking law was founded.

— There are sacred and religious aspects associated with wine. These aspects have assured the respectable character of wine. For example, there are wines for mass and kosher wines.

* Translation by Daniel S. Reynolds, Associate Dean and Associate Professor of Law, Northern Illinois University College of Law and by third-year law student Carol Watkiss.

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Wine has become a valuable object, a product of luxury, which is almost unheard of for an agricultural product. Because of its value, wine has earned a specific and special system of regulation.

Wine is also a commercial product—an important product in world trade. Public officials recognize this and they base fiscal policy on it, sometimes very heavily. The regulation of the vine and of wine is sometime direct (for example, special vineyard taxes) and sometimes indirect.

Wine is an agricultural product, cherished by people proud of what they do, persuaded of their absolute superiority and even biased to the point that they are not aware of what other wine makers produce. The infinite variety wine also evidences this individualism. This individualism contrasts rules of law that by definition must be general and impersonal.

Wine is nourishment, but this nourishment also contains alcohol. As far as a nourishing liquid, wine is not known as a staple dietary product. On the other hand, compared to drinking water, wine travels the same and is more nourishing. The beverage that would be most comparable to wine would be, without a doubt, milk. However, since wine contains alcohol, regulations are necessary to protect the public health.

France is a member of the European Union. Consequently, France is subject to Union Law, which has had specific impact on the winemaking industry. Thus, it is first important to look at the European Union system to then better analyze French wine law. French wine law has been integrated into the Union system, as have all national systems of EU member-producers.

I. THE EUROPEAN UNION SCHEME FOR QUALITY WINES

The European Community market organization for the wine industry is currently regulated by EU Regulation No. 822/87 Council of March 16, 1987. The text of this law was modified frequently before its adoption and may be rewritten completely. However, since European authorities want to use this law to modify the core of the OCM, and because there is discord among the member states of the European Union, there is no doubt that this rewriting will not take place for some time. For the moment, Regulation 822/87 is the text on which future regulations will be based. This regulation defines the products to which it applies, which are vine products, specifically wine. The subject of the regulation is very large because it aims to codify all “rules governing production and control of the development of wine-growing potential, rules governing oenological practices and processes, a price system and rules governing intervention and other measures to improve market conditions, arrangements for trade with non-member countries, and rules governing distribution and release to the market.”
After reading this text, it is apparent that the EU plan includes both economic rules and qualitative rules for winemaking. However, there is not always a clear distinction between these two types of rules—some economic rules have a qualitative character, and vice versa. In France, economic rules have traditionally concerned only table wines. Quality wines are not subject to economic rules, but rather are governed by qualitative rules.

In effect, from the first Article of this wine regulation, it distinguishes between “table wines” and “quality wines produced in specified regions” (“VQPRD”). Overall, the text is concerned with table wines. VQPRD are defined in another regulation that establishes their particular characteristics. This second text is EU Regulation No. 823/87.

Today an appreciable change is taking place, most notably in the Commission’s memorandum on the evolution and future of wine industry policies. The tendency today is to subject all wines, including quality wines, to strict economic rules in order to globally reduce surpluses.

It is important first to define VQPRD, then to distinguish how French national and Union authorities definitions differ when it comes to VQPRD.

A. THE MINIMALIST DEFINITION OF VQPRD

The Union Regulation 822/87 does not define VQPRD. It only defines table wines, and says that VQPRD are not table wines. Table wine is defined in the appendix of Regulation 822/87. VQPRD are considered not to pose any problems for the commercial sphere: they are easy to sell because their quality assures them sufficient markets. This is not true of table wines.

Table wines have no production limitations. Their production territory is not defined. On the other hand, the VQPRD are subject to strict production conditions. In principle, their production area is defined, the amount per hectare is limited; in sum, there are measures designed to assure quality control of these wines. However, in the Union plan, these control measures are more symbolic. A Union control body was created: it is currently composed of only two agents!

According to the first article of rule 823/87: “VQPRD shall mean wines which satisfy the provisions of this Regulation and the national rules adopted pursuant thereto.” After the reform of 1989 (EU amendment No. 2043/89), the formulation is this: “VQPRD shall mean wines regulated by this Regulation, by other specific implementing Regulations, and which satisfy the provisions of national rules.”

