



Taxing Taste and Gender: Legal Exceptionalism in Alcopop Regulation

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Abstract

This paper offers a feminist critique of Switzerland’s regulatory response to alcopops, a sweetened alcoholic beverage popular in the early 2000s. Framed as a public health crisis, the rise in alcopop consumption led to exceptional measures, including a steep excise tax. The analysis highlights the exceptionalism of these measures in a regulatory context focused on individual responsibility and apprehensive of taxation. The paper explores how gendered discourse shaped commercial, public, and legal narratives, framing alcopops as a ‘young women’s drink’. By examining governmental, legislative, and judicial arguments, the paper interrogates how legal discourse perpetuates gender stereotypes, portraying young women as vulnerable and in need of protection while sidelining structural drivers of alcohol consumption. Switzerland’s approach underscores how public health crises are framed, how exceptional legislative measures are justified, and how gender norms about appropriate behaviour influence regulation. The paper argues that these measures reinforce patriarchal power structures, raising critical questions about non-discrimination and demographic vulnerabilities in public health law.

Keywords Age · Alcohol · Crisis · Gender · Marketing · Moral panic · Public health · Regulation · Risk · Tax

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Introduction

Alcopops, a category of sweetened and flavoured alcoholic beverages, have drawn significant public health attention and regulatory scrutiny since their rise in the late 20th century (Babor and Robaina 2013). Emerging from the alcohol industry's efforts to revitalise and expand its market, products like wine coolers in the 1980s and later VK, Smirnoff Ice, Bacardi Breezer, and Jack Daniel's Hard Cola were strategically designed to appeal to younger consumers (Hastings et al. 2005; Casswell and Maxwell 2005; Black 2010). The pre-mixed, ready-to-drink bottles with sweet flavours, colourful branding, and targeted marketing campaigns were crafted to attract a new and younger demographic, particularly teenage girls, who were less likely to consume traditional alcoholic beverages (Metzner and Kraus 2008; J. Nicholls 2012). With alcohol content ranging from 4 % to 7 % and sugary profiles that obscure the taste of alcohol, these drinks became both accessible and appealing to inexperienced drinkers. Scholars have labelled alcopops a 'gateway drug', linking them to increased adolescent alcohol consumption (Forsyth, Barnard, and McKeganey 1997) and related harms, including accidents and the early onset of risky drinking behaviours. However, empirical evidence remains mixed: several studies have found no clear correlation between alcopop consumption and more problematic drinking patterns, such as binge drinking among younger populations (Wicki et al. 2006; Kraus, Metzner, and Piontek 2010). Nevertheless, the rise in their popularity, coupled with growing concerns about underage intoxication and its societal impacts, positioned alcopops at the centre of debates on public health and regulatory intervention.

In Switzerland, as in other countries, the rapid increase in alcopop sales in the early 2000s ignited public debates on health and safety. Sales data from this period documented a marked growth, with consumption rising from 1.7 million bottles in 2000 to 39 million in 2002 (Swiss Alcohol Board 2002, 16). Alcopops were readily available in diverse settings, from retail stores and petrol stations to bars, nightclubs, and public events, raising widespread concerns about their accessibility to minors (Niederer et al. 2008). As pre-mixed alcoholic beverages, alcopops became emblematic of the growing issue of underage drinking, the statutory age limit being 18 years. Between 1986 and 2002, the proportion of 15-year-olds consuming alcohol at least once a week in Switzerland increased from 14.65 % to 27.35 % (Delgrande Jordan et al. 2023).

Alcohol is no ordinary commodity (Babor 2010). Its toxic properties, potential for addiction, and capacity to impair psychomotor, cognitive, and emotional functions underscore the significant public health risks it poses. These dangers provide a clear rationale for regulatory oversight by the State (Commission fédérale pour les questions liées aux addictions et à la prévention des maladies non transmissibles 2024). In Switzerland, policymakers responded swiftly to the alcopop phenomenon, perceiving it as a public health crisis warranting legislative action (Federal Council 2003, 1978).¹ The concerns from public health actors extended beyond health issues such as addiction, binge drinking, and alcohol-related harm to include the societal

¹ Several European countries, including France and Germany, reacted in a similar manner, prompting a policy response at the European Union level (Sutton and Nylander 1999).

implications of young women's alcohol consumption and marketing strategies that seemed deliberately aimed at youth populations (Müller et al. 1997; Jernigan 2001, 33). This dual focus on health and social impact linked to gender laid the foundation for the exceptional regulatory measures that followed.

This paper examines Switzerland's legal response to the rise of alcopops, focusing on the interplay between taxation, regulatory measures, and the gendered framing that shaped governmental, legislative, and judicial discourse. The heightened intervention surrounding alcopops is exceptional and revealing in a regulatory environment characterised by individual responsibility and reluctance toward public health taxation. Switzerland's broader aversion to tax-based public health strategies makes the targeted action on alcopops a notable deviation from the norm. This paper argues that Switzerland's regulatory response to alcopops represents a case of legal exceptionalism, driven not only by public health imperatives but also by gendered narratives that influenced perceptions of risk and consumption patterns.

Existing literature at the intersection of law and gender has extensively examined the gendered underpinnings of family law, tax law, and labour law, shedding light on how legal frameworks often reinforce or perpetuate gender inequalities (Fineman 2005). However, the area of public health law remains relatively underexplored from a gender perspective despite the significant role that public health policies play in shaping gendered experiences and outcomes (Hunt and Backman 2008; Cook 2017). While the field of gender in medicine and health is rapidly expanding, much of this scholarship tends to focus on clinical practices, medical ethics, and health disparities rather than the structural and regulatory role of law (Kuhlmann and Annandale 2010). The legal dimensions of gendered public health interventions, including taxation and product regulation, are rarely addressed in depth, representing a critical gap in the literature. This paper seeks to fill these gaps by applying a critical feminist legal theory lens to Switzerland's alcopop regulation, illustrating how gendered narratives and paternalistic legal frameworks intersect with public health law to produce exceptional regulatory responses.

