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Supermarkets in India: Struggles over the Organization of Agricultural Markets and Food Supply Chains

AMY J. COHEN*

This article analyzes the conflicts and distributional effects of efforts to restructure food supply chains in India. Specifically, it examines how large retail corporations are presently attempting to transform how fresh produce is produced and distributed in the “new” India—and efforts by policymakers, farmers, and traders to resist these changes. It explores these conflicts in West Bengal, a state that has been especially hostile to supermarket chains. Via an ethnographic study of small producers, traders, corporate leaders, and policymakers in the state, the article illustrates what food systems, and the legal and extralegal rules that govern them, reveal about the organization of markets and the increasingly large-scale concentration of private capital taking place in India and elsewhere in the developing world.

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INTRODUCTION

There is perhaps nothing more fundamental to human wellbeing than food, and no more dramatic consequence of globalization than the transformation of the law and economics of food supply chains. Driving this transformation, many developing countries are re-regulating their food markets around the imperatives of large supermarket chains. Economists Thomas Reardon and Peter Timmer recently argued that “[m]arket-led development is now supermarket-led development” in countries throughout the Global South.¹ But, as economists know well, supermarket chains do not simply expand or enhance market-led growth—they fundamentally restructure how food markets work and the legal, jurisdictional, and geographical scales on which they operate. Indeed, the changes taking place throughout the developing world today recall those that have shaped the U.S. food experience over the past 150 years: the standardization and industrialization of agriculture, the demise of the small farmer, and, significantly, the development of legal mechanisms to achieve these ends.

This article explores how retail corporations are attempting to reshape how food is produced and distributed in the “new” India, and how they propose to use law to facilitate this market transformation. Via an ethnographic study of wholesale markets for fresh fruits and vegetables in West Bengal, the article suggests that in important, if also in complex and contradictory, ways, existing market transactions more closely approximate competitive exchange than the standardized, centralized, large-scale transactions required to support a supermarket. It argues that what we are presently witnessing in India is not, as policy analysts and supermarket proponents describe it, a shift from state to market-led food supply chains, but rather a transformation in the power relations that organize markets, and the legal and extralegal rules that govern them. As such, the article also suggests that legal scholars have an important role to play in clarifying and analyzing the kinds of legal and regulatory shifts that occur when food markets are rescaled from local or regional to national or transnational regimes.

In India, supermarkets are a burning topic of national debate. In September 2012, the Indian Cabinet reversed its longstanding exclusion

1. Thomas Reardon & C. Peter Timmer, *The Rise of Supermarkets in the Global Food System*, in GLOBALIZATION OF FOOD AND AGRICULTURE AND THE POOR 189, 209 (Joachim von Braun & Eugenio Díaz-Bonilla eds., 2007).

of foreign direct investment in food retail (think Walmart), despite immense political opposition. Along with domestic corporations, multinational retail chains aim to transform fragmented networks of small farmers and traders that end in the crowded local bazaar into highly rationalized sourcing systems that drastically limit the number of participants in market exchange, and end in the modern, air-conditioned, standardized supermarket. But despite remarkably persistent claims to the contrary, actually existing markets do not spring forth from abstract economic rules, nor do they assume any universal form. To the contrary, they coalesce in different ways in response to variable legal, social, and political interests and conditions.² This article thus examines the political economy of food in India and specifically in West Bengal, which is a state where protectionist legal policies and local economic and political interests have produced considerable resistance to the presence of domestic and multinational corporate capital in the buying and selling of food.

In West Bengal, wholesale markets for fresh fruits and vegetables developed in the shadow of two sets of legal rules. The first governs property—namely, land ceiling laws that impose a strict cap on the amount of land any one household can own. The second governs contract—namely, state regulations of agricultural markets that make contractual arrangements between farmers and private firms formally illegal. These two sets of legal rules have enabled small farmers and traders to engage in relatively decentralized and flexible forms of market exchange. To find out how these markets presently work, I interviewed roughly one hundred small horticulture farmers at four village sites. Here, for example, is a conversation I had with about fifteen farmers in a village about a two-hour drive from Kolkata (formerly Calcutta). I was there discussing the plans of an Indian retail corporation, Reliance Retail Limited (hereinafter “Reliance”), to enter into long-term contracts with farmers for agricultural produce—a common Western model of supermarket procurement that Reliance calls “farm to fork.” “No no no no,” one farmer began this exchange, “we won’t allow it. Contract means you are under someone’s restriction.”³ But what if the company gives you a

2. For recent insightful illustrations, see generally BERNARD E. HARCOURT, *THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER* (2011); Justin Desautels-Stein, *The Market as a Legal Concept*, 60 *BUFF. L. REV.* 387 (2012).

3. Interview with farmers in Santoshpur Village (near Kamdevpur) in District North 24 Paraganas, West Bengal (Mitra Routh trans.) (Sept. 21, 2010). I conducted all the interviews referenced in this article. For almost all interviews with farmers, I was accompanied by Mitra Routh, who translated my questions and my interlocutors’ answers, most of which we digitally recorded (on occasion I wrote notes by hand). Ratnesh Bhattacharya transcribed these recordings, translating much of the Bengali portions into English. Occasionally, and especially when multiple interlocutors were speaking at once, Bhattacharya was able to add additional translations or make

very good price, I asked, and then it offers to lock in that price via a two-week contract? A chorus of farmers rejected my hypothetical arrangement arguing that the market could go up during those two weeks. And if it goes down?, I countered. That same chorus replied that it would “tolerate the loss.” “No farmer will enter into a binding contract with Reliance or any company,” one insisted, “for the fresh products, we can understand the market, what will be the market rate for our products.”⁴ These farmers clearly distrusted formal contracts with large economic actors, preferring instead to sell fresh produce via more informal arrangements with smaller intermediaries often at a daily spot market price—a preference that endured not despite the market’s constant price fluctuations but rather because of its constant price fluctuations mediated by small traders selling and reselling commodities. “Let more people come,” they repeatedly told me.⁵ Within this crowded (if also stratified) system, farmers argued that they could assess supply and demand and negotiate for their price.

National and multinational supermarkets in India need a legal mechanism to replace this existing configuration of wholesale trade with a more fixed, formalized, and centralized procurement system that will allow them to amass the economies of scale necessary to undercut small retail outlets on price. They also need a legal mechanism to create an “economy of quality”—that is, to impose particular production standards on farmers designed to attract privileged consumers.⁶ As my conversation with farmers suggests, the mechanism supermarkets desire is the legalization of production contracts where farmers agree not only to deliver a certain quantity of produce for a certain price, but also to use particular seeds, pesticides, fertilizers, and other kinds of standardized technological management practices supplied to them and monitored by the contractor.

In this article, I analyze how restructuring the laws governing food markets will affect not only practices of retail and consumption, but primarily practices of agricultural production and trade. To that end, I explore how various actors propose to use law (specifically, rules of contract, property, and state licensing regimes) alternatively to challenge or advance the increasingly large-scale concentration of private capital

small corrections. Monalisa Saha consulted on a few of these translations. Throughout this article I therefore indicate whether the translations are performed by Routh, Bhattacharya, or Saha (or Namgyal Sherpa for one interview in Siliguri market).

4. *Id.* (Mitra Routh & Monalisa Saha trans.).

5. *Id.* (Mitra Routh trans.).

6. See Philip McMichael & Harriet Friedmann, *Situating the ‘Retailing Revolution,’* in *SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS: TRANSFORMATIONS IN THE PRODUCTION AND CONSUMPTION OF FOODS* 291, 303, 315 n.1 (David Burch & Geoffrey Lawrence eds., 2007).

taking place in India and elsewhere in the developing world. The story I tell is one of competing ideologies of markets. The first idea, suggested by the farmers above, is of the market as a limited source of equity for small farmers and traders. Some readers will find this suggestion surprising—it challenges popular understandings of “middlemen” as simply leeching off farmers, and it proposes instead that market intermediaries are also valued for their role in the supply chain, providing trusted connections among sellers and buyers. The second idea, suggested by the owners and managers of supermarket chains, is a more familiar description of the market as a source of national and multinational corporate competition. This idea of the market, however, is characteristically justified by its proponents in social welfare terms—via its capacity to produce large-scale efficiencies and lower consumer prices. Layered onto this story are competing ideas about how private actors coordinate market activity. Existing local and regional food markets rely more on extralegal networks grounded in particular forms of sociality and trust. By contrast, globalizing food markets dominated by large corporate retail chains rely more on liberal legal rules of contract—although in India, as elsewhere, this dichotomy is far from complete. In this article, I critically evaluate all sides of these divides: existing markets’ claims to equity grounded in social relations and supermarkets’ claims to efficiency grounded in law. As we shall see, there are deep structural inequalities in existing markets (although many small producers profess to prefer them to a new corporate regime). At the same time, supermarkets struggle to compete with local actors and the market efficiencies they have created, as well as to establish their own informal patronage-based networks—not simply new state protections encoded in formal legal rules.

I begin in Part I with a brief description of the rise of corporate supermarkets in the West and the legal and regulatory conditions that made their market dominance possible. In Part II, I trace the spread of supermarkets to developing economies including India. In a country where retail (and mostly small-scale retail) is the second-largest employer after agriculture (and mostly small-scale agriculture),⁷ supermarkets stand to have significant effects on opportunities for capital accumulation and social wellbeing for the hundreds of millions of Indians that service existing food supply chains. In order to examine these potential effects, in Part III, I offer a detailed analysis of the existing markets that link growers to consumers in West Bengal. In addition to

7. See ARPITA MUKHERJEE & NITISHA PATEL, FDI IN RETAIL SECTOR: INDIA 53 (2005); Vijay Kumar et al., *Organised Food Retailing: A Blessing or a Curse?*, ECON. & POL. WKLY., May 17–23, 2008, at 67, 68.

farmers, I interviewed wholesale traders, brokers, and government officials at two of the state's largest wholesale markets over the course of five months. Despite calls by corporate leaders, Indian economists, and the central Indian government for West Bengal to deregulate and liberalize these markets, what I found was a highly diffuse regulatory regime—some of it state-based but most of it not—that structures, in complex ways, the market opportunities of small farmers and traders.

In Part IV, I explore how national and global retail chains are attempting to reshape food markets in West Bengal. More specifically, I illustrate how firms wish to use contract farming to replace the existing configuration of commodity markets embedded in extralegal networks with state-sanctioned forms of vertical coordination. This potential shift will produce qualitatively different arrangements of capital concentration, standardization, and control. It also reflects divergent, and perhaps incommensurable, ideologies of markets and the values and actors they are designed to accommodate and support. I conclude by suggesting that the rise of corporate retail chains implicates hotly contested questions of economic justice, which, in turn, reflect competing normative ideas about the legal regulation of markets. In particular, the global spread of supermarkets demands that policymakers in developing countries consider whether to adopt dominant American ideals of “consumer welfare” as the single overarching regulatory principle that should inform how they govern their markets for food, or whether they should seek other regulatory alternatives.

I. ON THE RISE OF SUPERMARKETS IN THE WEST

A twentieth century U.S. invention, supermarkets initially sold to consumers whatever was available from food processors and manufacturers, the primary actors in food systems.⁸ Over the last few decades, however, supermarkets have reversed the way power flows in food supply chains. They now dictate what kinds of goods get produced, processed, manufactured, and sold.⁹ Indeed, supermarkets have amassed what Alexandra Hughes describes as a “hegemonic position in relation to other fractions of capital.”¹⁰

What were the political and economic conditions that made this

8. See, e.g., Jason Konefal, Carmen Bain, Michael Mascarenhas & Lawrence Busch, *Supermarkets and Supply Chains in North America*, in SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS, *supra* note 6, at 268, 268–69; *Change at the Check-Out*, *ECONOMIST*, Mar. 4, 1995, at 3–4.

9. Konefal et al., *supra* note 8, at 268–69.

10. Alexandra Hughes, *Forging New Cultures of Food Retailer–Manufacturer Relations?*, in RETAILING, CONSUMPTION AND CAPITAL: TOWARDS THE NEW RETAIL GEOGRAPHY 90, 96 (Neil Wrigley & Michelle Lowe eds., 1996).

oligopolistic control over other actors in the food supply chain possible? In the West, corporate retail chains consolidated market power by taking advantage of the neoliberal turn in the world economy, as well as by exploiting the tensions and contradictions within it. In the late 1980s and 1990s, supermarkets in the United States benefited from relaxed antitrust law and enforcement that enabled a series of large-scale mergers and acquisitions.¹¹ By 2005, the largest five U.S. supermarkets had captured 48 percent of the market, up from 24 percent in 1997¹² and 19 percent in 1992.¹³ In the United Kingdom, supermarket consolidation began a bit earlier. But, as Neil Wrigley observes, by the mid-1980s, the regulatory environments in the United States and the United Kingdom were *laissez-faire* in similar ways.¹⁴ By the mid-2000s, the leading five British supermarkets controlled 69.3 percent of the grocery retail market, compared to 63 percent in 1999 and 29.4 percent in 1973.¹⁵ Other advanced industrial countries experienced similar trends. By the mid-2000s, the top five supermarkets sold 80 percent of total food retail in France, 62 percent in Germany, and 58 percent in Spain.¹⁶ Likewise, in Australia, the top three supermarket chains had captured 80 percent of the grocery market.¹⁷

Supermarkets profited not only from deregulatory policies at home but also from market liberalization abroad, which included global shifts in the structure of agricultural production and trade.¹⁸ For much of the

11. See, e.g., Ronald W. Cotterill, *Mergers & Concentration in Food Retailing: Implications for Performance & Merger Policy*, 2 FOOD MKTG. POL'Y CTR. RES. REP. 1, 1 (1989); Ronald W. Cotterill, *Continuing Concentration in Food Industries Globally: Strategic Challenges to an Unstable Status Quo*, 49 FOOD MKTG. POL'Y CTR. RES. REP. 1, 1 (1999). See also Konefal et al., *supra* note 8, at 272–73; Neil Wrigley, *The Consolidation Wave in U.S. Food Retailing: A European Perspective*, 17 AGRIBUSINESS 489, 489, 495–96 (2001). For specific data on supermarket mergers in the United States, see ANDREW SETH & GEOFFREY RANDALL, *THE GROCERS: THE RISE AND RISE OF THE SUPERMARKET CHAINS* ch. 8 (2d ed. 2001).

12. Corinna Hawkes, *Dietary Implications of Supermarket Development: A Global Perspective*, 26 DEV. POL'Y REV. 657, 657 (2008).

13. Jason Konefal, Michael Mascarenhas & Maki Hatanaka, *Governance in the Global Agro-Food System: Backlighting the Role of Transnational Supermarket Chains*, 22 AGRIC. & HUM. VALUES 291, 296 (2005). See also Cotterill, *Continuing Concentration in Food Industries Globally*, *supra* note 11, at 3–4 (showing marked increase between 1987 and 1998 in the local market shares of the top four supermarkets in ninety-four of the top one hundred U.S. cities).

14. See Neil Wrigley, *Antitrust Regulation and the Restructuring of Grocery Retailing in Britain and the USA*, 24 ENV'T & PLAN. A 727, 729–31, 741, 747 (1992).

15. Hawkes, *supra* note 12, at 657.

16. Geoffrey Lawrence & David Burch, *Understanding Supermarkets and Agri-food Supply Chains*, in SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS, *supra* note 6, at 4.

17. *Id.* at 8.

18. In a series of articles, food scholars Harriet Friedmann and Philip McMichael describe these shifts as “food regimes” in order to explore how national and world agricultural systems shape dynamics of capital accumulation and dispossession at different historical moments. See most prominently Harriet Friedmann & Philip McMichael, *Agriculture and the State System: The Rise and Decline of National Agricultures, 1870 to the Present*, 29 SOCIOLOGIA RURALIS 93 (1989).

twentieth century, states protected their national food systems via welfarist regulations, including agricultural subsidies, controls on imports, commodity stabilization programs, and government purchases of food.¹⁹ There was, of course, global exchange: most prominently, the United States exported its surplus grain and its agro-industrial technologies as a geopolitical Cold War strategy.²⁰ Over the past few decades, however, agriculture has become a world economic sector subject to the demands of transnational corporate capital as much as the demands of states.²¹ In the aftermath of the debt crisis in the early 1980s, international financial institutions imposed conditions on loan restructuring that included reducing barriers to the global sourcing of agricultural commodities through measures such as eliminating agricultural subsidies and import restrictions and dismantling marketing boards and price supports for consumer staples.²² Agriculture also became subject to free trade agreements such as the WTO's Agreement on Agriculture.²³ Supermarket chains thus began to invest in regions with lower labor and production costs to source produce globally for year-round consumption in the West.²⁴

19. *See id.* at 103 (describing the period post World War I and especially post World War II as a time of "unusually strong state protection" of national food production and consumption). *See also* Philip McMichael, *Virtual Capitalism and Agri-Food Restructuring*, in *RESTRUCTURING GLOBAL AND REGIONAL AGRICULTURES: TRANSFORMATIONS IN AUSTRALASIAN AGRI-FOOD ECONOMIES AND SPACES 3* (David Burch, Geoffrey Lawrence & Jasper Goss eds., 1999); Philip McMichael, *Global Development and the Corporate Food Regime*, in *11 NEW DIRECTIONS IN THE SOCIOLOGY OF GLOBAL DEVELOPMENT 265, 271-72* (Frederick H. Buttel & Philip McMichael eds., 2005).

20. The United States used "food aid" as part of a broader Cold War project to spread democracy and capitalism. In addition to cultivating allies, however, food aid also transformed diets and created dependency on imported U.S. wheat in developing countries. *See* Harriet Friedmann, *The Political Economy of Food: The Rise and Fall of the Postwar International Food Order*, 88 *AM. J. SOC.* S248, S260-71 (1982). Along with private foundations, the U.S. government also helped catalyze "green revolutions" based on its own high intensity industrial approach to farming, which typically required developing states to subsidize the use of imported seeds and pesticides, high quality irrigation, and petroleum-based fueled machinery. For a critical evaluation of the distributional and ecological effects of the Green Revolution in India, see TONY WEIS, *THE GLOBAL FOOD ECONOMY: THE BATTLE FOR THE FUTURE OF FARMING* 106-10 (2007).

21. McMichael, *Global Development and the Corporate Food Regime*, *supra* note 19, at 280-81.

22. *See, e.g.*, McMichael, *Virtual Capitalism and Agri-Food Restructuring*, *supra* note 19, at 8-16; McMichael, *Global Development and the Corporate Food Regime*, *supra* note 19, at 276-80.

23. Agreement on Agriculture, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 *U.N.T.S.* 410.

24. Between 1990 and 2001, world trade in fruits and vegetables increased over 30 percent. OLI BROWN WITH CHRISTINA SANDER, *SUPERMARKET BUYING POWER: GLOBAL SUPPLY CHAINS AND SMALLHOLDER FARMERS* iii (2007). The United States increased its imports at rates of approximately 8 percent per year. Sandra R. Cuellar, *Marketing Fresh Fruit and Vegetable Imports in the United States: Status, Challenges, and Opportunities 3* (Dep't Applied Econ. & Mgmt., Cornell Univ., R. B. 02-04, Apr. 2002).

Supermarkets also developed new infrastructures and technologies that similarly reflected broader shifts in the world economy. They labored to transform food systems from Fordist models of mass production and consumption, which were managed by national regulation, to post-Fordist models of flexible specialization suited to increasingly diverse consumption choices and governed by private standards.²⁵ To that end, European and American retailers developed computerized bar codes to create highly responsive stock-control and tracking systems.²⁶ These systems enabled retailers to require suppliers to adopt just-in-time practices to maintain quick turnovers of retail stock, shorten lead times on deliveries, and reduce warehouse space.²⁷ Likewise, supermarkets developed computerized management systems to calibrate labor practices quite precisely to fluctuations in consumer demand.²⁸

Supermarkets also used their technological capacity to monitor all points of a supply chain in order to develop their own brands or private labels and thus to compete directly with manufacturers and suppliers.²⁹ Even more, they leveraged their technological oversight and control to capitalize on a political environment in which governments were increasingly willing to devolve regulatory power from state agencies to private firms because private firms were thought to be more nimble,

25. See, e.g., Michelle Lowe & Neil Wrigley, *Towards the New Retail Geography*, in *RETAILING, CONSUMPTION AND CAPITAL*, *supra* note 10, at 3, 9 (criticizing scholars for analyzing the post-Fordist idea of flexible specialization by examining transformations in manufacturing rather than also in retailing and consumption); Konefal et al., *supra* note 13, at 293–96. Cf. William H. Friedland, *Commentary on Part III: 'Creating Space for Food' and 'Agro-Industrial Just-In-Time'*, in *GLOBALISING FOOD: AGRARIAN QUESTIONS AND GLOBAL RESTRUCTURING* 226, 228 (David Goodman & Michael J. Watts eds., 1997) (pointing out the dual nature of the post-Fordist food system: “How shall we characterize a system which manufactures wheat, chickens, milk, etc. on a mass production basis while, at the same time, producing artisanal stone-ground wheat, free-range and/or organic chickens, and unhomogenised and/or unpasteurised milk in glass bottles?”).

26. See, e.g., NELSON LICHTENSTEIN, *THE RETAIL REVOLUTION: HOW WAL-MART CREATED A BRAVE NEW WORLD OF BUSINESS* 43–44 (2009).

