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**RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS**, by Dev Gangjee. Cambridge University Press, 2012. 341 pp. Hardback \$120.00.

Reviewed by Michael Handler, Faculty of Law, University of New South Wales.  
m.handler@unsw.edu.au.

Near the end of Dev Gangjee's wonderful monograph, *RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS*, and thinking about its impact, my mind turned to a different issue relating to geography—that of maps. By the mid-sixteenth century a flourishing trade in maps and sea charts had developed throughout Europe. Yet cartographers still struggled at this time with a fundamental problem of representation: namely, how to project the curved surface of the world on a flat map. The problem of inaccurate maps and a lack of a uniform approach to projection was particularly acute for seafarers, many of whom would describe identical sea journeys in ships' logs by reference to very different latitudes, depending on the maps they were using.<sup>1</sup> Cartographers squabbled over which projection of the world was the most accurate, but without a uniform standard developing. In 1569, Flemish cartographer Gerardus Mercator produced a giant map of the known world titled *Nova et Aucta Orbis Terrae Descriptio ad Usum Navigantium Emendate*. Drawing on a grid-based cylindrical projection developed by Ptolemy in the second century AD, the key advance in Mercator's map was his spacing of parallel lines of latitude so that the gaps between them increased exponentially the further they moved away from the equator.<sup>2</sup> The effect of this was that any straight lines drawn between any two ports on the map accurately represented both the distance between those two ports and a bearing that a navigator could take to make the journey. In the empty space on his map over North America, Mercator wrote that his mission was "to represent the positions and the dimensions of the lands, as well as the distances of places, as much in conformity with very truth as it is possible so to do".<sup>3</sup> Mercator's map and projection had an almost immediate impact as a navigational aid. But it had a far greater significance in shaping how we see and understand the world. This is something that can still be felt

today—you only need to go to Google Maps and zoom out as far as possible to see a modern day example of the Mercator projection.

Gangjee's monograph is to geographical indications scholarship what the Mercator projection is to cartography. It solves problems that have bedevilled scholarship in this field for a century, and imposes order on, and makes sense of, a field of law that the author rightly describes as "spectacularly messy" (p.1). The reasons for this mess are well known. The nature and scope of protection that must be afforded to, and the institutional forms of protecting, indications of geographical origin (IGOs) are unsettled throughout the world—something reflected in the bewildering array of terms and acronyms used to describe various types of IGO and in the outwardly inexplicable dual levels of protection for geographical indications (GIs) contained in Articles 22 and 23 of the TRIPS Agreement.<sup>4</sup> Debates over IGOs, whether undertaken by government policy-makers or commentators, also tend to be highly polarized, often shaped by cultural beliefs that a particular model of protection is the only appropriate means of safeguarding IGOs. Beyond a limited consensus that IGOs should be protected against use that misleads consumers as to the origin or qualities of goods, there is no agreement as to whether more extensive protection (for example, against dilution or pure misappropriation) is warranted, what legal form such protection should take, or to what extent it is appropriate to privilege "localized" production in international trade when to do so imposes costs on importing countries.

Gangjee's thesis is that only by stepping back and trying to understand how signs that indicate the geographical provenance of goods came to be protected in international intellectual property law from the late nineteenth century can we evaluate the current legal landscape, in particular, the GI provisions of the TRIPS Agreement, and think constructively about the future of GI protection. Taking such an approach involves setting up new epistemic frameworks to explain why IGOs have been conceptualized and protected as they have at the international, regional and domestic levels. It also involves calmly mediating the often hostile debates that have occurred over the regulation of IGOs, which only seem to have intensified with the growing recognition amongst some countries, particularly from the developing world, of the potential export value of geographically branded goods. Gangjee has succeeded admirably in achieving his stated goals. His novel organization of the topic, the new insights he has been able to provide based on his exemplary, comprehensive research, and his even-handed, critical engagement with the claims made by both advocates for and opponents of stronger GI protection, are likely to change the thinking of many scholars in this field and help to shape future global debates and policy agendas. As Mercator's projection did,

Gangjee's monograph should become the key, unifying resource in its field.

Part I of RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS consists of a detailed, historical, interdisciplinary analysis of IGOs, something which has not been undertaken in this sort of depth or with this sort of intellectual rigor before. Here, Gangjee unpacks the decisive contribution of three treaties—the Paris Convention for the Protection of Industrial Property of 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958—as well as a number of domestic IGO protection regimes, in order to explain the way in which IGOs emerged over the twentieth century as distinct legal subject matter that took a wide variety of forms. This is highly original work that sheds light on a largely forgotten body of law. More fundamentally, it makes a convincing case that understanding the current international GI framework and making normative arguments as to the optimal scope of international GI standards can only be done after first untangling the skein of regulation that developed over the previous hundred or so years, and fully engaging with the question of “how has the GI come to mean what it does and function in the way that it does?” (p.14).