This article adopts an interdisciplinary legal and socio-political approach, drawing on a combination of primary legal sources, parliamentary debates, and policy documents, as well as academic literature from feminist legal studies, public health, and critical alcohol studies. The primary materials include parliamentary records from the Federal Parliament (notably the debates from 2002 to 2004), legal texts such as the Federal Alcohol Act and its reforms, and policy reports issued by the Swiss Alcohol Board and the Federal Office of Public Health. These sources were selected to reconstruct the legal rationale and political discourse surrounding the regulation of alcopops in Switzerland. Special attention was given to the language and framing employed by Members of Parliament, with a focus on how gender, youth, and public health were mobilised rhetorically. The analysis also draws on judicial decisions and media coverage, where relevant, to map the broader societal framing of alcopops as a 'young women's drink'. This combination of materials enables a critical examination of how gendered legal exceptionalism is constructed and justified in public health regulation.

The paper proceeds as follows. After an introduction to the phenomenon of alcopops, focusing on their product attributes, target clientele, and the public health

concerns that emerged in Switzerland, the paper delves into the concept of alcopop exceptionalism. It analyses the accelerated legislative procedure used to address the perceived public health crisis, followed by a discussion of the unique tax rate imposed on alcopops, the cap on sugar content in alcopops, and the effectiveness of this targeted regulatory intervention. The paper then shifts to the gendered dimensions of the alcopop debate, starting with the role of corporate marketing in commodifying gender through alcopop advertisements. It highlights the gender-based arguments in governmental, legislative, and judicial discourse, illustrating how gender stereotypes can be perpetuated or reinforced through legal discourse. The paper pursues this analysis by exploring how gender norms and moral panics² have framed a gendered public health crisis and shaped regulatory responses. Finally, the paper concludes by critically reflecting on the implications of Switzerland's alcopop regulation and its broader significance for public health law, gender equality, and the use of legal exceptionalism in crisis management.

Alcopop Exceptionalism

The exceptionalism surrounding alcopop regulation and taxation in Switzerland reveals itself in several regards: an accelerated legislative procedure, a high tax rate, and a cap on sugar content. This exceptionalism is all the more revealing as Swiss public health regulation focuses on individual responsibility for healthy behaviour and is apprehensive of using consumer good taxation to direct and incentivise behaviour (Pärli 2018; Gächter 2018; Federal Office of Public Health 2019).

Crisis Framing: Accelerated Legislative Procedure

Alcopops first appeared in the Swiss market in the early 1990s with the launch of local wine-based products such as Frizz (1990) and Swizly (1995). The trend gained momentum in 1996 with the importation of spirit-based alcopops like Hooper's Hooch (UK) and Two Dogs (Australia, then France), which popularised these sweetened alcoholic beverages. The Swiss tax system reacted to these market developments, adapting its framework to address the growing presence of alcopops. In 1997, the Swiss Alcohol Board classified alcopops under the Federal Alcohol Act,³ imposing a significant price increase of CHF 3 per 30 cl bottle (Niederer et al. 2008). This measure effectively drove importers out of the market, leading to the temporary disappearance of alcopops from Swiss shelves.

However, the regulatory situation changed again in 1999 when a unified alcohol tax was introduced to comply with World Trade Organisation rules. This law reform

² For the purposes of this study, we understand moral panic as a situation in which a person, group or condition is portrayed as a threat to societal values and interests. This results in disproportionate public concern from the media, moral entrepreneurs and State institutions, and often leads to demands for moral or legal regulation. This definition builds upon the work of Cohen (1972) and Hall (1974), who emphasised the political and ideological aspects of moral panics to legitimise social control and reinforce dominant power structures.

³ Federal Act on Alcohol of 21 June 1932, RS 680.

reduced the levy on alcopops to 50 centimes per 30 cl. The tax reduction spurred the re-emergence of spirit-based alcopops in Switzerland, marking the beginning of their widespread popularity (Niederer et al. 2008; Federal Council 2003, 1983).

In the early 2000s, alcopop consumption surged in general, but especially among young people (Swiss Alcohol Board 2002, 16). Prior to 1998, no data were available on alcopop consumption among 15-year-olds, when their market share remained negligible. By that year, however, alcopops had captured a significant portion of the market: 12.3 % of 15-year-old boys and 8.6 % of girls reported consuming them at least once a week. By 2002, these proportions had increased to 17.3 % and 17.0 %, respectively (Delgrande Jordan et al. 2008). This development prompted the Swiss government and legislature to respond swiftly to what was described as a “public health problem”.⁴ Beyond the increase in sales numbers, alcopops also raised concerns – linked to their taste and the industry’s marketing – of underage drinking and premature initiation to alcohol consumption. In Switzerland, Article 14 of the Foodstuffs Act⁵ prohibits the sale of alcoholic beverages to young people under the age of 16. Article 41 of the Federal Alcohol Act⁶ prohibits the sale of distilled beverages (spirits, liqueurs, alcopops) to children and adolescents under the age of 18. Eventually, a special tax on alcopops entered into force on 1 February 2004.⁷

The introduction of this special tax on alcopops in 2004 marked a notable departure from standard legislative procedures, underscoring the perception of alcopops as an urgent public health crisis. The Federal government (i.e., the Federal Council) leveraged its ability to expedite the legislative process, bypassing the slower, deliberative mechanisms typically required for law reform (Federal Council 2003, 1984). Although the procedure did not formally invoke Article 165 of the Swiss Federal Constitution concerning emergency legislation,⁸ the government framed the steep alcopop tax as a pressing issue requiring immediate action.⁹ This framing positioned the issue as a public health priority, warranting exceptional measures.

On 26 February 2003, the Federal Council submitted its proposed amendment to the Federal Alcohol Act directly to the Federal Parliament, circumventing the usual legislative process.¹⁰ The typical steps – such as an explanatory governmental report, a preliminary draft, and a stakeholder consultation – were omitted.¹¹ The Federal Council justified this decision by emphasising the “limited political scope

⁴ National Council, 2003, Autumn Session - Eleventh Sitting, Didier Berberat.

⁵ Federal Act on Foodstuffs and Utility Articles of 20 June 2014, RS 817.0.

⁶ Supra n. 3, Article 41.

⁷ Supra n. 3, Article 23^{bis}, paragraph 2^{bis}.

⁸ Federal Constitution of the Swiss Confederation of 18 April 1999, RS 101.

