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Globalism and Sustainable Vineyard Practices

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Globalism and Sustainable Vineyard Practices

Michael Vitiello*

I. INTRODUCTION	623
II. DEVELOPING SUSTAINABLE VINEYARD PRACTICES	627
III. INSOFAR AS POPULAR SUPPORT EXISTS FOR SUSTAINABLE VINEYARD AND WINERY PRACTICES, WHAT IS THE LEGAL CLIMATE LIKE FOR LEGISLATING SUCH PRACTICES IN THE UNITED STATES?.....	634
IV. AN EFFECTIVE EPA	638
V. THE THREAT OF NATIONALISM AND THE HOPE OF GLOBALISM	642
VI. CONCLUSION	647

I. INTRODUCTION

My work on this Article began before the pandemic when I was invited to participate in a program on sustainable agriculture. Hosted by the University of Parma, the program was to be a celebration of food and wine, with a special focus on sustainable agricultural production.¹ Since the pandemic, the ability of sustainable agriculture to gain headlines has lessened.² Nonetheless, sustainable agricultural practices remain important for the health of our planet.³ As a result,

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1. *The Summer School*, U. PARMA, <http://www.summerschool.unipr.it/about-us/22/> (last visited Dec. 9, 2020) (on file with the *University of the Pacific Law Review*) (due to the global COVID-19 pandemic, the 2020 summer program was conducted online).

2. Obviously, the pandemic and the U.S. Presidential election dominated news cycles in 2020. See Mark Jurkowitz & Amy Mitchell, *Cable TV and COVID-19: How Americans Perceive the Outbreak and View Media Coverage Differ by Main News Source*, PEW RES. CTR. (Apr. 1, 2020), <https://www.journalism.org/2020/04/01/cable-tv-and-covid-19-how-americans-perceive-the-outbreak-and-view-media-coverage-differ-by-main-news-source/> (on file with the *University of the Pacific Law Review*). Even now, the pandemic and vaccine roll-out continue to command our national focus. See John R. Allen et al., *The World After the Coronavirus*, FOREIGN POL'Y (Jan. 2, 2021, 6:00 AM), <https://foreignpolicy.com/2021/01/02/2021-coronavirus-predictions-global-thinkers-after-vaccine/> (twelve leading thinkers discussing the virus and predicting its continued effects, one year after the beginning of the outbreak).

3. See Bruce M. Campbell et al., *Agricultural Production as a Major Driver of the Earth System Exceeding Planetary Boundaries*, ECOLOGY & SOC. (2017), <https://doi.org/10.5751/ES-09595-220408> (examining the impact of agricultural production on nine "planetary boundaries:" land-system change, freshwater use, biogeochemical flows, biosphere integrity, climate change, ocean acidification, stratospheric ozone depletion, atmospheric aerosol loading, and introduction of novel entities); Johan Rockström et al., *Sustainable Intensification of Agriculture for Human Prosperity and Global Sustainability*, 46 AMBIO 4, 4

the thesis of this Article remains important.

This Article focuses on a narrow area of international integration and explores how the integration of global wine markets can advance positive environmental goals. The development of sustainable vineyard practices has gained some traction in the United States.⁴ As with efforts to advance sustainable agricultural practices generally, such efforts focus on maintaining quality products while improving the health of the environment.⁵

Expanded demand for wine has increased vineyard acreage in the United States.⁶ Every state has at least one winery.⁷ Acreage in several states, including California, Oregon, and Washington, is vast.⁸ Limiting the use of pesticides and herbicides thus provides significant benefits to everyone, not just wine drinkers, because of improved water quality.⁹

At the same time, developing sustainable vineyard practices presents numerous challenges. To date, regulators and vineyard managers have not established uniform standards defining “sustainable” practices.¹⁰ More importantly, however, efforts to legislate such practices in the United States today face major hurdles. Several levels of government have a role in land management.¹¹ Often, landowners deal with four levels of regulations: cities and towns control some land use, as do counties and states.¹² Especially since the 1970s, the federal government has had a major role in environmental protection.¹³ Creation of the Environmental Protection Agency (“EPA”) has

(2017) (arguing for a “paradigm shift towards sustainable intensification of agriculture” to “reposition[] world agriculture from its current role as the world’s single largest driver of global environmental change to becoming a key contributor of a global transition to a sustainable world”); G. Philip Robertson, *A Sustainable Agriculture?*, DAEDALUS, Fall 2015, at 76, 76 (“Feeding another three billion people in the face of climate change, biodiversity loss, and an environment already saturated with excess nitrogen and other reactive pollutants requires . . . an ecological systems approach that considers sustainable farming practices in the full context of ecosystems and landscapes.”).

4. See *infra* Part II.

5. See *infra* Part II.

6. See Rob McMillan, *State of the Wine Industry Report 2019*, SILICON VALLEY BANK (2019), https://www.svb.com/globalassets/library/images/content/trends_and_insights/reports/wine_report/svb-2019-wine-report (on file with the *University of the Pacific Law Review*).

7. *50 States of Wine (Map)*, WINE FOLLY (July 17, 2019), <https://winefolly.com/lifestyle/50-states-of-wine-infographic/> (on file with the *University of the Pacific Law Review*).

8. See *Wine Production by State 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/wine-production-by-state/> (last visited Dec. 9, 2020) (on file with the *University of the Pacific Law Review*). Not surprisingly, California leads the nation by a wide margin.

9. See George Zalidis et al., *Impacts of Agricultural Practices on Soil and Water Quality in the Mediterranean Region and Proposed Assessment Methodology*, 88 AGRIC., ECOSYSTEMS & ENV’T 137, 141 (2002); *Protecting Water Quality in Vineyards (319h)*, VINEYARD TEAM, <https://www.vineyardteam.org/projects/clean-water-project.php> (last visited Dec. 9, 2020) (on file with the *University of the Pacific Law Review*).

10. See *infra* Part II.

11. See *infra* Part III.

12. See *infra* Part III.

13. See *infra* Part III.

helped the nation improve air and water quality.¹⁴

Most Americans continue to support the EPA and strong environmental policies.¹⁵ Despite that support, the extreme libertarian right-wing gained influence during the George W. Bush and Donald Trump administrations.¹⁶ Even though Congress passed the Environmental Protection Act during Richard Nixon's presidency, and even though many Republicans historically were environmentalists, those days are long gone.¹⁷ Beginning during Ronald Reagan's presidency, years before the Trump Administration, the Republican Party—increasingly aligned with the libertarian right-wing—waged war on science.¹⁸ Many on the right have targeted the EPA and lobbied for disbanding that agency.¹⁹ In contrast, Joe Biden campaigned on addressing climate change.²⁰ Undoing erosion of the EPA that occurred during the Trump administration will take effort, and bolstering efforts to reduce greenhouse gases will be especially necessary.²¹ Even with a Democratic administration, today, the chances for effective national legislation implementing sustainable vineyard practices are

14. See *infra* Part III.

15. Nathan Rott, *How the ERA Became a Victim of Its Own Success*, NAT'L PUB. RADIO (Feb. 17, 2017, 7:50 AM), <https://www.npr.org/2017/02/17/515748401/how-the-epa-became-a-victim-of-its-own-success> (on file with the *University of the Pacific Law Review*).

16. See Juliet Eilperin, *Obama's Former EPA Chief Takes the Helm of Environmental Group That's Sued Trump Nearly 100 Times*, WASH. POST (Nov. 5, 2019), <https://www.washingtonpost.com/climate-environment/2019/11/05/obamas-former-epa-chief-takes-helm-environmental-group-thats-sued-trump-nearly-times/> (on file with the *University of the Pacific Law Review*); Luke Darby, *How Trump Remade the EPA into a Pollution Green-lighting Agency*, GQ (Sept. 6, 2019), <https://www.gq.com/story/trumps-epa-business-vs-environment> (on file with the *University of the Pacific Law Review*); National Geographic Staff, *A Running List of How President Trump is Changing Environmental Policy*, NAT'L GEOGRAPHIC (May 3, 2019), <https://www.nationalgeographic.com/news/2017/03/how-trump-is-changing-science-environment/> (on file with the *University of the Pacific Law Review*); Suzanne Goldenberg, *The Worst of Times: Bush's Environmental Legacy Examined*, THE GUARDIAN (Jan. 16, 2009) (on file with the *University of the Pacific Law Review*).

17. *Republicans Used to Support the EPA, Says Former Administrator*, CTR. PUB. INTEGRITY (Feb. 6, 2015), <https://publicintegrity.org/environment/republicans-used-to-support-the-epa-says-former-administrator/> (on file with the *University of the Pacific Law Review*).

18. Clive Hamilton, *Silencing the Scientists: The Rise of Right-wing Populism*, OUR WORLD (Mar. 2, 2011), <https://ourworld.unu.edu/en/silencing-the-scientists-the-rise-of-right-wing-populism> (on file with the *University of the Pacific Law Review*); Brad Plumer & Coral Davenport, *Science Under Attack: How Trump Is Sidelining Researchers and Their Work*, N.Y. TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/climate/trump-administration-war-on-science.html> (on file with the *University of the Pacific Law Review*).

19. Rebecca Leber, *The Five Battlefronts in Republicans' War on the EPA*, NEW REPUBLIC (Nov. 10, 2014), <https://newrepublic.com/article/120228/what-expect-gop-war-epa> (on file with the *University of the Pacific Law Review*).

20. *The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity*, BIDEN-HARRIS CAMPAIGN, <https://joebiden.com/environmental-justice-plan/#> (last visited Dec. 15, 2020) (on file with the *University of the Pacific Law Review*).

21. Biden has promised to rejoin the Paris Climate Agreement, but the health of our planet still faces significant challenges. Jennifer A. Dlouhy, *What Biden's Win Means for the Paris Climate Agreement*, WASH. POST (Nov. 10, 2020, 9:04 AM), https://www.washingtonpost.com/business/energy/what-bidens-win-means-for-the-paris-climate-agreement/2020/11/10/b420d496-2369-11eb-9c4a-0dc6242c4814_story.html (on file with the *University of the Pacific Law Review*).

slim.²²

There may be a counterweight to eroding environmental protections. Expanded vineyard acreage and the production of high-quality grapes and wines have created an excess of capacity in the United States.²³ Large wine producers have begun developing international markets.²⁴ While entry into the European Union's ("EU") markets presents special challenges,²⁵ American producers' efforts to do so have begun to influence sustainable vineyard practices. The EU's standards for chemical residue are more demanding than those elsewhere, including in the United States.²⁶ Large United States producers have begun meeting those standards for most of their production, not just for wine aimed for the EU.²⁷

Such indirect environmental benefits are not unheard of. For example, in the United States, California's higher emission and fuel standards have forced auto manufacturers to meet those standards, even for sales in states other than California.²⁸ Economies of scale dictate as much.²⁹ A similar process is taking

22. See *infra* Part III.

23. Rob McMillan, *State of the US Wine Industry 2020*, SILICON VALLEY BANK (2020), <https://www.svb.com/globalassets/library/uploadedfiles/reports/svb-2020-state-of-the-wine-industry-report-final.pdf> (on file with the *University of the Pacific Law Review*).

24. Vicki Torres, *China's Growing Demand for Red Wine Fuels U.S. Exports*, EAST WEST BANK, <https://www.eastwestbank.com/ReachFurther/News/Article/Chinas-Growing-Demand-for-Red-Wine-Fuels-US-Exports> (last visited Dec. 15, 2020); *US Wine Exports Total \$1.46 Billion in 2018*, WINE INST. (Apr. 8, 2019), <https://wineinstitute.org/press-releases/u-s-wine-exports-total-1-46-billion-in-2018/> (on file with the *University of the Pacific Law Review*).

