

Law and innovation in new resistant grapevine varieties [☆]

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Received 9 October 2017; received in revised form 8 November 2017; accepted 8 November 2017
Available online 15 November 2017

Abstract

This article is a brief account of the main laws governing or impacting upon the breeding of new resistant grapevine varieties, complementing previous work in this Journal. It focusses on the emergence of the legal fields of *plant variety rights* and *sanitary and phytosanitary measures* to bring law into the foreground as an important set of institutional parameters which shapes the actions of economic operators involved in the development of new resistant grapevine varieties in both direct and contingent ways.

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Keywords: Law; Plant variety rights; Sanitary and phytosanitary measures

1. Introduction

In their recent paper *Economic issues and perspectives on innovation in new resistant grapevine varieties in France*,¹ (the “Montaigne paper”) the authors present an analysis of the trajectory of grapevine breeding in France from the mid-20th century alongside the emergence of disease resistance as a new technological paradigm driven by social demand. Among other factors, the authors identify institutional settings as an important constraint on the emergent responses to this new paradigm. Law forms a large part of these institutional settings and the Montaigne paper clearly demonstrates the significant influence of law on the decision-making of breeders, nurseries, growers and wine businesses.

This paper presents a brief complementary account of the laws governing or impacting upon the breeding of new resistant grapevine varieties, seeking to sketch more broadly the dimensions of the legal framework for new resistant grapevine varieties across the global wine sector, including France. In this way, we can bring into the foreground this

important set of institutional parameters shaping the actions of economic operators and understand how the constraints they impose may vary across place to create comparative advantage or disadvantage in the adoption of new grapevine varieties.

A global perspective, using the examples of *plant variety rights* and *sanitary and phytosanitary measures*, has been taken to emphasise certain points. The Montaigne paper describes a shift in the objectives of grapevine breeding programmes away from localised, production-driven concerns towards a broader and more consumer-driven paradigm. In this paper it is shown how this has been matched by an ongoing (but still far from complete) evolution in key areas of the legal framework towards greater international harmonisation, as well as a general convergence around certain key objectives. As the law has evolved, so have the priorities and opportunities facing breeders of new resistant grapevine varieties.

2. A perspective on “law”

References to “law” in the context of this paper are not simply references to the “black letter” law found in the text of laws, regulations, statutory rules, court decisions and the like. They are intended also to cover law as it is played out in society through institutional practices, and the responses of people affected by the law.

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Peer review under the responsibility of UniCeSV, University of Florence.

¹Montaigne et al. (2016), *Economic issues and perspectives on innovation in new resistant grapevine varieties in France* Wine Economics and Policy 5, 73–77.

Area of law	Purpose
Sanitary and phytosanitary measures	Protect human and plant health including rules on: biosecurity; GMOs; pesticides; novel foods / food safety.
Plant variety rights	Encourage innovation in plant breeding by granting exclusive rights to breeders of new plant varieties if certain criteria are met.
Environmental protection	Manage human impacts upon the environment including through use of harmful chemicals or plants.
Registration/approval of grapevine varieties	Ensure suitability of new grapevine varieties e.g. for winemaking.
Planting rights/authorisation	Mechanism for management of wine sector within the European Union.
Geographical indications and designations of origin	Protect producers and consumers by granting exclusive rights to producers within delimited area and/or following specified practices.
Consumer information	Ensure consumers have complete and accurate information, including regarding grapevine variety names.

Fig. 1. Key areas of law affecting breeding and dissemination of new grapevine varieties.

The law is not a closed or inflexible system removed from society, politics or the economy that acts only *upon* people. Rather it is a socially constructed system that is itself continually evolving and responding. Law is not only a set of formal rules; nor is it exclusively the domain of Parliament and the Courts. Law is also lived by people in their daily lives through practices, decisions, contests, knowledge, understanding and the like.

Therefore, in considering the law in the context of an evolving real-world scenario such as the case at hand, it should not be as sort of a stop/go “traffic light” that objectively directs operators; but as a provisionally fixed institutional setting that can over time be applied, used, responded to, opposed or changed according to the particular circumstances.

2.1. The legal framework for new resistant grapevine varieties

The development and use of new resistant grapevine varieties plays out across a number of different areas of the law at a national and/or community, as well as an international, level. The relationship between the decisions of actors in the filière (breeders, nurseries, viticulturists, oenologists and marketers) and the legal framework within which they operate may be direct or highly contingent.

The law permeates daily life to such an extent that it is impossible to identify every effect that it might have on a given set of interactions. However, it is possible to identify in broad terms certain key areas of the law impacting the decisions of those involved in the breeding of new innovative varieties. There are set out in Fig. 1 below.

Each of these areas of the law is implicated in the Montaigne paper: sanitary and phytosanitary measures and environmental protection laws were behind the ban on sodium arsenite; plant variety rights protect the INRA varieties discussed in the paper;

new varieties are shown to be subject to approval of grapevine varieties for use first, for winemaking, and then under AOC rules; finally, the challenges of consumer information laws are addressed in the discussion of variety names.

At the level of national/Community laws and their local application, it would no doubt be rewarding to explore in greater depth the specific legal factors at play in the particular case study presented in the Montaigne paper. (For example, the long term legal and policy shift within France away from *vin de table* towards varietal / PGI / PDO wines will certainly have had an impact on the objectives of plant breeding programmes.)

However, for the purposes of this paper, rather than examining local legal frameworks, this paper views the case study in the Montaigne paper through a more generalized and global lens so as to help place these local developments into a broader context. In particular, it focuses on two areas of the law that have undergone important processes of international harmonisation over the period of the case study in question: sanitary and phytosanitary measures and plant variety rights.

3. Sanitary and phytosanitary rules

Breeding new grapevine varieties for disease resistance has the potential to impact upon the health of both plants and human beings, and therefore such breeding programmes fall to be regulated by rules in place to protect the health of humans, animals and plants. Collectively known as sanitary and phytosanitary (SPS) measures, they include measures relating to GMOs, plant protection and quarantine, and the use of agricultural chemicals such as pesticides.

SPS measures can have a direct impact on decisions around grapevine breeding programs. To take a fairly obvious example, rules on GMOs will affect what can be done in terms

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