⁹ The use of Article 165 remains relatively rare. Between the entry into force of the 1999 Federal Constitution and 1 September 2022, the Swiss Parliament passed 42 laws under Article 165. Most of these laws relate to urgent financial and economic policy, or social security and health law, especially during the COVID-19 pandemic (Tschannen 2023). So far, Article 165 has never been used to pass legislation related to taxation. Using such an emergency law tool in the case of alcopop taxation would have been highly unusual.

¹⁰ Supra n. 8, Article 181.

¹¹ Supra n. 8, Article 147; Federal Act on the Consultation Procedure (CPA) of 18 March 2005, RS 172.061, Article 3.

and urgency” of the issue and asserting that stakeholder opinions were already well understood, making further consultation unnecessary (Federal Council 2003, 1985). During parliamentary debates, the urgency of the perceived threat to public health was reiterated, driving swift legislative action (Fässler-Osterwalder 2002). Both chambers of the Federal Parliament approved the reform with a substantial majority on 3 October 2003,¹² and the new provision, Article 23^{bis}, paragraph 2^{bis} of the Federal Alcohol Act, came into force on 1 February 2004. Remarkably, this reform was enacted in less than twelve months – compared to the average of fifty-one months for legislative projects during the 1995–1999 parliamentary term (Emmenegger and Fosatti 2022). The crisis framing of the alcopop issue was instrumental in accelerating the enactment of this law reform.

High Tax Rate

Taxation has long been recognised as a powerful public health tool for influencing consumer behaviour and reducing the consumption of harmful products (Gostin and Wiley 2016, 27). Known as ‘sin taxes’, these levies target goods such as alcohol, tobacco, and sugary beverages, aiming to internalise the societal costs associated with their consumption while generating revenue for public health initiatives. The theoretical foundation of this approach lies in the principles of Pigouvian taxation, which posits that taxing harmful goods can correct market failures caused by negative externalities, such as increased healthcare costs and productivity losses associated with alcohol and tobacco use (Pigou 2017). International bodies such as the World Health Organization endorse taxation as a key component of public health strategies, emphasising its dual role in discouraging harmful behaviours and financing health systems (World Health Organization 2018). Empirical evidence demonstrates that increased taxation can reduce consumption, particularly among price-sensitive groups such as adolescents and low-income individuals (Wagenaar, Salois, and Komro 2009; Puska 2024; Morris et al. 2024).

Switzerland’s regulatory framework is characterised by a cautious and often sceptical approach toward using taxation as a public health tool, reflecting a broader emphasis on individual responsibility and market freedom (Peter-Spiess 2024). Unlike many jurisdictions that deploy high taxes on alcohol, tobacco, and sugary products to reduce consumption and address public health concerns, Switzerland has historically avoided or used such measures only hesitantly.

For instance, not all alcoholic products and beverages are taxed in Switzerland.¹³ The Swiss Federal Constitution only allows for taxation of distilled beverages (spirits) and beer, not for wine.¹⁴ Wine – one of the country’s culturally significant products – is thus entirely exempt from excise taxes, while spirits and beer are taxed at

¹² 42/46 in the Council of States and 141/200 in the National Council.

¹³ The previously mentioned 1999 unified tax concerned the harmonisation of the taxation of domestic and imported spirits per litre of pure alcohol. Each type of alcoholic beverage is subject to a different tax regime under the Alcohol Act and the Foodstuffs Act. For a brief overview, see: <https://www.bazg.admin.ch/bazg/en/home/topics/alcohol/steuersaetze.html>.

¹⁴ Supra n. 8, Article 131; Federal Act on the Beer Tax of 6 October 2006, RS 641.411.

relatively moderate rates. Similarly, cigarette taxes in Switzerland are among the lowest in Western Europe despite the well-documented public health burden associated with smoking. This reluctance to impose taxes on consumer goods is rooted in economic considerations and societal values prioritising consumer autonomy over State intervention. Critics argue that this regulatory stance undermines the effectiveness of public health policies, as it limits the State's ability to address harmful behaviours through fiscal measures. In addition, and in stark contrast, the Swiss Federal State promotes the consumption of local wines through public subsidies for wine advertising campaigns, as well as subsidies for the production of local tobacco.¹⁵ Furthermore, several cantons and municipalities are among the key owners of vineyards and wineries in Switzerland.¹⁶

The Swiss government's introduction of a special tax on alcopops stands out as an exceptional regulatory measure, deviating sharply from Switzerland's typical reluctance to impose sin taxes on products with public health implications. Unlike standard alcoholic drinks, which are taxed based on alcohol content, alcopops are subject to a much higher excise duty per litre. According to Article 23^{bis}, paragraph 2^{bis} of the Federal Alcohol Act, the tax is increased by 300 % for sweetened distilled beverages with an alcohol content of less than 15 % by volume, which contain at least 50 g of sugar per litre expressed as invert sugar or an equivalent sweetener, and which are put on the market in the form of ready-to-drink mixtures, in bottles or other containers.¹⁷ The initially proposed tax rate was even higher, at 400 % of the standard rate for distilled beverages (Federal Council 2003, 1985). The Federal Council later tried to subject beer-based alcopops to a similar tax, to no avail (Federal Council 2005, 5338).

The government justified this exceptionalism in tax policy, leading to the uniquely high alcopop tax, by reference to the public health risks linked to these beverages, namely their appeal to adolescents and the fact that they could lead to early and excessive alcohol consumption (Federal Council 2003, 1982). The tax increase, which considerably raised the price of alcopops, was designed to curb consumption by making the product less financially accessible, particularly to younger consumers with less disposable income.

During the parliamentary debates, the exceptional character of the tax was further discussed, highlighting a similar stance. One Member of Parliament (MP) defended her willingness to tax alcopops by arguing that she is "not interested in demonising alcohol; I also like to drink a good glass of wine myself".¹⁸ Another MP argued that the exemption of wine taxation was "somewhat curious" but that he "could not bring [him]self to propose the introduction of a wine tax". One of the MPs highlighted,

¹⁵ Federal Act on Agriculture of 29 April 1998, RS 910.1, Article 12, provides for financial support from the Confederation for the promotion of sales of Swiss wine; Ordinance on Aid for the Promotion of Sales of Agricultural Products, RS 916.010, Article 10 paragraph 2, specifies that aid may be granted if the promotional measures do not contain scenes of alcohol consumption and are not aimed at young people.