25. Entry into EU markets is challenging for several reasons, including the difficulties of meeting EU quality standards and of competing with well-established national wines usually favored by Europeans. RENÉE JOHNSON, CONG. RESEARCH SERV., R43658, *THE U.S. WINE INDUSTRY AND SELECTED TRADE ISSUES WITH THE EUROPEAN UNION* 9, 12–13 (2016).

26. U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-825, *CHEMICAL REGULATION: COMPARISON OF U.S. AND RECENTLY ENACTED EUROPEAN UNION APPROACHES TO PROTECT AGAINST THE RISKS OF TOXIC CHEMICALS* 4 (2007); see also *Organic Production and Products*, EUR. COMMISSION, https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organic-production-and-products_en (last visited Dec. 12, 2020) (on file with the *University of the Pacific Law Review*) (EU organic farming rules on agricultural products, including wine); *Understanding REACH*, EUR. CHEMICALS AGENCY, <https://echa.europa.eu/regulations/reach/understanding-reach> (last visited Jan. 5, 2021) (on file with the *University of the Pacific Law Review*) (explaining EU's regulations and procedures concerning use of hazardous chemicals in manufacturing, importing, and downstream consumer uses).

27. Dana Nigro, *U.S. and Europe Have Different Definitions of Organic Wine*, WINE SPECTATOR (Feb. 24, 2012), <https://www.winespectator.com/articles/us-and-europe-have-different-definitions-of-organic-wine-46432> (on file with the *University of the Pacific Law Review*).

28. David Shepardson, *Trump Finalizes Rollback of Obama-era Vehicle Fuel Efficiency Standards*, REUTERS (Mar. 31, 2020, 7:09 AM), <https://www.reuters.com/article/us-usa-autos-emissions/trump-finalizes-rollback-of-obama-era-vehicle-fuel-efficiency-standards-idUSKBN21I25S> (on file with the *University of the Pacific Law Review*); Hiroko Tabuchi, *General Motors Sides with Trump in Emissions Fight, Splitting the Industry*, N.Y. TIMES (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/climate/general-motors-california-emissions-trump.html> (on file with the *University of the Pacific Law Review*).

29. See Zoë Schlanger, *Automakers Have Agreed to California's Fuel-Efficiency Standards Instead of Trump's*, QUARTZ (July 27, 2019), <https://qz.com/1676268/honda-ford-vw-bmw-agree-to-california-fuel-economy-standards/> (on file with the *University of the Pacific Law Review*); Coral Davenport & Hiroko Tabuchi, *Automakers, Rejecting Trump Pollution Rule, Strike a Deal with California*, N.Y. TIMES (July 25,

place in the wine industry as United States producers attempt to expand their foothold in the EU market.³⁰ This Article explores how efforts to expand export markets may benefit the environment in the United States.

Part II of this Article focuses on efforts to develop sustainable vineyard practices in the United States.³¹ It explores some of the regions where wine industry members have pushed for sustainable practices.³² Part III explores the legal climate in the United States.³³ It provides a rough overview of the interplay of local and federal laws and suggests why national standards will be difficult to achieve even in the best of times.³⁴ Part IV focuses on the right-wing attack on the EPA.³⁵ It suggests that the hostility towards the EPA erodes hope of a coherent environmentally friendly policy at least into the foreseeable future.³⁶ Part V turns to the hope that globalism provides for raising sustainable vineyard practices in the United States.³⁷ Expanding global markets for American wine is forcing United States' producers to achieve higher EU standards.³⁸ Absent retrenchment, quite possible in this current crisis, global trade works indirect pressure to achieve higher standards.

II. DEVELOPING SUSTAINABLE VINEYARD PRACTICES

Clifford P. Ohmart's book *View from the Vineyard: A Practical Guide to Sustainable Winegrape Growing* provides readers with a primer on sustainable vineyard practices.³⁹ He began working in the Lodi, California wine industry in 1995.⁴⁰ Although sustainable practices date to an earlier period, Ohmart came to the wine industry at a time when Americans became increasingly aware of the impact that agriculture generally, and the wine industry specifically, have on the environment.⁴¹

Ohmart's book offers many insights. For example, even defining the term presents a challenge.⁴² He indicates that getting participants in the industry to

2019), <https://www.nytimes.com/2019/07/25/climate/automakers-rejecting-trump-pollution-rule-strike-a-deal-with-california.html> (on file with the *University of the Pacific Law Review*).

30. See Nigro, *supra* note 27.

31. See *infra* Part II.

32. See *infra* Part II.

33. See *infra* Part III.

34. See *infra* Part III.

35. See *infra* Part IV.

36. See *infra* Part IV.

37. See *infra* Part V.

38. See *infra* Part V.

39. CLIFFORD P. OHMART, *VIEW FROM THE VINEYARD: A PRACTICAL GUIDE TO SUSTAINABLE WINEGRAPE GROWING* (2011).

40. *Id.* at xv.

41. See *id.* at 5–9 (briefly explaining the evolution of organic farming and the emergence of sustainable agriculture).

42. *Id.* at 3; see also Roger N. Beachy, *Science and Sustainability: The Emerging Consensus*, 60

agree on a definition is likely impossible.⁴³ Indeed, one of Ohmart's important insights is that wineries can develop differing degrees of sustainable practices—a pragmatic approach that has the overall impact of advancing environmental goals.⁴⁴ Participation to any degree means that the producer will reduce environmental harm.

Sustainable practices may include a variety of techniques: using spiders and other insects or beneficial birds to control weeds and pests;⁴⁵ covering crops and drip irrigation to conserve water;⁴⁶ composting and recycling to reduce waste;⁴⁷ preserving local habitats for flora and fauna to keep the region environmentally healthy;⁴⁸ and purchasing environmentally developed products.

The movement towards sustainable practices had its beginnings in experimentation with organic wines.⁴⁹ At one point, environmentally conscious winemakers experimented with the production and marketing of organic wines.⁵⁰ Organic wines have not yet taken hold in the United States.⁵¹ This is in part because producers were, and continue to be, hesitant to give up all use of chemicals.⁵² A few simple examples make this point: wine producers often need sulfites to kill natural yeast that may produce off-flavors.⁵³ Additionally, producers may need some chemicals in the vineyard to prevent mold when the vineyards receive rain late in the growing season.⁵⁴ Winemakers also often use sulfites to kill potential microorganisms that can cause spoilage or to kill any

BIOSCIENCE 406 (2010).

43. OHMART, *supra* note 39, at 3 (“If I were to assemble 50 people in a room, including growers, environmentalists, scientists, and government regulators, and ask them to define sustainable farming, I would likely get 50 different definitions.”).

44. *Id.* at 9.

45. *Id.* at 154–56; *see also* JO ANN BAUMGARTNER ET AL., SUPPORTING BENEFICIAL BIRDS AND MANAGING PEST BIRDS 38–43 (2019), https://d3n8a8pro7vhmx.cloudfront.net/wildfarmalliance/pages/337/attachments/original/1548794888/1WFA_Support_and_Manage_Birds-for_web.pdf?1548794888 (on file with the *University of the Pacific Law Review*).

46. OHMART, *supra* note 39, at 132–36.

47. *Id.* at 115.

48. *Id.* at 77–85.

49. *Id.* at 16–17.

50. *Id.* at 17–19, 206–07.

51. Pam Strayer, *The Organic Opportunity: Will the U.S. Wine Industry Miss Out?*, WINES & VINES (Jan. 2017), https://winesvinesanalytics.com/sections/printout_article.cfm?article=feature&content=178258 (on file with the *University of the Pacific Law Review*) (“Organic wine is still a niche market in the United States, comprising only 1% of wine sold by volume and 2% of wine by value.”).

52. *See* Andrew Wasley & Amanda Chaparro, *French Wine Industry's Love Affair with Pesticides Blamed for Worker Health Problems*, THE GUARDIAN (Oct. 29, 2015), <https://www.theguardian.com/sustainable-business/2015/oct/29/france-wine-pesticides-organic-workers-vineyards-lawsuits-cancer> (on file with the *University of the Pacific Law Review*).

53. *See* Rémy Charest, *How Sulfites Affect a Wine's Chemistry*, SEVENTYFIVE DAILY (May 16, 2019), <https://daily.seventyfive.com/how-sulfites-affect-a-wines-chemistry/> (on file with the *University of the Pacific Law Review*).

54. *See* Karine Pedneault & Caroline Provost, *Fungus Resistant Grape Varieties as a Suitable Alternative for Organic Wine Production: Benefits, Limits, and Challenges*, 208 SCIENTIA HORTICULTURAE 57 (2016).

residual yeast that might cause “spritz” in the wine or, worse, corks to pop out if fermentation continues after bottling.⁵⁵

Chemical use also differs from region to region in the United States and around the world.⁵⁶ While all fifty states in the United States have wineries,⁵⁷ growing conditions differ wildly across the country as well as within individual states.⁵⁸ Imagine a producer in California who wants to develop an organic wine. In many regions of the state, the climate is warm and dry. Nighttime temperatures drop dramatically (perhaps 40°F; say, from 90°F to 50°F).⁵⁹ Mold and mildew may not present a challenge in such ideal conditions.⁶⁰ But compare that to growing conditions in many southern and eastern states in the United States. In these places, for example, daytime temperatures may exceed 90°F but drop only to 70°F at night.⁶¹ The northeastern states are notoriously humid as well.⁶²

Some environmentally concerned producers make organic wines.⁶³ However, the organic wine industry is minuscule because of hesitation by producers.⁶⁴ It is

55. Daniel Sogg, *Inside Wine: Sulfites*, WINE SPECTATOR (Feb. 19, 2003), <https://www.winespectator.com/articles/inside-wine-sulfites-1573> (on file with the *University of the Pacific Law Review*).

56. Beppi Crosariol, *Which Countries' Wines Have the Least Amount of Pesticides?*, GLOBE & MAIL (Sept. 23, 2015), <https://www.theglobeandmail.com/life/food-and-wine/wine/which-countries-wines-have-the-least-amount-of-pesticides/article26474846/> (on file with the *University of the Pacific Law Review*); see also Gregory V. Jones, *Climate, Terroir, and Wine: What Matters Most in Producing a Great Wine?*, EARTH MAGAZINE (Jan. 9, 2014), <https://www.earthmagazine.org/article/climate-terroir-and-wine-what-matters-most-producing-great-wine> (on file with the *University of the Pacific Law Review*) (discussing chemical compositions of wine-growing soil in different regions).

57. *50 States of Wine (Map)*, *supra* note 7.

58. See Jessica Dupuy, *Examining America's Emerging Wine Regions*, SEVENTYFIVE DAILY (June 19, 2018), <https://daily.seventyfive.com/examining-americas-emerging-wine-regions/> (on file with the *University of the Pacific Law Review*).

59. See generally *NWS Forecast Office Sacramento, CA*, NAT'L WEATHER SERV., NAT'L OCEANIC & ATMOSPHERIC ADMIN., <https://www.weather.gov/sto/> (on file with the *University of the Pacific Law Review*) (regional weather and climate information displaying temperature fluctuations).