Consequently, the VQPRD is regulated in one part by the conditions set forth in Regulation 823/87 and in another part by the regulations and conditions in the country in which it is produced. Thus, the standards for
VQPRD set forth in Regulation 823/87 are very basic, and all producing countries can rather easily meet them. The second way in which VQPRD are regulated, namely national regulations, varies greatly according to the producing country.

Profiting from their ability to make their own rules, many producing countries have recategorized wine as VQPRD in order to escape the economic measures imposed by the OCM. First, Germany recategorized some of their wines; then Italy, but for fewer wines than Germany; then Spain. This pattern has no doubt translated into a perversion of the concept of premium wines. This problem is probably because the concept of VQPRD is not specifically defined in the Union plan.

Most producing states in the European Union are content with these community standards. Only France has much stricter legislation than is set forth in Article 18 of E.E.C. 827/87. However, it must be said that for several years now, France has been in the middle of political struggle to increase the number of A.O.C. wines—being the French equivalent of VQPRD. This is slowly resulting in a merging of the table wine category into the ill defined category of VQPRD.

B. THE RESPECTIVE RESPONSIBILITIES OF EUROPEAN ECONOMIC UNION AUTHORITIES AND NATIONAL AUTHORITIES.

As far as VQPRD is concerned, the European Union restricted itself to enacting some minimum standards that each member state had to follow. This very liberal idea meant that each member producing state could control their definition of premium wine. This idea translates into two essential principles that could be schematized as follows:

- Each member producing state can regulate its own VQPRD; and, most importantly, its production conditions.
- Each member producing state establishes its own list of VQPRD produced on its soil.

1. The Specific Production Conditions for VQPRD is a National Concern

Each member state regulates the production conditions for its VQPRD. Most of the articles of E.E.C. Regulation 823/87 refer to this principle. The main article that states this idea is article 18, sec. 1 of E.E.C. Amendment 2043/89 which states that "Producer Member States may, taking into account fair and traditional practices:
— In addition to the factors listed in article two, determine such other conditions of production and characteristics as shall be obligatory for [VQPRD],

— In addition to the other provisions laid down in this regulation, lay down any additional or more stringent characteristics or conditions of production, manufacture and movement in respect of the [VQPRD] produced in their territory."

This regulation is clear: each member state is permitted to formulate its own E.E.C. regulation regarding standards for VQPRD. Each member producing state can make the standards for VQPRD as rigorous or lax as they want. This provision affects France above all—France is the only state to have more rigorous standards than Union standards for the production conditions of quality wines. Each member producing state must formulate its own rules in each of the areas defined by the E.E.C. Beyond that, they can add to the qualitative Union standards, when present, by formulating more strict standards. Notably, they can prohibit certain practices authorized by the Union plan, or add production conditions not foreseen by the E.E.C. plan. However, they cannot authorize practices prohibited by the E.E.C.

Certainly, this very liberal principle results in important disparities between VQPRD produced within the European Union. Wines produced by E.E.C. countries are subjected, according to the country’s regulations, to production standards that can vary in great degree: some are more strict, others are less strict.

2. The European Economic Union List of VQPRD is a National Concern

The European Union does not determine the list of VQPRD. Each country compiles the list of its own VQPRD. Each member producing state is the master of its definition of premium wines made on its own soil. It is sufficient for each country to respect the minimal E.E.C. standards, and then comply with its own national standards. Apart from that, wine is considered “quality” and can be freely circulated in the European Union: it is thus VQPRD. The Union authorities restrict themselves to simply compiling the list of VQPRD. Each member producing country furnishes the content of this list. The commission guarantees that the list will be published in the official journal of the European Community.

The use of the label VQPRD is itself optional for member countries. They can certainly use this label to designate their quality wines, but they can also simply use “specific traditional labels” authorized by the national wine laws of each country. These labels are numerous for each member producing country. Actually, it is rather rare to find the VQPRD label on a European
Union wine bottle. Most producers and distributors prefer to use one of their own national labels. This is particularly true in France’s case. These national, traditional labels are cemented in the language of the producing country. This disparity hardly makes the consumer’s task easy when it comes to choosing which wine to buy.

