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Transforming the Work of Geographical Indications to Decolonize Racialized Labor and Support Agroecology

Rosemary J. Coombe and S. Ali Malik*

Critical scholarship on geographical indications (GIs) has increasingly focused upon their role in fostering development in the Global South. Recent work has drawn welcome attention to issues of governance and sparked new debates about the role of the state in GI regulation. We argue that this new emphasis needs to be coupled with a greater focus upon local social relations of power and interlinked issues of social justice. Rather than see GI regimes as apolitical technical administrative frameworks, we argue that they govern emerging public goods that should be forged to redress extant forms of social inequality and foster the inclusion of marginalized actors in commodity value chains. In many areas of the world, this will entail close attention to the historical specificities of colonial labor relations and their neocolonial legacies, which have entrenched conditions of racialized and gendered dispossession, particularly in plantation economies. Using examples from South Africa and South Asia, we illustrate how GIs conventionally reify territories in a fashion that obscures and/or naturalizes exploitative conditions of labor and unequal access to land based resources, which are legacies of historical disenfranchisement. Like other forms of neoliberal governmentality that support private governance for public ends, however, GIs might be shaped to support new forms of social justice. We show how issues of labor and place-based livelihoods increasingly influence new policy directions within Fair Trade agendas while concerns with “decolonizing” agricultural governance now animate certification initiatives emerging from new social movements. Both initiatives provide models for shaping the governance and regulation of GIs in projects of rural territorial development that encompass

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principles of rights-based development to further social movements for rural social justice.

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I. THE GEOPOLITICAL CONTEXT OF PROMOTING GEOGRAPHICAL INDICATIONS FOR RURAL DEVELOPMENT IN THE GLOBAL SOUTH

Critical scholarship on the use of geographical indications (GIs)¹ to foster rural development reveal a marked divergence in opinion between scholars in advanced industrial countries who are increasingly critical of the way in which GIs have functioned to further sustainable development, empower producer groups, and conserve biodiversity, and those in the Global South who continue to express confidence that GIs will help to achieve these objectives. The latter still see GI

1. Geographical Indications (GIs) were established as a distinctive category of intellectual property (IP) in the 1994 Trade-Related Aspects of Intellectual Property (TRIPS) Agreement. See Agreement on Trade-Related Aspects of Intellectual Property Rights art. 22(1), Apr. 15, 1994; Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Apr. 15, 1994; LEGAL INSTRUMENTS – RESULTS OF THE URUGUAY ROUND vol. 31, 33 I.L.M. 1125 (1994) [hereinafter TRIPS Agreement]. Increasingly promoted for use in the Global South, GIs, or marks indicating conditions of origin (MICOs) include appellations of source, denominations of origin, collective trademarks and certification marks. In many common-law jurisdictions, recognition is possible without registration if the MICO is an indication of source for consumers. Some countries in the Global South employ the term GI as a generic name for a new form of *sui generis* protection established by new legislation introduced to comply with the TRIPS Agreement. Because the TRIPS Agreement leaves discretion with member countries regarding the means and forms of such protections, countries may call their protections GIs, but utilize governance frameworks historically applied to denominations of origin or collective trademarks, for example. They may also fuse elements from diverse legal vehicles and add new ones. See DANIELE GIOVANNUCCI ET AL., GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS 8 (2009). Many countries have entrenched contemporary GIs as forms of state property when, historically, in European contexts, they would have been held by collective stakeholders such as producer associations that upheld quality controls and were responsive to local conditions. Moreover, some states in Asia have allowed traders to use them as if they were producers, which may further alienate their governance from those who create the goods that bear them. See N.S. Gopalakrishnan, Prabha S. Nair & Aravind K. Babu, *Exploring the Relationship Between Geographical Indications and Traditional Knowledge: An Analysis of the Legal Tools for the Protection of GIs in Asia* (Int’l Ctr. for Trade & Sustainable Dev., Working Paper, 2007).

protections as possessing the capacity to transform artisans, farmers, smallholders, pastoralists, and fishing peoples from raw material producers to exporters of differentiated products easily identifiable in global markets while stoking social pride in local products, commanding respect, and reaping price premiums.² Such optimism seems unwarranted after over a decade of accumulating evidence that many countries fail to anticipate or to fully bear the costs of establishing effective GI protections³ nevertheless forge them to maintain biodiversity, protect small producers, or reduce income inequalities in the regions of the Global South where they have been introduced.⁴ Rather than simply dismiss the optimism which many scholars still hold for the use of GIs in the Global South, however, we will use this essay to critically direct such hopes in more productive directions, by reflecting upon the geopolitical historical conditions of GI expansion, the ideologies GIs support, the labor relations they obscure, and the aspirations they might, nonetheless, still be shaped to advance.

Cerkia Bramley is a prominent proponent of using GIs for rural development in the Global South.⁵ Influential in policy circles because of her early research legitimating the South African Rooibos tea GI (upon which we will later reflect), she provides a positive case for linking GIs to rural development and, in so doing, rehearses the dominant arguments put forth by European boosters of GI strategies of rural territorial development.⁶ By remunerating assets involved in the production process, Bramley reiterates, “[T]he link between an origin labelled product and its area of origin allows for the creation of rents based on the ‘qualities’ of the product.”⁷ In defining product standards and signaling territorial values embedded in the product, GI qualification processes enable the capture of price premiums.

2. Justin Hughes, *The Limited Promise of Geographical Indications for Farmers in Developing Countries*, in *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC* 61, 66–86 (I. Calboli & W. Ng-Loy eds., 2017).

3. See, e.g., G.E. Evans & Michael Blakeney, *The Protection of Geographical Indications After Doha: Quo Vadis?*, 9 J. INT’L ECON. L. 575 (2006).

4. See CERKIA BRAMLEY, *A REVIEW OF THE SOCIO-ECONOMIC IMPACT OF GEOGRAPHICAL INDICATIONS: CONSIDERATIONS FOR THE DEVELOPING WORLD* (2011) (overviewing the literature on the socioeconomic impact of GIs and considerations relevant to countries in the Global South); Sarah Bowen & Ana Valenzuela Zapata, *Geographical Indications, Terroir, and Socioeconomic and Ecological Sustainability: The Case of Tequila*, 25 J. RURAL STUD. 108 (2009) (discussing a case study of GI governance that casts doubt on arguments that GIs will protect biodiversity). The term Global South is often employed synonymously with post-Cold War economically underdeveloped nation-states. Conceptually, it embodies transnational spaces and peoples bearing the brunt of contemporary capitalist globalization. Generally, Mahler notes “[c]ritical scholarship that falls under the rubric Global South is invested in the analysis of the formation of a Global South subjectivity, the study of power and racialization within global capitalism in ways that transcend the nation-state as the unit of comparative analysis.” Anne Garland Mahler, *Global South*, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0055.xml> [<https://perma.cc/9ERD-PUNM>] (last updated Oct. 25, 2017).

5. See Cerkia Bramley & Estelle Biénabe, *Why the Need to Consider GIs in the South?*, in *DEVELOPING GEOGRAPHICAL INDICATIONS IN THE SOUTH* 1 (Cerkia Bramley, Estelle Biénabe & Johann Kirsten eds., 2013).

6. See BRAMLEY, *supra* note 4.

7. *Id.* at 5.

Finally:

[B]y preventing the diversion of income from misappropriation, GIs enable producers to potentially enjoy larger income flows from their origin based production processes. In this way GIs lead to a more equitable distribution of value for local producers and communities . . . bringing an inclusive territorial benefit to all actors within the region.⁸

Other GI advocates laud indirect benefits, such as increased investment, land values, new potentials for agro-tourism, and greater employment opportunities, because spin-off industries, such as agro-tourism, work to strengthen the territorial brand.⁹ Moreover, by “enabling communities to continue producing their traditional products,” GIs “contribute to the preservation of cultural heritage.”¹⁰

Given how few advantages developing and least developed countries (to use TRIPs nomenclature) were provided under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), it is not surprising that GIs were embraced for the potential they afford to enhance markets for the unique, traditional, regional foodstuffs and handicrafts that developing countries appear to have in great abundance.¹¹ Nonetheless, readers should recognize that many of the proponents of GI expansion are supported and funded by the European Union (EU), whose interests in extending GI protections to new regions reflect a regional economic agenda in global trade relations. The EU aspires to protect and entrench a form of intellectual property (IP) in which Europe has a great competitive advantage but which other industrialized states in the World Trade Organization (WTO) regard as unwarranted protectionism.¹² GIs are a European mechanism for rural territorial development that has been exported to regions in the Global South

8. *Id.* (citing Daphne Zografos, *Geographical Indications & Socio-Economic Development* (IQsensato, Working Paper No. 3, 2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628534 [<https://perma.cc/J62S-6TGR>]).

9. BRAMLEY, *supra* note 4, at 3 (citing Kasturi Das, *Prospects and Challenges of Geographical Indications in India*, 13 J. WORLD INTELL. PROP. 148 (2010)).

10. *Id.* at 5; see also Tomer Broude, *Taking ‘Trade and Culture’ Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT’L ECON. L. 623 (2005); Daniel W. Gade, *Tradition, Territory, and Terroir in French Viticulture: Cassis, France, and Appellation Contrôlée*, 94 ANNALS ASS’N AM. GEOGRAPHERS 848 (2004). Even in the European context, however, not all GI governance regimes achieve such ends. For example, state-directed systems, such as the Protected GI scheme in Ireland, appear to be dominated by management perspectives more in keeping with food safety and quality regulation than with developing place-based product linkages between food and territory. See Ricky Conneely & Marie Mahon, *Protected Geographical Indications: Institutional Roles in Food Systems Governance and Rural Development*, 60 GEOFORUM 14 (2015).

11. Nicole Aylwin & Rosemary J. Coombe, *Marks Indicating Conditions of Origin in Rights-Based Sustainable Development*, 47 U.C. DAVIS L. REV. 753, 774 (2014); see also Michael Blakeney, *Protection of Traditional Knowledge by Geographical Indications*, in TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL EXPRESSIONS AND INTELLECTUAL PROPERTY IN THE ASIA PACIFIC 87 (Christoph Antons ed., 2009).

12. See GIOVANNUCCI ET AL., *supra* note 1, at 63–64; Irene Calboli, *Expanding the Protection of Geographical Indications of Origin Under TRIPS: “Old” Debate or “New” Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 181, 186 (2006); Rosemary J. Coombe, Sarah Ives & Daniel Huizenga, *Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products*, in THE SAGE HANDBOOK OF INTELLECTUAL PROPERTY 207, 210–11 (2014).

as part of a geopolitical strategy for maintaining European interests in global trade regimes.

EU support and trade pressures for the extension of GI protection (on behalf of France and Mediterranean member states), along with the advocacy work of European state overseas development offices and non-governmental organization (NGO) intermediaries were influential in popularizing and naturalizing a narrative in which GIs mark products “deeply rooted in tradition, culture and geography . . . [that] support rural development . . . promote new job opportunities” and “preserve the environment,” so that globalization does not diminish “the diversity, quality and tradition of origin products” while enabling producers to rely upon these “for the sustainable development of their communities.”¹³ The tropes of authenticity used to define such typical products “are deliberately cultivated in a specific European ‘mode of production,’ . . . enshrined in EU Regulations”¹⁴ that encouraged such interventions as part of neoliberal state decentralization trajectories. “The essence of this mode of production is its integration of cultural, financial, natural, and social capital into a form of territorial IP.”¹⁵

GIs are important vehicles in a more comprehensive European agricultural and rural development policy, a means for investing in lagging economies to build infrastructure, prevent emigration, and attract tourism while helping to preserve cultural heritage, thereby meeting several regional policy objectives. The success of GIs in Europe clearly relies upon a whole range of other supports and subsidies as well as a legal context in which human rights are “constitutionalized” within IP rights protections.¹⁶ Without such supports and normative framings, however, GIs cannot simply be transplanted and expected to function in the same way. For example, aspects of such European territorial development strategies are being imported wholesale in Bolivia, where newly established viticultural regions marked by denominations of origin welcome tourists to a South American Andalusia—but they do so by increasing income inequalities and further dispossessing peasants and indigenous peoples.¹⁷

13. Hughes, *supra* note 2, at 66 (citing ORGANISATION FOR AN INTERNATIONAL GEOGRAPHICAL INDICATIONS NETWORK, TERUEL DECLARATION 1 (2009)); see also Catherine Saez, *GIs the “Darling” of Europe, but Protection a Challenge for All, Producers Say*, INTELL. PROP. WATCH (May 28, 2013), <http://www.ip-watch.org/2013/05/28/gis-the-darling-of-europe-but-protection-a-challenge-for-all-producers-say/> [<https://perma.cc/KLF3-23QZ>].

14. Rosemary J. Coombe, *The Knowledge Economy and Its Cultures: Neoliberal Technologies and Latin American Reterritorializations*, 6 HAU: J. ETHNOGRAPHIC THEORY 247, 263 (2016).

15. *Id.*

16. See Christophe Geiger, *Implementing Intellectual Property Provisions in Human Rights Instruments: Towards a New Social Contract for the Protection of Intangibles*, in RESEARCH HANDBOOK ON HUMAN RIGHTS AND INTELLECTUAL PROPERTY 661 (Christophe Geiger ed., 2015); Christophe Geiger, *Reconceptualizing the Constitutional Dimension of Intellectual Property*, in INTELLECTUAL PROPERTY LAW AND HUMAN RIGHTS 115 (Paul L.C. Torremans ed., 3d ed. 2012); Christophe Geiger, *Fundamental Rights as Common Principles of European (and International) Intellectual Property Law*, in COMMON PRINCIPLES OF EUROPEAN INTELLECTUAL PROPERTY LAW 223 (Ansgar Ohly ed., 2012).

17. See Katherine L. Turner et al., *Creole Hens and Ranga-Ranga: Campesino Foodways and Biocultural Resource-Based Development in the Central Valley of Tarija, Bolivia*, 6 AGRICULTURE 1 (2016); see also Rosemary J. Coombe & Katherine L. Turner, *Territory as Intellectual Property: Prospects for*

While various NGOs have attempted to use European rural cultural economy strategies to effect new forms of territorial development in the Global South (particularly in Latin America), the work of IP in these efforts has been uneven and sporadic, with the use of marks indicating conditions of origin (MICOs), such as denominations of origin, often becoming dependent upon state priorities rather than local needs. Too frequently, efforts to develop MICOs have assumed foreign consumers and export markets; such gourmet branding strategies are especially susceptible to elite capture.¹⁸ Whether the mimicry of such models of European rural territorial development can effectively guide regions of the world that have historically endured European colonial government and occupation without further entrenching racialized colonial legacies is one of the broader and more uncomfortable questions we pose here. This is a particularly significant question as it pertains to goods still produced in plantation conditions and postcolonial political contexts where labor relations have not been decolonized, nor modern social welfare supports put into place.

In earlier work, we¹⁹ have explored examples from the Global South to argue that both *sui generis* GIs and other MICOs need to be critically evaluated as forms of local governance and socially assessed according to criteria of rights-based development.²⁰ We have shown how the rhetoric used to promote GIs tends to obscure social relations of production²¹ by projecting and naturalizing particular social imaginaries²² that ignore or deny historical forms of social inequality, legitimating forms of GI governance that tend to further entrench these inequalities. More recently, we suggested that certification strategies need to evolve in South and Southeast Asia to address issues of gender and racial inequality, the ongoing dispossession of lands and losses of biodiversity through monocropping, and the impact of such processes in increasing precarity in employment and undermining women's livelihood security.²³

In this Article, we will summarize and elaborate upon these earlier arguments in conversation with other scholars engaged in critical research on GI governance. Although we welcome the new scholarly attention to GI governance and share

Food Sovereignty Under Regimes of Informational Capital (Apr. 6, 2017) (unpublished manuscript) (on file with authors).

18. Katherine L. Turner, Iain J. Davidson-Hunt & Ian Hudson, *Wine, Cheese and Building a Gourmet Territory: Biocultural Resource-Based Development Strategies in Bolivia*, 39 CAN. J. DEV. STUD. 19 (2017).

19. The use of the authorial 'we' refers to Coombe's work with a group of graduate students and postdoctoral fellows over several years, including Nicole Aylwin, Marc Griebel, Daniel Huizenga, Sarah Ives, Kate L. Turner, and S. Ali Malik.

20. See Rosemary J. Coombe & Nicole Aylwin, *Bordering Diversity and Desire: Using Intellectual Property to Mark Place-Based Products*, 43 ENV'T & PLAN. A 2027 (2011).

21. See Coombe, Ives & Huizenga, *supra* note 12, at 224.

22. *Id.*

23. See Rosemary J. Coombe & S. Ali Malik, *Rethinking the Work of Geographical Indications in Asia: Addressing Hidden Geographies of Gendered Labor*, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC, *supra* note 2, at 87.

critics' concerns about the role of the state in many new *sui generis* GI regimes,²⁴ we also believe that GIs need to be more attentive to local relations of power and designed to build the political capacities of those most marginalized in commodity value chains. If GIs are increasingly promoted in the Global South as part of a strategy of rural territorial development, it is imperative that they are accompanied by rights-based development norms and practices that expand the range of social justice concerns brought to bear upon their governance. Moreover, these norms of thought and practice need to be devised to prevent GIs from being used to further entrench surviving colonial labor relations and the discriminatory forms of racialized and gendered marginalization that postcolonial conditions have yet to alleviate.

