The Case of the 1989 Bordeaux

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Legal commentators have taken a critical view of the methodology of the common law. Cardozo, for example, has described its decisions as based upon unstated goals, unverified generalizations, and subconscious preferences which are influenced by "inherited instincts, traditional beliefs, [and] acquired convictions." The legal method of making choices is a muddle of guesswork, intuition, and bias.

If the common law aims to be more principled, it can benefit from the economic way of thinking. Economic analysis requires the articulation of goals, quantification of values, and logical deduction. It takes the highest and best use of goods and services to be the primary societal value. Because markets are difficult to understand in all their complexity, one makes certain simplifying assumptions when evaluating the costs and benefits of various transactions. When one renders a judgment, the alternative with the highest ratio of benefit-to-cost gets preference. The economic method of decision-making is a model of objectivity, logic, and empiricism.²

Lawyers and judges have a lot to learn from economists. And for the past twenty years the Law and Economics Center (now associated with the George Mason University School of Law) has been conducting summer seminars which teach law professors and judges how the analytic tools of economic theory can be applied to a variety of legal issues. In the summer of 1990, along with twenty other law teachers, I took a two-week course of instruction.

A concurrent course in quantitative methods was held for students who had previously taken the basic course. Princeton University economist Orley C. Ashenfelter taught the advanced course. Ashenfelter, an oenophile, took many of his classroom examples from the world of wine. I heard via the grapevine that he was openly disdainful of the methodology of wine critics, charging that they lacked the objectivity necessary to make principled choices. He had particularly harsh things to say about America's most influential wine commentator, Robert M. Parker, Jr.

I was taken by surprise. I know Robert Parker. I taught him when he was a law student at the University of Maryland, and I have followed his career since

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- 1. Benjamin N. Cardozo, The Nature of the Judicial Process 12 (New Haven, 1921).
- 2. See A. Mitchell Polinsky, An Introduction to Law and Economics 1-10 (Boston, 1983).

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then. He has forsaken the practice of law to become a taster of fine wine. His newsletter, *The Wine Advocate*, has achieved immense influence. He is recognized for his great palate and scrupulous probity. His assessments of vintages virtually dictate which fine wines will be sold in this country. He never accepts free wine or goes on paid junkets.³ What did Ashenfelter have against Parker?

As that summer seminar of 1990 came to a close, I requested a conference with Professor Ashenfelter. I wanted to understand his quarrel with Robert Parker. Ashenfelter, as it turned out, is a business rival of Parker's. He publishes a competitor newsletter called *Liquid Assets*.

Liquid Assets differs from Parker's The Wine Advocate in appeal, approach, and circulation. Parker was first inspired to write about wine by a desire to protect consumers from poor values; he targets his newsletter for wine drinkers. Ashenfelter gives advice to wine speculators; those in the market for investment-grade wine are his intended audience.⁴

Robert Parker rates wines by tasting them. Relying on his palate, he grades wines on a scale from 50 to 100. The 50s are failures, the 80s good, and the 90s superb. His judgments are subjective, informed only by his sensory perceptions of taste and smell.⁵

Taste does not enter into Ashenfelter's ratings. He has constructed a mathematical model employing multivariate regression analysis. For various regional vintages he tabulated the recorded amount of winter rain, harvest rain, and summer heat. He determined the statistical relationship between these factors and the most objective gauge of quality he could find—the eventual selling prices of the wines. He then put the resulting scores on a scale, giving the all-time best seller, 1961 Bordeaux red, the top grade of 100; he uses this scale to rate newly harvested wines. Ashenfelter's judgments are objective, driven by the numbers.⁶

Parker's *The Wine Advocate* is a smashing success with a circulation in the 30,000 range and gross revenues approaching \$1 million. Only 600 takers subscribe \$18,000 (in total) to Ashenfelter's econometric conclusions in *Liquid Assets*.⁷

Notwithstanding their differences, I puzzled over Professor Ashenfelter's apparent hostility. He seemed angry with Robert Parker. Why was Ashenfelter

- 3. Jerry Adler, The Merciless Man of Wine, Newsweek, Dec. 14, 1987, at 77; John Elson, The Man with Paragon Palate, Time, Dec. 14, 1987, at 89; Peter Hann, The Rich, Ripe, Full-Bodied Life of Robert Parker, Bus. Wk., Aug. 18, 1986, at 95; Alan Richman, For Wine Critic Robert Parker, Sniffing, Sipping and Spitting Are All a Part of Life's Sedimental Journey, People, June 6, 1988, at 87.
- 4. See Richman, *supra* note 3; see also Stanley W. Angrist, Buying Wine Before Its Time, Forbes, Nov. 30, 1987, at 222.
- See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3.
- 6. Peter Passell, Wine Equation Puts Some Noses Out of Joint, N.Y. Times, Mar. 4, 1990, § 1, at 1, 27.
- 7. Id.

not satisfied to be a friendly rival and trust the wine market eventually to vindicate his position?

