

CHAPTER 3

The Common Agricultural Policy and Southern Rivalries

The Case of Algerian Wine

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3.1 INTRODUCTION

First occupied by France in 1830 and then annexed in 1847, Algeria was still French when the 1957 Treaty of Rome entered into force. As such, Algeria joined the European Economic Community (EEC) and remained an integral part of it until 1962, when the signing of the Évian Accords marked the end of a long war against French rule and ushered in Algerian independence.

The peculiarity of Algeria's participation in the project of European legal integration has caught the attention of several scholars over the past decade – most notably Megan Brown, whose justly acclaimed book is provocatively titled *The Seventh Member State*.¹ This flare of scholarly attention to Algeria's European – as opposed to just French – linkages is part of a larger wave of studies, aimed at unearthing the inherent connections between the post-Second World War implosion of the colonial order and the birth of the EEC. Since Peo Hansen and Stefan Jonsson brought the 'untold history of European integration and colonialism' into the lime-light, many in the social sciences have taken to explore this stretch of history in depth.² Current historiographies connect the start of European

¹ M. Brown, *The Seventh Member State, Algeria, France, and the European Community* (Cambridge: Harvard University Press, 2022).

² P. Hansen and S. Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (London: Bloomsbury, 2014), pp. 1–16; K. A. Nicolaidis, B. Sèbe and G. Maas (eds.), *Echoes of Empire: Memory, Identity and the Legacy of Imperialism* (London: I. B.

legal integration not only to the political desire of the six founding states to intertwine their economies for the sake of peace and prosperity, or to the Cold War imperative of shoring off Soviet expansion, but also to the need to enable and legitimize through EEC structures the management of Member States' former and extant imperial interests.³

In such studies, Algeria can claim the centre stage for several reasons.⁴ First, among the many possessions and territories of the founding members, Algeria was the only place outside of continental Europe to be specifically mentioned in the main body of the Treaty of Rome.⁵ Second, for the first five years of its EEC membership, France fought against Algeria's independence with utter violence – in stark contrast with the European aspiration to peace famously put forth by France's own foreign minister Robert Schuman. This striking dissonance has rightly prompted research and reflection on some of the most troubling contradictions at the roots of the European integration project. Third, Algeria's importance to European historiography has only grown with Brexit, as 'Algexit' provides an example *avant la lettre* of legal, economic, and political disentanglement from the European Union.⁶

In this volume, Amel Benrejda Boudjemaa (Chapter 12) revisits the whole arc of this riveting story, offering a most welcome Algerian perspective on the laws and policies of the EU over time and across a range of issues. This chapter zooms in, instead, on a discrete strand of the story, namely the rise and fall of the Algerian wine industry: the EEC regulation

Tauris, 2015); K. K. Patel, *Project Europe: A History* (Cambridge: Cambridge University Press, 2020); M. H. Davis, *Markets of Civilization: Islam and Racial Capitalism in Algeria* (Durham: Duke University Press, 2022); E. Marker, *Black France White Europe: Youth, Race, and Belonging in the Postwar Era* (Ithaca: Cornell University Press, 2022).

³ Hansen and Jonsson, *Eurafrica*.

⁴ P. Nugent, 'Book Reviews' (reviewing O. White, *The Blood of the Colony: Wine and the Rise and Fall of French Algeria* (Cambridge: Harvard University Press, 2021)) (2021) 16 *Journal of Wine Economics* 231 ('As colonies go, Algeria was singular'); K. K. Patel, 'The Latency of the European Colonial Past' (2022) 1 *European Law Open* 1 at 2 ('Algeria is a very special case').

⁵ See Hansen and Jonsson, *Eurafrica*, and Brown, *The Seventh Member State* (documenting France's insistence on granting Algeria privileged Treaty status in the hope of containing the swelling tide of independence).

⁶ K. K. Patel, 'Something New under the Sun? The Lessons of Algeria and Greenland', in B. Martill and U. Staiger (eds.), *Brexit and Beyond: Rethinking the Futures of Europe* (London: University College London Press, 2018), p. 114.

of wine production – one important facet of the Common Agricultural Policy – had a devastating impact upon the exports of Algerian wine and led to the eradication of a thriving industry.⁷ In some ways, the wine saga confirms that Algeria's path through the early days of European legal integration was one of a kind. A uniquely profitable Algerian industry, established by France for its own benefit in colonial times, was thrown out of business through EEC law; and this occurred precisely when Algeria, finally an independent nation, was poised to reap the full profits of wine exports. The extractive violence of racial capitalism, typical of colonial dynamics, leaps to the eye here.⁸ At the same time, the following pages aim to show how unexceptional, in one important respect, the wine parabola was. At a higher level of abstraction, the facts and the laws briefly outlined in this chapter were anchored in a common, ubiquitous, and resilient legal framework. It is a framework that, to this day, masks asymmetries of power and enables economic actors, including states and regional entities, to ignore the negative externalities they generate.