Taking issue with some contemporary positions on the effect of GIs, we argue that rather than decommodify fetishized goods,²⁵ dominant GI strategies tend, instead, to fetishize *territories* in a fashion that obscures the conditions of human labor that constituted them as such. We illustrate this through historical considerations of two GIs lauded as providing models for rural territorial development (Rooibos and Darjeeling teas) to show how regional branding may be symbolically as well as materially accomplished so as to naturalize ongoing forms of dispossession in regions historically dominated by plantation economies. Then, by considering the histories of two regions (in India and Sri Lanka) now registered for potential GI development and extolled as sites for territorial branding, we delineate the social formations of race and gender likely to be further ensconced through such projects. Activists in the Fair Trade movement share this interest in addressing the social marginalization and gendered and racialized subject positions produced by plantation economies and seek to ensure that certifications of fairness evolve to encompass labor standards that provide better justice to workers in agricultural sectors. Concerns with avoiding the reproduction of colonial conditions of production and decolonizing agricultural economic governance are, we will show, echoed in a number of other certification initiatives that suggest new norms and values that might inform future GI regimes. Ultimately, we suggest that the use of GIs in rural territorial development projects should incorporate principles of rights based development to further social movements for food sovereignty and agricultural social justice.

II. EMERGING CRITERIA FOR ASSESSMENT: GOVERNMENT AND REGULATION

Recent scholarship suggests that the benefits of using GIs are rarely as positive as the ideal scenarios outlined by their proponents. Both the particularities of local

24. Coombe & Aylwin, *supra* note 20, at 2033–35; *see also* Aylwin & Coombe, *supra* note 11.

25. *See, e.g.*, Franck Galtier, Giovanni Belletti & Andrea Marescotti, *Factors Constraining Building Effective and Fair Geographical Indications for Coffee: Insights from a Dominican Case Study*, 31 DEV. POLY REV. 597 (2013) [hereinafter Galtier, Belletti & Marescotti, *Factors*]; Franck Galtier, Giovanni Belletti & Andrea Marescotti, *Are Geographical Indications a Way to “Decommodify” the Coffee Market?*, in 12TH CONGRESS EUR. ASS'N AGRIC. ECONOMISTS – EAAE 2008 1 (2008) [hereinafter Galtier, Belletti & Marescotti, *Geographical Indications*].

social conditions and the ways in which GI regimes have been introduced and managed in the Global South have limited the range and distribution of their benefits. Barham, Evans and Blakeney, and Hughes, for example, caution against viewing GIs as a universal prescription for rural development, arguing that local contexts condition their impacts.²⁶ Nonetheless, most of the relevant local contexts these scholars point to are economic ones in which to assess comparative costs and benefits; countries are merely warned about the high costs of administering these programs. We will suggest that other historical contexts are relevant if GIs are to serve issues of justice and well-being that go beyond gross increases in income to attend to distributions of benefits, sustainability, and local capacity building.

After years of arguing that GIs should be assessed in terms of the political economies of their governance,²⁷ we find it heartening that more recent studies of GIs attend critically to their institutional implementation with particular attention to their local social impacts and the inclusions and exclusions they effect. Scholars in the Global South have been particularly interested in GIs as means “to uplift the economic condition of the poor people . . . who contribute to many key products of export” while (for example) providing “better protection to Indian indigenous knowledge and [the] reputation of products originating from India.”²⁸ The ultimate issue is how and under what conditions GI management can empower all producers along the value chain. It is now widely acknowledged that the necessary institution building for widespread social benefits will require strong public intervention.²⁹ New case studies of GIs in the Global South attempt to identify the ideal role for the state in “achieving the virtuous circle of GIs”³⁰ where the “long-standing

26. See Dominique Barjolle et al., *The Role of the State for Geographical Indications of Coffee: Case Studies from Colombia and Kenya*, 98 *WORLD DEV.* 105 (2017); Delphine Marie-Vivien, *The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India*, 13 *J. WORLD INTELL. PROP.* 121 (2010); see also Elizabeth Barham, *Translating Terroir: The Global Challenge of French AOC Labeling*, 19 *J. RURAL. STUD.* 127 (2003); Evans & Blakeney, *supra* note 3, at 575; Hughes, *supra* note 2.

27. See Aylwin & Coombe, *supra* note 11; Coombe & Aylwin, *supra* note 2027; Rosemary J. Coombe, Steven Schnoor & Mohsen Ahmed, *Bearing Cultural Distinction: Informational Capitalism and New Expectations for Intellectual Property*, 40 *U.C. DAVIS L. REV.* 891 (2007).

28. See K.D. Raju & Shivangi Tiwari, *The Management of Geographical Indications: Post Registration Challenges and Opportunities*, 42 *DECISION* 293 (2015).

29. Giovanni Belletti, Andrea Marescotti & Jean-Marc Touzard, *Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors' Strategies and Public Policies*, 98 *WORLD DEV.* 45 (2015).

30. Barjolle, *supra* note 26, at 105 (where factors in the coffee sector are explained as differing from those pertaining to conventional GIs that pose obstacles to achieving the virtuous circle of GIs). As described by Vandecandelaere, Arfini, Belletti, and Marescotti:

The virtuous circle starts from the long-standing reputation of specific qualities attributed to the origin (emblematic examples are Champagne, Parmigiano Reggiano, or Tequila). This reputation for quality enhances consumers' willingness to pay for the product; consumers pay more for the product compared to substitute products under certain conditions; finally, this economic return may allow value chain actors to maintain local, fair, and traditional farming and trading practices.

EMILIE VANDECANDELAERE, FILIPPO ARFINI, GIOVANNI BELLETTI & ANDREA MARESCOTTI, *FOOD & AGRIC. ORG. OF THE UNITED NATIONS, LINKING PEOPLE, PLACES AND PRODUCTS: A*

reputation of specific qualities attributed to the origin” enhances consumer willingness to pay a premium for the product, producing an “economic return [which] may allow value chain actors to maintain local, fair, and traditional farming and trading practices.”³¹ Unfortunately, however, there is little evidence that state governments are interested in using GIs for redistributing power among stakeholders or empowering local communities. Rather more evidence suggests that GI institutions tend to be dominated by powerful industry groups interested in maintaining their own positions of privilege.³²

Ironically, then, a neoliberal strategy of decentralized local territorial development has been met with increasing demands for enhanced state oversight and support, precisely because of the local social inequities and negative environmental consequences that might otherwise result. As sociologist Sarah Bowen argues, in the context of government withdrawal from agriculture and rural social support systems, sustainability and equity are unlikely to be achieved unless all producers receive institutional instruments to facilitate the organization required by GI supply chains.³³ Stronger public intervention and proactive public policies are also justified on the basis that GIs provide public goods.³⁴

If GI implementation calls for new forms of intervention, there is no necessary common regulatory framework for their governance. Thus, in some countries (such as India), state institutions have assumed the role of proprietors who grant rights to use the indication to others designated merely as authorized users, while leaving the identities of producers and mechanisms for their compensation opaque.³⁵ In the case of *sui generis* GIs in the Global South (in countries which do not use traditional trademark systems or do so without conventional safeguards), public-private sector collaboration is inevitable, raising the prospect that central governments, in collaboration with large corporate producer associations, will use the process to extract economic rents.³⁶ This development could potentially strengthen

GUIDE TO PROMOTING QUALITY LINKED TO GEOGRAPHICAL ORIGIN AND SUSTAINABLE GEOGRAPHICAL INDICATIONS 1 (2009).

31. Barjolle, *supra* note 26, at 105; *see also* Marie-Vivien, *supra* note 26.

32. Aylwin & Coombe, *supra* note 11, at 781–83, and sources cited therein; Coombe & Aylwin, *supra* note 20, at 2033–36, and sources cited therein. As we have elsewhere shown:

The oldest appellations of origin were developed to protect aristocratic traditions and continue to reflect class-based privilege, concentrate control over governance in small elites, restrict the upward mobility of smallholders, discourage the formation of or supplant co-operatives, and entrench poor agricultural working conditions. Many MICO regimes have reduced rather than increased local biological and cultural diversity. Moreover, the dominant social imaginary offered by proponents for GIs tends to be localized in activities of marketing, which do not merely misrepresent social realities but shape them, naturalizing hierarchical labor relations and influencing the ways stakeholders come to understand their relationships to these products.

Coombe & Malik, *supra* note 23, at 90 (internal citations omitted).

33. *See* Sarah Bowen, *Embedding Local Places in Global Spaces: GIs as a Territorial Development Strategy*, 75 *RURAL SOC.* 209 (2010).

34. Belletti, Marescotti & Touzard, *supra* note 29.

35. Raju & Tiwari, *supra* note 28, at 298.

36. Hughes, *supra* note 2, at 74.

government's role in the market, in ways that may reduce rather than increase benefits to the majority of rural people. Diverse stakeholders in supply chains are simply assumed to share similar interests in developing a region's reputation through the marking of distinctive goods. Nonetheless, it is increasingly evident that "GI premiums are rarely shared equitably, particularly in the Asian context, where traders are treated as if they are producers and constitute the most powerful actors in the value chain."³⁷ State-driven GI strategies that focus primarily upon increased productivity and export earnings tend to further deprive small producers and privilege industrial elites wherever they are introduced.³⁸

In a comparison of GI implementation in the national coffee sectors of Colombia and Kenya, for example, agricultural socio-economist Barjolle and her coauthors found great differences in state involvement, with the Colombian system providing greater divisions of labor, and checks and balances which prevented state overreaching.³⁹ Significantly, relatively egalitarian producer groups led the movement for branding Colombian coffee, registering foreign trademarks and new regional denominations of origin. Although legally GIs were held as collective state property, they were delegated to private bodies to manage. As in traditional trademark systems, the holder of the certification mark was not entitled to use the mark itself so as to maintain the integrity of the certifying process. In the Kenyan case, however, the state was both the holder of the mark and the central managing body for the certification process, which, we might surmise, makes the process more susceptible to patronage and lobbying.

States that have recently introduced GIs may play a particularly dominant role in dictating the terms of their use in national jurisdictions, which may not always correspond to local needs; "[c]ommunities have often found it difficult to control the social, ecological, and cultural consequences of producing traditional goods for modern mass markets."⁴⁰ A recent essay in *Decision* magazine by Raju (an IP specialist) and Tiwari (a plant biotechnologist), illustrates the utopian ideals, populist desires, and national pride that many people express when contemplating the development of Indian GIs.⁴¹ The authors are, however, more realistic than many others in their sober recognition of state failures in this field to date and the need for a better blueprint for improved GI governance. GIs are, in their view, ideally held as a community or group right by associations of producers; however, in India state governments, departments, and central government agencies have dominated GI applications (registering fifty-six percent of the 227 GIs registered since 2004) while cooperative associations and societies (primarily representing the handicrafts

37. Coombe & Malik, *supra* note 23, at 90 (citing Gopalakrishnan, *supra* note 1).

38. Coombe, Ives & Huizenga, *supra* note 12, at 217.

39. Barjolle et al., *supra* note 26, at 115.

40. Coombe, Ives & Huizenga, *supra* note 12, at 216.

41. See Raju & Tiwari, *supra* note 28. Madhavi Sunder remarks upon the enthusiasm she encountered in India about the introduction of GIs in Madhavi Sunder, *IP³*, 59 STAN. L. REV. 257 (2006).

sector) have filed only thirty-nine percent of the GIs granted.⁴² GI proprietors may live thousands of miles away from the producers of the goods that bear the mark, which limits the monetary benefits that producers are likely to see. In this system, producers and producer associations are mere beneficiaries, if and when they are even registered as such, which is seldom the case. Indeed, there are dozens of GIs registered for which there are few or no beneficiaries listed despite the known identities of hundreds of producers of the registered product. Raju and Tiwari thus suggest the development new institutions more attentive to social equities and local capacity building.⁴³

In Latin America, economist Mancini argues that GIs intended to further rural development by inserting territorially marked goods into global value chains all too often exclude smallholder farmers in marginalized regions.⁴⁴ Many GI initiatives lack independent governance mechanisms, and ignore the perspectives of the full range of stakeholders in conditions of greatly unequal power relations. Some critics optimistically suggest that GI governance functions need merely be decentralized because municipal governments are more sensitive to local social relations.⁴⁵ While this might sometimes be the case, municipal governments may also be more invested in the prejudices that uphold local forms of exclusion and more beholden to entrenched authority and respectful of elite privilege. Communities have often found it difficult to control the social, ecological, or cultural consequences of producing traditional goods for modern markets, and local governments have often encouraged the substitution of traditional knowledge and methods with practices deemed more conducive to modernization, with often dire consequences for minorities and the equities of benefit sharing.⁴⁶

There are several community-based enterprises that market local products and celebrate the distinctiveness of their origins in the Global South; the most successful of these have involved supports at many scales, including assistance in the constitution of cooperatives, the building of transnational partnerships with CSOs for the creation of marketing strategies, and the facilitation of communications

42. Universities and foreign holders claim the remainder of registrations. Raju & Tiwari, *supra* note 28, at 298.

43. The authors propose a governance model for a GI for traditional Kerala medicine that puts emphasis on inclusive structures and institutions, participatory deliberation, equity across the value chain, and affiliation with civil society actors while emphasizing transparency and accountability in governance, and insisting upon more reliable and equitable benefit sharing which delivers collective social welfare, infrastructural and environmental benefits, as well as individual monetary compensations. *Id.* It thereby includes many of the features that we associate with rights-based approaches to development, which we explore in the final section of this Article.

44. See Maria Cecilia Mancini, *Geographical Indications in Latin America Value Chains: A "Branding from Below" Strategy or a Mechanism Excluding the Poorest?*, 32 J. RURAL STUD. 295 (2013).

45. Barjolle et al., *supra* note 26, at 108; Claire Durand & Stéphane Fournier, *Can Geographical Indications Modernize Indonesian and Vietnamese Agriculture? Analyzing the Role of National and Local Governments and Producers' Strategies*, 98 WORLD DEV. 93 (2015).

46. See, e.g., ANITA SAY CHAN, NETWORKING PERIPHERIES: TECHNOLOGICAL FUTURES AND THE MYTH OF DIGITAL UNIVERSALISM 23–26 (2013); Durand & Fournier, *supra* note 45, at 98–100.

between communities and national institutions.⁴⁷ We have pointed to successful MICO strategies which link communities in the Global South and the Global North through transnational NGO networks to support new forms of solidarity and exchange,⁴⁸ particularly with relation to goods such as tea and coffee where women are dominant in both producer and consumer sectors.⁴⁹ More recent scholarship has recognized that GI regimes are often devised and implemented without significant and necessary state supports; non-state and transnational networks of actors may need to be involved to deliver maximum economic and social benefits.⁵⁰ As we will later suggest, a movement away from the state as the singular actor vested with obligations to encompass a broader field of social responsibilities to the rights claims and livelihood needs of the disenfranchised is also congruent with understandings of rights-based development practices.

However welcome this new emphasis on GI governance, most of this literature still presumes that producers are independent farmers or artisans, autonomous from the bodies that hold GIs or those who are authorized to use them, who need only seek inclusion in the “virtuous circle.”⁵¹ Our research indicates that this is seldom the case; instead, many GIs serve to obscure and indeed may legitimate oppressive conditions of production.⁵² Few critics address local conditions of land ownership and labor relations in their assumptions that there simply are “local, fair, and traditional farming and trading practices”⁵³ to be maintained, despite rather clear evidence that the historical use of GIs in Europe tended to uphold rather feudal relations of power and suggestions that new GIs are being introduced in a fashion that attempts to undermine peasant cooperatives.⁵⁴

If we seriously want to empower local stakeholders, we need to understand the processes through which local inequalities were established and became entrenched. This requires addressing the historical forces—both material and ideological—that have produced existing power imbalances, often on the axis of gender, race, and ethnicity. If recent scholarship now focuses on resolutions to collective action problems, very little of it squarely addresses the dominant sociological forms of economic exclusion from GI participation amongst local

47. See Aylwin & Coombe, *supra* note 11, at 781–84 (discussing Cajamarca cheese and El Ceibo chocolate); Coombe & Aylwin, *supra* note 20, at 2028 (discussing Octavalo weaving).

48. See Aylwin & Coombe, *supra* note 11, at 783–84; Coombe, *supra* note 14, at 265 (discussing the example of “quinoa real de Lipéz”); Coombe & Aylwin, *supra* note 20, at 2037–38 (exploring the examples of Just Change Tea and Café Feminino).

49. See Allison Loconto, *Can Certified-Tea Value Chains Deliver Gender Equality in Tanzania?*, 21 FEMINIST ECON. 191 (2015).

50. Didier Chabrol et al., *Establishing Geographical Indications Without State Involvement? Learning from Case Studies in Central and West Africa*, 98 WORLD DEV. 68 (2015).

51. Barjolle et al., *supra* note 26, at 105.

52. See Coombe & Malik, *supra* note 23.

53. Barjolle et al., *supra* note 26, at 116.

54. Gabriela Vargas-Cetina, *Corporations, Cooperatives, and the State: Examples from Italy*, 52 CURRENT ANTHROPOLOGY S127 (2011).

producer groups and their historical constitution.⁵⁵ We would argue that the time is ripe to consider issues of race and labor in GI governance and the need to alter and augment GI strategies with additional forms of social justice certification that challenge entrenched colonial modes of production.

Indeed, we would suggest that rather than decommodify goods by linking them back to their territorial origins, and thereby undermining their fetishism as commodities,⁵⁶ many GIs function instead to fetishize *territories* in a fashion that naturalizes rather than challenges the historical social relations of labor which constitutes territory as such. Moreover, to understand this process, we must acknowledge that the GI, like other MICOs, does its work of governing symbolically as well as materially through forms of enchantment that have historical provenance and enduring consequence. The rhetorical tropes used to assert typicality in rationales for seeking protection for GIs and other MICOs, in the promotion of their use by “communities” and in their characteristic forms of advertising are generic ones in which a standardized social imaginary is projected and reproduced of a given territory’s specific and traditional character.⁵⁷ Social imaginaries are ways of understanding the social that become social entities in themselves, mediating collective life, by way of representations which may acquire immense institutional force.⁵⁸

The assertion of naturalized synergies between the qualities of a territory, the characteristics of its goods, the traditions of its people, and the importance of these to their cultural identity has become orthodox for those extolling the virtues of introducing GIs and [tends to become hegemonic] in the areas from which the goods they mark originate. The use of GIs tends to imbue products with distinct attributes that unproblematically reflect both a local biodiversity and a local cultural distinction which are presumed to be isomorphic with a “community.” Thus, a stable, unified and harmonious “place” is ideally imagined, represented and, ultimately perhaps, even experienced.⁵⁹

We will illustrate this through brief historical and sociological journeys into two regions famous for their tea gardens and celebrated for obtaining two of the first twenty-first century GIs in the Global South.

