

## Acknowledgement

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*Andrea Borroni*



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## Foreword by Prof. Olivier Moréteau

Reading the title alone, the reader may think this is an essay comparing the best that culinary traditions may offer around the world. True, there is something of it in this little book. Yet, as the subtitle indicates, it visits gastronomy in its legal and cultural context.

Has gastronomy anything to do with the law? Is it not part of the *art de vivre*, a cultural activity that wants to have nothing to do with the law? Talking about gastronomy, the only legitimate place for the lawyer is not in the law firm but around the table, a glass in the hand!

Yet, this book shows that gastronomy may need the lawyer, not only to protect the best brands but also to provide a system guaranteeing the geographical origin of some exquisite products, owing their unique character to the fact that they have grown on a given territory, cultivated by people who have discovered secluded local secrets, combining cultural and geographical elements.

This is precisely what the French are calling *terroir*, a word that does not translate into English, the language of globalization, and that considers land in relation with its agricultural abilities, especially in relation to winery. The term recognizes a linkage between the soil and the quality of what grows out of it. By extension, it defines the subtle harmony that develops between the soil and the people that cultivate it: cultivation, culture... In the French language this is a one and unique term, *la culture*! In the 16<sup>th</sup> century already, the word *terroir* also served to indicate, in a figurative sense, the influence that a rural region may have on its people, associating their defaults and qualities to the region, the province where they live.

Like the writer of this short introduction, Andrea Borroni has grown in a country of multiple *terroirs*. Having been unified much later than France, Italy is a country that keeps even more distinct local cultures. France and Italy, two nations that cultivate *l'art de vivre, il ben essere*, have gone quite far in promoting and protecting the geographic origin of wines, cheese and a number of agricultural products that can be declined in infinite variations in their gastronomy. True, the system may be complicated and difficult to memorize, but wine tasting, its combination with cheese or the most subtle dishes creates emotions as strong and memorable as the most beautiful poems of Dante or Petrarca, Ronsard or Hugo.

We are dealing with the unique, the local, what connects the human being with the place where he grows up and grows what he eats. Gastronomy may be futile for some and yet it deals with the essence of life: as the author notices in his concluding sentence, we are made of what we eat and drink; there is spirit in the wine, if not truth itself: *in vino veritas*!

Gastronomy connects the people with the land where they are born and where they live, but it also connects us with other peoples when we travel and discover other cultures, or when people of different cultures come to dwell among us. It is as much of a rich cultural experience to share with friends a bottle of Barolo in Louisiana as to listen to a Vivaldi concerto grosso played by the enthusiastic musicians of the local Symphony.

Rules protecting geographical indications are challenged these days by the apostles of free trade and globalization. The largely fictitious global world of the ultra-liberal economists is the very opposite of the local *terroir*. The claim is made that these rules are overprotective and impair the free circulation of goods. Andrea Borroni visits the legal arguments. He compares the French and Italian model to the American, where local identity only exists by importation, settlers having named their place after towns and villages or their countries of origin. This is no surprise that in the country of the melting pot, very few will care about rules protecting geographical origins. Names like Champagne, Chablis or Chianti may be used as generic to label wines as much as the names of Paris, Mâcon, Rome or Venice have been borrowed to identify some towns all over the United States.

All countries do not have the same approach of the protection of geographical indications. This is analyzed with much finesse by the author, who also visits, with as much expertise, the rules developed by the European Union and the World Trade Organization. He is critical of the EU approach and defends the French *appellation d'origine contrôlée* (AOC), inviting the EU to adhere to its cultural roots.

The final product is really worth what the label promises. Andrea Borroni may be a young scholar; his talent is already mature and fully distinctive, making it a name that connoisseurs will soon recognize without failure on blind-testing. He has mixed a large variety of diverse ingredients in a very complex and yet highly readable text, well bodied, with a fresh personal bouquet.