The chapter proceeds as follows. Based on the work of scholars from other disciplines, Section 3.2 briefly recalls key events of the Algerian wine saga. This overview illustrates how at law, its special status notwithstanding, Algeria had no redress whatsoever against EEC tariff and non-tariff barriers, and highlights the legal entrenchment of an imperial pattern of centralized, unilateral rulemaking.

Section 3.3, for context, connects the collapse of Algerian wine exports to the larger dynamics of the Common Agricultural Policy and outlines the natural rivalry between Mediterranean countries – some in Europe, some beyond its borders – which share a similar climate

⁷ See G. Meloni and J. Swinnen, 'The Rise and Fall of the World's Largest Wine Exporter (and Its Institutional Legacy)' (2014) 9 *Journal of Wine Economics* 3; White, *The Blood of the Colony*; and J. Bohling, *The Sober Revolution. Appellation Wine and the Transformation of France* (Ithaca: Cornell University Press, 2018).

⁸ On racial capitalism in the colonial experience of Algeria see Davis, *Markets of Civilization*, p. 8 (discussing the racialization of Algerian Muslims under French rule and the use of religion as a basis for legal exclusion and economic precarity). On racial capitalism in European legal integration see J. Miller and F. G. Nicola, 'The Failure to Grapple with Racial Capitalism in European Constitutional Imaginaries', in J. Komárek (ed.), *European Constitutional Imaginaries* (Oxford: Oxford University Press, 2020); and D. Ashiagbor's chapter in this volume (Chapter 6).

and produce similar goods. In matters of wine, Algeria found a fierce competitor in the south of Italy, which in the 1950s and 1960s vied for access to French markets perhaps as much as Algerian exporters did. This glance at the political economy of Europe and its neighbourhood helps to highlight distributional tensions between three different types of trade relations: the deals that are struck among the Member States through common EEC policies; the external trade policies of the EEC; and the bilateral accords entered into by singular Member States with non-EU partners, which remain to this day legitimate wherever the EU lacks exclusive competence.

Section 3.4 adds a theoretical perspective to the narrative. Across a variety of legal systems, basic principles of both private and public (international) law, while having no apparent link to empire-building and colonialism, allow to this day for the perpetuation of power asymmetries redolent of colonial arrangements. The fact that the EEC, in reorganizing its own wine markets, single-handedly shut down a large stream of Algerian profit was a terribly consequential power move and a striking example of colonial wealth diversion. Yet, it also followed a very common pattern – one not confined to colonial arrangements – in which the law systematically enables and blesses agreements between two or more states, typically benefiting the parties of such agreements while extracting or diverting wealth from non-party states or nations. In many cases, this pattern breeds ruin for non-parties and allows short-term interests to prevail over geopolitical stability or transnational equity.

The chapter ends by referencing the contribution of Amel Benrejda Boudjemaa to this volume, which offers insights not only on past events, but also on the significance of revisiting such events at the present time, when Algeria occupies a very different geopolitical place than it did when the EEC was established.⁹ In hindsight, it is easy to see how the excision of Algeria from the Common Market was but a triumph of short-termism. The solar panels that now cover vast patches of Algerian desert, all made in China, attest to ever closer Sino-Algerian energy deals. This time around, Europe might be the one left out.

⁹ Chapter 12.

3.2 WINE

The story of Algerian wine – namely the rise and fall of Algerian wine exports – is a tale of epic proportions and a powerful illustration of colonial dynamics.¹⁰ In a nutshell: at the end of the nineteenth century, wine production in Algeria turned from a fringe economic activity of ancient origin to an impressive twentieth-century operation of international proportions. The trigger for this transformation was the phylloxera epidemic that swept through the French countryside in 1879, threatening to put French winemakers out of business. Algeria's fertile soil became then, in line with the odious colonial trope of virgin lands waiting to be conquered, the uncontaminated place where healthy grapes could grow, thanks not only to the hospitable climate of the country's northern hills, but also to the availability of cheap labour. In line with the racialized order of colonial economies, ownership remained French; Algerian peasants worked the fields; and the French-Algerian middle class took care of management and cellar operations. To be sure, the growth of this industry into the mid twentieth century was far from linear: as soon as French agronomists managed to stem the epidemic in the metropole and resume wine production at home, Algerian wines began to be perceived as in competition with French ones. Algerian exports started to face, then, regulatory obstacles and custom duties which France would introduce from time to time to appease its own vintners. Nevertheless, Algerian producers had their supporters in France.¹¹ Algerian wine, therefore, continued to flow more or less abundantly to the metropole and beyond.

Of special interest to this chapter is the fact that a significant part of such flows consisted of *vin de coupage* (blending wine): unusually strong and unbeatably affordable, this variety was used by French wine manufacturers to enhance the alcohol content of their own brands. Algerian blending wines enjoyed a privileged export regime even at times of protectionist legislation. The French law that, in 1930, prohibited the

¹⁰ White, *The Blood of the Colony*.