¹⁶ Including the cantons Fribourg: <https://www.vignoblesdelat.ch/>, Geneva: <https://www.ge.ch/dossier/vignoble-republique-canton-geneve>, and Neuchâtel: <https://www.ne.ch/autorites/DDTE/SAGR/encavage-etat/Pages/accueil.aspx>.

¹⁷ Supra n. 3, Article 23^{bis}, paragraph 2^{bis}.

¹⁸ Council of States, 2003, Summer Session - Twelfth Sitting, Helen Leumann-Würsch.

“This bill is not about fiscal policy, but about health policy and public health”.¹⁹ Another noted, “I am not generally in favour of raising new taxes”.²⁰ Furthermore: “This is not primarily a measure that pursues a fiscal objective, ... but rather a sort of incentive tax intended to protect the youth of our country against the risks of alcoholism”.²¹ These statements reflect a rhetorical strategy aimed at distancing the regulation of alcopops from broader alcohol policy, as MPs reaffirm their general acceptance of alcohol while advocating stricter measures for alcopops.

Cap on Sugar Content

A lesser-discussed aspect of alcopop regulation is the intersection with food law, particularly in terms of product composition. Alcopops often contain substantial amounts of sugar, which enhances their appeal to younger consumers by masking the taste of alcohol.

Switzerland’s legal framework for food regulation is notably permissive when addressing unhealthy dietary components such as sugar, salt, and fat. Unlike jurisdictions that impose mandatory limits on these ingredients in processed foods and beverages, Swiss law has largely refrained from implementing direct caps on unhealthy components (Peter-Spiess 2024). The regulatory approach in Switzerland instead focuses on voluntary measures, industry self-regulation, and consumer education to promote healthier food choices (Bryk Silveira and Levy 2023). This approach reflects broader societal and policy preferences for minimal State intervention, reliance on market dynamics, and individual responsibility. While such an approach aligns with Switzerland’s general regulatory philosophy, it has been critiqued for failing to address the public health burden of non-communicable diseases associated with unhealthy diets (Peter-Spiess 2024).

As such, alcopop exceptionalism is also visible with regard to sugar regulation. In fact, alcopops’ sugar content has been the focus of the Federal Council and Parliament. The Federal Council justified its focus on sugar by emphasising that it constituted a primary risk associated with alcopops, which are “specifically aimed at young people, who are used to sugary drinks”. It added that “the alcohol in a sugar-sweetened drink is not noticeable. Young people, and particularly young women, are therefore the prime target” (Federal Council 2003, 1982).²² The parliamentary discussions followed this stance.²³ This focus seems backed up by the data available in Switzerland. In their analysis of the Swiss alcopop market, Niederer et al. (2008) concluded that alcopop consumption is driven by taste for 75 % of respondents. Furthermore, 43 % of respondents stated that they drank spirit-based alcopops because they could “hardly taste the alcohol”. The sugar content, therefore, seems to play a

¹⁹ Supra n. 18, David Eugen.

²⁰ Supra n. 18, Jean-Claude Cornu.

²¹ Supra n. 4.

²² There is a limit to this principle: “sweet alcoholic beverages obtained solely by fermentation are not subject to this special tax. These are products defined in the ordinance on foodstuffs as wine, cider, diluted cider, beer, fruit wine or berry wine”.

²³ Supra n. 4; Supra n. 18.

decisive role in the appeal of alcopops. There is, however, an apparent discrepancy in the reasoning of the government and the legislator since alcoholic beverages obtained by fermentation, which include wine, cider, and beer, are not subject to this tax, regardless of the amount of sugar (Federal Council 2003, 1985).

Eventually, no formal cap on sugar content was enacted. However, the Swiss legislator introduced an indirect cap by linking high taxation of alcopops not only to the alcohol content of these beverages but also to their sugar content. Article 23^{bis} of the Federal Alcohol Act defines alcopops as “sweetened distilled beverages with an alcohol content of less than 15 % by volume, containing at least 50 grams of sugar per litre, expressed as invert sugar or an equivalent sweetener”. The Federal Alcohol Administration specified that this “must be determined based on a laboratory analysis” (Federal Customs Administration (FCA) and Federal Alcohol Administration 2003). Furthermore, the Federal Office for Customs and Border Security also added that one of the criteria used to classify an alcoholic beverage as an alcopop is the “sweetness of the drink: in a taste test, a clear sweetness must be detected. (Exclusion criterion: bitterness)” (Federal Office for Customs and Border Security (FOCBS), n.d.).

Indirectly, the Swiss State thus regulates alcopops not only through alcohol-related law but also through health and nutritional standards. This indirect regulation of sugar content through taxation mechanisms is a novelty in Swiss law. Today, the tax on alcopops remains the only tax related to high sugar content in Switzerland (Peter-Spiess 2024). So far unprecedented in Swiss food law, this exceptionalism could pave the way for new forms of regulation, reflecting growing concerns about obesity and diabetes in addition to alcohol-related harms.

However, political opposition has been strong in this context. Soon after the introduction of the alcopop tax, the Federal Council stated in 2007 that it did not consider the use of taxation on sugar and fat to be an appropriate public health tool for various reasons (Humbel 2007). Efforts to further regulate sugar in foodstuffs at the federal level have failed repeatedly in 2019 (Fehlmann Rielle 2018), 2022 (Fehlmann Rielle 2023), and 2023 (Weichelt 2023). Although the Federal Council supported the 2019 initiative, there seems to be a lack of political will to regulate sugar further (Peter-Spiess 2024, 140). This opposition to the use of taxation as a public health tool is stark evidence of the legal exceptionalism surrounding alcopops.

Effectiveness

The high excise tax on alcopops in Switzerland led to a significant decline in sales (Niederer et al. 2008), demonstrating the immediate impact of fiscal measures in curbing consumption. For the Federal Council, introducing the special tax has been a total success and “achieved its public health objective by eliminating from the market [those] alcoholic beverages” (Berberat 2005).