60. Since mold and mildew prefer wetter, more humid climates. See Annemiek Schilder, *Weather Ideal for Start of Downy Mildew in Grapes*, MICH. ST. U. (June 23, 2015), https://www.canr.msu.edu/news/weather_ideal_for_start_of_downy_mildew_in_grapes (on file with the *University of the Pacific Law Review*).

61. See, e.g., *Climate Biloxi — Mississippi*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/biloxi/mississippi/united-states/usms0033> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*); *Climate Savannah—Georgia*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/savannah/georgia/united-states/usga1191> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*).

62. See Ian Livingston, *'It's Been Relentless': Smothering Summer Humidity in the Northeast Has Crushed Records*, WASH. POST (Aug. 30, 2018, 11:32 AM), <https://www.washingtonpost.com/news/capital-weather-gang/wp/2018/08/30/its-been-relentless-smothering-summer-humidity-in-the-northeast-has-crushed-records/> (on file with the *University of the Pacific Law Review*).

63. See Kathleen Wilcox, *This Wine Was Brought to You by Bugs*, WINE-SEARCHER (May 30, 2019), <https://www.wine-searcher.com/m/2019/05/this-wine-was-brought-to-you-by-bugs> (on file with the *University of the Pacific Law Review*).

64. Strayer, *supra* note 51.

also so small because of its bad reputation: some notable organic wines are not very good.⁶⁵ As a general matter, wine drinkers reject organic wines after one bad experience.⁶⁶

These kinds of considerations have kept the organic wine industry to a fraction of the overall market.⁶⁷ However, organic winemaking has opened a door for sustainable practices generally. Fortunately, many West Coast producers are joining the move towards sustainable practices.⁶⁸ Washington, Oregon, and California produce 90% of American wines (and California alone produces over 80% of American wines).⁶⁹ Thus, as those states go, so goes the American wine industry.

Environmentally conscious producers have recognized the importance of improved practices that reflect their commitment to fighting global climate change.⁷⁰ Oregon producers have led the move towards sustainable vineyard practices.⁷¹ Oregon became a premier growing region in the 1960s and 1970s.⁷² One of the most important moments in Oregon's wine history took place in 1965: University of California, Davis ("U.C. Davis") enology-viticulture graduate David Lett planted Pinot Noir in the northern Willamette Valley.⁷³ Oregon wines have since blossomed, aided in part by a very strong showing by Oregon wines in a direct competition with Burgundy wines at the 1979 "Wine Olympics" in France.⁷⁴ Lett's Pinot finished third.⁷⁵ In 1980, in direct competition with renowned Burgundy producer Joseph Drouhin, Lett's Pinot came in second.⁷⁶

65. See Geoffrey Jones & Emily Grandjean, *How Organic Wine Finally Caught On*, HARV. BUS. REV. (Apr. 3, 2018), <https://hbr.org/2018/04/how-organic-wine-finally-caught-on> (on file with the *University of the Pacific Law Review*); Rebecca Clarren, *Does Organic Wine Taste Bad?*, SALON (Dec. 1, 2007, 5:11 PM), https://www.salon.com/2007/12/01/organic_wine/ (on file with the *University of the Pacific Law Review*).

66. Jones & Grandjean, *supra* note 65.

67. Strayer, *supra* note 51.

68. Gina Birch, *West Coast Wineries Who Are Making Amazing Sustainable Wines*, USA TODAY (Nov. 20, 2019), <https://www.10best.com/interests/drinks/west-coast-wineries-who-leading-sustainable-wine-california-oregon/> (on file with the *University of the Pacific Law Review*).

69. *United States Wine and Grape Industry FAQs (General Industry Stats 2019)*, NAT'L ASS'N AM. WINERIES, <https://wineamerica.org/policy/by-the-numbers/> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*) (general 2019 wine industry statistics).

70. See Hannah Wallace, *The Next Wave of Sustainability in Wine*, SEVENTYFIVE DAILY (Nov. 12, 2018), <https://daily.seventyfive.com/the-next-wave-of-sustainability-in-wine/> (on file with the *University of the Pacific Law Review*).

71. See *id.*

72. *Oregon Wine History*, OR. WINE BOARD, <https://www.oregonwine.org/about-us/> (last visited Dec. 14, 2020) (on file with the *University of the Pacific Law Review*).

73. *The Search for Site: Risk and Reward*, EYRIE VINEYARDS, <https://eyrievineyards.com/envisioning.shtml> (last visited Dec. 14, 2020) (on file with the *University of the Pacific Law Review*); Harvey Steiman, *Oregon Wine Pioneer David Lett Dies*, WINE SPECTATOR (Oct. 13, 2008), <https://www.winespectator.com/articles/oregon-wine-pioneer-david-lett-dies-4390> (on file with the *University of the Pacific Law Review*).

74. *History of Oregon Pinot*, ERATH WINERY, <https://www.erath.com/oregonpinot/history> (last visited Dec. 15, 2020) (on file with the *University of the Pacific Law Review*).

75. *Id.*

76. *Id.* Drouhin was so impressed that the Drouhin company bought acreage in the Dundee Hills in the

Location and timing were ideal to advance sustainable vineyard practices. Oregonians are among the most environmentally conscious Americans.⁷⁷ The high quality (and often pricey) Pinot Noir wines attract enough attention to have established a reasonably profitable market.⁷⁸ The success of Oregon wines took place as Americans were discovering quality wines.⁷⁹ Lett's Eyrie Winery and Domain Drouhin are not the only well-regarded vineyards producing sustainable wines. Wineries like Sokol Blosser have been at the cutting edge of the sustainability movement.⁸⁰

Similarly, Washington State wineries have supported sustainable practices. The Washington Winegrowers Association provides guidelines at its website.⁸¹

Without participation from California growers in such efforts, sustainable practices would fill a niche market at best due to the sheer size of California's wine acreage (as well as its quality).⁸² Fortunately, organizations in California also promote sustainable practices.⁸³ The Enology and Viticulture Department at U.C. Davis deserves more credit than any other organization in the United States for putting American—and especially Californian—wines on both national and international maps.⁸⁴ Its faculty members run programs aimed at developing sustainable practices.⁸⁵ Like other organizations interested in sustainability, some

northern Willamette Valley, where it continues to produce premium Burgundy style Pinots and Chardonnays. *French Vintner Buys Land in Oregon*, J. COM. ONLINE (Sept. 3, 1987, 8:00 PM) https://www.joc.com/maritime-news/french-vintner-buys-land-oregon_19870903.html (on file with the *University of the Pacific Law Review*); Harvey Steiman, *Domaine Drouhin Buys 279-Acre Vineyard in Oregon*, WINE SPECTATOR (Dec. 23, 2013), <https://www.winespectator.com/articles/domaine-drouhin-buys-279-acre-vineyard-in-oregon-49411> (on file with the *University of the Pacific Law Review*).

77. See Brent S. Steel et al., *Environmental Value Considerations in Public Attitudes About Alternative Energy Development in Oregon and Washington*, 55 ENVTL. MGMT. 634 (2015).

78. Paul Gregutt, *The State of Oregon Pinot Noir*, WINE ENTHUSIAST (Nov. 27, 2018), <https://www.winemag.com/2018/11/27/the-state-of-oregon-pinot-noir/> (on file with the *University of the Pacific Law Review*).

79. 1966 was a turning point in the United States. For the first time, Americans began consuming more table wines than fortified wines. THOMAS PINNEY, *THE MAKERS OF AMERICAN WINE: A RECORD OF TWO HUNDRED YEARS* 226 (2012).

80. See Alex Sokol Blosser & Alison Sokol Blosser, *Our Commitments to Sustainability*, SOKOL BLOSSER WINERY, <https://sokolblosser.com/who-we-are/#our-commitment> (last visited Dec. 14, 2020) (on file with the *University of the Pacific Law Review*).

81. *Sustainability*, WASH. WINEGROWERS ASS'N, <https://www.wawinegrowers.org/page/Sustainability> (last visited Jan. 31, 2021) (on file with the *University of the Pacific Law Review*).

82. See McMillan, *supra* note 23, at 17–25; Shana Clarke, *10 Must-Know Facts About California Wines*, WINE COUNTRY (July 18, 2019), <https://www.winecountry.com/blog/california-wine-facts/> (on file with the *University of the Pacific Law Review*).

83. *Sustainable Winegrowing*, WINE INST., <https://discovercaliforniawines.com/sustainable-winegrowing/> (last visited Dec. 14, 2020) (on file with the *University of the Pacific Law Review*).

84. *How California Became a Food and Wine Lover's Dream*, U.C. (Mar. 28, 2018), <https://www.universityofcalifornia.edu/news/california-food-wine> (on file with the *University of the Pacific Law Review*).

85. See, e.g., Symposium, *Current Issues in Sustainable Winemaking: Best Practices, Barriers, and Future Trends*, U.C. DAVIS (Apr. 16, 2015), <https://wineserver.ucdavis.edu/extension/ve-extension/campus/past-events/2015/current-issues-sustainable-winemaking-best-practices-barriers-and-future-trends> (on file with the *University of the Pacific Law Review*).

U.C. Davis professors focus on the economics of such practices as well.⁸⁶

Readers familiar with the culture of various states throughout America may recognize that Washington, Oregon, and California are among the most liberal states in the nation.⁸⁷ All have strong environmental-protection records.⁸⁸ While one would expect industry participants in those states to favor effective industry practices, the trend towards sustainable practices seems to be gaining a toehold.⁸⁹

Forbes Magazine recently wrote about some of these positive trends.⁹⁰ Its article reports on a presentation at an annual industry meeting and a presentation by one of the co-founders of Wine Opinions (“WO”). According to Christian Miller, founder of Full Glass Research, a survey of WO’s 457 members indicates that demand for sustainably produced products increases every year.⁹¹ Apparently, a majority in the American wine trade consider sustainability when they make new purchases and lay out development plans.⁹² If one focuses on California, numbers look rosy—at least according to the Wine Institute, the trade organization for the California industry.⁹³

The California Wine Institute states that California produces 60% of the wine sold in the United States and is the fourth largest producer in the world.⁹⁴ The estimated retail value in United States sales exceeds \$40 billion.⁹⁵ Notably, 85% of California’s wine is produced in a Certified California Sustainable winery. Within the industry, the younger generation seems more attuned to sustainable

86. *See id.*

87. *See* David Sarasohn, *The Rise of West Coast Democrats*, NEW REPUBLIC (Sept. 26, 2018), <https://newrepublic.com/article/151146/rise-west-coast-democrats> (on file with the *University of the Pacific Law Review*); *see also* *Political ideology by state (2014)*, PEW RES. CTR. (2014), <https://www.pewforum.org/religious-landscape-study/compare/political-ideology/by/state/> (on file with the *University of the Pacific Law Review*) (30% of people in Washington identifying as “liberal,” 30% in Oregon, and 29% in California. *Cf.* 12% in Alabama and 14% in Louisiana).

88. Rich Ehsen, *State Net Environmental Law News: California, Washington and Oregon Sign Climate Pact*, ST. NET CAP. J. (Nov. 4, 2013), <https://www.lexisnexis.com/legalnewsroom/environmental/b/environmentalregulation/posts/state-net-environmental-law-news-california-washington-and-oregon-sign-climate-pact> (on file with the *University of the Pacific Law Review*). *See generally* JOHN H. SPIERS, *SMARTER GROWTH: ACTIVISM AND ENVIRONMENTAL POLICY IN METROPOLITAN WASHINGTON* (2018); DAVID VOGEL, *CALIFORNIA GREENIN’ : HOW THE GOLDEN STATE BECAME AN ENVIRONMENTAL LEADER* (2018).