C. MINIMUM E.E.C. STANDARDS FOR QUALITY WINES

In principle, production conditions for VQPRD rest upon each member-producing country’s jurisdiction. Simply put, E.E.C. Regulation 823/87, modified in 1989, lists the scope of rules or standards that must be formulated by the member producing country. If they do not draft these regulations, 823/87 lists a certain number of minimum standards for the characteristics and production of VQPRD. Thus, the law-making technique used in Regulation 823/87 is as follows: first, the E.E.C. authorities list the general rubrics for VQPRD standards with which each country must comply; next, by formulating different rubrics and some general minimal rules, they allow each member producing country to implement and complete these E.E.C. standards by formulating rules for each VQPRD produced in their territory.

This regulation obligates member-producing countries to enact national rules that essentially define “quality.” This type of regulation scheme is odd. In effect, the first article indicates that there are special standards for VQPRD. However, Article 2 only articulates the “elements” on which the special standards in question are based. In fact, Article 2 establishes a list of items in which national regulation must intervene to define quality wine. This list has been strongly influenced by French principles of wine making, and is comprised of the following elements:

— demarcation of the area of production: the “determined region” (or territory)
— vine varieties
— cultivation methods
— wine-making methods
— minimum natural alcoholic strength by volume
— yield per hectare
— analysis and assessment of organoleptic or sensory characteristics

This is a hodgepodge list of items—even a bit confusing, in the way that it mixes a number of different problems together. Most notable are the production conditions themselves, and the control standards designed to assure the implementation of community standards. The list deals essentially with three ideas: soil or territory, vine varieties, and human activity.
Although E.E.C. laws govern, it is important to recognize that in all areas, French law on quality wine is older and much more developed than European Union wine law.

II. FRENCH QUALITY WINE LAW: TRADE NAME FROM A SPECIFIED PLACE OF ORIGIN (APPELLATION D'ORIGINE)

There is strong French policy concerning quality wines and trade names from a specified place of origin.

Two concepts are key to the idea of trade names from a specified place of origin: "First, they guarantee quality; next, they help to sort wines because the trade name presents to the public an easily identifiable mark. Therefore, the simplicity of trade names, the regulations that assure the name is not overused so that it means nothing to the public, the clarity of its presentation, and the strict prohibition of any names that might create confusion, appear to be the key to their success."

The current quality regulation was essentially complete shortly before the Second World War. Obviously, that was well before the formulation of the E.E.C. regulations that were directly inspired by the French quality regulation. France strives to continue to implement this quality regulation and as much as possible—to keep its regulatory autonomy.

Quality French wine rests essentially if not solely on the concept of Controlled Names of Origin or the familiar French equivalent, Appellation d'Origine Contrôlée (A.O.C.). Thus, this concept needs to be closely analyzed. A.O.C. integrates three concepts simultaneously: a trade name, a region, and a guarantee.

A. A.O.C. IS FIRST AND FOREMOST A NAME

The heart of the law of July 6, 1966 (which is the first French law to give a definition of A.O.C.) states that the A.O.C. label "constitutes a trade name from specified origin: the name of a country, region or locality used by a product that originates from it. The product's quality or character is determined by its geographic origins, either because of natural or human factors"

Trade names from a specified place of origin (A.O.C.), which are regulated by the French government, give the producer an important right: the use of the name. However, it is important to stress that there is nothing automatic about the use of the name, nor does one acquire a trademark simply through its use. Each year the right to use the name must be renewed. The
use of the name is itself subject to very strict control by the French government.

A.O.C. assures a second right: the use of the name is protected. This protection exists in part to stop its fraudulent use, and in part to stop people from encroaching on the name. In each case, the producer has the right to recourse through the French courts to ensure that name remains protected. Fundamentally, this protection is linked to the place where the wine is made.