55. For an example of scholarship that argues in favor of a participatory governance process in which local artisans and their knowledge must be closely involved, see Amit Basole, *Authenticity, Innovation, and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari*, 18 J. WORLD INTELL. PROP. 127 (2015).

56. Galtier, Belletti & Mariscotti, *Factors*, *supra* note 25; Galtier, Belletti & Mariscotti, *Geographical Indications*, *supra* note 25.

57. Aylwin & Coombe, *supra* note 11; Coombe, Ives & Huizenga, *supra* note 12.

58. Dilip Parameshwar Gaonkar, *Toward New Imaginaries: An Introduction*, 14 PUB. CULTURE 1, 4 (2002).

59. Coombe, Ives & Huizenga, *supra* note 12, at 213.

III. GOODS FROM THE ‘TEA GARDENS’: ROOIBOS TEA

In 2013 WIPO pronounced that:

For generations, [r]ooibos has provided a healthy, aromatic tea for people all around the world and an important economic resource for farmers and producers in South Africa. With its importance reverberating throughout the tea and IP world, it is poised to bring about change that will positively benefit a people, a legal system, and a nation.⁶⁰

WIPO here invokes what we call the social imaginary of the GI form when it suggests the unity of *a people* and *a nation* in this context. Rooibos was considered ideally suited for a GI because the link between the tea and its territory was due simultaneously to ecological characteristics, local production practices, and local culture, engaging both natural and human resources in “a collective process involving all local actors, thereby activating all the components of the rural economy.”⁶¹ Proponents of the GI conveniently ignored the colonial histories of dispossession characteristic of the distinctive territories in which rooibos is cultivated and the racialized legacies and social discriminations its cultivation upholds.

Rooibos tea is grown in a region of South Africa where apartheid’s racial legacy is a continuing reality for distinct peoples, including a precarious underclass of colored laborers. GI’s export earnings are significant, and there is no doubt that the indication commands great pride, but rather than help to heal apartheid’s wounds, the governance of the GI reinscribes its scars. The region in which rooibos grows is socially distinctive. In most of South Africa, the vast majority of the population is black (seventy-nine percent), with whites and coloreds (a distinctive apartheid-era category) each representing another ten percent (an “Asian” category is less than one percent).⁶² The rooibos-growing area, distinctly and differentially, is eighty percent colored, fifteen percent white, and only five percent black.⁶³ Our colleague Sarah Ives’s fieldwork revealed that both white Afrikaaners and local colored residents see themselves as indigenous to the GI region and its distinct ecology. Both regard the cultivation of rooibos as part of their natural cultural heritage in an area they regard as unique—superior to other parts of the country because it is a haven from “the black hordes” numerically prevalent in other regions. White Afrikaaner landholders see themselves as God’s chosen people for the area, arguing that their blood mingles with the soil to create in rooibos a product iconic of their identity.⁶⁴

60. *Disputing a Name, Developing a Geographical Indication*, WORLD INTELL. PROP. ORG. (Apr. 4, 2011), <http://www.wipo.int/ipadvantage/en/details.jsp?id=2691> [<https://perma.cc/6MPU-7W5H>].

61. C. Bramley & J.F. Kirsten, *Exploring the Economic Rationale for Protecting Geographical Indicators in Agriculture*, 46 AGRICON 69, 84 (2007).

62. Sarah Ives, *Farming the South African “Bush”*: *Ecologies of Belonging and Exclusion in Rooibos Tea*, 41 AM. ETHNOLOGY 698, 701 (2014).

63. *Id.*

64. In her fieldwork, Ives found that colored and Afrikaans residents alike identified themselves as belonging to the soil and to a natural landscape with resources they regarded as their heritage. Many

The rooibos that bears the GI designation comes from a region that has been carefully delimited by the South African Rooibos Council—one dominated by white farmers with huge landholdings upon which the tea is picked by landless colored farm workers.⁶⁵ One private company (which inherited apartheid-era public assets free of charge) processes seventy percent of the tea. Small-scale farmers (members of three co-operatives who lease lands from a sympathetic Christian mission) grow only two percent of this crop.⁶⁶ A colored identity is itself the mark of dispossession. Today these peoples are recognized internationally, and by many NGOs who assist them, as mixed-race descendants of the extinct Bushmen, or, more properly as Khoisan indigenous peoples (a mixture of Khoi pastoralists and San hunter gatherers), a group historically spurned by both white and black populations, because to be colored was to be without a place and something short of fully human (listed in fact as amongst the desert animals in apartheid era schoolbooks).⁶⁷

Those who harvest the tea are landless descendants of an exploited class of captive labor created by a colonial plantation society. They have no other sources of work; hired seasonally, they face perpetual threats of eviction in a country whose government continually postpones long-promised land redistribution, and offers landless workers few forms of social security. With the help of legal aid NGOs, some colored communities are attempting to reassert their rights to land in the area. In the process of compiling the historical records for these cases (less than 150 years ago), they have learned a great deal about the circumstances under which their ancestors had these lands seized, were killed (if men), or enslaved and subject to violent miscegenation (if women), in what is internationally recognized as a Khoisan genocide crying out for reparations.

The GI primarily benefits white owners of large farms and the large corporate processors of the tea. Development NGOs seeking to make rooibos a viable means to provide livelihood options for small-scale farmers (while increasing their numbers) have done so by supporting the formation of cooperatives trained to meet Fair Trade certifications that have now also been extended to the large estates. Sociologists Keahey and Murray's fieldwork research on five distinctive initiatives to develop Rooibos standards and certifications to improve small-scale farmers' access to markets for socially and environmentally responsibly produced goods

Afrikaans farmers felt that they were God's chosen people for this land to which they considered themselves "indigenous," with their "bodies bec[om]ing indigenized through exertion in the rooibos soil . . ." Sarah Ives, *Uprooting "Indigeneity" in South Africa's Western Cape: The Plant That Moves*, 116 AM. ANTHROPOLOGIST 310, 317 (2014). The few colored farmers who held land described it as the source of their freedom from employment by whites. They also considered rooibos cultivation to be an expression of the dignity of working with their own heritage that testified to their authentic belonging in the nation through their connection to the native fynbos landscape. Many regarded the plant's cultivation as protecting a natural native landscape against the invasion of new crops that would change the soil composition of one of the last 'properly South African' ecologies. *Id.* at 316. For a compilation of Ives' work on rooibos tea cultivation in the Western Cape, see SARAH IVES, *STEEPED IN HERITAGE: THE RACIAL POLITICS OF SOUTH AFRICAN ROOIBOS TEA* (2017).

65. See Coombe, Ives & Huizenga, *supra* note 12.

66. *Id.* at 227.

67. *Id.* at 232.

found none of them to greatly enhance access for colored farmers.⁶⁸ Nor were they deemed sustainable in the absence of extension systems to deliver training and support and fundamental political transformations that might make local governance more participatory.⁶⁹ The GI's proponents also fail to consider that the industry excludes hundreds of thousands of unemployed black South Africans from the industry (whom white farmers in the region refuse to hire).⁷⁰ One of the world's most progressive national constitutions, embodying a full range of human rights principles, was simply ignored in the original creation of this national IP and in its ongoing governance.

The marketing of rooibos reflects the conflictual narratives of its origins and histories of cultivation. Most rooibos tea is sold in bulk, which is considered unfortunate by those who believe that this proudly South African product should be globally marketed as such. The means to communicate how it is native to Africa, however, do not necessarily reflect any local circumstances. At least one company has adopted the term Khoisan to market rooibos, despite its being the name of a people and a marker of their heritage, which in most jurisdictions would not be a permissible trademark.⁷¹ The fact that the name was considered public domain and no contemporary people identifying as Khoisan appear to receive any benefits from its use—may indicate that both industry and consumers considered the Khoisan an extinct people at the time of this marketing. Marketing images that connote an indigenous lifestyle are also conveyed by words like Intaba, borrowed from the Xhosa language to denote a general idea of a black African heritage, but one utterly unrelated to the area's farmers, farm workers, or other residents.⁷² As Rachel Wynberg recently affirmed, accusations of biopiracy—the misappropriation and patenting of genetic resources and knowledge without consent—have become matters of public debate and controversy in the past few years:

Claiming to be the primary holders of traditional knowledge relating to rooibos, indigenous San and Khoi have also launched demands—to date unmet—for a stake in rooibos benefits. Meanwhile, small-scale colored rooibos producers, despite their involvement in fair trade, remain marginalized. All remain embedded in a political history of rooibos that is characterized by dispossession and adversity, having been propped up by the South African apartheid system.⁷³

68. Jennifer Keahey & Douglas L. Murray, *Promise and Perils of Market-Based Sustainability*, 3 SOC. DEV. 143 (2017).

69. *Id.*

70. If the rooibos industry was built upon the undercompensated labor of dispossessed colored peoples, recent years have seen a marked increase in black migrant workers from other parts of South Africa and from neighboring countries. Both colored and Afrikaans farmers refer to rooibos as “indigenous” to the region and black South Africans and immigrants from other Southern African countries as alien to it. *See* Ives, *supra* note 62, at 702.

71. Coombe, Ives & Huizenga, *supra* note 12, at 229.

72. *Id.* at 231.

73. R. Wynberg, *Making Sense of Access and Benefit Sharing in the Rooibos Industry: Towards a Holistic, Just and Sustainable Framing*, 110 S. AFR. J. BOTANY 39, 40 (2017).

Neither conservation nor rural development strategies in post-apartheid South Africa have been attentive to issues of environmental racialization in the country.⁷⁴ If conservation authorities tend towards excluding the poor from conservation management, human rights proponents argue that biodiversity conservation efforts are often obstacles to poverty reduction and the rights of the marginalized. As environmental geographer Kepe summarizes, many conservation efforts are racialized based on a colonial conservation mindset that sees the rural poor as the primary cause of environmental degradation or, alternatively, in need of handouts and saving by the overwhelmingly white tourist visitors (domestic and foreign).⁷⁵ Issues of equality, paternalism, and rural dispossession of land are rarely addressed.

Our interest in seeing the rooibos GI strategy evolve to address issues of rights, recognition, and redistribution is addressed by Wynberg, who proposes an access and benefit sharing mechanism (ABSM). An ABSM might enable the rooibos industry to recognize the historical injustices from which this agricultural sector has benefitted as well as the workers whose knowledge and energies provided the fundamental capital that the industry has exploited (and whose ongoing dispossession violates the rights post-apartheid South Africa constitutionally enshrines).⁷⁶ Such an ABSM would fairly compensate Khoi and San communities as rightful holders of the traditional knowledge of rooibos tea cultivation, alongside the tea growers, smallholder cooperatives, landholders, and industry actors with whom all actors engaged in bioprospecting or the export trade need to engage. Such an institutional development could compensate plantation workers, conserve rooibos genetic resources, and certify environmental and socially sustainable forms of rooibos cultivation, guiding new research priorities while modelling more equitable benefit sharing between what she deems the technology rich Global North and the biodiversity rich South.⁷⁷ Ultimately, she suggests that ABSM must be embedded in a wider development agenda in a fashion congruent with the rights-based development approach we advocate for GI governance.

IV. GOODS FROM THE ‘TEA GARDENS’: DARJEELING TEA

Our second example comes from South Asia. The British introduced tea plantations to the northeast Indian region of Darjeeling in the mid-nineteenth century to meet both domestic demand and to establish an industrial scale export commodity. That tea picking and cultivation required (and continues to require) hard labor combined with a sparsely populated hilly frontier necessitated the importation of a labor force. Indeed, some accounts contend that at the time of British colonization there were no more than roughly one hundred inhabitants on

74. Thembela Kepe, *Shaped by Race: Why “Race” Still Matters in the Challenges Facing Biodiversity Conservation in Africa*, 14 *LOC. ENV’T* 871, 872 (2009).

75. *Id.* at 876.

76. Wynberg, *supra* note 73, at 40–44, 46–49.

77. *Id.* at 40.

the land, specifically Lepcha tribal peoples.⁷⁸ Other Lepcha peoples, lauded for their hard work, were brought in from Nepal and later joined by indigenous and tribal peoples recruited from Nepal and Bhutan, as well as the provinces of Bihar, Bengal, Orissa, Uttar Pradesh and Andhra Pradesh,⁷⁹ as part of “a larger proletarian workforce drawn from indigenous and marginalized groups whose livelihoods were threatened”⁸⁰

Darjeeling’s high altitude and temperate climate embodied an environmental panacea to the harsh tropical summers endured by British colonialists. This was tied to a racialized colonial discourse of environment and corporeality in which prolonged exposure to high temperatures were seen as a threat to the integrity of the white European body.⁸¹ Colonial surveyors designated Darjeeling as having “met all the medical requirements to rejuvenate the white race.”⁸² Initiatives to make Darjeeling a British tourist destination were also launched around this time, with Darjeeling described as the Indian Alps. Gendered and racialized depictions of the local laborers worked in conjunction with the region’s climatic appeal in producing an exoticized tourist haven:

Visuals of women porters carrying staggeringly heavy loads on the one hand, and staged dances of Tibetan lamas on the other, circulated widely to showcase Himalayan exoticism, complete with anecdotes about strapping female porters carrying pianos on their backs. An entire visual vocabulary of the Himalayan Orient was produced via lantern slide, guidebook, postcard, stereoscope, and eventually, cinema newsreels. [As t]he *Newman’s* guidebook gushed, “A sturdy independent lot these people are, looking capable of holding their own with any one. They are, even in their dirt, picturesque.”⁸³

As we shall see, this nineteenth century colonial gendered and racialized exoticization of the environment and labor force is reproduced in the Darjeeling GI’s social imaginary.

The Darjeeling Tea GI has been much celebrated as extending IP-based justice to the Global South; it was the first of India’s now over 150 registered GIs and a huge success in terms of raising export earnings.⁸⁴ The Tea Board of India controls this GI as national patrimony, making eighty-seven plantations a natural garden home for a unique tea, based in a naturalized terroir:

78. Kishan Harijan, *Role of the Tea Plantation Industry in Human Resource Development in Darjeeling Hills-Problems and Perspectives*, 2 SALESIAN J. HUMAN. & SOC. SCI. 85 (2011); Jayeeta Sharma, *A Space that Has Been Labourled on: Mobile Lives and Transcultural Circulation Around Darjeeling and the Eastern Himalayas*, 2016 TRANSCULTURAL STUD. 54, 59.

79. Sushma Rai, *Plantation and the People of Darjeeling – Disparity and Development of the Region*, 1 INT’L J. MULTIDISCIPLINARY RES. REV. 161, 161 (2016).

80. Sharma, *supra* note 78, at 62.

81. DAVID ARNOLD, *THE TROPICS AND THE TRAVELLING GAZE: INDIA, LANDSCAPE, AND SCIENCE, 1800–1856*, at 42–43, 45, 47–50, 111, 194–96 (2006).

82. Sharma, *supra* note 78, at 55.

83. *Id.* at 75 (citations omitted).

84. See Coombe & Malik, *supra* note 23.

What is it that makes the world's tea aficionados rush to Darjeeling during spring-time to "book" the first flush teas? The answer? . . . Darjeeling Tea just happens . . . To science, Darjeeling Tea is a strange phenomenon. To the faithful, it is a rare blessing. Thankfully, the Darjeeling Tea Estates have always lived by their faith—by humbly accepting this unique gift of nature and doing everything to retain its natural eloquence. So, Darjeeling tea, hand-plucked by local women with magician's fingers, withered, rolled and fermented in orthodox fashion, with the sole intention of bringing out the best in them.⁸⁵

It is easy to dismiss such romanticism as endemic to advertising's excess, but a few basic facts about the industry quickly disrupt this rosy picture. Such Indian Darjeeling tea is picked nearly entirely by the female descendants of indentured women from Nepal, who brought this rare tea and their knowledge of its cultivation into this region (later incorporated into the state of West Bengal) where they have been trapped ever since. The GI marketing campaign represents exploitative industrial plantation labor (locally disparaged as "coolie" labor) using this traditional knowledge as the caregiving work of the angelic guardians of an Edenic space with which they have natural, affective bonds. To cite another Tea Board ad, "Perhaps it is the warmth of their touch which gives the brew such sweetness."⁸⁶

It might be argued that such advertising has no real impact on people's lives and livelihoods, and we were originally of that opinion. But Darjeeling (like many new GIs in the Global South) is also understood as national cultural patrimony and the basis for a new industry—tea tourism—in which women are disciplined to perform the smiling docility marked by the GI's social imaginary. These women make one dollar a day, working sixty-hour weeks, an amount far too low to support themselves and their families. Theirs is bonded labor; women inherit their jobs and are utterly reliant upon plantation owners for housing, health care, their children's education, and access to subsistence plots (degraded by monocultural production) for sustenance.

Working under huge billboards that feature their angelic doppelgangers, which are plastered across the countryside, how can tea pluckers transform their prospects? To the extent that such branding supports a new tourist industry whose profitability is dependent upon satisfying visitor's expectations, women's capacities to protest their working conditions are only undermined. Ironically, many tourists dress up as smiling tea-pickers, mimicking the GI advertisements, while the workers have new jobs to add to their toil—posing for pictures and singing for visitors. They complain that the GI has "turned the plantation into a zoo"—in which they are the captive animals.⁸⁷

85. SARAH BESKY, *THE DARJEELING DISTINCTION: LABOR AND JUSTICE ON FAIR-TRADE TEA PLANTATIONS IN INDIA* 89 (2014); see also Sarah Besky, *The Labor of Terroir and the Terroir of Labor: Geographical Indication and Darjeeling Tea Plantations*, 31 *AGRIC. & HUM. VALUES* 83 (2013).