89. Thomas Pellechia, *The U.S. Wine Industry Focuses on a Sustainable Future*, FORBES (Feb. 1, 2017, 10:28 AM), <https://www.forbes.com/sites/thomaspellechia/2017/02/01/the-u-s-wine-industry-focuses-on-a-sustainable-future/?sh=18b9e7cb51e2> (on file with the *University of the Pacific Law Review*).

90. *Id.*

91. *Id.*, *see also* Press Conference, Christian Miller, Wine Institute, Sustainability Research (Jan. 25, 2017), <https://app.box.com/s/eb4hci3ox6ug2g39fygivaivr7pqiwz6> (on file with the *University of the Pacific Law Review*) (summary of sustainability surveys).

92. Miller, *supra* note 91.

93. *See California Wine Sales Reach \$43.6 Billion in U.S. Market in 2019*, WINE INST. (July 9, 2020), <https://wineinstitute.org/press-releases/california-wine-sales-reach-43-6-billion-in-u-s-market-in-2019/> (on file with the *University of the Pacific Law Review*).

94. *Id.*

95. *Id.*

practices.⁹⁶

Before turning to legal issues relating to regulation of the industry, one needs to keep these positive developments in context. As discussed above, “sustainable practices” lacks a clear definition.⁹⁷ Surveys tend to overstate compliance with sustainable practices.⁹⁸ For certain consumers of sustainable wines, drinking a bottle of fine Eyrie Pinot Noir may be worth paying upwards of \$35,⁹⁹ but most wine purchasers are sensitive to price.¹⁰⁰ Insofar as sustainable vineyard practices increase cost, vineyards and wineries have disincentives to achieve the highest level of sustainable practices.

In addition, many of the largest producers like Gallo and Bronco have many labels.¹⁰¹ Those large companies, like most publicly traded companies in the United States, suffer from a trend that began about fifty years ago: influenced by economists like Milton Friedman, corporate executives adopted the view that their only goal was to maximize shareholder profits.¹⁰² As a result, corporations following such a philosophy abandoned shared community goals unless they advanced corporate profits.¹⁰³ Indicative, perhaps, of this profits-first mentality is the industry’s reaction to efforts by California regulators to require wine producers to list chemicals added to their wine on their labels.¹⁰⁴

96. See, e.g., Deborah Parker Wong, *Bronco’s Bright Green Future*, VINEYARD & WINERY MGMT., May-June 2016, at 74, <https://deborahparkerwong.files.wordpress.com/2016/06/franzia-bronco-may-2016.pdf> (on file with the *University of the Pacific Law Review*).

97. OHMART, *supra* note 39, at 3.

98. See Daniel Bases, *Business Sustainability Still Elusive-Study*, REUTERS (June 24, 2010, 4:30 PM), <https://www.reuters.com/article/investing-sustainability-survey-idUSN2412704020100625> (on file with the *University of the Pacific Law Review*).

99. *Eyrie Pinot Noir, 2014*, TOTAL WINE & MORE, <https://www.totalwine.com/wine/red-wine/pinot-noir/eyrie-pinot-noir/p92674750> (last visited Dec 15, 2020) (on file with the *University of the Pacific Law Review*).

100. Liz Thach & Janeen E. Olsen, *Profiling the High Frequency Wine Consumer by Price Segmentation in the US Market*, 4 WINE ECON. & POL’Y 53, 55–56 (2015).

101. *The Big List: Brands Owned by Huge, Hulking Corporations, Spring 2018 Update*, WINE FOR NORMAL PEOPLE (May 1, 2018), <https://www.winefornormalpeople.com/the-big-list-brands-owned-by-huge-hulking-corporations-spring-2018-update/> (on file with the *University of the Pacific Law Review*).

102. John Friedman, *Milton Friedman Was Wrong About Corporate Social Responsibility*, HUFFINGTON POST (Aug. 12, 2013), https://www.huffpost.com/entry/milton-friedman-was-wrong_b_3417866 (on file with the *University of the Pacific Law Review*); see Milton Friedman, *A Friedman Doctrine—the Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-so-cial-responsibility-of-business-is-to.html> (on file with the *University of the Pacific Law Review*). See generally ROBERT CHERNOMAS & IAN HUDSON, *THE PROFIT DOCTRINE: ECONOMISTS OF THE NEOLIBERAL ERA* (2017).

103. Taylor Tepper, *Milton Friedman on the Social Responsibility of Business, 50 Years Later*, FORBES (Sept. 16, 2020, 8:23 AM), <https://www.forbes.com/advisor/investing/milton-friedman-social-responsibility-of-business/> (on file with the *University of the Pacific Law Review*); Colin Mayer, Leo E. Strine Jr. & Jaap Winter, *50 Years Later, Milton Friedman’s Shareholder Doctrine is Dead*, FORTUNE (Sept. 13, 2020, 2:00 AM), <https://fortune.com/2020/09/13/milton-friedman-anniversary-business-purpose/> (on file with the *University of the Pacific Law Review*).

104. Marc E. Sorini, *California Court of Appeal Holds That “Safe Harbor” Defense Precludes Suit Based on Presence of Inorganic Arsenic in Wines*, NAT’L L. REV. (June 1, 2018), <https://www.natlawreview.com/article/california-court-appeal-holds-safe-harbor-defense-precludes-suit-based->

Given this corporate culture in the United States, large winery corporations are likely to follow sustainable practices only if the right set of incentives are in place. In the following part, this Article turns to some of the complex legal hurdles facing supporters of sustainable practices in the industry.¹⁰⁵ This complexity makes wholesale regulation difficult at best.

III. INSOFAR AS POPULAR SUPPORT EXISTS FOR SUSTAINABLE VINEYARD AND WINERY PRACTICES, WHAT IS THE LEGAL CLIMATE LIKE FOR LEGISLATING SUCH PRACTICES IN THE UNITED STATES?

Traditionally, one might expect the United States Congress or state legislatures to adopt legislative policies requiring sustainable vineyard and winery practices.¹⁰⁶ Such legislation would force compliance with best practices.¹⁰⁷ Indeed, as developed in the next part, for many years the federal EPA worked with state regulators to regulate in ways that led to cleaner air and improved water quality.¹⁰⁸ However, as developed more fully below, the industry has captured the agency and gutted its regulatory power (this is especially true under recent Republican administrations, including George W. Bush's and Donald Trump's administrations).¹⁰⁹ As a result, expecting national standards on sustainable vineyard practices is unrealistic. This Part focuses on different legislative solutions and problems.

The Law of Hazardous Wastes and Toxic Substances provides a look into some environmental regulations relating to sustainable vineyards and winery practices.¹¹⁰ It provides a comprehensive overview of federal regulation of hazardous and toxic substances. Of course, not all the hazardous and toxic

presence (on file with the *University of the Pacific Law Review*); Jon Bonné, *The Missing Ingredient in Wine*, SF GATE (OCT. 10, 2012, 9:35 AM), <https://insidescoopsf.sfgate.com/blog/2012/10/10/the-missing-ingredient-in-wine/> (on file with the *University of the Pacific Law Review*).

105. See *infra* Part III.

106. See Mary Graham, *Environmental Protection & the States: "Race to the Bottom" or "Race to the Bottom Line"?*, BROOKINGS INST. (Dec. 1, 1998), <https://www.brookings.edu/articles/environmental-protection-the-states-race-to-the-bottom-or-race-to-the-bottom-line/> (on file with the *University of the Pacific Law Review*); see also Robinson Meyer, *How the U.S. Protects the Environment, from Nixon to Trump*, THE ATLANTIC (Mar. 29, 2017), <https://www.theatlantic.com/science/archive/2017/03/how-the-epa-and-us-environmental-law-works-a-civics-guide-pruitt-trump/521001/> (on file with the *University of the Pacific Law Review*).

107. See Meyer, *supra* note 106.

108. See *infra* Part IV.

109. See Branko Marcetic, *The Long War on the EPA*, JACOBIN (Feb. 3, 2017), <https://jacobinmag.com/2017/02/trump-epa-environment-conservation-reagan-bush> (on file with the *University of the Pacific Law Review*). Despite earlier Republican Presidents' fights against the EPA, some have warned against the even more extreme measures under Trump. Courtney Lindwall, *Three Former Republican EPA Administrators Are Sounding the Alarm*, NAT'L RESOURCES DEF. COUNCIL (June 19, 2019), <https://www.nrdc.org/stories/three-former-republican-epa-administrators-are-sounding-alarm> (on file with the *University of the Pacific Law Review*).

110. JOHN G. SPRANKLING & RACHAEL E. SALCIDO, *THE LAW OF HAZARDOUS WASTES AND TOXIC SUBSTANCES IN A NUTSHELL* (3d ed. 2018).

regulations discussed in the book relate to substances used in wine industry practices. However, in the index, the book lists hundreds of federal statutes and regulatory provisions addressing such substances.¹¹¹

As detailed in the book, some laws already in place regulate the use of herbicides and pesticides.¹¹² Other regulations deal with water management. While the book does not thoroughly review local ordinances and regulations at the state or citizen-enforcement levels, such provisions exist as well.¹¹³ Much existing regulation does not focus specifically on the wine industry.

With all of that said, *The Law of Hazardous Wastes and Toxic Substances* suggests the enormous complexity of regulating toxic and hazardous substances. Here is a summary suggesting the complexity of the regulatory climate:

[Regulation of hazardous and toxic substances involves] the overlap of law, science, economics and public policy. . . . The text of the principal federal statutes addressed in this book occupy over 1,000 single-spaced pages in West's *Selected Environmental Law Statutes*. In turn, these statutes are interpreted by thousands of pages of regulations, judicial opinions, administrative decisions, and guidance documents. . . .¹¹⁴

As this summary suggests, states and the federal government have numerous laws in place that might apply to vineyard and winery practices. Many, if not most, of those laws are not fine-tuned to address the unique challenges in the wine industry. However, there are problems that are far more fundamental.

One aspect of federal law may gut the effectiveness of the federal EPA: federal environmental legislation allows agencies to consider economic feasibility.¹¹⁵ Such concerns are legitimate; however, they reflect the way in which big-money players influence legislation as it moves through Congress. One can find many examples of that kind of influence. When agencies attempt to regulate, they must post proposed regulations and accept public comment.¹¹⁶ The industry, faced with losing the use of potentially dangerous chemicals, often

111. *Id.* at XXXVII–LVIII (Table of Statutes & Table of Regulations).

112. *Id.* at 40–58 (Federal Insecticide, Fungicide, and Rodenticide Act).

113. *Id.* at 13–14.

114. *Id.* at V.

115. *E.g.*, Safe Drinking Water Act of 1996, 42 U.S.C. § 300f(1)(C)(i) (2021) (defining a maximum level of contaminants in a public water system “if, in the judgment of the [EPA] Administrator, it is *economically* and technologically feasible to ascertain the level of such contaminant in water in public water systems”) (emphasis added); 33 U.S.C. § 1311 (2021) (Clean Water Act pollution-control regulations requiring the “best available technology *economically achievable*”) (emphasis added); *see also* Andy McGlashen, *Science Loses Ground to Economics with New Endangered Species Act Rules*, AUDUBON SOC’Y (Aug. 12, 2019), <https://www.audubon.org/news/science-loses-ground-economics-new-endangered-species-act-rules> (on file with the *University of the Pacific Law Review*) (describing new Trump Administration changes to Endangered Species Act that allow economic concerns to “to shape decisions about whether species receive protection under the law”).

116. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 523–24 (1978) (discussing 5 U.S.C. § 553 “notice-and-comment” rulemaking).

frustrates these attempts.¹¹⁷ They can do so by offering competing studies and by emphasizing the economic impact that adverse regulations will have on the industry.¹¹⁸

Closely related to the previous problem is the risk of agency or regulatory “capture.”¹¹⁹ Agency or regulatory capture occurs when the regulated industry gains too much influence on the regulating agency, such that the agency is effectively “captured” by the industry it is supposed to regulate.¹²⁰ While some closeness between an agency and its regulated industry is beneficial and can provide a depth of information about the industry to the agency,¹²¹ too close a relationship can foster undue influence on the agency.¹²² Because the regulated parties tend to know more about the intricate details of the industry than the general public does, they are often able to lobby the agency for their special interests while keeping this intent under the public radar.¹²³ The agency might end up acting more for the industry’s unfettered self-interest, rather than in furtherance of public interest, and may thereby substantially fail to enforce the regulations it promulgates.¹²⁴ Agency or regulatory capture becomes more likely as members of the regulated industry become more powerful.¹²⁵ Given the structure of the wine industry in the United States, regulatory capture is probable.

The *State of the Wine Industry Report* includes a great deal of information about wine consumption and other aspects of wine drinking in the United States.¹²⁶ It also includes data about the sheer size of some of the largest producers in the United States.¹²⁷ Organizations like Gallo dominate the

117. See, e.g., Puneet Kollipara, *The Bizarre Way the U.S. Regulates Chemicals – Letting Them on the Market First, Then Maybe Studying Them*, WASH. POST (Mar. 19, 2015, 5:32 AM), <https://www.washingtonpost.com/news/energy-environment/wp/2015/03/19/our-broken-congress-latest-effort-to-fix-our-broken-toxic-chemicals-law/> (on file with the *University of the Pacific Law Review*).

118. See Dion Casey, *Agency Capture: The USDA’s Struggle to Pass Food Safety Regulations*, 7 KAN. J.L. & PUB. POL’Y 142, 142 (1997); see also David Hatch, *Industry-Funded Studies and the Skewing of America*, TARBELL (Apr. 24, 2018), <https://tarbell.org/2018/04/industry-funded-studies-and-the-skewing-of-america/> (on file with the *University of the Pacific Law Review*) (covering numerous examples of industry-funded studies intended to affect public opinion and regulatory approval).

119. See Nicholas Bagley & Richard L. Revesz, *Centralized Oversight of the Regulatory State*, 106 COLUM. L. REV. 1260, 1284–90 (2006) (short history of agency capture theory).

120. See Nicholas Bagley, *Agency Hygiene*, 89 TEX. L. REV. 1, 2 (2010) (agency capture is “a shorthand for the phenomenon whereby regulated entities wield their superior organizational capacities to secure favorable agency outcomes at the expense of the diffuse public”).

121. See generally Harold F. O’Keefe, *Food and Drug Administration Industry Information Programs*, 21 FOOD DRUG COSM. L.J. 52 (1966).

122. See, e.g., Randall G. Holcombe, *QE3: An Example of Regulatory Capture*, INDEP. INST. (Sept. 17, 2012, 9:02 AM), <https://blog.independent.org/2012/09/17/qe3-an-example-of-regulatory-capture/> (on file with the *University of the Pacific Law Review*).

123. Casey, *supra* note 118, at 143.

124. See *id.*

125. See JAMES Q. WILSON, *THE POLITICS OF REGULATION* 372–94 (1980).

126. McMillan, *supra* note 6.

127. *Id.* at 19 (showing “eight-month performance of the seven largest California wineries, which should typically account for about 68 to 70 percent of total annual US wine sales”).

industry.¹²⁸ Such large corporate wine businesses can, if they have not already, capture regulatory agencies despite the goals of smaller boutique wineries and members of society generally.

A third problem is that even in states where environmental protections have broad political support, federal law may preempt a state's more stringent standards.¹²⁹ California's regulation of air pollution provides a perfect example. For many years, California, a state with very strong support for environmental regulations, applied for gasoline efficiency standards that were more stringent than nationally dictated standards.¹³⁰ The Trump administration vowed to withdraw California's waiver and to force it to accept national standards.¹³¹ The general point is that, if Congress or the relevant regulatory agency chooses to do so, federal law may preempt states that want to increase environmental standards.¹³²

Illustrative of these kinds of problems is water management. Where private water rights relating to appropriation and use of water as a resource are almost exclusively a matter of state law and vary greatly from state to state, the federal government regulates pollutant discharge via the Clean Water Act.¹³³ The Clean Water Act requires each state to establish and review its own specific water quality standards, subject to regulations ultimately administered by the EPA.¹³⁴ At the same time, municipal and local regulations exist as well. Most recently, during extended periods of drought, farmers have overused water in the underground aquifer, causing a host of problems.¹³⁵ For example, in some areas, soil subsidence has caused difficulties, putting some important projects at risk.¹³⁶ Further, replenishing the aquifer presents challenges: even after drought, the aquifer remains below historical levels.¹³⁷

The previous discussion presents the difficulty in regulating agriculture generally and the wine industry specifically. Effective regulation is not merely a

128. *See id.* (E. & J. Gallo Winery shipped roughly 50 billion more gallons of wine than the next-highest-producing California winery in the first eight months of 2018).

129. Comment, *Preemption Doctrine in the Environmental Context: A Unified Method of Analysis*, 127 U. PA. L. REV. 197, 197 (1978) ("State legislation enacted for the purpose of environmental protection is particularly susceptible to the challenge that the exercise of state authority has encroached on federal interests.").

130. ROBIN KUNDIS CRAIG, ENVIRONMENTAL LAW IN CONTEXT 656 (4th ed. 2016).

131. Coral Davenport, *Trump to Revoke California's Authority to Set Stricter Auto Emissions Rules*, N.Y. TIMES (Sept. 17, 2019), <https://www.nytimes.com/2019/09/17/climate/trump-california-emissions-waiver.html> (on file with the *University of the Pacific Law Review*).

132. *See* Comment, *supra* note 129, at 197.

133. 33 U.S.C. §§ 1251–1387.

134. 33 U.S.C. § 1313; *see also* GREGORY S. WEBER, JENNIFER L. HARDER & BENNET L. BEARDEN, CASES AND MATERIALS ON WATER LAW 554–58 (9th ed. 2014).

135. ARTHUR L. LITTLEWORTH & ERIC L. GARNER, CALIFORNIA WATER 88 (3d ed. 2019).

136. *Id.* at 80–81 (photographs of soil subsidence in California's Central Valley from 1925 to 1977 and from 1988 to 2013).

137. *Id.* at 88 ("By early 2014, groundwater levels throughout [California] had reached all-time historic lows, while many areas lacked adequate groundwater monitoring.").

question of an environmentally motivated state passing best practices for the industry. Those interested in effective regulation must overcome major hurdles. The economic influence of big corporate players will likely make uniform regulation difficult.¹³⁸ Beyond that, even highly motivated state regulators must work with federal agencies, who may not share the same environmental goals.¹³⁹

Many politicians—typically, but not always, on the right-wing—and some serious economic policy wonks argue that state and federal governments have over-regulated industries in the United States.¹⁴⁰ Often, they can point to regulations that seem foolish to individuals with common sense.¹⁴¹ While some regulations are excessive, the Republican Party and others on the libertarian right-wing of the political spectrum have won elections with promises of cutting “red tape.”¹⁴² Given that reality, environmentally friendly legislators may have difficulty in pushing a reform agenda through the relevant legislatures.

In the next part, I turn to recent Republican administration efforts to gut the EPA and explore how that may prevent the expansion of sustainable practices in the American wine industry.¹⁴³

IV. AN EFFECTIVE EPA

Older Americans may remember environmental problems the United States faced before the creation of the EPA.¹⁴⁴ Many major cities had choking air pollution.¹⁴⁵ Many Americans faced risks to their clean water supply. In the 1950s and 1960s, politicians from both political parties advocated for federal environmental legislation.¹⁴⁶

“Conservative” President Richard Nixon created the EPA even before

138. See *supra* Part II.

139. See Steve Cohen, *The States Resist Trump’s Environmental Agenda*, COLUM. U. EARTH INST. (May 7, 2018), <https://blogs.ei.columbia.edu/2018/05/07/states-resist-trumps-environmental-agenda/> (on file with the *University of the Pacific Law Review*).

140. See, e.g., Ben Adler, *Why Is Trump So Fixated on Abolishing the EPA?*, GRIST (May 20, 2016), <https://grist.org/politics/why-is-trump-so-fixated-on-abolishing-the-epa/> (on file with the *University of the Pacific Law Review*); Sean Hackbarth, *3 Potent Arguments Against EPA’s Carbon Regulations*, U.S. CHAMBER COM. (July 29, 2014, 5:30 PM), <https://www.uschamber.com/above-the-fold/3-potent-arguments-against-epa-s-carbon-regulations> (on file with the *University of the Pacific Law Review*).

141. E.g., Ryan Young, *This Week in Ridiculous Regulations*, COMPETITIVE ENTERPRISE INST. (Nov. 16, 2020), <https://cei.org/blog/this-week-in-ridiculous-regulations-186/> (on file with the *University of the Pacific Law Review*) (recurring blog series of purported “ridiculous regulations” published in the *Federal Register*).

142. *President Donald J. Trump is Following Through on His Promise to Cut Burdensome Red Tape and Unleash the American Economy*, WHITE HOUSE (Oct. 17, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-following-promise-cut-burdensome-red-tape-unleash-american-economy/> (on file with the *University of the Pacific Law Review*).

143. See *infra* Part IV.

144. See Meyer, *supra* note 106.

145. See Kristie Ross, James F. Chmiel, & Thomas Ferkol, *The Impact of the Clean Air Act*, 161 J. PEDIATRICS 781, 781 (2012).

146. Meyer, *supra* note 106 (Clean Air Act (1970) and Clean Water Act (1972) were “popular, bipartisan bills”).

Congress enacted legislation to establish the agency.¹⁴⁷ The EPA's jobs include environmental assessment, research, and education.¹⁴⁸ The agency has the authority to create regulations and to enforce them, even criminally.¹⁴⁹ Its staff, even with recent efforts by the Republican Party to curtail the EPA's power, exceeds 15,000 employees.¹⁵⁰ Many of those are engineers, scientists, and environmental specialists.¹⁵¹

For most of its history, the EPA has earned the support of nearly all Americans.¹⁵² It has helped improve air and water quality, and its scientists have had authorization to follow good scientific practices and to prepare scientifically sound reports.¹⁵³ Importantly, the agency also appropriately weighed in on climate change.¹⁵⁴

Large percentages of Americans support the agency.¹⁵⁵ At one point, the overwhelming percentage of Americans recognized the reality of climate change, global warming, and the risks to the sustainability of our planet.¹⁵⁶ In the past decade, climate change has become a divisive political issue.¹⁵⁷

However, many business interests have opposed regulations generally and have targeted the EPA.¹⁵⁸ Several well-researched books have chronicled the switch in the politics of the Republican Party. Right-wing libertarian executives, think tanks, and other organizations have worked hard to change the regulatory

147. *Id.*; see also Jonathan H. Adler, *The Conservative Record on Environmental Policy*, 39 NEW ATLANTIS 133, 134 (2013).