27. See Lowe & Wrigley, *supra* note 25, at 9–11. Walmart, for example, provides suppliers with retail information and then makes them responsible for setting and meeting highly specific targets for volume, quality, price, and returns—indeed, the supplier is not paid until a customer purchases an item. LICHTENSTEIN, *supra* note 26, at 51–52; C. Peter Timmer, *Food Policy in the Era of Supermarkets: What's Different?*, in *THE TRANSFORMATION OF AGRI-FOOD SYSTEMS: GLOBALIZATION, SUPPLY CHAINS AND SMALLHOLDER FARMERS* 67, 74 (Ellen B. McCullough, Prabhu L. Pingali & Kostas G. Stamoulis eds., 2008).

28. Lowe & Wrigley, *supra* note 25, at 11.

29. See, e.g., David Burch & Jasper Goss, *Global Sourcing and Retail Chains: Shifting Relationships of Production in Australian Agri-foods*, 64 *RURAL SOC.* 334, 335 (1999); David Burch & Geoff Lawrence, *Supermarket Own Brands, Supply Chains and the Transformation of the Agri-Food System*, *INT'L J. SOC. AGRIC. & FOOD*, July 2005, at 1, 2; David Burch & Geoffrey Lawrence, *Supermarket Own Brands, New Foods and the Reconfiguration of Agri-food Supply Chains*, in *SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS*, *supra* note 6, at 100.

flexible, and adaptive to changing conditions on the ground.³⁰ Supermarkets positioned themselves as authorities on food quality and safety by developing private standards and third-party accreditation schemes that promise food supply chain “traceability.”³¹ They, in turn, used these market-driven standards to vie for high-end consumers who increasingly value factors such as choice and health as much as quantity and price.³² As we shall see, this “economy of quality”³³ has placed new demands on small farmers who struggle to comply with rigorous production standards, often without either state or corporate assistance.³⁴

Finally, supermarkets have turned themselves into not only regulatory agencies but also sources of finance capital. Several chains have established their own banking operations that sell credit and insurance.³⁵ Supermarkets also behave like financial institutions—for example, leveraging properties to generate investment funds and delaying pay-

30. On the intersection of public and private food governance, see, e.g., TERRY MARSDEN, ANDREW FLYNN & MICHELLE HARRISON, *CONSUMING INTERESTS: THE SOCIAL PROVISION OF FOODS* (2000) (chapter six: “The Retailers: The Emergence of Retailer-led Food Governance”); Terry Marsden & Neil Wrigley, *Retailing, the Food System and the Regulatory State*, in *RETAILING, CONSUMPTION AND CAPITAL*, *supra* note 10, at 33; Thomas Reardon, C. Peter Timmer, Christopher B. Barrett & Julio Berdegué, *The Rise of Supermarkets in Africa, Asia, and Latin America*, 85 *AM. J. AGRIC. ECON.* 1140, 1145–46 (2003); Thomas Reardon, C. Peter Timmer & Julio Berdegué, *The Rapid Rise of Supermarkets in Developing Countries: Induced Organizational, Institutional, and Technological Change in Agri-Food Systems*, in *THE TRANSFORMATION OF AGRIFOOD SYSTEMS*, *supra* note 27, at 47, 58–61; McMichael & Friedmann, *supra* note 6, at 297–98.

31. For a detailed description of various private standard schemes, see Doris Fuchs, Agni Kalfagianni, & Maarten Arentsen, *Retail Power, Private Standards, and Sustainability in the Global Food System*, in *CORPORATE POWER IN GLOBAL AGRIFOOD GOVERNANCE* 29 (Jennifer Clapp & Doris Fuchs eds., 2009); Spencer Henson & John Humphrey, *Private Standards in Global Agri-Food Chains*, in *PRIVATE STANDARDS AND GLOBAL GOVERNANCE: ECONOMIC, LEGAL AND POLITICAL PERSPECTIVES* 98 (Axel Marx, Miet Maertens, Johan Swinnen & Jan Wouters eds., 2012).

32. See Hazel R. Barrett et al., *From Farm to Supermarket: The Trade in Fresh Horticultural Produce from Sub-Saharan Africa to the United Kingdom*, in *GEOGRAPHIES OF COMMODITY CHAINS* 19, 19 (Alex Hughes & Suzanne Reimer eds., 2004); Spencer Henson & Thomas Reardon, *Private Agri-Food Standards: Implications for Food Policy and the Agri-Food System*, 30 *FOOD POL'Y* 241, 243–44 (2005); Lawrence Busch & Carmen Bain, *New! Improved? The Transformation of the Global Agrifood System*, 69 *RURAL SOC.* 321, 329 (2004). To be sure, there is a rich and critical debate about food standards governed primarily by markets rather than states. See, e.g., *id.* at 335, 342.

33. McMichael & Friedmann, *supra* note 6, at 303.

34. See, e.g., Burch & Lawrence, *Supermarket Own Brands, Supply Chains and the Transformation of the Agri-Food System*, *supra* note 29, at 12–13; Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 62; KEVIN CHEN, ANDREW W. SHEPARD & CARLOS DA SILVA, *CHANGES IN FOOD RETAILING IN ASIA: IMPLICATIONS OF SUPERMARKET PROCUREMENT PRACTICES FOR FARMERS AND TRADITIONAL MARKETING SYSTEMS* 23–27 (FAO 2005).

35. David Burch & Geoffrey Lawrence, *Towards a Third Food Regime: Behind the Transformation*, 26 *AGRIC. HUM. VALUES* 267, 276 (2009).

ment to suppliers as a means of accessing capital at no cost.³⁶

In sum, supermarkets consolidated their political and economic power during our present political moment, which is characterized by global agricultural markets; flexible forms of production, labor, and consumption; technological innovation; and a legal/regulatory environment amenable to their interests. Taken together, supermarkets reached unprecedented levels of economic concentration in the advanced industrialized economies of the Global North. When they found their markets at home highly saturated, they looked, as capital always does, to new opportunities for accumulation and control.

II. INDIA AND THE GLOBAL SPREAD OF SUPERMARKETS

Since 1990, supermarket chains have expanded their reach enormously in the developing world. They began with markets targeted at third-world elites and then spread out to less affluent consumers, often beginning in locations where urbanization and impersonal social relations made life more conducive to modern forms of shopping and consumption.³⁷ The global expansion of big retail was both rapid and dramatic—aided, again, by structural adjustment programs that required countries to open their retail markets to foreign investment.³⁸ In the early 1990s, supermarkets' share of food sales in countries in South America and Central Europe was only about 5 to 10 percent; in one decade, it increased to about 50 to 60 percent.³⁹ About five to seven years later, countries in Southeast Asia and Central America experienced similar, even faster, growth—by the mid-2000s, supermarkets had captured 30 to 50 percent of market share.⁴⁰ China's growth was particularly dramatic: the first supermarket opened its doors in 1990, and by 2002 supermarkets controlled around 30 percent of urban grocery purchases with an annual growth rate of roughly 30 to 40 percent.⁴¹ Thomas Reardon and Peter Timmer report that supermarkets in China

36. *Id.* at 276–77.

37. See Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 49, 52; Reardon et al., *The Rise of Supermarkets in Africa, Asia, and Latin America*, *supra* note 30, at 1140–42.

38. For example, in the aftermath of the East Asian debt crisis, Indonesia permitted foreign investment in retail as part of its IMF bailout package. See, e.g., *Indonesia—Memorandum of Economic and Financial Policies*, INTERNATIONAL MONETARY FUND para. 39 (Jan. 15, 1998), available at <http://www.imf.org/external/np/loi/011598.htm>.

39. Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 49–50; Thomas Reardon, C. Peter Timmer & Bart Minten, *Supermarket Revolution in Asia and Emerging Development Strategies to Include Small Farmers*, 109 PNAS 12332, 12332 (2012).

40. Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 50; Reardon et al., *Supermarket Revolution in Asia*, *supra* note 39, at 12332. For more country specific data, see Reardon & Timmer, *supra* note 1, at 191–92.

41. Dinghuan Hu, Thomas Reardon, Scott Rozelle, Peter Timmer & Honglin Wang, *The*

and Latin America, “already buy from local producers twice as much produce as either of those areas export to the rest of the world.”⁴² More recently, large retail chains have ventured into markets in African countries.⁴³

When compared against the historical growth of supermarkets in the Global North, these are astonishing rates. Latin America, for example, experienced in one decade a rate of supermarket development that took the United States five decades to achieve.⁴⁴ Foreign investment plays a critical role in explaining this difference.⁴⁵ Whereas early American chain stores developed from the bottom up via lengthy periods of market competition and innovation,⁴⁶ contemporary multinational supermarket chains enter new markets flush with capital that they use to acquire smaller existing domestic chains and independent groceries, to rent or buy large plots of urban retail space, and to sustain their operations, even if initially at a loss.⁴⁷ Indeed, in Latin America, between 70 and 80 percent of the five leading supermarket chains are owned by multinationals.⁴⁸ Analysts likewise report that in “China, Vietnam, Thailand, Indonesia, Malaysia, and Taiwan, on average approximately three of the top six chains are foreign.”⁴⁹ Wal-Mart Stores, Inc. (hereinafter “Walmart”) alone expanded by 50 percent in developing countries between 2001 and 2005,⁵⁰ shortly after then-CEO David Glass announced Walmart’s ambition “to dominate North America first, then South America, and then Asia, and then Europe.”⁵¹ Supermarket pene-

Emergence of Supermarkets with Chinese Characteristics: Challenges and Opportunities for China’s Agricultural Development, 22 DEV. POL’Y REV. 557, 557–58 (2004).

42. Reardon & Timmer, *supra* note 1, at 208.

43. *Id.* at 193–94.

44. Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 49.

45. *Id.* at 48; *see, e.g.*, Hu et al., *supra* note 41, at 569 (discussing the relaxation of foreign direct investment regulations in China).

46. *See generally* MARC LEVINSON, *THE GREAT A&P AND THE STRUGGLE FOR SMALL BUSINESS IN AMERICA* (2011).

47. It would also appear that some chains use their capital to bribe local officials for licenses and permits. *See, e.g.*, Mike Koehler, *Foreign Corrupt Practices Act Enforcement as Seen Through Wal-Mart’s Potential Exposure*, WHITE COLLAR CRIME REP., Sept. 21, 2012, at 1, 6–7 (reporting that Walmart is now investigating alleged violations of the Foreign Corrupt Practices Act in Mexico, Brazil, China, South Africa, and India).

48. Thomas Reardon & C. Peter Timmer, *Transformation of Markets for Agricultural Output in Developing Countries Since 1950: How has Thinking Changed?*, in 3 HANDBOOK OF AGRICULTURAL ECONOMICS—AGRICULTURAL DEVELOPMENT: FARMERS, FARM PRODUCTION AND FARM MARKETS 2807, 2834 (Robert Evenson & Prabhu Pingali eds., 2007). For general analysis, *see* David Meyer, *What’s Eating Latin America?*, FOREIGN POL’Y, Mar. 1, 2003, at 89.

49. Reardon et al., *Supermarket Revolution in Asia*, *supra* note 39, at 12334.

50. Hawkes, *supra* note 12, at 657.

51. STACY MITCHELL, *BIG-BOX SWINDLE: THE TRUE COST OF MEGA-RETAILERS AND THE FIGHT FOR AMERICA’S INDEPENDENT BUSINESSES* 16 (2006) (quoting David Glass).

tration is also reproducing levels of capital concentration common in the Global North. For example, in Latin America, the largest five chains in each country represent 65 percent of retail sales.⁵² Indeed, policy analysts “predict that it is not unrealistic to imagine future global markets in which the sale of food is controlled by four to five global firms with a handful of regional and national companies.”⁵³

India is an intriguing counter-example to this global trend. With its growing middle class,⁵⁴ it is considered by investors as one of the most attractive retail markets in the world.⁵⁵ Still, roughly 95 percent of India’s \$450 billion retail market remains in the hands of what policy analysts call the “unorganized” or “informal” retail sector.⁵⁶ With approximately eleven to fifteen million retail outlets,⁵⁷ this sector employs an estimated forty million people.⁵⁸ These retail outlets are managed by owners or local caretakers who are often family members. They procure goods locally through highly decentralized supply chains without standardized or transparent accounting or management practices.⁵⁹

Approximately 60 percent of these informal retail establishments sell food.⁶⁰ Small stand-alone grocery stores or “kirana stores” sell non-perishable food and household items (only 4 percent are larger than 500

52. Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 52; Reardon & Timmer, *supra* note 48, at 2834.

53. BROWN WITH SANDER, *supra* note 24, at 1.

54. The actual size of India’s middle class is debated. Three hundred million is a popular figure. *See, e.g.*, R.K Maheshwari & Ekta Rastogi, *Changing Face of Indian Consumerism in Context of Food Retail*, 9 S. ASIAN J. SOCIO-POLITICAL STUD. 84, 84 (2009). That figure, however, is likely widely overstated. The U.S. State Department more cautiously ventures that “700 million Indians live on \$2 per day or less, but there is a large and growing middle class of more than 50 million Indians with disposable income ranging from 200,000 to 1,000,000 rupees per year (\$4,166-\$20,833).” *India (01/09)*, U.S. DEPT. OF STATE, <http://www.state.gov/outofdate/bgn/india/105759.htm> (last visited Sept. 12, 2013).

55. But compare the A.T. Kearney Global Development Retail Index for 2012 and 2013. In 2013, India slipped from the fifth to the fourteenth most attractive developing economy for retail expansion. *See Consumer Products & Retail*, A.T. KEARNEY, <http://www.atkearney.com/consumer-products-retail/global-retail-development-index> (last visited Sept. 12, 2013).

56. *Retail Sector in India Growing at Phenomenal Pace*, TIMES OF INDIA (June 25, 2012, 5:12 am), http://articles.timesofindia.indiatimes.com/2012-06-25/news/32408603_1_retail-sector-retail-industry-global-retail-development-index; *Carrefour in India: A Wholesale Invasion*, ECONOMIST, May 22, 2010, at 70.

57. PRICEWATERHOUSECOOPERS, FROM BEIJING TO BUDAPEST: NEW RETAIL AND CONSUMER GROWTH PATTERNS IN TRANSITIONAL ECONOMIES 66 (3d ed. 2004–2005) (estimating twelve to fifteen million small retail outlets); Mohan Guruswamy, Kamal Jeevan, Prakash Mohanty & Thomas Korah, *FDI in India’s Retail Sector: More Bad than Good?*, 40 ECON. & POL. WKLY. 619, 620 (2005) (estimating eleven million).

58. Guruswamy et al., *supra* note 57, at 622; Kumar et al., *supra* note 7, at 68.

59. *See, e.g.*, MUKHERJEE & PATEL, *supra* note 7, at 26.

60. Guruswamy et al., *supra* note 57, at 619; Maheshwari & Rastogi, *supra* note 54, at 84.

square feet⁶¹). Local bazaars host a number of fresh fruit, vegetable, fish, meat, and poultry stalls (each is often no larger than fifty square feet), and street vendors bicycle carts of produce through neighborhood streets. Unlike corporate retail, none of these stores use a self-service model; customers ask for what they want and the vendor weighs and packages goods. Rather than browsing and self-selecting, there is banter and bargaining. Sellers will make deliveries and extend informal credit to poor consumers.⁶²

To explain the resilience of this traditional retail sector, policy analysts often cite India's history of economic protectionism and especially its refusal to allow foreign direct investment in food retail markets.⁶³ To offer only the briefest summary here, after independence, the central government imposed a number of controls on private enterprise aimed at reducing poverty and inequality. These included direct state ownership of financial and manufacturing institutions as well as a licensing scheme to oversee private capital.⁶⁴ In the agricultural and food sector, regulatory protections included limiting futures trading,⁶⁵ establishing minimum support prices for major agricultural commodities, creating a public distribution system to provide subsidized foods in local ration shops,⁶⁶ and creating state-level regulated marketing acts (discussed at length below).

Unlike many developing countries, India resisted wide-ranging neoliberal economic reforms until 1991. That year brought about a shift

61. MUKHERJEE & PATEL, *supra* note 7, at 53; Guruswamy et al., *supra* note 57, at 621. By contrast, in India, supermarkets are typically between 3,000 and 5,000 square feet and hypermarkets (which often include food as well as other household consumer goods) are between 25,000 and 50,000 square feet. Kumar et al., *supra* note 7, at 69.

62. See, e.g., Bart Minten, Thomas Reardon & Rajib Sutradhar, *Food Prices and Modern Retail: The Case of Delhi*, 38 *WORLD DEV.* 1775, 1778 (2010).

63. See, e.g., MUKHERJEE & PATEL, *supra* note 7, at 19, 54; Thomas Reardon, Julio A. Berdegue & John Farrington, *Supermarkets and Farming in Latin America: Pointing Directions for Elsewhere?*, 81 *OVERSEAS DEV. INST. NAT. RESOURCE PERSP.* 1, 5 (2002); Guruswamy et al., *supra* note 57, at 622.

64. For a detailed description of this period (including the contradictory ways that planners aimed both to check and stimulate the private sector), see FRANCINE R. FRANKEL, *INDIA'S POLITICAL ECONOMY 1947–2004: THE GRADUAL REVOLUTION* ch. 3 (2d ed. 2005).

65. Until recently, futures trading of many agricultural commodities was restricted under the Forward Contracts Regulation Act of 1952. In 2003, the government created three national level internet-based futures exchanges. For a fascinating and critical ethnographic account, see Richa Kumar, *Mandi Traders and the Dabba: Online Commodity Futures Markets in India*, *ECON. & POL. WKLY.*, July 31, 2010, at 63. For an overview of futures trading regulations, see BHARAT RAMASWAMI, SHAMIKA RAVI & S.D. CHORPA, 22 *STATE OF THE INDIAN FARMER: RISK MANAGEMENT* 143–46 (2004).

66. For a detailed description of how the government administers minimum support prices and public distribution, see S.S. Acharya, *Domestic Agricultural Marketing Policies, Incentives and Integration*, in *INDIAN AGRICULTURAL POLICY AT THE CROSSROADS: PRIORITIES AND AGENDA* 129 (S.S. Acharya & D.P. Chaudhri eds., 2001).

in economic policy, when India sought financing from the International Monetary Fund to manage a rising debt caused by, among other things, a declining growth rate of state-owned industries and a lack of foreign exchange, as well as spikes in global oil prices and India's large arms budget.⁶⁷ The Congress Party-led government instituted currency devaluation programs and adopted a variety of liberalizing measures. It privatized state-owned industries, relaxed or abolished licensing requirements and import controls in various sectors, and generally opened Indian markets to foreign capital (creating, for example, the Securities and Exchange Board of India and the National Stock Exchange).⁶⁸ Even as it liberalized, however, the Congress government deemed the retail market (like the markets in nuclear energy and gambling) too sensitive to allow foreign direct investment.⁶⁹

In November 2011, however, the Indian Cabinet reversed its long-standing policy against foreign direct investment in response to concerns about its declining rate of economic growth.⁷⁰ The Cabinet announced that it would allow up to 51 percent of foreign direct investment in the multi-brand retail sector, which is primarily (roughly 60 percent) made up of food retailers.⁷¹ Unsurprisingly, the November policy reversal generated massive opposition from traders, wholesalers, local food retailers, street hawkers, and organized associations of farmers.⁷² Traders' unions

67. See V. Sridhar & Vijay Prashad, *Wal-Mart with Indian Characteristics*, 39 CONN. L. REV. 1785, 1788–90 (2007); FRANKEL, *supra* note 64, at 580, 586, 589.

68. See Arunabha Ghosh, *Pathways Through Financial Crisis: India*, 12 GLOBAL GOVERNANCE 413, 418, 421, 422 (2006); see also Jagdish Bhagwati & Arvind Panagariya, *Introduction: Trade, Poverty, Inequality, and Democracy*, in *INDIA'S REFORMS: HOW THEY PRODUCED INCLUSIVE GROWTH 5* (Jagdish Bhagwati & Arvind Panagariya eds., 2012) (noting that many liberalizing reforms reflected internal government policy rather than external conditions imposed by international financial institutions).

69. See INDIAN MINISTRY OF COMMERCE AND INDUS., FOREIGN DIRECT INVESTMENT POLICY (2006), available at http://www.ibef.org/download/fdi_policy_2006.pdf.

70. See Background Material on Cabinet Decision on the FDI in Retail, Press Info. Bureau, Indian Ministry of Commerce & Indus. (Nov. 25, 2011), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=77619>. I should add: the Indian government did so with the support and encouragement of the U.S. government. On the broader efforts of the US government to restructure Indian agricultural markets, see, e.g., Kavitha Kuruganti, *Targeting Regulation in Indian Agriculture*, ECON. & POL. WKLY., Nov. 29, 2008, at 19, 20; *From Mandi to Walmart: A Paradigm Shift for Indian Farmers*, GMED-USAID NEWSLETTER (USAID, Washington, D.C.), Jan. 2007 (describing the USAID-sponsored India Growth Oriented Micro-Enterprise Development (GMED) Program).

71. See Background Material on Cabinet Decision on the FDI in Retail, *supra* note 70. In 2006, the Indian government allowed up to 51 percent of foreign direct investment in single-brand retail. See FOREIGN DIRECT INVESTMENT POLICY, *supra* note 69.