86. BESKY, *THE DARJEELING DISTINCTION*, *supra* note 85, at 98.

87. *Id.* at 111.

The region covered by the GI (eighty-seven colonial plantations put back into production) is *not* co-extensive with the Darjeeling district of West Bengal. In fact *most* of the same tea in this state is cultivated by *Adivasis* (tribal or indigenous peoples) who are entirely excluded from the GI's benefits. And of course, the GI excludes the country of Nepal's own smallholder cooperatives (indeed, they are seen as imitators from whom "the real" Darjeeling needs to be protected⁸⁸). According to anthropologist Sarah Besky, the female tea pickers report that much of the green leaf that goes into the processed tea is imported in trucks that came in the night from Nepal and/or smuggled in from Adivasi cooperatives because it is cheaper and enables planters to avoid the costs mandated by India's still minimal industrial labor laws.⁸⁹ Nepali women smallholders' traditional knowledge of tea cultivation (maintained, ironically because they were excluded from the benefits of Green Revolution chemical technologies), has enabled their smallholder cooperatives to achieve Fair Trade organic certification. The administration of this sector has also thereby moved into the hands of men, because local gender norms discourage women from dealing with foreigners.⁹⁰

The gendered and patriarchal nature of tea advertising has a long colonial history that appears to have been revitalized in twenty-first century Fair Trade and the marketing of ethically sourced products. Representations of South Asian women as feminine smiling workers delicately gardening pristine landscapes in Lipton advertising are shown by Ramamurthy to naturalize a racial hierarchy of labor in the late nineteenth and early twentieth century.⁹¹ Although such imagery declined in the wake of political independence from colonial power and government nationalizations of the industry, this "exoticized space of labour" evoking feelings of "environmental responsibility, romantic rural idylls, stasis and tranquility" has returned to grace product packaging and advertising in Fair Trade advertising.⁹²

How is fairness to women enhanced by denying the conditions of industrial plantation labor? The relationship between the commodification of colonial household goods for Western consumption and the rituals of colonial Asian female

88. See Yogesh Pai & Tania Singla, *Vanity GIs: India's Legislation on Geographical Indications and the Missing Regulatory Framework*, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC, *supra* note 2, at 333, 352–54 (finding it unfortunate that cheaper (but similar quality) tea from Nepal can make its way into Indian markets, but taking at face value the assertion that all exported tea has a "genuineness" and "authenticity" that guarantees Darjeeling tea's "untarnished reputation").

89. BESKY, *supra* note 85, at 104–05. Although we were first inclined to believe this to be mere rumor, we have received hearsay substantiation from several Nepalese students at York University whose visits home to Nepal furnished evidence that smallholders in Nepal provide much of the tea that is marked and marketed as Darjeeling, without receiving any of the additional value that accrues to the tea from this misrepresentative use of the GI. We cannot, however, verify whether this Darjeeling tea is sold only in domestic markets or is being exported.

90. Debarati Sen, *Fair Trade Vs. Swaccha Vyāpār: Women's Activism and Transnational Justice Regimes in Darjeeling, India*, 40 FEMINIST STUD. 444, 445–46, 451 (2014).

91. Anandi Ramamurthy, *Absences and Silences: The Representation of the Tea Picker in Colonial and Fair Trade Advertising*, 13 VISUAL CULTURE BRITAIN 367 (2012).

92. *Id.* at 380.

labor is one that has recently engaged feminist scholars who ask how multiple patriarchies—women’s subordination in domestic and industrial labor—continue to shape the hegemonic contours of the postcolonial plantation⁹³ and neoliberal discourses of development.⁹⁴ Historically of course, advertising has hidden or domesticated industrial production and women’s labor has been especially romanticized as emotional, rather than manual in nature; in products involving tropical goods from colonial contexts, however, images of manual work are more apparent because the natural racialization of labor in colonial social hierarchies. Lipton’s advertisements were the most dominant imagery of South Asians in British commercial culture for over a century, their contents shifting from depictions of plantation industrial labor to the more individuated and exoticized South Asian female tea plucker featured serenely at leisure in a natural environment.

By the turn of the twentieth century, these outdoor factories had already been renamed as tea gardens tended by exotic and sexualized women.⁹⁵ Both an exotic object for Western consumer consumption and “a representation of a figure that blurs the boundaries between consumer and laborer,”⁹⁶ this serene tea picker belied growing struggles against colonialism in tea-growing regions. Indeed, images of cooperation between English homemakers and female tea workers emerged to symbolize a new version of Empire as a partnership of mutual benefit for Britain and her colonies. Always carefully surrounded by lush vegetation, the reality of the tea pickers’ manual labor and harsh exploitation is always hidden as consumers are invited to identify with her apparent ease and happiness in an attractive environment. Some of the most iconic imagery further domesticates her work by positioning her within a garden from which she offers her guest, the consumer, the choicest leaves.⁹⁷

Only in the twenty-first century did this gendered figure fade from prominence in mass-marketed tea (except on nostalgic tea tins), returning, ironically, in twenty-first century Fair Trade advertising designed to defetishize conditions of production and create solidarities between consumers and producers.⁹⁸ As Kalpana Wilson suggests, Western charities often reproduce racialized and gendered hierarchies in representing the empowered agencies of workers through representations of their cheerful docility.⁹⁹ Erasing the conditions of their lives and

93. PIYA CHATTERJEE, *A TIME FOR TEA: WOMEN, LABOR, AND POST/COLONIAL POLITICS ON AN INDIAN PLANTATION* 7 (2001).

94. Kalpana Wilson, ‘Race,’ *Gender and Neoliberalism: Changing Visual Representations in Development*, 32 *THIRD WORLD Q.* 315, 315–22 (2011).

95. Ramamurthy, *supra* note 91, at 372.

96. *Id.* at 372.

97. *Id.* at 374.

98. *Id.* at 375.

99. Wilson, *supra* note 94. For discussions of similar imagery used in socially responsible coffee marketing, see Nicki Lisa Cole, *Global Capitalism Organizing Knowledge of Race, Gender and Class: The Case of Socially Responsible Coffee*, 15 *RACE GENDER & CLASS* 170, 170–87 (2008). For a more general overview of the way the so-called ‘de-fetishizing move,’ or Fair Trade, ultimately serves to fetishize people and places, see Matthias Zick Varul, *Consuming the Campesino: Fair Trade Marketing Between Recognition and Romantic Commodification*, 22 *CULTURAL STUD.* 39, 39–51 (2017).

livelihoods, such imagery does little to help us to understand the realities of plantation labor in countries where there are few forms of social security in regions where there are scarce options for employment. Ironically, some of today's plantation workers look "back to the 'good old days' of colonialism when children were at least sent to school and health care was provided by the estate."¹⁰⁰

Raju and Tiwari are rare amongst South Asian scholars because they do not uncritically extoll Darjeeling Tea as the first Indian GI, nor do they hold it out as a model for the Global South; rather they see it as paradigmatic of the failure of a system which has invested little in marketing, less in enforcement, and has no means for instituting benefit sharing. They note that not a single beneficiary has been registered for Darjeeling tea, even though eighty "tea gardens" are authorized to use it,¹⁰¹ showing that producers of goods have no incentive for registering as beneficiaries because the current legislative system has no mechanisms for sharing benefits with "the producer community."¹⁰² Nonetheless, they recognize that many Indian regions are famous for their tea gardens and they are enthusiastic about regional branding as a basis for rural development.¹⁰³ To the extent that they ignore the historical sociology of such regions, they remain blind to the ethnic, racialized, and gendered nature of the labor relations that constitutes these territories as such through their specific modes of production. The community that produces Darjeeling and most other tea exported from India, is constituted by hierarchically organized plantations on which descendants of indentured laborers, most of whom are women and ethnic minorities, toil under harsh conditions with little job security and few benefits.

The Tea Board of India has taken few measures to insist that its logo be used on other brands of tea that claim to be Darjeeling. There are no mechanisms to ascertain if such tea comes from the demarcated region from which tea marked as Darjeeling must, according to the GI specifications, originate.¹⁰⁴ Ironically, however, the Tea Board has filed "many cases against countries like Japan for registration of the Darjeeling logo mark, namely, Darjeeling women 'serving tea/coffee/coca/soft drinks/fruit juice' in the Japanese Patent Office."¹⁰⁵ Similar cases in France, Russia, the United States, Germany, Israel, Norway, and Sri Lanka,¹⁰⁶ might suggest that the subservience of women is integral to the region's brand, metonymically symbolized by the GI.

100. Ramamurthy, *supra* note 91, at 378.

101. Raju & Tiwari, *supra* note 28, at 295.

102. *Id.* at 298.

103. *Id.* at 305.

104. *Id.* at 299; *see also* Pai & Singla, *supra* note 88 (relying entirely upon Tea Board claims that "sale-chain integrity" is indeed being maintained through their authentication processes).

105. Raju & Tiwari, *supra* note 28, at 300.

106. *Id.* at 298.

V. PLANTATION HISTORIES IN THE MAKING OF RACE, GENDER, AND TERRITORY

While Darjeeling is one of the most well-known Indian GIs, it is not the only GI pertaining to tea in India nor is it the only tea protected by multiple MICOs.¹⁰⁷ Assam is another tea-growing region in which the Tea Board of India holds a GI as well as certification marks.¹⁰⁸ In the nineteenth century, the Assam Valley tea plantations in the Northeast of India deployed the labor of over two million migrant laborers, workers who were held in indentured servitude well into the late twentieth century. Their history and continuing struggles for decent working conditions, access to livelihood resources, and recognition as citizens are poorly known.

Regarded by colonial authorities as “waste land,” the Assam Valley was deemed ripe for English projects of improvement in the early nineteenth century. Planters were permitted to simply seize as much land as might be required or used for the development of the tea industry from 1834–1850. Formed in 1839, the Assam Tea Company was the world’s first, and deforested vast tracts of indigenous lands well into the twentieth century.¹⁰⁹ At first local hill tribes from Upper Assam and plains tribes from Kachari did seasonal wage work for the company but these people refused regularized labor relationships. New labor sources needed to be found. British capitalists from the 1860s sought cheap, plentiful, and easily controlled people from the overtaxed tribal and dispossessed aboriginal agrarian communities living in less agriculturally productive regions in Bihar, Bengal, Orissa, Uttar Pradesh, Madhya Pradesh, and Chotanagpur who were indentured as coolies for industrial plantation production.¹¹⁰

More than three million migrants were transported to the greater region of Assam between the 1860s and 1947, in conditions of generational servitude. Breach of the labor contract resulted in criminal prosecution; planters held extensive penal sanctions, including flogging for work slow-downs, strikes, and private powers of arrest for desertion.¹¹¹ What collective resistance took place was considered

107. For example, the word “Darjeeling” and the Darjeeling logo are also registered as certification marks. Pai & Singla, *supra* note 88, at 353. Darjeeling Tea is also often certified as organic and as Fair Trade.

108. Biswajeet Saikia, *Development of Tea Garden Community and Adivasi Identity Politics in Assam*, 51 INDIAN J. LABOUR ECON. 307–22 (2008).

109. N.K. Das, *Making Tea Tribes in Assam: Colonial Exploitation and Assertion of Adivasi Rights*, 3 J. ADIVASI & INDIGENOUS STUD. 1, 2–3 (2016).

110. Jayeeta Sharma, ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry, 43 MOD. ASIAN STUD. 1287, 1299 (2008). Even at the time, this migration was considered coercive and abusive, characterized by fraud and deception on the part of recruiters. These people were just some of the 30 million Indian migrants indentured by British capitalists in what is now understood to have replaced African slavery with a form of racialized oppression often referred to as a “new system of slavery.” RANA P. BEHAL, ONE HUNDRED YEARS OF SERVITUDE: POLITICAL ECONOMY OF TEA PLANTATIONS IN COLONIAL ASSAM 4 (2014). Certainly, the region’s planters in this era readily referred to these workers as slaves, and there is little doubt that “the tea plantations developed a power structure that was much like the one that existed under slavery in American plantations in the Antebellum era.” *Id.* at 11; see also HUGH TINKER, A NEW SYSTEM OF SLAVERY: THE EXPORT OF INDIAN LABOUR OVERSEAS 1830–1920 (1974).

111. Das, *supra* note 109, at 4.

individual criminal activity. The cost of transportation to the plantation was paid by the worker through her work, along with the cost of funerals, medicine, and clothing, ensuring not only that she would remain indebted for her life, but that her children would begin theirs saddled with their parents' and grandparents' debts. Even those with limited term contracts able to work off their debts found it impossible to return to their regions of origin and remained dependent upon the plantation economy.

The historical organization of coolie dwellings into numbered barracks or lines of squalid thatched huts partitioned to hold four families, and policed by line managers who exercise constant surveillance over the movements of line workers remains the dominant principle of labor discipline today.¹¹² Workers were historically locked in at night and allowed no contact with local villagers.¹¹³ Well into the late twentieth century, the local social structure divided tea plantations from the agrarian and urban social economy of Assam and its Hindu caste-based intelligentsia. Local peasants shunned manual labor because of its association with coolies, a category that was as racial as it was economic.¹¹⁴ The only local people who had any sustained contact with plantation laborers were their overseers with whom they had a deeply antagonistic relationship.

Trade union interest and detailed research into these conditions of labor did not take place until the 1920s, when exploitation, violence, sexual abuse, illness, lack of literacy, and the difficulties of collective organization under plantation conditions were finally recognized.¹¹⁵ No action, however, was taken to enforce the abolition of planter penal authority in 1926, or to educate workers about their rights. If the indentured labor system formally ended in the 1920s, it continued informally for decades afterwards, and the tea industry's economic success is said to be built upon no less than half a million violent and premature deaths.¹¹⁶

With the country's independence on the horizon, the tea industry entered into an agreement to ensure that the Indian National Trade Union Congress (INTUC) would have a monopoly over unions in the sector¹¹⁷ to exclude Communist-affiliated unions. An all-Assam organization (ACMS) led by caste Hindus from outside the labor ranks, evolved a reputation for being soft on employers.¹¹⁸ More than half a century after independence, unions had clearly done little to provide any opportunities for vertical mobility or systemic change.¹¹⁹

From the beginnings of the industry, women and children have made up half of the plantation's workforce.¹²⁰ Sexually exploited by Assam's white masters in the

112. *Id.* at 5.

113. Sharma, *supra* note 110, at 1308.

114. *Id.* at 1312.

115. Das, *supra* note 109, at 7, 12–13.

116. BEHAL, *supra* note 110, at 94.

117. Sharma, *supra* note 110, at 1320.

118. *Id.* at 1321.

119. *Id.* at 1321.

120. *Id.* at 1308.

nineteenth century, they bore the latter's illegitimate children, and were subjected to sexualized forms of torture.¹²¹ The low birth and infant survival rate and high numbers of abortions among coolie women (a 1906 report suggested that sixty-five percent of pregnant women in the gardens did not give birth to live children)¹²² may have been a consequence of a lack of any maternity leave, wretched conditions for giving birth, and resistance to bringing up children in prevailing conditions. Unfortunately, it also lowered the estimation in which their morality was held by neighboring populations. According to a 2014 Columbia Law School Human Rights Institute Report, they are regularly subject to sexual harassment and subjected to stereotypes of tribal promiscuity.¹²³

Women and children were paid less than men but worked the same numbers of hours; moreover, female workers were assigned additional tasks such as plucking, a delicate and labor intensive job, which has never been considered skilled, enabling them to be paid as unskilled labor.¹²⁴ Children, employed as casual labor well into the twenty-first century, were given jobs which exposed them to harmful pesticides; a 1992 UNICEF report found them to be doing some of the plantation's most physically strenuous work.¹²⁵ Women worked with their children strapped to their backs, nursed children in fields, and were picking tea within days or even hours after giving birth.¹²⁶ Recent studies of contemporary labor conditions by lawyers, activists, and academic researchers reveal continuing patterns of racialized dispossession.¹²⁷ Belated 1951 legislation sought to improve the living conditions of isolated plantation workers—outlawing child labor and restricted the hours of those aged twelve to seventeen, mandated provision of housing and sanitation facilities, potable water, subsidized food, primary schools, and hospitals, all of which plantation associations continue to regard as an unfair burden.¹²⁸ Still, in 1990, over fourteen percent of the workforce, or close to one hundred thousand children, continued to labor on the plantations,¹²⁹ and experts concede that these 1951 provisions were ignored due to state indifference. Studies from the 1990s and 2000s showed that houses leaked and were not maintained, there were no toilets or bathing

121. *Id.* at 1309.

122. *Id.* at 1309 (citing ASSAM LABOUR ENQUIRY COMM., REPORT OF THE ASSAM LABOUR ENQUIRY COMMITTEE (1906)).

123. Das, *supra* note 109, at 9.

124. *Id.* at 6.

125. VASANTHI RAMAN, CHILD LABOUR IN THE TEA PLANTATIONS OF NORTH-EAST INDIA (1992).

126. BEHAL, *supra* note 110, at 81, 86.

127. There are an estimated two-and-a-half million tea plantation workers in the region. Tribal peoples continued to be moved into the region well into the decades after World War II, and these peoples continued to have little or no interaction with their kin in the region from which they came. Contemporary wage rates in Assam are so low they would not even constitute subsistence wages for workers in the informal sector (which generally pays far less than formal sector employment). Indeed, plantation employers complain about being subject to the laws that govern organized private sector workers, considering the sector as properly exempt from contemporary labor relations. See Sharit K. Bhowmik, *Living Conditions of Tea Plantation Workers*, 50 ECON. & POL. WKLY., Nov. 2015, at 1–2.

