© The Author(s), 2021. Published by Cambridge University Press for the British Institute of International and Comparative Law

THEORISING THE LOCAL ADAPTATION OF TRANSNATIONAL CERTIFICATION STANDARDS

JOHN GILLESPIE* AND HA H DO†

Abstract Over the last three decades, transnational certification standards have proliferated to fill perceived 'governance gaps' in developing countries. Transnational non-governmental organisations and private standards-setting agencies have developed standards that cover a vast range of areas such as labour rights, social justice and environmental protection. As a form of private transnational regulation, certification standards travel through transnational production networks that link lead firms in developed countries with supplier firms in developing countries. This article draws on a case study about coffee certification to challenge the conventional understanding of transnational certification as a contractual conduit that transfers encoded certification standards from senders to receivers. It shows how transnational certification standards interact with, and remake local regulatory landscapes as they pass through. This interaction between global and local knowledge compels us to see transnational standards as a protean, highly localised regulatory process rather than stable universal norms. The article concludes that transnational certification does not function like an integrated 'joined-up' process and it is better understood as a mode of polycentric regulation that decentres and fragments transnational norms and standards.

Keywords: comparative law, human rights, environment, supply chains, socio-legal theory.

I. INTRODUCTION

Comparative law studies have long been interested in how legal rules and standards travel across geopolitical borders.[1] Much of this interest has focused on rules established by governments and multilateral international organisations, rather than standards set by transnational private actors.[2] This

---

* Professor of Law, Monash University, John.Gillespie@monash.edu.

† Post-Doctoral Research Associate, The University of Oxford China Centre, ha.do@orinst.ox.ac.uk.

[1] For a critique of these theories, see M Graziadei, 'Comparative Law as the Study of Transplants and Receptions' in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 441–77; C Valcke, *Comparing Law: Comparative Law as Reconstruction of Collective Commitments* (Cambridge University Press 2018) 144–86.

[2] In this article, international law, which is supported by States and international organisations, is distinguished from private transnational regulation, which primarily is sourced from and targets

[*ICLQ* vol 71, January 2022 pp 37–71] doi:10.1017/S0020589321000439

article aims to explore this under-researched area by investigating transnational certification standards—an increasingly important mode of private transnational regulation.[3] It is estimated that over 80 per cent of global trade is governed to some extent by transnational certification standards governing labour rights, environmental protection and human rights.[4] This study uses the certification of coffee production as a case study to explore how private transnational standards cross geopolitical and cultural borders—engaging and remaking local regulatory landscapes as they pass through.[5]

Most research about transnational certification assumes that authoritative rule-makers based in developed countries are the sole authors of the standards that govern producers in developing countries.[6] These rule-makers include Transnational Non-Governmental Organisations (TNGOs), transnational corporations and standards-setting agencies. Standards are supposed to travel through integrated, 'joined-up' transnational production networks (TPNs) that contractually link transnational corporations with producers in developing countries.[7] Human rights and environmental standards developed by private transnational actors are expected to fill 'governance gaps' in developing countries.[8] This literature treats transnational certification standards as something exogenous to producers —'a thing out there'—capable of conveying encoded meanings across borders from transnational corporations to producers in developing countries. Although some studies recognise that normative adjustments are required, there is little discussion about whether transnational actors need to secure support for certification from State and non-State actors in developing countries.

---

private (individual, corporate, or collective) actors involved in standard-setting, monitoring/compliance and enforcement across international borders. See R Cotterrell, 'What Is Transnational Law?' (2012) 37 Law and Social Inquiry 500; T Bartley, 'Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards' (2011) 12 Theoretical Inquiries in Law 517.

[3] See B Eberlein *et al*, 'Transnational Business Governance Interactions: Conceptualization and Framework for Analysis' (2014) 8 Regulation & Governance 1; A Peters *et al.* (eds), *Non-State Actors as Standard Setters* (Cambridge University Press 2009) 1–32. Also see J Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 Global Governance 5.

[4] International Labour Organization, *World Employment Social Outlook: The Changing Nature of Jobs 2015* (International Labour Organization 2015). Also see S Bernstein and B Cashore, 'Can Non-State Global Governance Be Legitimate? An Analytical Framework' (2007) 1 Regulation & Governance 347.

[5] Coffee is the agricultural commodity with the highest levels of global certification. See J Lernoud *et al.*, *The State of Sustainable Markets: Statistics and Emerging Trends* (International Trade Centre 2017) 86–94.

[6] J Salminen, 'Contract-Boundary-Spanning Governance Mechanisms: Conceptualizing Fragmented and Globalized Production as Collectively Governed Entities' (2016) 23 Indiana Journal of Global Legal Studies 709; K Sobel-Read, 'Global Value Chains: A Framework for Analysis' (2014) 5 TLT 364; Li-Wen Lin, 'Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example' (2009) 57 AmJCompL 711.

[7] GA Sarfaty, 'Shining Light on Global Supply Chains' (2015) 56 HarvIntlLJ 419.

[8] The United Nations Guiding Principles on Business and Human Rights 2011 presuppose a conduit model of transnational norm diffusion. See Ruggie (n 3).

The starting point in challenging this literature is the comparative law studies that emphasise the misunderstandings,[9] prior familiarities[10] and local systems of regulatory knowledge that reinterpret and disrupt the diffusion of transnational rules and standards.[11] A unifying thread in this socio-legal approach to comparative law is that people construe the meaning of transnational rules and standards according to the knowledge systems in which they are embedded.[12] These studies query whether transnational rules and standards are internally coherent and stable—possessing the capacity to convey encoded meanings from transnational corporations to producers. They shift the analytical focus away from top-down compliance and redirect our attention to how local actors in developing countries reinterpret and shape the content and meaning of transnational standards.

To understand how producers might socially construct transnational certification standards, this article explores an empirical study of coffee certification in Vietnam, which is currently the world's second-largest coffee exporter (after Brazil).[13] Coffee production in Vietnam has come at a high cost to the environment and indigenous landholders. It has deforested coffee-growing areas and dispossessed indigenous communities. To mitigate this harm, transnational coffee buyers have adopted coffee certification standards, especially the Common Code for the Coffee Community (4C), Rainforest Alliance and UTZ Certified.[14] Certification standards promote sustainable coffee production that protects forests and promotes land rights for indigenous people. Transnational coffee certification reflects the broad objectives of the United Nations Guiding Principles on Business and Human

---

[9] G Ajani, 'By Chance and Prestige: Legal Transplants in Russia and Eastern Europe' (1995) 43 AmJCompL 93.

[10] M Chen-Wishart, 'Legal Transplantation and Undue Influence: Lost in Translation or a Working Misunderstanding?' (2013) 61 ICLQ 1.

[11] E Örücü, 'Law as Transposition' (2002) 51 ICLQ 205; J Short, 'Transplanting Law in a Globalized World: Private Transnational Regulation and the Legal Transplant Paradigm' in F Bignami and D Zaring (eds), *Comparative Law and Regulation: Understanding the Global Regulatory Process* (Edward Elgar 2016) 430–44.

[12] The socio-legal approach to comparative law does not rely on functional comparison between different jurisdictions. See Valcke (n 1) 206–21; A Riles, 'Comparative Law and Socio-legal Studies' in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 775–814.

[13] See T Havemann *et al.*, 'Coffee in Dak Lak, Vietnam' in SJ Scherr, K Mankad, S Jaffee and C Negra (eds), *Steps Toward Green: Policy Responses to the Environmental Footprint of Commodity Agriculture in East and Southeast Asia* (EcoAgriculture Partners and World Bank 2015) 99–122; N Giang *et al.*, 'Sustainable Coffee Supply Chain Management: A Case Study in Buon Me Thuot City, Daklak, Vietnam' (2018) 3 International Journal of Corporate Social Responsibility 1.

[14] 4C is the largest global certifier with approximately about 47 per cent of the total volume of certified coffee. UTZ is the second-largest certifier with a 15 per cent share and Rainforest Alliance comes third with a 9 per cent share. See T Dietz *et al.*, 'The Voluntary Coffee Standard Index (VOCSI). Developing a Composite Index to Assess and Compare the Strength of Mainstream Voluntary Sustainability Standards in the Global Coffee Industry' (2018) 150 Ecological Economics 72.

Rights 2011 (UNGP), because it uses transnational standards to rectify perceived governance failings in developing countries.[15]

This study examines the efficacy of transnational certification in an authoritarian polity where the government jealously protects national sovereignty against private transnational regulation.[16] It asks whether transnational certification is an integrated 'joined-up' process that promotes uniform interpretations of transnational norms,[17] or whether it is better understood as a polycentric process that decentres and fragments interpretations.[18] Ultimately, it aims to shed light on the capacity of transnational certification regimes to transmit norms and standards to actors in developing countries.

This article is organised as follows: Part II makes the case for using systems theory and 'communities of practice' theory[19] to analyse how coffee producers understand transnational certification standards. Parts III and IV then explore the regulatory context of coffee certification, first examining transnational coffee certification regimes and then considering government regulation of coffee production in Vietnam. Part V draws on empirical research to understand how transnational corporations interacted with local State officials to communicate coffee standards to coffee producers. Part VI then shifts the focus to understanding how coffee producers interpreted the coffee standards. By studying a particular type of transnational certification, the analysis in Part VII aims to contribute a richer theoretical understanding about how transnational norms and standards transmogrify as they travel from transnational corporations to producers in developing countries. The article concludes that although certification regimes are established at the transnational level to operate as integrated 'joined-up' regimes, they function in developing countries like polycentric regimes. As a result, standards designed to encode transnational understandings of human rights and environmental protection come to resemble local State and community norms and practices.

---

[15] Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) UN Doc A/HRC/8/5 3.

[16] See J Marques and B Eberlein, 'Grounding Transnational Business Governance: A Political Strategic Perspective on Government Responses in the Global South' (2020) Regulation & Governance <https://doi:10.1111/rego.12356>; T Nguyen, 'Co-Constructing Business Governance' (2020) 31 StanL&Pol'yRev 143.

[17] L Lin, 'Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example' (2009) 57 AmJCompL 711.

[18] See J Black, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 Regulation & Governance 140; J Van Zeben, 'Polycentricity as a Theory of Governance' in J Van Zeben and A Bobic (eds), *Polycentricity in the European Union* (Cambridge University Press 2019) 9–27.

[19] The term 'communities of practice' was developed to explain how groups of people come together to learn and apply new fields of knowledge. See E Wenger *et al.*, *Cultivating Communities of Practice: A Guide to Managing Knowledge* (Harvard Business School Press 2002).

II. THEORY AND METHODS

A. Theorising the Interaction between Transnational and Local Regulatory Systems

Transnational certification regimes attempt to convey normative standards developed by private transnational actors to producers in developing countries.[20] As the institutional learning literature demonstrates, tacit, rather than explicit knowledge, is vital to this process.[21] Tacit knowledge conveys the background precepts and norms that enable local actors to unpack the transnational meanings underlying certification standards. One difficulty facing transnational certification is that tacit knowledge is personal and context-specific, and therefore challenging to communicate through the formalised contractual processes governing TPNs.[22] This problem raises a core question for this study: does a failure to effectively communicate transnational tacit knowledge open space for local tacit knowledge to influence how producers interpret certification standards?[23] This question directs our attention to the sites of engagement and persuasion where transnational and local actors seek to shape normative standards.