72. As we shall see, proponents of supermarket-led agricultural restructuring argue that their efforts stand to benefit farmers by eliminating intermediaries. Some (often large) Indian farmers have agreed; others have not. See, e.g., Pratham Dwivedi, *Farmer Groups Oppose FDI in Retail, Term it Nightmare*, SUNDAY INDIAN (Nov. 2, 2012, 7:56 PM), <http://www.thesundayindian.com/en/story/farmer-groups-oppose-fdi-in-retail-term-it-nightmare/254/42913/>.

organized strikes and city closures to protest the announcement.⁷³ Political parties from both the far right and far left also expressed opposition to the decision.⁷⁴ The pressure worked. Within a few weeks, the Cabinet announced that foreign direct investment in multi-brand retail was on hold and India's food markets would be protected at least for a bit longer from transnational capital. On September 12, 2012, however, the central government reinstated its decision,⁷⁵ catalyzing another round of fierce local opposition, including a day of citywide trade union strikes and closures of public transportation, schools, and commercial activity in cities across the country.⁷⁶ And several states have pledged not to implement the central government's directive. Indeed, the new Chief Minister of West Bengal, Mamata Banerjee, withdrew from the central government's majority coalition in protest.⁷⁷

But in India, foreign direct investment is only part of the story. In the 1990s (and in some cases even earlier), a few organized domestic retail chains began to target small pockets of elite Indian shoppers.⁷⁸ Over the last five to seven years, family-run Indian business conglomerates, flush from investments in information technology, oil, and construction, among other areas, have invested billions in developing modern food retail stores with mass appeal.⁷⁹ Some have hired global

73. See, e.g., *FDI in India: Traders Protest Across India*, *ECON. TIMES* (Dec. 1, 2011, 10:13 AM), http://articles.economicstimes.indiatimes.com/2011-12-01/news/30463036_1_retail-sector-traders-protest-bandh.

74. For a survey of parliamentary reactions, see *FDI Backlash: I Will Burn Any Walmart Store that Comes Here, Says Uma Bharti*, *NDTV* (Nov. 25, 2011), http://www.ndtv.com/video/player/news/fdi-backlash-i-will-burn-any-walmart-store-that-comes-here-says-uma-bharti/216951?v_also-see; see also FDI in Retail: Opposition to Corner Gov't in Parliament, *TIMES OF INDIA* (Nov. 28, 2011, 8:00 AM), http://articles.timesofindia.indiatimes.com/2011-11-28/india/30449884_1_fdi-in-retail-business-retail-sector-fdi-issue.

75. See Press Note No. 5, *Review of the Policy on Foreign Direct Investment*, Indian Ministry of Commerce & Indus. (Sept. 20, 2012), available at http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2012.pdf.

76. See, e.g., Anuradha Himatsingka, *Nationwide Trade Bandh Against FDI in Retail on September 20*, *ECON. TIMES* (Sept. 15, 2012, 7:31 PM), http://articles.economicstimes.indiatimes.com/2012-09-15/news/33863004_1_retail-trade-trade-bandh-crore-traders; India Strike Over Supermarket Reforms, *BBC NEWS INDIA* (Sept. 20, 2012), <http://www.bbc.co.uk/news/world-asia-india-19658146>.

77. See, e.g., *Mamata Banerjee quits UPA II; TMC Ministers to Resign on Friday*, *ECON. TIMES* (Sept. 18, 2012, 8:32 PM), http://articles.economicstimes.indiatimes.com/2012-09-18/news/33926128_1_trinamool-congress-mamata-banerjee-upa-ii.

78. See Piyush Kumar Sinha & Sanjay Kumar Kar, *Insights into the Growth of New Retail Formats in India*, in *RETAILING IN THE 21ST CENTURY: CURRENT AND FUTURE TRENDS* 119, 133 (Manfred Krafft & Murali K. Mantrala eds., 2010); Anirban Sengupta, *Emergence of Modern Indian Retail: An Historical Perspective*, 36 *INT'L J. RETAIL & DISTRIBUTION MGMT.* 689, 695-99 (2008).

79. These include Bharti Enterprise (whose food retail chain is Easy Day), Aditya Birla Group (whose food retail chain is More), RPG Group (whose food retail chain is Spencer's), Tata Group (whose food retail chain is Star Bazaar), and Reliance Industries Ltd (whose food retail

retail chains such as Walmart and Tesco as consultants to provide technological and logistical support.⁸⁰ These domestic experiments are still very new. In an article published in 2012, Thomas Reardon, Peter Timmer, and Bart Minten report “that 75% of modern retail sales in India arose in chains formed only in the past 3 [years].”⁸¹

It is too early to predict the effects of domestic corporate retail on the informal sector. But, thus far, it has not been easy sledding. Many domestic chains have scaled back more ambitious and optimistic plans and now welcome, rather than resist, foreign direct investment to help sustain shaky operations with new capital infusions.⁸² Still, analysts estimate that corporate retail in India is growing at annual rates between 16 and 50 percent—a wide range that reflects the difficulty of accessing reliable and consistent official data.⁸³

Perhaps more telling, leading domestic Indian supermarket chains have made significant inroads in selling fresh fruits and vegetables.⁸⁴ Fresh produce is a “destination category” in supermarket lingo because it draws shoppers into stores.⁸⁵ When consumers turn to retail chains for products like tomatoes and mangos (rather than for the occasional packaged or “branded” good), they have likely abandoned local markets. Fresh produce is thus one of the most important but also one of the hardest food markets to capture because consumers in many countries

chain is Reliance Fresh). They also include Future Group, currently India’s largest corporation devoted primarily to retail with food retail stores that include Food Bazaar and Big Bazaar.

80. See *Retailing in India: Send for the Supermarketers*, *ECONOMIST*, Apr. 14, 2011, at 67, 68; *Carrefour in India: A Wholesale Invasion*, *supra* note 56, at 70; see also Sridhar & Prasad, *supra* note 67, at 1788.

81. Reardon et al., *Supermarket Revolution in Asia*, *supra* note 39, at 12333.

82. See, e.g., Soutik Biswas, *Why India May Not Be Such an Attractive Destination for Supermarkets*, *BBC NEWS* (Sept. 17, 2012, 8:45 AM), www.bbc.co.uk/news/world-asia-india-19595655; Nandita Bose, *Indian Retailers Retrench as Reform Hopes Dashed*, *CHI. TRIB.* (June 10, 2012), [articles.chicagotribune.com/2012-06-10/business/sns-rt-us-india-retail-fundraisingbre8590cy-20120610_1_foreign-investment-carrefour-supermarkets](http://articles.chicagotribune.com/2012-06-10/business/sns-rt-us-india-retail-fundraisingbre8590cy-20120610_1_foreign-investment-carrefour-supermarkets; Organized Retailers Change Tack as Sector Evolves); *Organized Retailers Change Tack as Sector Evolves*, *MINT*, Apr. 17, 2012; Suman Layak, *Retail Business Is for Cash-Rich in India*, *BUS. TODAY* (May 30, 2012), business.today.intoday.in/storyprint/184980; Megha Bahree, *India Unlocks Door for Global Retailers*, *WALL ST. J.* (Nov. 25, 2011), online.wsj.com/article/SB10001424052970204630904577058131832465876.html; Rajib Bhattacharyya, *The Opportunities and Challenges of FDI in Retail in India*, *IOSR J. OF HUMAN. & SOC. SCI.*, Nov.–Dec. 2012, at 99.

83. Thomas Reardon & Ashok Gulati, *The Rise of Supermarkets and Their Development Implications: International Experience Relevant for India* 36 (Int’l Food Pol’y Res. Inst., Discussion Paper No. 00752, Feb. 2008).

84. See Reardon et al., *Supermarket Revolution in Asia*, *supra* note 39, at 12334.

85. See, e.g., Catherine Dolan & John Humphrey, *Governance and Trade in Fresh Vegetables: The Impact of UK Supermarkets on the African Horticulture Industry*, in *GLOBALISATION AND TRADE: IMPLICATIONS FOR EXPORTS FROM MARGINALISED ECONOMIES* 147, 152–53 (Oliver Morrissey & Igor Filatotchev eds., 2001); CHEN ET AL., *supra* note 34, at 12; BROWN WITH SANDER, *supra* note 24, at 3.

traditionally associate freshness with small local food vendors.⁸⁶ In India, however, fresh produce already comprises 10 to 15 percent of grocery sales in leading chains—an amount that took “some 15–20 [years] in Mexico (a country with a similar share of fresh produce in the diet as in India) and some 40 [years] in the United States (where supermarkets long did not ‘touch’ fresh produce, given the traditional habits of shopping daily at wet-markets and small shops that were thought insuperable).”⁸⁷

The spread of supermarkets in India thus stands to have potentially significant consequences for agricultural production, and, with it, the livelihoods of over 60 percent of the population who work in agriculture,⁸⁸ many of whom are small growers.⁸⁹ In order to undercut traditional markets, supermarkets aim to transform agricultural supply chains in ways they can monitor and control. In traditional Indian supply chains, agricultural goods change hands several times in rural and urban wholesale markets, often facilitated by many intermediaries, before they reach consumers. Supermarket proponents aim to replace these decentralized and fragmented networks of small farmers, brokers, and traders with new sourcing and distribution systems that, they argue, will eliminate a variety of inefficient practices.⁹⁰

But, as we shall see, this argument on behalf of efficiency is less straightforward than it often appears. To begin, consider this surprising conversation with Mayank Jalan, the Managing Director of Keventer’s Fresh, a corporation that supplies supermarkets with fresh fruits and vegetables in West Bengal and that is a subsidiary of Keventer Agro Limited, a national food processing corporation with multi-million dollars of annual sales.⁹¹ According to Jalan, Keventer’s Fresh cannot gen-

86. See Thomas Reardon & Julio A. Berdegué, *The Rapid Rise of Supermarkets in Latin America: Challenges and Opportunities for Development*, 20 DEV. POL’Y REV. 371, 379–382 (2002); see also Hu et al., *supra* note 41, at 567 (discussing fresh produce in China). For a fascinating account of how American consumers began to associate freshness (rather paradoxically) with refrigeration, see SUSANNE FREIDBERG, *FRESH: A PERISHABLE HISTORY* (2009).

87. Reardon et al., *Supermarket Revolution in Asia*, *supra* note 39, at 12334.

88. DEP’T OF AGRIC. & COOPERATION, INDIAN MINISTRY OF AGRIC., NATIONAL POLICY FOR FARMERS 2007, available at <http://agricoop.nic.in/NPF/npff2007.pdf>.

89. Based on 2005–2006 statistics, 41.1 percent of India’s farmers own less than two hectares of land and another 23.9 percent own between two and four hectares. DIRECTORATE OF ECON. & STATISTICS, DEP’T OF AGRIC. & COOPERATION, INDIAN MINISTRY OF AGRIC., AGRICULTURAL STATISTICS AT A GLANCE 2011 tbls. 2.3(a) & 15.1 (2011), available at http://eands.dacnet.nic.in/latest_2011.htm.

90. See, e.g., *Retailing in India*, *supra* note 80, at 67; MUKHERJEE & PATEL, *supra* note 7, at 74, 154. For a general description of how supermarkets aim to transform procurement systems across the developing world, see Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 52–62.

91. See, e.g., *Keventer Agro Limited Profile*, HOOVERS: A D&B Co., <http://www.hoovers>

erate cost savings for its retail clients simply by upgrading and modernizing supply chains.

“If you’re doing research,” he surmised, “the most common thing you read about the supply chain in India for fruits and vegetables is the huge gap between the farmer and the consumer. Right? The numbers go from 100 percent to 30 percent to 50 percent, you know, with wastages and everything.”⁹² As Jalan suggests, policy and media reports incessantly invoke the large percentage of produce that is lost in India—never making its way from the farmer’s gate to the consumer’s plate—because of fragmented, nonprofessional supply chains saturated with intermediaries.⁹³ Indeed, government officials and policy analysts have described such waste as an underlying cause of India’s food inflation⁹⁴ (although with little empirical data to support their estimates⁹⁵).

But for corporate actors attentive to the bottom economic line, the pressing question is how much actual profit does this waste cost. As it turns out—at least according to Keventer’s model—none at all. Jalan continued:

But then, the important thing that we tried to find out is what is the *economic value* which is lost? So we did a very interesting model,

.com/company-information/company-search.html?term=Keventer (reporting USD 53.62 million in sales in 2011).

92. Interview with Mayank Jalan, Managing Director of Keventer’s Fresh, in Kolkata, West Bengal (Nov. 1, 2010).

93. For a sampling of estimates of the fresh produce that is lost due to Indian supply chains, see MUKHERJEE & PATEL, *supra* note 7, at 136 (40 percent); JOHN LLEWELLYN ET AL., LEHMAN BROS., INDIA: EVERYTHING TO PLAY FOR 20 (2007) (30 percent); CHANGING GEARS: RETAILING IN INDIA 85 (Econ. Times Intelligence Grp., 2003), (30–40 percent); *The Next Big Thing*, ECONOMIST, Nov. 12, 2005, at 70 (35–40 percent); *Retailing in India*, *supra* note 80, at 67–68 (25 percent or more).

94. See, e.g., Background Material on Cabinet Decision on the FDI in Retail, *supra* note 71; *Fallout From India’s Failed Foreign Retailer Plan*, NPR (Dec. 8, 2011, 4:00 AM), <http://www.npr.org/2011/12/08/143333600/fallout-from-indias-failed-foreign-retailer-plan>.

95. See, e.g., Bart Minten, Thomas Reardon & Anneleen Vandeplas, *Linking Urban Consumers and Rural Farmers in India: A Comparison of Traditional and Modern Food Supply Chains* 20–23, 36 (Int’l Food Pol’y Res. Inst., Discussion Paper No. 00883, 2009) (observing that there is little empirical data to support common estimates of waste and reporting far lower percentages in their own fieldwork). See also Navtan Kumar, *Centre Inflates Waste Data to Justify Retail FDI*, SUNDAY GUARDIAN (Oct. 6, 2012), <http://www.sunday-guardian.com/business/centre-inflates-waste-data-to-justify-retail-fdi>. (“The Centre, while arguing the case of FDI in multi-brand retail, has claimed that 30-40% fruits and vegetables get wasted . . . However, a study by Central Institute of Post-Harvest Engineering and Technology (CIPHET), Punjab, for Indian Council of Agriculture Research (ICAR), an autonomous institute under ministry of agriculture, pegs the wastage of fruits at 6% to 18% and vegetables at 6% to 12.5%.”); Dilasha Seth, *Question Mark on Govt Fruit & Vegetable Wastage Figures*, BUS. STANDARD (Oct. 1, 2012, 1:05 AM), http://www.business-standard.com/article/economy-policy/question-mark-on-govt-fruit-vegetable-wastage-figures-112100102016_1.html; Tarun Nangia, *Waste Not, Want Not: Traders Up FDI Ante*, SUNDAY STANDARD (Oct. 7, 2012, 11:54 AM), <http://newindianexpress.com/thesundaystandard/article1288685.ece>.

where we did, for a week, the traditional supply chain and the so-called Western-accepted supply chain, which is to create sorting, grading, cold chain, platform, processing, storage, and dispatch. What did we save? We saved about 21 percent wastage. *But, economically, we lost.*⁹⁶

In other words, under current conditions (including, to be sure, the low cost of human labor), for Jalan to salvage 21 percent more fruits and vegetables using the methods of a “Western” supply chain that includes refrigerated transport and particular kinds of sorting and storage, he would cost the firm more money than he would save.

Why is this? “You see,” Jalan explained,

the price of an average vegetable or fruit is about ten rupees for a consumer. The farmer will be getting anywhere between five to six rupees. That leaves four rupees in the middle. If you look at it in terms of percentage, you’re talking about 70 percent, because four, divided by six—you’re talking about something like that—but it’s actually only four rupees. So you save 20 percent, so you maybe save about one and one-half rupees. But then [transportation via the traditional method] is costing them sixty paise. But when you’re craning it, and putting it in a cold chain, that’s costing me two rupees sixty paise. And then bringing it to platform—the manpower, the overhead and everything—that’s costing me about ninety paise. Storage is again costing me one rupee ten paise. Then transporting it from the platform to the retail is again one rupee seventy paise. So economically I was losing out.⁹⁷

Although the profit margin on horticulture produce when represented as a percentage is considerable, it in fact translates into a small amount of money. Saving 20 percent more produce via a modern supply chain, rather than the existing chain of middlemen, would generate less profit for Keventer’s Fresh than cost. Jalan stressed, moreover, that these were operational, not start-up, costs (although presumably the balance sheet would change with a radically different configuration of infrastructure and conditions on the ground).⁹⁸

This calculation is the case, Jalan explained, for two reasons. First, the traditional supply chain is, in Jalan’s words, “*really* efficient” with its proliferation of small intermediaries rapidly moving goods all over the state. “Look at the mode of transport,” he exclaimed, “look at the

96. Interview with Jalan, *supra* note 92.

97. *Id.*

98. By all accounts such a transformation is hardly forthcoming. *See, e.g.*, Amol Sharma & Biman Mukherji, *Bad Roads, Red Tape, Burly Thugs Slow Wal-Mart’s Passage in India*, WALL ST. J., Jan. 11, 2013, at A1, A10 (describing the obstacles Walmart would confront if it wishes to function efficiently in the Indian market and suggesting that “the scale of the problems is unlike any it has faced in the 27 countries it operates in”).

way that they're doing the transactions. You know, their tenacity to get stuff, and then sell it off, and their knowledge about the pulse of the market, and the consumer—it's fabulous."⁹⁹ I heard a similar, if less enthusiastic, appraisal in an earlier interview with Keventer's Fresh sourcing manager, Sandra Prosad Choudhuri, at a banana ripening plant one hour north of Kolkata:

It is very difficult for us. That's because I have to compete with the other unorganized [intermediaries] who have the capacity to sell very cheap labor also. That's because they're not maintaining any type of process Suppose we are having the shops, we are having the processing centers, we are maintaining some crates, we are washing, readying, different aspects. But all the unorganized are not doing any of these things. They are buying in bulk, going straight to the consumer place, and selling it at a very cheap margin also.¹⁰⁰

Choudhuri thus argued that “unorganized” and highly flexible wholesale operations, working on razor thin margins, posed genuine competition.

Second, unlike processed foods, fruits and vegetables, as Abhijit Chattopadhyay, Business Head of Reliance Retail Limited, pointed out, do not “come with a brand.”¹⁰¹ This is a problem, Jalan clarified, because for most fresh produce “we can't give a perceived value addition” to justify raising retail prices. “What can you value-add in a fruit or vegetable?” he asked. “It's fresh from the farm. It's probably getting fresher, from the farm to the consumer, in the traditional method than it is going through us, because that's just how the dynamics of the market [are] working these days.”¹⁰² In other words, given the current state of domestic consumer demand, it is hard for corporate actors to improve upon either price or upon perceived quality. For the time being, then, Keventer's Fresh relies heavily on traditional intermediaries and the channels they have established in existing markets.

This business decision confounds most conventional retail advice. For example, a lengthy industry report published by The Economic Times of India instructs modern food retailers to drive inefficiencies out of supply chains due to “too many middlemen” and “complicated laws” if they wish to work with “happy farmers” and “smiling customers.”¹⁰³ A recent front-page article in the Wall Street Journal offers the same diagnosis and advice.¹⁰⁴ Via a case study of West Bengal, the following

99. Interview with Jalan, *supra* note 92.

100. Interview with Sandra Prosad Choudhuri, Keventers Sr. Manager of Sourcing, in Barasat, District North 24 Parganas, West Bengal (Aug. 25, 2010).

101. Interview with Abhijit Chattopadhyay, Corporate Manager of Reliance Retail Ltd., in Kolkata, West Bengal (Sept. 17, 2010).

102. Interview with Jalan, *supra* note 92.

103. CHANGING GEARS: RETAILING IN INDIA, *supra* note 93, at 77.

104. Sharma & Mukherji, *supra* note 98.

parts critically examine whether and how particular laws and intermediaries in fact cause farmer or consumer distress. I argue that for supermarkets the reorganization of supply chains is not simply a question of efficiency, but of market dominance and control.

III. LAND, LAW, AND AGRICULTURAL MARKETS IN WEST BENGAL

A. *Land Reform, Finance Capital, and Agricultural Marketing Law*

In West Bengal, an East Indian state of over ninety-one million people,¹⁰⁵ supermarkets have met with intense political resistance. This is in part because from 1977 through 2011 West Bengal was governed by the Communist Party of India (Marxist) (CPIM). The CPIM, a democratically elected leftist party, instituted a number of social-democratic and populist policies.¹⁰⁶ Some of these policies are now clashing with capitalist globalization. But rather than set the “communist state” against the “private market”—an opposition that, as we shall see, is far too simple¹⁰⁷—in this Part, I explore how the state helped to create particular kinds of agricultural markets in West Bengal. These markets offer important opportunities for small farmers and traders to engage in economic exchange, but they are also marked by significant inequalities. Most succinctly put, the leftist state’s efforts to redistribute agricultural land enabled small farmers and small traders to proliferate within commodity markets. At the same time, however, the state’s failure to similarly reform finance capital—which, like land, was highly concentrated in private hands—allowed elite local agro-commercial actors to dominate these markets.¹⁰⁸ In the following Part, I compare this existing mar-

105. OFFICE OF THE REGISTRAR GEN. & CENSUS COMM’R, INDIA, CENSUS OF INDIA 2011: PROVISIONAL POPULATION TOTALS WEST BENGAL (2011), http://www.censusindia.gov.in/2011-prov-results/prov_data_products_wb.html.

