

# Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products

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## INTRODUCTION

Geographical indications (GIs) are increasingly promoted as a means to protect the livelihoods of rural farmers and serve local and indigenous development needs. States, international institutions, NGOs and development agencies advocate the use of GI protections to promote a form of development that will ensure community security and environmental sustainability while safeguarding intangible cultural heritage. We situate the development of GIs historically and explore the political and economic conditions in which a renewed interest in the use of GIs for rural development and indigenous community aspirations has recently emerged. GIs are promoted through use of a rhetoric that represents a holistic 'community' having a singular tradition, deriving from a singular culture, rooted in a singular place, with its own naturally distinctive ecosystem which it stewards as resources for the future. We call this the 'social imaginary' of GI protections and caution against its literalization. While

GIs may serve such laudable objectives, positive social outcomes are not guaranteed, nor are benefits from their use necessarily distributed equally. Historically, they have figured in a politics of privileging elites, reifying cultural traditions and legitimating particular power relations. Focusing on numerous examples, we explore the promise and the perils of using GIs to achieve development objectives and urge consideration of a wider range of social objectives when designing the means of their implementation. Let us start with a simple example:

The Karoo region presents images of wholesomeness, windmills, sheep farms, endless vistas, hospitality and wholesome food ... The region is famous for its sheep meat with its distinct taste and texture. Karoo sheep meat's distinctive character is derived from grazing on indigenous Karoo veldt vegetation. The name 'Karoo' has been abused and misappropriated by many businesses not based in the Karoo. The economic benefits have been taken from the people of the Karoo. Now for the first time a certification mark will guarantee that you are buying true Karoo meat. (Karoo Meat of Origin 2012–2013)

This is the text that opens the homepage of the Certified Karoo Meat of Origin website written by a Foundation which acts as the ‘custodian of the intellectual property rights that vest in the name “Karoo”’. Established in 2009, the Foundation aims to ‘trace, record, preserve and commemorate the rich heritage which evolved in the Karoo region’, while promoting its economic development by investing in the reputational assets of this arid and economically marginal area of South Africa. To this end, the Foundation has developed a certification scheme in which all those who produce or trade in ‘authentic’ Karoo sheep meat can use the new mark. Proponents of the mark extoll a regional culture based upon the tranquility and honesty of the Karoo way of life, such that the ‘Karoo concept’ has become synonymous with quality, tradition and wholesomeness (Kirsten 2006). The Foundation declares that the initiative will create new opportunities for local people to take a more active interest in their natural and cultural heritage, as well as spur development initiatives sensitive to ecological concerns on behalf of ‘the beneficiary community in the Karoo’. This example condenses many emergent hopes and expectations for the benefits to be derived from the use of a particular kind of intellectual property known as a geographical indication (GI).

We begin by explaining what a geographical indication (GI) is, by situating the term historically and explaining the way it differs in important ways from other forms of intellectual property (IP). We then discuss the political and economic conditions under which GIs have attracted new interest from a diverse group of international actors. We suggest that a certain ‘social imaginary’ (Castoriadis 1987, 1997; Gaonkar 2002; Maza 2005; Taylor 2004; Touraine 1981; Wagner 2012; Zavela 1992) of a harmonious community with a naturalized relationship to a territory and its resources is fostered by the use of GIs. Those who are encouraged to develop GIs come to understand this as a strategy of legitimation, both for claiming economic revenues and for asserting cultural

identity. These rhetorical forms are neither true, nor necessarily false, we suggest, but the deployment of such strategies may bring benefits in some regions while undermining sustainable development objectives in others. We show how such marketing strategies may have unintended social consequences and could give rise to unexpected social disputes, as well as contests over the proper scale for marking the provenance of goods described in cultural terms. While holding social appeal for framing development aspirations in some regions, this social imaginary obscures important social complexities in contexts where tradition and indigeneity are contested terms through which different social groups attempt to maintain or to assert gains in status, income and opportunity, as the following chapter, focused on South African rooibos, will attest.

## THE MANY MEANINGS OF GEOGRAPHICAL INDICATIONS

Few forms of intellectual property (IP) are as confusing as geographical indications (GIs). Partly this is because as a form of legal protection, GIs are so recent; only with the passage of the Trade-Related Aspects of Intellectual Property Agreement (TRIPS Agreement) in 1994 did they become known as a distinctive category of intellectual property. Multiple jurisdictions with different legal traditions use a variety of discrete legal vehicles, including indications of source, appellations of origin, denominations of origin and collective trademarks and certification marks, which we will refer to collectively as marks indicating conditions of origin (MICOs). MICOs continue to be the preferred legal means of protecting names and symbols that mark a specific good as having a quality, reputation or characteristic that is attributable to its geographical origin.

