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Geographical Origin in the Global Economy

Do you consider yourself a savvy consumer? In purchasing a pair of leather shoes, would you select an Italian brand or one carrying a ‘Made in USA’ label? ... Do you prefer the Italian brand because of a belief that Italian leather is superior in quality or craftsmanship? Or do you prefer the shoes made in the United States out of a sense of national pride and responsibility in keeping Americans employed?

B. L. Bade, ‘Beyond Marking: Country of Origin Rules and the Decision in CPC International’. *The John Marshall Law Review* 179 (1997): 179

A powerful force drives the world toward a converging commonality ... The result is a new commercial reality – the emergence of global markets for standardised consumer products on a previously unimagined scale of magnitude ... Gone are accustomed differences in national or regional preference ... The world’s needs and desires have been irrevocably homogenized.

T. Levitt, ‘The Globalization of Markets’. *Harvard Business Review* 61 (1983): 92–93

Champagne is probably the most illustrious alcoholic beverage in the world. Its allure is based on its association with the rich and famous – both fictional and real-life. James Bond’s preferred brands included Bollinger and Dom Pérignon. Winston Churchill claimed, ‘A single glass of champagne imparts a feeling of exhilaration. The nerves are braced; the imagination is stirred; the wits become more nimble.’ Celebrations in Formula 1 car racing involve obligatory Champagne-spraying from the podium. Champagne is used to celebrate christenings and weddings: ‘In short, popping a bottle of bubbly is about making

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a statement.’¹ Although producers of Champagne own famous brands, the beverage itself is a geographical indication (GI). Despite its global fame, one feature of Champagne is rarely recognised, let alone appreciated: its renown required recognition by the various Champagne houses that they had a common interest and that protection of this GI called for collective action. In a landmark decision in the Chancery Division of the High Court, Justice Dankwerts ruled in 1961 that ‘[t]he test is the existence of a common interest between the plaintiffs and the persons on whose behalf they sue. The twelve plaintiffs were appointed at a meeting in 1958 by the 46 houses which produce virtually all the Champagne imported into England and Wales.’²

Within fifty years of this ruling, brands became ubiquitous. It is impossible to visit a supermarket, retail outlet, or airport lounge without being bombarded by major brands. According to the social activist Naomi Klein, recent decades have been characterised by ‘a considerable increase in spending on advertising ... a renewed interest in puffing-up brand identities [which has sent] manufacturers on a cultural feeding frenzy ... In the process virtually nothing has been left unbranded’.³ Similarly, Douglas Holt, founder of the Cultural Strategy Group and L’Oréal Professor of Marketing at the University of Oxford, argued that branding is a core activity of capitalism: ‘it is a distinctive mode of capital accumulation’.⁴ Many famous brands are also global brands. A ranking of the top 100 global brands by the brand agency Interbrand in 2016 listed Apple, BMW, Siemens, Sony, and Toyota.⁵ Such brands, and most of the others appearing on the list, are owned by multinational companies.

The Interbrand ranking includes Jack Daniels and Möet & Chandon, which are directly relevant to this book: both are associated with alcoholic beverages produced in specific geographical locations the boundaries of

¹ <http://firstwefeast.com/drink/2014/10/champagne-quotes-from-the-famous-drinkers-who-loved-it-best>

² *J. Bollinger and Others v. The Costa Brava Wine Company Limited, Reports of Patent, Design and Trade Marks Cases* (hereafter, RPC), 1961, No. 5: 117.

³ N. Klein, *No Logo, No Space, No Choice, No Jobs* (London: Flamingo, 2001), 7–8. Klein’s views helped launch a global anti-branding movement that links firms’ branding efforts to the central concerns of those opposed to rampant globalisation. D. B. Holt, ‘Why Do Brands Cause Trouble? A Dialectical Theory of Consumer Culture and Branding’, *Journal of Consumer Research*, 29 (2002): 70.

⁴ D. B. Holt, ‘Toward a Sociology of Branding’, *Journal of Consumer Culture*, 6 (2006): 300.