106. For an overview of the CPIM and its complex policies, see Dwaipayan Bhattacharyya, *Politics of Middleness: The Changing Character of the Communist Party of India (Marxist) in Rural West Bengal (1977-90)*, in SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH 279, 281 (Ben Rogaly, Barbara Harriss-White & Sugata Bose eds., 1999).

107. Indeed, the CPIM was voted out of power in 2011 after it attempted to expropriate fertile agricultural land for private (national and multinational) industrial development, and because it violently suppressed peasant resistance to its plans. It planned to reallocate this land to the Indian giant, Tata Group, to develop a car assembly plant and to the Indonesian Salim Group to build a motorcycle manufacturing plant. See, e.g., Dia Da Costa, *Tensions of Neo-Liberal Development: State Discourse and Dramatic Oppositions in West Bengal*, 41 CONTRIBUTIONS TO INDIAN SOC. 287, 303–04 (2007). On the CPIM’s use of force, see Martha C. Nussbaum, *Violence on the Left: Nandigram and the Communists of West Bengal*, DISSENT, Spring 2008, at 27, 30–31. On a wave of popular outrage, the opposition party, Trinamool Congress led by Mamatma Banerjee, opportunistically campaigned on a populist pro-poor platform, winning a majority of electoral seats in the spring of 2011.

108. The political economist Barbara Harriss-White establishes this point in breathtaking

ket structure to the distinctive kinds of legal and economic arrangements that are required to support a supermarket in West Bengal. I suggest that for many small producers, existing markets represent a far more desirable economic, social, and political ideal (despite their inequalities and conflicts) than the corporate legal and contractual regime that would replace them.

To briefly summarize a complex and important history, the CPIM came to power in West Bengal in 1977 following a massive popular mobilization against concentration in agricultural land. To that end, it rapidly implemented a series of reforms.¹⁰⁹ First, it extended a land ceiling law to redistribute land over a statutory maximum in small plots to the rural poor. During the late 1960s, the previous left governments achieved significant shifts in land ownership by stripping absentee landlords (*ex-zamindars*¹¹⁰) from large landholdings and redistributing roughly 630,000 acres to nearly one million households.¹¹¹ When the CPIM was elected into office in 1977, it was harder to identify very large landowners “isolated from other peasant classes.”¹¹² The CPIM nonetheless confiscated another 140,000 acres via land ceiling laws and distributed them in tiny plots to approximately an additional one million

detail. See generally BARBARA HARRISS-WHITE, *RURAL COMMERCIAL CAPITAL: AGRICULTURAL MARKETS IN WEST BENGAL* (2008) and *infra* notes 122–125 and accompanying text.

109. Scholars debate whether the CPIM’s reforms represent significant redistribution. Some suggest the reforms reflect a modest compromise designed to reestablish peace among poor farmers and agricultural laborers, on the one hand, and middle and rich peasants, on the other hand, that sacrificed class interests of the former on behalf of the later. For critical assessments, see ROSS MALLICK, *DEVELOPMENT POLICY OF A COMMUNIST GOVERNMENT: WEST BENGAL SINCE 1977* ch. 2 (1993); Dipankar Basu, *Political Economy of ‘Middleness’: Behind Violence in Rural West Bengal*, 36 *ECON. & POL. WKLY.* 1333 (2001). For a defense, see G.K. Lieten, *Depeasantisation Discontinued: Land Reforms in West Bengal*, 25 *ECON. & POL. WKLY.* 2265 (1990).

110. *Zamindars* were landholders (as well as tax collectors) first under Mogul then under British rule. In 1793, when the East India Company implemented its Permanent Settlement, it granted *zamindars* absolute land ownership conditioned on the payment of yearly taxes, which *zamindars* in turn collected from their tenants. Surinder Jodhka, *Agrarian Structures and Their Transformations*, in *THE OXFORD INDIA COMPANION TO SOCIOLOGY AND SOCIAL ANTHROPOLOGY* 1213, 1219 (Veena Das ed., 2003). See generally RANAJIT GUHA, *A RULE OF PROPERTY FOR BENGAL: AN ESSAY ON THE IDEA OF PERMANENT SETTLEMENT* (1963) (exploring how the imposition of a Western property regime reproduced, in complex and unintended ways, semi-feudal and precapitalist forms of social organization). *Zamindars* were formally abolished after independence but many remained an upper class of landowners and landlords alongside an upper class of wealthy peasants, private money-lenders, and wealthy traders. For more details, see D. Bandyopadhyay, *Land Reforms and Agriculture: The West Bengal Experience*, 38 *ECON. & POL. WKLY.* 879, 879 (2003); PARTHA CHATTERJEE, *THE PRESENT HISTORY OF WEST BENGAL: ESSAYS IN POLITICAL CRITICISM* 55–57 (1997).

111. HARRISS-WHITE, *supra* note 108, at 6. See also Ben Rogaly, Barbara Harriss-White & Sugata Bose, *Introduction: Agricultural Growth and Agrarian Change in West Bengal and Bangladesh*, in SONAR BANGLA?, *supra* note 106, at 11, 29.

112. Bhattacharyya, *supra* note 106, at 286–87. See also Rogaly et al., *supra* note 111, at 29.

households.¹¹³ The party also registered roughly 1.4 million sharecroppers—around 70 percent of the state’s sharecroppers.¹¹⁴ Once registered, sharecroppers enjoyed anti-eviction and profit-sharing rights.¹¹⁵ Finally, the CPIM instituted a decentralized form of local governance—a three-level *panchayat* system—to expand democratic representation.¹¹⁶ Taken together, one of the CPIM’s most important achievements was thus to vest particular kinds of property rights and, with them, political rights in the rural poor.

In the early years of the CPIM’s reign, West Bengal experienced an agricultural transformation. When the CPIM came to power, West Bengal’s rate of agricultural production lagged behind most Indian states.¹¹⁷ By the early 1980s, however, and continuing until the early 1990s, its foodgrain production increased dramatically, outperforming other East Indian states.¹¹⁸ The government unambiguously credited its land and tenancy reforms for this remarkable rate of growth. In the words of Chief Minister Jyoti Basu, “Our land reforms are responsible for it.”¹¹⁹ Scholars, however, have debated the broader social effects of these

113. HARRISS-WHITE, *supra* note 108, at 6. For more precise figures, see Arild Engelsen Ruud, *From Untouchable to Communist: Wealth, Power and Status Among Supporters of the Community Party (Marxist) in Rural West Bengal*, in SONAR BANGLA?, *supra* note 106, at 253, 261, 276 n.11. I should add: land was distributed to male heads of households. See, e.g., Bina Agarwal, *Disinherited Peasants, Disadvantaged Workers: A Gender Perspective on Land and Livelihood*, 33 ECON. & POL. WKLY., A-2, A-4 (1998).

114. HARRISS-WHITE, *supra* note 108, at 6.

115. These rights were mostly already encoded in legislation but poorly implemented until the CPIM’s efforts at registration and reform. See The West Bengal Land Reforms Act, 1955 (with 1977 amendments closing loopholes in the 1955 Act), available at http://www.wbrsra.org/exam_pdf/West%20Bengal%20Land%20Reforms%20Act,%201955.pdf.

116. HARRISS-WHITE, *supra* note 108, at 6–7. For details, see Sudipta Bhattacharyya, *Class and the Politics of Participatory Rural Transformation in West Bengal: An Alternative to World Bank Orthodoxy*, 7 J. AGRARIAN CHANGE 348, 350–53 (2007). For a complex and intriguing ethnographic account of the *panchayats* in action, see Glyn Williams, *Panchayati Raj and the Changing Micro-Politics of West Bengal*, in SONAR BANGLA?, *supra* note 106, at 229.

117. HARRISS-WHITE, *supra* note 108, at 2; Abhijit Banerjee et al., *Strategy for Economic Reform in West Bengal*, 37 ECON. & POL. WKLY. 4203, 4212 (2002).

118. Rogaly et al., *supra* note 111, at 12 (reporting that “[f]oodgrains production in West Bengal had grown by between 4.3 and 6.5 per cent per annum” depending on different figures and calculations).

119. Sugata Bose, *Agricultural Growth and Agrarian Structure in Bengal: A Historical Overview*, in SONAR BANGLA?, *supra* note 106, at 41, 48 (citing an interview with Jyoti Basu, *Business World*, July 1994). There is statistical evidence to support Basu’s position. See, e.g., Haris Gazdar & Sunil Sengupta, *Agricultural Growth and Recent Trends in Well-Being in Rural West Bengal*, in SONAR BANGLA?, *supra* note 106, at 60, 65–68 (reviewing studies); Abhijit V. Banerjee, Paul J. Gertler & Maitreesh Ghatak, *Empowerment and Efficiency: Tenancy Reform in West Bengal*, 110 J. POL. ECON. 239 (2002). Scholars nonetheless debate the relation between land reform and agricultural growth versus the effects of other kinds of changes on growth, such as private sector development of water markets and high-yielding varieties of rice. See, e.g., John Harriss, *What Is Happening in Rural West Bengal?: Agrarian Reform, Growth and Distribution*, 28 ECON. & POL. WKLY. 1237, 1243–45 (1993); Basu, *supra* note 109, at 1341.

agrarian reforms as they analyze, on the one hand, West Bengal's transformation from a deficit to a surplus state and the accompanying material improvements in the lives of rural poor, yet on the other hand, the persistence of rural poverty and little change in the overall structure of agrarian power.¹²⁰

What this disparity suggests is that the relationship between agrarian structure and market structure is complex. Land reforms helped to increase the number of agricultural households able to generate surplus crops for market exchange. Today, small farmers—that is, farmers with about two acres of land—own 84 percent of agricultural land, and the number is even higher when it includes registered sharecroppers.¹²¹ But at the same time, *non-landed* relations of labor and market exchange have played a significant role in perpetuating poverty and exploitation in rural West Bengal. Indeed, even as the CPIM was redistributing landed wealth in favor of the rural poor, a community of trading elite known as *Marwaris* had consolidated large agro-commercial firms.¹²² *Marwaris* have long been a diasporic trading community in Bengal, and they have continued to play a dominant role in its rural economy until today.¹²³ With wealth from commerce and urban professions, they had little interest in opposing land reforms.¹²⁴ Critically for them, the CPIM imposed no equivalent ceiling on finance capital. To the contrary, the CPIM extended privileged access to finance from “nationalised banks and state development finance corporations” to its agro-commercial elite.¹²⁵ They did so because large-scale trading firms and privately owned rice mills

120. See Harriss, *supra* note 119, at 1243–44. For example, at the millennium, the state's share of poverty was just above the national average (a decline from prior decades), but its share of rural poverty remained high: “84 per cent of the absolutely poor population of West Bengal lived in rural areas, compared to 74 per cent in India as a whole.” DEV. & PLANNING DEP'T, GOV'T OF W. BENGAL, WEST BENGAL HUMAN DEVELOPMENT REPORT 2004 at 9 (2004), available at http://hdr.undp.org/en/reports/nationalreports/asiathepacific/india/India_West%20Bengal_2004_en.pdf. Its literacy, education, and health levels also trailed behind other states. *Id.* at 37. See also Arup Maharatna, *Population, Economy and Society in West Bengal Since the 1970s*, 43 J. DEV. STUD. 1381 (2007).

121. Interview with Asim Dasgupta, Finance Minister, in Salt Lake City, West Bengal (Dec. 4, 2010).

122. *Marwari*, as Harriss-White explains, is “a ‘multivalent term’ forged through migration, trade, and capitalist alliances to define a heterogonous set of castes.” HARRISS-WHITE, *supra* note 108, at 28. She explains further that “Marwari identity has been created through the strategic behavior of these business families in the public sphere, drawing on symbols of kinship, lineage, family, and the ‘domestication’ of women.” *Id.* at 28–29.

123. *Id.* at 29–31. For a fascinating account of *Marwari* migration to Bengal and *Marwari* efforts to legitimate and legalize futures trading, see RITU BIRLA, STAGES OF CAPITAL: LAW, CULTURE, AND MARKET GOVERNANCE IN LATE COLONIAL INDIA (2009) (chapter four: “Hedging Bets: Speculation, Gambling, and Market Ethics, 1890-1930”).

124. HARRISS-WHITE, *supra* note 108, at 30–32.

125. Barbara Harriss-White, *Agricultural Growth and the Structure and Relations of Agricultural Markets in West Bengal*, in SONAR BANGLA?, *supra* note 106, at 381, 390.

kept down the costs of procurement for the state in its efforts to provide subsidized foodgrains to urban areas via its public distribution system.¹²⁶ In sum, the CPIM's redistribution of agricultural land could not itself radically transform rural economic relations—at least not when its allocation of finance capital permitted elite oligopolistic forces to dominate agricultural markets.¹²⁷

But small farmers are only part of this market story. In the 1980s, West Bengal also witnessed an “explosion of petty trade.”¹²⁸ Land reform helped enable small farmers to produce surplus crops for market exchange in small amounts and in dispersed areas. Small traders, in turn, could earn profits by combining goods and minimizing trading costs.¹²⁹ Small farmers and agricultural laborers could also enter into petty trade to supplement their own meager incomes.¹³⁰ Many did not become independent traders but rather bulked and traded the supplies of richer farmers, moneylenders, and other market intermediaries—working as “disguised wage labour on to whom the risks of price fluctuations can be transferred.”¹³¹ As one small farmer told me, nearly all the agricultural households in his village included family members engaged in agricultural trade. This farmer, for example, would sell his family's own produce at the closest rural wholesale market. He would also regularly travel several hours by train to reach the largest wholesale market in Kolkata to sell the goods of a wealthy broker, which arrived to the market daily via lorry. He would purchase these goods on credit and pay the broker a commission of his sales—illustrating how in West Bengal small-scale farming and small-scale trading, rather than necessarily representing a divergent set of interests, can be deeply interlinked.¹³²

Thus, even as agricultural land in West Bengal became decentralized, agricultural markets in the state developed into a two-tiered and markedly unequal system that in many ways perpetuated, rather than eradicated, agrarian poverty. Powerful local monopolies that controlled

126. HARRISS-WHITE, *supra* note 108, at 2–3, 12.

127. In fact, in some ways land reforms helped to facilitate the consolidation of market power. For example, the CPIM's widely publicized productivity gains of the state's small farms depend upon high-intensity but unremunerated family (often female and child) labor. This extra-market labor, in turn, allowed larger agro-commercial capitalists to “concentrate their control over the product and credit markets . . . without incurring costs in the labour market.” Bose, *supra* note 119, at 50–51, 56.

128. HARRISS-WHITE, *supra* note 108, at 186.

129. *Id.* at 186–87 (offering different explanations for the growth in petty trade and stressing the difficulty of pinpointing causation via field research).

130. *Id.*

131. Harriss-White, *supra* note 125, at 405.

132. Interview with farmer in Surya Nagar Village (between Baruipur and Joynagar) in District South 24 Paraganas, West Bengal (Sept. 26, 2010); *see also* Harriss-White, *supra* note 125, at 405.

rice mills and potato storage dominated wholesale trade. And they used their own and state-supplied sources of finance to tie not only small farmers but also a mass of small traders, dependent on external sources of credit, to them.¹³³ In this way, the political economist Barbara Harriss-White argues, “they were able to stave off any threat to their supplies that might have arisen from small-scale traders buying from the producers.”¹³⁴ And the state enabled, if not supported, this split between the concentration of a small trading elite, on the one hand, and the proliferation and simultaneous pauperization of petty production and trade, on the other. “Despite state regulation,” Harriss-White explains, “the barriers to entry into petty trading are not high enough to prevent a proliferation of intermediaries at the base of the structure.”¹³⁵ But rather than create “a regulative environment which incentivizes livelihoods based on dispersed and small-scale accumulation,”¹³⁶ the CPIM kept petty trade mostly unlicensed and without access to state-regulated banking institutions, at the same time that it protected the mercantile elite.¹³⁷ It was only in the 1990s, that “[b]etween the extremes, the intermediaries known as middlemen—wholesalers, brokers and commission agents” increased in power.¹³⁸ Liberalizing reforms, specifically the de-licensing of numerous aspects of processing and trading in rice, meant that mid-size intermediaries were “able to borrow independently from banks and to transport and store without constraint other than working capital.”¹³⁹

Today, fresh agricultural produce travels to the consumer in West Bengal through multiple decentralized markets comprised of small, medium, and large traders, wholesalers, and brokers that link small farmers with small retailers. Central government officials, economists, and corporate leaders are now calling for deregulation—that is, the deregulation of the market by the state. But in West Bengal, legal bureaucratic rules are hardly the dominant force structuring the actual practice of market exchange. Although, as I have argued, these markets were certainly shaped by background legal rules of property (both land and finance), the vast majority of wholesale and retail trade is directly regulated primarily by social institutions other than state law. These institutions include private trade associations that have evolved over

133. HARRISS-WHITE, *supra* note 108, at 2, 146–83.

134. *Id.* at 2.

135. Harriss-White, *supra* note 125, at 407.

136. HARRISS-WHITE, *supra* note 108, at 253.

137. Harriss-White, *supra* note 125, at 408; *see also* HARRISS-WHITE, *supra* note 108, at 12 (“Under the Left Front, petty trade has not just been passively neglected; its development has been actively thwarted by a reluctance to legitimate or finance it.”).

138. HARRISS-WHITE, *supra* note 108, at 252.

139. *Id.* at 252–53.

time to compensate for a lack of effective state regulation (and that govern via extralegal rules that often penalize outsiders).¹⁴⁰ They also include social-structural factors such as gender, which “prevents entry into all but the pettiest trading activity” and caste, which “constrains entry into the largest scale trading firms.”¹⁴¹

Still, over the past five years, law—and more specifically the power of the state directly to order agricultural trade via its own marketing rules—has become an increasingly important arena for fights about the future of large retail chains. In India, the governance of agriculture is left to state (not federal) regulation and the most contentious state-level legal rules are Agricultural Produce Marketing Committee (“APMC”) Acts.¹⁴² Implemented in nearly all states in India, APMC Acts are designed to regulate the first point of sale between the grower and trader in ways intended to benefit farmers.¹⁴³ Depending on the state, more or less of its wholesale markets may be “regulated,” that is, governed by APMC legislation, or “private,” that is, operated and governed via the private sector. India-wide approximately 7,161 or 98 percent of the principal wholesale markets or *mandis* are regulated.¹⁴⁴ And of 27,000 smaller rural periodic wholesale markets or *haats*, 15 percent are regulated.¹⁴⁵ In West Bengal, the percentage is smaller: according to the then-Minister of Agricultural Marketing, Mortaza Hossain, farmers supply approximately 3,000 different kinds of wholesale markets, but only 200 are regulated or “owned or controlled by our government.”¹⁴⁶ Regulated markets are supposed to be administered by a democratic committee comprised of state and local government officials and representatives of various market sectors such as growers, financiers, and cooperative

140. Harriss-White, *supra* note 125, at 409; see also S.S. ACHARYA, 17 STATE OF THE INDIAN FARMER: AGRICULTURAL MARKETING 106 (2004) (arguing that in existing regulated markets “traders, commission agents and other functionaries have organised themselves into associations and do not allow entry of new persons”).

141. Harriss-White, *supra* note 125, at 390.

142. These Acts have colonial roots. In the 1920s, the British government began to investigate the shortcomings of its own agricultural markets. It proposed a number of state controls that, although mostly unimplemented at home, were exported to India in 1928 via the Royal Commission on Agriculture to standardize and rationalize the markets that produced the colonial power’s imported crops. “Regulated markets,” however, only became a significant percentage of India’s wholesale markets in the decades following independence. Barbara Harriss, *Inaction, Interaction and Action: Regulated Agricultural Markets in Tamil Nadu*, SOC. SCIENTIST, Nov. 1980, at 96, 96, 97–98 (1980). See also ACHARYA, *supra* note 140, at 99–100.

143. ACHARYA, *supra* note 140, at 94; HARRISS-WHITE, *supra* note 108, at 34.

144. S.S. Acharya, *Agricultural Marketing and Rural Credit for Strengthening Indian Agriculture*, INRM POLICY BRIEF NO. 3 (Asian Development Bank, New Delhi, India), 2006, at 3–4.

145. *Id.*

146. *Regulated Markets to Reduce Power of Local Agents*, BUSINESS ECON., Aug. 16–31, 2010, at 27.

marketing societies. Committees are charged with providing services such as dispute resolution and market information as well as dispensing licenses to all of the various buyers and intermediaries trading in the market—with the power to revoke these licenses in the case of malpractices.¹⁴⁷

In recent years, policy analysts have attacked regulated markets as a source of state-controlled inefficiencies and bureaucratic rent.¹⁴⁸ In the wholesale markets of West Bengal, however, I found highly decentralized forms of commodity exchange governed primarily *not* by state regulation, but rather by dense relational networks and extralegal norms.¹⁴⁹ In some cases, legal rules were known and openly flouted. In others, they were simply too far detached from reality on the ground to have much effect—an irony given that these markets are currently the subject of a raging national debate over how best to deregulate them. At the same time, understanding the governance structures of existing markets helps to make clear how different legal rules could privilege new market actors—namely, corporate retail chains—against the current configuration of wholesale traders and agents. Here, then, is a brief description of one of the largest regulated *mandis*, which chiefly functions as a primary wholesale market where farmers can bring their goods, and one of the largest private *mandis*, which chiefly functions as a secondary wholesale market where goods are exchanged among different traders as well as retail vendors.