To understand this interaction between transnational and local actors, some scholars[24] invite us to treat transnational certification as a 'process of arranging, organizing, fitting together' that assembles new regulatory knowledge that is not exclusively local or exclusively transnational.[25] Thinking about transnational certification as a process of regulatory assembling avoids the assumption that transnational standards transmit, fully formed and unchanged, into regulatory vacuums. It also raises the possibility that rather than functioning as integrated top-down processes, certification regimes are polycentric—based on semi-autonomous local actors who reinterpret the meaning of transnational standards.[26] This focus on local assembling invites us to examine the sites of engagement where transnational certification standards encounter local expressions of identity and claims to a particular territory.[27]

---

[20] E McCann and K Ward, 'Policy Assemblages, Mobilities and Mutations: Toward a Multidisciplinary Conversation' (2012) 10 Political Studies Review 325; J Peck, 'Geographies of Policy: From Transfer-Diffusion to Mobility-Mutation' (2011) 35 Progress in Human Geography 773.

[21] A Gupta and V Govindarajan, 'Knowledge Flows within Multinational Corporations' (2000) 21 Strategic Management Journal 473.

[22] See C Chen, 'The Effects of Knowledge Attribute, Alliance, Characteristics, and Absorptive Capacity on Knowledge Transfer Performance' (2004) 34 R&D Management 311.

[23] McCann and Ward (n 20); Peck (n 20).

[24] Eberlein (n 3); Peters *et al.* (n 3).

[25] J Wise, 'Assemblage' in CJ Stivale (ed), *Gilles Deleuze: Key Concepts* (McGill-Queen's University Press 2005) 80.

[26] In polycentric regulatory theory 'centres of decision-making' refer to 'organisations drawn from the public, private and voluntary sectors that have overlapping realms of responsibility and functional capacities'. M McGinnis and E Ostrom, 'Reflections on Vincent Ostrom, Public Administration, and Polycentricity' (2012) 72 PAR 15, 15; E Partiti, 'Polycentricity and Polyphony in International Law: Interpreting the Corporate Responsibility to Respect Human Rights' (2021) 70 ICLQ 133.

Systems theory provides a theoretical architecture to understand the local assembling of transnational certification standards.[28] It explains how social groups, such as coffee producers, interpret external regulatory norms from internal normative and cognitive perspectives (tacit knowledge). Systems theory developed from Niklas Luhmann's observation that a process of functional differentiation has fragmented modern societies into discrete 'discursive systems'.[29] Discursive systems are comprised of like-minded individuals who share similar epistemic assumptions about external (to the system) modes of regulation. Sometimes called epistemic or interpretive communities, discursive systems share a common dialogical space and do not necessarily correspond to a physical territory or to concrete social organisations.[30] Taking the example of coffee certification, transnational corporations, local government agencies and coffee producers might constitute discrete discursive systems, because they each draw on different sets of epistemic assumptions to interpret coffee standards. Systems theory poses the question: do differences in the epistemic assumptions informing these discursive systems undermine attempts to promote uniform top-down interpretations of coffee certification standards?

Systems theory suggests ways that communication might promote uniform interpretations of coffee certification standards. For example, communication conducted in a mutually comprehensible conceptual grammar can flatten epistemic differences between discursive systems.[31] This type of 'fruitful' communication produces 'co-evolution' and epistemic convergence because it allows different discursive systems to reconcile differences, identify common regulatory objectives and evolve shared assumptions. Intermediaries play an important role in bridging epistemic differences and promoting co-evolution and epistemic convergence.[32] They act as regulatory mobilisers, 'the carriers, conduits, and points of entry for the circulation of transnational legal norms'.[33]

---

[27] McCann and Ward (n 20).

[28] For a discussion about how systems theory applies to transnational law see G Teubner, 'The Corporate Codes of Multinationals: Company Constitutions Beyond Corporate Governance and Co-Determination' in R Nickel (ed), *Conflict of Laws and Law of Conflict in Europe and Beyond* (Oxford University Press 2009) 203; Valcke (n 1) 139–42.

[29] N Luhmann, 'The Unity of the Legal System' in G Teubner (ed), *Autopoietic Law: A New Approach to Law and Society* (De Gruyter 1987) 12–35; also see M King, 'The Radical Sociology of Niklas Luhmann' in R Banakar and M Travers (eds), *Law and Social Theory* (Hart Publishing 2013) 65–73. For a discussion about how systems theory applies to comparative law see Valcke (n 1) 139–42.

[30] P Hiller, 'Understanding Corruption: How Systems Theory Can Help' in G Graaf *et al.* (eds), *The Good Cause: Theoretical Perspectives on Corruption* (Verlag Barbara Budrich 2010) 64–82.

[31] G Teubner, 'Legal Irritants: How Unifying Law Ends up in New Divergences' in P Hall and D Soskice (eds), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press 2001) 417; G Teubner, 'Self-Constitutionalizing TNCs? On the Linkage of "Private" and "Public" Corporate Codes of Conduct' (2011) 18 Indiana Journal of Global Legal Studies 617.

Systems theory advances our study by showing how discourse can bridge epistemic differences among the different discursive systems embedded in coffee production networks.[34] What it does not explain is how different discursive systems shape how coffee producers learn from and apply certification standards.

'Communities of practice' (CoP) theory addresses this analytical lacuna.[35] The term 'communities of practice' is used to describe groups of actors who come together to create a shared repertoire of ideas and practices about a common objective, such as implementing coffee certification standards.[36] Communities of practice arise when members share a 'cognitive evaluation that something is understandable' or 'to do otherwise is unthinkable'.[37] For example, coffee producers and intermediaries from coffee companies might form communities of practice where they share a common understanding about the meaning and purpose of coffee certification standards. CoP theory contributes the insight that learning is a socially constituted experience. As Hanks explained: 'Learning is a process that takes place in a participation framework, not in an individual mind. This means, among other things, that it is meditated by the differences of perspective among the CoP participants.'[38]

Hanks argued that learning is contingent upon the construction of identities that are open to the acquisition of knowledge.[39] For example, coffee producers are more likely to adopt certification standards where they assume an identity that is receptive to transnational procedural and substantive norms. Shared or collective identities arise when participants in communities of practice are exposed to common values and goals that encourage a commitment towards unconscious conventions and intra-group cooperation.[40]

Systems and CoP theories provide a framework for analysing the interaction between transnational certification standards and local systems of regulatory knowledge. They open the analysis to the role that discourse, group relationships and collective identities play in reinterpreting and reassembling coffee certification standards. These theoretical insights suggest three main research questions:

---

[32] See G Teubner, 'Legal Pluralism as a Form of Structural Coupling' in A Febbrajo and G Harste (eds), *Law and Intersystemic Communication: Understanding Structural Coupling* (Routledge 2013) 343–60; KW Abbott *et al.*, 'Theorising Regulatory Intermediaries: The RIT Model' (2017) 660 AnnalsAmAcadPol&SocSci 19.

[33] G Shaffer, 'Transnational Legal Process and State Change' (2005) 37 L&SocInquiry 229, 254.

[34] ibid.

[35] Wenger (n 19).

[36] ibid.

[37] B Cashore, 'Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority' (2002) 15 Governance 503, 515.

[38] W Hanks, 'Foreword' in JW Lave Etienne (ed), *Situated Learning: Legitimate Peripheral Participation* (Cambridge University Press 1991) 15.

[39] ibid. Also see Wenger (n 19).

[40] H Tajfel and J Turner, 'The Social Identity Theory of Intergroup Behavior' in S Worchel and WG Austin (eds), *Psychology of Intergroup Relations* (2nd edn, Nelson-Hall 1986) 7–24. Also see T Owens, D Robinson and L Smith-Lovin, 'Three Faces of Identity' (2010) 36 Annual Review of Sociology 477; R Brubaker *et al.*, 'Ethnicity as Cognition' (2004) 33 Theory and Society 31.

- How effectively do coffee certification regimes communicate transnational procedural and substantive norms to coffee producers?
- How do 'communities of practice' influence the way coffee producers learn about and respond to coffee certification standards?
- To what extent can transnational certification regimes be considered integrated and 'joined-up', if standards undergo normative change as they travel from transnational corporations to coffee producers?

B. *Methodology and Data Collection*

This study contrasts two TPNs that link coffee producers in the central highlands of Vietnam with domestic and foreign consumers. Nestlé —a transnational buyer —controlled one network, and Dak Lak September 2nd Import-Export Company (Simexco)—a State-owned domestic buyer—controlled the other network.[41] The study focuses on 4C certification for two main reasons. One, it is the most widely-used coffee certification standard in Vietnam and thus the easiest standard to study in the field.[42] Two, since both Nestlé and Simexco use 4C certification—a focus on this standards facilitates our comparative analysis.

To understand how actors located in different positions along the coffee production networks interpreted coffee certification standards, we conducted in-depth interviews with 27 interviewees. They were identified through a combination of personal networks, as well as purposive, niche, and snowball sampling methods.[43] To minimise the possibility of self-selection, we used different entry points to access multiple unconnected personal networks.

Interviews commenced in late 2017 with domestic coffee buyers (Simexco and Thắng Lợi Coffee) and transnational buyers (Nestlé and Olam Vietnam), as well as coffee certification auditors. During 2018, 2019 and 2021, we expanded the interviews to include local party and State officials and coffee producers supplying Nestlé and Simexco. Of the 15 coffee producers interviewed, eight managed farm groups for Simexco and Nestlé. In their capacity as managers, the group leaders understood the thinking of the 50–60 coffee-producing households that comprised each farm group. The group leaders furnished insights that significantly extended our sample size.

Most interviews were conducted in Buôn Ma Thuột City, as well as Buôn Hộ, Cư M'Gar and Krông Năng, three geographically dispersed coffee-growing districts in Đắk Lắk Province. To minimise preference falsification, follow-up interviews revisited core issues to determine whether respondents changed their stories in any material respects. Follow-up interviews were used to encourage group leaders and coffee producers to express their epistemic assumptions using the resources of language, especially analogy and metaphor. Interview data was then cross-checked and augmented with written sources, such as research reports and newspaper articles. The interviewees have been anonymised by using pseudonyms and generalised occupational descriptions.

---

[41] Giang *et al.* (n 13).

[42] D Gaitán-Cremaschi *et al.*, 'Assessing the Sustainability Performance of Coffee Farms in Vietnam: A Social Profit Inefficiency Approach' (2018) 10 Sustainability 4227; Giang *et al.* (n 13).

[43] See R Atkinson and J Flint, 'Snowball Sampling' in M Lewis-Beck *et al.* (eds), *The Sage Encyclopaedia of Social Science Research Methods* (Sage 2011) 2044–52.