148. See *What Kind of People Work at EPA?*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/careers/what-kind-people-work-epa> (last visited Dec. 16, 2020) (on file with the *University of the Pacific Law Review*).

149. See *The Basics of the Regulatory Process*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/basics-regulatory-process> (last visited Dec. 16, 2020) (on file with the *University of the Pacific Law Review*).

150. U.S. ENVTL. PROTECTION AGENCY, *supra* note 148.

151. *Id.*

152. Meyer, *supra* note 106.

153. See SCI. INTEGRITY COMM., U.S. ENVTL. PROT. AGENCY, PUB. NO. 601B17001, SCIENTIFIC INTEGRITY POLICY FOR TRANSPARENT & OBJECTIVE SCIENCE (2018).

154. *Environmental Protection Agency*, U.S. GLOBAL CHANGE RES. PROGRAM, <https://www.globalchange.gov/agency/environmental-protection-agency> (last visited Dec. 15, 2020) (on file with the *University of the Pacific Law Review*).

155. Meyer, *supra* note 106.

156. Patrick J. Egan & Megan Mullin, *Climate Change: US Public Opinion*, 20 ANN. REV. POL. SCI. 209, 212 (2017).

157. See Cary Funk & Meg Hefferon, *U.S. Public Views on Climate and Energy*, PEW RES. CTR. (Nov. 25, 2019), <https://www.pewresearch.org/science/2019/11/25/u-s-public-views-on-climate-and-energy/> (on file with the *University of the Pacific Law Review*) (90% of U.S. adults who identify as Democrat or leaning-Democrat think the federal government is doing too little to reduce the effects of climate change, whereas 39% of Republicans or leaning-Republicans think so).

158. See, e.g., *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 313 (2014) (various state and industry groups challenging EPA's regulations under the Clean Air Act as arbitrary and capricious). See generally SHELDON KAMIENIECKI, CORPORATE AMERICA AND ENVIRONMENTAL POLICY: HOW OFTEN DOES BUSINESS GET ITS WAY? (2006).

climate in the United States.¹⁵⁹ Individuals like Charles Koch have spent many millions of dollars to influence the Republican Party.¹⁶⁰

This process began well before the 2020 election. Although some Americans tend to forget, George W. Bush advanced many extreme right-wing positions during his presidency.¹⁶¹ The trend hastened after Barack Obama's election.¹⁶² The rise of the Tea Party in the United States is falsely portrayed as a grassroots movement; the Koch brothers' money boosted that organization.¹⁶³

The influence of the right-wing in the United States has spread to the federal courts as well. Efforts began years ago to develop right-wing candidates who had credentials justifying consideration for appointment to the federal court bench.¹⁶⁴ Most noticeable are Trump's three appointments to the Supreme Court,¹⁶⁵ but Trump and Senator Majority Leader Mitch McConnell were proudest of their ability to fill large numbers of lower federal court seats with right-wing judges.¹⁶⁶

Organizations on the far right are not "conservative" in any traditional sense.¹⁶⁷ True conservatives (à la Englishman Edmund Burke) believe in good, even if small, government.¹⁶⁸ In fact, many traditional conservatives have left the

159. *E.g.*, NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT'S STEALTH PLAN FOR AMERICA* (2017); JANE MAYER, *DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT* (2017). These are only two of many books detailing the influence of the far right wing on American politics—most notably on the Republican Party.

160. *War on the EPA*, FRONTLINE (PBS television broadcast Oct. 11, 2017), <https://www.pbs.org/wgbh/frontline/film/war-on-the-epa/transcript/> (on file with the *University of the Pacific Law Review*). See generally CHRISTOPHER LEONARD, *KOCHLAND: THE SECRET HISTORY OF KOCH INDUSTRIES AND CORPORATE POWER IN AMERICA* (2019).

161. See Branko Marcetic, *The George W. Bush Administration Lives on in Donald Trump*, JACOBIN (Aug. 9, 2020), <https://jacobinmag.com/2020/08/george-bush-administration-donald-trump-dhs-ice> (on file with the *University of the Pacific Law Review*).

162. See Dominic Teirney, *Is Trump Obama's Dark Doppelgänger?*, THE ATLANTIC (Mar. 17, 2016), <https://www.theatlantic.com/politics/archive/2016/03/is-trump-obamas-doppelganger/474108/> (on file with the *University of the Pacific Law Review*).

163. Tim Mak, *Koch Brothers, Behind Tea Party Wave, Face Democrats' Rising Tide in 2018*, NAT'L PUB. RADIO (Jan. 30, 2018, 5:00 AM), <https://www.npr.org/2018/01/30/581730998/koch-brothers-behind-tea-party-wave-face-democrats-rising-tide-in-2018> (on file with the *University of the Pacific Law Review*).

164. See Dylan Matthews & Byrd Pinkerton, *The Incredible Influence of the Federalist Society, Explained*, VOX (June 3, 2019, 9:00 AM), <https://www.vox.com/future-perfect/2019/6/3/18632438/federalist-society-leonard-leo-brett-kavanaugh> (on file with the *University of the Pacific Law Review*).

165. *Current Members*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographies.aspx> (last visited Dec. 19, 2020) (on file with the *University of the Pacific Law Review*).

166. Melissa Quinn, *Trump's Imprint on Federal Courts Bould Be his Enduring Legacy*, CBS NEWS (Apr. 6, 2020, 9:48 AM), <https://www.cbsnews.com/news/trump-federal-judges-judiciary-enduring-legacy/> (on file with the *University of the Pacific Law Review*).

167. See, *e.g.*, David Brooks, *The Rotting of the Republican Mind*, N.Y. TIMES (Nov. 26, 2020), <https://www.nytimes.com/2020/11/26/opinion/republican-disinformation.html> (on file with the *University of the Pacific Law Review*); see Perry Bacon Jr., *The Republican Party Has Changed Dramatically Since George W. Bush Ran It*, FIVETHIRTYEIGHT (Dec. 1, 2018, 11:19 AM), <https://fivethirtyeight.com/features/the-republican-party-has-changed-dramatically-since-george-h-w-bush-ran-it/> (on file with the *University of the Pacific Law Review*).

168. See generally JESSE NORMAN, *EDMUND BURKE: THE FIRST CONSERVATIVE* 282–83 (2013).

Republican Party.¹⁶⁹ To the far right-wing, the EPA has been a thorn in the side of libertarian businesspeople.¹⁷⁰ Beginning with George W. Bush's presidency and continuing with the Trump administration, the government gutted the EPA.¹⁷¹ Some of those steps included limiting the EPA's scientists from publishing their reports;¹⁷² curtailing gas mileage standards;¹⁷³ changing air quality standards to allow greater use of coal, despite its high CO₂ emissions;¹⁷⁴ and dramatically cutting the agency's budget.¹⁷⁵

Members of the Republican Party in the 1980s and 1990s supported leaders like the first President Bush in his support of environmental protection.¹⁷⁶ Distressingly, Republicans now follow prominent party members, such as Donald Trump, who avidly deny climate change.¹⁷⁷ The relevance for advancing sustainable agriculture generally, and wine industry specifically, seems obvious. Joe Biden won the election in part because of his promise to address climate

169. See, e.g., MAX BOOT, *THE CORROSION OF CONSERVATISM: WHY I LEFT THE RIGHT* (2018); Justin Amash, *Our Politics Is in a Partisan Death Spiral. That's Why I'm Leaving the GOP*, WASH. POST (July 4, 2019, 3:00 AM), https://www.washingtonpost.com/opinions/justin-amash-our-politics-is-in-a-partisan-death-spiral-thats-why-im-leaving-the-gop/2019/07/04/afbe0480-9e3d-11e9-b27f-ed2942f73d70_story.html (on file with the *University of the Pacific Law Review*); see also Eric Bradner, *Flake's Speech Burning Trump Gets Standing Ovation from Some Republicans*, CNN (Oct. 25, 2017, 5:09 AM), <https://www.cnn.com/2017/10/24/politics/jeff-flake-retirement-arizona/index.html> (on file with the *University of the Pacific Law Review*).

170. See, e.g., Jonathan H. Adler, *Libertarianism and Environmental Protection*, WASH. POST (Aug. 18, 2017, 10:07 AM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/08/18/libertarianism-and-environmental-protection/> (on file with the *University of the Pacific Law Review*) (opinion piece arguing against government regulation to protect the environment and for "free-market environmentalism").

171. Leif Fredrickson et al., *History of US Presidential Assaults on Modern Environmental Health Protection*, 108 AM. J. PUB. HEALTH S98–S99 (Supp. 2, 2018).

172. Dina Fine Marion, *Trump Administration Restricts News from Federal Scientists at USDA, EPA*, SCI. AM. (Jan. 24, 2017), <https://www.scientificamerican.com/article/trump-administration-restricts-news-from-federal-scientists-at-usda-epa/> (on file with the *University of the Pacific Law Review*).

173. *Trump Administration Announces One National Program Rule on Federal Preemption of State Fuel Economy Standards*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/newsreleases/trump-administration-announces-one-national-program-rule-federal-preemption-state-fuel> (last visited Dec. 19, 2020) (on file with the *University of the Pacific Law Review*).

174. *Trump Orders EPA to Speed Air Quality Permits to Aid Industry*, REUTERS (Apr. 12, 2018, 11:33 AM), <https://www.reuters.com/article/us-usa-trump-environment/trump-orders-epa-to-speed-air-quality-permits-to-aid-industry-idUSKBN1HJ331> (on file with the *University of the Pacific Law Review*).

175. Rebecca Beitsch & Rachel Frazin, *Trump Budget Slashes EPA Funding, Environmental Programs*, THE HILL (Feb. 10, 2020, 2:18 PM), <https://thehill.com/policy/energy-environment/482352-trump-budget-slashes-funding-for-epa-environmental-programs> (on file with the *University of the Pacific Law Review*).

176. See Fred Krupp, *The Environmental Legacy of President George H.W. Bush*, ENVTL. DEF. FUND (Dec. 1, 2018), <https://www.edf.org/media/environmental-legacy-president-george-hw-bush> (on file with the *University of the Pacific Law Review*); Marshall Shepherd, *The Surprising Climate And Environmental Legacy of President George H.W. Bush*, FORBES (Dec 1, 2018 7:58 AM), <https://www.forbes.com/sites/marshallshepherd/2018/12/01/the-surprising-climate-and-environmental-legacy-of-president-george-h-w-bush/#71b03838589c> (on file with the *University of the Pacific Law Review*).

177. See Dana Nuccitelli, *Republicans Have So Corrupted EPA, Americans Can Only Save It in the Voting Booth*, THE GUARDIAN (Apr. 30, 2018), <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2018/apr/30/republicans-have-so-corrupted-epa-americans-can-only-save-it-in-the-voting-booth> (on file with the *University of the Pacific Law Review*).

change.¹⁷⁸ He must reverse many of Trump's executive orders and efforts to gut the agency.¹⁷⁹ No doubt addressing sustainable vineyard practices will be a low priority, given the rapid degradation of the climate and need to address other serious issues in the immediate future.¹⁸⁰

V. THE THREAT OF NATIONALISM AND THE HOPE OF GLOBALISM

We live in strange times. Transportation, communication, and education developments have shrunk the world.¹⁸¹ For many of us, sharing a smaller planet has significant benefits. Travel opens minds and can bring extraordinary insights into the richness of the world. That is certainly the case for those of us who have benefitted by experiencing the larger world.¹⁸²

However, right-wing politicians have flamed nationalistic fervor in recent years.¹⁸³ Ironically, in the past, nationalism tended to thrive in hard economic times (as during the worldwide depression in the 1930s).¹⁸⁴ However, politicians like Donald Trump were able to spark nationalism during good economic times.¹⁸⁵ Before the pandemic, Trump touted the strength of the American economy as his doing, even though he inherited a strong economy from the Obama years.¹⁸⁶

178. See *The Biden Plan for a Clean Energy Revolution and Environmental Justice*, BIDEN-HARRIS CAMPAIGN, <https://joebiden.com/climate-plan/> (last visited Dec. 15, 2020) (on file with the *University of the Pacific Law Review*).