In Chapter 2, in considering the Paris Convention, Gangjee deals with the overlooked question of why “indications of source”—signs that merely describe the provenance of goods—were deemed worthy of protection in an *industrial property* treaty. He demonstrates, through a thorough analysis of extrinsic materials, that the “valuable intangible” sought to be protected was in fact the collective reputation that attached to regional products. Indications of source were, accordingly, treated as similar, though ontologically separate from, trade marks, with Union members required to provide broadly similar rights against the use of “false” indications under Article 10 and misrepresentation by way of Article 10*bis*. In this way, Gangjee identifies an early model of IGO protection that recognized the collective nature of the subject matter, with the scope of protection based on a purely communicative logic—that is, that the indication provided useful information to consumers about the origin of goods produced by one of a number of local traders entitled to use the indication. At the same time, Gangjee uncovers a strong degree of opposition amongst founding members of the Paris Union, notably France, to a minimum standard of protection based on consumers having been misled. The concern here was that such a standard was inadequate to protect indications in export markets, where the indication might not be understood as having geographical significance. Gangjee suggests that a desire for more absolute

protection explains the quickly assembled Madrid Agreement of 1891, the effect of Articles 1(1) and 4 of which is to oblige members to ensure the seizure on importation of wine bearing false indications of source, even if those indications are generic in the country of importation. Here, Gangjee identifies the emergence of a different logic underpinning IGO protection—that certain indications might represent not only origin, but also a unique link between product and place, such that they ought never to be able to be used as generic product descriptors, irrespective of what consumers in a particular country might understand the term to mean. That is, we start to see the emergence of a *terroir* logic underpinning IGO regulation, albeit at this stage only in relation to geographical terms used to identify one type of product, namely, wine.

It is at this point that what might appear to be an unusual decision in terms of the structure of the monograph makes perfect sense. Having identified two different and competing logics underpinning international IGO protection (the communicative and *terroir* logics), Gangjee turns away from the multilateral regime to explore these logics as manifested in a number of national models of IGO protection. This is done to show that any attempt to understand how the notion of “the GI” that emerged in international intellectual property law at the end of the twentieth century cannot be undertaken by reference to international conventions alone. Rather, it requires an appreciation of the seemingly irreconcilable interests of those advocating for particular standards and forms of IGO protection, which can only be achieved by an examination of their national laws *and* their rural policies. Gangjee’s approach also allows for a wider critique of the two logics based on their historical origins and development, which is important given his stated desire to reframe the global debate about the justifications for protecting GIs at particular levels.

The primary focus of Chapter 3 is therefore on the development of the *terroir*-influenced French *Appellations d’Origine Contrôlée* (AOC) system. In a superb analysis at the start of the chapter, Gangjee unpacks the obscure notion of *terroir*. He argues that it can be conceived of as a “mythical” or spiritual bond between place and product that has been used for the purposes of regional identity formation, a “deterministic influence” that prioritizes the uniqueness of physical and environmental elements in the production of goods, or “a more contingent composite of natural and human factors, open to innovation” (p.85). He then demonstrates how the French system of IGO protection was informed by this second, deterministic notion of *terroir*, with a gradual recognition of the third, composite notion. More specifically, in a painstakingly researched and engagingly written part of the chapter, he shows how in the late nineteenth century the French state, prompted by significant vine shortages which led to fraudulent origin labelling of wine, sought to

intervene in the market for wine by managing production levels in wine-producing regions. Through various decrees, it first sought to define the boundaries of such regions and, following the adoption of the AOC regime from the 1930s, to administer the registration of the names of such regions and to prescribe the qualities, characteristics and methods of production of wines from such regions whose producers were entitled to use registered names. On the basis that registered names were thought to indicate unique qualities and characteristics of wine, these laws gave entitled producers the right to prevent non-entitled traders from using the registered name outright (that is, even for the purposes of comparison). The value of Gangjee's historical approach is that it shows how contingent the strong French *sui generis* model of protection was on a range of purely domestic factors that helped shape its rural policy. His analysis also raises real questions about the "transferability" of such a model to the international stage, something he takes up in later chapters. At the same time, Gangjee charts a subtle shift in the French AOC model in the increasing importance it placed on human factors, such as stable customs or localized knowledge, in the production of regional goods. In doing so, his approach avoids falling into the trap of caricaturing *terroir* as a fabricated idea of uniqueness based on static conceptions of place, and instead recognizes the potential significance of human know-how and its intersection with geographical factors as explaining why IGOs might serve more than a communicative function, which might then impact on the scope of protection afforded to them.