To analyse how the respondents interpreted coffee certification standards, the study explored the narratives (ie stories and discourse) used to explain coffee certification. Following Van Dijk, we understand that narratives are intrinsically linked to their social and material context—they are socially constituted as well as socially constituting.[44] An analysis of the narratives exposed the epistemic assumptions guiding the coffee buyers and coffee producers. It also revealed the boundary narratives[45] that defined the collective identities assumed by coffee producers. The in-depth interviews were sufficiently rich in detail to generalise more broadly about how coffee producers interpreted and responded to coffee certification.

Despite difficulties in accessing coffee producers in the politically sensitive central highlands, the study provides a comprehensive account about the interaction between transnational certification standards and local actors—an aspect of private transnational regulation that has so far remained elusive to researchers.

III. TRANSNATIONAL COFFEE CERTIFICATION

Transnational certification regimes were developed to reduce the social and environmental harm caused by the operations of TPNs in developing countries.[46] According to John Ruggie, United Nations Special Representative for Business and Human Rights, 'the root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences'.[47] Coffee certification regimes aimed to address this governance gap in coffee-producing countries.[48]

TNGOs initially developed coffee certification to stabilise global coffee markets after the system of voluntary production quotes lapsed in 1989. They were also motivated by the environmental and human rights movements that arose in Europe, the United States and Japan during the 1980s.[49] Certification standards advanced the goals of these movements by protecting the environment and indigenous peoples in coffee-growing countries.[50] Following three decades of transnational coffee certification, there is still nothing resembling a multilateral certification regime.[51] Different TNGOs promote certification regimes with little regard for the coordination and harmonisation of standards.

---

[44] T Van Dijk, *Discourse and Knowledge: A Sociocognitive Approach* (Cambridge University Press 2014).

[45] Owens *et al.* (n 40).

[46] See B Choudhury, 'Balancing Soft and Hard Law for Business and Human Rights' (2018) 67 ICLQ 961; Ruggie (n 3).

[47] Report of the Special Representative of the Secretary-General (n 15).

[48] G Auld, *Constructing Private Governance: The Rise and Evolution of Forest, Coffee, and Fisheries Certification* (Yale University Press 2014); LT Raynolds, 'Mainstreaming Fair Trade Coffee: From Partnership to Traceability' (2009) 37 World Development 1083.

4C certification, which is the focus of this article, aims to unify coffee certification by promoting a uniform set of standards.[52] This objective was inspired by the UNGP, which endeavours to combine existing international conventions governing human rights in transnational businesses into a single, logically coherent and comprehensive template.[53] 4C certification was developed by the 4C Association—a TNGO that represents the three main stakeholder groups in coffee production networks: namely, coffee buyers, coffee producers and TNGOs, such as Oxfam and Greenpeace. In 2016, the 4C Association transformed into the Global Coffee Platform.[54] By this time, 4C had become the most widely-adopted certification standard, both in Vietnam and globally.[55]

4C standards differ from other coffee certification standards, such as UTZ and Rainforest Alliance, because they are primarily drawn from international conventions.[56] For example, 4C standards governing sustainable farming practices[57] are largely based on the Stockholm Convention on Persistent Organic Pollutants 2001 and protocols developed by TNGOs—for instance, the Pesticide Action Network.[58] Similarly, standards concerning environmental protection are modelled on provisions in the United Nations Convention on Biological Diversity 1992 that prohibit the clearing of primary forests for agriculture.[59] 4C standards protecting indigenous land rights are likewise based on international conventions, especially Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the United Nations Commission on Human Rights Resolution 2004/28 on the Prohibition of Forced Evictions.[60] In addition, 4C standards relating to labour protection are drawn from International Labour Organization conventions. Since transnational labour standards are already well researched,[61] this article concentrates on the less well understood 4C standards relating to environmental protection and indigenous land rights.

---

[49] ibid.

[50] Many global certification schemes aim to protect the environment and indigenous rights. See T Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (Oxford University Press 2018).

[51] Auld (n 48).

[52] S Manning and O von Hagen, 'Linking Local Experiments to Global Standards: How Project Networks Promote Global Institution-Building' (2010) 26 Scandinavian Journal of Management 398.

[53] Ruggie (n 3).

[54] 4C certification sets lower standards than UTZ and Rainforest Alliance. See Dietz *et al.* (n 14).

[55] D Boselie, 'The True Price of Coffee from Vietnam' True Price and Sustainable Trade Initiative (Sustainable Trade Initiative 2016) <https://trueprice.org/wp-content/uploads/2016/04/TP-Coffee.pdf>.

[56] Global Coffee Platform, 'Baseline Common Code' (2016) <https://archive.globalcoffeeplatform.org/assets/files/GCP_Doc_01_Baseline-Common-Code_v2.1_en.pdf>. (Baseline Common Code 2016). Also see Manning and von Hagen (n 52) 401–13.

[57] Baseline Common Code 2016 (n 56) Principle 1.2–1.8 at 9–15.

[58] Pesticide Action Network (PAN 2021) <http://www.panna.org>.

[59] 4C environmental standards govern biodiversity, soil fertility, and carbon dioxide mitigation. See Baseline Common Code 2016 (n 56) Principles P2.1–2.9 and 3.2–3.9. See generally Manning and von Hagen (n 52).

The study of 4C certification offers an opportunity to evaluate whether transnational certification regimes can effectively convey norms embedded in international conventions to local actors in developing countries. Vietnam has a monist legal system, and international conventions acquire the status of domestic law once they have been ratified by the National Assembly (NA).[62] An exception to this principle is provided by Article 6 of Law No. 108/2016/QH13 on Treaties 2016, which requires the enactment of international conventions into domestic legislation where they 'lack clarity and specificity'. In practice, most international conventions ratified by the NA are not self-executing and require enactment into domestic legislation to gain legal force.[63]

The implication for this study is that although Vietnam has ratified the international conventions underlying most 4C standards, the conventions lack domestic legal force without enabling legislation. For example, Vietnam has ratified the UN Convention on Biological Diversity 1992 and UNDRIP, but without a domestic regulatory regime that protects biological diversity and indigenous land rights, the conventions are not legally enforceable.[64] 4C certification has the potential to rectify the lack of enabling domestic legislation in Vietnam and implement environmental and human rights norms drawn from these international conventions.[65]

4C certification is based on legally non-binding, voluntary codes of practice.[66] Compliance is achieved through a combination of socialisation and normative pressures, as well as external verification by third-party auditors. Consistent with the international auditing literature,[67] the findings show that the small number of auditors operating in Vietnam can only inspect a minute percentage of the coffee producers. Due to the logistical difficulties in auditing the tens of thousands of small-scale coffee producers, 4C certification relies on self-reporting in farm record-books to monitor compliance. Studies suggest that less than one-third of the coffee producers rigorously followed this system.[68]

---

[60] Baseline Common Code 2016 (n 56) Principle 2.1–2.9 at 16–21.

[61] See eg J Short *et al.*, 'Improving Working Conditions in Global Supply Chains: The Role of Institutional Environments and Monitoring Program Design' (2020) 73 ILR Review 873.

[62] See TH Yen, 'Vietnam' in S Chesterman *et al.*, (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press 2019).

[63] VC Trịnh, *Vai Trò Giám Sát Của Quốc Hội Việt Nam Trong Quá Trình Đàm Phán, Ký Kết, Gia Nhập và Các Thực Hiện Điều Ước Quốc Tế* [The Supervisory Role of the National Assembly of Vietnam in the Process of Negotiating, Signing, Joining and Implementing International Treaties] (Đại Học Quốc Gia 2013).

[64] See P Ortmann, *Environmental Governance in Vietnam: Institutional Reforms and Failures* (Palgrave Macmillan 2017); P Meyfroidt *et al.*, 'Trajectories of Deforestation, Coffee Expansion and Displacement of Shifting Cultivation in the Central Highlands of Vietnam' (2013) 23 Global Environmental Change 1187.

[65] Choudhury (n 46); Ruggie (n 3).

[66] Giang *et al.* (n 13) 3–4; Manning and von Hagen (n 52).

Certification signals to customers and other stakeholders that certified producers attained a higher socio-environmental standard than their uncertified competitors. The main penalty for non-compliance is withholding certification, which results in producers losing the market premium paid for certified coffee.[69] Acting as an additional deterrent, producers may lose market share as some buyers will not purchase uncertified coffee.

IV. STATE REGULATION OF COFFEE PRODUCTION IN VIETNAM

This study asks a core question: how do authoritarian States like Vietnam influence private transnational regulation? Much has been written about how authoritarian legal systems extract the benefit of law while minimising the risks—especially legal challenges to State authority.[70] This study examines two other regulatory characteristics associated with socialist authoritarian polities: State economic management and tight controls over freedom of assembly.

Turning first to State economic management, the Vietnamese government exercises a high level of planning and regulation over coffee production. *Đổi mới* (renewal) reforms during the late 1980s excited wide-ranging institutional and regulatory changes, ending decades of socialist command planning and agricultural cooperatives.[71] Instead of shrinking State regulation over the economy, reforms resulted in the redeployment and diversification of State regulation.[72] For example, government officials redesigned 'State economic management' (*quản lý kinh tế nhà nước*)—a mode of command planning—to coordinate coffee production.[73] A World Bank report concluded that the Vietnamese 'government [has] directly participated in every aspect of the coffee industry', playing an 'all-encompassing' role.[74] It went on to say that the 'Government is the primary and most influential institution by far, and has created nearly the entire [coffee] sector's other institutions'.[75]

---

[67] G LeBaron and J Lister, 'Benchmarking Global Supply Chain: The Power of the "Ethical Audit" Regime' (2015) 41 Review of International Studies 905.

[68] M Kuit *et al.*, 'The Sustainable Coffee Conundrum: A Study into the Effects, Cost and Benefits of Implementation Modalities of Sustainable Coffee Production in Vietnam' (Kuit Consultancy 2013); Giang *et al.* (n 13).

[69] Dietz *et al.* (n 14).

[70] See T Moustafa, 'Law and Courts in Authoritarian Regimes' (2014) 10 Annual Review of Law and Social Science 281.

[71] J London, 'Vietnam: The Making of Market Leninism' (2009) 22 Pacific Review 375.J Gillespie 'Is Vietnam Transitioning out of Socialism or Transforming Socialism? Searching for Answers in Commercial Regulation' in H Fu *et al.* (eds), *Socialist Law in Socialist East Asia* (Cambridge University Press 2018) 319–50.

[72] M Gainsborough, 'Privatisation as State Advance: Private Indirect Government in Vietnam' (2009) 14 New Political Economy 257, 265–7.

[73] Ủy Ban Nhận Dân Tỉnh Đắk Lắk, *Phát* Triển Cà Phê Bền Vững Tỉnh Đắk Lắk Đến Năm 2020 và Định Hướng Đến Năm 2030 ban hành kèm theo Quyết định số 2811/QĐ-UBND ngày 10/10/2017

Another major regulatory difference from non-socialist coffee-growing countries is that the formation of non-government associations is highly constrained in Vietnam.[76] Party-controlled mass organisations, such as the Farmers Association (*Hội Nông Dân*), rapidly co-opt and displace attempts by coffee producers and civil society actors to form member-directed associations that might influence the regulatory environment. The Farmers Association is a mass organisation controlled by the Fatherland Front (*Mặt Trận Tổ Quốc*), an organisational branch of the communist party.[77] Mass organisations like the Farmers Association are difficult to categorise according to conventional understandings of State power since they are neither entirely civil society organisations, nor entirely under State control.[78] In discussing the role of the Farmers Association, a World Bank report concluded that: 'While technically not part of the government, it regards its role as representing the interests of farmers to the government and acting as a conduit for the government's messages and priorities.'[79] Consistent with this report, our study shows that the Farmers Association played a key role in influencing how coffee producers interpreted 4C standards.