B. Siliguri Regulated Market

Siliguri Regulated Market is on the outskirts of Siliguri, the largest city in the northern part of West Bengal. It is linked to Kolkata via train as well as by a small domestic airport. Asok Santra, then-CEO and Secretary of the West Bengal State Marketing Board, described it as one of

147. For an example, see The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 §§ 12–13, available at <http://www.lawsfindia.org/statelaw/5944/TheWestBengalAgriculturalProduceMarketingRegulationAct1972.html>.

148. Acharya, *supra* note 144, at 2–4 (“Agricultural marketing in India is characterized by pervasive government intervention [M]arket failure is occurring due to excessive state intervention By and large, APMCs have emerged as some sort of government-sponsored monopolies in the supply of marketing services/facilities, with all the drawbacks and inefficiency associated with public sector monopolies.”); CII–A.T. KEARNEY, RETAIL IN INDIA: GETTING ORGANIZED TO DRIVE GROWTH 18 (2006) (“The APMC Act has proved a deterrent in developing efficient practices, both for the retailer as well as for the farmer. The Act provides a monopoly status to the state-owned Agricultural Produce Marketing Committee in the purchase of agricultural produce from farmers.”).

149. See also HARRISS-WHITE, *supra* note 108, at 199 (observing that in West Bengal APMC legislation operates “according to neither its letter nor its spirit”).

the state's "biggest model market yards."¹⁵⁰ According to Hiranmoy Majumdar, the accountant of the Siliguri Regulated Market Committee, it covers 53.5 acres of land.¹⁵¹ As a regulated market, it is funded by a percentage fee levied on all market transactions, which is collected from buyers when they exit the market rather than from sellers when they enter (to lessen hardships on farmers).¹⁵²

In West Bengal, regulated markets are designed, in the words of the then-Minister of Agricultural Marketing, Mertoza Hossain, "to minimise the power of local agents."¹⁵³ Or as Santra insisted, "in my [regulated] markets, traders are buying directly from the farmers. That means there is no agent or anybody else who will purchase on [their] behalf."¹⁵⁴ Prefiguring the design of corporate supermarket chains, the CPIM has long pledged to "eradicate the middleman" on behalf of farmers and consumers even as, as Harriss-White wryly notes, it has presided "over a multiplication of middlemen without precedence in the entire history of Bengal."¹⁵⁵ Indeed, despite Santra's insistence to the contrary, commission agents—that is, middlemen who broker transactions for a commission—populate every corner of Siliguri market. They rent large stalls on long-term leases from the local market committee, which also grants them yearly trade licenses. They procure their goods from a mix of farmers and wholesale traders and sell either to retail vendors or other wholesale traders. The wealthiest commission agents sell to traders who export goods to other states and out of the country. One commission agent summarized the situation as follows: "There are places for the farmers but they never come and sell. Vacant places have been constructed by the government . . . but it's impossible for them to come and sell."¹⁵⁶ And despite marketing laws that require all sales to "be made by open auction or . . . by open agreement as may be permitted by the market committee,"¹⁵⁷ commission agents regularly negotiate deals in ways that are not necessarily transparent to either farmers or buyers.¹⁵⁸

150. Interview with Asok Santra, CEO and Secretary of West Bengal State Marketing Board, in Kolkata, West Bengal (Nov. 9, 2010).

151. Interview with Hiranmoy Majumdar, Accountant of the Siliguri Regulated Market Committee, in Siliguri, West Bengal (Nov. 19, 2010).

152. For horticulture produce, buyers are supposed to pay a 1 percent levy on their purchase at a checkpoint when they exit the market.

153. *Regulated Markets to Reduce Power of Local Agents*, *supra* note 146, at 27.

154. Interview with Asok Santra, CEO and Secretary of West Bengal State Marketing Board, in Kolkata, West Bengal (Nov. 18, 2010).

155. Harriss-White, *supra* note 125, at 408.

156. Interview with Commission Agent in Siliguri, West Bengal (Nov. 19, 2010).

157. The West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982, ch. III § 13(1), available at <http://wbagrmarketingboard.gov.in/rules-ok/rules.html>.

158. Majumdar tactfully suggested that auctions are not regular events. Interview with Majumdar, *supra* note 151. Commission agents were far more blunt: "[Auctions] do not exist

Why can commission agents dominate the regulated market in this way? A farmer who had brought about 250kg of cauliflower to the market that morning explained that he would compare rates at his local *haat* with rates in the regulated wholesale market. In the much smaller *haat*, he would sell his produce to a local trader (who would, in turn, likely bring it to a larger wholesale market such as this one). But in Siliguri he used a commission agent. The system in Siliguri is different he told me; here he could not “recognize” the buyers.¹⁵⁹ He and others repeated this phrase (about who could or could not recognize buyers) to explain why farmers relied on commission agents despite the regulated market law. What they meant by this was not only, or not necessarily, that farmers did not know who the buyers were but that they had no relationship with them. Large wholesale buyers often purchase goods on credit, perhaps settling their bills after a few weeks. Even if a farmer could afford to delay his payment, he could not transact in this way without certain kinds of relationships—a network he could trust. At the same time, wholesale buyers often prefer to deal with intermediaries they know over long periods of time.¹⁶⁰ As traders told Harriss-White, “[t]he entire trade runs on verbal contract” and “[a] known face is the only one I do business with.”¹⁶¹ Thus, the cauliflower farmer I spoke with in Siliguri explained that he would give his goods to a commission agent who would pay him that day, minus an 8 to 10 percent commission, using a reputational network to broker sales that, as a farmer, he lacked.

The vulnerability of farmers and the limits on their trust networks mean that brokers play a very important role in agricultural markets in West Bengal and throughout India. Brokerage, as Denis Vidal argues, does not simply siphon off rent from the labor of buying and selling, it enables and expands market exchange.¹⁶² Commission agents extend the informational capabilities of buyers and sellers beyond what they could acquire individually, and they create relationships of trust among otherwise anonymous market actors. “It is through the broker,” Vidal observes, “that supply and demand are defined and that the evaluation of

here. Why lie to you? . . . if I want to increase the price . . . we have a fingering system: we will shake hands and [the buyer] will push on some points so we will know [his price]. So again we will talk to another and whoever is giving more we will sell it to them and nobody will know the price.” Interview with Sanjay Prasad, Commission Agent, Sankar Prasad & Sons, in Siliguri, West Bengal (Nov. 19, 2010).

159. Interview with farmer in Siliguri, West Bengal (Nov. 19, 2010) (Namgyal Sherpa trans.).

160. See, e.g., Sandip Mitra, Dilip Mookherjee, Maximo Torero & Sujata Visaria, *Asymmetric Information and Middleman Margins: An Experiment with West Bengal Potato Farmers* 4 (Int’l Food Pol’y Res. Inst. & Int’l Growth Centre, Apr. 25, 2012).

161. HARRISS-WHITE, *supra* note 108, at 175.

162. Denis Vidal, *Markets*, in THE OXFORD INDIA COMPANION TO SOCIOLOGY AND SOCIAL ANTHROPOLOGY, *supra* note 110, at 1342, 1352–55.

customer and trader is made.”¹⁶³ Policy analysts miss this observation when they criticize commission agents for acting as both brokers and traders (and thus with potentially conflicting economic interests).¹⁶⁴

Indeed, it is precisely because commission agents do not act simply as go-betweens on behalf of other principals, but rather make market transactions possible, that it is genuinely difficult to separate commission from trade in Indian wholesale markets. Traders trade on their own accounts. But, as Mekhala Krishnamurthy argues, commission agents likewise “take the risk and responsibility of purchasing and handling the produce on their own accounts for a period of time before settling the transaction, recovering their costs, and collecting their commissions.”¹⁶⁵ Given how these networks facilitate market exchange, it is thus not at all obvious how state regulators should differentiate between transaction costs—which Santra told me the CPIM aimed to eliminate by eradicating commission agents—and legitimate trade and traders—which Santra explained that his party meant to sustain.¹⁶⁶

Commission agents in West Bengal also transgress divisions between trade and production, which in turn further muddies the line between brokerage and trade. Larger commission agents have farmers tied to them through interlinked agreements.¹⁶⁷ As Vidal thus argues, “the practice of traders who are being paid only on a commission basis but who nevertheless advance most of the price of the [commodity] to the seller before the transaction takes place, blurs practically any distinction between the main partners of a transaction (the ‘real’ buyers and the

163. *Id.* at 1354. See also Denis Vidal, *Markets and Intermediaries: An Enquiry About the Principles of Market Economy in the Grain Market of Delhi*, in DELHI: URBAN SPACE AND HUMAN DESTINIES 125 (Véronique Dupont, Emma Tarlo & Denis Vidal eds., 2000). In his work on the largest grain wholesale market in Delhi, Vidal explains further that “if one were coming to the market in order to buy or sell anything without being represented by . . . some insider, not only would that person risk being neglected but he would also find that the only possible transaction open to him would be the direct exchange of cash against merchandise.” *Id.* at 135.

164. See, e.g., Marcel Fafchamps, Ruth Vargas-Hill & Bart Minten, *Quality Control and the Marketing of Non-staple Crops in India*, in GLOBAL SUPPLY CHAINS, STANDARDS AND THE POOR 122, 125 (Johan F.M. Swinnen ed. 2007); Minten et al., *supra* note 95, at 19–20.

165. Mekhala Krishnamurthy, *Harda Mandi: Experiencing Change in an Agricultural Market in Central India (1980–2010)* 225 (2011) (unpublished Ph.D. dissertation) (on file with University College London); see also Vidal, *supra* note 163, at 135–36.

166. Interview with Santra, *supra* note 154.

167. I could not uncover reliable statistical data on the percentage of farmers engaged in interlinked agreements at the Siliguri market. Recent general studies on Indian wholesale markets vary in their findings. For example, in a study of regulated wholesale markets in Maharashtra, Orissa, Tamil Nadu, and Uttar Pradesh, the authors report that they found far fewer advanced linkages than they anticipated: only 9 percent of farmers received credit or other kinds of inputs in advance from their buyers. Fafchamps et al., *supra* note 164, at 125. However, in a study in two rural districts in the state of Punjab, Anita Gill reports that commission agents are the primary form of credit for farmers who use crops as their collateral. Anita Gill, *Interlinked Agrarian Credit Markets: Case Study of Punjab*, 39 *ECON. & POL. WKLY.* 3741, 3745–48 (2004).

'real' sellers) and the intermediaries."¹⁶⁸

Consider, as an example of this sort of operation, Sankar Prasad & Sons, a family firm that is one of the largest of the approximately thirty to forty commission agents in Siliguri that deal in oranges (grossing five to six crores or nearly \$1 million for the season).¹⁶⁹ This family business works with fifty to sixty orange farmers who are also intermediaries—village aggregators who bulk the produce of smaller farmers in their village and then transact with commission agents on the smaller farmers' behalves. These farmers-cum-intermediaries bring their fruit to a large storage area in the market where mostly female wage laborers sit on the ground sorting, grading, and packaging them.¹⁷⁰

One son, Sanjay Prasad, told me that he pays his farmers one year in advance so that "the garden is locked for me [and these farmers] will not sell to other people."¹⁷¹ He enforces this arrangement informally—there is no written contractual agreement: "[The farmer is] not allowed, but it's not written, there's no fixed agreement between us like that, just like we talk." Prasad does not negotiate a particular purchase price with the farmer. Rather he offers a sum of money, roughly based on the previous year's transaction, which he will then adjust up or down based on the market and its fluctuations during the orange season. Prasad explained, "Suppose I gave him five lakhs of rupees in advance one year earlier, so he's taking that money . . . when the season comes he starts bringing the oranges, his own gardens and others' gardens also. Then it depends on the market what his fate will be and what our fate will be." Relations of debt and credit are carried forward each year. If after the season the farmer still owes the agent money, then "we adjust, another year again we try. That depends on the relationship we have."¹⁷²

Prasad argued that this relationship enables farmers to access the capital they need to cultivate, and it links them to wholesale buyers while simultaneously protecting them from those buyers' aggressive and speculative practices. And Prasad is likely right, at least to some extent. In her ethnography of regulated wholesale markets in Madhya Pradesh, Krishnamurthy recounts highly politicized struggles in the 1980s to abolish commission agents in grain markets.¹⁷³ Commission agents exploited farmers by, among other things, charging interest on credit,

168. Vidal, *supra* note 163, at 136.

169. Interview with Prasad, *supra* note 158.

170. See Harriss-White, *supra* note 125, at 395 ("Women form a majority of the casual labour force of large scale agro-processing firms (and are quite deliberately casualised).").

171. Interview with Prasad, *supra* note 158.

172. *Id.*

173. Krishnamurthy, *supra* note 165, at 64–74.

delaying capital, and pegging scales in their favor.¹⁷⁴ Farmers, however, reported that conditions for them worsened in the decade after commission agents were banned from the market. Without the agents, the market was governed by younger, more aggressive traders who were less invested in maintaining personal relations with individual farmers.¹⁷⁵ Krishnamurthy explains that—consistent with other studies of patron-client relations in India—the farmers she studied had “lost the individual attention, common courtesy, frequent contact, and on occasion, personal protection that had come with their status as *grahaks* or customers of their respective *arhatiyas* [commission agents]. Even with all the well-known malpractices . . . the *arhatiya* too had to work hard to ensure that he maintained his clients, never going so far in his extraction so as to injure a farmer into leaving” the market.¹⁷⁶ As one farmer she interviewed put it, in the aftermath of the change “[w]e experienced only exploitation without any sense of attachment.”¹⁷⁷ Krishnamurthy reports that once commission agents and the personal networks they had created were abolished in favor of “direct” sales, farmers needed far more intensive state regulation and technological support to ensure fair market practices.¹⁷⁸

In Siliguri, parties of vastly unequal wealth and power are likewise linked together in robust relationships that combine control and dependency with trust and facilitation. These complex relationships are mediated by finance capital and collective social organization. And it would seem that even in the state’s model regulated market they are governed least of all by state marketing law. Intermediaries play an intrinsic role and very small farmers (the majority of agricultural producers) are not present at all. As Prasad put it: “Like all the middlemen’s middlemen’s middlemen’s middlemen’s middlemen’s middlemen, it’s a long chain.”¹⁷⁹

As the next section suggests, there are few, if any, differences to this long chain in private markets—that is, the markets that are not formally regulated by state bureaucracy and marketing committees.

174. *Id.* at 65.

175. *Id.* at 90, 131, 213.

176. *Id.* at 90. For a summary of some of these studies, see John Harriss, *South Asia*, in *A HANDBOOK OF ECONOMIC ANTHROPOLOGY* 526, 526–27 (James G. Carrier ed., 2005). *Cf.* Bart Minten, Anneleen Vandeplas & Johan Swinnen, *The Broken Broker System?: Transacting on Agricultural Wholesale Markets in India (Uttarakhand)* 25 (Int’l Food Pol’y Res. Inst., Discussion Paper No. 01143, Dec. 2011) (finding, in a study of two Indian wholesale markets, that “[i]nterlinkages seem to be not an instrument for farmer exploitation but rather a service offered by brokers to establish farmer loyalty and ensure future supplies”).

177. Krishnamurthy, *supra* note 165, at 92.

178. *Id.* at 100–21.

179. Interview with Prasad, *supra* note 158.

C. Kolay Market

The Kolay market—owned and managed by the Kolay family who founded it in 1933—is a secondary wholesale market and the largest wholesale market in Kolkata. Located next to the major Shealdah train station, it covers approximately 57,600 square feet.¹⁸⁰ By one estimate, it handles 400 tons of produce per day.¹⁸¹ It operates according to a two-tiered system. Small traders, who procure produce from farmers in *haats*, travel by train to Kolkata. Upon entering the market (or if they are very poor upon leaving after they have sold their goods), they pay a fee per “head load”—literally per bundle that is carried into the market, often on the head of a low-caste laborer. They take their place in the center of the market in a crowded mass of buyers and sellers.

The second tier is comprised of powerful commission agents who rent spaces around the periphery (often on leases held for generations). These agents bring truckloads of produce to the market from primary wholesale markets both within West Bengal as well as from other states. They sell what they can directly to large buyers, paying a fee to the Kolay family based on the units of goods they sell. They give the remainder to small traders who buy from them on credit. These small traders (who may themselves be small farmers supplementing their income) squat in front of commission agents’ offices selling to small buyers in the market and likewise paying a market fee per container that they sell. Like in Siliguri, these sales are not conducted via transparent (open outcry) auctions. They are, however, perhaps better monitored from above. As one seller assured me when I asked how his market fees were calculated amidst the pandemonium of the market, “the owner has got his representative here. He is looking.”¹⁸² (By contrast, I visited regulated markets where officials reported that market fees had not been collected for months if not years.¹⁸³) The owner, Bablu Kolay, and his staff also keep general tabs on market relations, sometimes even providing dispute resolution services, for example interfering to interrupt the “debt circle” between commission agents and the small traders tied to

180. Interview with Bablu Kolay, owner of Kolay Market, in Kolkata, West Bengal (Oct. 2, 2010).

181. S. Kathrin Kriesemer, Katinka Weinberger & M.L. Chadha, Demand for and Awareness of Safely Produced Vegetables in India 3 (AVRDC—World Vegetable Ctr., Publ’n No. 10-744, 2010).

182. Interview with seller at Kolay Market, in Kolkata, West Bengal (Sept. 25, 2010).

183. See also Barbara Harriss-White, *Order, Order. . . Agro-Commercial Micro-Structures and the State: The Experience of Regulation*, in INSTITUTIONS AND ECONOMIC CHANGE IN SOUTH ASIA 275, 295 (Burton Stein & Sanjay Subrahmanyam eds., 1996) (observing that in regulated markets in West Bengal that “[f]ees are levied not *ad valorem* but *ad hoc*”); HARRISS-WHITE, *supra* note 108, at 199 (same).

them, by encouraging a compromise.¹⁸⁴

Although Kolay market is a private market, it is nonetheless subject to a range of state laws—few of which, again, have regulatory effect on the ground. For example, anyone engaged in agricultural trade anywhere in the state (in a regulated or private market) is supposed to have a license from the West Bengal State Marketing Board to conduct business legally.¹⁸⁵ When I asked Bablu Kolay about his relationship with the Board, he explained that he only holds a license from the Kolkata municipality to operate the market in its jurisdiction. But all of the agricultural trade—selling and reselling—that happens inside of the market is outside the APMC state system. Traders inside the market do not hold APMC licenses nor, he explained, does the state require it. In Kolay's words: "Yes, the marketing board . . . I know those people, but, you know, we've not registered with them. And it's not mandatory to register with them."¹⁸⁶ Of course it *is* mandatory to register and for all traders to be licensed—the language of the AMPC Act makes this entirely clear.¹⁸⁷ But state marketing law has little relevance, either formally or informally, to the internal governance of his market. For example, when I asked whether his son, an attorney working in a prestigious transnational law firm, would eventually join the market, Kolay described his legal training as a liability: "His mindset is totally different. Here, you have to do a lot of PR . . . you have to do a lot of PR with different politicians, of different political parties; you have to do a lot of adjustments . . . the way he's worked for the last five, six years, will not allow him to fit in."¹⁸⁸ Kolay believes that the skills one needs to manage one of West Bengal's most powerful wholesale markets are in politics, not in law.