128. *Id.*

129. *Id.*

facilities, and no potable water for workers in the fields, schools were understaffed, badly maintained, and teachers untrained.¹³⁰ High rates of illiteracy persist.¹³¹

Conditions since the turn of the twenty-first century have actually deteriorated even further, as plantation closures have resulted in thousands of deaths from starvation, which has ensured that surviving plantations, which offer the only employment in these regions, are under even less pressure to meet minimal legal requirements.¹³² Surveys in 2014 found that most workers had no savings or assets, no housing maintenance was being performed,¹³³ acute congestion was the norm and overcrowding put people at risk of respiratory problems and infectious disease, despite empty lands sitting idle nearby. Most plantation workers have no access to toilets and there are no means to supply water to the labor lines in the fields.¹³⁴ In 2016, wages were described as having “increased only nominally since 1947.”¹³⁵ With more than a million workers, the tea plantation industry is the largest in the formal private sector in India, yet wages are the lowest of any sector in the country.¹³⁶ The capacity of such dispossessed and illiterate workers to organize is minimal, but female workers in the region of Kerala have begun to mobilize in the rare circumstances where workers have been made shareholders in plantation companies.

Indian state neglect of plantation workers is closely related to the fact that most of them are from tribal communities and are still considered foreign aliens in the regions where they work. As we have seen, workers in Darjeeling are descendants of migrants from Nepal, whereas workers in Assam originate in Jharkand, Chhattisgarh, Odisha, and West Bengal. Whereas many of the tea workers in West Bengal are recognized as Scheduled Tribes (constitutionally recognized historically marginalized groups), people with similar origins are denied this status in Assam and designated as Other Backward Classes. Under Indian law, Scheduled Tribe status enables the exercise of protective discrimination and avails access to free education and reservation in formal employment alongside other state facilities. The Assamese government, dominated by caste Hindu Indian National Congress leaders, has refused to recognize plantation workers as having the same tribal origins as those of their kin who remained in West Bengal.

Many tea workers now identify as Adivasi, or indigenous peoples, both as an umbrella identity under which members of different tribes can mobilize and as a

130. M.A. KALAM, SHARIT K. BHOWMIK & VIRGINIUS XAXA, *TEA PLANTATION LABOUR IN INDIA* (1996).

131. See generally Deb Nath Ruma & Nath Dipak, *Educational Vulnerability and Risk Factors of Tea Garden Workers with Special Reference to Dewan Tea Garden Village, Cachar, Assam, India*, 3 INT'L RES. J. SOC. SCI. 14, 14–21 (2014).

132. Bhowmik, *supra* note 127, at 1–3.

133. *Id.* at 2.

134. *Id.*

135. Das, *supra* note 109, at 7.

136. Bhowmik, *supra* note 127, at 1.

basis to assert collective political rights.¹³⁷ Despite passage of a state resolution to recognize “tea tribes” in 2004, the Registrar General of India denied these plantation workers tribal status on the basis that they did not display primitive traits, hold a distinctive culture, or the requisite backwardness.¹³⁸ Such characteristics are arguably no longer descriptive of any tribes in contemporary India. Nonetheless, the workers’ tribal identity is contested by other recognized tribal groups who see plantation lands as illegally seized from indigenous peoples and who sometimes violently assault plantation laborers who claim Adivasi identity.¹³⁹

As we saw with the Darjeeling example, women’s subordination is not incidental to, but rather central to GI marketing efforts. Indeed, one symbol proposed for use in advertising GI protected Assam tea is a crudely racialized image of a woman literally in bondage to her labors:¹⁴⁰



World’s Gold Standard

How might the adoption of a GI for Assam Tea be used as an opportunity to decry the exploitation endemic to this plantation sector, and put pressure upon the tea industry to transform conditions of production to better protect and empower members of the racialized and gendered minority underclass this industry has so

137. If prospects for organizing workers for social change have improved in Assam, it is due largely to the capacities of the first generation of students to obtain secondary education, thanks to the introduction of Christian missionary schools in the region. Newly organized workers abandoned the traditional unions and established new federations in 2002, organizing workers in more than thirty gardens. But with tribal workers scattered across 793 registered gardens, activists have long held out more hope for social and economic change in workers becoming recognized as ninety-seven scheduled tribes who would thereby regain constitutional rights to affirmative action. Das, *supra* note 109, at 8.

138. *Id.* at 11.

139. Hiren Gohain, *A Question of Identity: Adivasi Militancy in Assam*, 42 *ECON. & POL. WKLY.* 13, 13–16 (2007).

140. See Tony Gebely, *Tea Authenticity and Geographical Indications*, *WORLD TEA* (July 11, 2016, 8:21 PM), <https://worldoftea.org/tea-appellations/> [https://web.archive.org/web/20170215124530/https://worldoftea.org/tea-appellations/].

brutally created? If we regard GIs as creating a new category of public goods, it is imperative that the commodities which bear such GIs are produced under conditions that respect the human rights of those whose labor supports this industry. To the extent that GIs are marks communicating conditions of origin, the time is ripe to use the opening of new GI export markets to shame these industries into improving the labor and living conditions of the women whose toil brings us our daily tea.

Many advocates of GIs in the Global South nonetheless look to these Indian tea examples as offering models for development of new GIs. For example, W.A.S.S. Wijesinghe and B.A.R.R. Ariyaratna see the Darjeeling Tea GI as providing an obvious means for Sri Lanka to protect “Ceylon Tea” and “the whole rural lifestyle established based on tea culture” in the hill country which “provides employment to over 1 million people” who “lack education and who are not skilled labourers.”¹⁴¹ Like the Darjeeling hills, this tea country might also promote regional tourism following the model established by European wine regions. Indeed, the Sri Lanka Tea Board has registered the names of its seven main tea-growing regions as certification marks under their Intellectual Property Act. Similarly, Naazima Kamardeen extolls the added protection that the Indian *sui generis* GI system (allegedly) provides as desirable for enabling better returns on trade in Sri Lankan tea, cinnamon, and sapphires.¹⁴²

Sri Lankan tea production has a history no more savory than Darjeeling and Assam. The “whole rural lifestyle established based on tea culture” features additional forms of exploitation that have created a contemporary underclass of socially marginalized and racialized peoples.¹⁴³ Unable to get native Sinhalese peoples to submit to wage labor, mid-nineteenth century British tea plantations began to import workers from southern India—members of landless Tamil agricultural castes in the area now known as Tamil Nadu. The British paid middlemen—the notorious kanganies—to recruit families into gangs of indentured workers wholly dependent upon these overseers for credit, food, and shelter. Kanganies, who received wages from the planters, kept these families in perpetual debt, moving them from estate to estate as bonded labor. The tea plantation was a total institution in which captive workers were wholly isolated from surrounding communities who disparaged them for their ethnicity and their slave-like existence. Unlike the descendants of Indian Tamil peoples who arrived in the eleventh century,

141. W.A.S.S. Wijesinghe & B.A.R.R. Ariyaratna, *The Protection of Geographical Indications in Developing Countries: The Case of Ceylon Tea*, 1 BALANCE – MULTIDISCIPLINARY L.J. 11 (2015).

142. Naazima Kamardeen, *The Potentials, and Current Challenges, of Protecting Geographical Indications in Sri Lanka*, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC, *supra* note 2, at 409. Although we do not have the space to explore conditions of production in all three areas, we would note that sapphire mining is an industry known for paying workers, not for the time they spend laboring, but according to the quality of the stones they excavate, exposing workers to poisonous gases, and continuing to use child labor while evading compulsory education requirements for adolescents. Cinnamon is also a plantation crop provided by minority groups whose labor rights appear to be unenforced.

143. Wijesinghe & Ariyaratna, *supra* note 141 at 11.

these “Plantation Tamil” peoples received no representation in the Sri Lankan Constitution of 1933. Even after independence in 1948, the plantations continued to be controlled by the British using despotic forms of production in which kanganies dominated abused workers.¹⁴⁴

For the surrounding Sinhalese villagers, tea plantations represented the power of an imperial Other perpetuating historical injustice, hostile islands of privilege and abuse run by white men and manned by peoples who were alien in culture and religion.¹⁴⁵ Most “public utilities in the rural regions were introduced for the benefit of the plantations, which were resented for creating obstacles to the expansion of the rural agricultural economy.”¹⁴⁶ From independence until 1972, there was virtually no effort to redistribute land or make plantations serve national social purposes or provide local benefits. The state could no longer ignore agrarian structures after the insurrections of 1971, deemed “the first post-independence armed anti-state insurgency led by radical Marxists mainly representing the rural subalterns.”¹⁴⁷ Limited land reforms and a nationalization of the foreign and company-owned tea estates followed. Lands given to villagers, however, accounted for only five percent of Ceylon Tea properties; the rest were transferred to state-owned enterprises that continued to run large plantations staffed by the descendants of colonial-era coolie laborers, managed by national elites and the local recipients of their political patronage.¹⁴⁸

Plantation Tamils (sometimes called Up Country Tamils) were much better able to mobilize actions under these new conditions of state ownership, moving beyond industrial issues to make demands for citizenship. Only in the late 1980s did the majority of these people receive Sri Lankan citizenship, with some remaining stateless until 2003.¹⁴⁹ State governments were also compelled to be more attentive to their needs because they wanted to prevent the spread of Tamil nationalism from the civil war into the plantation areas. NGO and international development funding pressures helped to improve conditions on plantations, provide better education and welfare reforms in the 1990s.¹⁵⁰ Up Country Tamils, however, continue to live on the margins of Sri Lankan society, face deep-seated social prejudice and denigration, and endure poor sanitation, inadequate housing, and violent pogroms.¹⁵¹ Still, neither these Tamils nor their rural Sinhalese neighbors want their children to assume plantation employment. More and more plantation estate acreage has been abandoned and uncultivated due to shortages of labor, and these

144. DANIEL BASS, EVERYDAY ETHNICITY IN SRI LANKA: UP-COUNTRY TAMIL IDENTITY POLITICS 37–38 (2013).

145. Chandana Alawattage & Danture Wickramasinghe, *Weapons of the Weak: Subalterns’ Emancipatory Accounting in Ceylon Tea*, 22 ACCT., AUDITING & ACCOUNTABILITY J. 379, 387 (2009).

146. *Id.* (quoting Ronald Rote, *A Taste of Bitterness: The Political Economy of Tea Plantations in Sri Lanka* 266–67 (1986) (unpublished Ph.D. dissertation, University of Amsterdam) (on file with author)).

147. *Id.*

148. *Id.* at 388.

149. PATRICK PEEBLES, PLANTATION TAMILS OF CEYLON 226 (2001).

150. BASS, *supra* note 144.

151. *Id.*

new “waste lands” are now encroached upon and enclosed by smallholders who see themselves as exercising the rights of the rural peasantry in what local politicians recognize as a legitimate means to address rural poverty and unemployment.

To what extent might the use and the benefits to be accrued by the deployment of the Ceylon Tea GI evolve beyond the hegemony of plantation industrial capitalism and its paternal and colonial forms of labor management to reflect this new political economy and ecology? How will an emerging class of rural smallholders benefit from the GI? What pressure can be put upon the government and the Sri Lankan Tea Board to create governance regimes for the Ceylon Tea GI which benefit both those whose exploited labor historically enabled this capitalist accumulation and those who seek new forms of rural livelihood security in the face of the collapse of this colonial regime of racialized labor? These are the questions that we might hope Asian legal scholars address rather than romanticizing such exploitation as a rural cultural lifestyle and endorsing the global branding of territories and goods that bear such extensive legacies of social injustice.

VI. FAIR TRADE, TERRITORY, AND LABOR

Our concerns with respect to the limitations on the governance of GIs echo those that now animate the critical fields of Food Studies and Fair Trade activism. The use of GIs with respect to tea, coffee, and other foodstuffs, like the use of certification labels, is a form of non-state or neoliberal agricultural governance¹⁵² that can be repurposed to address new issues and to focus consumer attention in new ways.¹⁵³ Consumer movements have attempted to re-embed markets that have become disembedded from society, bringing ethical conventions back into circulation to challenge dominant tendencies to treat land and labor as mere commodities. Arguably, the industrial production of food has become ever more invisible to many North American consumers for whom a pastoral ideal of family farming remains hegemonic. Plantations, we would venture, imaginatively belong for many of us to another historical era, despite the fact that they are still in operation throughout the world. Ethnic differences have historically shaped such labor systems, but “ethnicity is not an exogenous variable that can be isolated from class relations but rather an ongoing, dynamic process that helps constitute and sustain systems of exploitation, or ‘conjugated oppression.’”¹⁵⁴

152. See generally Julie Guthman, *The Polanyian Way? Voluntary Food Labels as Neoliberal Governance*, 39 *ANTIPODE* 456 (2007).

153. See generally Graeme Auld, Stefan Renckens & Benjamin Cashore, *Transnational Private Governance Between the Logics of Empowerment and Control*, 9 *REG. & GOVERNANCE* 108 (2015); Valerie Nelson & Anne Tallontire, *Battlefields of Ideas: Changing Narratives and Power Dynamics in Private Standards in Global Agricultural Value Chains*, 31 *AGRIC. & HUM. VALUES* 481 (2014); Anne Tallontire et al., *Beyond the Vertical? Using Value Chains and Governance as a Framework to Analyse Private Standards Initiatives in Agri-Food Chains*, 28 *AGRIC. & HUM. VALUES* 427 (2011).

154. Sarah Besky & Sandy Brown, *Looking for Work: Placing Labor in Food Studies*, 12 *LABOR* 19, 37 (2015).

Food activism in the United States has recently “focused on improving the lives of a marginalized and largely immigrant workforce”¹⁵⁵ and improving compensation, as part of an examination of the broader structures that govern food provisioning. Issues of labor are back on the table, as food activists have realized that their emphasis upon small farmers and socially and environmentally sustainable agriculture ignored the vastly greater numbers of people who produce the food we eat as wage laborers and migrant workers. Moving our critical gaze in this direction inevitably compels us to consider issues of ethnicity, race, and gender. Studies of food labor add important political economic dimensions to our understanding of commodity chains, and it is precisely such global commodity and value chains, we would suggest, that the GI social imaginary tends to obfuscate and that IP scholars should emphasize. “Global commodity chain (GCC) research has tended to focus on questions of governance, in terms of economic interactions between individual firms within a given supply chain, and the relative power of various actors to shape conditions of production and trade”¹⁵⁶ while exploring agriculture as a socially productive process in which territorial construction and subject-making are key factors in production.¹⁵⁷ Inevitably, these involve processes of racial formation.

Critical studies of food, Besky and Brown suggest, will increasingly involve critical studies of labor that move beyond class to consider ethnic, gendered, and other forms of both oppression and collective action in particular places.¹⁵⁸ Significantly, they feel this is best accomplished by attention to the spatialization of difference in agro-food systems, which GIs, by entrenching and naturalizing differentiations in territory, help to effect.¹⁵⁹

The concept of landscape . . . [like the concept of community] functions through its ambiguity to naturalize and thus conceal relations of power and inequality. Just as landscapes obscure experiences of exploitation, marginality, and structural violence, so too do they conceal stories of solidarity and action.¹⁶⁰

Landscape, such as that projected by the imaginary of terroir that undergirds so many GI protections, must be connected to the labor processes that bring it into being, to expose “an ontology of labor rooted in people’s interactions with their material environment,” as well as the particular forms that the production of space assumes under capitalist modes of production.¹⁶¹ Landscape making is a struggle, to both endure and to resist exploitative conditions. It is precisely such struggles

155. *Id.* at 19–20.

156. *Id.* at 30; see generally Daniel Berliner et al., *Governing Global Supply Chains: What We Know (and Don’t) About Improving Labor Rights and Working Conditions*, 11 ANN. REV. L. & SOC’Y 193 (2015).

157. Jennifer Bair & Marion Werner, *Commodity Chains and the Uneven Geographies of Global Capitalism: A Disarticulations Perspective*, 43 ENV’T & PLAN. A 988 (2011).

158. Besky & Brown, *supra* note 154, at 39.

159. See Coombe & Aylwin, *supra* note 20, at 2027–30, 2038–39, for a discussion of how GIs function so as to constitute borders of differentiation that forge communities and identities.

160. Besky & Brown, *supra* note 154, at 39.

161. *Id.* at 39–40.

that contemporary usages of GIs tend to obscure and that critical IP scholarship and legal advocacy might bring to light when considering GI governance.

During the early colonial era, tea country was considered “waste land” to be invested with new productivities enabled by the trade in Indian opium to Chinese consumers and the appropriation of Chinese tea, expertise, and labor¹⁶² to provide a crop that became a new stimulant and source of energy to fuel the British industrial working class.¹⁶³ The first tea pickers were Chinese laborers recruited from the Singapore-Chinese labor exchange who were often kept in debt peonage ensured by opium addiction. Finding the Chinese too demanding of creature comforts, colonial officials found “the downtrodden status of the Indian . . . a virtue.”¹⁶⁴ Regional populations of were encouraged to migrate as families to live on plantations so as to provide a self-reproducing Indian workforce.

As historical sociologist Andrew Liu explains, *jungli* is derived from the Hindi vernacular *jangal*, the roots of the English word “jungle.”¹⁶⁵ Thus, a connotation of wildness was inscribed upon communities searching for work during labor recruitment for colonial tea plantations. It indexes the construction of an essentialist ontology of primitiveness upon populations classified as “tribal.” Within labor immigration policies, administrators created typologies through which capacities for manual work were measured. Tribal people were viewed as most suited for the most physical tasks, such as the clearing of jungles and cultivation. Since nineteenth-century anthropology of colonial documents classified Indian tribes on the basis of an evolutionary telos, the local appellation *jungli* signified their place on this pragmatic telos of labor procurement and management.