One of the most notable effects of the tax was its impact on the appeal of alcopops to youth. The additional cost of approximately CHF 2 per bottle rendered alcopops less accessible to price-sensitive adolescents, thus deterring underage drinking. Furthermore, after 2003, no new alcopops were introduced in the Swiss market, except

for wine-based and beer-based alcopops, since they were not subject to a special tax (Niederer et al. 2008, VII, 17).

Beyond acting as a financial deterrent, the tax indirectly incentivised manufacturers to reformulate their products, often reducing sugar content to avoid the steep tax burden. Producers adjusted their recipes to lower sugar levels below 50 g per litre, thus exempting their products from the special tax (Niederer et al. 2008, V, 5, 17; Federal Council 2012, 1130, 1138). However, the sugary taste was a key factor in attracting young consumers, for whom these drinks masked the strong taste of alcohol (Niederer et al. 2008, 66). This product reformulation thus contributed to decreasing sales numbers.

The effectiveness of the tax was partially undermined by substitution behaviours. While alcopop sales declined, some young consumers shifted to alternative alcoholic products, such as beer or hard liquor, which were not subject to the same level of taxation. For Switzerland, the consumption of spirits and liqueurs reached new heights in 2010, probably following the reformulation of alcopop recipes (Windlin et al. 2011). Niederer et al. (2008) note

instead of ready-mixed alcopops, self-mixed vodka-based drinks are increasingly being consumed. This finding is confirmed on the one hand by a huge increase in vodka imports since 2003 and on the other hand by corresponding survey results among adolescents and young adults.

In particular, young people have started to make their own mixes, thus partially circumventing the special tax, and sales of beer- and wine-based sweetened alcoholic beverages, which are tax-exempt, have increased (Federal Council 2012, 1130, 1138). This unintended consequence highlights a common challenge in public health taxation. While targeted measures can reduce the consumption of specific products, they may also lead to compensatory behaviours that offset some of the intended public health benefits.

While the high alcopop tax was an effective regulatory tool to bring down sales numbers of alcopops quickly, the bigger picture is more nuanced (Skov et al. 2011). The main study on alcopops and their use by young people in Switzerland showed that “problematic drinking patterns and consequences appeared not to be specific to alcopops but were found similarly for all alcoholic beverages” (Wicki et al. 2006). Alcohol consumption among adolescents and young adults, including the phenomenon of binge drinking, remains a public health concern (Niederer et al. 2008), even though the proportion of young people consuming alcohol at least once a week has been following a downward or stable trend over the last two decades (Delgrande Jordan et al. 2019). Public health literature calls for approaches to reduce alcohol consumption in general rather than focusing on specific products (Wicki et al. 2006; Müller et al. 2010). Beyond the limitations of addressing one product category, the inconsistency of tax policies regarding alcohol in Switzerland does not contribute to an overall beneficial public health outcome.

Other states have also relied on taxation to address the public health concerns associated with alcopops, achieving similar reductions in sales while encountering substitution effects. France was one of the first countries to introduce a tax on alco-

pops in 1996. This was followed almost immediately by a collapse of the French pre-mix market: fewer than 10,000 L were sold in 1997, compared with 950,000 L in 1996 (France (National Assembly), 2006). In Germany, introducing a high excise tax on alcopops in 2004 led to an 80 % decline in sales within the first year, marking a significant success in curbing consumption. However, subsequent reports highlighted an increase in the consumption of other alcoholic beverages, such as beer and spirits, particularly among younger demographics (Metzner and Kraus 2008; Wagenaar, Salois, and Komro 2009; Müller et al. 2010). Similarly, Australia implemented a substantial tax hike on alcopops in 2008, which resulted in a marked decrease in sales but was accompanied by a rise in spirit consumption as a substitution effect (Chalmers et al. 2013). In the UK, while taxation played a role, efforts to regulate alcopops were supplemented by advertising restrictions under the Alcohol Strategy, aiming to address broader youth drinking behaviours and reduce overall demand (Hastings et al. 2005). These comparative examples illustrate the shared challenges of targeting specific products through taxation, highlighting the effectiveness of such measures in reducing consumption and the unintended consequences of substitution behaviour that may require complementary regulatory interventions. Interestingly, in the parliamentary debates preceding the adoption of these taxes on alcopops, all the aforementioned countries emphasised their impact on young people, particularly on young women.²⁴

‘A Young Women’s Drink’

The regulatory exceptionalism surrounding alcopops, as explored in the preceding sections, highlights the unique and targeted approach adopted by Swiss lawmakers to address the perceived public health risks associated with these beverages. This exceptionalism is not only evident in the introduction of high taxation and an indirect sugar cap but also in the way alcopops have been framed within public and legal discourse. Central to this framing is the characterisation of alcopops as a ‘young women’s drink’, a narrative that has profoundly shaped the regulatory response.

This section critically examines how gendered assumptions underpinned the regulation of alcopops, from their marketing strategies to the legal and policy discourse that emerged in response to their popularity. The exceptional tax on alcopops was justified in part by concerns about their appeal to young people, especially young women, and the societal anxieties tied to female alcohol consumption. Such framing reveals deeper issues regarding the intersection of gender and public health law. By focusing on the commodification of gender in corporate marketing, the use of gendered arguments in legal discourse, and the paternalistic undertones of public health

²⁴ France, Senate. 1996. Séance du 13 Novembre 1996 – Intervention de René Régnault; United Kingdom. House of Lords. 2002. Parliamentary Debates (Hansard). Alcohol Abuse. 27 May. Vol. 635, Col. 1116; Germany. Federal Government. 2005. Bericht der Bundesregierung über die Auswirkungen des Alcopop-steuergesetzes auf den Alkoholkonsum von Jugendlichen unter 18 Jahren Sowie die Marktentwicklung von Alcopops und Vergleichbaren Getränken. Drucksache 15/5929; Australia, Senate. 2008. Standing Committee on Community Affairs. Ready-to-Drink Alcohol Beverages. Parliamentary Paper No. 281

interventions, this section highlights how gender norms and moral panics influenced not only the regulation of alcopops but also broader public health narratives.