Although the Vietnamese State has abandoned socialist command planning, it continues to maintain a high level of regulatory control over most aspects of the coffee industry. 4C standards as a consequence do not enter a regulatory vacuum and must engage with a proactive party-State.

V. TRANSNATIONAL PRODUCTION NETWORKS AND THE ASSEMBLAGE OF 4C STANDARDS

In Vietnam's authoritarian polity, it is important to understand to what extent coffee certification functions independently from the State. This question is related to our broader inquiry into whether 4C certification operates as an integrated, 'joined-up' transnational regime. It asks whether 4C standards bypass State agencies and directly engage with coffee producers. Or is 4C certification polycentric, allowing State agencies and other actors to repurpose 4C standards to further State and community objectives? To

---

của Ủy Ban Nhân Dân Tỉnh (Đắk Lắk People's Committee, Developing Sustainable Coffee in Dak Lac Province to 2020 and Orientation to 2030 issued in conjunction with Decision No 2811 / QD-UBND October 10, 2017 Provincial People's Committee).

[74] Giovannucci *et al.*, *Vietnam Coffee Sector Report* (World Bank 2004) 7.

[75] ibid.

[76] See generally, B Kerkvliet, *Speaking Out in Vietnam* (Cornell University Press 2019).

[77] See C Thayer 'Vietnam and the Challenge of Political Civil Society' (2009) 31 Contemporary Southeast Asia 1.

[78] J Wischermann *et al.*, 'Vietnamese Civic Organisations: Supporters of or Obstacles to Further Democratisation? Results from an Empirical Survey' (2016) 35 Journal of Current Southeast Asian Affairs 57.

[79] Giovannucci *et al.* (n 74) 16.

explore these issues, we need to understand how Nestlé and Simexco conveyed 4C standards to coffee producers.

A. Coffee Production Networks

1. Nestlé's transnational production network

Nestlé has been operating in Vietnam since 1912 and is currently one of the leading foreign coffee buyers. In 2011, it established the Nest Café Vietnam production network, which in 2017 acquired coffee from more than 21,000 small-scale households in the central highlands.[80] Nestlé only buys coffee that is certified to 4C standards and company-specific sustainability sourcing guidelines and standards.

Nestlé has incorporated some of the international norms underlying the 4C standards into its mandatory policies. For example, the Nestlé Policy on Environmental Sustainability 2013 reflects the UN Convention on Biological Diversity 1992, as it requires coffee producers to conserve water, natural resources and biodiversity, and adapt to climate change.[81] Similarly, Nestlé's Commitment to Land and Land Rights draws on Article 10 of UNDRIP. It requires production networks to 'address infringements on individual, community or Indigenous Peoples' land rights, both in our direct operations and through our supply chains'.[82] Nestlé's mandatory policies appear in English on the company's website but have not yet been translated into Vietnamese.

As a foreign-owned company, Nestlé is prohibited from contracting directly with coffee producers, and must purchase coffee from independent brokers. Brokers write contracts that legally bind coffee producers to 4C standards and then on-sell the coffee to Nestlé. A regional manager with Nestlé described how this process works: 'We invite the brokers to meet with the farmers. If the brokers agree to purchase from the farmers, the two parties will complete an agreement to supply the coffee beans through the 4C coffee production chain.'[83]

Nestlé staff then organise coffee producers into farm groups of approximately 50 to 60 farming households from the same area. Group leaders are appointed to coordinate, implement and monitor 4C certification.[84] They act like intermediaries, serving as 'the carriers, conduits, and points of entry for the circulation of transnational legal norms'.[85] Although Nestlé's TPN operates independently from State agencies, some group leaders work concurrently as party-State officials.[86] As discussed in more detail later, these group leaders to some extent filtered 4C standards through State policies. A Nestlé staff member discussed this process:[87]

---

[80] Interview with Mr Kiên, Nestlé regional manager (Buôn Ma Thuột, Đăk Lăk, 1 December 2017).

[81] 'The Nestlé Policy on Environmental Sustainability' (Nestlé, Mandatory Policy February 2013) 2.

[82] 'The Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains' (Nestlé, Mandatory Policy July 2014) 2.

[83] Interview with Mr Kiên, Nestlé regional manager (Buôn Ma Thuột, Đăk Lăk, 25 February 2018).

[84] J Grabs 'The Rise of Buyer-Driven Sustainability Governance: Emerging Trends in the Global Coffee Sector' (Social Science Research Network 2017).

[85] Shaffer (n 33) 254.

> In fact, we have to follow the government, as Nestlé has a slogan: '*nhập gia tùy tục*.' [follow the customs] … We operate in Vietnam; therefore, we have to comply with Vietnamese law [and] prioritise the proposals of the Vietnamese government … Compromise does exist … .

2. *Simexco's transnational production network*

The Đắk Lắk Party Committee established Simexco in 1993 to export coffee and pepper. As a State-owned company, Simexco's TPN differs from Nestlé's network as it is integrated into the organisational fabric of local government. For example, Simexco uses commune-level members of the Farmers Association to recruit and manage coffee producers. A coffee producer observed this process:[88]

> Mobilizing is not difficult, because they [Simexco] use the Farmers Association system. Farmers come to work directly with the Farmers Association. Each commune has a branch of the Farmers Association, so when the Farmers Association urges and mobilizes then it is easy to join Simexco.

In the minds of the people working for Simexco, there is little substantive difference between the coffee network and party-State networks.[89] Simexco group leaders did not differentiate between their roles as company employees and as cadres working for the Farmers Association. For example, they often invoked the political language of the party-State, such as stressing the importance of *vận động quần chúng* (mass mobilisation) and invoking party slogans such as *lấy dân làm gốc* (take the people as the base).[90] This close cooperation merged Simexco's production network into the party-State regulatory apparatus.

The next sections draw on in-depth interviews to examine how Nestlé and Simexco developed 'communities of practice' to communicate the 4C standards to coffee producers.

---

[86] Three of the four Nestlé group leaders interviewed were party-State officials at the grassroots level: Mr Đat (Buôn Ma Thuột, Đăk Lăk, 9 November 2018); Ms Nga (Buôn Ma Thuột, Đăk Lăk, 9 November 2018); Mr Tuệ (Cư M'gar, Đăk Lăk, 4 March 2019).

[87] Interview with Mr Thuyết, Néstle staff (Đăk Lăk, 13 April 2021).

[88] Interview with Mr Thắng, coffee producer (Krông Năng, Đăk Lăk, 23 February 2018).

[89] Interviews Mr Trường (Buôn Hộ, Đăk Lăk, 21 February 2018); Mr Cảnh, coffee producer (Cư M'gar, Đăk Lăk, 22 February 2018); Mr Thắng, coffee producer (Krông Năng, Đăk Lăk, 23 February 2018); Ms H'Xíu, coffee producer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018).

[90] Interview with Mr Trung, manager, Simexco (Buôn Ma Thuột, Đăk Lăk, 4 December 2017).

B. Developing Communities of Practice

Group leaders working for Nestlé and Simexco used personal connections to organise coffee producers into farm groups comprising 50–60 farming households. An official from a coffee exporting company described this process:[91]

> The company trains group leaders to develop close human relationships with farmers, to have regular personal exchanges. Although group leaders are trained to promote efficient production: to convey this know-how they need to be at ease with the farmers.

The farm groups acted like communities of practice because members shared a common objective[92]—to understand and implement the 4C standards. In addition, they occupied a common physical space where members could meet, participate in training programmes, share information and learn collaboratively. Displaying another characteristic of communities of practice, the groups functioned like discursive systems and intersubjectively developed a common repertoire of epistemologies and practices to understand and apply 4C standards.[93]

Group leaders acted like intermediaries in mobilising and inculcating the 4C standards. They conversed using modes of social interaction, idioms and language that were familiar to the coffee producers. As a Nestlé manager observed: 'Building close relationships through many channels, such as visits during Tết [lunar new year] and gift giving to coffee producers encourages them [coffee producers] to confide, speak from the heart (*tình cảm*) and give feedback.'[94] Over time, this 'fruitful' communication[95] built up a set of shared epistemic assumptions that influenced the way members of the communities of practice interpreted and responded to 4C standards.

Intermediaries emphasised personal relationships and de-emphasised the contractual arm's-length relationships underlying the coffee production networks. This use of relational connections to communicate knowledge had the effect of de-coupling the 4C standards from global systems of knowledge and re-embedding them into local knowledge systems. Relational interactions downplayed the legal formality and top-down hierarchies associated with the coffee networks, and infused the 4C standards with local meanings of a non-legal character. In Part VI, we develop this argument by showing that coffee producers turned to the complex web of relational connections in the communities of practice to acquire tacit knowledge about the 4C standards.

---

[91] Interview with Mr Huân, manager (Buôn Ma Thuột, Đăk Lăk, 28 November 2017).

[92] J Hughes, 'Lost in Translation: Communities of Practice – The Journey from Academic Model to Practitioner Tool' in J Hughes *et al.* (eds), *Communities of Practice: Critical Perspectives* (Routledge 2007) 30–40; Wenger (n 19).

[93] ibid.

[94] Interview with Mr Kiên, Néstle manager (Buôn Ma Thuột, Đăk Lăk, 25 February 2018).

[95] Teubner, 'Legal Pluralism as a Form of Structural Coupling' (n 32).

Having established that Nestlé and Simexco used communities of practice to convey the 4C standards to coffee producers, the next section examines normative differences in the messages transmitted to the coffee producers.

C. *Reassembling the Meaning of the 4C Standards*

Nestlé and Simexco emphasised different aspects of the 4C standards. Although both supported sustainable farming, Simexco followed government policies that treated sustainable farming as a means of accessing global markets.[96] Nestlé, on the other hand, placed more emphasis on 4C standards relating to scientific farming, environmental protection and social justice.

1. *Promoting scientific farming*

4C certification required coffee producers to record the use of chemicals, pruning and irrigation.[97] A Simexco group leader explained the record-keeping process:[98]

> We based our monthly report on whether the diary [record book] kept by household heads fully recorded farming practices. The farmers' diaries must clearly state when he went into his orchard, together with observations about whether the area was clean or not and an assessment about the appropriate use of chemicals and fertilizers.