The TRIPs Agreement definition adds that the reputation or characteristic be

‘essentially’ attributable to geographic origin. While this qualification has no clear meaning in the Agreement, the language is significant in that it signals a demand for clear evidence of an *essentialized* natural or cultural linkage between a product and its place of origin.

In some common law jurisdictions, a MICO may be recognized even when it is not registered if it has come to serve as an indication of source for consumers. Although lack of registration makes it more difficult to prevent others from utilizing a mark, because it requires that evidence of use and reputation be established in a court of law, it also eases costs of entry into markets for producers and collective associations seeking to establish a reputation for an indication prior to incurring the costs of registration. Unfortunately, marks do need to be registered in their country of origin to receive international protection under the TRIPS Agreement (Article 24.9), making this less expensive and informal option suboptimal for countries in the Global South.

Having a recognized GI enables the holder of the protection (who may be a certifying authority) to prevent the use of the same mark by others outside of the protected area and by those within it that do not follow the prescribed conditions for producing the goods that bear it. This does not prohibit producers from using the same techniques to make the product as long as they do not use the protected name to market it. It simply sets standards for producers within a geographical region who want to identify their products using the GI. Producers within territories covered by a GI cannot move their production outside of that region and retain the name protected by a GI, as a private owner or a corporation might do with a trademark (Barham 2003: 129). Although over 110 countries have specific GI laws in place, only 22 countries outside of the EU have established public registers (Giovannucci et al., 2009: 39–41) which allow holders of GIs to alert foreign competitors that a mark is already protected. In most countries, expensive litigation or administrative proceedings are necessary to prevent

the use of a GI-protected mark in commerce. The broad international obligations set by the TRIPS Agreement do not require that countries commit any particular resources to enforcement. Given the lack of common international commercial law, marks need to be applied for in all relevant countries. Not surprisingly, many countries in the Global South would prefer to see a common international registration system established for all GI-protected goods, not just wines and spirits, which are currently given higher protection.

Clearly a large, diverse and unwieldy group of legal protections already come under the umbrella term ‘GI’. Nonetheless, to make the field more confusing, many countries that did not historically protect such indications have used the TRIPS term ‘geographical indication’ as a generic name for the new forms of protection they have legislatively created to comply with their new international trade obligations. This is particularly true of countries in the Global South, which have only recently developed such protections. However, because the TRIPS Agreement does not specify what form such protection should take, and only requires that unspecified ‘basic provisions’ be put into place for protection (Article 22.1), countries may call their protections ‘GIs’, but actually employ governance frameworks historically used for denominations of origin or for collective trademarks. Alternatively, they may combine elements from different legal forms of protection and add new ones (Giovannucci et al. 2009: xiii). For example, many countries that have introduced GIs in the past two decades have established them as forms of state property, when historically they would have been held by producer associations, certifying bodies and collectives that maintained quality controls and were better able to respond to local exigencies. Thus, few generalizations about the promise or performance of GIs as a global category seem warranted without further examination of the actual regulations governing their use and the nature of the quality controls put into place in particular cases.

In the European Union (EU) even further distinctions are made between forms of GI protection, particularly with respect to wines and foodstuffs. For example, a Protected Denomination of Origin (PDO) is the name of a place or region that is used to designate an agricultural product or foodstuff that is both produced and processed within that geographical area; the quality and characteristics of the produce must be due exclusively or essentially to the geographic environment, which has both natural and social dimensions. *Parmigiano Reggiano* is a well-known example. A Protected Geographical Indication (PGI), on the other hand, is understood to be more flexible: so long as the product exhibits some characteristics attributable to the area, traditional knowledge or local know-how is unnecessary. *Darjeeling tea* has this status.

The European approach to these issues is considered culturally distinctive and is actively opposed by many other industrialized states. Nonetheless, the European approach is likely to become more widespread for several reasons. The EU sees GI extension as compensation for the reduction of agricultural subsidies entailed by global trade liberalization. In its negotiation of Economic Partnership Agreements with southern countries the EU has pressured states to adopt GIs for local goods in exchange for protecting those established in Europe (Bramley and Biénabe 2013b: 5). European development and environmental NGOs and other transnationally active organizations with funding from European state donors are also promoting the use and development of GIs for a variety of local goods. European approaches to rural development in the agricultural regions of Southern Europe, which depend upon local social economies of collective territorial intellectual property that cultivate and market the culture of the producing territory (Ray 2002) are held out as development models for countries in the Global South (Tregear et al. 2007; Vandecastelaere et al. 2009; Van de Kop et al. 2006).