Corporate Marketing and the Commodification of Gender

The role of corporate marketing in shaping consumption behaviours through gendered advertising is well-researched (Atkinson et al. 2019; Lyons et al. 2024). Corporate marketing strategies for alcopops have played a pivotal role in framing these beverages as products tailored for young women. Alcopop producers have long employed marketing strategies that play on traditional gender norms, often presenting their products as ‘fun’, ‘light’, and ‘feminine’, thus appealing to a female demographic and reinforcing gendered stereotypes of femininity and sociability (Brain 2000; Mosher and Johnsson 2005; McCreanor et al. 2005).

Such marketing strategies commodify gender by exploiting cultural norms and expectations surrounding female consumption and social behaviour, effectively creating a niche market for alcopops (McCreanor et al. 2005; Hastings et al. 2005). They reinforce gendered expectations about what types of drinks are appropriate for women – typically sweeter, lower in alcohol, and aesthetically designed to cater to perceived feminine tastes (Mosher and Johnsson 2005). The Swiss Federal Council alludes to gendered marketing when mentioning that the alcohol industry made alcopops a fashionable product in the quest for new markets and new consumers. It states that “young people and young women in particular are the prime target” of these strategies (Federal Council 2003, 1982).

The gendered perception of alcopops directly impacts girls’ consumption choices (E. Nicholls 2016). This phenomenon appears across borders (Metzner and Kraus 2008). Interestingly, alcopop consumption in Switzerland has consistently been higher among boys than girls from 1998 to 2022, with nearly equal consumption between 2002 and 2006. However, alcopops were the alcoholic beverage of choice between 1998 and 2006 for girls, while they never managed to top beer for boys. Beer remains the alcoholic beverage most consumed by young people overall due to its affordability (Delgrande Jordan et al. 2019). In the UK, alcopops were responsible for two-thirds of the increase in alcohol consumption among 15-year-old girls between 1996 and 1999 (Brain 2000). They appear to be the favourite drink of “less sophisticated, pre-teen and early teen female drinkers” (Cullen 2011). In Australia, “stereotypical girly” alcopops remain the most consumed alcoholic beverage for young females (Jones and Reis 2011). In New Zealand, alcopops were popular “among 14–17 years old, and females” (Huckle et al. 2008).

The commodification of gender for alcopops aligns with broader trends in alcohol advertising, where products are often segmented along gender lines to maximise consumer appeal. However, in the case of alcopops, the overt targeting of young women has raised significant public health concerns, as it intersects with broader anxieties about youth drinking and female vulnerability to alcohol-related harm (Hastings et al. 2005). This commodification of gender can be critiqued as part of a larger system that both constructs and exploits gender stereotypes for profit (Lazar 2006; Gill 2008; Elias et al. 2017; Bordo 2023). Instead of addressing corporate responsibility for shaping harmful consumption patterns, Swiss public health policy regarding alco-

pops, as in other areas, has focused on regulating consumer behaviour. Feminist critiques have long pointed to the role of media and advertising in shaping consumption patterns and reinforcing gender norms, raising the question of why regulatory measures focus on consumers rather than addressing the marketing practices of industry actors (Gill 2008; Masse and Negura 2024).

Gendered Arguments in Legal Discourse

One of the most striking elements of the alcopop debate in Switzerland is the gendered official discourse that has emerged around the product among various State actors. Alcopops are often described as a “young women’s drink”, with government officials and courts citing their appeal to teenage girls in discussions about regulation and taxation (Federal Council 2003, 1983). This gendered framing has influenced the public health arguments favouring stricter regulation, the legal reasoning supporting the special tax and other measures, and the urgency of introducing such measures.

This rhetoric is present in the federal government’s proposal for law reform, which sought to introduce a special tax on alcopops. The Federal Council argues that the tax targets “young people, particularly young women, who often do not appreciate the taste of traditional beverages such as wine and beer, and all those who like change and novelty, who follow fashions and trends” (Federal Council 2003, 1982).

During the discussion of the proposed regulation and taxation in the Federal Parliament, the MPs insisted on two aspects: first, the fact that alcopops targeted “young people”; second, the fact that these alcopops targeted “young girls”. This gendered perspective crossed party lines, with MPs ranging from right-wing parties (Christian Democrats and Radical Liberals) to left-wing parties (Socialists and Ecologists) being in favour of the new tax. Most MPs’ interventions followed the same pattern, stressing the need for “greater protection of young people, especially young girls”. Only one of the MPs who participated in the legislative drafting process did not explicitly mention “young girls”. Among the stand-out interventions, one MP mentioned “young girls, who, like children, appreciate the drink because it is sweet and thirst-quenching”.²⁵ Another MP justified the tax because young girls do not like the taste of beer, while “there is something insidious about this sweetness and seduction, and because it is insidious, it is perverse and dangerous”.²⁶ Notably, these parliamentary debates remained entirely inward-looking; no references were made to regulatory or tax solutions adopted in other countries.

Once the Federal Parliament adopted the high tax on alcopops, the regulation and taxation were challenged by the alcohol industries in court, mainly based on arguments relating to the legal alcopop definition and the industry actors’ economic freedom. One case reached the Swiss Federal Tribunal, which acknowledged that the high tax rate was justified for public health reasons and denied that the regulation amounted to a disproportionate violation of the industry actors’ fundamental rights. However, in doing so, even the third branch of government referred to the argument that the product’s “target audience is primarily young people, especially

²⁵ Supra n. 4, Lucrezia Meier-Schatz.

²⁶ Supra n. 4, Jacques-Simon Eggly.

young women”, who are more likely to be targeted by alcopop marketing and more susceptible to the harms of binge drinking.²⁷ In a previous Swiss Federal Tribunal decision, the judges also referred to alcopops. They insisted on the public interest in preventing excessive alcohol consumption in adolescents and young people in general, highlighting that this practice exposes these population segments to multiple risks: alcoholic comas, accidents (falls, drownings, traffic accidents), acts of violence, and unprotected sexual relations.²⁸

Gender Norms and Moral Panics

At first glance, the framing of alcopops is ostensibly aimed at addressing public health risks for a specific demographic (Feeny et al. 2021). However, the use of gendered arguments in governmental, legislative, and court discourse surrounding alcopops raises critical questions about the role of gender stereotyping in legal and regulatory decision-making. In this context, public health policies become entangled with broader social norms and expectations surrounding gender. By categorising alcopops as a ‘young women’s drink’, such official discourse risks reinforcing harmful stereotypes that depict young women as naive, vulnerable, and particularly susceptible to manipulative marketing and peer pressure, thereby framing them as a demographic in need of heightened legal protection (Dubriwny 2012; Feeny et al. 2021; Duncan et al. 2022a, b). This regulatory focus perpetuates traditional narratives that overemphasise women’s vulnerability and undermine their agency in consumption choices, framing their behaviour through a paternalistic lens of protection or irresponsibility rather than empowerment.