This characterisation becomes especially important as Gangjee returns to the international arena in Chapter 4, which focuses primarily on the Lisbon Agreement of 1958, an agreement underpinned by *terroir* logic that sets up a multilateral registration and protection scheme for appellations of origin for all products. Gangjee makes a strong case that, despite its low membership, this treaty is worth examining because it shows not only how the French notion of the appellation of origin came to be received in international discourse, but also some of the significant difficulties involved in structuring an international agreement around the category. He traces particular problems with the Lisbon definition of "appellation of origin" (such as whether it contains an implicit requirement that the qualities or characteristics of the named product be unique to its place of origin, or whether human factors alone would be sufficient to justify protection), and with the registration scheme designed to "settle . . . matters of definitional validity and protected status in the home country, then export this status to the entire Lisbon Membership" (p.157).

It is at this point that the monograph takes another unexpected, but entirely justifiable, turn. Rather than offering a descriptive account of the operation of Article 3 of Lisbon, which requires Members to protect

registered appellations “against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as ‘kind,’ ‘type,’ ‘make,’ ‘imitation,’ or the like”, Gangjee engages with the normative arguments that could be marshalled to justify protecting IGOs at particular levels. In doing so, he makes the original claim that Lisbon is not aimed at preventing “dilution” or even “misappropriation” of geographical names, but rather that it obliges “absolute” protection, based on a contractual model where each Member has recognized the mutual advantage in providing unqualified protection to others’ appellations. This is the most convincing explanation of Lisbon put forward to date, particularly given the small number of countries responsible for its negotiation. It also helps explain why such a model is unlikely to be accepted by WTO Members more generally, except in the context of bilateral arrangements between Members that are negotiated on a similar “contractual” basis.

Having set up the competing epistemic frameworks and charted the tortuous history of IGO protection domestically and internationally, Gangjee turns in Part II to the GI provisions in the TRIPS Agreement. Here, he builds on his thesis by arguing that TRIPS, being “burdened with unstable compromises” based on competing communicative and *terroir* logics, cannot provide a coherent blueprint for international protection. Despite this, he suggests that it is the very “indeterminacy of its provisions [that] makes possible the reconceptualisation of GI protection within the existing framework” (p.184). To this end, Chapter 5 explores the origins, operation, and indeterminacy of TRIPS, while Chapter 6 looks to the flexibilities within TRIPS for accommodating “an alternative or supplementary epistemology of GIs” (p.266).

Chapter 5 covers territory that is likely to be familiar to scholars of GIs, but it does so in a fresh way, affording new insights throughout. For example, most treatments of GIs in TRIPS start by focusing on the disagreement in the GATT Uruguay Round negotiations over whether, and to what extent, IGOs ought to be protected in a treaty intended to have broad membership. Gangjee goes further back, discussing the attempts at WIPO from the mid-1970s to construct the “geographical indication” as subject matter occupying a different conceptual space from both the Paris-based indication of source and the Lisbon-based appellation of origin, and showing how this approach provided the foundations for the TRIPS GI definition. He then challenges the idea that TRIPS represents a major advance in this area of the law, arguing that what was agreed in TRIPS was a heavily negotiated compromise between the EU and the US, based on their fundamentally different understandings of the message and guarantee associated with geographic terms and the appropriate legal mechanisms for protecting them against

misuse, underpinned by competing communicative and *terroir* logics. In one remarkable passage (pp.224-229), he shows that the position is even more convoluted than this. He demonstrates that the reason that the TRIPS definition of a GI requires only that the reputation of the good (rather than its quality or a specific characteristic) be essentially attributable to its geographical origin for the indication to be protected was not the result of a desire to accommodate the certification mark models of protection in countries such as the US and Australia. Rather, it was the product of competing understandings *within* the EU over what sort of geographic terms should be protected (something reflected in the EU's internal, dual model of protection, which itself fuses communicative and *terroir* logics). Exploring these themes of compromise and instability further, Gangjee then addresses the lack of a normative basis for the differing levels of protection contained in Articles 22.2 (the Paris-based misrepresentation standard, applying to GIs for all products) and 23.1 (the Lisbon-based absolute standard, but applying to GIs for wine and spirits only). He also offers a lucid account of some of the limitations of the exceptions contained in Article 24, notably those dealing with generic terms and with the relationship between GIs and trade marks. Although this is not by any means its primary purpose, Chapter 5 could serve as an excellent stand-alone primer for those seeking a detailed, nuanced understanding of the TRIPS GI provisions. More than this, the chapter succeeds as critical analysis, in that it upends the teleological reading of TRIPS that has taken hold in some scholarship (that is, that TRIPS should be seen as a useful "consolidating project" (p.262) that has set up clear, stable, global rules for protecting IGOs).