Even the concept of *terroir*, long associated with venerable European wines, the most

prestigious products of French viniculture, and the oldest appellations of origin, is arguably viable for goods as diverse as Vermont maple syrup (Trubek 2008), Fenland celery from Cambridgeshire, Kalahari melon seed oil, and the microbial qualities of raw milk cheeses (Paxson 2008). One comprehensive overview of the field of GIs defines *terroir* as:

(1) a delimited geographic space, (2) where a human community, (3) has constructed over the course of history a collective intellectual or tacit production know-how, (4) based on a system of interactions between a physical and biological milieu, and a set of human factors, (5) in which the socio-technical trajectories put into play, (6) reveal an originality, (7) confer a typicality, (8) and can engender a reputation, (9) for a product that originates in that *terroir*. (Giovannucci et al. 2009: xv)

The existence of *terroir* is not necessary for GI protection. However, when the concept is described so broadly, the opportunities that protections for *terroir*-based goods might hold for producers of goods in the Global South becomes evident. Such a definition is wide enough, for example, to encompass craft traditions in which naturally derived materials such as grass, wood and clay are regularly used in conventional ways, providing that they have some reputation as distinctive.

## RATIONALES FOR AND INTERESTS IN EXTENDING GI PROTECTIONS

Many states and international institutions see GIs as providing prospects for new forms of rural development, community autonomy, preservation of cultural traditions, and even conservation of biological diversity when the production of goods encourages the stewardship rather than the depletion of the natural resources from which they are made (Cullet 2005). GIs may enable the sustainable use of genetic resources and aid local conservation efforts (Larson 2007, 2010). Increasingly, the conservation of biological diversity and

the safeguarding of cultural diversity are added to developmental objectives in proposals to extend GI protection to new regions and peoples (Wong and Dutfield 2011). Such protections are often idealized as offering the potential to maintain local conditions of production, reward traditional knowledge, and in some formulations even protect cultural practices despite the obvious social transformations they put into play (Broude 2005).

Amongst IP protections, MICOs are unique in creating new forms of inalienable goods rather than alienable commodities. To the extent that many of the legal vehicles employed to protect place-based goods are open to the use of all those who fulfill the underlying conditions, MICOs act more like locally bounded public goods than private properties (Calboli 2006). For example, European PDOS and PGIs are available for the use of all producers within the designated area who adhere to the code of required production practices and who are considered to benefit from the area's reputation (Marty 2008). According to academic commentators, GIs may thus be especially apt for protecting goods produced through collective cultural traditions of knowledge (Bentley and Sherman 2009: 976; Gervais 2009; Sanders 2010; Sherman and Wiseman 2006: 259; Sunder, 2006, 2007).

We have already emphasized that both global and regional trade agreements have put increasing pressure on states to strategically consider these new forms of protection. The geopolitics of trade ensure that developing countries are often forced to compete in the global market without the protection and agricultural subsidies provided in developed countries which, even when reduced in the name of trade liberalization, are still sizeable. Developing countries may also see GIs as one of the few TRIPs-protected IP rights that provide them with some competitive advantage, especially under an agreement that promised them *enhanced access* to markets (Agdomar 2008). GIs 'present long term benefits as they create value, enhance the marketability of goods and give an edge to

developing countries to promote exports and rural development, thus generating sustainability and inter-generational equity' (Zografos 2008: 103).

Indeed, the vast increase in the number of states legislatively creating these forms of protection suggests a widespread belief that MICOs have potential value (Bramley and Biénabe 2013a). Nonetheless, far more countries have internationally lobbied for enhanced protections and passed legislation than have registered products at home or abroad, suggesting that the work of implementing regimes of GI governance and marketing protected goods has been far more expensive and complex than anticipated (Das 2009; Hughes 2009; Musungu 2008). For a GI to be effective, strong organizational and institutional structures and well-financed market partners committed to long-term promotion and commercialization are needed to maintain, market and monitor it (Giovannucci et al. 2009: xviii–xix). Moreover, the organization of supply chains, establishment and enforcement of product specifications and development of marketing plans are all daunting and expensive requirements that may be necessary to make GIs successful even in purely economic terms (Rangnekar 2009).

If MICOs are theoretically available to protect an increasing range of goods, they are also attracting the hopes and desires of a greater range of actors because they appear able to meet a number of international policy objectives. The increasing attention to the idea of culture in development theory and practice is another factor that encourages international bodies and civil society organizations to put emphasis on GIs. Coombe has written at length about the growing importance of culture in institutions for sustainable development and the emphasis on both development and tradition by the World Intellectual Property Organization, including efforts to devise new forms of protection for traditional cultural expressions (Ahmed et al. 2007; Coombe 2005, 2009). Similarly, the valorization of intangible cultural heritage under global cultural policy instruments



has focused attention on viable vehicles for maintaining, protecting and projecting localized cultural properties while rejecting forms of commodification more likely to disrupt social reproduction than to safeguard local forms of meaningful practice (Coombe and Turcotte 2012). MICOs are of interest to cultural heritage practitioners because they have a history of being used to protect collectively held 'traditional cultural expressions' (Aylwin and Coombe 2014: 110–111).