179. See *id.*

180. For example, Biden's first announcement after his election concerned the formation of a COVID 19 task force. Lev Facher, *Biden Transition Team Unveils Members of Covid-19 Task Force*, STAT NEWS (Nov. 9, 2020), <https://www.statnews.com/2020/11/09/biden-transition-team-unveils-members-of-covid-19-task-force/> (on file with the *University of the Pacific Law Review*).

181. See generally Thomas L. Friedman, *It's a Flat World, After All*, N.Y. TIMES MAG. (Apr. 3, 2005), <https://www.nytimes.com/2005/04/03/magazine/its-a-flat-world-after-all.html> (on file with the *University of the Pacific Law Review*).

182. See generally Kira Shaw, *Travel Broadens the Mind, but Can It Alter the Brain?*, THE GUARDIAN (Jan. 18, 2016), <https://www.theguardian.com/education/2016/jan/18/travel-broadens-the-mind-but-can-it-alter-the-brain> (on file with the *University of the Pacific Law Review*); Brent Crane, *For a More Creative Brain, Travel*, THE ATLANTIC (Mar. 31, 2015), <https://www.theatlantic.com/health/archive/2015/03/for-a-more-creative-brain-travel/388135/> (on file with the *University of the Pacific Law Review*). Most Americans who have spent time abroad no doubt agree with this view. A simple example of travel's ability to affect cultural change is how affordable travel to Europe after World War II began changing Americans' diet, particularly sparking an interest in European cuisine. Stateside Staff, *How World War II Changed American Food*, MICH. RADIO (Nov. 18, 2014), <https://www.michiganradio.org/post/how-world-war-ii-changed-american-food> (on file with the *University of the Pacific Law Review*).

183. See Fredrickson et al., *supra* note 171, at S100.

184. See Antonis Klapsis, *Economic Crisis and Political Extremism in Europe: From the 1930s to the Present*, 13 EUR. VIEW 189, 190–92 (2014).

185. See Adam Plowright, *Some Similarities 'Make the Hair Stand up on the Back of Your Neck': As Populists Gain Support, Historians Point Towards the 1930s*, BUS. INSIDER (Nov. 23, 2016, 2:16 AM), <https://www.businessinsider.com/afp-back-to-1930s-nationalism-historians-battle-over-comparison-2016-11> (on file with the *University of the Pacific Law Review*).

186. Chuck Jones, *No President Trump, Obama's Economic Recovery Was Not a Con Job*, FORBES (Feb. 19, 2020, 8:20 AM), <https://www.forbes.com/sites/chuckjones/2020/02/19/no-president-trump-obamas->

Despite his claims of creating a strong economy, Trump began using tariffs to punish enemies and friends alike.¹⁸⁷ Unable or unwilling to learn from history, Trump did not seem aware of the role protectionism played in bringing on the Great Depression.¹⁸⁸ Long-term effects of Trump's protectionist policies are hard to assess given the economic downturn brought about during the pandemic.¹⁸⁹

Central to the thesis of this Article, however, is that globalism and, notably, trade with countries having strong environmental protection should indirectly influence practices in the United States.¹⁹⁰ The rest of this Part develops how that can happen.

Think back to earlier sections of this Article: small producers are adopting sustainable practices.¹⁹¹ Some of those wineries have devoted followers. An oversimplification: liberal idealists may make choices based on things like the producer's environmental practices.¹⁹² However, niche markets cannot solve large-scale problems. Since the days of Milton Friedman, large corporations have adopted a bottom-line-only approach to corporate behavior: the corporation's only role is to enhance shareholders' wealth.¹⁹³ With that in mind, what are the chances that large corporate wine producers will adopt sustainable practices?

In recent years, some large corporations have seen benefits in reversing the

economic-recovery-was-not-a-con-job/#1eb67ae25e62 (on file with the *University of the Pacific Law Review*); Tara Subramaniam & Katie Lobosco, *Fact Check: How Trump's Economy Compares to Obama's*, CNN (Feb. 19, 2020, 10:46 AM), <https://www.cnn.com/2020/02/18/politics/trump-v-obama-economy-fact-check/index.html> (on file with the *University of the Pacific Law Review*).

187. See, e.g., Jeff Mason, Matt Spetalnick & Humeyra Pamuk, *Trump Threatens New Tariffs on China in Retaliation for Coronavirus*, REUTERS (Apr. 31, 2020, 11:00 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-china/trump-threatens-new-tariffs-on-china-in-retaliation-for-coronavirus-idUSKBN22C3DS> (on file with the *University of the Pacific Law Review*); Zeeshan Aleem, *A New Government Study Shows How Trump's Tariffs Have Backfired*, VOX (Dec. 29, 2019, 12:28 PM), <https://www.vox.com/policy-and-politics/2019/12/29/21041238/trump-tariffs-trade-war-federal-reserve-manufacturing-consumer-prices> (on file with the *University of the Pacific Law Review*); *Donald Trump Vows to Use Tariffs to Punish Mexico for Migrants*, THE ECONOMIST (May 31, 2019), <https://www.economist.com/finance-and-economics/2019/05/31/donald-trump-vows-to-use-tariffs-to-punish-mexico-for-migrants> (on file with the *University of the Pacific Law Review*).

188. Barry Eichengreen & Douglas A. Irwin, *The Slide to Protectionism in the Great Depression: Who Succumbed and Why?*, 70 J. ECON. HIST. 871, 875–81 (2010); see also ROBERT JERVIS ET AL., CHAOS IN THE LIBERAL ORDER: THE TRUMP PRESIDENCY AND INTERNATIONAL POLITICS IN THE TWENTY-FIRST CENTURY 139 (2018) (Trump's "America First protectionism" is "the type of nationalism [that] has stymied rational policymaking, as the isolationist era of the 1930s demonstrated.").

189. See *US 2020 Election: The Economy Under Trump in Six Charts*, BBC NEWS (Nov. 3, 2020), <https://www.bbc.com/news/world-45827430> (on file with the *University of the Pacific Law Review*); *What Happened to the Economy Under Trump Before Covid and After*, WALL STREET J. (Oct. 14, 2020, 6:04 PM), <https://www.wsj.com/articles/what-happened-to-the-economy-under-trump-before-covid-and-after-11602713077> (on file with the *University of the Pacific Law Review*).

190. See *supra* Part I.

191. See *supra* Part II.

192. See Mark A. Bonn, J. Joseph Cronin Jr. & Meehee Cho, *Do Environmental Sustainable Practices of Organic Wine Suppliers Affect Consumers' Behavioral Intentions? The Moderating Role of Trust*, 57 CORNELL HOSPITALITY Q. 21, 21 (2016).

193. See Tepper, *supra* note 103; Mayer, Strine & Winter, *supra* note 103.

Friedman trend and now recognize value in adhering to social good.¹⁹⁴ At times, they exhibit genuine public-spirited behavior.¹⁹⁵ Often, though, corporations recognize that they can enhance profits by gaining public support for their “good-citizen” image.¹⁹⁶ Some large wineries in the United States are advertising themselves as following sustainable practices.¹⁹⁷ As indicated above, measuring the meaning of “sustainable” is difficult, given the lack of a uniform definition of that term.¹⁹⁸ As long as large numbers of wine drinkers make choices primarily on price,¹⁹⁹ large corporations may have little incentive to adopt wholeheartedly sustainable practices; these practices increase the cost of production, which in turn has the potential to decrease profits if those costs were not passed on to the consumer.

Here, though, is where globalism may provide the economic incentive for large producers in the United States to meet more sustainable standards than are currently enforced. The discussion of the wine industry above includes data concerning the size of the American wine industry.²⁰⁰ While many Americans have discovered the wine experience, production in the United States continues to grow at a pace faster than consumption.²⁰¹ Some demographic groups have not

194. See Alex Henderson, *Here's Why Milton Friedman's 'Shareholder Theory' of Economics Was Dead Wrong*, ALTERNET (Aug. 23, 2019), <https://www.alternet.org/2019/08/heres-why-milton-friedmans-shareholder-theory-of-economics-was-dead-wrong/> (on file with the *University of the Pacific Law Review*); David Benoit, *Move Over, Shareholders: Top CEOs Say Companies Have Obligations to Society*, WALL STREET J. (Aug. 19, 2019, 6:55 PM), <https://www.wsj.com/articles/business-roundtable-steps-back-from-milton-friedman-theory-11566205200> (on file with the *University of the Pacific Law Review*); Asher Schechter, *It's Time to Rethink Milton Friedman's 'Shareholder Value' Argument*, CHICAGO BOOTH REV. (Dec. 7, 2017), <https://review.chicagobooth.edu/economics/2017/article/it-s-time-rethink-milton-friedman-s-shareholder-value-argument> (on file with the *University of the Pacific Law Review*); Susan Holmberg & Mark Schmitt, *The Milton Friedman Doctrine Is Wrong. Here's How to Rethink the Corporation*, EVONOMICS (June 9, 2016), <https://evonomics.com/milton-friedman-doctrine-wrong-heres-rethink-corporation/> (on file with the *University of the Pacific Law Review*).

195. Benoit, *supra* note 194. But see Bruce Watson, *The Troubling Evolution of Corporate Greenwashing*, THE GUARDIAN (Aug. 20, 2016), <https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies> (on file with the *University of the Pacific Law Review*) (describing the sophisticated strategies of corporations to present responsible, environmentally-friendly images intended to distract from their unsustainable practices).

196. See Pascual Berrone, Andrea Fosfuri & Liliana Gelabert, *Does Greenwashing Pay Off? Understanding the Relationship Between Environmental Actions and Environmental Legitimacy*, 144 J. BUS. ETHICS 363, 365, 376 (2017); Magali A. Delmas & Vanessa Cuerel Burbano, *The Drivers of Greenwashing*, 54 CAL. MGMT. REV. 64, 71–72 (2011).

197. See, e.g., *Sustainability at Silver Oak*, SILVER OAK CELLARS, <https://silveroak.com/about/sustainability/> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*); *Environmental Stewardship*, STONESTREET ESTATE VINEYARDS, <https://www.stonestreetwines.com/sustainability/environmental-stewardship> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*); *Environmental Responsibility at Trinchero Family Estates*, TRINCHERO FAM. EST., <https://www.tfewines.com/tfe-green/> (last visited Jan. 3, 2021) (on file with the *University of the Pacific Law Review*).