¹¹ Nugent, 'Book Reviews', 231–233.

blending of foreign wines with domestic ones affected Moroccan and Tunisian exports, but not *vin de coupage* coming from Algeria.¹²

Overall, Algerian wine exports conquered the world's markets. When Algeria, through France, joined the EEC, it was the largest exporter of wine in the world and the fourth biggest wine producer.¹³

EEC Treaty Article 227 made it clear that Algeria would partake of the common market for goods, which meant it would soon be able to export its wine not just to France, but to the entire EEC without any tariff or non-tariff barrier.¹⁴ Famously, such prospects did not materialize. Having gained independence, through the 1960s Algeria embarked on a journey of disentanglement from France that would involve the nationalization of local industries, including wine production, hoping to reap and keep revenues once siphoned away by French ownership. Such hopes for the economy of the newly independent country found support in the Évian Accords: in matters of trade, France and Algeria would maintain 'privileged relations' including low barriers to Algerian wine exports.¹⁵ The other Member States initially followed suit.¹⁶ But as the reality of Algeria's independence seeped in, the idea of trade openness to Algerian products began to fade. Germany and the Benelux countries kept applying to Algerian products the tariff reductions that existed between the six founding states in 1962. Italy was instead eager to erect barriers and, by 1968, gave Algeria third-country treatment.¹⁷ France

¹² J. Meloni and J. Swinnen, 'Algeria, Morocco, and Tunisia', in K. Anderson and V. Pinilla (eds.), *Wine Globalization: A New Comparative History* (Cambridge: Cambridge University Press, 2018), pp. 441 and 451.

¹³ Meloni and Swinnen, 'The Rise and Fall'.

¹⁴ See K. Nicolaidis, 'Southern Barbarians? A Post-Colonial Critique of EU Universalism', in K. Nicolaidis, B. Sèbe and G. Maas (eds.), *Echoes of Empire: Memory, Identity and the Legacy of Imperialism* (London: I. B. Tauris, 2015), pp. 283 and 286–287.

¹⁵ 'Algeria: France-Algeria Independence Agreements (Evian Agreements), Declaration of Principles Concerning Economic and Financial Cooperation', Preamble Point 3, (1962) 1 *International Legal Materials*, pp. 214 and 221.

¹⁶ 'By March 1963, the Six agreed to maintain the "status quo" in which independent Algeria would continue to enjoy the same preferential tariff rates, migrant social security regime, and customs regulations that it did when it was a juridical part of metropolitan France.' Brown, *The Seventh Member State*, p. 183.

¹⁷ See Commission of the European Communities, Directorate General for Information, 'Cooperation Agreements between the EEC and the Maghreb Countries' (1982), p. 3 (available at <https://aei.pitt.edu/7755/1/7755.pdf>).

continued to receive Algerian products mostly on a duty-free basis, but ended up buying much less Algerian wine than it had promised to do over the 1960s.¹⁸ When Algeria clarified its intention to push France out of the management of Algerian energy resources, France used the ‘wine card’ as payback and in 1970 blocked Algerian wine imports altogether.¹⁹

The *coup de grâce* for Algerian wine exports came by means of EEC law. The Common Wine Policy, as designed by the EEC in 1970, set up a system that would protect EEC wine prices from non-EEC competitors, open up borders between Member States, and introduce rules on wine production and quality.²⁰ The new tariffs and countervailing duties vis-à-vis third countries – a category in which Algeria would now belong – were steep, but wine-making rules and quality restrictions went even further and locked out of the EEC wines that had traditionally been imported, most prominently from Algeria. Restrictions on the practice of *coupage*, for instance, drew a sharp line between Community wines and imported ones – a line that could not be crossed at any price.²¹ The new regime proved disastrous for Algerian exporters.²² Algeria – a predominantly Muslim country surrounded by neighbours of similar faith – had little internal demand for wine and failed to find alternative wine purchasers abroad. This sudden loss of market share, coupled with the realization that the wine industry had always been – symbolically and at law – a purely French creation, led to a massive abandonment of Algerian wineries.²³ In 1971, an Algerian decree ordered the uprooting of 25,000

¹⁸ G. Meloni and J. Swinnen, ‘The Political Economy of European Wine Regulations’ (2013) 8 *Journal of Wine Regulation* 244 at 266–268.

¹⁹ The Italian newspaper *L’Unità* reported in July 1971 that since September 1970 not a single litre of Algerian wine had crossed into French territory. ‘Echi e Notizie’, *L’Unità*, 18 July 1971, p. 13, https://archivio.unita.news/assets/main/1971/07/18/page_013.pdf.

²⁰ Regulation (EEC) No. 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organisation of the market in wine, OJ 1970 L 99/1, Title II: Trade with Third Countries.

²¹ Regulation 816/70, Article 26(4): ‘The coupage of an imported wine with a Community wine and the coupage on Community territory of imported wines shall be prohibited except by way of derogation to be decided by the Council.’

²² D. Caruso, ‘Non-parties: The Negative Externalities of Regional Trade Agreements in a Private Law Perspective’ (2018) 59 *Harvard International Law Journal* 389–430 at 419.