⁵ The rankings are based on brand value. <http://interbrand.com/best-brands/best-global-brands/2016/ranking/>

which are legally defined and fiercely protected. Jack Daniels can only be produced in Lynchburg, Tennessee. State legislation stipulates that Tennessee Whiskey and Tennessee Sour Mash Whiskey labelling can only be used on whiskey produced in Tennessee according to criteria governing the composition of grain and the distilling, barrelling, and bottling processes.⁶ Similarly, Möet & Chandon is renowned for its champagne. It is one of the biggest-selling marques and it holds a Royal Warrant. Authorised use of the GI Champagne requires, *inter alia*, that it is produced within the eponymous region and that it satisfies the regulations of Le Comité Interprofessionnel du vin de Champagne.⁷

My intention in writing this monograph is to provide an interdisciplinary history of indications of geographical origin (IGOs) in the global economy from the nineteenth century to the present. Adopting an integrative approach is necessary because the evolution of these indications reflects many overlapping themes. From an economic perspective, protection of IGOs is necessary because manufacturers and agriculturalists recognised that misrepresentation had adverse consequences, including loss of reputation and market share. Passing-off exploited the relationship between a product's geographical origin and price, and substantial returns were earned by unscrupulous traders, which simultaneously affected producers and consumers. Passing-off also blurred the correct operation of markets and price signals: did demand for New Zealand lamb increase because consumers appreciated its quality, or because there were greater opportunities to misrepresent it as Welsh? A related theme is how quickly and effectively did national and international law respond to the fraudulent use of IGOs, and to what extent did the law protect the relationship between geographical indication and location? This question is closely aligned to debates about whose interests – consumers' or producers' – matter most. Finally, without adequate legal protection, advertising campaigns promoting IGOs would have been ineffectual. It is no coincidence that during the interwar period the New Zealand government was aggressive in its prosecution of fraudsters when it engaged in a saturation-marketing campaign promoting New Zealand lamb in Britain.

⁶ *State of Tennessee: An Act to amend Tennessee Code Annotated, Title 57, Chapter 2, relative to the manufacturing of intoxicating liquors*. Public Chapter No. 341, House Bill No. 1084, 2013.

⁷ K. M. Guy, *When Champagne Became French* (Baltimore, MD: Johns Hopkins University Press, 2003), 8.

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This book had its genesis in the mid-1990s when I began researching the trademarks used by Sheffield cutlers and the emergence of ‘Sheffield’. Subsequently, collaboration with Geoff Tweedale, Mads Mordhorst, and Dev Gangjee, and participation in conferences and workshops, extended my interest in IGOs. Over time, I realised that this subject had been comparatively neglected by business historians. There were, of course, exceptions. Paul Duguid, for example, is prominent in debates on how and why regulatory and institutional change affected the development of IGOs in the port industry during the nineteenth and early twentieth centuries.⁸ Nonetheless, it is fair to say that research on these indications has been dominated by scholars in legal history, marketing, and agricultural–rural development.⁹

Debates on IGOs extend far beyond the academic sphere. Producers and consumers, local and national governments, and international organisations, such as the World Trade Organization (WTO), became involved. The value attached to IGOs necessitated intervention by jurists to define the legal properties of these indications and their demarcation from other branches of intellectual property. Sometimes, the results of litigation appear bizarre: Feta and Basmati are recognised as GIs despite the fact that the geographical locations to which they refer do not exist. Other litigation has pitted the small company against the colossal multinational.¹⁰ Finally, every conceivable grocery we buy signals its

⁸ P. Duguid, ‘Networks and Knowledge: The Beginnings and End of the Port Commodity Chain, 1703–1860’, *Business History Review*, 79 (2005): 493–526. See also T. Mollanger, ‘The Effects of Producers’ Trademark Strategies on the Structure of the Cognac Brandy Supply Chain during the Second Half of the 19th Century: The Reconfiguration of Commercial Trust by the Use of Brands’, forthcoming, *Business History*; J. Simpson, ‘Cooperation and Cooperatives in Southern European Wine Production’, *Advances in Agricultural History*, 1 (2000): 95–126; J. Simpson, ‘Selling to Reluctant Drinkers: The British Wine Market, 1860–1914’, *Economic History Review*, LVII (2004): 80–108; A. Stanziani, ‘Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France’, *European Journal of Law and Economics*, 18 (2004): 149–167; A. Stanziani, ‘Information, Quality and Legal Rules: Wine Adulteration in Nineteenth Century France’, *Business History*, 51 (2009): 268–291.