B. THE SPECIFIED TERRITORY

The name is the source. This source is geographic in nature. Most often the name is that of a geographical region big or small; the Lisbon Agreement and the French law of 1966 both state this.

The name is most often the geographical name of a region (Médoc), a town (Bordeaux, Pauillac, Saint-Émilion) or of a place called a surveyed region—but not always. Tradition behind the regulation has consecrated certain number of non-geographic names (Muscadet, Graves).

C. CONTROLS

The fact that this control exists and that it is enforceable by law reinforces the institutional nature of A.O.C. The decreed law of 1935 instituted guarantees at different levels.

— First, the source name is regulated from the moment of its creation. The decree that institutionalizes the name also lays out laws specific to that name. These laws are established through administrative proceedings. These laws directly run with the land, and they define the limits of the name's territory. They also establish the vine varieties that will comprise the vineyard, the agricultural and vinification methods to be used, the optimal yield for alcohol, volume, etc. All quality factors that contribute to the special nature of the product are defined in the decree creating the trade name, the "Appellation."

— This law also regulates the daily management of the trade name. First, an administrative agency is directly charged with implementing the law and verifying the proper use of the trade name by producers and distributors, mostly to prevent fraud. Beyond that, public professional organizations like INAO and private organizations like trade associations play a fundamental role in the protection and the promotion of the trade name. These organizations have received strong governmental support to control the use of the trade name.
CONCLUSION

Few authors use a legal approach to trade names from a specified origin, specifically A.O.C. However, A.O.C., as far as wine is concerned, is a legal governmental institution consisting of a distinctive, recognized symbol, controlled and protected by laws in the public interest. This distinctive symbol is inalienable and indefeasible from the land. It defines precise geographic areas for production as well as quality factors tied to those areas, which are under state control.
Le Système Des Vins De Qualité, En Droit Européen et En Droit Français

ANTOINE VIALARD*

INTRODUCTION

La France est championne de la réglementation viti-vinicole. Cette réglementation française est antérieure à celle de l'Union Européenne, qu'elle a d'ailleurs fortement influencée, mais aussi maladroitement, s'attachant avant tout à sauvegarder le paricularisme de ses règles. Les autres États producteurs de l'Union Européenne sont peu soucieux de droit viticole, et se bornent à mettre en œuvre la réglementation communautaire. Donc, s'il existe un droit du vin, c'est de façon diffuse et inégale selon les pays. Ce droit a pour objet la vigne et le vin. Pourquoi ce produit mérite-t-il une législation spéciale?

Pour comprendre l'importance du vin sur le plan socio-économique, ce qui justifie l'élaboration d'une réglementation particulière, il est nécessaire de se replacer dans un contexte historique: pendant des siècles, le vin a été, d'une part, un aliment d'autre part, une richesse culturelle.

Il existe quelques éléments, qu'on retrouve à peu près systématiquement à toutes les époques, ou, au moin, sur des périodes très longues. On peut les qualifier de constantes. C'est autour d'elles que s'est construit le droit viti-vinicole.

— Le vin présente un aspect sacré, religieux, qui implique l'existence de principes destinés à assurer le respect de ce caractère — vins de messe, vins kasher.

— Le vin est devenu une richesse, un produit de luxe, ce qui est exceptionnel pour un produit agricole. À ce titre, il mérite une réglementation spécifique.

— Le vin est un produit de commerce.

C'est une valeur d'échange importante. Cela n'échappe pas aux pouvoirs publics, qui vont fonder sur lui une fiscalité parfois très dense. L'imposition de la vigne et du vin est tantôt directe (impôt foncier spécifique au vignoble), tantôt indirecte.

— Le vin est un produit agricole, élaboré par des hommes fiers de ce qu'ils font, persuadés de leur supériorité absolue, chauvins même au point

* Directeur du Centre Universitaire d’Agen

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— Le vin est un aliment, mais cet aliment est une boisson alcoolique. Il est vrai qu’en tant qu’aliment liquide, le vin ne connaît guère de produit de remplacement: l’eau potable n’est guère plus commode à transporter et est moins énergétique; le liquide concurrent le plus sérieux serait sans doute le lait. En tant que boisson alcoolique, il appelle des mesures de protection de la santé publique.