²³ *Ibid.*

hectares of ‘useless’ vineyards – a colonial legacy that the newspaper *El Moudjahid* did not hesitate to define as ‘poisonous’.²⁴ Even visually, the change was stunning. As recounted by Albert Camus in his autobiographical last novel, extensive vineyards had been a defining feature of the Algerian countryside.²⁵ Within a few years, however, that picture would be replaced by sights of uprooted vines and deserted cellars.²⁶

3.3 SOUTH–SOUTH RIVALRIES

While Algeria lay to the south of the EEC, Italy was undoubtedly the southernmost of the six official founding states. Besides, Italy carried within itself the predicament of north–south divisions, and its vexed Southern Question posed a political conundrum well known to European intellectuals.²⁷ This economic and political imbalance could hardly go unnoticed in the 1950s. In relative terms, the destructive force of the Second World War had pummelled the fledgling industries in the south of Italy more viciously than the northern ones, thereby deepening an economic dualism as old as the 1861 unification of the Italian peninsula.²⁸ Since the end of the Second World War, the Allies had feared that the pockets of abject poverty typical of the southern Italian regions would be breeding grounds for communist propaganda, and the Truman administration had seen it appropriate to direct some of the Marshall funds towards the development of such areas.²⁹ When convened by Gaetano Martino to the 1955 Messina

²⁴ The left-leaning Italian newspaper *L'Unità* heralded this decree as a laudable act of emancipation. ‘Echi e Notizie’, *L'Unità*, 18 July 1971, p. 13.

²⁵ A. Camus, *Le premier Homme* (Paris: Gallimard, 1994). See also P. Birebent, *Hommes, vignes et vins de l'Algérie française 1830–1962* (Nice: Editions Jacques Gandini, 2007).

²⁶ Meloni and Swinnen, ‘The Rise and Fall’. See also K. Sutton, ‘Algeria’s Vineyards: An Islamic Dilemma and a Problem of Decolonization’ (1990) 1 *Journal of Wine Research* 101, at 113–115 (noting how ‘culturally inappropriate’ the wine industry was in Algeria).

²⁷ See D. Caruso, ‘Direct Concern in Regional Policy: The European Court of Justice and the Southern Question’ (2011) 17 *European Law Journal* 804.

²⁸ ‘Business: Hope in the Mezzogiorno’, *Time Magazine*, 13 June 1955.

²⁹ Help for the reconstruction of the south came to Italy directly from the Marshall plan and also from the World Bank. See S. Lorenzini, ‘Ace in the Hole or Hole in the Pocket? The Italian Mezzogiorno and the Story of a Troubled Transition from Development Model to Development Donor’ (2017) 26 *Contemporary European History* 441.

Conference, the foreign ministers of the other five European Coal and Steel Community states couldn't but notice – along with the many beauties of the Sicilian landscape – the depth of devastation and the challenges of reconstruction.³⁰

The founders of the Community, well aware of southern poverty, knew that the Common Market would likely bring prosperity only to some areas and saw it as their joint responsibility to correct such imbalances.³¹ It was clear to political elites in the 1950s that the liberalization envisaged by the early Community treaties might outlaw some of the special regimes, such as state aids, that were part of Rome's strategy for the Mezzogiorno.³² Italy's entry into the Common Market came therefore with several South-friendly provisions: Article 92(3) of the EEC Treaty, which allowed for intra-national transfers to poorer regions; the European Social Fund, aimed at boosting employment; the European Investment Bank, presided by Italy in the early years of the Community;³³ and a special Protocol, annexed to the EEC Treaty upon Italian insistence, making it clear that the EEC would pay attention to

³⁰ See A. M. Oteri, 'La città fantasma. Danni bellici e politiche di ricostruzione a Messina nel secondo dopoguerra (1943–1959)' (2007) *Storia Urbana* 63 (reporting that after the Second World War Messina was reduced again to a state similar to the one in which it found itself after the 1908 earthquake).

³¹ The Protocol concerning Italy, attached to the 1957 Treaty of Rome, referred to 'dangerous tensions' that might arise from high unemployment in certain regions of Italy. It read in English: 'THE MEMBER STATES OF THE COMMUNITY TAKE NOTE of the fact that the Italian Government is carrying out a ten-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in Southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment; AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund; ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy.'

³² Caruso, 'Direct Concern', 817.

³³ Protocol on the Statute of the European Investment Bank (EIB) annexed to the EEC Treaty, March 25, 1957.

the development of its southernmost flank.³⁴ In a Europe of six, the south of Italy had become the south of the whole Community and the inspiration for its regional policy.³⁵

Italian politicians, who had fought hard for such attention, were extremely wary of their Mediterranean competitors, who also vied for special treatment. In a Eurocentric perspective, facilitating agricultural expansion in post-war Italy was a matter of fairness in north–south relations. It was therefore clear that the newly established Community would have to protect southern Italian agriculture from Algerian competition. Algeria's first president Ahmed Ben Bella was well aware of such dynamics and in the wake of independence, expressed his understandable antipathy for the nascent Common Agricultural Policy.³⁶