Women (and children), however, have always been numerically dominant in the tea fields and, in 2009, comprised half of all plantation workers and over eighty percent of tea pluckers on Indian plantations.¹⁶⁶ Female plantation labor has historically been invested with a politically rich semiotic excess. An “iconic body of wildness and primitivism,” the tea pickers corporeality justifies “a civilizing and disciplining mission” and “lays the foundations for the elaborate and racialized sociology of plantation work”¹⁶⁷ in which tea plucking is located at the farthest, most silent hinterland of an international chain of labor.

The metaphors of cultivation, of gardens, and indeed of the Eden to be planted in the new colony create a template of colonial inscriptions about tea plantations in northeastern India. There was a paradise to be gained, new fields of endemic cultivation: of landscapes to be “settled” and made “human” through a vision of empire and light on a “savage” frontier. So

162. Andrew B. Liu, *The Birth of a Noble Tea Country: On the Geography of Colonial Capital and the Origins of Indian Tea*, 23 J. HIST. SOC. 73, 83, 88, 90 (2010).

163. SIDNEY W. MINTZ, SWEETNESS AND POWER: THE PLACE OF SUGAR IN MODERN HISTORY 182–83 (1985).

164. Liu, *supra* note 162, at 86.

165. *Id.* at 80 & 94 n.33.

166. *Id.* at 87.

167. CHATTERJEE, *supra* note 93, at 7–8.

the “gardens” were planted, harnessing people for the hard task of cultivation, making an even, emerald landscape—which to this day remains curiously unpeopled from the distance of the road. The bushes stretch undulating and green, bordering the paddy fields, against the Himalayan foothills. The “field” takes on many meanings: its Cartesian emptiness to be explained with a corporeal history, its cartographies made temporally human.¹⁶⁸

Rather than untouched wilderness however, the tea gardens are literally manicured by women, whose plucking activities both enable the reproduction of the tender new leaves desired by tea aficionados and shape the landscape of symmetrical bushes that engender the region’s characteristic charms.

Marxist discussions of value may help us to understand the relationships between the fetishized native women’s nimble fingers, the representation of industrial agricultural production as gardening, and the qualities of the territory thereby forged. Value is never something inherent in soil or land qualities, but is a socially contingent formation, belonging “to a definite historical formation of society, which is manifested in a thing and lends this thing a specific social character.”¹⁶⁹ Land is a precondition for creating commodities of value, but the true source of such value lies in the social organization of labor:

[T]he powers of soil were a product of history as much as nature . . . profitability was made possible by violent impositions of control over land, and the forced dispossession and discipline of people and labor. Tea plantations were industrial enterprises made possible by “the vast and uneven spatial integration of different regions into overlapping economic circuits” . . . plantations were and are made possible by movements more dynamic than a static, designated locale . . . and while they were animated by the specificity of local populations, climate and land, they . . . borrowed techniques of management, recruitment and organization from . . . around the globe such that [for example] Assam and tea are virtually synonymous but impossible to explain without considering the spatiotemporal dynamics of colonialism and commodity capital in nineteenth century Asia.¹⁷⁰

As we will explore, many peasant struggles, new social movements, alternative food networks, and efforts to achieve food sovereignty are now described as forms of decolonization,¹⁷¹ but Asian plantation economies are perhaps those most in need of decolonial strategies for reconfiguring relationships between land, labor, and agricultural value.

168. *Id.* at 17.

169. 3 Karl Marx, *Capital: A Critique of Political Economy* 590 (Friedrich Engels ed., 1894), <https://www.marxists.org/archive/marx/works/download/pdf/Capital-Volume-III.pdf> [<https://perma.cc/XB9V-X6JZ>].

170. Liu, *supra* note 162, at 89–91.

171. See generally Sam Grey & Raj Patel, *Food Sovereignty as Decolonization: Some Contributions from Indigenous Movements to Food System and Development Politics*, 32 *AGRIC. & HUM. VALUES* 431, 439–42 (2015).

Recent struggles over the social organizations of labor that may be certified as being fair within the Fair Trade movement testify to growing public concern with these issues. Fair Trade certification has been the subject of a great deal of activist and scholarly criticism while internal conflicts about appropriate criteria for production have created great cleavages in the movement. Debates about the viability of Fair Trade production-consumption chains as a form of profit redistribution continue to rage. Early criticism suggested that small producers were subjected to great pressures in which they essentially become contract farmers with little autonomy in what is ultimately a buyer-driven value chain even when mediated by a producer's cooperative:

Certification standards are often the instrument of smallholders' dependency. They strictly define the conditions that producers need to meet to access Fair Trade or organic-certified markets and their premium prices. If the harvest is of poor quality or the need for cash is urgent, the producer will have to find an alternative market Qualifying for strict standards requires following farming practices that are generally more labor intensive and will produce different impacts on household labor . . . [forcing farmers] to comply with regulations that may be extremely difficult to enact locally Certification becomes a neoliberal governance procedure for small producers . . . and the social premium in Fair Trade projects can be understood as part of the neoliberal rolling out of the state where nongovernmental organizations projects substitute for government services. The debate about the status of these small-contract farmers reemerges. Is this a process of repeasantization, enabling autonomy within a high-value-added commodity chain? . . . [D]oes the incentive to export-oriented production shift contract farmers away from food staples . . . therefore making them more vulnerable?¹⁷²

Others have focused criticism on Fair Trade marketing, which tends to reproduce neocolonial power relations in which white consumers are positioned as saviors helping producers in the Global South who are rendered as abject, needy, and without agency in this relationship.¹⁷³ As we noted earlier, Fair Trade advertising is also seen as revitalizing gendered and racialized imagery of female subaltern plantation labor in the tea industry.

Another response to these developments is to reject the Fair Trade binarism positing Southern producers and Northern consumers as discrete subject positions in which the development of the former is produced primarily through the agencies

172. Susan Narotzky, *Where Have All the Peasants Gone?*, 45 ANN. REV. ANTHROPOLOGY 301, 308 (2016) (citations omitted).

173. Ian Hussey & Joe Curnow, *Fair Trade, Neocolonial Developmentalism, and Racialized Power Relations*, 5 INTERFACE 40, 40–41, 43, 56, 59 (2013). For a discussion of this in the context of Fair Trade coffee, see Nicki Lisa Cole, *Global Capitalism Organizing Knowledge of Race, Gender and Class: The Case of Socially Responsible Coffee*, 15 RACE GENDER & CLASS 170 (2008), and see generally Mattias Zick Varul, *Consuming the Campesino: Fair Trade Marketing Between Recognition and Romantic Commodification*, 22 CULTURAL STUD. 654, 664–65.

of the latter and to insist instead that fairness must be attentive to local agencies in a place-based geopolitics of certification.¹⁷⁴ Fair Trade certifications have operated as forms of neoliberal government which control farmers, subjecting them to enhanced forms of discipline that simultaneously binds them into a new locus of improvement and territorial control. Naylor, for example, insists that although “mediated by the market and not the state, certification remains a regulatory mechanism that both discursively constructs and attempts to ‘fix’ the ‘global south.’”¹⁷⁵ Her criticisms, however, pertain largely to Fair Trade USA, and fail to address the rather significant changes taking place in Fair Trade International.

The issue of plantation labor has become increasingly important in the Fair Trade movement. Historically, Fair Trade certification was “given both to co-operatives of small farmers and to plantations employing permanent workers” although there are far fewer studies of the latter.¹⁷⁶ Fair Trade certification in plantation sectors historically focused on crops such as tea and bananas in which small farmer cooperatives were underdeveloped.¹⁷⁷ It was, however, designed not for plantation owners, but for the support of landless workers. Arguably, the former group has received as much benefit as the latter.¹⁷⁸ Supporters of plantation certification believed that it would improve labor conditions in notoriously abusive industries, while others doubted that such benefits would trickle down to workers. As Besky’s work in Darjeeling illustrated, workers often have little if any knowledge of Fair Trade.¹⁷⁹ As Rie Makita explains, this is because patron-client relations between management and workers create relations of compliant dependency in which there are minimal external influences.¹⁸⁰ Her ethnographic research found that even when Darjeeling tea was Fair Trade certified, workers had no knowledge of certification and only a vague understanding of the Joint Body (the group of elected worker representatives organized to use Fair Trade premiums on behalf of the community), often assuming that any funding must come from management.¹⁸¹

174. Lindsay Naylor, *Some Are More Fair than Others: Fair Trade Certification, Development, and North-South Subjects*, 31 *AGRIC. & HUM. VALUES* 273, 277–78 (2014).

175. *Id.* at 280.

176. See, e.g., Sarah Besky, *Colonial Pasts and Fair Trade Futures: Changing Modes of Production and Regulation on Darjeeling Tea Plantations*, in *FAIR TRADE AND SOCIAL JUSTICE: GLOBAL ETHNOGRAPHIES* 97, 97–122 (Sarah Lyon & Mark Moberg eds., 2010) [hereinafter Besky, *Colonial Pasts*]; Sarah Besky, *Can a Plantation Be Fair? Paradoxes and Possibilities in Fair Trade Darjeeling Tea Certification*, 29 *ANTHROPOLOGY WORK REV.* 1 (2008) [hereinafter Besky, *Can a Plantation Be Fair?*]; Ruerd Ruben & Lucie van Schendel, *The Impact of Fair Trade in Banana Plantations in Ghana: Income, Ownership, and Livelihoods of Banana Workers*, in *THE IMPACT OF FAIR TRADE* 137 (Ruerd Ruben ed., 2008).

177. DANIEL JAFFEE, *BREWING JUSTICE: FAIR TRADE COFFEE, SUSTAINABILITY, AND SURVIVAL* 117 (2007); Marie-Christine Renard & Victor Pérez-Grovas, *Fair Trade Coffee in Mexico: At the Center of the Debates*, in *FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION* 138 (Laura T. Reynolds et al. eds., 2007).

178. Renard & Pérez-Grovas, *supra* note 177, at 150.

179. Besky, *Colonial Pasts*, *supra* note 176; Besky, *Can a Plantation Be Fair?*, *supra* note 176.

180. Rie Makita, *Fair Trade Certification: The Case of Tea Plantation Workers in India*, 30 *DEV. POLY REV.* 87, 88–89 (2012).

181. *Id.* at 103.

This was an impression that management had little interest in dispelling, not wanting premiums to be deployed to organize workers to make more demands.¹⁸² In short, Fair Trade premiums were used primarily to increase worker dependency by enhancing management patronage.

The extension of Fair Trade certification to plantations in sectors where smallholder cooperatives had traditionally been the major beneficiaries created major cleavages in the Fair Trade movement. Many scholars have commented on the movement's shift away from its original social justice orientations towards a primary concern with mainstream market share,¹⁸³ alongside a shift from norms of civic partnership to those of industrial traceability coupled with growing powers of technical auditing that increasingly moved cost burdens onto small producers.¹⁸⁴ This trend may be largely explained by governance factors; for years, national labeling organizations were the only members of Fair Trade International and they sought to maximize volumes of labelled goods and the percentage of market sales.¹⁸⁵ Fair Trade USA and the UK Fairtrade Foundation, representing the two biggest certified markets, led the way in further consolidating these industrial market practices in the 2000s.¹⁸⁶ Within the international system, however, European labeling organizations held more civic commitments and were supported by a larger group of civil society stakeholders.¹⁸⁷

One of the key areas of disagreement concerned the certification of hired labor enterprises; small producers and their allies barred large enterprises from most agricultural sectors,¹⁸⁸ arguing that demand was insufficient to absorb existing farmer input and that peasants should be protected from unfair competition from large enterprise with respect to six commodities: coffee, cocoa, honey, sugar, rice, and cotton. However, labelling organizations ensured that large enterprises were included in all other new certified commodities.¹⁸⁹ Most of these new commodities—flowers, fruits, and wine grapes—were produced by landless laborers on plantations, provoking demands that the organization give priority to improved conditions for workers and their political organization in Latin American

182. *Id.* at 99.

183. See, e.g., Christopher M. Bacon, *Who Decides What Is Fair in Fair Trade? The Agri-Environmental Governance of Standards, Access, and Price*, 37 J. PEASANT STUD. 111 (2010); Danie Jaffee, *Fair Trade Standards, Corporate Participation, and Social Movement Responses in the United States*, 92 J. BUS. ETHICS 267 (2012); Laura T. Reynolds, *Mainstreaming Fair Trade Coffee: From Partnership to Traceability*, 37 WORLD DEV. 1083 (2009); Marie-Christine Renard & Allison Loconto, *Competing Logics in the Further Standardization of Fair Trade: ISEAL and the Símbolo de los Pequeños Productores*, 20 INT'L J. SOC. AGRIC. & FOOD 51 (2013).

184. Laura T. Reynolds, *Fairtrade Labour Certification: The Contested Incorporation of Plantations and Workers*, 38 THIRD WORLD Q. 1473 (2017).

185. *Id.* at 1478. For example, only at the turn of the twenty-first century did producer groups and their social movement allies push the Fair Trade Organization to adopt multi-stakeholder governance and add a few trader and producer groups to the Executive Board, who were still a minority.

186. *Id.* at 1480.

187. *Id.*

188. *Id.* at 1482.

189. *Id.* at 1480–81.

banana, African flower, and Asian tea production particularly.¹⁹⁰ Fair Trade USA's desire to expand to garment manufacturing stretched stakeholder resistance to a breaking point, particularly when certified athletic balls were shown to have been produced by child labor in factories that failed to pay minimum wages in 2010.¹⁹¹ The breakaway of Fair Trade USA in order to independently certify plantations in all agricultural and marketing sectors was the inevitable collapse of long-standing fissures in the movement.¹⁹²

One very important consequence of this rupture was the opportunity to solidify the rights of workers and centralize the significance of labor standards in Fair Trade International. As Reynolds recounts, not only has the International Executive now given producers as many board seats as labelling groups, but traders are no longer represented there, and farmers, workers, and their allies now voice specific regional concerns.¹⁹³ Trade union representatives have been finally given a voice. Since 2010, a Workers' Rights Advisory Council has encouraged stronger ties with unions and workers' rights organizations, bringing them into review of central policy. The 2012 New Workers' Rights Strategy rejects models of corporate social responsibility and auditing models to stress initiatives that empower workers to affect the decisions that have the greatest impact on their lives. Fair Trade International now sees itself as having an obligation to create the conditions under which workers negotiate their own working conditions.¹⁹⁴

In formulating its new criteria, Fairtrade also solicited input from certified plantation and factory managers, distributors and national labelling initiatives, as well as NGO and union stakeholders. The revised 'Fairtrade Standard for Hired Labour' was approved by the Board in 2013 with near unanimous support . . . [to] incorporate two foundational labour advocacy and union demands. First, while certification has always required paying minimum wages, Fairtrade's new standards require payment of 'living wages', acknowledging that minimum wages often do not ensure a decent standard of living. And, second, while Fairtrade has always required that workers be democratically organised, its new standards require proactive support for unionisation, recognising unions as the most legitimate form of worker representation.¹⁹⁵

There is also evidence to suggest that Fair Trade International is becoming more sensitive to local conditions and supportive of local social justice initiatives. For example, April Linton shows that in the South African wine industry Fair Trade International has negotiated certification standards to foster greater racial and

190. *Id.* at 1482.

191. *Id.* at 1484.

192. Laura T. Reynolds, *Fair Trade: Social Regulation in Global Food Markets*, 28 J. RURAL STUD. 276 (2012).

193. *Id.* at 282.

194. *Id.* at 288.

195. *Id.* at 289 (internal citations omitted).

gender equities and address biodiversity conservation concerns.¹⁹⁶ In other words, fairness has been interpreted to take account of the particular histories of apartheid and its environmental legacies such that the Fair Trade label “means that it was produced according to South African rules that aim to promote social transformation.”¹⁹⁷ Similarly, Makita shows that in nine Darjeeling tea plantations, independent NGOs now manage premiums to ensure more equitable distributions that fulfill community needs; the Community Health Advancement Initiative (CHAI), for example, has assisted workers in using the premium to build roads and sanitation facilities, provide health care, and establish community centers.¹⁹⁸ Both instances illustrate that MICOs are capable of evolving so as to pluralize governance structures to meet local social justice needs grounded in human rights concerns. They thereby bring principles of rights-based development to bear upon GI governance.

Let us return to Naylor’s criticisms of Fair Trade USA—criticisms that can “be used to re-imagine systems of trade . . . not trapped in an economic system dictated by a nebulous ‘[N]orth’ and made available to a faceless ‘[S]outh’” and enable us to “think differently about certification outside of the north–south framing and neoliberal economic imaginaries.”¹⁹⁹ As an example, she points to an independent movement on the part of small producers in Latin America to create an alternative “small producers’ symbol” (Símbolo de los Pequeños Productores—SPP) to mark goods as having their origins in conditions that promote fairness according to local norms and values that are more sensitive to the pressures that producers face. This system of producer-led standards began certifying groups in 2011. This regionally based movement focused on using existing, place-based production systems to create networks of exchange grounded in social relationships that strengthened solidarity networks which added value locally and supported more dignified forms of livelihood.²⁰⁰ Practitioners thereby perform “economic identities that are focused on place-based ways of living.”²⁰¹ This political and economic emphasis, we will suggest, informs many new uses of GIs and other MICOs evolving in the wake of agricultural crises, peasant politicization, and consumer concerns about food security in many regions of the world.

196. April Linton, *Growing Fair Trade in South Africa*, 9 GLOBALIZATIONS 725 (2012).

197. *Id.* at 726.

198. Makita, *supra* note 180, at 102–04.

199. Naylor, *supra* note 174, at 280; *see also* Cheryl McEwan et al., *Fairtrade, Place and Moral Economy: Between Abstract Ethical Discourse and the Moral Experience of Northern Cape Farmers*, 49 ENV. & PLAN. A 572 (2017).

200. Renard & Loconto, *supra* note 181; *see generally* Ronald Nigh & Alma-Amalia González Cabañas, *Reflexive Consumer Markets as Opportunities for New Peasant Farmers in Mexico and France: Constructing Food Sovereignty Through Alternative Food Networks*, 39 AGROECOLOGY & SUSTAINABLE FOOD SYSTEMS 317 (2015).