After the meeting, I read up on the world of fine wine. Most wines are bottled soon after the grapes are pressed, and are ready to drink several years thereafter. But a small fraction of French wines, primarily the Burgundy and Bordeaux, have a much longer period of maturation. The Bordeaux reds, for example, are harvested each fall and placed in oak casks the following winter. The wine remains in barrels for eighteen to twenty-four months. It is then set aside for aging in bottles for another eight years, more or less, before it is ready to drink.⁸

Wine commentary is most influential with respect to vintages that are aged. Young Bordeaux is the favorite investment-grade wine. The maturation period allows time for auctioning off units of the wine by houses such as Christie's, and for the subsequent speculation, wholesale and retail, in cases and bottles. Because the wine is not ready for the drinking, the opinion of wine critics is important information for the speculators.⁹

Robert Parker established his reputation by commenting on the red wines of Bordeaux. Probably this is still the region where he is strongest as a critic. His first book, *Bordeaux*, has been published in Britain and France and is now in its second edition.¹⁰

When tasting a vintage Bordeaux, Parker has a regular routine. He first tastes a new crop in March when it is placed in barrels, and he rechecks from the barrel in June. His rankings based on the June tasting heavily influence the unit price when the vintage is first sold at auction the year after harvest. The influence continues when the young Bordeaux subsequently is bottled and sold in wholesale lots shipped around the world.¹¹

Experts acknowledge that wines tasted from the barrel cannot be ranked with precision. There is many a slip between barrel, bottle, and lip, as the saying goes. Accordingly, Parker retastes the young Bordeaux from time to time until maturity. He may either upgrade or downgrade his vintage assessments as the taste develops. Not until ten years after harvest, when the drinking begins, does demand come to depend more on the consumers' taste (the tangible qualities of the vintage) and less on his recommendations.¹²

The Bordeaux region was also where Orley Ashenfelter perfected his mathematical model. Working with historical weather facts and wine prices, he found that heavy rains in the winter followed by a hot summer enhanced value, while rainfall before harvest detracted from it. For example, the sum-

- 8. Id.
- 9. See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3.
- Bordeaux: A Comprehensive Guide to the Wines Produced from 1961–1990, rev. ed. (New York, 1991).
- 11. See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3
- 12. See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3.

mer of 1972 was wet and cool and Bordeaux 1972 sold cheap. In 1961, on the other hand, heavy rains in the winter were followed by a hot summer, and Bordeaux 1961 set all-time record prices.¹³

Although Ashenfelter is confident that his model will predict the tangible quality of future Bordeaux vintages, he has a nagging concern about its reliability as a predictor of future prices. His formulation proceeds on this assumption: the better the wine, the higher the price. But for that to be true, consumers must be well informed.

Everyone agrees that the opinions of Robert Parker have a primary effect on consumer demand and a secondary impact on wine prices. Growers react by either raising prices or holding their stock back from market. Retailers simply list his best buys on their advertised offerings. Ashenfelter calculates that any Parker score above 85 will dramatically increase a wine's price. Wine merchants know that a Parker rating of 95 will permit them to double the price overnight.¹⁴

The Parker Effect changes the prices that Ashenfelter is intent on predicting. This would be well and good if Parker accurately advised wine buyers as to the tangible quality of a vintage, but Ashenfelter fears that Parker lacks sufficient objectivity about the quality of new crops. If Parker gives a high rating to a bad wine (or a low rating to a good wine), he not only misleads consumers, he also undermines the reliability of the advice that Ashenfelter is providing to investors. If Parker is mistaken, Ashenfelter's Theorem cannot account for the self-fulfilling prophetic effect that Parker's opinions may have on prices.¹⁵

The year 1989 brought the differences between Ashenfelter and Parker to a head. That year the Bordeaux region had a wet winter followed by one of the hottest and driest summers in recorded history. When Orley Ashenfelter crunched the numbers, he came to an astonishing conclusion. If on his scale the rating of the classic 1961 Bordeaux was 100, then the rating of the 1989 Bordeaux was 149. It was the vintage of the century! He predicted that it would "sell for as high a price as any wine made in the last 35 years." ¹⁶

Robert Parker tasted the samples of the 1989 Bordeaux harvest from the barrel and found them "dazzling," but when asked what he thought of Ashenfelter's rhapsodic appraisal of the vintage, he scoffed: he found the idea "ludicrous and absurd" that a mathematical formula, unrelated to taste or smell, could predict a wine's greatness. Parker would follow his usual routine of tracking the 1989's development with a series of vintage assessments until it reached maturity.¹⁷

- 13. Frank J. Prial, Wine Talk, N.Y. Times, May 23, 1990, § C, at 10; Passell, supra note 6; Angrist, supra note 4.
- Robin Young, Vintage Selling by Numbers, The Times (London), Feb. 27, 1993, Features section, at 29; Angrist, supra note 4.
- 15. Young, supra note 14; Angrist, supra note 4.
- Richard Z. Chesnoff et al., A Rhapsody in Bordeaux, U.S. News & World Rep., July 23, 1990, at 61; see also Prial, supra note 13; Passell, supra note 6.
- 17. Chesnoff et al., supra note 16; Prial, supra note 13; Passell, supra note 6.