Paradoxically, it is in Louisiana, a land that does not grow wine, that this fine connoisseur has researched and written this text, under the supervision of a French scholar, whose ancestors once produced wine and manufactured barrels in South Burgundy. Preparing his LL.M. at Louisiana State University, he studied in a bi-jural environment, discovering that the combination of the civil law and the common law in this very unique country is as complex and promising as the marriage of the cabernet and the sauvignon. A fine Italian jurist formed at the grand Italian School, he discovered in Louisiana how much law is part of human culture and how much culture may be influenced by the law. This book warns us how much a so-called global world may become tasteless if one forgets one's roots and neglects the endless and savory discovery of *les saveurs du terroir*.

*Olivier Moréteau*

*Professor of Law*

*Russell B. Long Eminent Scholars Academic Chair*

*Louisiana State University*

*Directeur honoraire de l'Institut de droit comparé Edouard Lambert*

*Université Jean Moulin Lyon 3*

## Foreword by Eleanor Cashin Ritaine

One of the most fashionable legal areas at the outset of this 21st century is undoubtedly intellectual property. Yet the protection of agricultural products, notably of the sometimes century-old know-how from which they originate, has not attracted much attention among the legal scholars so far, let alone among comparatists.

Even in the globalisation era, the diversity of cultural identities is not really fading away when it comes to foodstuff, nor will in the foreseeable future. Legally, the field is nonetheless rapidly evolving. Regulation, both national and international, is increasing and increasingly complex. The level and techniques of protection widely differ from one country to another. The impact of economy on the law is particularly conspicuous here. All this conjures up to make it an excellent topic for a comparative research. Andrea Borroni has praiseworthy undertaken such one and this booklet presents his findings.

A scholarship-holder at the Swiss Institute of Comparative Law in the spring 2004, Mr. Borroni has taken the challenge proposed by Dr. Alberto Aronovitz to the readers of the *Mélanges* honouring Prof. Pierre Widmer, former Director of the Swiss Institute of Comparative Law\*, to pursue the research on the way gastronomy is apprehended by the law. The originality of the *Mélanges* did not escape Mr. Borroni's curiosity and natural penchant towards what goes beyond the trodden paths. Its first seeds being thus sown in Switzerland, the project of a contribution on gastronomy and the law then fermented in Italy under the aegis of Prof. Crespi Reghizzi and reached its full maturity in Louisiana under that of Prof. Olivier Moréteau, two well-known comparatists and good friends of the Institute.

The origin of the book, which is as diverse as a multicépage wine, is reflected in the geographical range it covers. Mr. Borroni outlines the development of the legal protection of the agricultural product par excellence, and the first to be traditionally felt as needful of protection, wine. First, as a European, he examines the situation in two among the largest wine-producing jurisdictions, France and Italy, home countries to his two mentors and presents the E.U. policy in the field. He then crosses the Atlantic and considers U.S. legislation and finally, on the international level again, the WTO regulations. After having illustrated all different approaches, Mr. Borroni ventures to say which are, in his opinion, the best ones and, while so doing, is inclined to promote the new promising Indian model. All these ingredients are dealt with equilibrium. The pedagogical verve, including the few passages on the wine-making process – Mr. Borroni is obviously a connoisseur himself –, will not fail to be welcomed by a lay reader.

It is always a pleasure to write a few lines to introduce the work of a former scholar of the Institute. This is all the more so when the work has been inspired by one of the Institute's works, further cultivates one of the Institute's various specialties, and, above all, is of high quality. May this book reach as large an

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\* A. Aronovitz, "*Inter gastros silent jus?* ou Existe-t-il un droit de la gastronomie et de l'alimentation?" in A. Aronovitz (Ed.), *Gastronomie, alimentation et droit*, *Mélanges en l'honneur de Pierre Widmer*, Schulthess, Zurich, 2003, p. 15 et seq., at 19.

audience as it deserves, among legal comparatists but also among all those laymen and laywomen who are simply curious about the impact of gastronomy on law and society at large. May scholars around the world continue to be attracted to and inspired by the Institute's unique library, as was the author of the present book.