198. OHMART, *supra* note 39, at 3.

199. Thach & Olsen, *supra* note 100, at 54–58.

200. See *supra* Part II; *Wine Production by State 2020*, *supra* note 8.

201. McMillan, *supra* note 23, at 17 (“[The wine industry is] at a position of oversupply across the entire

taken to wine, suggesting that demand may flatten out in the future.²⁰² As a result, producers in the United States are looking for other markets.²⁰³

In California, especially in less well-known regions like Lodi (historically an area that produced bulk wine but that has over the past twenty years begun making fine table wines),²⁰⁴ producers have aggressively attempted to expand to markets in Asia.²⁰⁵ China has been a notable area of growth and expansion for some California producers.²⁰⁶ Along with some other regions, like Canada, Asia seemed to be a prime market for American wines, with U.S. exports approaching \$1.5 billion in 2018.²⁰⁷ That strategy seemed to be working well; however, hidden in the numbers was an increased demand in Europe.²⁰⁸

Trump's tariff wars threatened to impair distribution of American wines.²⁰⁹ Biden's election should reverse restrictive trade policies.²¹⁰ Importantly, the globalization of the wine trade can have a positive impact on sustainable practices.

Entering the European market has forced some large producers to adopt sustainable vineyard practices. The EU has more stringent regulations than the United States, including regulations of pesticide and herbicide usage.²¹¹ These regulations conflict with industry policies in the United States.²¹²

supply chain.”).

202. *Id.* at 51. See also Stephanie Cain, *Millennials Are Passing on Wine When Dining Out. How the Wine Industry Is Changing Its Approach*, FORTUNE (Feb. 21, 2020, 4:00 AM), <https://fortune.com/2020/02/21/millennials-wine-industry-habits/> (on file with the *University of the Pacific Law Review*).

203. See *United States Wine and Grape Industry FAQs (General Industry Stats 2019)*, *supra* note 69.

204. Tim Carl, *Lodi Rising: The Region's Wines Are Taking off and the World Is Watching*, NAPA VALLEY REG. (Oct. 19, 2018), https://napavalleyregister.com/wine/lodi-rising-the-regions-wines-are-taking-off-and-the-world-is-watching/article_4cacecac-a6b9-5611-96d6-ebed307a952b.html (on file with the *University of the Pacific Law Review*).

205. See *US Wine Exports Total \$1.36 Billion in 2019*, WINE INST. (Mar. 23, 2020), <https://wineinstitute.org/press-releases/us-wine-exports-total-1-36-billion-in-2019/> (on file with the *University of the Pacific Law Review*).

206. Torres, *supra* note 24.

207. *Wine and Grape Industry FAQs (General Industry Stats 2019)*, *supra* note 69.

208. *US Wine Exports Total \$1.36 Billion in 2019*, *supra* note 205.

209. Jim Boyce, *China Tariffs Squeeze US Wines*, WINE-SEARCHER (July 1, 2019), <https://www.wine-searcher.com/m/2019/07/china-tariffs-squeeze-us-wines> (on file with the *University of the Pacific Law Review*).

210. See Robert B. Zoellick, *Biden Can Make American Trade Deals Great Again*, WALL STREET J. (Dec. 10, 2020, 12:52 PM), <https://www.wsj.com/articles/biden-can-make-american-trade-deals-great-again-11607622762> (on file with the *University of the Pacific Law Review*); Interview by Cardiff Garcia with Soumaya Keynes, Trade and Globalization Editor, The Economist, *The Indicator from Planet Money*, NAT'L PUB. RADIO (Nov. 19, 2020, 5:00 PM), <https://www.npr.org/transcripts/936805234> (on file with the *University of the Pacific Law Review*). After Vermont Senator Bernie Sanders dropped out of the race, calls for protectionist policies by Democrats became muted.

211. *Products Covered by EU Organics Rules*, EUR. COMMISSION, https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organic-production-and-products_en (last visited Jan. 4, 2021) (on file with the *University of the Pacific Law Review*).

212. Pam Strayer, *Pesticides and the Political Will: Europe and U.S. Moving in Opposite Directions - What It Means to the U.S. Wine Industry*, ORGANIC WINES UNCORKED (Oct. 25, 2017, 9:23 AM), <http://winecountrygeographic.blogspot.com/2017/10/populism-and-political-will-europe-and.html> (on file with

The willingness of the EU to set high standards for traces of chemicals may be good news for those supporting sustainable practices in the United States. Here is an analogy that helps explain the way in which EU standards can lead to better practices in the United States: California has imposed the highest mileage standards on cars, higher than the standards in any other state in the country.²¹³ Because of California's size (the largest state in the country by a considerable number), car manufacturers sell automobiles throughout the country that meet the California standards.²¹⁴ Compliance with the higher standards in all vehicles is cheaper than trying to manufacture cars based on individual state standards.²¹⁵ For so long as the federal government does not preempt state law, California will continue the drive towards better outcomes.²¹⁶

Similarly, if the EU continues to adhere to high standards for wine sold in the EU, American producers will have no choice but to improve their vineyard and winery practices, if they wish to continue export to Europe.²¹⁷ United States producers are eager to expand their markets to Europe and have been doing so.²¹⁸

The end of Trump's tariff wars should be good news for anyone interested in the free flow of goods, including the flow of European wines and other food products into the United States.²¹⁹ Evidence suggests, not surprisingly, that the tariffs were harming sectors of the United States economy.²²⁰ A continued worldwide economic slowdown brought on by the pandemic represents a threat

the *University of the Pacific Law Review*).

213. See CRAIG, *supra* note 130, at 656.

214. See Umair Irfan, *Trump's Fight with California over Emissions Rules Has Divided Automakers*, VOX (Nov. 5, 2019, 3:30 PM), <https://www.vox.com/policy-and-politics/2019/11/5/20942457/california-trump-fuel-economy-auto-industry> (on file with the *University of the Pacific Law Review*) ("The [fuel efficiency] benchmarks set in the Golden State ripple through the rest of the country and can even shape the global market.").

215. See Davenport & Tabuchi, *supra* note 29.

216. *Id.*

217. See DAVID VOGEL, *THE POLITICS OF PRECAUTION: REGULATING HEALTH, SAFETY, AND ENVIRONMENTAL RISKS IN EUROPE AND THE UNITED STATES* 12–15 (2012) ("As a result of the EU's economic importance . . . the growth of its regulatory capacity, and the relative stringency of its regulatory standards, global business regulations are increasingly being 'made in Brussels.'").

218. See Emily Hamann, *California Wine Industry Fears Trade War After U.S. Hits European Imports with Tariffs*, SACRAMENTO BUS. J. (Oct. 8, 2019, 6:41 AM), <https://www.bizjournals.com/sacramento/news/2019/10/08/california-wine-industry-fears-trade-war-after-u-s.html> (on file with the *University of the Pacific Law Review*); *International Public Policy*, WINE INST. (Oct. 2, 2019), <https://wineinstitute.org/our-work/international/policy/> (on file with the *University of the Pacific Law Review*).

219. See Charles Penty, *European Vineyards, Cheesemakers React to Blow from U.S. Tariffs*, BLOOMBERG (Oct. 5, 2019, 4:08 AM), <https://www.bloomberg.com/news/articles/2019-10-05/european-vineyards-cheesemakers-react-to-blow-from-u-s-tariffs> (on file with the *University of the Pacific Law Review*).

220. Erica York, *Tracking the Economic Impact of U.S. Tariffs and Retaliatory Actions*, TAX FOUND. (last updated Sept. 18, 2020), <https://taxfoundation.org/tariffs-trump-trade-war/> (on file with the *University of the Pacific Law Review*); Kathryn Russ, *What Trump's Tariffs Have Cost the U.S. Economy*, PBS NEWS HOUR (Oct. 11, 2019, 5:35 PM), <https://www.pbs.org/newshour/economy/making-sense/what-trumps-tariffs-have-cost-the-u-s-economy> (on file with the *University of the Pacific Law Review*).

to world trade.²²¹

The hope is that, as world markets reopen, the flow of goods across borders will rebound. Further integration of wines produced in the United States can increase pressure on large producers to comply with the higher purity standards enforced in the EU.²²² That would be a fortunate outcome of international trade.²²³

VI. CONCLUSION

The United States is now a deeply divided nation.²²⁴ The right-wing has taken control of the Republican Party.²²⁵ Thus, while traditional conservatives might join liberals in developing a stronger regulatory scheme to advance environmental protection,²²⁶ the Republican Party stands opposed to most regulations.²²⁷ Absent regulatory solutions to advance sustainable practices in the wine industry, this Article has argued that strong environmental regulations in the EU may indirectly advance improved practices in the American wine industry.²²⁸ That is so because large producers, even if they do not have a national market demanding sustainable practices, must comply with higher EU standards.²²⁹

221. See IMF: 'Less Severe' but 'Still Deep' Recession Predicted, UN NEWS (Oct. 13, 2020), <https://news.un.org/en/story/2020/10/1075282> (on file with the *University of the Pacific Law Review*); Global Trade Amid COVID-19: Signs of Rebound, but Recovery Uncertain, UN NEWS (Oct. 7, 2020), <https://news.un.org/en/story/2020/10/1074842> (on file with the *University of the Pacific Law Review*).

222. See *supra* Part I; see also FREDERIK ERIXON, PHILIPP LAMPRECHT & TATIANA KAKARA, EUROPEAN CTR. INT'L POLITICAL ECON., NO. 01/2020, THE ROLE OF TRADE POLICY IN PROMOTING SUSTAINABLE AGRICULTURE 2 (2020) (evaluating international free trade agreements and their effects on how governments "should organize their sustainability policy if they also want the opportunity to take part in modern trade agreements").

223. Author Cliff Ohmart has told me that large producers are, in fact, exploring improving vineyard practices and determining the economic benefits to such compliance.

224. See *In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions*, PEW RES. CTR. (Dec. 17, 2019), <https://www.pewresearch.org/politics/2019/12/17/in-a-politically-polarized-era-sharp-divides-in-both-partisan-coalitions/> (on file with the *University of the Pacific Law Review*) ("Partisanship continues to be the dividing line in the American public's political attitudes, far surpassing differences by age, race and ethnicity, gender, educational attainment, religious affiliation or other factors.").

225. See Zack Beauchamp, *The Republican Party Is an Authoritarian Outlier*, VOX (Sept. 22, 2020, 1:20 PM), <https://www.vox.com/policy-and-politics/21449634/republicans-supreme-court-gop-trump-authoritarian> (on file with the *University of the Pacific Law Review*); Joseph Lowndes, *The GOP Had an Uneasy Relationship with the Far Right. Until Trump.*, WASH. POST (Sept. 16, 2020, 3:00 AM), <https://www.washingtonpost.com/outlook/2020/09/16/gop-far-right-trump/> (on file with the *University of the Pacific Law Review*); Lee Drutman, *Why There Are So Few Moderate Republicans Left*, FIVETHIRTYEIGHT (Aug. 24, 2020, 6:00 AM), <https://fivethirtyeight.com/features/why-there-are-so-few-moderate-republicans-left/> (on file with the *University of the Pacific Law Review*).

226. See *Republicans Used to Support the EPA, Says Former Administrator*, *supra* note 17.

227. See generally *Resolution Regarding the Republican Party Platform*, REPUBLICAN NAT'L COMMITTEE (2020), https://prod-cdn-static.gop.com/docs/Resolution_Platform_2020.pdf (on file with the *University of the Pacific Law Review*) (in 2020, the Republican Party simply "reassert[ed] the Party's strong support for President Donald Trump and his Administration" and retained unmodified its 2016 Party Platform).

228. See *supra* Part V. See also ERIXON, LAMPRECHT & KARARA, *supra* note 222.

229. See *supra* Part V.

2021 / Globalism and Sustainable Vineyard Practices

Large United States producers are looking for new markets as production in the United States expands.²³⁰

230. *See supra* Part V.