Feminist legal studies provide a critical lens for examining these gendered narratives, uncovering the implicit assumptions and expectations about women’s vulnerability, behaviour, societal roles, sexuality, and susceptibility to harm. Public health policies and alcohol regulations are not neutral; they are expressions of cultural and societal norms, often shaped by longstanding patriarchal structures (Keane 2013). In the case of alcopops, the framing of young women as vulnerable or irresponsible drinkers intersects with broader discourses on alcohol consumption and morality, illustrating how gender is naturalised as a feature of public health discourse.

Women are frequently addressed in terms of their biological and social vulnerability to alcohol, with claims that their bodies and organs are more rapidly affected by alcohol and that intoxication exposes them to heightened risks, such as unsafe sex or sexual violence (N. Campbell 2002; Keane 2009; 2013; 2017; Martin and Aston 2014; N. D. Campbell and Herzberg 2017; Duncan et al. 2022a, b). These narratives of gendered vulnerability are not merely descriptive but serve to reinforce traditional notions of femininity and the control of women’s bodies.

Beyond vulnerability, another key element in the framing of alcopops as a ‘young women’s drink’ is the heightened scrutiny of women’s behaviour, particularly in relation to alcohol consumption. Women’s drinking has historically been subject to moral panic (Garland 2008; Rolfe, Orford, and Dalton 2009), with societal anxieties focus-

²⁷ Swiss Federal Tribunal, 2012, 2C_712/2011.

²⁸ Swiss Federal Tribunal, 2009, 2C_466/2008.

ing on the appropriateness of female behaviour in contexts traditionally associated with men, such as alcohol consumption (Keane 2009). The perception of alcopops as particularly appealing to young women taps into these longstanding concerns, portraying women's drinking not only as a public health issue but also as a moral and cultural deviation. This reaction fits the dynamics of a moral panic in Cohen's (1972) and Hall's (1974) sense: media and political discourse construct women drinkers as symbolic 'folk devils', representing broader threats to social order and gender norms, while calls for regulation and control serve to reaffirm prevailing moral boundaries. This narrative mirrors historical patterns where women's consumption of alcohol has often been viewed through the lens of morality, deviance, and social control, reinforcing gendered double standards in public discourse (Keane 2009; Martin and Aston 2014).

Feminist analyses of alcohol consumption and femininity highlight how public health interventions reinforce notions of appropriate femininities and societal expectations about women's behaviour (Day, Gough, and McFadden 2004; Lennox et al. 2018). Drinking by women is framed through moral categories of acceptable consumption and drunkenness (Schmidt 2014, 581: "alongside the equal right to drink has come greater equality in exposure to alcohol-attributable harms, abuse and dependence"), where appropriate female drinking aligns with controlled, private behaviour. In contrast, public or excessive drinking by women is deemed transgressive (Measham 2002; Keane 2017). This discourse underscores how regulatory frameworks can inadvertently reinforce gender roles and expectations, illustrating "[w]ays of doing gender", rather than challenging them (West and Zimmerman 1987; Measham 2002; Lyons 2009).

A further element is the link between women's bodies and sexuality. Women's drinking is often associated with promiscuous or risky sexual behaviour (Pennay et al. 2022), which not only reflects gendered anxieties about women's autonomy but also positions their bodies as sites of regulation and control. Scholars have noted that public health narratives increasingly depict women as "containers of the foetus", framing alcohol consumption as a threat to reproductive health and societal expectations of motherhood (N. Campbell 2002, 56; Abrahamson and Heimdahl 2010, 82; Keane 2017, 127). This shift in focus, particularly concerning young women, creates a moral panic around their behaviour, linking their drinking to broader anxieties about sexual risk behaviour and reproduction.

The gendered regulation of alcopops exemplifies how public health policies can lead to the overregulation of women's bodies and choices, often undermining their agency (Goodwin 2020; Levy 2024). While regulatory efforts to reduce alcohol-related harm are well-intentioned, the policing of women's drinking choices reflects a paternalistic approach. The framing of young women as especially vulnerable and in need of protection risks infantilising them, treating them as passive recipients of harm rather than active agents capable of informed decision-making (Schmidt 2014; Levy 2024).

While this paper focuses primarily on gender, it is important to acknowledge how gender and age intersect in the public health framing of alcopops. The perception of alcopops as targeting *young* women does not merely invoke gendered ideas of femininity, but also age-based anxieties around adolescence, development, and risk. As

scholars have noted, youth is often constructed as a vulnerable life stage requiring protection and discipline, especially in relation to substance use, sexuality, and consumer habits (Cohen 1972; Griffin 2004). In this context, young women are doubly coded as needing regulation – both as minors and as gendered subjects – which reinforces paternalistic interventions and heightens moral panic. This intersectionality plays a crucial role in understanding the particular regulatory attention that alcopops attracted in Switzerland.

Finally, it is notable that despite the strong discursive association of alcopops with young women, these beverages also remained highly popular among boys. As studies on youth alcohol consumption in Switzerland show, beer continues to be the preferred drink across genders, yet alcopops were widely consumed by both girls and boys throughout the 2000s (Delgrande Jordan et al. 2019). This discrepancy between consumption data and regulatory focus underscores how gendered framings of public health crises can shape legal responses in ways that do not align with empirical patterns. It also highlights how regulation may act symbolically, targeting certain populations – in this case, young women – not necessarily because of their higher consumption, but due to broader societal concerns about femininity, morality, and control.