La France est membre de l’Union Européenne. À ce titre, elle est soumise au droit communautaire, particulièrement important en matière vitivinicole. Il est donc indispensable d’envisager en premier lieu le système communautaire, pour analyser ensuite le droit français, qui n’a qu’un caractère complémentaire, et qui s’intègre dans le système communautaire, comme tous les systèmes nationaux de États membres producteurs.

I. LE SYSTÈME COMMUNAUTAIRE DES VINS DE QUALITÉ

L’organisation commune du marché vitivinicole est actuellement réglée par le règlement C.E.E. n°822/87 du Conseil du 16 mars 1987. Ce texte a été souvent modifié, et il est question de le refondre complètement, mais, comme les autorités communautaires veulent en profiter pour modifier au fond l’O.C.M., et qu’il y désaccord entre les États membres de l’Union Européenne, cette refonte n’aura sans doute pas lieu avant quelques mois. Pour l’instant, encore, le règlement 822/87 est donc le texte de base. Ce règlement définit les produits auxquels il s’applique. Ce sont les produits de la vigne et, spécialement, le vin. Son object est très large puisqu’il s’agit de fixer les “règles concernant la production et le contrôle du développement du potentiel viticole, des règles concernant les pratiques et traitements oenologiques, un régime des prix et des règles concernant les interventions et autres mesures d’assainissement du marché, un régime des échanges avec les pays tiers, ainsi que des règles concernant la circulation et la mise à la consommation.” (art. 1, § 1).

D’après cette énumération, on consacre qu’il existe, au plan communautaire, des règles d’ordre économique, et des règles d’ordre qualitatif. La distinction n’est d’ailleurs pas toujours très nette entre les deux ordres, certaines mesures économiques ayant un caractère qualitatif, et réciproquement. Les mesures d’ordre économique concernent traditionnellement les vins de table, les vins de qualité n’étant visés, en principe, que par les mesures qualitatives.
En effet, dès l’article 1er, et à propos des vins, le Règlement distingue les “vins de table” et les “vins de qualité produit dans des régions déterminées (VQPRD)”. Le texte concerne surtout les vins de table. Les VQPRD sont définis dans un autre règlement, qui établit à leur égard des dispositions particulières. Ce second texte est le règlement C.E.E. n°823/87 du Conseil du 16 mars 1987.

Aujourd’hui, une évolution sensible apparaît, notamment à travers le document de réflexion de la commission sur l’évolution et l’avenir de la politique viti-vinicole. La tendance est aujourd’hui de soumettre tous les vins, y compris les VQPRD à des règles économiques contraignantes, afin de réduire globalement les excédents.

Il importe alors de définir, dans un premier temps, le VQPRD, puis de distinguer les attributions respectives des autorités communautaires et nationales en la matière.

A. LA DÉFINITION MINIMALISTE DU VQPRD

La réglementation communautaire ne définit pas le VQPRD. Elle se contente de l’opposer au vin de table. Le vin de table est défini dans l’annexe 1 du règlement 822/87. Le VQPRD, quant à lui, n’est pas un vin de table. Les VQPRD sont censés ne pas poser de problème sur le plan commercial: leur mise en marché est facile, car leur qualité leur assure des débouchés suffisants. Il n’en est pas de même des vins de table.

Les vins de table sont produits sans limitation de rendement. Leur terroir de production n’est pas délimité. En revanche, les VQPRD sont soumis à des conditions de production strictes en principe: leur aire de production est délimitée, le rendement à l’hectare est plafonné; en outre, il existe à leur propos des mesures destinées à assurer le contrôle de la qualité de ces vins. Cependant, au plan communautaire, ces mesures de contrôle sont très symboliques. Un corps de contrôle communautaire a été créé: il est composé actuellement de deux agents.

Selon l’article ler al 2 règlement 823/87: “Par VQPRD, on entend les vins répondant aux prescriptions du présent règlement ainsi qu’à celles arrêtées en application de celui-ci et définies par les réglementation nationales.” Après une réforme de 1989, la formule est celle-ci: “Par VQPRD on entend les vins régis par le présent règlement, par d’autres règlements spécifiques ou d’application, et répondant aux prescriptions définies par les réglementation nationales”.