Differences were observed in the way Nestlé and Simexco explained record-keeping. Nestlé advocated scientific farming and encouraged coffee producers to understand the ecological consequences of unsustainable farming practices. A Nestlé group leader explained this approach:

> They [farmers] train very carefully about how to use the chemicals. But we need to explain scientifically that when the orchard is healthy we should not spray, because there will be natural enemies to protect the plants. Indiscriminate spraying of the insecticide will kill the natural species that attack the aphids.[99]

Nestlé's group leaders urged coffee producers to base decision-making on recorded observations and experimentation. Their objective was to instil inductive reasoning based on a 'rational' scientific approach to horticulture. Scientific thinking was promoted to counter traditional farming practices based on received wisdom and established rituals and procedures. Other studies about coffee certification have shown that scientific methods have the potential to shift coffee producers from 'experience and tradition (basically applying what one applied the previous year) to more quantitative measures where field observations informed the decision-making process'.[100] This discussion is continued in Part VI, which explores how coffee producers understood the link between scientific farming and environmental protection.

---

[96] Developing Sustainable Coffee in Dak Lac Province to 2020 and Orientation to 2030 (n 73).
[97] Baseline Common Code 2016 (n 56) Principle 1.7 at 17.
[98] Interview with Mr Dũng, group leader (Cư M'gar, Đăk Lăk, 4 March 2019).
[99] ibid.

2. *Environmental protection*

In another difference between the coffee networks, Simexco filtered 4C standards concerning environmental protection through government policies. As a State-owned company, its training programmes were closely monitored by State officials. A manager working for Olam Vietnam[101] explained the process:

> In order for the program to comply with the sustainable coffee development policies of the Ministry of Agriculture and Rural Development. … I have to work with the Department of Agriculture and Rural Development, and with the district and commune authorities to avoid politically sensitive areas.

Government officials selectively repurposed and opposed the 4C environmental standards. For example, they repurposed Unacceptable Practice Seven of the 4C Common Code, which prohibits 'Cutting of primary forest or destruction of other forms of natural resources'.[102] Officials supported the provisions in Unacceptable Practice Seven that forbid forest clearing near waterways because this standard supported government clean water policies. In contrast, they opposed provisions that prohibited forest clearing for new coffee production because government policies privilege coffee production and exports over biodiversity and climate change mitigation.[103]

Simexco's group leaders followed government policies by linking environmental protection with the protection of health and safety. For example, group leaders emphasised the safe application of insecticides while downplaying 4C environmental standards that encouraged an ecological duty to protect the environment beyond the local community. Most coffee producers welcomed this narrow focus on health and safety. As a Simexco group leader explained:[104] 'Farmers participate in [4C] only if they obtain some "*tiền tươi thóc thật*" [fresh money, real rice], economic benefits [and] profits. They will not participate if we call them to protect the environment.'

Nestlé was more prepared than Simexco to advance 4C standards that protected the environment beyond the farm gate, such as protecting biodiversity and mitigating climate change. Whether this different normative emphasis resulted in better environmental outcomes was difficult to evaluate. Empirical surveys are not encouraging, as they show widespread forest clearing continued in Central Highland districts that produced 4C-certified coffee.[105] Part VI returns to this question and considers how collective identities influenced the way coffee producers responded to the 4C environmental standards.

---

[100] Kuit *et al.* (n 68) 87.

[101] Interview with Mr Huân, manager (Buôn Ma Thuột, Đăk Lăk, 28 Nov 2017).

[102] Baseline Common Code 2016 (n 56) Unacceptable Practice 7, at 38.

[103] Ortmann (n 64); Meyfroidt *et al.* (n 64).

[104] Interview with Mr Anh, Simexco staff member with experience working on coffee certification programmes (Buôn Ma Thuột, Đăk Lăk, 1 April 2021).

3. *Indigenous land rights*

Unacceptable Practice Four of the 4C Common Code prohibits 'Land acquisition carried out without prior and informed consent of affected people with legal land use rights including those who claim traditional land use rights, especially indigenous people'.[106] This standard recognises the cultural and spiritual relationships that indigenous people enjoy over their lands and seeks to protect them from dispossession caused by coffee production.

The Central Highlands has been an arena of conflict between the Vietnamese State and ethnic minority communities for decades.[107] From the 1960s onwards, successive governments promoted the transmigration of people from the overcrowded lowlands into the highlands.[108] Governments proscribed swidden cultivation and aimed to sedentarise indigenous highland communities into new settlements. This policy resulted in the dispossession of indigenous land users—mainly the Ede and Mnong ethnic minority communities—and the clearing of their land for coffee production.[109]

Social tensions arising from indigenous dispossession have periodically erupted into violent clashes between police and the ethnic majority (*Kinh*) lowland settlers on one side, and ethnic minority communities on the other side.[110] Further animating mistrust, some ethnic minority communities fought against the communist government during the anti-colonial and American wars.[111] Party leaders accuse these 'counter-revolutionary' groups of sedition in attempting to undermine national security and harmony between the State and ethnic minorities.[112]

In this highly politicised environment, there is little political tolerance for 4C policies that might advance indigenous land claims.[113] Working within these constraints, Nestlé's intermediaries cautiously promoted company policies that required production networks to integrate ethnic minorities into the mainstream economy and ensure they equitably benefited from coffee production.[114] In contrast, our findings show that Simexco's intermediaries followed government policies and opposed the 4C indigenous land standards.[115] While government policies regulating coffee production do not explicitly mention indigenous landholders,[116] Directive 24/1998/CT-TTg on Developing and Implementing Village Covenants instructs highland district people's committees to prohibit 'evil customs' (*hủ tục*), such as the swiddening agricultural practices that form the basis of indigenous land claims.[117] This directive prevents ethnic minority groups from claiming customary rights to forests that are cleared for coffee production.[118]

---

[105] Kuit *et al.* (n 68) 72.

[106] Baseline Common Code 2016 (n 56) Unacceptable Practice 4, at 37.

[107] See A Hardy, *Red Hills: Migrants and the State in the Highlands of Vietnam* (NAIS Press 2003); O Salemink, 'Revolutionary and Christian Ecumenes and Desire for Modernity in the Vietnamese Highlands' (2015) 16 Asia Pacific Journal of Anthropology 388, 388–409.

[108] ibid.

[109] See G Evans, 'Internal Colonialism in the Central Highlands of Vietnam' (2018) 33(S) Sojourn 30.

[110] Hardy (n 107).

[111] Salemink (n 107) 388–409.

[112] H Ly and Y Tao, 'Binh yen cho vung dat Tay Nguyen' [Peace for the Central Highland] (*Nhan Dan Dien Tu*, 8 August 2015) <http://www.nhandan.com.vn/phongsu/item/27198202-binh-yen-cho-vung-dat-tay-nguyen.html>. See generally J Gillespie and HTQ Tran, 'Legal Pluralism and the Struggle for Customary Law in the Vietnamese Highlands' (2021) 69 AmJCompL (forthcoming).

[113] Giovannucci *et al.* (n 74).

In summary, Nestlé and Simexco prioritised technical farming practices because these standards received a willing reception from coffee producers and local authorities. Nestlé remained faithful to transnational interpretations of 4C standards and emphasised scientific farming methods, environmental protection and, to a lesser extent, indigenous land rights. In contrast, Simexco folded the 4C environmental standards into government policies and opposed indigenous land claims. In the next section, we analyse how the coffee producers understood the 4C standards.

VI. VIETNAMESE COFFEE PRODUCERS AND THE INTERPRETATION OF 4C STANDARDS

Communities of practice theory tells us that '[l]earning is a process that takes place in a participation framework'.[119] It directs attention to the personal interactions and collective identities that shape how members of communities of practice decide whether to replace existing regulatory practices with new ways of thinking.

A. *Socially Embedded Communities of Practice*

The findings show that coffee producers came to understand 4C standards through tacit knowledge communicated via personal relationships. A coffee producer explained the learning process:[120]

> Everyone has a contract, but they are not important. We only recall the main ideas, for example, the rules provided in 4C, such as harvested coffee should not be dried in an exposed yard. We look to farm leaders [intermediaries] to say if anyone follows the wrong process, people follow his advice and there is no role for contracts.

---

[114] 'The Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains' (Nestlé, Mandatory Policy July 2014) 2.

[115] Interviews with Mr Anh, Simexco staff member (Buôn Ma Thuột, Đăk Lăk, 1 April 2021); Ms Liên, group leader and head of commune Farmers Association (Buôn Ma Thuột, Đăk Lăk, 25 June 2018); Ms Hoa, coffee producer (Buôn Ma Thuột, Đăk Lăk, 25 June 2018); Ms H'Xíu, coffee producer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018).

[116] Developing Sustainable Coffee in Dak Lac Province to 2020 and Orientation to 2030 (n 73).

[117] Gillespie and Tran (n 112).

[118] Meyfroidt *et al.* (n 64) 1196.

[119] Hanks (n 38).

[120] Interview with Ms Diệu, Thắng Lợi Coffee, manager (Krông Păk, Đăk Lăk, 1 Dec 2017).

Coffee producers turned to the communities of practice for knowledge, but also for security. They wanted the communities to 'take care' (*trông nom*) of them.[121] Many producers spent ten to twenty years—their formative years—working in State agricultural cooperatives that operated in the central highlands until the late 1990s.[122] They expected the communities of practice to function like State cooperatives in providing social welfare and stable markets.

Producers were also sceptical about the capacity of the arm's-length contractual relationships governing the TPNs to protect them against the vicissitudes of global commodity markets.[123] They opposed contractual relationships on the grounds that contracts undermined group cohesion and distanced the coffee buyers and intermediaries from the accountability mechanisms grounded in personal relationships. In short, the producers resisted the legal relationships underlying 4C certification and sought mutual assistance, security and knowledge from the relational connections that constituted the communities of practice.

These findings have four key implications for this study. One, the producers did not contemplate the possibility that 4C standards would or could be legally enforced. Two, the epistemic framework that informed how producers interpreted 4C standards was communicated through personal interactions occurring in the communities of practice, rather than through the top-down, contractual relationships in the TPNs. Three, this epistemic framework is best understood as a distributed phenomenon that cannot be captured in the individual minds of intermediaries, local officials and coffee producers. Four, if learning is a socially constituted experience[124] then the collective identity of the coffee producers has a bearing on the learning experience. The next section considers how collective identities influenced the interpretation of 4C standards.

B. *Learning through Identity*

Communities of practice theory shows that collective identities structure the way people learn about new ideas. When 'people take on the same identity, experience the same reality, and observe one another's parallel emotions and collateral behaviour, a sense of common destiny and empathic connection arises'.[125] Group identification draws the boundaries between 'inside' and 'outside' categories of meaning—and thus establishes the basis for distinguishing between relevant and irrelevant knowledge.[126] It compel members of close-knit social groups, such as communities of practice, to conceptualise and evaluate ideas in similar ways.

---

[121] Interviews with Ms Hoa, Simexco coffee producer (Buôn Ma Thuột, Đăk Lăk, June 2018); Mr Tình, Simexco coffee producer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018); Ms Hạ, Néstle coffee producer (Cư M'gar, Đăk Lăk, 4 March 2019).

[122] Giovannucci *et al.* (n 74).