Paternalism and the Feminisation of Public Health Crises

The concept of paternalism, deeply embedded in feminist critiques of law, (Daly 1989; Mohapatra and Wiley 2019) is particularly salient in the context of alcopop regulation. Paternalism in regulation occurs when the State imposes restrictions on individual freedoms, ostensibly for the individual's own good (Feinberg 1971). In the case of alcopops, the Swiss government justified high excise taxes and indirect regulations of sugar content as measures to protect young women from harm. While this framing appeals to public health objectives, it also reflects deeper societal discomfort with women's autonomy, notably when their behaviour deviates from traditional gender norms (Duncan et al. 2022a, b).

Protectionist measures targeting young women's alcohol consumption draw on longstanding gendered anxieties about women's bodies and behaviours. This narrative, while addressing real health risks, often conflates concern for women's well-being with conservative moral judgments about appropriate female behaviour. As such, the regulatory response to alcopops reflects not only paternalism but also an implicit conservatism that ties women's health protection to their roles as future mothers and moral exemplars.

The feminisation of the public health crisis surrounding alcopops underscores this dynamic. By constructing the issue as one primarily affecting young women, Swiss regulatory discourse reinforces the notion that women's health issues are exceptional and require more restrictive measures. Feminist critiques argue that such regulatory frameworks not only reinforce traditional gender roles but also divert attention from systemic issues, such as corporate marketing practices that exploit gender stereotypes for profit (Gill 2008; Masse and Negura 2024). By focusing disproportionately on women's behaviour, public health policies risk reinforcing gendered hierarchies while failing to address broader structural contributors to alcohol-related harm.

Furthermore, this approach overregulates women's bodies and choices without equally considering the broader social and cultural drivers of alcohol abuse. It ignores the reality that alcohol-related harms, including binge drinking and addiction, are not confined to one gender (Esser and Jernigan 2018). This approach also fails to address broader alcohol-related harms that disproportionately affect men, as "men's drinking is normalised" (Abrahamson and Heimdahl 2010). For instance, while young women are framed as vulnerable to binge drinking and manipulative marketing, men's overrepresentation in alcohol-related harms – such as violent behaviour, domestic violence, and traffic accidents – receives comparatively little attention in legal discourse (Duncan et al. 2022a, b; Duncan et al. 2022a, b). Clayton (2007) pointedly asks: "Given this, the question arises, why aren't we in a panic over male alcohol consumption practices?" This double standard perpetuates gendered stereotypes and obscures the broader social and cultural drivers of alcohol abuse (De Visser and McDonnell 2012; Pennay 2022; Pennay et al. 2022).

The selective focus on young women's consumption of alcopops also reveals contradictions within Swiss public health policy. Switzerland's general legal framework emphasises individual responsibility, which is highlighted by the availability of alcohol in motorway service areas, for example. Yet, this principle is set aside in the case of alcopops to justify exceptional regulatory intervention.

From a legal perspective, this raises critical questions about the compatibility of such gendered regulatory tools with the principle of non-discrimination under Article 8 of the Swiss Federal Constitution.²⁹ While the excise tax on alcopops is neutral on its face and pursues a legitimate public health objective – reducing excessive alcohol consumption among adolescents – the intent, purpose, and discourse surrounding the tax are deeply gendered. This framing risks reinforcing harmful gender stereotypes and could be construed as discriminatory, particularly when contrasted with Switzerland's tax exemptions for wine, a product culturally coded as masculine. The unequal treatment of different alcoholic products underlines the contradictions and potential gender bias in Swiss alcohol regulation, raising broader questions about the intersection of public health law, gender equality, and constitutional principles.

Conclusion

Switzerland's legislative response to alcopops can be seen as an exceptional process driven by urgent public health concerns, leading to the creation of a high tax and indirect sugar cap on alcopops in 2004. The effect of this tax has been notable, as alcopop sales dropped significantly in the years following its implementation. However, a critical reading of the alcopop exceptionalism reveals a more nuanced picture.

Public health authorities and governmental, legislative, and judicial actors play a key role in shaping the legal discourse surrounding products such as alcopops. The gendered framing of alcopops as a 'young women's drink' in Swiss regulatory discourse offers critical insights into the intersections of public health law and gender norms. It highlights how the 'crisis' framing, particularly concerning gender, can

²⁹ Supra n. 8.

lead to extraordinary legal responses. Furthermore, the gendered rhetoric surrounding alcopops raises important questions about how public health issues are framed and the potential consequences of such framing. While the aim of reducing alcohol consumption among youth is laudable, the focus on young women risks reinforcing gender stereotypes about women's vulnerability and susceptibility to manipulation. It also reflects broader societal anxieties about women's behaviour and autonomy. The regulatory focus adopted can be critiqued as embodying a "your body, our choice" power dynamic (Boucheron 2025), where the State intervenes exceptionally in women's alcohol consumption while remaining comparatively passive regarding men's drinking behavior despite its established links to violence and other societal harms. This discrepancy highlights the need for a more equitable public health approach that avoids perpetuating gendered biases and moral judgments.

The regulation of women's consumption choices, as illustrated by the exceptional treatment of alcopops, starkly contrasts with the lack of regulation imposed on corporate marketing practices that perpetuate harmful gender stereotypes. Marketing strategies that frame alcopops as a 'young women's drink' capitalise on cultural constructs of gender to generate profit. This unchecked corporate influence perpetuates stereotypes that depict women as easily manipulated consumers, a narrative that public health law inadvertently reinforces when it prioritises regulating women's choices over addressing the root causes of these stereotypes and holding industry actors accountable.

Switzerland's response to the rise of alcopops reflects broader trends in public health regulation, where targeted interventions address specific perceived threats. Moving forward, the Swiss experience with alcopop regulation offers valuable insights into the challenges of balancing public health concerns with principles of non-discrimination and gender equality. It also underscores the importance of considering the social and cultural dimensions of public health crises, particularly when legal responses are framed around specific demographics. This paper advocates for a public health framework that promotes agency and addresses corporate responsibility rather than reinforcing paternalistic controls over women's behaviours, bodies, and choices. More inclusive public health regulation necessitates re-evaluating inconsistencies in Swiss alcohol taxation policies, avoiding gendered stereotypes in public health interventions, and addressing structural factors in addition to consumer behaviour.

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