To the extent that NGOs are tasked with furthering projects that carry out objectives under major international policy instruments and human rights norms, they too seek to ascertain whether GIs are appropriate for an ideal of sustainable development in the Global South, that includes the preservation of biological and cultural diversity (e.g., Bramley and Kirsten 2007; Escudero 2001; Gopalakrishnan et al. 2007; Rangnekar 2010; Singhal 2008; Van de Kop et al. 2006). Increasingly, scientists, state research centers and development institutions explore the intersections between regional soil conditions, environmental factors and plant qualities to provide empirical evidence that a product's qualities are attributable to geographic factors and publish their findings in academic journals (Hawkins et al. 2011; Oberthür et al. 2011; Waarts and Kuit 2011).

The fact that MICOs may be collectively managed makes them attractive to development practitioners and NGOs hoping to prevent new forms of inequality and to encourage greater social cohesion by providing new measures of community control over economic activities that tie rural areas into larger markets. Proponents suggest that 'the introduction of GIs can help forge collective rights that are indivisible from locality' (Aylwin and Coombe 2014: 111). Advocates of GIs assume that farmers, large-scale growers and distributors, small-scale producers and residents all share similar interests in developing a region's reputation through the marking of distinctive goods.

For producers, GIs convey unique characteristics that allow them to distinguish their products and break out of the commodity trap of numerous similar and undifferentiated products trading primarily on price. GIs may also provide a measure of protection for the intellectual or cultural property of a particular group or place and, as such, can contribute to a unique and not easily assailable form of competitive advantage. (Giovannucci et al. 2009: 8)

For rural economies, GIs appear to provide the lynchpin of 'a physical and conceptual structure for affirming and valuing the unique socio-cultural and agro-ecological characteristics of a particular place' (Giovannucci et al. 2009: 8). The reputational effects to which they contribute may influence other products in the region, foster tourism and contribute to regional branding (as anyone who has travelled in rural Italy can certainly attest).

Moreover, a growing number of international legal instruments create state obligations to protect traditional knowledge and indigenous heritage (Coombe 2008). The recognition and acknowledgement of traditional or indigenous knowledge under global biodiversity regimes, and the neoliberal commitment to using market-based vehicles of compensation for benefit-sharing, has motivated a great deal of research and policy that points to GIs. The interests of the UN Permanent Forum on Indigenous Issues in achieving 'development with culture and identity' while protecting 'biocultural heritage' resources and 'biocultural territories' (Wong and Dutfield 2011: xxxvi) has also focused attention on GIs. For indigenous rights advocates, GIs have

features that respond to the needs of indigenous and local communities and farmers ... [they] are based on collective traditions and a collective decision-making process; reward traditions while allowing for continued evolution; emphasize the relationship between human efforts, culture, land, resources; and environment; and are not freely transferable from one owner to another. (Addor and Grazioli 2002: 865)

This is largely due to their collective ownership:

One advantage of GIs in this context is that they are a common property instrument. Whereas commercial trademarks are usually owned by individual economic agents who therefore have a monopoly on their use, GIs are instruments that can be used by all genuine economic agents in a specific geographical area, who respect the terms of reference guaranteeing conformity with tradition – not a frozen set of practices but practices judged, after collective deliberation, to be consistent with tradition, i.e. that are genuinely a part of a living culture. (Ilbert and Petit 2009: 504)

The purported confluence of state and indigenous interests make GIs attractive to those concerned with state obligations to protect community heritage, knowledge and expressions. Again and again we see representations and assumptions of a singular tradition, deriving from a singular culture, rooted in a singular place, with its own naturally distinctive ecosystem which a ‘community’, holistically imagined, stewards as resources for the future. We call this the ‘social imaginary’ of GI protection.

## THE SOCIAL IMAGINARY OF GI PROTECTION

‘Social imaginaries’ are ways of understanding the social that become social entities themselves, mediating collective life ... They are first-person subjectivities that build upon implicit understandings that underlie and make possible common practices. They are embedded in the habitus of a population or are carried in modes of address, stories, symbols, and the like. They are imaginary in a double sense: they exist by virtue of representation or implicit understandings, even when they acquire immense institutional force; and they are the means by which individuals understand their identities and their place in the world. (Gaonkar 2002: 4)

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 has often become established 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.