Lausanne, 5 February 2007

*Eleanor Cashin Ritaine*  
*Director of the Swiss Institute of Comparative Law*

*O, for a draught of vintage! that hath been  
Cool'd a long age in the deep-delved earth,  
Tasting of Flora and the country green,  
Dance, and Provençal song, and sunburnt mirth!  
O for a beaker full of the warm South,  
Full of the true, the blushful Hippocrene,  
With beaded bubbles winking at the brim,  
And purple-stained mouth;  
That I might drink, and leave the world unseen,  
And with thee fade away into the forest dim:  
(John Keats, Ode to a nightingale, May 1819)*

*Don Giovanni  
(Drinking)  
Vivan le femmine  
Viva il buon vino  
Sostegno e gloria  
D'umanità  
(Lorenzo da Ponte)*

## 1. Introduction

Wine is an integral part of the culture and heritage of countries like France and Italy. This value was protected in Roman times and has been in the modern era since 1960 (which is the period of the first French and Italian laws giving a definition to the controlled origin of wines), with strict regulations enacted to save the production methods, origin, and quality of the grapes.

To the “old school” representatives, a wine of one origin can never be replicated in another place. This is because both natural and human factors combine to create the wine of a particular area.

It is their belief that the appellation of origin reflects this unique combination in the wine’s quality.

The changes brought about by a more global economy have created tensions in the wine community. The attitude of the “old school” towards quality clashes with the duties created with the rise of the World Trade Organization and the European Community, specifically the latter’s promotion of the free movement of goods between Member States.

In addition, the forced harmonization of law in both the European locality and on world wide scale plays a huge role in the struggle created from pressure from the industrial producers in the United States and Australia towards a lower level of protection.

This work will address this tension in a comparative perspective.<sup>1</sup>

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<sup>1</sup> This interdisciplinary approach is well represented in the basic literature of comparative law. See ZWEIGERT, H. – KOTZ, H., *Introduzione al diritto comparato*, Vol. I, Milan, 1992 (trans. by Barbara Pozzo), DAVID, R., JAUFFRET-SPINOSI C., *I grandi sistemi giuridici contemporanei*, 5a Italian edition by R. Sacco, Padua, 2004, MATTEI U.– MONATERI, P.G., *Introduzione breve al diritto com-*

Part I briefly explains some introductory definitions and the deep meaning of the protection for geographical indication. Part II examines the history of wine production by exploring the production process and original regulation in the *Appellation d'Origine Controlée* (AOC) and the *Denominazione d'Origine Controllata* (DOC) (the methods that France and Italy have historically employed in the protection of wine). Part III outlines the impact of the EU Regulation on the circulation of goods and the protection of appellation of origin through specific E.U. Regulations Nos. 2081/92 and 1493/1999. Part IV deals generally with the United States regulations; in particular, the BATF Regulations and the Lanham Act, with emphasis on the Certification Mark, Collective Marks, Common Law Geographical Indications, Generic Geographical Names Not Protected and Geographically Deceptively Misdescriptive Marks. Part V tries to present the philosophy, the reasons and the regulations behind wine labels. Part VI is an analysis of the interrelation between intellectual property law and international protection of geographical indication.<sup>2</sup> The succession of treaties since the Paris Convention for the Protection of Industrial Property, the Lisbon Agreement on the Protection of Appellations of Origin and Their Registration to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Finally, section VII analyzes whether the current solutions to this clash are effective and whether alternative solutions are available.

In section VII part I will present the critics and the contradictions of the European model, which is at present the best solution available.

Section VII part II considers the Geographical Indication as a special kind of intellectual property and drafts conclusions focusing on the importance of the culture in the *de jure condendo* perspective.