³⁴ Caruso, 'Direct Concern', 817–818 (footnotes omitted): 'There is no univocal account of the distributional effects of EEC policies upon the Italian South. The inception of the CAP certainly allowed for a shift of resources towards agricultural regions, and agriculture accounted for a larger share of Southern economies. On the other hand, for many years, the Community's agricultural policy was centred on price support rather than infrastructural development, and therefore by design, it brought more help to those rural areas where infrastructures were already in place and productions abundant – namely the centre-north. Only in 1992 was the CAP reformed to correct its regressive distributional impact. In terms of industrialisation, the interventions of the Community in favor of Southern economies also had ambivalent effects. On one hand, the European Investment Bank contributed real money to the projects sponsored by the Cassa del Mezzogiorno (a financial institution set up in 1950 with the task of funding the infrastructural development of the South). On the other hand, the bulk of the Community's industrial policy was geared towards boosting Italy's northern industrial poles, making it impossible for the South to ever catch up.'

³⁵ C. Spagnolo, 'Appunti per una storia regionale dell'integrazione Europea nel Mezzogiorno', in C. Spagnolo and R. De Leo (eds.), *Verso una Storia Regionale dell'Integrazione Europea* (Bari: LiberAria, 2010), pp. 18–19 (defining the Mezzogiorno as the first laboratory of Community regional policy and noting some French interest in the policy because of France's overseas territories). See also S. Tarditi and G. Zantias, 'Common Agricultural Policy', in R. Hall, A. Smith and L. Tsoukalis (eds.), *Competitiveness and Cohesion in EU Policies* (Oxford: Oxford University Press, 2001), pp. 179 and 195.

³⁶ Patel, 'Something New under the Sun?', p. 115: 'The Algerian War of Independence ... was fought mainly to shake off the yoke of French rule. But, unsurprisingly, the Front de Libération Nationale (FLN) also wanted to cut the connection with the EC. Looking back a few months after independence had been won, Algeria's first president Ahmed Ben Bella deplored the "300 years of colonial domination" and heavily criticised the EC, particularly its nascent Common Agricultural Policy.'

Wine was a core issue. While wine production had traditionally been abundant throughout Italy, from Piedmont to Sicily, it was in the south that blending wines and table wines were mostly produced. Per Owen White's account, '[T]he Treaty of Rome in March 1957 promised integration for Algeria's agricultural goods, but with it the ominous prospect of new competition from cheap Italian wines that tariffs had virtually excluded from the French market before'.³⁷

In the mid 1960s, Italian politicians made their worries known in Brussels. Megan Brown explains:

As the Six extended aid to Algeria, roadblocks arose in the form of individual state concerns. Italian representatives raised now-familiar complaints about the menace to their state were a Maghrebi accord to go forward, given that Italy's agricultural production closely mirrored that of the southern shores of the Mediterranean. Italy's representatives bristled at their state losing out to Algeria, a concern exacerbated by older fears about being cast as less than European. They complained that "the sacrifices to be agreed upon will be made practically by a single region – already underprivileged in relation to the rest of the Community – of a single member state." This would be compounded by labor migration rights, which would endanger nationals from "the only country in the Community that still has an excess of laborers," while proving advantageous to the other member states.[11]

In other words, Italian officials believed their economy and citizens had the most to lose were the EC to embrace the Maghreb too wholeheartedly.³⁸

And so it happened. In summer 1970, as noted, France blocked Algerian wine imports completely, and soon thereafter the EEC made sure there would no longer be special tariff arrangements with any of the Member States. Regulation 816/70 erected a comprehensive system of tariffs and countervailing duties on all imported wines, guaranteeing price protection from cheap imports to all EEC wines.³⁹ Qualitative barriers, such as

³⁷ White, *The Blood of the Colony*, p. 205.

³⁸ Brown, *The Seventh Member State*, pp. 220–221, referring in endnote 11 to: EEC Council, 'Relations avec les pays du Maghreb: Aide-mémoire du secrétariat', S / 38 / 65, January 14, 1965, annex II: 'Déclaration générale faite par la délégation italienne à l'occasion de la réunion du 9 décembre 1964'.

³⁹ Regulation 816/70.

the noted restrictions on the practice of *coupage*, enhanced the strength of the new regime. It is worth noting that, from the standpoint of southern Italy, where the production of strong and sweet wine was abundant, the elimination of Algerian competition would be of crucial value.⁴⁰

To be sure, the relative distributional impact of the 1970 Common Wine Policy on the different regions of Italy is a matter for debate.⁴¹ Regulation 816/70, outlined earlier, was complemented by Regulation 817/70 of the same year, which elevated the status of ‘quality wines’ then typical of the Italian north while rare in the south.⁴² There is strong evidence, however, that the dismantlement of the Algerian wine trade resulting from the 1970 EEC reforms gave a relative boost to southern Italy’s wine exports and was advantageous, at least in the short term, to winemakers in the Mezzogiorno.⁴³ For Algeria, by contrast, this was the end of an epoch. From an Algerian perspective, the unprecedented limitation of its exports to Europe was wrongful in multiple ways: as a French breach of the Évian Accords and other promises of preferential trade; as a form of undue French and European retaliation against just assertions of Algerian independence, such as the nationalization of its energy resources; and as a signal that the EEC was in no hurry to extend

⁴⁰ The architects of the new policy understood full well that maintaining the flow of wine exports was ‘of great importance’ to the Algerian economy, and in 1971 allowed for a ‘temporary partial suspension of the Common Customs Tariff duties on wine originating in and coming from Algeria’. See Regulation (EEC) No. 2313/71 of the Council of 29 October 1971 on the temporary partial suspension of the Common Customs Tariff duties on wine originating in and coming from Algeria, OJ 1971 L 244/10. But they did so only until 31 August 1972 – surely a momentous date in the contested timeline of *Algexit*. See Brown, *The Seventh Member State* (recounting Algeria’s non-linear, protracted, and fractured process of separation from the EEC).