⁹ See, especially, E. Barham and B. Sylvander (eds.), *Labels of Origin for Food: Local Development, Global Recognition* (Wallingford: CAB International, 2011); N. Papadopoulos and L. Heslop, ‘Country Equity and Country Branding: Problems and Perspectives’, *Journal of Brand Management*, 2 (2002): 294–314; D. Rangnekar, ‘The Socio-Economics of Geographical Indications’, *International Centre for Trade and Sustainable Development*, 4 (2004).

¹⁰ C. Heath, ‘The Budweiser Cases: A Brewing Conflict’, in C. Heath and A. Kamperman (eds.), *Landmark Intellectual Property Cases and Their Legacy* (Biggleswade, The Netherlands: Kluwer Law International, 2011), 181–244.

provenance: wines from Burgundy and Rioja, Czech and German beers, French cheeses, Spanish and Italian hams, as well as Scotch beef and Welsh lamb.

It is useful at the outset to demarcate the terms used throughout this book. This is not an easy task. Dev Gangjee noted that the nomenclature resembles ‘alphabet soup’.¹¹ The main difficulty is that international definitions of appellation, appellation of origin, geographical indications, and indications of source (IoS) were not clearly defined until the mid-twentieth century. Subsequently, the definition of appellation blurred into geographical indication. Regulations for correct nomenclature are currently governed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which defines GIs as

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.¹²

In broad terms, and at the risk of exasperating specialist legal historians, the TRIPS definition of a GI is equivalent to appellation.¹³ Throughout this book I use the terms GI and appellation interchangeably. However, for the sake of historical accuracy, I endeavour to use appellation until the TRIPS Agreement (1994), and GI thereafter. The key point to be cognisant of is that both terms require that a product possesses certain attributes that are *unique* and that can only be derived from a *specific* geographical region. The role of terroir provides classic examples of such products. Thus, the Chardonnay grape when cultivated in a particular subsoil in the region of Chablis produces the renowned Chablis wine, but when grown in other regions the wine does not possess the same characteristics and cannot be described as Chablis.¹⁴ The most famous French examples of GIs are Burgundy, Champagne, and Cognac, for which, literally, ‘the product is the place’. Many GIs have considerable lineage: Roquefort cheese was consumed by the ancient Romans and

¹¹ D. Gangjee, *Relocating the Law of Geographical Indications* (Cambridge: Cambridge University Press, 2012), 3.

¹² Article 22. TRIPS Agreement. This definition is similar to appellation. The TRIPS Agreement is binding on all Member States belonging to the World Trade Organization.

¹³ The issue of whether geography per se imparts these specific qualities is hotly contested. Cultural factors and the role of human skill are considered equally important.

¹⁴ M. A. Devlétian, ‘The Protection of Appellations and Indications of Origin’, *Industrial Property Quarterly*, 1 (1957): 12.

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legislation passed by the Toulouse Parliament in 1666 reserved the sole rights to this name for cheese cured in the natural caves at Roquefort.¹⁵

The World Intellectual Property Organization (WIPO) defines an IoS (or indication of origin) as

an indication referring to a country (or to a place in that country) as being the country or place of origin of a product. In contrast to a geographical indication, an indication of source does not imply the presence of any special quality, reputation or characteristic of the product essentially attributable to its place of origin. Indications of source only require that the product on which the indication of source is used originate in a certain geographical area. Examples of indications of source are the mention on a product of the name of a country, or indications such as ‘made in ...’, ‘product of ...’.¹⁶

Indications of origin, which include country of origin and ‘Made in’, *only* indicate geographical location: they do not denote that the products emanating from that location have special characteristics due to geography (soil, climate, humidity). For example, Denmark and New Zealand, as applied to butter, are indications of source, and farmers based in Aarhus and Esbjerg, or the North and South Island, can use Denmark and New Zealand, respectively.¹⁷ Throughout this book, I use the terms ‘indication of origin’ and ‘country of origin’, interchangeably, and use the term ‘indications of geographical origin’ (IGO) in a general sense when the distinction between GIs and indication of origin is unimportant.