## 2. Premise

As a general rule, comparative inquiry focuses on either the common core or diversities of different legal systems. Scholars achieve this purpose using the content of legal norms or, modernly, through an interdisciplinary approach. In the past, other sciences have utilized comparative techniques, including history, philosophy, anthropology, ethology, law and economics, and linguistics to name some of the better known examples.<sup>3</sup>

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*parato*, Padua, 1997, R. Sacco, *Introduzione al diritto comparato*, Turin, 1992 and Gambaro, A. – Sacco, R., *Sistemi giuridici comparati*, 2<sup>o</sup> ed., Turin, 2002.

<sup>2</sup> The principal objectives of Intellectual Property laws are: 1. To give statutory expression to the moral and economic rights of creators in their creations. 2. To provide encouragement to various creative efforts by offering protection. 3. To confer official/authentic recognition to the creators. 4. To create a global storehouse of vital information. 5. To promote creativity as an intentional act of Government policy followed by dissemination and application of its results to encourage fair-trading which would contribute to economic and social development. 6. To promote the growth of domestic industry, culture, and international trade, through the treaties offering multi-lateral protection. KANAGAVEL, P., "Intellectual property rights: a comprehensive overview", 85 *J. Pat. & Trademark Off. Soc'y*, 663, August, 2003 and on-line information from <http://www.wipo.int> (Last visited 22.02.2006).

<sup>3</sup> See GROSSWALD CURRAN, V., "Cultural Immersion, Difference and Categories in U.S. Comparative Law", 46 *Am. J. Comp. L.* 43 (1998).

One of the basic values of postmodern comparative<sup>4</sup> legal studies is the acceptance of disparate and distinct cultural styles “*rejecting any claim to the universality of one’s own views.*”<sup>5</sup> This simple statement, instead of limiting itself to the legal ground, could be extended to the new disputes that arise in the field of food and more precisely, gastronomy.

The main conflicts originated in the struggle for the protection of agricultural products and their places of origin: it concerns above all the qualification of cheese and wine.

This work intends to present a brief history of the development of the protection of the products in the worldwide context – WTO and EC – compared to the solutions of the single countries, focusing attention on the wine regulation. The weight of the economic implication should by itself justify a cultural and legal inquiry.<sup>6</sup>

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<sup>4</sup> On the postmodernism see MATTEI, U. and DI ROBILANT, A., “The art and science of critical scholarship: postmodernism and international style in the legal architecture of Europe”, *75 Tul. L. Rev.* 1053 March, 2001 and FRANKENBERG, G., “Critical Comparisons: Re-thinking Comparative Law”, *26 Harv. Int’l L.J.* 411 (1985) and MONATERI, P.G., “‘Everybody’s Talking’: The Future of Comparative Law”, *21 Hastings Int’l & Comp. L. Rev.* 825, 1998.

<sup>5</sup> SARCEVIC, P., “Quo vadis iudice, in *Gastronomie, alimentation et droit*”, in: A. Aronovitz (ed.), *Publications de l’Institut suisse de droit comparé, Mélanges en l’honneur de Pierre Widmer*, Schulthess, Zurich, 2003.

<sup>6</sup> See BROUDE, T., “Taking “trade and culture” seriously: Geographical indications and cultural protection in WTO law”, *26 U. Pa. J. Int’l Econ. L.* 623 at 628, winter 2005. Reflecting its importance in human exchange, food and drink have acquired a special status in international trade law. In the current Doha round of trade negotiations of the WTO, it has become clear that the international regulation of the production, consumption, and commercial exchange of food products is the ultimate deal-breaker. *Id.* at 629. About the existence of a gastronomy law see ARONOVITZ, A., “Inter gastros silent jus? ou: Existe-t-il un droit de la gastronomie et de l’alimentation?” in: A. Aronovitz (ed.), *Publications de l’Institut suisse de droit comparé, Mélanges en l’honneur de Pierre Widmer*, Schulthess, Zurich, 2003.