The rhetoric used often borrows the tropes of authenticity and primordialism characteristic of discourses of cultural heritage. This is not surprising given the intensity of European involvement in United Nations Educational, Scientific and Cultural Organization (UNESCO) heritage activities, which similarly focus upon the marketing of local cultural distinctions. Let us take a European example to illustrate this phenomenon. Matera, a town of 60,000 people in Southern Italy, is known for its stratified system of formerly inhabited limestone caves which was inscribed as a World Heritage site in 1993. Local crafts such as clay whistles, kitchenware and figurines not only provide tourist revenue, but are also reproduced as signs and symbols iconic of the town and emblematic of its heritage (Bortolotto 2010). In 2003 the Chamber of Commerce launched a publicity campaign for the promotion and appreciation of the DOC (Controlled Denomination of Origin) to further promote the ‘culture of typical products underlying their geographical, social and productive roots’ through a collective mark for Matera artistic craftsmanship to be used by artisans for the purposes of safeguarding traditional cultural heritage:

On this point the discourse of the promoters of the label is clear: in the products of the label ‘are narrated the events of a region, its territory, its customs, and its people’ and the skills of the artisans are considered tools that keep alive a tradition which is assumed to be inherent with a territory. Guaranteed by the collective mark, the authenticity of these goods is produced by the results of the spatial component (geographic origin) and the temporal component (historic depth of the techniques of production). Rooted in the historical-geographic unity which founds the idea of ‘territory’, authenticity is the product of the crossover point between the natural dimension

(in relation to the provenance of the primary materials) and the cultural dimension (continuation of know-how and skills) ... This example demonstrates how local heritage stakeholders mobilise and exhibit numerous kinds of evidence in order to prove their conformity with tradition and the embeddedness of the local culture. In so doing they guarantee their authenticity and uniqueness. (Bortolotto 2010: 110)

A form of legal protection that promises new economic benefits and invites communities to trade upon essentialized qualities is sure to find such qualities, or at least to find agents willing and able to project, elicit or inculcate them. Such exercises of social agency are inevitable in the context of enabling legal and political forces at state, regional and international political levels. GIs are being cultivated to promote products, processes and methods 'traditional' to places, and 'traditions' are being cultivated to support these marketing vehicles. Elsewhere, Coombe and Aylwin (2011) have argued that MICOs reify, objectify and socially construct cultural differences, rather than merely reflect a world of traditions that organically pre-exist them. Moreover, the spatialized natural/cultural differentiations which GIs symbolically mark in commerce have social, political and economic consequences, while constituting borders of community and identity (Coombe and Aylwin 2011: 2029).

Anthropologist Paola Filippucci (2004) suggests that the making and marketing of traditional products is the dominant means by which the borders of meaningful cultural difference are marked in modern France. Cheese is understood to be the classic *produit du terroir*, typical of a place and embodying a combination of natural sources and human skills that link people and their habitat. Residents deem such products as exemplary of cultural heritage, representing the enduring presence of a collectivity that displays its identity. Areas that 'do not even have a cheese' appear to lack patrimony (Filippucci 2004: 72). They are unable to demonstrate the essentialized qualities of tradition and authenticity that mark them as having a cultural identity that

is legible to the state. Indeed, those who promote the establishment of cultural economies for rural development often advocate the creation of inventories of cultural districts identified by ascertaining goods produced from local cultural traditions (Rojal 2005).

The social imaginary projected by MICO advocates seems to presume a unified community which will receive uniform benefits from its use, a scenario which may have little empirical basis and serves as an aspiration only if GI institutions are shaped with sensitivity to local social relations. Studies of appellations in Europe, for example, suggest that the producers with the most secure marketing networks tend to acquire the lion's share of the added value they yield (Rangnekar 2004). Small producers struggle to build supply chains; without public investments it is virtually impossible to prevent powerful private actors from monopolizing the opportunities that GIs afford. Those most familiar with the use of these legal vehicles in Europe caution against their general promotion and urge careful consideration of their governance when assessing their capacities to serve as engines of equitable rural development (Barham 2003). Even in France, it appears that the oldest appellations of origin were developed to protect aristocratic traditions and continue to reflect class-based privilege (Moran 1993, 1999). Gade's (2004) empirical study of the management of the appellation for cassis in Southern France, for instance, shows how an ever-smaller syndicate of producers came to dictate the conditions of its use in their own favor, limiting the number of eligible producers, preventing tenants who actually grew the grapes from receiving any benefits from its use, and deploying it so as to prohibit the creation of cooperatives that would benefit smaller producers, while entrenching poor working conditions for agricultural workers. The historical use of the GI exacerbates rather than mitigates local inequalities while reducing both biological and cultural diversity, and fails to meet criteria for participatory, democratic governance; for this reason, Aylwin and



Coombe (2014) make the case that new institutions for GI governance should be guided by principles of rights-based development.

Organized indigenous peoples in many areas of the world, however, have developed a concept of territory to describe historical attachments to specific ancestral lands and established forms of governance to further their collective interests in continuing to manage these areas in accordance with culturally distinctive principles of environmental stewardship. For these groups, the social imaginary of GIs may be less pernicious. This is not to argue that indigenous communities are essentially more harmonious. However, where those recognized as indigenous peoples have a political history of managing resources collectively and justifying those practices of resource management in accordance with norms drawn from human rights, environmentalist and sustainable development discourses, as they do in many parts of Latin America, (Coombe 2011a, 2011b), GIs may be attractive. This is precisely because indigenous collectivities have made political gains in self-governance using arguments about the cultural significance of their territories in constituting them as a people with specific responsibilities to manage environmental goods in accordance with principles of customary law. They are thus well poised to effectively use this rhetoric, taking advantage of the economic and political opportunities that GI protections afford. To the extent that indigenous collective rights have been forged in a human rights context, many indigenous peoples have a long history of forging rights-based collective institutions based upon participatory principles that avoid entrenching or producing new inequalities.