Or to put this point a bit differently, the leftist state does not govern commodity markets through legislative and licensing regimes that function to control and constrain them, as Western liberal policy analysts might presume. Nor, to be sure, does it govern commodity markets via transparent, coherent, uniform legal rules designed to promote free and fair competition, as they would desire. Rather it governs, if at all,

184. Interview with Kolay, *supra* note 180.

185. The West Bengal Agricultural Produce Marketing (Regulation) Rules, *supra* note 157, at ch. 2 § 3, provides that:

Every person desiring [to] carry on business or act as a trader, commission agent, broker, weighman, measurer, warehouseman or surveyor, or [sell] or purchase agricultural produce or engage [in] processing or preservation of agricultural produce shall make an application to the market committee [having] jurisdiction [over the market area] for the grant of a license

186. Interview with Kolay, *supra* note 180.

187. See the text of the Act in *supra* note 185.

188. Interview with Kolay, *supra* note 180.

through more opaque, less uniform, and patronage-based kinds of political accommodations (such as privileging certain elite actors like Kolay). Harriss-White puts the point well when she notes that from the early 1980s onwards, development agencies and financial institutions alike assumed that in West Bengal the relationship between the state and market “was one of conflict.”¹⁸⁹ “The reverse,” she argues, “was actually more typical.”¹⁹⁰

D. *Reconfiguring State and Market*

This accommodation between the state and the market in West Bengal has shifted with the rise of a new and far more powerful agro-commercial elite. As retail chains started spreading to East India from the West and South, the CPIM-led state government began to require—and to refuse to grant—APMC licenses for any large corporate entity that wishes to engage in agricultural trade. Consider the comments of the MIT-trained economics professor and then-Finance Minister Asim Dasgupta:

The corporate houses have come here, but they have gone back. Reliance started building big malls and so forth, but total number is not very much, because, you will ask—is there a legal prohibition? There is a legal prohibition . . . this is the Agricultural Produce Market Regulation Act . . . they have to get a license from regulated market committees, and we have denied that license. That is the legal power which most of the states can use. We have the power.¹⁹¹

This use of “legal power” signals a marked regulatory shift. When Keventer’s Fresh Limited set up shop to trade in fresh fruits and vegetables, it described a rather sleepy state of affairs in West Bengal. In 2006, it encountered little trouble procuring an APMC license when it applied for one. The Managing Director, Mayank Jalan, recounted:

We took [the APMC license] in 2006, when nobody was really looking at this, and nobody really knew what the department is; nobody even knew where the office is of the department. I remember the first time when we actually applied for the license—it took us about two weeks just to find that law book, and in every shop, the law book was not there. They said, ‘We haven’t even heard of this law; what is this?’ So we just got it then. It was just a stroke of luck or good timing. And then suddenly, it became a *really big* issue; it had blown up. So since we had it, they couldn’t do anything about it.¹⁹²

The West Bengal state government enacted its APMC Act in 1972, five

189. HARRISS-WHITE, *supra* note 108, at 38.

190. *Id.*

191. Interview with Dasgupta, *supra* note 121.

192. Interview with Jalan, *supra* note 92.

years before the CPIM came to power. But far from wielding significant regulatory force—at least according to Jalan—until just a few years ago it was largely unknown. Since 2008, however, Keventer's Fresh has repeatedly defended its license before the Kolkata High Court against attempts by the state and local marketing boards to retract it (on various technical grounds).¹⁹³ At the same time, as my interview with Bablu Kolay suggests, the State Marketing Board continues to permit a great deal of unlicensed trade. As Santra (then-CEO and Secretary of the Board) admitted, it explicitly distinguishes between large corporate capital—domestic as much as multinational—and everyone else.¹⁹⁴ For small traders, he explained, “we are not forcing now.”¹⁹⁵ Indeed, petty traders and farmers will not have heard of the APMC at all. And even powerful local actors such as Kolay have remained unaffected by APMC license requirements.

From the perspective of the CPIM, retrenching corporate power via its licensing regime is a legitimate matter of political governance: it is the state's responsibility to allocate economic power to ensure the survival of the majority of its market actors. But from the perspective of neoliberal legal principles such as freedom of contract—which stipulate the formal equality of all market actors—the state's legal distinction between the very large versus the rest is untenable.¹⁹⁶ One can thus appreciate why the state government of West Bengal is under ongoing pressure from the central Indian government as well as corporate leaders to deregulate and liberalize its agricultural marketing regime.

But what this Part has argued is that formal state marketing law structures little of market life. Underneath the highly politicized efforts of the government to use its legal licensing power to exclude large corporations is a decentralized, fragmented market structure controlled by a range of private actors and institutions. In fact, corporate actors themselves have called for *more* direct state regulation of the market, complaining of the laissez-faire governance of the leftist state. Consider the comments of Keventer's Fresh sourcing manager, Sandra Prosad

193. Interview with Debanjan Mandal, Partner, Fox Mandal, in Kolkata, West Bengal (Nov. 15, 2010). Mr. Mandal, counsel for Keventer's, kindly allowed me to read through court filings and orders, including a 2009 order directing regulated marketing committees to uphold Keventer's license.

194. Santra made explicitly clear that his party objects to “big corporations” in the “business of agricultural marketing,” whether they are “national or multinational or international.” Interview with Santra, *supra* note 150.

195. *Id.*

196. For an analysis of how neoliberal theorists analogize multiple forms of social organization to individuals subject to the same legal and social rules, see generally Amy J. Cohen, *Dispute Systems Design, Neoliberalism, and the Problem of Scale*, 14 HARV. NEGOT. L. REV. 51, 60–75 (2009); Ilana Gershon, *Neoliberal Agency*, 52 CURRENT ANTHROPOLOGY 537, 537–43 (2011).

Choudhuri, who currently uses Keventer's APMC license to supply large supermarkets in the state. "For vegetables," he complained, "here is a market, here is a market, here is a market—all of the markets are not interconnected also. And there is no regulation, no board, no society, [no] monitoring—nothing is there."¹⁹⁷ For the highly capitalized firm, it is clearly undesirable to exist in an economic space that is comprised of multiple fragmented markets, which set their own internal prices and defy a uniform set of governing rules. "There is no [daily] price point," Choudhuri groused, within or across these markets because of "abundant unorganized players." Imagine if instead, he proposed, the state would impose rules to regulate price fluctuations and organize the times and spaces where trading can happen: "Suppose in [the] case of vegetable trading, there is a specific time. Morning six to ten a.m., you can trade the vegetable only. Suppose eight to eleven a.m., you can trade the fruits only And their price point will be the same at the beginning and at the ending of the trading period."¹⁹⁸ Rather than a proliferation of markets with significant internal variation, Choudhuri desires a single economic space that is standardized and made predictable in ways that he can more easily navigate. Moreover, he wants the *state* rather than private market institutions to set the rules that govern this space. In other words, supermarkets and their corporate suppliers want a new kind of regulated market—one that is organized along different principles than the version of the private and "free" market that already exists.

IV. A NEW KIND OF MARKET: CONTRACT FARMING AND SUPERMARKETS IN WEST BENGAL

As Choudhuri's comments suggest, proponents of supermarket-led food supply chains envision state law as a key force of market transformation. Or as Raj Jain, President of Walmart's India unit, bluntly put it when he recently encouraged states to change their marketing laws: "If we want to become big one day, then reforms would be required."¹⁹⁹ To that end, the central Indian Ministry of Agriculture has promulgated a new Model APMC Act that it is presently encouraging all states to adopt.²⁰⁰ The Model Act would legalize procurement contracts between farmers and retail firms so that firms could circumvent the complex

197. Interview with Choudhuri, *supra* note 100.

198. *Id.*

199. Sharma & Mukherji, *supra* note 98, at A10.

200. For the text of the Model APMC Act, see Dep't of Agric. & Cooperation, Indian Ministry of Agric., Salient Features of the Model Act on Agricultural Marketing, MARKETING INFRASTRUCTURE & AGRIC. MARKETING REFORMS, <http://agmarknet.nic.in/amrscheme/modelact.htm>.

chain of wholesale markets and intermediaries described above.²⁰¹ In this Part, I suggest that contract farming is about producing new configurations of market power, standardization, and control as much as it is about producing greater efficiencies for farmers and consumers. I conclude by suggesting that at stake are hotly contested visions of economic justice that in India inform both practices of resistance to corporate retail and competing ideas of market reform.

To begin, consider a recent study by Marcel Fafchamps, Ruth Vargas-Hill, and Bart Minten that examines trade in maize, mango, potato, tomato, and turmeric in regulated markets in four Indian states. The authors report findings they did not expect:

We started the study concerned that the State Agricultural Produce Market Act may serve as a barrier to entry to trading and, hence, might increase transaction costs for non-staple crops [T]he somewhat obscure way in which auctions are held, [and] the dual role of commission agents [as both broker and wholesaler] . . . suggest that the Produce Market Act generates rents that are captured by a few traders. *Whether these rents are sufficiently large to reduce farmer prices and increase consumer prices significantly remains unclear.*²⁰²

In fact, Fafchamps, Vargas-Hill, and Minten suggest that large rather than small capital is hurt most by the current structure. The clear losers in their study are large exporters and processors who want to access high-end consumer markets, and who therefore desire to approach farmers directly and control the supply chain to ensure quality, standardization, and consistency: “For them, liberalization is essential.”²⁰³

As I will argue in this Part, with liberalization—and specifically with the legitimation of contract farming—“things change,” as Janan of Keventer’s Fresh told me. “Very frankly,” he offered, with contract farming “it really, really changes; the dynamics of the game change.”²⁰⁴ As we shall see, contract farming reconfigures the background rules for market competition, giving supermarkets an unprecedented amount of flexibility and control over both production and exchange. Via production contracts, supermarkets can require that farmers grow highly particular types and quantities of crops using specific seeds and technological practices, and they can retain the ability to revise these requirements in the face of market fluctuations and changes in consumer demand.

201. See *id.* at ch. VII & Addendum on Contract Farming Agreement and its Model Specifications.

202. Fafchamps et al., *supra* note 164, at 125 (studying Maharashtra, Orissa, Tamil Nadu, and Uttar Pradesh) (emphasis added).

203. *Id.* at 126.

204. Interview with Janan, *supra* note 92.

Consider the contract farming plans of Reliance Industries—India’s second largest corporation,²⁰⁵ which has pledged to invest \$5.6 billion “to become India’s largest modern retailer.”²⁰⁶ The Chairman and managing director, Mukesh Ambani has promised to connect farmers “directly to Indian and global consumers” by building “a next-generation distribution and logistics system for farmers, so they can share in inclusive growth.”²⁰⁷ According to Abhijit Chattopadhyay, Business Head of Reliance Retail Limited, here is how contract farming would work in West Bengal:

I will take the farmer’s land and lease. The farmer’s land is not mine, the ownership will not change. But the produce whatever will happen for, say, five years or ten years or ninety-nine years, that lease period, will be mine. He cannot sell it to any other guy . . . [Reliance] will give him the fertilizer. [Reliance] will make sure all the [produce is] of this size, [is] of this weight, and only those produces . . . will be purchased . . . And [Reliance] will be the owner of the particular produce for that contract period.²⁰⁸

Via a long-term contractual commitment, Reliance will thus ensure a consistent and highly standardized supply of produce. How it sets contract prices, Chattopadhyay made clear, depends on the particular commodity. For example, tomatoes, he argued, are highly perishable: “maximum three days you can keep it. So I cannot have a contract [price] for three months . . . because I don’t know what will be the dump. So I will have a much shorter period for tomato. But for other produce, I could have a longer period.”²⁰⁹ Reliance envisions that farmers will bind themselves to long-term contracts for production (“for, say, five years or ten years or ninety-nine years”) but with prices for different crops set by Reliance multiple times during a season. Prices would depend on a variety of factors that are calibrated to retail sales, including the shelf life of a particular commodity, how much is sold, and how much is wasted.

Indeed, contract farming is especially desirable in a state like West Bengal where land ceiling laws make large agribusiness landholdings possible only with state accommodations.²¹⁰ And even if complete verti-

205. See *Fortune Global 500: Full List*, CNNMONEY (last visited Sept. 17, 2013), http://money.cnn.com/magazines/fortune/global500/2013/full_list/.

206. Sinha & Kar, *supra* note 78, at 119. See also GEOFF HISCOCK, *INDIA’S STORE WARS: RETAIL REVOLUTION AND THE BATTLE FOR THE NEXT 500 MILLION SHOPPERS* 53–67 (2008).

207. HISCOCK, *supra* note 206, at 61 (quoting Mukesh Ambani).

208. Interview with Chattopadhyay, *supra* note 101.

209. *Id.*

210. Currently, land ceilings are twelve acres for irrigated land and seventeen acres for dry land. See *AGRICULTURAL STATISTICS AT A GLANCE 2011*, *supra* note 89, at tbl. 17.1. On corporate purchasing and/or leasing of rural farmland by agribusiness corporations, see Olivier De Schutter,

cal integration were possible, contract farming offers retail giants greater flexibility in the face of market uncertainty. Firms need not become tied to particular pieces of land through property ownership. Instead, they can use contracts to shift the risks of production and ecological degradation onto producers, and they can respond to new market opportunities without the expense of relocation.²¹¹ As one commentator put it—describing the Indian corporation FieldFresh’s operations in Punjab (a state where contract farming is legally recognized²¹²)—“Instead of owning the land and taking on the associated risk . . . the company has struck pacts with local farmers”²¹³ Moreover, by formally contracting for agricultural goods (rather than employing agricultural workers), corporations can also benefit from unregulated (non-wage) labor without assuming any direct responsibility for work practices.²¹⁴ Thus, the international small farmer’s group Via Campesina has argued that corporate agro-commercial power now flows less from land ownership than from the ability to control the means of production—“loans, materials supply, the dissemination of new technologies”—via contract.²¹⁵

So far the state government of West Bengal has kept these sorts of contractual arrangements with farmers formally illegal via its licensing regime.²¹⁶ When I asked the then-Minister of Agriculture, Narendranath Dey, about the state’s hostility to contract farming, he explained that under a regime of contract farming, the land owned by small farmers

The Green Rush: The Global Race for Farmland and the Rights of Land Users, 52 HARV. INT’L L.J. 503 (2011).

211. See Burch & Goss, *supra* note 29, at 347–48.

212. See, e.g., Sharanjit S. Dhillon & Navchetan Singh, *Contract Farming in Punjab: An Analysis of Problems, Challenges and Opportunities*, 44 PAK. ECON. & SOC. REV. 19, 26 (2006).

213. Mukesh Pandey et al., *FieldFresh Foods: Linking Indian Fields to the World* 6 (Mich. State Univ., 2010). FieldFresh Foods Pvt Ltd. is an agribusiness joint venture between Bharti Enterprises and a Rothschild funded investment company created to export Indian fruits and vegetables to western supermarkets. *The Next Big Thing*, *supra* note 93, at 70.

214. For a fascinating example in the Indian context, see Priti Ramamurthy, *Rearticulating Caste: The Global Cottonseed Commodity Chain and the Paradox of Smallholder Capitalism in South India*, 43 ENV’T & PLAN. 1035, 1035–36 (2011) (arguing that “as wage rates rise and seed prices do not” corporations prefer to outsource cottonseed production via contract with complex social, economic, and dignity effects for newly propertied low-caste farmers).

215. *Announcement: World Forum on Agrarian Reform*, LA VIA CAMPESINA: INT’L PEASANT’S MOVEMENT (Feb. 14, 2006), <http://viacampesina.org/en/index.php/main-issues-main-menu-27/agrarian-reform-mainmenu-36/79-announcement-world-forum-on-agrarian-reform>, cited in McMichael, *Global Development and the Corporate Food Regime*, *supra* note 19, at 292.

216. This is a decision that the new government has thus far pledged to continue. See, e.g., Sutanuka Ghosal, *West Bengal Government May Amend APMC Act*, ECON. TIMES (June 12, 2012, 4:21 PM), http://articles.economictimes.indiatimes.com/2012-06-12/news/32195018_1_apmc-act-contract-farming-west-bengal (reporting that “the state government will not follow the Centre’s advice on adopting contract farming”).

“ultimately will go to . . . a *zamindar* in disguise.”²¹⁷ *Zamindars* were colonial-era landowners that extracted rents from peasants and the first targets of land reform after independence.²¹⁸ Dey thus argued that the corporation would become the new *zamindar* and the farmer “will lose his freedom” not through semi-feudal property relations but rather through contract.²¹⁹

This is a common argument in West Bengal.²²⁰ But the Minister meant something more subtle than the literal loss of land when farmers default on their agreements. Against neoliberal ideology that valorizes contracts as facilitating market exchange, Dey claimed that contracts constrain desirable market activity. Contracts, he argued, require the farmer to sell his produce at an already agreed upon price whereas “in our present government, the market, the demand and supply will always determine . . . the price. Farmers will have their own land, they will cultivate according to their choice, they will sell their products at the rate of the market price. All this [will be] the freedom of the farmers.”²²¹ That is, farmers will have the freedom to participate in uncertain spot markets rather than experience the domination that could result when market relations assume more fixed, centralized, and durable institutionalized forms.

In other words, for Dey, the enforcement of contracts is a public decision that governs how power, resources, risk, and security are distributed in the market.²²² By refusing to recognize production contracts, the state is actively choosing to favor certain actors and relationships over others—that is, corporate firms cannot legitimize their arrangements with farmers via the force of state law. “What is then the contract?,” Dey asked, “Contract is some agreement, and you will have to go according to the agreement. That is the problem.”²²³ The current

217. Interview with Narendranath Dey, Minister of Agriculture, in Kolkata, West Bengal (Oct. 8, 2010).

218. See *supra* note 110.

219. Interview with Dey, *supra* note 217.

220. As Santra put it: “In the name of a long term contract . . . farmers lose their control over the small ancestral land . . . maybe two or three years down the line, he’ll be left with no option but to surrender his land to one of his corporate giants.” Interview with Santra, *supra* note 150. And indeed, as the alarmingly high rates of farmer suicides in the post-liberalization era suggest, the indebtedness of small farmers is now a national crisis. See, e.g., Jeffrey Neilson & Bill Pritchard, *The Final Frontier? The Global Roll-out of the Retail Revolution in India*, in *SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS*, *supra* note 6, at 219, 237; WEIS, *supra* note 20, at 110.

221. Interview with Dey, *supra* note 217.

222. See, e.g., Morris R. Cohen, *The Basis of Contract*, 46 HARV. L. REV. 553, 562, 591 (1933).

223. Interview with Dey, *supra* note 217.

regime would instead protect the farmer's freedom to change his mind against the corporation's efforts to constrain it.

In offering this sort of political and ideological representation for farmers, the Minister of Agriculture was invoking an image of the rural poor as independent entrepreneurs making decisions based on the agricultural environment and supply and demand. But as I suggested in the section above, farmers in West Bengal are already part of a complex and hierarchical relational/regulatory regime—some of it state-based, most of it not—that structures their market opportunities. It is precisely these constraints, supermarket proponents argue, that the state could eliminate by legitimating formal legal contracts between firms and farmers. Because farmers' welfare is at the heart of this debate, it is to their own representations of the costs and benefits of potential market transformation that I now turn.

I spoke with approximately one hundred small vegetable farmers (often in small groups) in four village sites all within a two-hour radius (north and south) of Kolkata. Most owned approximately one to two acres of land.²²⁴ I focused on trade in fresh vegetables and fruits because it is widely acknowledged as the most challenging and important sector for supermarkets to capture: again, when consumers abandon their local vendors for daily produce, supermarkets are entrenched.²²⁵ Not all farmers were forthcoming about their earnings, but several stated that they earned around 4,000 rupees per month (roughly eighty dollars), just enough, they suggested, to maintain their families. Most of the small farmers I spoke with told me that they sell their produce at their closest local *haat* where they work with a number of different intermediaries. Very often, they said, these intermediaries are “known people” with whom they have been dealing for some time. These intermediaries are small traders or small commission agents who typically bring goods to wholesale markets (this particular distinction did not appear especially relevant—farmers treated both as their buyers). None of the farmers I spoke with had pre-committed their crop to any agents or traders, and they reported that, at least for them, interlinked sales were uncommon. Some, however, would give their goods to traders on credit and settle their bills only after one week. This description is consistent with what

224. Because horticulture farming is especially labor intensive, it is disproportionately produced by small farmers who can recruit unpaid family labor and thus earn higher profits than if they cultivate staple crops like wheat or paddy where more of the production is easily mechanized. See, e.g., Reardon et al., *Supermarket Revolution in Asia*, supra note 39, at 12335.

225. I should add that West Bengal is an important state for horticulture production. It produces 3.9 percent of the country's fruit and 18.2 percent of its vegetables (more vegetables than any other state). NAT'L HORTICULTURE BD., GOV'T OF INDIA, INDIAN HORTICULTURE DATABASE 2011 9–11 (2011), available at <http://nhb.gov.in/area-pro/database-2011.pdf>.

researchers reported from a recent study on horticulture farmers in Uttarakhand. Although farmers could choose from among many brokers, several farmers would work with just a few that they knew personally, often for long periods of time.²²⁶

What small farmers repeatedly told me is that existing markets worked for particular kinds of fresh commodities. By “worked,” they meant that the market set prices through reasonably competitive forces of supply and demand rather than simply through naked power relations and speculative accumulation (as is more often the case, they argued, for commodities like potatoes, rice, and mustard seed oil). But their idea of the market as a (limited) source of equity also reflected their sense of how these markets were embedded in particular social relations. Thus, even in spot vegetable markets, farmers would enter into more stable and longer-term trading arrangements with particular “known” traders. In these trust relations, they perhaps felt exploited but not *overly* so. By contrast, they sensed that with large corporations things could get out of hand.

In all my conversations, I discussed Reliance as my example of an Indian retail chain interested in contract farming. Some farmers had heard of Reliance’s contract farming plans. As one put it: “They themselves are going to open a brokerage house here, and do the system we had earlier, where people would give us money to cultivate certain crops,” referring to a time when fields in the area were tied to commission agents.²²⁷ Some farmers were already selling to Reliance representatives who were (illegally but quite commonly) buying produce in local *haats* and offering farmers a premium (two rupees per kg above the market rate) for high quality produce.²²⁸

When I asked farmers what they thought the resale value on their goods was, many suggested that retail vendors would double their selling price. Some expressed resignation: “Even if we know, there is no consequence. Nothing can be done.”²²⁹ Others thought that it more rea-

226. Minten et al., *supra* note 95, at 26–27. They also report that 22 percent of the farmers had received a loan from the broker that they had used in their last transaction. *Id.* at 29–30. *See also* Minten et al., *supra* note 176, at 19 (finding that “95 percent of the farmers in our sample report trusting most brokers”). *Compare* Mitra et al., *supra* note 160. Here researchers found that potato farmers in West Bengal “almost universally” reacted “to price offers made by traders” rather than agree in advance to sell to a particular trader at a particular amount or price. *Id.* at 23. They also report that traders competed for the farmer’s goods—albeit within a narrow price range limited by the farmers’ alternative options to transport their produce to larger wholesale markets to try and sell at the prevailing market price. *Id.* at 30–31.