[123] Interviews with Ms Hoa, Simexco coffee producer (Buôn Ma Thuột, Đăk Lăk, June 2018); Mr Tình, Simexco coffee producer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018); Ms Hạ, Néstle coffee producer (Cư M'gar, Đăk Lăk, 4 March 2019).

[124] Hanks (n 38).

[125] Owens *et al.* (n 40); Brubaker *et al.* (n 40).

1. Adopting sustainable farming practices

The coffee producers interviewed were receptive to 4C sustainable farming standards, especially standards promoting productivity.[127] According to one representative account:[128]

> Most people follow practices in their lives as farmers that achieve high economic efficiency. This is what people will focus on doing to improve their lives. This is the mindset of the people. They listen to training that changed how their farms achieved more economic efficiency.

Coffee producers accepted sustainable farming standards because they were considered improvements to existing farming practices. Identity played a more discernible role in the way coffee producers learnt about record-keeping, environmental protection and indigenous land rights.

2. Record-keeping

Nestlé used record-keeping to encourage scientific farming—an approach that required coffee producers to change how they thought about themselves. The head of a grassroots farmers association discussed the difficulties in convincing coffee producers to base production on scientific empirical observation:[129]

> In the old days farmers used 'crap' (*tào lao*) methods, without any notes there was no understanding about how much they spent a year, and how much they don't know about production. It was very difficult to get them to change, because the farmers did not want to change from familiar customary practices that gave them the 'sentiment of their home-village' (*tình cảm quê hương*).

A coffee producer explained the personal transformation involved in acquiring scientific knowledge:[130]

> Previously I just followed personal feelings and worried whether I had attracted bad luck. I did not know that I could record and control the cost of inputs and make plans that influenced tree production and countered fluctuations in market prices.

---

[126] JR Eidson *et al.*, 'From Identification to Framing and Alignment: A New Approach to the Comparative Analysis of Collective Identities' (2017) 58 Current Anthropology 340.

[127] Other studies about coffee networks in Vietnam have reached similar conclusions. See eg Kuit *et al.* (n 68).

[128] Interview with Mr Thắng, coffee producer (Krông Năng, Đăk Lăk, 23 February 2018).

[129] Interview with Ms Liên, Farmers Association (Buôn Ma Thuột, Đăk Lăk, 25 June 2018).

[130] Interview with Ms Hoa, coffee producer (Buôn Ma Thuột, Đăk Lăk, 25 June 2018).

This transformation was especially challenging for ethnic minority coffee producers. A producer recalled:[131]

> I still tell people that record books help me know a lot of things. When they heard, they could only nod. Because most of the people here are ethnic Ede [minority] who only think about the old ways of doing things.

Traditional farming practices are guided by spirits, who inhabit a parallel world (*thế giới bên kia*) that interacts with the temporal world.[132] The spirit and temporal worlds continuously communicate with each other, and the 'well-being' of the worlds depends on the observance of proper relationships. For example, poor harvests are attributed to angry spirits, without any specific evidence of factual causation.[133] Farmers in traditional communities are expected to follow rituals to appease the spirit world and protect the community from 'bad luck' (*xui xẻo*).

Scientific farming represented a significant departure from the spirit-based traditional practices. It required coffee producers to abandon the ambiguity, subjectivism and fatalism associated with traditional farming and accept a scientific approach (*thuộc về khoa học*) that harnesses objective phenomena, such as soil nutrients and irrigation, to improve sustainable production. This emphasis on systematic inquiry, careful measurement and logical deductions distanced coffee producers from deeply entrenched traditional customs and codes of practice. A coffee auditor explained the significance of this change in thinking:[134] 'The reason why farmers are reluctant to make observations, is not that they do not understand the regulations, but because they believe in customary practices and think the scientific approach will change who they are.' Scientific farming not only influenced what the producers should learn and how they should farm; empirical observation and logical deduction also shaped their world view.

It is difficult to precisely gauge the extent to which the 4C scientific standards influenced coffee producers. A group leader estimated that only 20 per cent of coffee producers have a 'comprehensive awareness of scientific farming' and follow record-keeping protocols.[135] Other studies in the central highlands concluded that approximately 30 per cent of coffee producers described themselves as scientific farmers and routinely used record-keeping to quantitatively monitor and analyse coffee production.[136] The slow adoption of scientific methods was attributed to an unwillingness to engage with new ideas that seemed irrelevant or contrary to the producers' identity as traditional farmers. It also has implications for the legal enforcement of 4C standards, which relies on record-keeping as a means of monitoring compliance.

---

[131] Interviews with Ms Liên, Farmers Association (Buôn Ma Thuột, Đăk Lăk, 25 June 2018); H'Xíu, Ede farmer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018) and Y Lương, Ede farmer (Buôn Ma Thuột, Đăk Lăk, 27 June 2018). Confirmed that poor Vietnamese language skills hindered knowledge transfers.

[132] N Århem and NTT Binh, *A Social-Cultural Assessment of the Indigenous Population along the Ho Chi Minh Highway in Central Truong Son, Viet Nam* (WWF Indochina 2007).

[133] Interviews with Ms Hoa, coffee producer (Buôn Ma Thuột, Đăk Lăk, 25 June 2018); Mr Tình, coffee producer (Buôn Ma Thuột, Đăk Lăk, 26 June 2018); Ms Hạ, coffee producer (Cư M'gar, Đăk Lăk, 4 March 2019).

[134] Interview with Mr Minh, 4C Auditor (Buôn Ma Thuột, Đăk Lăk, 27 November 2017).

[135] Interview with Mr Thắng, coffee producer (Krông Năng, Đăk Lăk, 23 February 2018).

3. *Protecting the natural environment*

To protect biodiversity and mitigate climate change, 4C standards impose an obligation to safeguard the environment for the public good.[137] Most coffee producers adopted a narrower perspective that confined environmental protection to the physical environment surrounding their family and community. They equated environmental protection to health and safety measures and disregarded the public good objectives underlying transnational environmental norms. As a coffee buyer observed:[138] 'to persuade farmers you have to analyse how environmental protection will benefit them personally. For example, you have to tell the farmers that using herbicides and pesticides will harm their children and future generations—like Agent Orange.'

Convincing coffee producers to protect the environment beyond their immediate family and community proved difficult. A Nestlé manager explained:[139]

> There is a habit of throwing things away, so the sense of environmental protection is very poor, leading to poor environmental sanitation in the garden, and the use of banned chemicals. It is difficult to increase the level of compliance with 4C environmental rules to include ecological harm.

A coffee auditor attributed the narrow interpretation of environmental protection to a preoccupation with family and community:[140]

> Compared to global approaches, coffee production in Vietnam shows a high degree of focus on local factors. Most farmers pay attention to productivity and the harvest of coffee and want to achieve the highest economic efficiency without harming themselves and their families. But around the world, farmers prioritize the development of a sustainable coffee industry. In addition to the economic goal, they want to ensure a balance and stability between society and the environment.

Traditional collective identities played a key role in entrenching narrow interpretations of environmental protection. Coffee producers were reluctant to support standards concerning biodiversity, because this public good norm encompassed strangers outside family and community networks. As members of traditional farming communities, coffee producers owed their primary loyalty to people inside (*nội*) the home-village (*quê hương*) and considered outsiders beyond their sphere of concern. They recounted boundary narratives[141] that emphasised relational connections that differentiated insiders from outsiders (*ngoài*). Boundary narratives determined what was considered inside and thus appropriate knowledge, and outside and thus inappropriate knowledge. For example, a technician working for Néstle described how producers approached environmental protection:[142]

---

[136] Kuit *et al.* (n 68) 44.

[137] See Manning and von Hagen (n 52).

[138] Interview with Mr Đông, senior manager, transnational coffee company (Buôn Ma Thuột, Đăk Lăk, 28 Nov 2017).

[139] Interview with Mr Kiên, Néstle manager (Buôn Ma Thuột, Đăk Lăk, 25 February 2018).

[140] Interview with Mr Minh, Auditor (Buôn Ma Thuột, Đăk Lăk, 27 November 2017).

> They opened their mouths in agreement but kept the same practices because of habit. Wanting to change is very stressful, very difficult … They don't think [environmental] change is for themselves and their families … They keep thinking that the change is for outsiders so that change is considered not applicable to them.

Although public awareness in Vietnam about environmental issues has recently increased, it remains a primarily urban phenomenon.[143] As an auditor explained:[144] 'When applying the 4C environmental standards, farmers have a forced attitude, and are reluctant to find ways to adapt … After explanations and encouragement … they have changed their perception and action [but] the rate of change is only about 20 per cent.' Consistent with this estimate, other studies have found that coffee certification in Vietnam has not fundamentally changed the way most producers think about the environment.[145]

4. *Protecting indigenous land rights*

Coffee producers we interviewed did not support the 4C standards that protect indigenous land rights.[146] This response was unsurprising from *Kinh* (ethnic majority) coffee producers because many of them gained land through the dispossession of ethnic minority communities.[147] Unexpectedly, ethnic minority coffee producers also expressed little support for indigenous land rights. One possible explanation is their tenuous status within the communities of practice. As outsiders, they adjusted their thinking to fit in. Most communities of practice were controlled by either ethnic *Kinh* or ethnic minority intermediaries who worked in the State sector and promoted government policies regarding indigenous land rights. Further isolating ethnic minority producers, communication within the communities of practice was conducted in Vietnamese, rather than indigenous Mon-Khmer languages. With a poor grasp of Vietnamese, many of them struggled to comprehend the knowledge circulating in the communities of practice.[148] An ethnic minority coffee producer explained this problem:[149]

---

[141] Owens *et al.* (n 40).

[142] Interview with Mr Thuyết (Đăk Lăk, 13 April 2021).

[143] Ortmann (n 64); J Gillespie *et al.*, 'From "Weak" to "Strong" Sustainability: Protesting for Environmental Justice in Vietnam' (2019) 14 Journal of Vietnamese Studies 1.

[144] Interview with Minh, Auditor (Buôn Ma Thuột, Đăk Lăk, 27 November 2017).

[145] Kuit *et al.* (n 68) 66.

[146] Baseline Common Code 2016 (n 56) Unacceptable Practice 4, at 37.

[147] Hardy (n 107); Meyfroidt *et al.* (n 64).

> I feel that when I go to seminars the reality of the problem is not very obvious. I talk to people who are knowledgeable in the Party Community Centre [intermediaries], although they explain and guide, we are somewhat lacking in capacity (*tai nặng*), we don't understand what we hear. The people explain to me again, but generally what they tell me I don't understand.

Ethnic minority producers learnt from the communities of practice by emulating the *Kinh*. A group leader described this practice:[150]

> Yes, ethnic minority farmers are different, and it is hard to teach them because their customs are so old and deeply felt. But gradually when some come into contact they speak to the *Kinh*. The *Kinh* made them see the right way and they found a way to imitate.