IGOs are becoming increasingly visible in the twenty-first century and operate on three distinct geographical levels. At the national level, Swiss-made as applied to watches is a GI. Similarly, at the regional level, many European cheeses and meats are sold in wrappers imprinted with small yellow and red or yellow and blue labels indicating ‘Protected Designation of Origin’ (PDO) or ‘Protected Geographical Origin’ (PGI), respectively. These are also GIs and their boundaries are strictly demarcated and fiercely protected. Turning to indications of origin, New Zealand and Danish are renowned when applied to lamb and bacon, respectively. Likewise, ‘Made in Germany’ is valuable when applied to automobiles and engineering, and ‘Made in Italy’ has a cache when embossed on footwear.

Trademarks, brands, and IGOs are closely related. At the most basic level, a trademark indicates the manufacturer or trade source of a product.

¹⁵ Gangjee, *Relocating the Law of Geographical Indications*, 32.

¹⁶ www.wipo.int/geo_indications/en/faq_geographicalindications.html

¹⁷ Subject to compliance with any state legislation.

A trademark may have other functions, but it must indicate trade origin. This essential function was central to trademark legislation introduced by many countries during the nineteenth century, and it remains valid today.¹⁸ Prior to this legislation litigation for ‘passing-off’ – a broader class of action involving misrepresentation in its widest sense – was well established and, at least in a British context, can be dated to the early nineteenth century. But such actions were expensive and the outcome uncertain.¹⁹ By creating legal property, registration facilitated action for infringement. Unsurprisingly, there was a rapid and substantial response to the Trademark Registration Acts.²⁰

Trademarks are related to brands in the sense that both indicate trade origin. Additionally, a symbiotic relationship exists between them: ‘Changes in trademark laws affect what sorts of signs will be registrable as trademarks and likely to attract investment and become brands, and changes in branding practices have repeatedly led to significant restructurings of trademark laws.’²¹ Thus, Cadbury succeeded in registering a specific shade of purple which was indicative of its chocolate and Nike is the registered owner of the catchphrase ‘Just do it.’ However, in other respects, brands communicate more complex and nuanced information than trade origin. In broad terms, a brand represents a set of values or characteristics that are advertised to, and appreciated by, consumers.²² Essentially, brands transform a commodity or product by adding associations. Culture, in its broadest sense, is central to this process. For Martin Kornberger,

[t]he movement from product-commodity to brand is a semiotic transformation . . . [with] important implications: first, brands become mental constructs that evoke

¹⁸ D. Kitchin, D. Llewelyn, J. Mellor, R. Meade, T. Moody-Stuart, and D. Keeling, *Kerly’s Law of Trade Marks and Trade Names* (London: Sweet & Maxwell, 2005), 8.

¹⁹ T. A. Blanco-White, *Kerly’s Law of Trade Marks and Trade Names* (London: Sweet & Maxwell, 1966), 1–10.

²⁰ P. Duguid, T. da Silva Lopes, and J. Mercer, ‘Reading Registrations: An Overview of 100 Years of Trademark Registrations in France, the United Kingdom, and the United States’, in T. da Silva Lopes and P. Duguid (eds.), *Trademarks, Brands and Competitiveness* (Abingdon: Routledge, 2010), 9–30.

²¹ A. George, ‘Editorial Brands: Interdisciplinary Perspectives on Trade Marks and Branding’, *Brand Management*, 13 (2006): 175.

²² S. Anholt, *Competitive Identity: The New Brand Management for Nations, Cities and Regions* (London: Palgrave Macmillan, 2006); J. Davis and S. Maniatis, ‘Trademarks, Brands and Competition’, in Silva Lopes and Duguid, *Trademarks, Brands, and Competitiveness*, 119–137; G. McCracken, *Culture and Consumption* (Bloomington: Indiana University Press, 1988); M. Schultz, Y. Antorini, and F. Csaba, *Corporate Branding* (Copenhagen: Copenhagen Business School, 2005).