Some environmental advocates argue that collective trademarks, one variety of GI, are particularly apt for indigenous communities who seek to protect their traditional knowledge, preserve biological diversity and assert indigenous rights. For example, Graham Dutfield (2011), who acknowledges that IP generally does not easily accommodate the collective interests of groups and

communities, nonetheless expresses optimism about the prospects for associations of territorially based small producers to use such marks to assert group rights in goods derived from biocultural heritage (2011: 5). Biocultural heritage is a term developed by indigenous peoples and defined by the Convention on Biological Diversity Secretariat as:

The knowledge, innovations, and practices of indigenous and local communities which are often collectively held and inextricably linked to traditional resources and lands and waters traditionally occupied and used by indigenous and local communities; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological contexts of communities. (CBD Secretariat 2007: 11)

Goods derived from biocultural heritage may include traditional crops and products made from them, foods and beverages, medicines and handicrafts.

### **THE LIMITS OF THE GEOGRAPHICAL INDICATION'S IMAGINED COMMUNITY**

The potential promise that GIs hold for rural sustainable development should not be overestimated. Although there are many community-based enterprises built upon marketing local products that celebrate the distinctiveness of their origins, 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 between communities and national institutions. Moreover, states which 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 community needs or aspirations. Communities have often found it

difficult to control the social, ecological and cultural consequences of producing 'traditional' goods for modern mass markets. Two examples from Peru are illustrative.

Anthropologist Anita Chan shows that the Peruvian government has encouraged the use of denominations of origin for the marketing of traditional ceramics. With respect to ceramics marked as 'Chulucanas', she argues, the government has done so while promoting economies of scale and forms of industrialized manufacture that have seriously damaged the social relations of production which historically sustained egalitarian communities of producers, and while driving down prices and increasing competitive relations of mistrust and alienation (Chan 2008, 2014). In the Northern Andes, on the other hand, soft cheeses from the Department of Cajamarca were targeted for development as 'typical products: they are simple, attached to a territory, and the quality of the *mantecosa* is closely linked to the local soils and climate which determine the richness of the pastures and thus the quality of the milk' (Boucher and Gerz 2006: 43). Relying upon traditional knowledge and serving as a symbol of local identity, *mantecosa* is the work of many small farmers in a poor rural area which was seen as likely to benefit from its marketing as a typical product. Efforts to better market the cheese and to promote synergies between cheese, other regional foodstuffs and the development of landscape amenities with the potential to develop regional tourism were promoted through the collective mark 'Poronguito', recognized in 2000. Nonetheless, the work of collective organization has required extensive efforts by NGOs to facilitate dialogue between producers of *quesillo* (the curd used to make the cheese, which is generally provided by poor livestock producers in mountainous regions), small-scale cheese producers, speciality shops and national marketing institutions. In short, brokers were needed to ensure that small cheese makers had their interests respected in this process. Despite these considerable efforts, 'further work must be done to promote a

greater sharing of benefits with small producers of *quesillo* (who are often women, often isolated, often exploited by middlemen, and physically and culturally distant from the end-product) as well as to reduce elite family-control of direct marketing to consumers' (Aylwin and Coombe 2014: 115). In both of these Peruvian instances, moreover, infrastructural support is necessary to enforce protection for marks indicating conditions of origin and to prevent their infringement in wider markets.

Such projects of facilitating 'development with identity' (Rhoades 2006) or investing in 'cultural economy' (Ray 2002) have attracted international NGO, indigenous rights, and environmentalist attention and are spreading across Latin America. For example, a 2011 study supported by the Ford Foundation identified multiple poor areas in which 'investment in the valorization of cultural identity can be an effective strategy for sustainable development that includes said territories', citing 'emerging demand for products and services that carry cultural identity associated with rural areas' as a rationale for 'the development of innovations in policies, public investments, and services, and the strengthening of actors, institutions and networks' to generate opportunities for the poor and marginalized (RIMISP 2011: 9).