⁴¹ G. Meloni and J. Swinnen, ‘The Political Economy of Regulations and Trade: Wine Trade 1860–1970’ (2018) 41 *World Economy* 1567. For critical remarks on the EEC wine policy, particularly in matters of blending wine (‘vino da taglio’), see M. Soldati, *Vino al Vino. Alla ricerca dei vini genuini* (Milan: Mondadori, 1977), pp. 237–239.

⁴² Regulation (EEC) No. 817/70 of the Council of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions, OJ 1970 L 99/20. Southern regions have since developed a thriving industry of quality wines, eligible for special protection on European and international markets.

⁴³ In the wine year 1969/1970, 90% of wine imports into France consisted of Italian wine. Such surges would lead to the ‘wine war’ between France and Italy in 1973–1974 and to an EEC corrective market intervention. Meloni & Swinnen, ‘The Political Economy of European Wine Regulations’, 268–269.

to Algeria the trade privileges that its neighbours in the Maghreb had already received in 1969.⁴⁴ Yet, by EEC law, Algeria had no remedy.

3.4 NON-PARTIES

The regulation of wine production, distribution, and sale in the EEC is a seemingly inexhaustible fountain of Court of Justice of the European Union cases. Many of these are well known and EU jurists intuitively understand the large economic stakes of the controversies underlying them. Usually, such cases concern conflicts between two well-defined types of legal rules: on the one hand, state regulations, which reflect political settlements among local economic actors as well as local habits of wine production or consumption; on the other hand, EU law – often its primary imperatives (free movement of goods, as in *Commission v. UK, Wine and Beer*, or fundamental rights, as in *Hauer*), but other times secondary legislation demanding the approximation of state laws and practices (as most recently in *Weingut A*).⁴⁵ In all these cases, the EU judiciary interprets EU law only after considering an alternative legal stance reflecting the interests of national or sub-national constituencies. What is more, the judicial representation of relevant stakeholders (states or private parties) amplifies the arguments that such stakeholders may have already voiced in the process of drafting and adopting the rules in question: a double chance to be seen in the architecture of a complex legal system. To be sure, there is no guarantee that being ‘in the room where it happens’ results in net benefits for all participants: there are myriad reasons why a party fully involved in rule-drafting, or fully represented in disputes concerning such rules, could ultimately find itself holding the short end of the stick.⁴⁶ What

⁴⁴ On the 1969 Agreements reached by the EEC with Morocco and Tunisia, which were trade agreements only and would later be subsumed into the more complex cooperation arrangements of 1976, see Commission of the European Communities, Directorate General for Information, ‘Cooperation Agreements between the EEC and the Maghreb Countries’ (1982), p. 3.

⁴⁵ Case 44/79, *Liselotte Hauer v. Land Rheinland-Pfalz*, ECLI:EU:C:1979:290; Case 170/78, *Commission v. United Kingdom, Tax arrangements applying to wine*, ECLI:EU:C:1983:202; and Case C-354/22, *Weingut A*, ECLI:EU:C:2023:916.

⁴⁶ D. Kukovec, ‘Regional Trade Agreements and Global Justice’ (2020) *Harvard International Law Journal* Online.

remains, nevertheless, a prerogative of *parties* – as opposed to outsiders – is a relatively higher degree of visibility and voice.

Not so, however, when the impact of rules made by insiders is felt by *non-parties*, as when the Algerian wine industry was dealt a deadly blow by arrangements made among the six EEC states in matters of wine commerce.⁴⁷ Not only did Algeria, by then definitely a non-party, have no say whatsoever in the making of the 1970s wine rules;⁴⁸ it also had no way to challenge such rules at a later point in time and was left to its own devices in trying to make up, or not, for the lost market share.

In a way, this complete lack of representation is typical of colonial dynamics: the colony cannot but accept and receive rules made in the metropole.⁴⁹ In Amel Benrejda Boudjemaa's words, 'determining the future of Algeria from the outside' was precisely what Europe did in colonial times.⁵⁰ Yet, something else is also at work here – a diffuse legal sensibility that originates in private law but permeates legal regimes of all kinds, and works to normalize the harm that the deals concluded by some parties inflict upon non-parties. A brief detour through private law territory may efficiently illustrate why Algeria's excision from the EEC's wine market was deeply harmful and yet not actionable – a pattern both specifically colonial and ubiquitous in space and time.⁵¹

In private law, contracts cause negative externalities all the time, but such harms are conceptualized as the price society must pay for the sake of competition:⁵² 'There is nothing intrinsically wrong in a

⁴⁷ Caruso, 'Non-parties', 389.