It might have been expected that the monograph would conclude with an analysis of the ongoing GI debates in TRIPS—over whether the absolute protection contained in Article 23.1 should be extended to apply to GIs for all products, and over the nature of the multilateral notification and registration scheme required to be set up under Article 23.4. Chapter 6 does deal with these issues, but Gangjee's main interest in this penultimate chapter lies elsewhere. His concern here is to ask whether there are different logics and other justifications for protecting GIs, particularly those that might support something more than misrepresentation-based protection. His central argument is that if the object of legal protection is recognized to be not just the geographic sign but also *the product itself*, this might greatly expand the range of potential justifications for legal protection. Thus, drawing on agricultural economics, he considers arguments for protecting such products based on biodiversity conservation and on rural development (that is, the improvement of rural incomes and the sustenance of rural populations by privileging regionally produced goods in international trade). Gangjee concludes by considering that the most promising

rationale, particularly given the growing interest in GIs amongst developing countries, relates to the protection of traditional knowledge. Specifically, he suggests that “‘absolute’ protection could potentially be explained on the basis that it recognizes a certain form of TK—the *savoir faire* or local knowledge identified in Chapter 3 and potentially incorporated within the TRIPS definition in Chapter 5” (p.287). His concluding argument here, building on his historical work in Part I, is that reserving the use of certain names to the “original” producer group both recognizes the collectively generated and intergenerationally transmitted knowledge that has gone into the production of the goods and allows space for such knowledge to continue to evolve.

This is a rich, densely packed book, and a major contribution to the scholarship in the discipline. But, like the Mercator projection, it does have some limitations, particularly in the way in which it prioritizes some issues (and countries) over others. For example, while Chapter 3 does an excellent job of deconstructing *terroir* and explaining the emergence of the French *sui generis* model of protection, the treatment of other countries’ models of protection in this chapter is underdeveloped. Although the communicative logic of IGO protection as reflected in German and British law is more easily explained, it would have been useful to have considered the rural and trade policies of Germany and the UK in this chapter. In addition, it would also have been useful to have addressed the experiences of other key agricultural exporters (many with large immigrant communities) at this point, in exploring why it was that the conditions for AOC-style protection did not emerge throughout the world. This would also have given more context in Chapter 4 as to why the Lisbon Agreement is generally viewed as being of such marginal importance and why recent calls for Lisbon’s “misunderstood potential” to be recognized by WTO Members<sup>5</sup> have perhaps received such a muted response. Further, while Gangjee draws an insightful connection in Chapter 3 between early French boundary determinations and the current Australian and US wine GI registration schemes, this analysis tends to gloss over the context of the latter countries’ adoptions of GI-specific laws and the influence of bilateral arrangements in this regard.<sup>6</sup> While Gangjee touches on the role of GIs in bilateral and preferential trade agreements at various places in the book, more might have been made on the relationship between these and the multilateral sphere. This is because such agreements bring into focus how much GIs have been used by particular countries as instruments of pure trade policy, where one trading partner is asked to afford higher or absolute levels of GI protection in exchange for other, non-GI related, trade benefits. With a growing number of preferential trade agreements making specific provision for GIs in this manner, this calls into question the importance of debates at the multilateral level over appropriate standards of protection. At the very least it suggests

that despite the growing number of WTO Members arguing in favor of GI extension, any renegotiation of the international standards is unlikely to take place on the basis of principled arguments, but rather only if appropriate trade concessions (potentially extending well beyond intellectual property issues) are granted.<sup>7</sup>