In Latin American countries cultural heritage is often associated with very poor and disadvantaged segments of the rural population, including women, indigenous peoples, people of African descent and rural dwellers. Valuation, then, is linked to public recognition of their knowledge and skills, contributing to a rise in self-esteem and sense of citizenship. It has also been observed that governance based on community/collectivity is key as important social capital distinctive of many Latin American countries. Therefore, the rural territorial development with cultural identity processes should include these different dimensions in addition to the economic one. Behind the identity products and services are the real actors and makers of them: people in flesh and blood, communities and their own strategies. To think only of new offerings for new markets leading to higher revenues and consequently, greater well-being, is a simplistic equation. At least in the

rural territorial development with cultural identity it tends to stifle their prospects for a less mercantilist, more comprehensive, and more just and inclusive development. (Ranaboldo 2009: 7, acronyms omitted)

The authors of this report, sponsored by the Latin American Centre for Rural Development (which itself is variously funded by the International Development Research Centre (Canada), the Interchurch Organization for Development Cooperation (Netherlands), the International Fund for Agricultural Development, the Ford Foundation (USA) and New Zealand's Aid Program, indicate that throughout Latin America 'there has been an emergence of actors and networks dedicated to exploring development strategies based on the valuation of cultural assets in rural areas', with women and young people playing prominent roles in these initiatives, and municipal governments increasingly mobilizing to protect cultural heritage assets (Ranaboldo 2009: 8). Although GIs (usually protected denominations of origin) are identified as useful vehicles for this purpose, national and regional laws are described as 'still unfocused, poorly articulated, and little known and used' and in danger of becoming simply marketing instruments, most suitable for powerful business sectors (Ranaboldo 2009: 9).

It is widely acknowledged that Latin American countries face considerable challenges in creating models of culturally based development that do not focus primarily on wealth but also on encouraging multiculturalism, sustainability and the protection of biodiversity. Efforts, however, are well underway to build and extend models of biocultural diversity territories for 'sustainable inclusive development' (Biocultural Diversity 2013), including capacity-building exercises, diploma programs, coalition-building tools, and the sharing of knowledge management strategies. Not surprisingly, EU partnerships and European models feature prominently in these multi-sectoral, transnational endeavors (e.g., Slow Food Latin America

is now a trademark). The recent emphasis upon sustainability and inclusiveness indicates that regional development institutions have absorbed at least some of the lessons that have been drawn from the use of GIs for rural development over the last decade. In particular it has become clear that unless small producers and community actors and institutions themselves are involved in the design of such marketing strategies, the benefits from it are likely to be limited. Current research indicates that MICO programs captured by private interests for primarily economic purposes may destroy the natural and cultural assets upon which the GI is premised (Giovannucci et al. 2009: 118).

GI strategies driven primarily by states in the name of the public interest may also have exclusionary and destructive consequences. One example is a Mexican public-private initiative that aimed to diversify regional varieties of liquor beyond tequila (Mexico's most famous GI, derived from the blue agave) by protecting more varieties of mezcal using new denominations of origin (Coombe and Aylwin 2009). The process was dominated by government and industry elites. It relied upon the introduction of highly industrialized standards and volumes of production which marginalized smaller producers and undermined the characteristics of mezcal's traditional manufacture (Giovannucci et al. 2009: 2, 101). Although agaves and mezcals are endemic to Mexico, the unique aspects of these alcoholic beverages were also derived from culturally diverse processing methods:

Most of the best quality mezcal is still small-scale artisanal production from rustic installations in remote, poor communities and does not go beyond regional markets. Even though vertically integrated industrial mezcal enterprises are beginning to sprout in different parts of the country, following the tequila model, bottling and commercialization are still generally carried out by small to medium intermediaries who buy up and blend the local productions from the scattered distilleries of small producers. For many poor peasant families of the dry tropics agave and mezcal represent a very important, even if meager, source of income. Because mezcal complements their subsistence

economy, mezcaleros are among the few members of the poor and extremely-poor communities who do not need to migrate in order to maintain their families. (Giovannucci et al. 2009: 184)

If the denomination of origin publicized and made mezcal more popular amongst consumers, it was also a state property, use of which was restricted to producers, distillers and bottlers who were registered and monitored by a system controlled by a limited numbers of government-approved certifiers. The use of the term was restricted to a particular region, defined by political rather than geographical or cultural borders, excluded many traditional regions and created purely industrial opportunities for people with no tradition of cultivation. Many distinctive mezcals failed to meet the defined product criteria, which were based upon the chemical properties of tequila, not those of mezcal. Diversity in crops, farming methods and in products has been thereby reduced.

The socioeconomic consequences of protecting mezcal have been similarly disappointing. In the traditional cultivation area of Oaxaca, production and commercialization is concentrated in fewer industrial hands, and small agave producers are being pushed out and into migration (Angeles 2007). The federal funds available for developing the maguey-mezcal supply chain are quickly taken by better organized groups and entrepreneurs, often newcomers to the industry. The benefits appear to have been concentrated among large 'commercial interests and bottling enterprises that sometimes buy mezcal cheaply from the smaller producers that are unable to certify themselves and reap the profits ... [the former may] establish their own industrial stills and thereby push the original small producers out of business' (Giovannucci et al. 2009: 189). State structures are, in theory, controlled by the public for the public, but, echoing the earlier case of tequila (Bowen and Valenzuela 2006), social conflicts ensued because the Mexican state did not introduce adequate provisions for the participation of smaller producers or

traditional farmers or reduce the obstacles they face. With respect to the tequila GI, the entire system became economically and ecologically unsustainable, undermining the sociocultural characteristics of the region which was the cradle of the industry (Bowen and Valenzuela 2006). The future for mezcaleros appears similarly gloomy.