⁴⁸ To be sure, crucial features of European wine policy, such as the system of Appellations d'Origine Contrôlée, originated from the commerce of wine between France and Algeria. See Bohling, *The Sober Revolution*.

⁴⁹ See H. Eklund, 'Peoples, Inhabitants and Workers: Colonialism in the Treaty of Rome' (2023) 34 *European Journal of International Law* 831–854 at 840 (documenting how 'the heads of delegation and the Drafting Group on the Overseas Countries and Territories codified "association" without involving any form of political representation from the countries that were to be associated').

⁵⁰ Chapter 12.

⁵¹ Caruso, 'Non-parties', 389.

⁵² *Vegehlahn v. Gunter*, 167 Mass. 92, 106 (1896) (Holmes, C. J., dissenting). ('The doctrine generally has been accepted that free competition is worth more to society than it costs, and that on this ground the infliction of the damage is privileged.')

contract's benefitting its parties to the detriment of a third party. Such is the nature of a free market and the inevitable result of the principle of freedom of contract. Indeed, this should normally be expected'.⁵³

The rule, then, is that the harm to non-parties is privileged. It is, in old parlance, *damnum absque injuria*: real harm, but resulting from privileged conduct, and therefore not a trigger of legal remedies.⁵⁴ The rule has exceptions, mostly in torts law and antitrust, but a hallowed rule it remains.⁵⁵ Where actionable legal remedies (injunctions or actions for damages) exist, they are for the most part distributionally ambivalent: they can be equally mobilized by market actors of all types, including dominant ones, and therefore do not necessarily ameliorate the fate of weaker parties.⁵⁶ Theoretical support for the 'rule' rests on a widespread faith in the self-healing properties of free markets: it is commonly assumed that in a dynamic market with full mobility of people and resources, the non-party which was harmed by the contracts of others will reinvent herself to stay financially afloat, and might one day be even better off.

Decades of dominant neo-liberal thinking have normalized this kind of reasoning, to the point of obscuring the fact that markets are often far from seamless and that alternative business opportunities are more available to some non-parties than others.⁵⁷ All the time, non-parties suffer unredeemable loss as a consequence of deals made among others.

As noted by famed scholars of international law,⁵⁸ on the stage of the world economy, where states constantly conclude bilateral treaties

⁵³ B. Porat, 'Contracts to the Detriment of a Third Party: Developing a Model Inspired by Jewish Law' (2012) 62 *University of Toronto Law Journal* 347–401 at 348. Porat moves on to seek possible exceptions at law to this premise.

⁵⁴ See generally E. P. Weeks, *The Doctrine of Damnum Absque Injuria Considered in Relation to the Law of Torts* (San Francisco: Sumner Whitney, 1879).

⁵⁵ See, for a critical account of such a rule, A. Bagchi, 'Other People's Contracts' (2015) 32 *Yale Journal of Regulation* 211–256, at 221. ('Contract law does not adequately account for the harm that we inflict on third parties by joint agreement.')

⁵⁶ Caruso, 'Non-parties', 417.

⁵⁷ V. A. Schmidt and M. Thatcher (eds.), *Resilient Liberalism in Europe's Political Economy* (Cambridge: Cambridge University Press, 2013).

⁵⁸ H. Lauterpacht, *Private Law Sources and Analogies of International Law* (London: Longmans, Green & Co., 1927), p. ix. See J. Sgard, 'Contracts, Treaties, and the Public Space (Comment)' (2019) 59 *Harvard International Law Journal* 20 (highlighting the intellectual origin of the contract/treaty analogy).

3.5 CONCLUSION

or enter regional agreements, similar dynamics occur as in private markets and, more importantly, similar legal constructs – including the presumptive legality of most types of indirect economic harm – apply. And while private-law relations may be embedded in state-based systems of solidarity and mechanisms for redistribution, relations between sovereign nations often occur in a vacuum, so that losses lie where they fall. Regional free trade agreements, as well as customs unions, produce ripple effects in the world economy and predictably harmful externalities. Further, when the parties to such agreements create law- and policy-making institutions such as those of the EU, they can continue to hurt non-parties with a stream of trade-diverting rules, such as key provisions of Regulation 816/70 EEC. In limited circumstances, when trade arrangements made between two or more states hurt other nations, remedies exist in international trade law too, but they do little to offset the chasm between haves and have-nots in the global economy.⁵⁹ The institutional mechanisms for redressing global injustice remain marginal, even when – as in the case of Algeria vis-à-vis EEC members – there are seemingly strong ties between outsiders and deal makers. This means that, like Algerian vintners in the early 1970s, non-parties are regularly left without recourse. All they can do is seek alternative strategies for economic development. Algeria did just that.