Par conséquent, le VQPRD est le vin qui répond, d’une part, aux conditions fixées par le règlement 823/87, et, d’autre part, aux conditions établies par la réglementation du pays dans lequel il est produit. Or, les
mesures posées au règlement 823/87 ne constituent que des règles minimales que tous les pays producteurs peuvent assez facilement respecter. Le second aspect - national - du contenu de la notion de VQPRD est, lui, très variable selon les États producteurs.

Profitant de cette liberté, divers États producteurs ont multiplé leurs VQPRD, afin de faire échapper ceux-ci aux rigueurs des mesures économiques de l’O.C.M.. C’est ce qu’a fait l’Allemagne en premier lieu; l’Italie dans une moindre mesure; puis l’Espagne. Cette évolution traduit sans doute une perversion de la notion de vin de qualité. Cela est dû probablement au fait que cette notion n’est pas définie au plan communautaire.

La plupart des États producteurs de l’Union Européenne se contentent de ces normes communautaires. Seule la France possède une législation beaucoup plus stricte comme l’y autorise l’article 18 du règlement 823/87. Encore faut-il préciser que la France s’est elle-même lancée depuis quelques années dans une politique de multiplication de ses A.O.C., c’est-a-dire de ses VQPRD. ce qui conduit finalement a un glissement non maîtrisé de la catégorie des vins de table vers la catégorie des VQPRD.

B. ATTRIBUTIONS RESPECTIVES DES AUTORITÉS COMMUNAUTAIRES AT DES AUTORITÉS NATIONALES.

En matière de VQPRD, l’Union Européenne se borne à édicter quelques principes constituant le minimum à respecter pour chaque État membre. L’idée première et libérale était de laisser chaque État producteur, membre de l’Union Européenne, maître de la définition de ses vins de qualité. Cette idée se traduit concrètement par deux principes essentiels que l’on peut ainsi schématiser:

— Chaque État membre producteur a la possibilité de réglementer lui-même ses propres VQPRD, et spécialement les conditions de production;
— Chaque État membre producteur établit lui-même la liste des VQPRD élaborés sur son sol.

1. Les conditions concrètes de production des VQPRD, une affaire nationale.

En premier lieu, chaque État membre réglemente lui-même les conditions de production de ses VQPRD. La plupart des articles du règlement 823/87 se réfèrent à ce principe.

La disposition principale en ce domaine est celle de l’article 18 al 1 du règlement, qui dispose que “les États membres producteurs peuvent définir, compte tenu des usages loyaux et constants:
— outre les éléments visés à l’article 2, toutes les conditions de production et caractéristiques complémentaires auxquelles doivent répondre les VQPRD.

— outre les autres dispositions prévues par le présent règlement, toutes les caractéristiques ou conditions de production, d’élaboration et de circulation complémentaires ou plus rigoureuses pour les VQPRD élaborés sur leur territoire”.

Cette formule est très claire: il est permis à chaque État membre de compléter, dans le sens de la rigueur, la réglementation communautaire en matière de VQPRD. Cette disposition concerne surtout la France, qui est la seule à être plus sévère quant aux conditions de productions des vins de qualité. L’État producteur doit donc poser des règles dans chacun des domaines définis par l’Union Européenne. En outre, il peut compléter la réglementation qualitative communautaire, lorsqu’elle existe, en posant des règles plus strictes. Il peut notamment interdire certaines pratiques autorisées au plan communautaire, ou ajouter des conditions non prévues par l’Union Européenne. Cependant, il ne peut pas autoriser des pratiques interdites par l’Union Européenne.

Il est certain que ce premier principe, très libéral, entraîne des disparités très importantes entre les VQPRD de l’Union Européenne. Soumis, selon les États membres producteurs, à des règles de production qui peuvent être, dans une large mesure, plus ou moins rigoureuses.