It is evident that many recent GI initiatives are state-driven projects that may have little to do with local communities or their social values and norms. Indeed, in many parts of the world, the issue of whose cultural goods should be protected as whose intellectual property, and thus who should own or control any marks indicating conditions of origin, is becoming a politics of contested scales. For example, Lorraine Aragon and James Leach (2008) showed how the Indonesian government unproblematically used an imagined community of homogenous local cultural groups holding expressive goods such as arts and crafts traditions as collective cultural possessions to declare such goods *national* patrimony. In other words, communities were imagined along the lines of Western corporations who acted as agents for the state. Not only was this a misrepresentation of how local peoples traditionally held rights in cultural goods, it fundamentally undermined local systems of creativity based upon customary trust and reciprocal obligations.

Although the ethnographic work done by Aragon and Leach focused primarily upon the emergence of protections for traditional cultural expressions (the concern of the Ford Foundation mission that funded their research), the implications for development of GI protections are clear. If local norms and practices of transmitting expressive knowledge and practices are ignored in state recognition of 'tradition', it seems highly unlikely that the GIs anticipated under Indonesian law for use on traditional handicrafts from particular areas (Mawardi 2009: 7) will provide participatory rights for communities that respect local social relationships, needs or aspirations. If such handicrafts are deemed to be based on cultural patrimony already

considered *national* cultural heritage, these marks are even less likely to provide local community benefits. Indeed, the very use of the term ‘traditional’ rather than ‘indigenous’, Aragon (2012: 411) suggests, is designed to foreclose community claims to rights and resources.

It would be a mistake to see forms of development based upon cultural identity as restricted to indigenous peoples, or to understand those territories likely to benefit from cultural economy strategies as more likely to be indigenous. In Latin America, for example, mestizo, maroon, ethnic settler and diasporic communities have also shown capacities to capitalize upon ‘cultural distinctions’ to foster development (Ranaboldo 2009: 8). Nonetheless, to the extent that indigenous peoples have internationally recognized rights to heritage resources (Coombe, 2008), they are more likely to resist their cultural resources being appropriated by the states in which they are resident, and more likely to receive external support for the exercise of their rights to autonomy in this regard. Indigenous communities in countries where states maintain extensive powers over the use of GIs have sometimes turned to collective marks, which can be held by a community, used and developed informally, without recourse to national registration processes, to develop reputations over longer periods of time, and in distinctive channels of trade.

Collective marks may be used to mark goods made from biocultural heritage resources, pursuant to their own norms or customary laws, and/or in furtherance of non-market values (Coombe 2013). Alejandro Argumedo (2013), a Quechua activist, international indigenous advocate, and founder of the Potato Park in Peru dedicated to the conservation of sustainable use of potato genetic resources using Quchua traditional knowledge under indigenous governance, considers collective marks good vehicles for rural community development, particularly when GIs are held by the state in which they are resident. He argues that marks which can be collectively owned and managed in

accordance with community self-determined rules that correspond with customary law principles offer the promise of real economic and political benefits to indigenous communities (Argumedo 2013). Nonetheless, reliance upon a trademark system to enforce rights against infringements of such marks is inefficient, expensive and time-consuming compared to a GI system structured to protect producer interests (oriGIn 2011). Thus Argumedo believes that regulation of collective marks could be better designed to serve the needs of indigenous peoples, and suggests a new regime of ‘biocultural heritage indications’ to ‘open up the current intellectual property rights system to millions of poor rural communities’ (2013: 5).

## CONCLUSION

The globalization of IP rights and the spread of IP protections to new parts of the world have engendered hope that GIs will serve processes of sustainable, inclusive development and bring new opportunities and benefits to indigenous peoples and rural communities, particularly in the Global South. We have considered the forces which have coalesced to make GIs appear especially attractive to a wide range of social actors and canvassed research that explores their promise and their perils as vehicles for development with identity, maintaining biocultural heritage, and facilitating the incorporation of traditional knowledge and practice into modern markets. We have argued that the ‘social imaginary’ of GIs, that supports naturalized synergies between the qualities of a territory, the characteristics of its goods, the traditions of its people, and their cultural identity, may express the experience and enhance the economic sustainability of some peoples in some places, but (as we will further suggest in the next chapter) may socially entrench fundamental inequalities in others. Ultimately, GIs are regimes of governance that need carefully designed institutions to



fulfill an optimal range of social and economic objectives.

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