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The Algerian wine saga offers a broad cautionary tale. Like other actors with significant power in the global market economy, the EU can enter deals or make decisions hurtful to states that are, or have become, non-parties vis-à-vis Europe. One line in a technical regulation, while fully legitimate and mostly well intentioned, could be enough to wipe entire industries out of existence. There are, of course, reasons to celebrate the

⁵⁹ Caruso, 'Non-parties', 389 (positing that 'actionable remedies in favor of non-parties to trade agreements are analytically helpful, but remain distributionally ambivalent') and Kukovec, 'Regional Trade Agreements' (arguing that 'the hierarchical structure of global production needs to be considered when addressing inequality perpetuated by trade diversion').

EU's power to export its values and to influence the regulatory choices of other nations, for instance in matters of safety standards or data privacy.⁶⁰ But different, darker sides of the same power exist. When externalities are negative, and especially when they are felt by those with lesser bargaining power, the EU is legally privileged to ignore them, but it does so at its own peril.

The fall of the Algerian wine industry is not only an early illustration of trade diversion resulting from a 'megaregional' *avant la lettre*. Even more relevant is the distributional complexity of its background. The founders of the EEC were institutionally bound to boost trade inside the Common Market, and also inclined to ameliorate the economic conditions of Europe's south. The complete collapse of Algerian wine exports may have seemed the natural by-product of policies designed to pursue such goals. Arguably, however, ruining Algeria's most profitable export was *not* beneficial to the EEC. If anything, European leaders would have had an interest in sustaining the Maghrebi economy, not least because, were Algeria to realize its yet under-tapped mineral wealth, it would become a great market for European exports.⁶¹ In hindsight, maintaining better relations with Algeria might have eased a variety of European worries concerning migration management, political instability in the Mediterranean, oil and gas supplies in times of shortage, and so forth.⁶² Instead, with its wine policy, the EEC signalled an abrupt break from Algeria – one that affirmed President Ben Bella's intuitive distrust of the European integration process.

Today, at times, the relation between the EU with its members on one side and Algeria, a non-party, on the other seems cooperative and coherent across sectors. As Benrejda Boudjemaa observes about current Mediterranean partnerships, 'one should not deny the European will

⁶⁰ A. Bradford, *The Brussels Effect. How the European Union Rules the World* (Oxford: Oxford University Press, 2020).

⁶¹ Hansen and Jonsson, *Eurafrica*, pp. 125–128.

⁶² Ibid.; D. Caruso and J. Geneve, 'Trade and History: The Case of EU-Algeria Relations' (2015) 33 *Boston University International Law Journal Online*; D. Caruso and J. Geneve, 'Melki in Context. Algeria and European Legal Integration', in F. Nicola and B. Davies (eds.), *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* (Cambridge: Cambridge University Press, 2017), p. 506.

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to engage with Algeria in a mutually beneficial manner, based on common interests'.⁶³ At other times, the relation still seems to evolve 'haphazardly', just as it did, according to the Commission, in the 1960s.⁶⁴ Indeed, in a world characterized by an ample degree of economic liberty for states as well as corporate entities, one deal may defeat the purpose of another; insiders to one agreement will be outsiders in other contexts. Well-meaning EU gestures towards non-parties may be undercut by rules decided by the Member States among themselves (e.g. the liberalization of the energy market); and even when the parties stay the same, the benefits of the agreement reached in one area may be offset by the harms of seemingly unrelated conduct. There is, as well, the complication of independent initiatives of individual states – for instance on migration control – or large investors or multinationals. Today, as in the 1960s, such quagmires make it hard to identify distributional vectors, and difficult to devise tailored corrective strategies.

And then there is China. As Benrejda Boudjemaa aptly remarks, we now live 'in an era where China is emerging as a global power'.⁶⁵ China supported Algerian independence on day one, and strong economic and political ties have since developed between the two countries. While Algeria's agricultural output is both more abundant and more diverse than in the 1960s, it is in the deserts that the real profits lie. Not only is Algeria enjoying remarkable success in the oil and gas sector, due to the upward pressure on hydrocarbon prices resulting from the war in Ukraine; but the Algerian government is also investing in green energy. Its desert lands are being equipped with solar panels at a pace with which some sunny areas in the EU (again, Italy's deep south) cannot keep up.⁶⁶ In terms of trade balance, Algeria imports heavily from China, while being a net exporter to Europe.⁶⁷ Individual EU Member States and large investors compete for opportunities in

⁶³ Chapter 12.

⁶⁴ See Commission of the European Communities, Directorate General for Information, 'Cooperation Agreements between the EEC and the Maghreb Countries' (1982).

⁶⁵ Chapter 12.

⁶⁶ *Sarà in sicilia la più grande fabbrica europea di moduli solari*, *Materia Rinnovabile/Renewable Matter*, 26 January 2024.

⁶⁷ S. Jackson, 'China in the Maghreb: Threading the Needle of Algeria and Morocco', *Wilson Center* (5 February 2024).

Algeria, which is now picking and choosing its business partners simply because it can. The tables have turned, and while EU legal scholars justly dissect the past in light of postcolonial insights, the fact remains that some bridges were burnt and no amount of European soul-searching will build them up again.