201. Naylor, *supra* note 174, at 281.

VII. PLACE-BASED ECONOMIES AND BIOCULTURAL DIVERSITY: SECOND AND THIRD GENERATION MARKS INDICATING CONDITIONS OF ORIGIN (MICOS)

Neoliberal pressures such as market-led agrarian forms, foreign land grabs, new enclosures, and the associated intensification of monocropping in new plantation sectors such as horticulture, soya, and oil palm, have catalyzed a growing transnational peasant movement with new emphasis on supporting farmer autonomy, agroecology, and alternative food networks.²⁰² Under conditions of increasingly detrimental market dependence, efforts to secure greater autonomy in agriculture and food production more generally have become increasingly politicized. New forms of MICOs and related certifications are emerging from efforts to integrate people's agricultural work into circuits of value accumulation in ways which prevent the subsumption of their labors into total proletarianization and give them greater control over the conditions of their livelihood.

Significantly, “[t]ransnational social movements such as [La] Vía Campesina have focused on peasants’ agency to secure land rights and food sovereignty,” emphasizing peasant identification with land and embeddedness in local communities,²⁰³ while making peasants “interlocutors and rights-bearing claimants in international institutions.”²⁰⁴ Thus, the rhetoric of community land-attachment and territorial identification may be put to new uses in contemporary political struggles as land-based peoples strive to simultaneously maintain livelihoods and make a living in conditions under which neither autonomous subsistence nor total proletarianization (or contract farming when even the security of proletarianization is no longer available) provide adequate forms of economic or food security.

Agroecological projects have been defined as a new “rural development paradigm” and are often related to food sovereignty movements. They differ from Fair Trade and organic-certified agriculture because they are embedded in local knowledge paradigms and eschew monocrop and export agriculture in favor of short-circuit biodiverse agricultural systems. These projects are oriented toward re-embedding food production in local territories by strengthening knowledge links and responsibilities between producers and consumers. Although they are generally presented as grassroots movements that claim power to reorganize food provisioning, they are often supported by regional, national, or supranational institutions.²⁰⁵

Agroecology movements generally oppose Green Revolution technologies and biotechnological inputs into agriculture which make farmers dependent upon

202. Narotzky, *supra* note 172.

203. *Id.* at 304–05.

204. *Id.* at 305 (citing Marc Edelman & Carwil James, *Peasants’ Rights and the UN System: Quixotic Struggle? Or Emancipatory Idea Whose Time Has Come?*, 38 J. PEASANT STUD. 81 (2011)) (it should be noted that this subject position is not necessarily limited to rural areas, but may also encompass landless urban dwellers).

205. *Id.* at 308–09.

transnational corporations. Instead, they support family subsistence, care of the environment, and a more craftsman-like approach to food production and may also rely upon higher-value added returns through niche product markets.²⁰⁶ Unlike conventional GI strategies, however, agroecology movements are also invested in the use, development, mobilization and sharing of traditional knowledge, biodiversity conservation and enhancement, the revitalization of small markets, protection of rural employment and support for women's farming activities.

Such projects in the Global South are often modeled on what we will call second-generation MICOs, developed in Europe to further rural development initiatives that aim to fulfill a broader range of social objectives than conventional consumer-oriented certifications. They "depend on creating consumer-producer alliances through cooperatives that seek to avoid intermediaries in the food chain" often involving producer-consumer networks and participatory guarantee systems to "bypass third-party certification pressures."²⁰⁷ Often described as alternative food networks or food activism,²⁰⁸ these practices of relocalization make new uses of Protected Designation of Origin in the European context and suggest new uses for GIs that might also support emergent solidarity economies.

Before dismissing all European solutions as suspect due to their metropolitan or colonial provenance, we might reflect that regions in the European rural South, like many rural districts in South Asia, have recently faced protracted crises in commercial agriculture and food provisioning. As Cristina Grasseni's ethnographic study of *Gruppo di Acusto Solidale* (GAS or solidarity purchase group) networks in southern Italy clearly illustrates, alternative food networks are increasingly normalized for lower-middle class families in Southern European regions facing a credit crunch, recession, or austerity measures.²⁰⁹ No longer niche or alternative, buying collectively from nearby producers has become an increasingly necessary everyday practice in which new territorial communities are forged. Revitalising traditional knowledges, reintroducing local cultivars, and organizing fairs and festivals of products in short food chains, such provisioning activities increasingly combine economic, environmental, and human rights concerns as well as new forms of conviviality.²¹⁰

206. See generally J.D. VAN DER PLOEG, *THE NEW PEASANTRIES: STRUGGLES FOR AUTONOMY AND SUSTAINABILITY IN AN ERA OF EMPIRE AND GLOBALIZATION* (2008).

207. Narotzky, *supra* note 172, at 309.

208. See, e.g., *FOOD ACTIVISM: AGENCY, DEMOCRACY AND ECONOMY* (Carole Counihan & Valeria Siniscalchi eds., 2014); *FOOD FOR CHANGE: THE POLITICS AND VALUES OF SOCIAL MOVEMENTS* (Jeff Pratt & Pete Luetchford eds., 2014); Marco Pitzallis & Filippo M. Zerilli, *Giardinieri Inconsapevole: Pastori Sardi, Retoriche Ambientaliste e Strategie di Riconversione*, 6 *CULTURE DELLA SOSTENIBILITÀ* 149 (2013).

209. CRISTINA GRASSENÌ, *BEYOND ALTERNATIVE FOOD NETWORKS: ITALY'S SOLIDARITY PURCHASE GROUPS* (2013).

210. Issues of equity incite purchasers to put emphasis upon women's, children's, and Indigenous Peoples' interests as producing groups. *Id.* at 5.

In the province of Bergamo, Italy, Grasseni explores “a veritable reinvention of local food systems”²¹¹ by sixty-two GASs that brought a critical political edge to local food politics. The region had already established various MICOs for *prodotti tipici* protected through GIs such as denominations of origin as well as Slow Food certifications to add value to foods marketed as heritage goods.²¹² “[I]n the face of the socioeconomic challenges presented by deindustrialization, food desertification, and the pauperization of the urban working classes,” new socioeconomic projects of territorialization were forged.²¹³ The predominant class dimensions of social relations of consumption of organic, regional, local and typical or traditional goods that rely upon the territorial valorization of a “market-oriented developmental imaginary” (such as those promoted by most proponents of GIs) may be overturned, Grasseni shows, when consumers and producers forge collaborative networks.²¹⁴ Rather than “envisioning the local as a mythical locus of resistance to capitalistic globalization,” or viewing “locality and community as symbolic investments,” these new networks addressed issues of inequality and dispossession. They did so in a context where organizations like Slow Food, which valorized artisanal, niche, and authentic traditional goods were seen as “yet another form of urban domination over rural food systems, social organization and symbolic capacities”²¹⁵ that failed to address producer and consumer needs.

Not only were the farmers in these efforts not reduced to recipients of paternalistic charity, but they rearticulated the rhetorical tropes of food heritage and locality—the province of conventional GI marketing materials—to reconfigure unequal partnerships between peasants, certification authorities, and consumer groups. For example, the marginalized rural territory of Val Brembana sought to mark itself as a solidarity economy district as a potential alternative to wage labor in the face of declining local manufactures and luxury export brands (such as San Pellegrino water) which, like other GIs, provided few widespread local benefits:

Despite the fact that local cheeses had gained several denominations of protected origin, and that about 3,500 individuals were registered farmers, it turned out that only about 200 had commercial milk quotas, which meant that all the others were not authorized to sell milk. Few orchards and fields were cultivated Networking appeared fraught Training and cooperative leadership had to be provided and

211. *Id.* at 12.

212. CRISTINA GRASSEN, *THE HERITAGE ARENA: REINVENTING CHEESE IN THE ITALIAN ALPS* (2017); Cristina Grasseni, *Reinventing Food: The Ethics of Developing Local Foods*, in *ETHICAL CONSUMPTION: SOCIAL VALUE AND ECONOMIC PRACTICE* 198 (James G. Carrier & Peter G. Lutchford eds., 2012); Cristina Grasseni, *Resisting Cheese: Boundaries, Conflict and Distinction at the Foot of the Alps*, 15 *FOOD CULTURE & SOC'Y* 23 (2012); Cristina Grasseni, *Reinventing Food: Alpine Cheese in the Age of Global Heritage*, 8 *ANTHROPOLOGY FOOD* 1, 1 (2011).

213. GRASSEN, *supra* note 209, at 19–20.

214. *Id.* at 20 (citing David Goodman, *Place and Space in Alternative Food Networks: Connecting Production and Consumption*, in *CONSUMING SPACE: PLACING CONSUMPTION IN PERSPECTIVE* 194 (Michael K. Goodman, David Goodman & Michael Redclift eds., 2012)).

215. *Id.* at 26.

built. Local entrepreneurs and stakeholders had to be mapped. However, a number of projects had already focused on sustainable agriculture for cultural tourism or food heritage projects . . . [and] activists counted on local smallholders, breeding farm animals on free-range pastures or cultivating organic vegetables, to initiate short supply chains.²¹⁶

A dedicated group of consumers built a sustainable purchase group to enable these and future smallholders to move beyond self-sufficiency and place surplus goods in local markets. This, Grasseni shows, was just one of many “concurrent strategies of food relocalization and reterritorialization” based upon “renewed interest in local food as a resource for development and sometimes for territorial marketing.”²¹⁷

As Grasseni astutely recognizes, “[T]he scenario of marginalized agriculture de facto sustains both elitist food practices and grassroots food activism, with significant overlaps and sometimes collaboration”²¹⁸ but the two agendas are distinct. Solidarity economies are grassroots efforts to shape ecologies and build markets in which new purchasing, distribution, and pricing models supplement cooperative production and a revitalization of traditional crops in self-conscious exercises of food sovereignty. In this way, they are quite distinct from more conservative projects that valorize and market locality, authenticity, territorial identity, and food heritage but do nothing to preserve agricultural land, decrease food prices for lower income consumers, fairly allocate risks between consumers and producers, or provide guaranteed markets and social supports for bakers and other food artisans.²¹⁹ These economic experiments are part of a larger movement in the European rural hinterlands and its urban/rural interfaces, which—running parallel to agroecology movements in the Global South—are based on the premise that agricultural modernization and its lack of sustainability are “the opposite of rural development,” which must emphasize “not only quality food but also the social reproduction of the farm itself.”²²⁰

Unlike many Italian GI schemes that “rely upon the attractiveness of local foods to introduce a number of typical products based on the premise that each locality should market a suitably varied palette of products that are indicative of the singularities of the land and the agricultural tradition of that specific territory, hoping that this will be rewarded in the market,” alternative provisioning networks “rethink and reweave the economic fabric.”²²¹ They position consumers as active workers in the maintenance of rural producers’ economic security, supporting independent farmers’ cooperatives which pledge respect for land quality as well as

216. *Id.* at 35.

217. *Id.* at 36.

218. *Id.* at 38.

219. *Id.* at 40–41.

220. *Id.* at 42 (citing JAN DOUWE VAN DER PLOEG, *OLTRE LA MODERNIZZAZIONE: PROCESSI DI SVILUPPO RURALE IN EUROPA* (2006); Jan Douwe van der Ploeg, *Diversità Delle Forme di Impresa e Sviluppo Rurale*, in *BIODIVERSITÀ E TIPICITÀ: PARADIGMI ECONOMICI E STRATEGIE COMPETITIVE* 184 (Gianluca Brunori ed. 2007)).

221. *Id.* at 46.

workers' rights. Such efforts have also attracted the energies of Catholic and communist workers' associations, environmentalists, and conservation and agricultural park advocates and managers.²²² Solidarity purchase groups are heavily staffed by women, whose efforts account for their exponential growth during the austerity years of 2010–2012. In addition to revitalizing traditional cultivars and food preparation practices, they have been influential in liberating at least some food supplies from mafia-ridden distribution chains, and the exploitative immigration practices, slave-like labor, toxic waste disposal practices, and land degradation with which the mafia is closely associated. Such ethnographic studies clearly indicate that issues of food security and sovereignty are not limited to farmers, artisans, and indigenous peoples in the Global South but increasingly engage wider networks of consumers and producers seeking new ways of fulfilling livelihood and environmental needs.

Ethnographic work from southern India also shows how alternative agricultures are emerging amongst smallholders in response to an epidemic of farmer suicides marking an economic and environmental crisis in the region caused by debt and the externalities of the Green Revolution.²²³ Like their Italian counterparts, Indian farmers, smallholders, and consumers seek to find supports for greater self-determination and resilience in agricultural livelihoods as well as greater human and environmental health. If some have migrated to engage in export-oriented ginger cultivation, others have converted to organic agriculture, while still others have become adherents of Zero Budget Natural Farming (ZBNF), which shares many attributes with agro-ecological movements for peasant autonomy around the world.²²⁴ ZBNF emerged as a grassroots experiment in reterritorialization that shifted relations between humans, animals, soils, and

222. *Id.* at 58.

223. See generally FOOD & AGRIC. ORG. OF THE UNITED NATIONS, ZERO BUDGET NATURAL FARMING IN INDIA (2016), <http://www.fao.org/3/a-bl990e.pdf> [<https://perma.cc/MZ49-7M4V>]; Niloshree Bhattacharya, *Food Sovereignty and Agro-Ecology in Karnataka: Interplay of Discourses, Identities, and Practices*, 27 DEV. PRAC. 544, 548 (2017); Ashlesha Khadse et al., *Taking Agroecology to Scale: The Zero Budget Natural Farming Peasant Movement in Karnataka, India*, 32 J. PEASANT STUD. 1, 7 (2017); Srijit Mishra, *Risks, Farmers' Suicides and Agrarian Crisis in India: Is There a Way Out?*, 63 INDIAN J. AGRIC. ECON. 38 (2008); B.B. Mohanty, *We Are Like the Living Dead: Farmer Suicides in Maharashtra, Western India*, 32 J. PEASANT STUD. 243 (2005); Vamsi Vakulabharam, *Agrarian Crisis in India*, 40 J. PEASANT STUD. 300 (2013) (finding over a quarter of a million Indian farmers have committed suicide in the last two decades according to La Via Campesina). In its report, the Food and Agriculture Organization of the United Nations explains that Post-Green Revolution Indian farmers' movements have been concerned with issues of pricing, the environmental degradation of monocropping, water and electricity use, farmer indebtedness and dependency and draw from Gandhian ideologies of self-reliance, self-respect, *satyagraha* (freedom to save seeds) and nonviolence. They have protested genetically modified seeds, multinational corporate dominance of agricultural inputs, and global trade-based intellectual property requirements with respect to plant breeders' rights and genetic patenting. Many of these farmers' movements attempted to unite peasants across class and caste differences against exploitation and dependency.

224. See Daniel Munster, *Agro-Ecological Double Movements? Zero Budget Natural Farming and Alternative Agricultures After the Neoliberal Crisis in Kerala*, in CRITICAL PERSPECTIVES ON AGRARIAN TRANSITION: INDIA IN THE GLOBAL DEBATE 223–24 (B.B. Mohanty ed., 2016).

markets, by increasing humus creation in the soil through biodynamic fertilization processes and intercropping to reduce needs for external inputs.

As Munster's ethnographic work in Kerala revealed, the options facing smallholders were limited; export-oriented chemical farming of new crops such as ginger, involved speculative investments by farmers in distant fields, which were quickly depleted with the same chemicals that had already destroyed their local lands. Transitioning to organic agriculture was merely another means of becoming dependent upon expensive and external inputs to soil quality, subject to external auditing, and tethered to an exclusive set of export crops that did not meet local subsistence needs.²²⁵ In the face of these alternatives, ZBNF became immensely popular. Originally developed by Subhash Palekar as a means to address negative Green Revolution effects on his own family farm and drawing upon his extensive research on indigenous farming ecologies as an extension officer,²²⁶ the practice is now taught at massive training camps across the country. It has evolved from a toolkit of farming techniques into a peasant-driven social movement,²²⁷ albeit one with little formal organization. ZBNF became widespread in Karnataka when it was adopted by Karnataka Rajya Raitha Sangha (KRSS), one of the most visible La Via Campesina (LVC) member organizations in South Asia.²²⁸ The practice has spread primarily through campesino-to-campesino horizontal learning models (first adopted in Cuba) based in farmer training schools such as Amrita Bhoomi, the first LVC school of agroecology in South Asia. ZBNF insists upon maintaining farmer autonomy and building upon traditions of local knowledge specific to communities of practice such as methods of making manure, revival of local earthworms, use of natural insecticides, rainwater conservation, and productive forms of intercropping.²²⁹ Such activities enhance soil conditions, diversify local genetic resources, and minimize loss of energy, water, and nutrients.²³⁰

225. *Id.* at 232 (describing that, for most ZBNF practitioners, organic farming is too similar to chemical farming in making smallholders dependent upon agri-business companies who control organic inputs); *see also* Bhattacharya, *supra* note 223, at 549.

226. *See* Khadse et al., *supra* note 223. Many have remarked that Palekar's own philosophy of ZBNF—which evokes mother earth and the Goddess Anapurna, in which the native cow is holy and the practice draws from Vedas and recovers a Hindu national past—echoes right-wing Hindutva ideology and fundamentalism. Still, ethnographic evidence suggests that ZBNF is accepted by farmers not because of any underlying ideology but because of the practical success of its techniques in increasing farmer security, producing greater yields of multiple crops, reducing costs and providing greater dignity and autonomy to smallholders. Many adopt just some ZBNF techniques to combine with other natural practices. Some farmers claim that such natural farming techniques are part of a much longer heritage; certainly Gandhian and Lohiate ideologies also support these methods, as do the politics of food sovereignty and the science of agroecology. In any case, Palekar does not seem to discriminate in promoting ZBNF, nor is he known to use any ethnic rhetoric in his agricultural promotions.