227. Interview with farmers in Amboula Village (near Habra) in District North 24 Paraganas, West Bengal (Sept. 19, 2010) (Ratnesh Bhattacharya & Monalisa Saha trans.).

228. *Id.*

229. *Id.* (Ratnesh Bhattacharya trans.).

sonably reflected the risk that buyers down the chain may not be able to sell everything and end up with waste.²³⁰ When I asked whether farmers thought contract farming was a desirable alternative to this current system, the majority expressed strong reservations. Just as the Minister of Agriculture insisted, many farmers told me that they were not interested in using formal contracts to manage price fluctuations or hedge against risk. “The market varies for vegetables, fresh vegetables,” one farmer stated. As a result, he speculated that contract prices would fall below market ones. And if the reverse happens?, I inquired. He answered that, for him, a loss due to market fluctuations is a less painful or “conscious” loss than one due to a longer-term contractual decision.²³¹ This was especially the case, he explained, when farmers negotiate over highly perishable goods that do not depend on storage facilities and processing plants and as a result, as another farmer put it, “we can understand the market.”²³² These farmers were thus arguing that they preferred to hedge against risk through their more immediate knowledge of the market and market relations than through futures contracts with powerful economic actors.

Contract farming makes farmers’ market knowledge increasingly fragile. As Busch and Bain argue, prices for goods traded in wholesale markets “can be far removed from and uncorrelated with the prices of similar products grown under contract,” leaving farmers with insufficient information to bargain.²³³ Indeed, from the perspective of the firm, one reason to favor contracts is non-public, non-transparent pricing.²³⁴ Moreover, as contract farming becomes more common, spot markets, in turn, become less reliable. Indeed, farmers elsewhere “have voiced concerns that . . . spot market prices become ‘more vulnerable to manipulation and volatility as fewer buyers and sellers account for a larger percentage of the trade.’”²³⁵ The farmers I spoke with in West Bengal

230. *Id.* See also Minten et al., *supra* note 95, at 18 (finding, in a study of two wholesale markets in Uttarakhand, margins “as high as 13 percent in the case of green peas and 26 percent in the case of cauliflower” between what farmers receive from wholesalers and what retailers pay to wholesalers).

231. Interview with farmer in Santoshpur Village, *supra* note 3 (Mitra Routh trans.).

232. *Id.*

233. Busch & Bain, *supra* note 32, at 331. See also CHEN ET AL., *supra* note 34, at 24 (reporting that in their interviews with small farmers “the lack of or limited market information and intelligence on prices and alternative buyers and their limited negotiating or bargaining skills were considered as constraints to initiating [contractual] linkages”).

234. See, e.g., Neil Hamilton, *Agricultural Contracting: A U.S. Perspective and Issues for India to Consider*, in CONTRACT FARMING IN INDIA: A RESOURCE BOOK 1, 5 (Ashok Gulati, PK Joshi & Maurice Landes eds., 2008), available at http://www.ncap.res.in/contract_%20farming.

235. Busch & Bain, *supra* note 32, at 331 (quoting Steve Martinez & David E. Davis, *Farm Business Practices Coordinate Production with Consumer Preferences*, FOOD REV., May 2002, at 33).

expressed similar anxieties. As one put it: “If the market is not there, then we cannot verify the actual amount for that particular produce. In that case, it won’t be possible for us to know the actual price for my produce.”²³⁶ Under a corporate regime, farmers, in other words, do not trust that they could access the kind of market information they need to negotiate a price.

Farmers thus distinguished between the market and corporate capital. They described the market as a physical and geographical space characterized by price fluctuation, risk, and opportunity—but of the sort they knew how to navigate and understand. Corporate capital, by contrast, they described as a predatory force, controlling and fixing prices outside of the market. As another farmer argued, the corporation “will fix the rate . . . [we will] be on a monopoly system. They will dictate So, what will be the rate of my produce, they will decide.”²³⁷ These anxieties are well known to corporate actors. For example, I interviewed Vishal Sehgal, Head of Corporate Relations of Metro Cash & Carry, which is an Indian subsidiary of a German corporation. Metro set up shop in Kolkata in late 2008 with an APMC license to engage in wholesale trade. (The license reflects a high-level political compromise; as a condition of entry, Metro explicitly promised not to engage in any contract farming or retail sales.) When I asked Sehgal to describe some of Metro’s challenges as a wholesale trader, he emphasized trust: “do people trust us as a large company? . . . Do they think they are getting into a contract?” Indeed, he ventured that “the failure of large business is that we have not put sufficient trust in the market.”²³⁸

So how, then, do farmers trust existing markets? To explore this question, I repeatedly asked farmers whether they thought they were currently receiving fair market prices. Here are some common responses. One farmer replied that he was receiving “the rate of the entire market.” And he proceeded to explain why he was confident that this was the case: “we are doing this [cultivation] generation after generation So we know the market rates.” Those around him explained that they work with “known people” over many years—traders, they added, to whom they sometimes give their goods on credit: “we trust them, and by season, we finish our produce.”²³⁹

236. Interview with farmer in Akondoheria Village (near Haroa) in District North 24 Paraganas, West Bengal (Oct. 3, 2010) (Mitra Routh trans.).

237. Interview with farmers in Amboula Village, *supra* note 227 (Mitra Routh trans.).

238. Telephone Interview with Vishal Sehgal, Head of Corporate Relations, Metro Cash and Carry India (September 11, 2010). I interviewed Sehgal from Metro’s headquarters in Bangalore because given how politically sensitive they perceived their operations, the local management in Kolkata wished to defer to their central office.

239. Interview with farmers in Akondoheria Village, *supra* note 236 (Mitra Routh trans.).

Other farmers I spoke with did not emphasize longstanding personal relations as much as the potential for market competition among numerous small intermediaries. For example:

Farmer 1: Before entering the market, we can get an idea of what the day's market is going to be like. Say, I take eggplants to the market today. I can get a sense at the bazaar that the supply of eggplants is very low, and then I tell the broker that today's eggplant pricing is fifteen rupees. Now, he will want my price of fifteen rupees

Farmer 2: Farmers are always going to want to give produce to the market at a daily rate. Because the market cannot just fix the rate any day no matter if it is Tata or anyone else.²⁴⁰

Or for similar comments in another village:

Farmer 1: The middlemen or the vendors, whoever is coming right now, they're offering different kinds of prices. But if Reliance comes, then he is the only one

Farmer 2: He will dictate the market. He will buy the whole market.²⁴¹

The salutary power of markets, these farmers thus argued, depends on intermediaries circulating goods and money "offering different kinds of prices"—a paradigm that corporate capital, with its capacity to "buy the whole market," threatens to unravel.

At the same time, however, farmers hardly romanticize existing markets, where, as I suggested above, powerful wholesale agents "coexist with crowded, petty trade."²⁴² As our conversations progressed, many suggested that contract farming would exacerbate—not introduce—serious inequalities and conflicts. Farmers repeatedly told me that powerful parties such as owners of cold storage systems or processing mills controlled commodities such as potatoes, rice, and mustard seed oil, manipulating prices.²⁴³ They anticipated that retail giants, with their immense capacity for storage and speculation, would act much the same way.

For example, one farmer argued that if he and others decide to sell produce to Reliance at a fixed rate, "[we] will get [our] money, undoubtedly, but later on those people [will] store it in their house, and the next week, when the market is high, they will sell all at the higher rate. In that

240. Interview with farmers in Amboula Village, *supra* note 227 (Ratnesh Bhattacharya trans.).

241. Interview with farmers in Santoshpur Village, *supra* note 3 (Mitra Routh trans.).

242. Barbara Harriss-White, *Maps and Landscapes of Grain Markets in South Asia*, in *NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT* 87, 93 (John Harriss, Jane Hunter & Colin M. Lewis eds., 1995).

243. For detailed analysis of how this works, see HARRISS-WHITE, *supra* note 108, at 146–212.

case, [farmers] will suffer.”²⁴⁴ Another ventured that it was precisely for this reason that the government was trying to keep contract farming illegal:

If [Reliance offers] a higher price, then we’ll take a higher price from them. [But] the government is then thinking that [Reliance will then sell] the supplies at an even higher rate. So then the market no longer has any goods. The supplies are entirely in the hands of the other people. That’s what the government is concerned about.²⁴⁵

Other farmers, however, quickly objected that the government was *already* beholden to powerful local firms that controlled market supplies and prices (what they called “the capitalists”). “Without the capitalists, the government cannot operate,” one argued. “Now, take rice, potatoes, or mustard seed,” he continued, “The capitalists are controlling these just as they like.”²⁴⁶ Or another: “We wanted [the government to keep the capitalists out.] But is the government able to do that? If these big capitalists want, then the government can’t do anything.”²⁴⁷ These farmers thus argued that rather than regulate the production and distribution of commodities to maximize the livelihoods of small farmers and traders, the government has long accommodated local “big capitalists.”

Yet many farmers insisted that they had more space to maneuver in existing markets than they would under a regime of contract farming with its new demands and constraints. When I asked whether, given these inequalities, farmers would prefer to work directly with Reliance, several demurred, describing Reliance as an even bigger capitalist.²⁴⁸ As one warned, “Reliance won’t come here to incur a loss. Reliance will perform its calculations, and then come here.”²⁴⁹ Or as another explained, “the middleman will make [a] profit [of] hardly two rupees to three rupees. Not much. And in that case, the market will be controlled by us. But for the rich people, once they capture the market, it will be out of control.”²⁵⁰

Over and over, farmers talked of “control.” By control, however, they did not simply mean the opportunity to influence market prices. They also discussed how they would manage their own production and its associated risks. Some farmers thought their income would likely rise under contract farming, but they worried about meeting stringent corpo-

244. Interview with farmers in Amboula Village, *supra* note 227 (Mitra Routh trans.).

245. *Id.* (Ratnesh Bhattacharya trans.).

246. *Id.*

247. *Id.* Harriss-White argues much the same point: “the agro-commercial elite actively developed its ‘clientelage’ to the state to a point where it exercised decisive power over its ‘patron.’” HARRISS-WHITE, *supra* note 108, at 2–3.

248. Interview with farmers in Amboula Village, *supra* note 227 (Mitra Routh trans.).

249. *Id.* (Ratnesh Bhattacharya trans.).

250. *Id.* (Mitra Routh trans.).

rate demands for quality and uniformity.²⁵¹ “Suppose we have produced [a] bunch of bananas,” one proposed. “Maybe out of that, few are very big . . . good looking, and they will put [the Reliance name], but what will happen to the [rest]? Those that are not in a bigger shape, [that] may not be that good looking and all. Then we’ll suffer. They will only take the best one.”²⁵² Or another: “They are only [there] in our good periods. But in bad periods, they won’t be there. If my produce is of good quality, they will come and buy it. But if the produce is of bad quality, they will forget it and go home and I will lose.”²⁵³ Supermarkets are indeed “tough customers” who demand particular specifications, high volumes, and steady deliveries with little room for error.²⁵⁴ To that end, it is not uncommon for firms to demand a right of first refusal rather than an obligation to purchase the entire crop.²⁵⁵ Nor is it unusual for them to use quality standards to discount or reject a large majority of produce²⁵⁶—sometimes, scholars observe, pretextually when market prices drop below contract ones²⁵⁷ or when firms have access to an increasingly large group of suppliers.²⁵⁸

Intriguingly, farmers also argued that corporate retail standards undercut the possibility of collective action. To manage the risks of contract farming, development scholars and professionals commonly suggest that farmers self-organize into collectives or “self-help groups.”²⁵⁹ (Analysts report that few farmers in India are actually organized in this way.²⁶⁰) The farmers I spoke with told me that production specifications

251. Other researchers likewise report that farmers anticipate higher prices under contract farming but they nonetheless do not deem this added income worth new risks and demands. *See, e.g.*, Christopher B. Barrett, Maren E. Bachke, Marc F. Bellemare, Hope C. Michelson, Sudha Narayanan & Thomas F. Walker, *Smallholder Participation in Contract Farming: Comparative Evidence from Five Countries*, 40 *WORLD DEV.* 715, 725 (2012); CHEN ET AL., *supra* note 34, at 23. *See also* Hamilton, *supra* note 234, at 6.

252. Interview with farmers in Amboula Village, *supra* note 227 (Mitra Routh trans.).

253. Interview with farmer in Santoshpur Village, *supra* note 3 (Mitra Routh trans.).

254. David Neven & Thomas Reardon, *The Rapid Rise of Kenyan Supermarkets: Impacts on the Fruit and Vegetable Supply System*, in *THE TRANSFORMATION OF AGRI-FOOD SYSTEMS*, *supra* note 27, at 189, 189.

255. *See, e.g.*, Sukhpal Singh, *Crisis and Diversification in Punjab Agriculture: Role of State and Agribusiness*, 39 *ECON. & POL. WKLY.* 5583, 5586 (2004); Gurdev Singh & S.R. Asokan, *Contract Farming in India: Text and Cases*, in *INDIA’S AGRICULTURAL CHALLENGES* 133–34 (Ramesh Chand ed., 2005).

256. *See, e.g.*, CHEN ET AL., *supra* note 34, at 16.

257. Dhillon & Singh, *supra* note 212, at 30.

258. Barrett et al., *supra* note 251, at 727.

259. *See, e.g.*, Ben White, *Agroindustry and Contract Farmers in Upland West Java*, *J. PEASANT STUD.*, Apr. 1997, at 100, 105; Sukhpal Singh, *Understanding Practice of Contract Farming in India: A Small Producer Perspective*, at 9–10, in *CONTRACT FARMING IN INDIA*, *supra* note 234; Helen Markelova & Esther Mwangi, *Collective Action for Smallholder Market Access: Evidence and Implications for Africa*, 27 *REV. POL’Y RES.* 621, 623 (2010).

260. Sukhpal Singh, *Marketing Channels and Their Implications for Smallholder Farmers in*

and gradations themselves individuate farming households:

Say that Reliance comes to our [village]. And, out of ten families, maybe five families produced good vegetables of good quality and Reliance had a contract with them, and they agreed, and they will sell. But the others will say I don't have that good quality produce. We'll sell it in the *haat*, we're not interested in going for Reliance. So you cannot expect unity among them, no? It's very difficult to get.²⁶¹

But, again, how does this compare to farmers' current conditions? "Brokers," farmers explained, "take everything. They don't go for the best." Instead, they adjust the rate based on quality.²⁶² And, indeed, small retail shops in Kolkata remain awash with non-uniform, non-beautiful produce.

Farmers thus discussed their current arrangements with a mix of resignation as well as affirmative appreciation and strategic self-interest. To be sure, they complained that intermediaries limit their market opportunities.²⁶³ Yet many simultaneously made clear that they did not wish to see a radically different configuration of market power. Here is a conversation among three farmers that captures this tension:

Farmer 1: Even if I want, I cannot sell it in the market directly. Why? The middlemen have got their union. They will stop us.

Farmer 2: We cannot fight with them. We cannot compete with them

When I suggested that under a contract farming regime there would be no middlemen, I was surprised by their response: "that will [be] bad for us," they told me. Here is how my translator interpreted the rather lively conversation among the three farmers that ensued:

In that case, the family of the middleman will suffer. It is a "chain-chain" business. Everybody is making money and surviving. So if Reliance is coming directly to us, then the middleman won't be there, and their family will be starving. So we don't want that. Everybody is making business; let them do it.²⁶⁴

When I looked somewhat incredulous at this expression of altruism, my interlocutors reminded me how it was that I was having this unlikely conversation. As one put it: "You have come to us through him [my

India, in THE TRANSFORMATION OF AGRICULTURE SYSTEMS, *supra* note 27, at 279, 299, 308 n.5 ("Only 2.2 per cent are members of any farmer association and only 4.8 per cent of farming households have a member belonging to a self-help group (SHG).").

261. Interview with farmer in Santoshpur Village, *supra* note 3 (Mitra Routh trans.).

262. Interview with farmers in Amboula Village, *supra* note 227 (Mitra Routh trans.).

263. Some farmers suggested that given the power of local intermediaries, even with contract farming "direct[] [sales] won't happen"; that is, middlemen would broker arrangements between small farmers and corporate firms. Interview with farmer in Surya Nagar Village, *supra* note 132 (Ratnesh Bhattacharya trans.).

264. Interview with farmers in Santoshpur Village, *supra* note 3 (Mitra Routh trans.).

translator's friend], and again he came to me through [another relation]; it's a chain. So this will go chainwise." My translator, however, pressed on unconvinced.

MR: You said the middlemen's union is a problem for you. So are you feeling for them?

Farmer 1: From very childhood, they are running this business. How can I have their business?²⁶⁵

Not all farmers I spoke with expressed such eloquent fellow feeling, but none described naked practices of exploitation as much as a combination of mutual constraint and survival when they discussed small-scale trade. "Big big farmers will have contracts with the companies," one farmer insisted, "Not the small farmers, [we] won't go." Small farmers, he continued, would rather sell to "the small businessperson, local businessperson."²⁶⁶ When I pressed the farmers on why this was the case, another explained: "If after some days the company goes out, then who will help us? Who will make us survive? . . . Always we'll look for our profit."²⁶⁷

Today, small farmers' movements around the world call for food sovereignty, peasant unity, and social justice.²⁶⁸ The farmers I met with did not express their desires in any of these terms. Instead they talked more modestly of preserving their own opportunities for profit and market exchange. As Clifford Geertz famously observed, the traditional bazaar economy is full of "rational calculation, egoistic behavior, [and] technical proficiency," a description that is no less true for the farmers I met.²⁶⁹ But these farmers also expressed a particular view of how they wanted markets to function. They spoke of "keeping alive" an arena of petty exchange, risk, competition, and also sociability and trust. For them, the idea that "everybody is making business; let them do it" is its own intrinsic value that markets (and the legal rules that regulate them) should support. From this perspective, capital concentration is not a nat-

265. *Id.*

266. Interview with farmers in Surya Nagar Village, *supra* note 132 (Mitra Routh trans.).

267. *Id.*

268. See, e.g., CHAÏA HELLER, *FOOD, FARMS, & SOLIDARITY: FRENCH FARMERS CHALLENGE INDUSTRIAL AGRICULTURE AND GENETICALLY MODIFIED CROPS* (2013). Heller offers a rich ethnographic account of the French smallholder farmers' union, Confédération Paysanne, which cofounded La Via Campesina, a solidaristic transnational movement that includes small farmers, agricultural laborers, women's groups, and indigenous people's groups, and that is comprised of multiple nationally-based organizations such as the Karnataka State Farmers' Association and the Brazilian Landless Movement. *Id.* at 75. See also *The International Peasant's Voice*, LA VIA CAMPESINA: INT'L PEASANT'S MOVEMENT (Feb. 9, 2011, 2:08 PM), <http://viacampesina.org/en/index.php/organisation-mainmenu-44> (defending "small-scale sustainable agriculture as a way to promote social justice and dignity").

269. CLIFFORD GEERTZ, *PEDDLERS AND PRINCES: SOCIAL CHANGE AND ECONOMIC MODERNIZATION IN TWO INDONESIAN TOWNS* 47 (1963).

ural function, let alone a virtue, of markets, but rather an economic arrangement of a qualitatively different kind.

Supermarkets operate according to a different market logic. Thus their owners and managers desire a different set of market conditions and, accordingly, state regulations to exist. Let me now return to Jalan's suggestion that contract farming changes the dynamics of the game. Contract farming offers supermarkets a legal framework to radically transform supply chains—not simply to make them more efficient. It transfers power in commodity markets away from the numerous other private actors with whom supermarkets must engage when they source via the traditional supply chain—village aggregators, wholesale traders, large commission agents like Prasad, and the owners of private wholesale markets like Kolay. And in West Bengal, where small farmers dominate the agricultural landscape, firms can use contract farming to circumvent these other more powerful intermediaries while simultaneously taking advantage of the fragmentation of agricultural land and the inequalities of bargaining power that are endemic to small farmers.²⁷⁰

Most significantly, contract farming changes how market control is exercised. As we have seen, under the current regime, farmers often rely on agents who facilitate sales for a commission. Sometimes there is competition among agents for the farmer's price. Sometimes, however, these sales are interlinked. Bigger agents, such as Prasad and his family, will provide credit, and farmers will promise to dedicate their fields to them (which is not unlike contract farming—although Prasad was quick to argue that he does not provide seeds or in any way constrain farmers' production decisions). And in West Bengal local cartels dominate staple agricultural sectors, such as rice, potato, and mustard seed oil.²⁷¹ None of this is in writing. Instead, it is based on a combination of sociality, trust, patronage, coercion, and informal control.

Under liberalization, these kinds of informally interlinked arrangements between farmers and large economic actors stand to become formal contracts between farmers and vastly more dominant actors. Indeed,

270. Studies indeed suggest that small farmers are attractive partners precisely because, with less marketable surplus and bargaining power, they are more compliant and dependent on firms than larger farmers. *See, e.g.,* Pratap S. BIRTHAL, P.K. JOSHI & ASHOK GULATI, *Vertical Coordination in High-Value Food Commodities: Implications for Smallholders* 21 (Int'l Food Pol'y Res. Inst., MTID Discussion Paper No. 85, 2005). At the same time, however, there are transaction costs involved in aggregating produce, and small farmers may lack the capacity to meet the rigorous quality standards demanded by supermarkets. Hence, many analysts predict that, ultimately, in most developing regions "[r]etail concentration will cascade, sooner or later, into supplier concentration." Reardon et al., *The Rapid Rise of Supermarkets in Developing Countries*, *supra* note 30, at 62.