2. *La liste des VQPRD communautaire, une affaire nationale.*

Ce n’est pas l’Union Européenne qui détermine la liste des VQPRD de l’Union Européenne. Chaque pays dresse la liste de ses propres VQPRD. Chaque État membre producteur est maître de la définition des vins de qualité élaborés sur son sol. Il lui suffit pour cela de respecter les normes minimales communautaires, et, éventuellement, ses propres normes nationales. À partir de là, le vin est dit de qualité et peut circuler librement dans l’Union Européenne: c’est un VQPRD. Les autorités communautaires se bornent à tenir une liste des VQPRD, liste dont le contenu lui est fourni par chaque État membre producteur. La Commission assure la publication de ladite liste au journal officiel des communautés européennes.

L’emploi de la formule “VQPRD” est elle-même facultative pour les États membres. Certes, ils peuvent utiliser cette mention pour désigner leurs vins de qualité, mais il peuvent se borner à utiliser des “mentions spécifique traditionelles”, admises par les dispositions nationales de l’État. Ces mentions ont nombreuses pour chaque État membre producteur. Concrètement, il est assez rare de trouver la mention VQPRD sur une bouteille de vin de qualité

C. LES MINIMAS COMMUNAUTAIRES EN CE QUI CONCERNE LES VINS DE QUALITÉ.

Les conditions de productions des VQPRD relèvent, en principe, de la compétence de chaque État membre producteur. Simplement, le règlement 823/87, modifié en 1989, énumère les domaines dans lesquels une réglementation doit être posée; le cas échéant, il pose un certain nombre de normes minimales relatives à l’élaboration et à la production des VQPRD. La technique employée dans le règlement 823/87 est la suivante: d’une part, les autorités communautaires énumèrent les grands domaines dans lesquels il doit exister des dispositions propres à chaque VQPRD; d’autre part, posant, dans ces différents domaines, quelques règles générales minimales, elles laissent aux États membres producteurs le soin de mettre en œuvre les prescriptions communautaires, et de compléter ces règles, en ce qui concerne chaque VQPRD produit sur leur territoire.

Ce règlement oblige les États membres producteurs à édicter des règles nationales dans des domaines essentiels de définition de la qualité. Le procédé réglementaire est d’ailleurs étrange. En effet, l’article ler indique que le règlement pose des dispositions particulières pour les VQPRD. Mais l’article 2 se borne à indiquer les “éléments” sur lesquels sont fondées les dispositions particulières en question. En fait, l’article 2 établit un catalogue des domaines où la réglementation nationale doit intervenir pour définir un vin de qualité. Ce catalogue est très influencé par les principes français. Il comprend les éléments suivants:

— délimitation de la zone de production: la “région déterminée” (ou terroir);
— encépage
— pratiques culturales
— méthodes de vinification;
— titre alcoométrique volumique minimal naturel;
— rendement à l’hectare;
— analyse et caractéristiques organoleptiques.

Cette liste est un peu hétéroclite, voire confuse, dans la mesure où elle mélange un certain nombres de problèmes différents, notamment les conditions de production elles-mêmes et les mesures de contrôle destinées à
assurer le respect des normes communautaires. Elle s’articule autour de trois notions essentielles: le sol, ou terroir, le cépage, et l’activité humaine.

De toutes les façons, quoique dise le droit communautaire, force est de reconnaître que le droit français des vins de qualité est bien plus ancien et bien plus développé que celui de l’Union Européenne.

II. LE DROIT FRANÇAIS DES VINS DE QUALITÉ: LES VINS D’APPELLATION D’ORIGINE

Il existe une véritable politique française des vins de qualité et des appellations d’origine.

Deux idées doivent dominer la matière: “D’une part, garantir la qualité, d’autre part, faire de telle sorte que ces dénominations présentent au public une image de marque simple et frappante ayant un grand pouvoir d’attraction. La simplicité des appellations, éventuellement leur limitation pour que la notion ne devienne pas banale auprès du public, la clarté de leur présentation, l’interdiction sévère de tout conditionnement susceptible de créer la confusion, paraissent donc être les conditions du succès”.