Membership of the communities of practice gave ethnic minority producers access to knowledge about sustainable coffee production and the financial benefits of international markets. It also created obligations to adopt government views regarding indigenous land rights that were circulating within the communities. The desire to belong compelled ethnic minority producers to downplay community support for indigenous land rights because these views conflicted with the values and goals promoted by the communities of practice.[151] Pressure to conform to a State-dominated collective identity explains why coffee certification regimes have done little to change attitudes regarding the dispossession of ethnic minorities living in coffee-growing areas.[152]

Our study suggests that collective identities flattened normative differences between the Nestlé and Simexco networks. Although Nestlé emphasised environmental protection and indigenous land rights more than Simexco, we detected few significant differences in how coffee producers in these respective networks interpreted and applied 4C standards. Most producers rejected or downplayed 4C standards protecting indigenous land rights, and narrowly construed environmental standards.

---

[148] J Michaud, *Historical Dictionary of Peoples of the Southeast Asian Massif* (Scarecrow Press 2006).

[149] Interview with Y Nha, Ede coffee producer (Cư M'gar, Đăk Lăk, 5 March 2019).

[150] Interview with Ms Nga, Néstle group leader (Buôn Ma Thuột, Đăk Lăk, 9 November 2018).

[151] J Gibson, 'Group Identities and Theories of Justice: An Experimental Investigation into the Justice and Injustice of Land Squatting in South Africa' (2008) 70 Journal of Politics 700, 702–3.

[152] A study found that global coffee certification in Vietnam has not prevented the displacement of indigenous landowners. See Meyfroidt *et al.* (n 64) 1196.

VII. ANALYSIS

These findings problematise the portrayal of transnational certification as an interconnected series of contracts that transfer norms from global to local arenas. They show how complex local process of learning, socialisation and ideation, change the meanings ascribed to transnational standards. Rather than functioning as an integrated 'joined-up' regime, our findings suggest transnational certification is polycentric. Local decision-makers decentre and fragment the interpretation of certification standards.[153]

Staff working for Nestlé and (to a lesser extent) Simexco supported an integrated network that transferred transnational interpretations of the 4C standards to coffee producers. This system of top-down transfers was most effective where group leaders cultivated personal relationships with coffee producers. Acting as intermediaries, the group leaders leveraged local knowledge to communicate with coffee producers. They used local idioms and modes of expression to develop a shared epistemic grammar. In some cases, this 'fruitful communication'[154] conveyed the tacit knowledge (epistemic assumptions) underpinning transnational interpretations of the 4C standards.[155] It bridged epistemic differences and promoted convergence between transnational and local interpretations of the 4C standards.

Consider, for example, the relationship between understanding scientific farming and accepting the public good norms underlying 4C environmental protection standards. Coffee producers needed tacit knowledge about scientific farming practices to acquire an environmental awareness that coffee production impacts an interconnected web of ecologies that extends far beyond local communities. Coffee producers who adopted this scientific knowledge were more prepared to transcend local relational commitments to family and community and protect the environment for the public good. Scientific knowledge conveyed the epistemic grammar required to understand ecological interpretations of environmental protection. This transnational knowledge displaced local tacit understandings that would otherwise have infused the 4C standards with local meanings.

It turns out that the tacit knowledge (epistemic assumptions) underpinning transnational norms, such as environmental protection and indigenous land rights, is context-specific, and therefore difficult to formalise and communicate through systematic language in codes of practice, training manuals and contracts.[156] This suggests that the impersonal contractual relationships which constitute 'join-up' and integrate certification regimes are ineffective conduits for communicating transnational interpretations of 4C standards. The communication of transnational knowledge requires intermediaries who can form the personal connections that link transnational corporations with coffee producers. In addition, intermediaries span transnational and local systems of knowledge and can thus translate transnational tacit knowledge into concepts that are cognisable to coffee producers.[157]

---

[153] McGinnis and Ostrom (n 26).

[154] Teubner, 'Legal Irritants: How Unifying Law Ends up in New Divergences' (n 31).

[155] F Selnes and J Sallis, 'Promoting Relationship Learning' (2003) 67 Journal of Marketing 80.

[156] CJ Chen, 'The Effects of Knowledge Attribute, Alliance, Characteristics, and Absorptive Capacity on Knowledge Transfer Performance' (2004) 34 R&D Management 311; Abbott *et al.* (n 32).

This finding presents a quandary for transnational certification regimes. Although intermediaries recruited from coffee-growing communities can use relational connections to convey tacit knowledge, often they share similar tacit assumptions to those circulating within these communities. For example, many intermediaries in our study downplayed 4C protections for indigenous people, favouring instead a local normative preference for State security.

Another key finding was that collective identities structured the way coffee producers interpreted transnational standards. There was a reciprocal interaction between identity construction and tacit learning.[158] Processes of learning were enabled and restricted by collective identities. For example, the opportunities for tacit learning were shaped by the identity positions available to coffee producers, whereas the new identities facilitated tacit learning by encouraging coffee producers to participate in the communities of practice. This reciprocal interaction is illustrated by the cases where intermediaries promoted scientific knowledge. Coffee producers who adopted this tacit knowledge and identified with scientific farming became more receptive to the broad ecological implications of coffee production. This shift in identity made them more amenable to 4C standards that treated environmental protection as a public good.

In other circumstances, collective identities worked to constrain learning about the 4C standards. Intermediaries and coffee producers in some communities of practice cultivated a traditional farming identity that rejected or downplayed scientific farming practices. They advocated relational and spiritual traditions that rekindled a sense of community solidarity and shared purpose—a belief in local traditions. For example, they discussed the importance of *quận thế nóng thôn tập quán nông thôn* (country customs) and promoted *tình cảm quê hương* (sentiment of the home-village).[159] They also recounted boundary narratives[160] that distinguished inside (*nội)* knowledge from outside (*ngoài*) knowledge that was considered irrelevant or contrary to their identity. This traditional identity encouraged producers to accept environmental standards that directly impacted their local community, such as health and safety protocols, while rejecting 4C standards that protected the public good, and—by implication—strangers outside their community.

---

[157] For a discussion about culture-spanning intermediaries, see L Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400–1900* (Cambridge University Press 2002) 3–9.

[158] See N Beech *et al.*, 'Learning from Difference and Similarity: Identities and Relational Reflexive Learning' (2021) 52 Management Learning 393.

[159] Interviews with Mr Thắng, coffee producer (Krông Năng, Đăk Lăk, 23 February 2018); Ms Liên, coffee producer (Buôn Ma Thuột, Đăk Lăk, 25 June 2018); Ms Nga, coffee producer (Buôn Ma Thuột, Đăk Lăk, 9 November 2018).

[160] Owens *et al.* (n 40).

Some communities of practice gave rise to collective identities that resisted both transnational interpretations of 4C standards and local community beliefs. For example, in striving to belong, ethnic minority coffee producers aligned themselves with intermediaries and *Kinh* coffee producers who discouraged support for indigenous land rights. This position reflected views promoted by local party cadres and opposed the indigenous land rights advocated by the 4C standards and most highland ethnic minority communities.[161]

At this point, it is pertinent to ask under what conditions coffee producers might relax their identification with traditional practices and embrace the public good environmental norms advanced by the 4C standards? Michael Walzer associated this shift from particular to universal norms with moving from thick to thin normative perspectives.[162] He argued that thick norms are constructed from the detailed and concrete stories people tell about themselves and their social group. Normative views are 'determined by the group or groups with which one identifies, the group or groups to which one cannot be disloyal and still like oneself'.[163] This suggests that a shift from thick community-based understandings of environmental protection to the thin universal norms promoted by the 4C standards would require coffee producers to expand their loyalties beyond family and close-knit farming communities.

A difficulty in making this shift is that universal norms often lack social and economic relevance in communities that are shaped by relational transactions, village spirituality and traditional identities.[164] Most people in these communities know more about their families and local communities than about the nation or humanity as a whole and they are in a better position to address normative questions such as environmental protection for the people who can be described thickly.[165]

Some coffee producers managed to overcome the relational constraints imposed by traditional communities and expand their cognitive horizons. For example, in adopting scientific farming methods, they came to recognise that their actions impacted an ecological web that extended well beyond the village. However, for most producers, a shift from thick to thin normative perspectives will require a decoupling from their thick social moorings.[166]

---

[161] See Salemink (n 107) 388–409; Evans (n 109).

[162] See M Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (University of Notre Dame Press 1994) 10–26. Also see A Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (University of Chicago Press 2011).

[163] R Rorty, 'Justice as a Larger Loyalty' (1997) 4 Ethical Perspectives 139, 141.

[164] See K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times* 61 (2nd edn, Beacon Press 2001) 61.

[165] Rorty, 'Justice as a Larger Loyalty' (n 163) 12.

[166] See J Henrich, *The Weirdest People in the World* (Allen and Lane 2020) 297–305; N Luhmann, *Observations on Modernity* (W Whobrey trans, Stanford University Press 1998) 80–5.

Richard Rorty observed that globalisation plays a key role in this modernisation process because it induces a shift 'in our sense of who counts as "us," of what sort of people need to be consulted in the course of deliberation'.[167] He argued that globalisation brings people into contact with strangers and, 'as groups get larger, law has to replace custom, and abstract principles have to replace *phronesis* (practical wisdom)'.[168] This shift from thick to thin normative perspectives corresponds with an enlargement in the size and complexity of the groups with whom people interact and to whom they owe their loyalty.

There is potential for global markets to enlarge group loyalties.[169] For example, studies about cassava producers in the Vietnamese central highlands show how production networks exposed them to the environmental and social justice concerns of downstream consumers.[170] Lowland traders inserted themselves into local community relationships and then used their inside position to bring the producers closer to urban markets and consumers. As the producers interacted with strangers, the thick normative rules developed for closed rural communities were unable to deal with the new exchanges. Social complexity compelled them to adopt thin normative principles that could apply to a diverse range of people from different backgrounds with different expectations and beliefs.

Patrick Glen thought the shift to universal norms and cosmopolitan perspectives lay in resistance to 'closure or reification of human groups, or concepts of groups'.[171] This suggests that coffee producers are unlikely to adopt transnational interpretations of 4C standards unless they prune the dense interpersonal connections that support their traditional identities. Exposure to global markets offers a means of decoupling from tradition identities and lays the psychological foundations for observing thin external norms, such as the 4C environmental standards.

Another question raised by our study is whether Vietnam's authoritarian polity constrains how coffee producers engaged with the 4C certification standards. Our findings reveal two areas where this occurred. Firstly, the Vietnamese government does not act like a neutral observer, which is the assumed function of States in many comparative law studies about private transnational regulation.[172] Instead, it jealously protects national sovereignty against transnational standards that might privilege interests, norms and actors other than those favoured by the government. For example, local officials supported 4C sustainability standards that complemented government industrial development policies and repurposed biodiversity norms considered detrimental to productivity.[173] Officials also opposed 4C norms protecting indigenous land rights on national security grounds.

---

[167] R Rorty, 'Response to Habermas' in RB Brandom (ed), *Rorty and His Critics* (Wiley 2000) 56, 64.

[168] ibid.

[169] See generally Henrich (n 166) 297–305.

[170] P To *et al.*, 'Moral Economies and Markets: "Insider" Cassava Trading in Kon Tum, Vietnam' (2016) 57 Asia Pacific Viewpoint 168.