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different meanings; second, brands are powerful because they influence the social and cultural fabric of our world . . . In short, brands are cultural expressions and not just corporate enterprises . . . cultural codes constrain and enable the production of meaning.²³

IGOs are different from ‘proper’ or ‘technical’ trademarks because they denote geographical, not trade origin.²⁴ In many common law countries, for example, these indications were traditionally registered as certification trademarks which required that a trade body or association certify that a product possessed certain attributes.²⁵ Nonetheless, many IGOs are powerful brands, especially when heritage is an important determinant of consumer choices. It is claimed that interest in heritage became prominent towards the end of the twentieth century, which was characterised by a ‘nostalgia boom’.²⁶ David Lewis and Darren Bridger argue that during this period a new group of consumers emerged whose ‘attitudes, aspirations and purchasing patterns are unlike any before them’. Because their basic needs were quickly and easily satisfied, these new consumers ‘tend[ed] to reject mass-produced and mass-marketed commodities in favour of products and services that can claim to be in some way authentic’.²⁷ For IGOs, authenticity involves a connection to time and place which affirms tradition; authenticity is also a core component of successful brands because it forms part of a unique brand identity.²⁸

‘Heritage’ brands denote longevity; they are proof that key attributes of a product do not change through time. Recent scholarship in heritage branding has claimed:

Historical culture provides a rich foundation for branding processes and practices; and deploying history and heritage in brand development hardly requires a leap of faith given how deeply and extensively the past infiltrates everyday life . . .

²³ M. Kornberger, *Brand Society: How Brands Transform Management and Lifestyle* (New York: Cambridge University Press, 2010), 42–43.

²⁴ Though trademarks and IGOs may complement each other. Thus, a product may be marked with an IGO and a trademark. The former denotes geographical origin; the latter identifies the products of a particular manufacturer. V. Mantrov, *EU Law on Indications of Geographical Origin* (London: Springer, 2014), 64.

²⁵ N. Dawson, *Certification Trademarks: Law and Practice* (London: Intellectual Property Publishing Limited, 1988); J. Belson, *Certification Marks* (London: Sweet & Maxwell, 2002).

²⁶ S. Brown, R. V. Kozinets, and J. F. Sherry Jr., ‘Teaching Old Brands New Tricks: Retro Branding and the Revival of Brand Meaning’, *Journal of Marketing*, 67 (2003): 19.

²⁷ D. Lewis and D. Bridger, *The Soul of the New Consumer* (London: Nicholas Brealey, 2001), 3–4.

²⁸ M. B. Beverland, ‘Crafting Brand Authenticity: The Case of Luxury Wines’, *Journal of Management Studies*, 42 (2005): 1003, 1007.

Although the impact of history and the past assumes many different forms, looking at cultural and historical codes of strong brands can provide particularly useful insights into branding practices ... our approach to branding and brand development is deeply indebted to this particular understanding of the past and the present as being mutually inclusive of each other.²⁹

The importance of heritage is complemented by human geographers. Andrew Pike has argued that '[o]rigination means the attempts by actors – producers, circulators, consumers and regulators inter-related in spatial circuits – to construct geographical associations for goods and services'.³⁰ However, the temporal and spatial signals communicated by brands are not always constant or robust: they are 'inherently unstable' and may be falsely reinvented.³¹ Consider, for example, Newcastle Brown Ale. This beer is currently produced in Tadcaster (North Yorkshire), but it retains Newcastle in the brand because this is where the beer was originally produced and where it has a strong local allegiance. By the early twenty-first century, the United States had become the biggest market for this beer. Because American consumers had no interest where in England the beer was produced, the company decided to add the legend 'Imported from England'.³²

Concerns have also been raised that interpreting 'place' as a static concept is misguided: 'If places can be conceptualised in terms of the social interactions which they tie together, then it is also the case that these interactions themselves are not motionless things, frozen in time.'³³ Other