227. *See* Khadse et al., *supra* note 223.

228. *See* Bhattacharya, *supra* note 223, at 546.

229. *See* R. YOGANANDA BABU, ACTION RESEARCH REPORT ON SUBHASH PALEKAR'S ZERO BUDGET NATURAL FARMING (2008), http://www.atimysore.gov.in/pdf/action_research.pdf [<https://perma.cc/3LK8-RD6P>] (providing a detailed overview of the various techniques that may be involved); Khadse et al., *supra* note 223, at 10–12. Dozens of demonstrations are also available on YouTube.

230. *See* Khadse et al., *supra* note 223, at 10.

In Karnataka, the movement's capacity to support poor peasants from lower castes is still limited due to transition costs (particularly access to a cow) and because moneylenders seek to make their clients dependent upon their own supply of seeds and fertilizers.²³¹ Until the costs of obtaining and keeping local cows can be lowered, subsidized, or socialized, there will be significant barriers to smallholders in India. Nonetheless, caste solidarity across social class and KRSS political solidarity with lower class Dalits appears to be bringing small and marginal farmers into the movement. Women and youth attend training camps in high numbers and participate in on-farm ZBNF activities; Amrita Bhoomi has made women's leadership training a priority.²³²

Farmers using the method or some combination of its techniques report relief from debt, more security, abundant yields, higher and more stable net incomes, better soil conditions, more attractive produce, greater genetic diversity, reduced vulnerability to pests and pathogens, less need for water and labor, and improved family health.²³³ ZBNF now has adherents in most Indian states, achieving scale in Tamil Nadu and Andhra Pradesh as well as Kerala and Karnataka (where it is estimated to be used by 100,000 farmer families; Munster reports that Palekar claims 30 million practitioners²³⁴). Its adoption and support by LVC, however, promises to make it even more widely known. With the support of the International Food Security Network (co-funded by the Council of Europe) and the Asia Food Security Network, LVC brought farmers, researchers, and scholars from Bangladesh, Indonesia, Sri Lanka, Nepal, Zimbabwe, Turkey, Indonesia, Thailand, Tanzania, and even Puerto Rico and Spain to learn the technique and to spread their knowledge of it through their own national movements, schools, and communities in an agroecology training event in late 2015.²³⁵

Marketing remains a particular challenge for scaling up ZBNF; "many farmers sell their natural produce as if it were chemically grown, to private traders or at government wholesale yards" with no price premium because differentiated marketing opportunities are scant.²³⁶ "Other farmers rely on their own local marketing networks, such as [specific] organic shops and individual customers."²³⁷ Most other agroecology production processes rely upon local and favorable markets, in which networks of consumers and producers provide supports. Various cooperatives, crowdsourcing, social entrepreneurial initiatives, and trusts have

231. See Bhattacharya, *supra* note 223, at 551–52.

232. See Khadse et al., *supra* note 223, at 9; *No Revolution Without Women: Karnataka Women Making Inroads into the Farmers Movement*, LA VIA CAMPESINA S. ASIA BLOG (Oct. 17, 2016), <http://lvsouthasia.blogspot.com/2016/10/no-revolution-without-women.html> [<https://perma.cc/32L3-N3FM>].

233. See Khadse et al., *supra* note 223; Munster, *supra* note 224, at 237.

234. See Munster, *supra* note 224, at 234.

235. See INT'L FOOD SEC. NETWORK & ASIA FOOD SEC. NETWORK, INTERNATIONAL FARMERS' AGROECOLOGY TRAINING (2015).

236. See FOOD & AGRIC. ORG. OF THE UNITED NATIONS, *supra* note 223, at 4.

237. See *Id.* at 1–4.

begun marketing projects for ZBNF.²³⁸ Since winning the prestigious civilian award Padma Shi from the national government in 2016, Palekar has become more influential. In a May 2017 Times of India interview, he proclaimed ZBNF to be the future of agriculture for the country, and in June 2017 he became advisor to the Andhra Pradesh state government on natural farming.²³⁹ Authorities have encouraged Palekar to use video-conferencing to further expand his already considerable social media following and invited him to launch a new agriculture university focusing on natural farming.²⁴⁰ It seems highly likely that new forms of certification will be designed for ZBNF agricultural goods in the near future. Palekar has long anticipated a parallel certified market in which local NGOs develop their own certification marks to indicate to consumers that foods have been produced entirely from farm-based resources without external outputs.²⁴¹ Given that the indicia for goods grown in accordance with these principles have already been established, a certification scheme could provide them with added value at little cost,²⁴² a prospect that seems more probable with new administrative supports.

Multilateral institutions, transnational environmental and human rights NGOs, and organized indigenous peoples and peasant social movements such as ZBNF are also promoting new certifications for goods as well as eco-services derived from practices of preserving what is now known as biocultural diversity.²⁴³ Emphasizing the interconnectedness of biological and cultural manifestations of livelihoods, biocultural diversity is a principle that recognizes the co-production of nature, culture, and knowledge. For example, the International Institute for Environment and Development (IIED), an environmental NGO working with a regional indigenous organization, Association Andes, has been influential in convincing UN agencies of the importance of supporting, recognizing, and finding new means to mark and to market goods and services produced in accordance with customary legal principles that maintain biocultural diversity and indigenous livelihoods.²⁴⁴ They promote the development of a Biocultural Heritage Indication

238. Jabir Mushthari, Natural Farm Products Get Boost with New Project, HINDU (Aug. 12, 2015), <http://www.thehindu.com/news/national/kerala/new-project-to-ensure-steady-market-in-kozhikode/article7528669.ece> [<https://perma.cc/ARC6-X7MB>] (“Vithu Muthal Vipani Vare Vishudhi? [was] launched by Earth Care Foundation to ensure maximum price for farmers and toxin-free food for consumers.”).

239. See M.N. Samdanil, *Subhash Palekar Appointed Govt Advisor on Natural Farming*, TIMES INDIA, June 14, 2017, <https://timesofindia.indiatimes.com/city/vijayawada/subhash-palekar-appointed-govt-advisor-on-natural-farming/articleshow/59148594.cms> [<https://perma.cc/67AP-KK26>].

240. See Munster, *supra* note 224, at 240 (citing SUBHASH PALEKAR, FIVE LAYER PALEKAR MODELS: MIXED LASHYADHISHA PATTERN (2010)).

241. *Id.*

242. Teshager W. Dagne, *Harnessing the Development Potential of Geographical Indications for Traditional Knowledge-Based Agricultural Products*, 53 J. INTELL. PROP. L. & POL’Y 441 (2010); Ranjan Jena et al., *Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector*, 28 DEV. POL’Y REV. 217 (2010); Munster, *supra* note 224.

243. See Coombe, *supra* note 14, at 258–59, 261–66.

244. See ALEJANDRO ARGUMEDO, TOWARDS NEW INDICATIONS OF DISTINCTION FOR INDIGENOUS PEOPLES IN THE POTATO PARK 5 (2013).

labelling scheme, like Fair Trade or Slow Food designations based, for example, upon the collective trademark that Potato Park communities in Peru have established.²⁴⁵ They have employed sympathetic IP scholars (e.g., Graham Dutfield) and social movement lawyers (e.g., those working with the NGO Natural Justice) to deliberate on the prospects that common law marks hold for community use, sharing these experiences with communities in Africa, Asia, and Canada. Most recently, they have attracted the support of the International Union for the Conservation of Nature, the United Nations Educational, Scientific and Cultural Organization (UNESCO) consultative body responsible for managing natural heritage areas, cultural landscapes, and newly recognized indigenous and community conserved areas. A biocultural labelling system would create MICOs rooted in international environmental, heritage, and indigenous human rights principles.²⁴⁶

Such third generation biocultural MICOs aim to merge added value through marketing with the protection of biocultural diversity to promote rural development.²⁴⁷ Traditional crops and foods grown in biologically diverse landscapes are valorized as candidates for bearing new green certifications that mark the role of environmentally sustainable cultivation methods. Goods originating in India's Western Ghats mountain range are candidates. The district of Kodagu, also known as Coorg, produces one third of India's coffee primarily cultivated by the Kodava community.²⁴⁸ In 2008, Conservation International recognized the Western Ghats as a biodiversity hotspot, one of only thirty-six in the world.²⁴⁹ Smallholder coffee cultivation within forests and protected areas has substantially increased since 1977.²⁵⁰ The Kodava are the primary landowning group in the district whose "customs and traditions have historically shaped, and continue to shape, landscape evolution in the district."²⁵¹ With cultural traditions closely linking ancestral worship to nature, they maintain sacred groves in their natural state amid the coffee plantations. They typically express a positive attitude towards biodiversity

245. See GRAHAM DUTFIELD, ALEJANDRO ARGUMEDO & KRYSZYNA SWIDERSKA, *DESIGNING AN EFFECTIVE BIOCULTURAL HERITAGE INDICATION LABELING SYSTEM* (2015).

246. PAVEL CASTKA & DANNA LEAMAN, *CERTIFICATION AND BIODIVERSITY – HOW VOLUNTARY CERTIFICATION STANDARDS IMPACT BIODIVERSITY AND HUMAN LIVELIHOODS IN POLICY MATTERS* 140 (2016); DUTFIELD, ARGUMEDO & SWIDERSKA, *supra* note 245.

247. See Ranjay K. Singh & R.C. Srivastava, *Biological Geographical Indicators of Traditional Knowledge Based Products and Green Technology from Arunachal Pradesh: An Initiative for Safeguarding IPR of Communities*, 9 INDIAN J. TRADITIONAL KNOWLEDGE 689 (2010) (discussing how in India, the hunt for potential 'green' GI goods is intensifying).

248. See Delphine Marie-Vivien et al., *Trademarks, Geographical Indications and Environmental Labelling to Promote Biodiversity: The Case of Agroforestry Coffee in India*, 32 DEV. POL'Y REV. 381 (2014).

249. *Western Ghats and Sri Lanka*, CRITICAL ECOSYSTEM PARTNERSHIP FUND, <https://www.cepf.net/our-work/biodiversity-hotspots/western-ghats-and-sri-lanka/> [<https://perma.cc/25BZ-MBXM>] (last visited June 16, 2018).

250. JEFFREY NEILSON & BILL PRITCHARD, *VALUE CHAIN STRUGGLES: INSTITUTIONS AND GOVERNANCE IN THE PLANTATION DISTRICTS OF SOUTH INDIA* 173–74 (2009).

251. *Id.* at 173.

conservation on their estates, which are governed by traditional management institutions.

Some of Kodagu's lush forest areas have been converted to coffee plantations, although this has not impacted original forest tree cover in a significantly detrimental manner. Still, there is a desire to slow this biodiversity loss in light of the region's overall richness. Garcia and her coauthors note that the forests "provide a series of environmental services in terms of pollination, carbon sequestration, and water recharge that the scientific community is only now starting to assess,"²⁵² while Neilson and Pritchard suggest that "the integrity of the biodiversity values of Kodagu [may be] dependent on the enrolment of coffee planters as environmental stewards."²⁵³ Eco-certification labelling in the Indian coffee sector is a recent phenomenon, premised upon rewarding coffee growers for biodiversity conservation.²⁵⁴ The CAFNET project was introduced in Kodagu in 2011 to help farmers document biodiversity on their farms, inventorize their management practices, and organize their internal record keeping systems.²⁵⁵ Their existing agricultural practices already met the project's environmental standards. The effort addressed some of the shortcomings of an earlier failed Coorg Orange GI, in which the GI specifications failed to consider biodiversity or to build awareness among local farmers of the environmental services provided by the landscape and the product.²⁵⁶ Eco-labelling standards from global certification bodies typically apply standard environmental criteria with little regard for local contexts' Global systems of certification, Neilson and Pritchard argue, must be modified so as to be flexibly recalibrated to local ecosystems, the needs of local producers and sensitivity to local institutions. Coorg coffee production actually required higher standards to guarantee greater environmental sustainability.

Considering local specificities may also enable attention to a wider range of social impacts and benefits tethered to biocultural preservation.²⁵⁷ The Kodagu agrocoffee sector, for instance, could adapt initiatives applied to aid smallholders in the Nilgiris tea industry in the Tamil Nadu region, such as the Quality Upgradation Programme (QUP).²⁵⁸ Initiated by a governmental agricultural research agency to improve the position of smallholders in tea value chains, the QUP sought market based solutions through an improved product that could fetch higher prices, rather than state intervention via subsidies. Growers were trained in leaf quality and established Quality Tea Procurement Centers led by village-based women's self-

252. See Claude Garcia et al., *Geographical Indications and Biodiversity in the Western Ghats, India: Can Labeling Benefit Producers and the Environment in a Mountain Agroforestry Landscape?*, 27 MOUNTAIN RES. & DEV. 206 (2007).

253. See NEILSON & PRITCHARD, *supra* note 250, at 173.

254. See Marie-Vivien et al., *supra* note 248, at 388.

255. *Id.* at 389.

256. See Garcia et al., *supra* note 252, at 210.

257. See NEILSON AND PRITCHARD, *supra* note 250, at 164.

258. *Id.* at 195.

help groups.²⁵⁹ These groups act as “community-based institutions for revolving credit and for the financing of small-scale entrepreneurial activities,” assisted by NGOs in enhancing their financial and management organization towards articulating and fulfilling collective community responsibilities.²⁶⁰ Such enterprises may empower the most marginalized groups in value chains by integrating local objectives and values into biocultural heritage certification schemes.

VIII. FROM RURAL TERRITORIAL DEVELOPMENT TO RIGHTS-BASED DEVELOPMENT IN RESILIENT PLACES

As we have shown, a great deal of scholarly attention has been paid to the role of GIs in fostering development in the Global South. Recent attention to how GI regimes are governed and considerations of the ideal forms of state involvement has been especially welcome. Rather than see GI regimes as apolitical technical administrative frameworks, we suggest they be envisioned as emerging public goods, which must be forged to redress extant forms of social inequality and foster the inclusion and political capacities of the most marginalized actors in commodity value chains. Such concerns need to move beyond a focus on the state as the only relevant actor that might ensure that GIs and other MICOs serve to foster greater equities in rural development, particularly in regions suffering the legacies of colonial forms of labor relations and Green Revolution externalities in which racialized and gendered forms of dispossession are often combined with environmental degradation. Unfortunately, these legacies are not being addressed by state initiatives, which tend to use GIs primarily as marketing tools that reify and fetishize territories while ignoring the histories of human labor and social relations of production that have produced them and their legacies of social injustice. Such issues are, however, the focus of new social movements which are actively reforming practices of certification to attend to such issues. Moreover, new certifications attempt to link place-based values, productive activities, and consumer priorities in new networks of commitment to agricultural, economic, environmental, and social change. Such decolonizing activities might provide normative models for the future of GI governance and influence the creation of other MICOs and their regulation. To move in this direction would shift the emphasis in developing GIs from following European models of rural territorial development to forging models of rights-based development more dedicated to maintaining place-based resilience.

The use of European models of IP such as GIs for rural territorial development in the Global South has too often been focused on state economic aspirations rather than local social needs and environmental priorities. It has been oriented primarily to export markets, marketing essentialist narratives surrounding niche goods in a social imaginary geared to foreign consumer (and tourist)

259. *Id.* at 198.

260. *Id.* at 200.

preferences rather than the security of local producers and consumers. Environmental concerns have been largely marginalized in these initiatives, as have race and gender issues. We need territorial models for rural development that capitalize upon locally differentiated goods but do so in a fashion more sensitive to social justice issues, focused on reducing inequality, better integrating the rural poor, combining urban and rural activities in dynamic agricultural markets, and building political as well as social capital through greater participatory local decision making.²⁶¹ Such models understand territories to be socially-produced, place-based sources of identity created through collective productive transformation and institutional development.

These alternative models for rural territorial development (e.g., GAS and ZBNF) are aligned with rights-based development norms, which reject economic growth as the primary impetus for planning, consider economic, political, social, and cultural rights to be mutually constitutive, redress asymmetries of power, and prioritize issues of non-discrimination and justice in administration and inclusive participation in decision-making, production activities, and the distribution of benefits.²⁶² Identifying its subjects as dignified and capable rather than backward and in need of charity, rights-based development puts emphasis on how new projects and institutions create opportunities for residents to make claims on others,²⁶³ scrutinizing the legitimacy of institutions and structures in local social contexts according to local concepts of fairness and equity as well as international human rights principles. Such models do not focus on the state as the exclusive or even the primary actor responsible for recognizing local rights. Instead, they situate the state as one of what must necessarily be a multiscale assemblage of actors that includes NGOs, social movements, and transnational as well as rural-urban networks of civil society actors who hold rights-based obligations to others in relationships that privilege local deliberations in project and policy implementation as practices of self-determination. In so doing, rights-based development models are more sensitive to place-based cultural practices and their significance, particularly to minoritized and indigenous peoples whose traditional environmental practices hold promise for revitalizing the resilience of lands and their resources. Only under such conditions will GIs, linked to transnational certifications attuned to both social equity and environmental resilience, advance objectives of decolonization and self-determination while reducing historically entrenched forms of dispossession. Fortunately, as we have seen, there are multiple projects of certification moving in this direction, leaving us with some hope for the evolution of GIs in our shared global futures.

261. See ALEXANDER SCHEJTMAN & JULIO A. BERDEGUE, RIMISP, RURAL TERRITORIAL DEVELOPMENT (2004); Alain de Janvry & Elisabeth Sadoulet, *Toward a Territorial Approach to Rural Development*, 4 J. AGRIC. & DEV. ECON. 66 (2007).

262. See Aylwin & Coombe, *supra* note 11, at 759.

263. See J.E. Ensor et al., *A Rights-Based Perspective on Adaptive Capacity*, 31 GLOBAL ENVTL. CHANGE 38 (2015); see also Gordon Crawford & Bard A. Andreassen, *Human Rights and Development: Putting Power and Politics at the Center*, 37 HUM. RTS. Q. 662 (2015).