[171] See P Glenn, 'Cosmopolitan Legal Orders' in A Halpin and V Roeben (eds), *Theorising the Global Legal Order* (Hart 2009) 33.

[172] See eg Eberlein *et al.* (n 3); Bartley, 'Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards' (n 2).

The second area of governmental constraint concerns freedom of public association. Although Article 25 of the Vietnamese Constitution 2013 proclaims the right to form associations, in practice, the government tightly controls member-directed associations.[174] In non-authoritarian coffee-growing countries, NGOs can catalyse support for transnational coffee standards by forming local associations that work with coffee producers. For instance, studies in Indonesia have shown how socially progressive NGOs can convince coffee producers to support the environmental goals of coffee certification regimes.[175] Civil society actors have performed a similar role in some Latin American coffee-producing countries.[176] Organised civil society support for politically sensitive transnational standards is unlikely to emerge in Vietnam.[177] Government officials work with the Farmers Association to ensure that social organisations and public discourse supports party-State objectives.[178]

In summary, these findings show that the 4C standards encountered at least three different regulatory regimes as they passed through the TPNs. At the central level, Nestlé and Simexco are run by professionally trained staff who are organised according to legal rules and codes of conduct. In this rules-based system, the 4C standards are seen as legally enforceable transnational norms. It is assumed that TPNs function like integrated and 'joined-up' contracts that legally bind coffee producers to follow 4C standards. Viewed from this perspective, the certification system reflects the objectives of the UNGP, as the coffee buyers act as norm-makers and aim to fill 'governance gaps' in developing countries.[179]

Efforts to transplant transnational standards begin to unravel when TPNs engage actors at the local level. Transnational normative interpretations struggle to compete with the tacit assumptions underpinning local relational networks and collective identities. They also encountered an authoritarian State apparatus that repurposed environmental standards and opposed human rights. Although professional staff, especially in Nestlé's network, supported transnational normative interpretations, they could not simply bypass the communities of practice and transfer centrally encoded standards directly to the coffee producers. Communities of practice fragmented the 'joined-up' contracts forming the TPNs—producing polycentric regulation.[180] Attempts by Nestlé and Simexco to reduce normative divergence and promote transnational interpretations[181] faced intense regulatory competition from communities of practice and local governance authorities.

---

[173] Interviews with Mr Vinh, Đăk Lăk Department of Agriculture and Rural Development (Buôn Ma Thuột, Đăk Lăk, 22 September 2020); Mr Đông, senior staff transnational coffee company (Buôn Ma Thuột, Đăk Lăk, 28 November 2017). Also see Developing Sustainable Coffee in Dak Lac Province to 2020 and Orientation to 2030 (n 73).

[174] Kerkvliet (n 76); Gillespie *et al.* (n 143).

[175] M Ibna *et al.*, 'Certification and Farmer Organisation: Indonesian Smallholder Perceptions of Benefits' (2018) 54 Bulletin of Indonesian Economic Studies 387.

[176] R Ruben and G Zuniga, 'How Standards Compete: Comparative Impact of Coffee Certification Schemes in Northern Nicaragua' (2011) 16 Supply Chain Management: An International Journal 98.

[177] J Gillespie and NH Quang 'Between Authoritarian Governance and Urban Citizenship: Tree-Felling Protests in Hanoi' (2019) 56 Urban Studies 977.

[178] Salemink (n 107); Gillespie and Tran (n 112).

[179] The United Nations Guiding Principles on Business and Human Rights 2011 presuppose the conduit model of transnational norm diffusion. See Ruggie (n 3).

VIII. CONCLUSION

This article aims to reconceptualise transnational certification regimes. It shows that transnational standards do not simply traverse landscapes from the global to the local; they have a spatial impact that remakes production in developing countries through complex interactions with a wide range of actors and regulatory practices. Certification standards begin their journey at the transnational level as universal norms[182] but are then reassembled at the local level to reflect particularistic government policies, customary practices and collective identities. Thinking about transnational certification standards as an assemblage of global and local knowledge compels us to see them not as stable universal norms but rather as protean, highly localised regulatory processes.

This reconceptualisation emerges from our findings that coffee certification does not function like an integrated, 'joined-up' transnational legal order. One indicator of an integrated transnational legal order is convergence around a shared definition of problems and the appropriate normative responses.[183] Convergence requires producers in developing countries to accept the programmatic and conceptual goals of transnational certification regimes. Our study showed strong convergence around the programmatic goals of sustainable farming practices, especially the technical processes that improve productivity. Convergence was much weaker (or absent) with respect to scientific farming and the public good norms relating to human rights and environmental protection. The producers accepted the procedural programmatic goals of certification without accepting the normative objectives.[184]

---

[180] McGinnis and Ostrom (n 26) 15.

[181] For a discussion about the need to reinforce global interpretations of human rights conventions, see Partiti (n 26).

[182] T Halliday and G Shaffer, 'Transnational Legal Orders' in T Halliday and G Shaffer (eds), *Transnational Legal Orders* (Cambridge University Press 2015) 5–6.

[183] J Zeitlin and C Overdevest, 'Experimentalist Interactions: Joining up the Transnational Timber Legality Regime' (2020) Regulation & Governance <https://doi:10.1111/rego.12350>.

[184] In this respect, coffee certification resembles trends in the transnational legal order. See N McDonald, 'The Role of Due Diligence in International Law' (2019) 68 ICLQ 1041.

Another characteristic of an integrated transnational legal order is the institutionalisation of cooperation to advance transnational norms and processes.[185] Institutionalisation might involve information-sharing, as well as collaborative training and enforcement activities that link transnational and local actors. This study revealed some evidence of top-down institutionalised cooperation. For example, the transnational coffee corporations established processes designed to steer and coordinate the adoption of 4C standards. Cooperation broke down when the standards encountered the communities of practice. These self-organising groups of local actors acted semi-autonomously in reinterpreting and reassembling the 4C standards.

An additional feature of integrated transnational legal orders is the use of top-down regulation that bypasses nation States and local regulatory authorities.[186] Far from bypassing the State, transnational coffee certification dissolved at the local level into complex webs of political and community relationships. Government officials and party cadres played a leading role in shaping how coffee producers interpreted and applied 4C standards.

Rather than an integrated transnational legal order, our findings suggest that transnational certification is polycentric at both the transnational and local levels. At the transnational level certification resembles the polycentrism associated with some international conventions, such as the UNGP.[187] Transnational certification aims to integrate public international standards into the processes that transnational corporations employ to manage their risks.[188] This process is polycentric because public entities use transnational private actors and their rules and standards in the pursuit of public international goals. Since transnational private actors tend to share the belief systems underlying public international goals,[189] polycentrism at the transnational level generally produces normative convergence.

In contrast, when transnational certification standards encounter local actors and regulatory regimes, polycentrism often generates normative divergence. The certification architecture enables local actors, such as communities of practice, to function as semi-autonomous decision-making centres that determine their own tacit assumptions and interpretive beliefs.[190] Many local assumptions and beliefs differ widely from those informing transnational interpretations of certification standards. Consequently, when interpreted through local epistemic assumptions, environmental protection and human rights norms assume different meanings from those intended by transnational standard setters.

---

[185] Zeitlin and Overdevest (n 183).

[186] Halliday and Shaffer (n 182).

[187] P Aligica and V Tarko 'Polycentricity: From Polanyi to Ostrom and Beyond' (2012) 25 Governance: An International Journal of Policy, Administration, and Institutions 237; McGinnis and Ostrom (n 26).

[188] Partiti (n 26).

[189] See generally Auld (n 48); Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (n 50).

[190] McGinnis and Ostrom (n 26); Partiti (n 26).

This finding has broader implications for the transfer of transnational certification standards into developing countries. TNGOs based in Europe and North America formulate the human rights and environmental protection norms found in most transnational certification standards.[191] These norms reflect the epistemic assumptions that emerged from egalitarian social movements that influence liberal democracies.[192] As these norms diffuse into developing countries, they are likely to encounter a wide range of epistemic assumptions that differ from the egalitarian and cosmopolitan values informing the transnational standards.[193] This epistemic dissidence produces much of the observed local divergence from the normative objectives of transnational certification regimes.

If epistemic dissidence generates local divergence, then compliance with transnational standards requires more than strong central standards, monitoring and economic incentives.[194] This focus in the compliance literature on how individuals weight costs and benefits in responding to deterrents and incentives,[195] misses an important element of the compliance story. It is not that individuals in developing countries never respond pragmatically, but rather they are guided by collectively determined epistemic assumptions that differ from those informing transnational understandings of certification standards. Compliance in these circumstances requires a fundamental epistemic transformation—a change in the norms and beliefs that guide producers in developing countries.

This raises the question: how might transnational actors convey norms and epistemic precepts to producers? As we have shown, top-down communication is unlikely to convey the transnational tacit knowledge required to change local understandings and generate regulatory convergence. Another possibility is the use of local intermediaries who can leverage cross-cultural knowledge to explain transnational norms in ways that make sense and appeal to local sensibilities and belief systems.[196] Progressive civil society actors can also bridge epistemic differences between transnational and local understandings about human rights and environmental protection.[197] The use of culture-spanning local actors is constrained in authoritarian polities where governments limit the circulation of knowledge that conflicts with domestic policy imperatives. However, even without intermediaries and civil society actors, it is possible that social changes generated by globalisation might encourage producers to support the public-good norms underlying transnational human rights and environmental standards. For this to happen, they need to adopt cosmopolitan sympathies and extend their loyalties beyond families and local communities. Globalisation, and the accompanying engagement with downstream consumers, has the potential to broaden cognitive horizons—making producers more receptive to transnational public-good norms.

---

[191] Sarfaty (n 7); Bernstein and Cashore (n 4).

[192] ibid.

[193] There is vast literature but see Auld (n 48); Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (n 50).

[194] See generally Short *et al.* (n 61).

[195] ibid.

[196] Benton (n 157) 3–9.

[197] Ibna *et al.* (n 175).

Overall, these findings suggest that transnational certification does not function like a transnational legal order.[198] It lacks a central authority with powers to transfer stable universal norms and standards backed by coercive authority. But does the absence of law-like qualities mean that transnational certification is failing? If the expectation that private transnational regulation can transfer encoded norms into developing countries is abandoned, then local-level polycentrism looks more like regulatory adaption than regulatory failure. For example, in coffee certification the communities of practice repurposed environmental protection and human rights standards to suit different sets of local scales, policies and practices. Although local adaption results in divergence from central normative interpretations, it also has the capacity to bring transnational norms closer to local values and precepts, enabling them to influence local behaviour.

Another implication from our findings is that transnational regulatory orders do not fill governance 'gaps' in developing counties. There are no local regulatory vacuums for them to occupy. Rather, the interaction between transnational norms and local epistemic assumptions irritates and redirects the regulatory thinking of local actors.[199] It ensures that local regulatory thinking cannot always follow its own internal logic and—to some extent—is guided in directions that are compatible with transnational systems of thought.

---

[198] See Halliday and Shaffer (n 182).

[199] See Teubner, 'Self Constitutionalizing TNCs?: On the Linkage of "Private" and "Public" Corporate Codes of Conduct' (n 31).