Orley Ashenfelter had a ready answer. He pooh-poohed the notion that anyone could sample young wine that tasted liked turnip juice and pronounce upon its greatness ten years hence. To prove his point he used statistical analysis to compare the wine ratings of the world's two most influential wine critics, Parker and Michael Broadbent, head of Christie's wine department. By comparing the marks they gave vintages from 1961 to 1989 to a sampling of fourteen Bordeaux chateaux, he found widespread disagreements and inconsistencies; Parker's bests were sometimes Broadbent's worsts, and vice versa. Ashenfelter's message was clear and simple: taste is subjective and unreliable as a measure of quality.¹⁸

Ashenfelter's second line of attack has been more subtle. With statistics disclosing the discomforting fact that Parker tends to give vintages high ratings while they are too young to drink and to downgrade them thereafter, Ashenfelter suggests that Parker's vintage assessments may amount to little more than a fanfare followed by reassessments shadowing the prices that the wines are actually demanding in the wine market. Parker may follow the prices rather than predict them.¹⁹

So I had solved my puzzle. When I talked with Orley Ashenfelter in the summer of 1990, he and Robert Parker were in the midst of a Bordeaux-red blood feud. Parker had publicly ridiculed Ashenfelter's model. Ashenfelter had publicly accused Parker of bad taste, puffery, and post-hoc rationalization.

But then it struck me. The interesting conflict here was not a petty personal dispute between two wine experts. It was the profound professional disagreement between a judge and an economist. In the effort to determine a wine's quality, Robert Parker employs the legal method while Orley Ashenfelter adopts an economic approach.

Robert Parker is a wine judge. He credits his legal education with teaching him to immerse himself in the subject matter, and to be skeptical of easy answers. He borrowed from his law school examination days the 50–100 scale for the grading of wine.²⁰ Judging wines, Parker employs the methods of the common law. He sniffs, sips, and spits his way through a number of cases each week. The validity of his impressions cannot be verified, nor can his values be objectively measured. His judgments are based on experience rather than logic.²¹ His conclusions are continually tested through vintage reassessments. He can always change his mind on the basis of new evidence. Robert Parker savors the real world of wine in all its complexity and ventures working judgments as to quality.²²

- 18. See Young, supra note 14; see also Angrist, supra note 4.
- 19. See Young, *supra* note 14; see also Robin Young, Bordeaux-line Cases, The Times (London), Feb. 9, 1991, Features section, at 28.
- 20. See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3.
- 21. Cf. Oliver Wendell Holmes, The Common Law 1 (Boston, 1881) ("The life of the law has not been logic: it has been experience.").
- 22. See Richman, supra note 3; see also Adler, supra note 3; Elson, supra note 3; Hann, supra note 3.

Orley Ashenfelter is a wine economist. When rating a wine, he assumes that quality corresponds to price, which correlates to the weather conditions under which the grapes are grown. Since his ratings are premised upon the degrees of temperature and inches of rainfall, he cannot change them once given. Ashenfelter simplifies the world of wine and gauges the quality of a vintage on the basis of variables that are subject to objective measurement.²³

The jury remains out in the case of the 1989 Bordeaux. Bottles are aging in wine cellars around the world. Wine economist Orley Ashenfelter heralds the wine as a sure thing, the all-time high-priced best-seller. Wine judge Robert Parker adopts a cautiously optimistic wait-and-see attitude.

If, when the 1989 Bordeaux comes to maturity, the consumer demand sustains a selling price at a substantial premium over the great 1961 vintage, Ashenfelter wins the case. His laptop will have outpredicted Parker's palate. The economic mode of analysis will have outperformed the legal method of judgment.

If the 1989 Bordeaux fails to sell at record prices, the winners and losers will remain uncertain. Orley Ashenfelter will not necessarily have lost the argument. He can still contend that the failure of his prediction lies not in the Ashenfelter Theorem, but in the Parker Effect: Parker's failure to recognize the wine's greatness may have predestined it to mediocrity. Nor can Robert Parker prove that his judgment has been vindicated. Although Parker grades the tangible quality of a vintage on a closely calibrated scale, there is no way to test his accuracy. His judgment is not susceptible to objective verification. The only proven winner will be the common law approach to decision-making. For a complex question, the legal method of immersion (in all the raw facts) and impressionistic appraisal (of the best choice) will have proven more reliable than the economic approach of simplification and objective calculation.

^{23.} See Young, supra note 14; see also Young, supra note 19; Angrist, supra note 4.