La réglementation qualitative contemporaine était, pour l’essential, complète peu avant la guerre de 1939-45. C’est dire, par conséquent, qu’elle était bien antérieure à la réglementation communautaire, qu’elle a directement inspirée. La France tenait vivement à conserver sa réglementation qualitative, et, autant que possible, son autonomie réglementaire.

Le vin de qualité français repose essentiellement—quoique pas seulement—sur la notion d’appellation d’origine contrôlée (AOC) et c’est donc elle que nous allons particulièrement étudier. L’AOC fait appel à trois concepts simultanés: une dénomination, une origine, un contrôle.

A. L’AOC EST D’ABORD DÉNOMINATION.

— En vertu de la loi du 6 juillet 1966, qui est la première en France, ayant donné une définition de l’appellation d’origine, “constitue une appellation d’origine la dénomination d’un région ou d’une localité servant à désigner un produit qui en est originaire et dont la qualité ou les caractères sont dus au milieu géographique comprenant des facteurs naturels et des facteurs humains”.

L’appellation d’origine, attribuée par l’autorité publique, confère au producteur une prérogative essentielle: l’usage de la dénomination. Mais il faut souligner qu’il n’y a aucune automatичité, aucun caractère acquis en ce qui concerne cet usage. Chaque année, le droit d’utiliser l’appellation est remis en cause. L’usage de l’appellation est lui-même soumis à un contrôle très strict de la part de l’autorité publique.
La seconde prérogative conférée par l’AOC est une protection particulièrre. Cette protection consiste, d’une part, à lutter contre les fraudes, d’autre part, à lutter contre les usurpations. Dans les deux cas, le producteur a nécessairement recours à la puissance publique pour pouvoir bénéficier de cette protection. Enfin, la protection porte sur le sol viticole.

B. L’ORIGINE

La dénomination est celle d’une origine. Cette origine est géographique. Aussi bien, le plus souvent, l’appellation est celle d’une région géographique, plus ou moins étendue; c’est ce qu’indiquent l’Arrangement de Lisbonne et la loi française de 1966.

L’appellation est le plus souvent le nom géographique d’une région (Médoc), d’une ville (Bordeaux, Pauillac, Saint-Émilion), ou d’un lieudit cadastral. Mais pas toujours: la tradition, antérieure à la réglementation, a consacré certaines dénominations sans lien avec la géographie (Muscadet, Graves).

C. LE CONTRÔLE.

Le fait que ce contrôle existe, et qu’il émane de la puissance publique, renforce encore la nature institutionnelle de l’AOC. Le décret-loi de 1935 a institué un contrôle à différents niveaux.

— En premier lieu, l’appellation d’origine est contrôlée au moment de sa création. Le décret qui l’institue pose des règles qui lui sont propres, et qui ont été établies à partir d’enquêtes de nature administrative. Ces enquêtes portent sur le sol et la délimitation du terroir, mais aussi sur l’encépagement, les méthodes de culture et, éventuellement de vinification, sur le rendement optimal, sur le titre alcoométrique volumique, etc. Tous les facteurs de qualité, qui contribuent à la notoriété du produit, sont définis dans le décret créant l’application.

— Mais le contrôle existe aussi sur le plan quotidien, dans le cadre de la gestion de l’appellation. D’abord, l’administration est chargée directement de vérifier le respect permanent de la réglementation par les producteurs et les négociants, notamment pour la répression de fraudes. En outre, des organismes professionnels, publics comme l’INAO, privés comme les syndicats de défense, jouent un rôle fondamental dans la défense et la promotion de l’appellation. Ces organismes ont reçus de la puissance publique des pouvoirs non négligeables en matière de contrôle.
SYNTHÈSE

Peu d’auteurs donnent une approche juridique de l’appellation d’origine et, a fortiori, de l’AOC. L’application d’origine contrôlée, en matière viticole, est une institution de droit public qui consiste en un signe distinctif reconnu, contrôlé et protégé par le pouvoirs publics, dans l’intérêt général. Ce signe distinctif est indisponible et imprescriptible. Il exige une définition géographique précise du produit, ainsi que des facteurs de qualité qui lui sont liés, et qui font object du contrôle ératique.