²⁹ J. Schroeder, J. Borgerson, and Z. Wu, 'A Brand Culture Perspective on Global Brands', in F. D. Riley, J. Singh, and C. Blankson (eds.), *The Routledge Companion to Contemporary Brand Management* (Abingdon: Routledge, 2016), 155. Brand heritage is recognised as important in a diverse range of industries. See, for example, B. T. Hudson, 'Brand Heritage and the Renaissance of Cunard', *European Journal of Marketing*, 45 (2011): 1538–1556; T. da Silva Lopes, *Global Brands: The Evolution of Multinationals in Alcoholic Beverages* (New York: Cambridge University Press, 2007); K.-P. Wiedmann, N. Hennigs, S. Schmidt, and T. Wuestefeld, 'Drivers and Outcomes of Brand Heritage: Consumers' Perception of Heritage Brands in the Automotive Industry', *Journal of Marketing, Theory and Practice*, 19 (2011): 205–220.

³⁰ A. Pike, *Origination: The Geographies of Brands and Branding* (Chichester: Wiley-Blackwell, 2015), 17.

³¹ Pike, *Origination*, 21; E. Hobsbawm, 'Introduction: Inventing Traditions', in E. Hobsbawm and T. Ragnner (eds.), *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), 1–14.

³² A. Pike, 'Placing Brands and Branding: A Socio-Spatial Biography of Newcastle Brown Ale', *Transactions of the Institute of British Geographers*, 36 (2011): 213–216. The decision to relocate production out of Newcastle meant the beer ceased to be classed as a PGI.

³³ D. Massey, 'A Global Sense of Place', *Marxism Today* (June 1991): 29.

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geographers have enhanced this perspective to incorporate GIs. Using the example of Champagne, Bronwyn Parry questions whether it is meaningful to claim that the qualities of this wine were determined by terroir. In Parry's view, the current emphasis on GIs is 'completely outmoded' and may hinder the development of 'more outward-looking and progressive approaches to the protection of unique communal products'.³⁴

It is incontrovertible that cultural, social, and political forces have had a direct bearing on GIs. Consider the term 'appellation d'origine contrôlée' (AOC), which is central to French wine regulations and underpinned by the concept of 'usages locaux, loyaux, et constants' ('local, loyal, and constant usages'). Erica Farmer has shown how the combination of these three elements provides a judicial benchmark that incorporates qualitative values which help differentiate an AOC wine in one location from that of its neighbours: 'Boundaries of local communities are defined socially ... the social perceptions of the product in connection to it are just as important.' The role played by sociocultural forces in demarcating the boundaries of wine appellations is crucial. The interaction of these forces creates 'an enforceable legal framework that allows for the interpretation of culturally based evidence'.³⁵

The economics literature indicates that trademarks can generate numerous advantages to producers and consumers. Benefits to the former include the creation of monopoly rents, incentives to maintain quality, facilitating entry into new markets, and generating inertia in consumer preferences.³⁶ It is claimed that trademarks are useful because they reduce search costs, which helps consumers match their individual preferences to specific products, and because they overcome the problem of asymmetric information, which can lead to quality dissipation and

³⁴ B. Parry, 'Geographical Indications: Not All "Champagne and Roses"', in L. Bently, J. Davis, and J. C. Ginsburg (eds.), *Trade Marks and Brands: An Interdisciplinary Critique* (Cambridge: Cambridge University Press, 2008), 379–380.

³⁵ E. A. Farmer, 'Local, Loyal, and Constant: The Legal Construction of Wine in Bordeaux', in R. E. Black and R. C. Ulin (eds.), *Wine and Culture: Vineyard to Glass* (London: Bloomsbury, 2013), 145–146, 148–149.

³⁶ A. Griffiths, 'A Law-and-Economics Perspective on Trade Marks', in L. Bently, J. Davis, and J. C. Ginsbur (eds.), *Trade Marks and Brands: An Interdisciplinary Critique* (Cambridge: Cambridge University Press, 2010), 241–266; B. Klein and K. B. Leffler, 'The Role of Market Forces in Assuring Contractual Performance', *Journal of Political Economy*, 89 (1981): 615–641; W. M. Landes and R. A. Posner, 'Trademark Law: An Economic Perspective', *Journal of Law and Economics*, 30 (1987): 265–309; G. B. Ramello, 'What's in a Sign? Trademark Law and Economic Theory', *Journal of Economic Surveys*, 20 (2006): 547–565.