A related concern is with Gangjee's discussion of alternative justifications for protection in Chapter 6. While this thought-provoking chapter contains some of the most sophisticated interdisciplinary research in the monograph, the arguments here are perhaps not quite as sharp, and the conclusions not as fully realized, as in many other places in the book. Recognizing that GI protection might be justified on various non-trademark related grounds does not, of itself, provide normative arguments in favor of increasing international levels of protection beyond the misrepresentation standard. A separate case needs to be made that the rationale for protecting regionally produced goods in one country justifies mandatory international standards that oblige importing countries to privilege such goods in their domestic markets, notwithstanding the market distortions that might be involved. One can both support, for example, the EU's internal attempts to sustain its rural economy through strong GI protection and query the costs that exporting EU levels of protection would impose on other countries in which European goods are sold. Further, the idea that the preservation of traditional knowledge can provide a normative argument that supports absolute levels of GI protection raises difficult questions about the precise role that legal standards play in ensuring that developing country producers can secure access to foreign markets, and whether other issues such as ensuring adequate investment in local production, quality control, proper marketing, and fair distribution of returns from the sale of geographically branded goods are in fact key here.<sup>8</sup> The problem with the attempt to draw a link between justifications and levels of protection is encapsulated by a quote at the end of the chapter, where Gangjee suggests that "[i]f the products—and those who produce them—are *sufficiently valued or important*, then the associated sign ought to be reserved for the home producer group, regardless of the sign's reception before a given audience" (p.296, my emphasis). Yet this begs the question of exactly how this "sufficiency" is to be worked out in the international sphere: at what point does the desire to safeguard, or the value of, the human know-how of a community take precedence over the communicative function of the sign in a different country? (Or is this something that can realistically only be determined on a bilateral basis?) These are extremely difficult normative questions and, in fairness, Gangjee recognizes that the ideas he raises in the latter part of Chapter 6 are at an embryonic stage, and are best seen as a call for future research.<sup>9</sup>

Notwithstanding these minor concerns, *RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS* remains an outstanding monograph. It is beautifully and engagingly written, impeccably researched and, above all, compellingly argued throughout. It imposes much needed clarity and order over the law of GIs, but not at the expense of complexity, nuance or analytical rigor. It is the most authoritative text that has been written on the topic, and will be an invaluable aid to navigators of this body of the law for years to come.

## ENDNOTES

<sup>1</sup> See Simon Garfield, *ON THE MAP: WHY THE WORLD LOOKS THE WAY IT DOES* (Profile Books, 2012).

<sup>2</sup> See John P. Snyder, *Map Projections in the Renaissance, THE HISTORY OF CARTOGRAPHY, VOLUME 3: CARTOGRAPHY IN THE EUROPEAN RENAISSANCE* (David Woodward ed., University of Chicago Press, 1987).

<sup>3</sup> In the original Latin: *Alterum quod intendimus fuit, ut terrarum situs magnitudines locorumque distantias juxta ipsam veritatem quantum assequi licet exhiberemus.*

<sup>4</sup> Throughout the book, Gangjee uses “IGO” as an umbrella term when referring to “a category of sign denoting the geographical origin of the associated product and that category has previously figured within the IP discourse” (p.4) and “GI” more specifically when referring to what WTO Members are required to protect under the TRIPS Agreement, namely “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. I have tried to maintain the same distinction in this review, accepting Gangjee’s point that using the umbrella term helps to “avoid the artificial backward projection of the GI in TRIPS onto categories which are not functional analogues” (p.4).

<sup>5</sup> See, e.g., Christophe Geiger et al., *Towards a Flexible International Framework for the Protection of Geographical Indications*, 1 W.I.P.O. J. 147 (2010).

<sup>6</sup> For a comprehensive analysis of the Australian boundary-determination experience, see Gary Edmond, *Disorder with Law: The Determination of the Geographical Indication for the Coonawarra Wine Region*, 28 *Adelaide L. Rev.* 59 (2006).

<sup>7</sup> This is a point I explore more fully in Michael Handler, *Rethinking GI Extension*, *RESEARCH HANDBOOK ON INTELLECTUAL*

PROPERTY AND GEOGRAPHICAL INDICATIONS (Dev Gangjee and Justin Hughes eds., Edward Elgar, forthcoming 2014).

<sup>8</sup> For strong, recent analyses, see Justin Hughes, *Coffee and Chocolate—Can We Help Developing Country Farmers through Geographical Indications?*, International Intellectual Property Institute (2009), <http://iipi.org/wp-content/uploads/2010/09/Coffee-and-Chocolate-J.-Hughes.pdf>; Webster D. McBride, *GI Joe? Coffee, Location, and Regulatory Accountability*, 85 *New York University L. Rev.* 2138 (2010); May T. Yeung & William A. Kerr, *Are Geographical Indications a Wise Strategy for Developing Country Farmers? Greenfields, Clawbacks and Monopoly Rents*, 14 *J. World Intellectual Property* 353 (2011).

<sup>9</sup> Indeed, Gangjee has, since the publication of his monograph, started to engage with some of these issues in more detail: Dev Gangjee, *Geographical Indications and Cultural Heritage*, 3 *W.I.P.O. J.* 92 (2012).

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