271. *See* HARRISS-WHITE, *supra* note 108, at 146–212.

supermarkets in West Bengal aspire for a similar kind of oligopolistic power that principal wholesale actors presently command. But they cannot exercise their power through identical means—that is, through the same kinds of longstanding relations of patronage and ad hoc negotiations with the state. As corporations, supermarkets are responsive to shareholders who require governance practices like audit statements, standardized accounting, professional organization, and management expertise. As such, they must exercise control—at least in part—through means that can be made transparent and legitimate to states and shareholders, and in forms that are cognizable to the national and international financial and legal bureaucracies that govern them. Formal state authorization of contract farming is thus critical to corporate retail operations.

But, to be clear, it would be too simple to describe this potential shift as one from reputation-based networks that facilitate personal exchange to law-based institutions that facilitate anonymous, impersonal trade—as contract scholars often describe the societal progression from traditional to modern markets.²⁷² This standard description misses important particularities of both the current Indian situation as well as the likely configuration of any potential transition. First, as I suggested above, in Indian wholesale markets, agents indeed use reputational networks created through repetitive exchange. But they do so to link together what is otherwise a mass of anonymous sellers and buyers. Brokerage, in other words, is a trust-based institution that facilitates expansive networks of already impersonal trade.²⁷³ Second, supermarkets' own promise of corporate governance and accountability depends upon supply chain *traceability* not anonymity.²⁷⁴ Supermarkets use standards to identify suppliers and connect them to a different and larger-scale kind of reputational web—one that deals in the perceived trustworthiness of the corporation to know and monitor its suppliers via private agreements that can be legitimated—or at least not contravened—by state law.

Third, although state-sanctioned contract law is therefore necessary to legitimate supermarket operations in this way, it is unlikely that in West Bengal any firm would opt to rely on law-based institutions for

272. Avner Grief, for example, lays out this common typology. See Avner Grief, *The Birth of Impersonal Exchange: The Community Responsibility System and Impartial Justice*, J. ECON. PERSPECTIVES, Spring 2006, at 221, 222.

273. Indeed, scholars have persistently described the Indian bazaar, far from a “premodern arena of personalized exchange,” as “a vast intermediate network” that through “ties of kinship and idioms of clan and caste fueled the colonial economy via vast networks of credit, wholesale, and retail trade, and the financing of commodity production.” BIRLA, *supra* note 123, at 9–10.

274. See Minten et al., *supra* note 95, at 41.

contract enforcement. This is both because of the problems and backlogs endemic to Indian lower courts and because large firms presume that social and political sympathies for small farmers would prejudice any public contest between them.²⁷⁵ Instead, in this particular context, desires for legally cognizable contracts go hand in hand with explicit expectations of extralegal contract enforcement.²⁷⁶ For example, some of the farmers I spoke with debated whether they could simply breach if contract prices fell below market ones; they did not worry about lawsuits but rather that the “company’s men” would in some way police them. For their parts, corporate actors not only discussed how they could liberalize the market via formal contracts but also how they could simultaneously embed *themselves* within informal social networks. For example, Sehgal (of Metro Cash & Carry) hoped that the Model APMC Act would eventually legalize contract farming in West Bengal. But like other corporate representatives I interviewed, he dismissed the idea of public-order contract enforcement. “As a large company,” he explained, “my contract cannot be enforced. If I sign a contract and the price is five but the market is ten, no one will sell to me, I can’t go to court. So it is better to build trust.”²⁷⁷ Jalan likewise proposed that he aspired to build what he called not a fully “professional” model but rather a “hybrid” one. For example, he explained that, like more traditional market actors, the Keventer Group too extends credit to farmers without formal security (here he discussed farmers who produced mangos for Keventer’s food processing operations):

[I]n the month of November, December, we would just go and throw away money to all the farmers, you know . . . millions and hundreds of millions of Indian rupees just goes out to the farmers, because that’s when they need it. Now, when the season starts, in the month of May, after six months . . . I don’t have any security; I don’t have any paper; [I’ve] just given the money—I hope to collect it back through mangos.²⁷⁸

In other words, even as they push for the formal legalization of contract farming, corporate actors simultaneously labor to coordinate market

275. On the problems of Indian lower courts, see Marc Galanter & Jayanth K. Krishnan, “*Bread for the Poor*”: Access to Justice and the Rights of the Needy in India, 55 HASTINGS L.J. 789, 829 (2004). It is equally unlikely that farmers would instigate legal actions against firms. Recognizing this, the Model APMC Act recommends the creation of (unspecified) local forms of private arbitration. See Salient Features of the Model Act on Agricultural Marketing, *supra* note 200, at Addendum on Contract Farming Agreement § IX.

276. Contract farming in India thus blurs familiar conceptual dichotomies between opting in or out of the state legal system. See most classically, Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992).

277. Interview with Sehgal, *supra* note 238.

278. Interview with Jalan, *supra* note 92.

activity through practices of loyalty, clientalism, dependency, and trust (suggesting that in India, as in many other modern capitalist economies, the difference between contract and trust-based relations is not as stark as one might think).²⁷⁹ As the historian Natalie Zemon Davis argues “modern market relations continue[] to be ‘embedded’ with other institutions and practices. . . . Commercial operations on both local and international scale are informed by legal contract and calculations of rational interest, on the one hand, and by ‘liens de clientele,’ on the other.”²⁸⁰

And for Keventer’s Fresh, as for many other market actors, clientelism works in tandem with capital extraction. Jalan put the economics of contract farming bluntly. Contracts, Jalan suggested, flourish under monopsonistic economic conditions:

In countries like China, Africa, Eastern Europe, former USSR—where [contract farming is] really growing—*why* is it really growing? Because the products that they are cultivating, it’s not something which is easily saleable in the local vicinity. So they need people to take the stuff out and sell it somewhere. In India the problem is that everything that a person grows it *can* be sold in the local vicinity, you know, so then the farmer is like, ‘should I sell local? Should I give to the company? Who gives me a better price? Who gives me better terms?’ So it’s going to be a bit challenging.²⁸¹

In India, Jalan explained, supermarkets must constantly compete with the possibility of farmers “selling local,” that is, of negotiating for better prices via existing markets that are sustained by India’s large population and capacity for domestic consumption. By contrast, he reported that:

I [did] some cultivation in Ukraine. Now, Ukraine’s population is so small, if I grow 10,000 acres [of] bananas there, with 2 month’s crop I could feed the entire country. So the balance of 9 months or 8 months, I have to take the product out of the country. That’s why contract farming is really successful. And contract farming is suc-

279. Cf. Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, in *VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE* 1, 8 (Peter A. Hall & David Soskice eds., 2001). In their analysis of advanced industrial capitalist economies, Hall and Soskice describe “coordinated market economies” where firms are likely to use non-market relations, incomplete contracting, and collaborative interaction to organize market activity. They distinguish coordinated market economies from “liberal market economies,” which are more often characterized by arm’s-length exchange, formal contracts, and the kinds of “calculations stressed by neoclassical economics.” *Id.* Scholars have also observed how relational trade networks “can execute informal contracts that enjoy efficiencies unavailable to formal, arm’s-length transactions.” For a description and references to some of this literature, see Barak D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 *LAW & SOC. INQUIRY* 383, 409 (2006).

280. Natalie Zemon Davis, *Conclusion*, in *AUTOUR DE POLANYI: VOCABULAIRES, THÉORIES ET MODALITÉS DES ÉCHANGES* 283, 288–89 (Phillipe Clancier et al., eds. 2005), *quoted in* BIRLA, *supra* note 123, at 244–45 n.26.

281. Interview with Jalan, *supra* note 92.

cessful for stuff like jatropha, soya, which actually needs to go to a company to be able to do something—it cannot be sold in the local market. Tobacco—very successful. Because if a farmer grows tobacco, who will he sell to? He *has* to sell to a tobacco company. So that's where contract farming can be really, really effective. For fruits and vegetables, if you have a high consumption, you know, and a market very nearby, it is slightly more complicated.²⁸²

In other words, supermarkets need not only particular legal rules and social relations; they also need a particular configuration of market conditions to make farmers maximally dependent on them and therefore willing to accept and comply with contract terms. So far this is not yet the case in West Bengal—especially for fresh fruits and vegetables where small farmers and traders can still access numerous decentralized local markets, assess prices, and make production decisions based on local conditions. Consistent with this analysis, the few studies thus far to specifically examine supermarket procurement of fresh produce in India report very low levels of formal contractual coordination. Bill Pritchard, C.P. Gracy, and Michelle Godwin, for example, describe more informal and “relatively loosely coordinated arrangements” that, they argue, “reflect[] the particularities of the ‘Indian condition.’”²⁸³ These authors suggest a critical question: will these more informal arrangements in India become their own institutionalized reality that can sustain India's food economy, including, I would add, the vast numbers of small producers that comprise it? Or will these arrangements give way to more liberal models of market coordination “as conditions in India emulate those prevailing elsewhere?”²⁸⁴

As this question indicates, how contractual relations unfold on the ground depend upon diverse contextual conditions. And there is evidence to suggest that some Indian farmers have benefitted from corporate contractual arrangements,²⁸⁵ although studies also report endemic

282. *Id.*

283. Bill Pritchard, C.P. Gracy & Michelle Godwin, *The Impacts of Supermarket Procurement on Farming Communities in India: Evidence from Rural Karnataka*, 28 DEV. POL'Y REV. 435, 435, 452 (2010) (surveying seventy-eight farmers in Karnataka supplying Reliance Fresh). See also CHEN ET AL., *supra* note 34, at 13–14 (describing how one Indian retail chain set daily prices in lieu of more formal contractual relations).

284. Pritchard et al., *supra* note 283, at 452.

285. For studies in India that generally report higher returns for farmers compared to non-contracting farmers (albeit sometimes for different kinds of crops and with various degrees of correction for observable and non-observable farmer characteristics), see Sukhpal Singh, *Contracting Out Solutions: Political Economy of Contract Farming in the Indian Punjab*, 30 WORLD DEV. 1621, 1632 (2002); B.K. Dileep, R.K. Grover & K.N. Rai, *Contract Farming in Tomato: An Economic Analysis*, 57 INDIAN J. AGRIC. ECON. 197, 202, 208 (2002); Isabella Agarwal, S. Priya & S. Bhuvaneswari, *Contract Farming Venture in Cotton: A Case Study in Tamilnadu*, 19 INDIAN J. AGRIC. MKTG. 153, 156 (2005); R. S. Tripathi, Ram Singh & Sube Singh, *Contract Farming in Potato Production: An Alternative for Managing Risk and*

problems with delayed payment,²⁸⁶ nontransparent pricing systems,²⁸⁷ and one-sided contract terms.²⁸⁸ Indeed, according to the former Indian Secretary of Agriculture, “in most of the existing models, the contracts protect company interests at the cost of the farmer and do not cover the farmer’s production risk.”²⁸⁹ Other studies report gains in income but alongside concerns about higher chemical input intensity and unsustainable cultivation.²⁹⁰ Scholars, moreover, warn that given the challenges of research methodology²⁹¹ and scant long-term studies,²⁹² empirical data remains inconclusive.

But rather than ask whether farmers may make small welfare gains or losses depending on how specific contracts are designed,²⁹³ my aim in

Uncertainty, 18 AGRIC. ECON. RES. REV. 47, 52–54, 58 (2005); P.S. Rangi & M.S. Sidhu, *A Study on Contract Farming of Tomato in Punjab*, AGRIC. MKTG., Jan.–Mar. 2000, at 15, 22–23 (2000); Bill Pritchard & John Connell, *Contract Farming and the Remaking of Agrarian Landscapes: Insights from South India’s Chilli Belt*, 32 SING. J. TROPICAL GEOGRAPHY 236, 247 (2011).

286. Braja Bandhu Swain, *Contract Farming in Andhra Pradesh: A Case of Rice Seed and Gherkin Cultivation*, ECON. & POL. WKLY., Oct. 2011, at 60, 60; Dileep et al., *supra* note 285, at 208; Singh, *supra* note 285, at 1631; Dhillon & Singh, *supra* note 212, at 31.

287. S. Mahendra Dev & N. Chandrasekhara Rao, *Food Processing and Contract Farming in Andhra Pradesh: A Small Farmer Perspective*, 40 ECON. & POL. WKLY. 2705, 2712 (2005).

288. Singh & Asokan, *supra* note 255, at 133–34; Singh, *supra* note 285, at 1632–33.

289. R.C.A. Jain, *Regulation and Dispute Settlement in Contract Farming in India*, in CONTRACT FARMING IN INDIA, *supra* note 234, at 1, 4.

290. Singh, *supra* note 285, at 1633; Barrett et al., *supra* note 251, at 725; *see also* Sukhpal Singh, *Contract Farming for Agricultural Development: Review of Theory and Practice with Special Reference to India* 10 (Ctr. for Trade & Dev., Working Paper No. 2, 2005) (arguing generally that “[t]he over-exploitation of groundwater, salination of soils, soil fertility decline, and pollution are typical examples of environmental degradation due to contract farming”).

291. *See, e.g.*, Martin Prowse, *Contract Farming in Developing Countries - A Review*, À SAVOIR, Feb. 2012, at 6 (cautioning that although existing literature “would appear to lend some weight” to the claim that growers benefit, it does not control for bias “when selecting initiatives to evaluate”; that is, researchers typically study highly visible projects that likely would have quickly collapsed if they had not raised farmer income); Marc F. Bellemare, *As You Sow, So Shall You Reap: The Welfare Impacts of Contract Farming*, 40 WORLD DEV. 1418, 1418 (2012) (suggesting that it is difficult to make a “definitive causal statement about the welfare impacts of contract farming”).

292. *See* Peter D. Little & Michael J. Watts, *Introduction*, in LIVING UNDER CONTRACT: CONTRACT FARMING AND AGRARIAN TRANSFORMATION IN SUB-SAHARAN AFRICA 15 (Peter D. Little & Michael J. Watts eds., 1994) (suggesting that what little longitudinal data that exist on contract farming “frequently show that optimism . . . based on a five-year experience can be premature”). If global trends are any indicator, there is much reason for caution. Contract farming has replaced independent production throughout industrialized countries and “the farmer share of the food dollar has declined and continues to decline. On average, across all farm products, farm gate prices now make up less than 20 percent of the retail price.” Busch & Bain, *supra* note 32, at 331. For more detail on declining prices for farmers even as consumer expenditures rise, *see* MOHAN GURUSWAMY, KAMAL SHARMA, & MARIA MINI JOS, FDI IN RETAIL – III: IMPLICATIONS OF WAL MART’S BACKDOOR ENTRY 8 (Ctr. for Pol’y Alt., 2007); Terry Marsden, *Creating Space for Food: The Distinctiveness of Recent Agrarian Development*, in GLOBALISING FOOD, *supra* note 25, at 169, 172.

293. For various regulatory proposals, *see* Caterina Pultrone, *An Overview of Contract Farming: Legal Issues and Challenges*, 17 UNIF. L. REV. 263, 279–89 (2012); Prowse, *supra* note

this article has been to trace more broadly what is at stake—ideologically and politically—in the reorganization of food markets. This case study of West Bengal thus examines how different markets for food operate according to different principles and require different kinds of state involvement to exist as they do. It also points to some of the transformations that must occur for markets in fresh produce to become increasingly scalable—that is, less reliant on spot interaction facilitated by relational networks and more accessible to and easily navigated by regional, national, and transnational corporate actors. These are transformations that global markets depend upon.

In this particular case, the CPIM was *laissez-faire* enough in its oversight of food supply chains that a rather under-regulated market sprang up, one that allowed for rapid price fluctuations and the value of fresh fruits and vegetables to be determined by a market system. To that end, it also enabled many small traders and agents to participate in market circulation and competitive exchange. This article thus describes existing fresh fruit and vegetable markets, embedded in social relations, as providing some measure of equity for small farmers and traders. And it complicates a competing story about large corporate supermarkets as providing clearly superior forms of market efficiency and doing so by instituting new forms of market governance that depend primarily on formal liberal legal rules.

There is some irony here: over the past few decades, we have witnessed an explosion of neoliberal development initiatives aimed at replacing social engineering from above with programs devoted to creating new entrepreneurial market-embedded individuals from below—for example, myriad kinds of “micro-finance” and “micro-enterprise” projects designed to help the citizens of the Global South learn how to participate in markets. At the same time, however, India’s own small-scale capitalist farmers must now worry that contract farming will limit their ability to access markets and market information if the innumerable small trades that happen daily in *haats* and *mandis* are replaced by less transparent and more uniform contracts with a few powerful buyers. Nor, as I have shown, do many wish to trade long-term contracts for opportunities to profit from daily (even hourly) market fluctuations for fresh fruits and vegetables—at least from fluctuations in markets that they understand.

Of course, West Bengal’s commodity markets are idiosyncratic in

291, at 61–84; CARLOS ARTHUR B. DA SILVA, THE GROWING ROLE OF CONTRACT FARMING IN AGRI-FOOD SYSTEMS DEVELOPMENT: DRIVERS, THEORY AND PRACTICE 22–24 (FAO, 2005); Banerjee et al., *supra* note 117, at 4214–15. See also Salient Features of the Model Act on Agricultural Marketing, *supra* note 200, at Addendum on Contract Farming Agreement.

their own way. They were regulated, first, to privilege local commercial elite and then to exclude far more powerful national and multinational corporate actors. So they are by no means an ideal type of free market. But perhaps they are closer to the economist's free market than the standardized, centralized, large-scale contractual forms of exchange required to support a supermarket ever would be in West Bengal. This is an irony that is not lost on left Indian activists. Consider the work of Sanhati, an international civil society organization dedicated "to fighting neoliberalism in Bengal and beyond."²⁹⁴ One of its founders, the scientist and activist Dr. Partho Sarathi Ray, explained that to protest corporate retail he and other Marxist allies created the Forum Against Monopolistic Aggression—a somewhat "unholy" alliance among socialists, petty traders, and businessmen.²⁹⁵ Leftists too, he insisted, were fighting for free markets.²⁹⁶

CONCLUSION: LOGICS OF RESISTANCE AND REFORM

As even the leftist activist fighting neoliberalism in Bengal suggests, none of my interlocutors expressed a desire to live outside of markets. Rather they are debating how and by whom food markets should be controlled—under what set of public and private rules and what corresponding vision of economic justice.²⁹⁷ To be sure, the status of food as a market commodity has a particularly dark history in Bengal. Under colonial directives, peasants shifted from producing foodgrains to more lucrative commercial crops and undermined their own capacity for self-sustenance and food security as a result.²⁹⁸ When war inflation drove up the price of food more than the wage of labor (especially agricultural labor), people could not afford to purchase food that was available via markets.²⁹⁹ Over the course of one year, beginning in 1943, nearly 3.5 million people in Bengal died in the world's most devastating modern famine.³⁰⁰ In 1959, left opposition parties gained popular support as part

294. See, e.g., SANHATI, <http://sanhati.com/about/> (last visited Aug. 29, 2013).

295. See, e.g., *Booklet from FAMA on Entry of Big Capital in Retail in Bengal and India*, SANHATI, <http://sanhati.com/literature/1049/> (last visited Aug. 29, 2013).

296. Interview with Dr. Partho Sarathi Ray, in Kolkata, West Bengal (Sept. 4, 2010).

297. See also RAJ PATEL, *STUFFED & STARVED: MARKETS, POWER AND THE HIDDEN BATTLE FOR THE WORLD FOOD SYSTEM* 247–48 (2007) (describing social movements committed to economic justice in food markets).

298. Jodhka, *supra* note 110, at 1220–21.

299. AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* 75–78 (1981); Amartya Sen, *Famines as Failures of Exchange Entitlements*, 11 *ECON. & POL. WKLY.* 1273, 1279–80 (1976). Some of my interviews with farmers—who feared that supermarkets would hoard goods in order to control prices—suggest that memory of the famine continues to influence collective consciousness. See *supra* notes 244 & 245 and accompanying text.

300. Jodhka, *supra* note 110, at 1221.

of a food movement demanding that the ruling Congress party, among other things, fix the price of rice.³⁰¹ But even under the CPIM-led government, the majority of food in West Bengal (as in the rest of India) reaches consumers via markets.³⁰² As such, the pressing policy question is not whether to embrace or attack a market system. Rather it is how competing ideas of markets stand to advance or harm the interests of the majority of India's citizens who are poor.³⁰³ I therefore conclude by offering some overarching policy considerations—but I do so here in only the broadest of terms (a detailed analysis of these policy arguments is the subject of another paper).

To begin, as my comparison of existing and corporate-driven markets suggests, there are serious problems with the status quo. It has important redeeming features. Most prominently, existing markets are spaces where numerous economic actors can sustain themselves and their dependents through longstanding market relations while linking together diverse and widespread sites of exchange—circulating food throughout the country via methods, I might add, that depend far less on fossil fuels than the highly capitalized supply chains of the West. But at the same time, in traditional wholesale markets, this crowded mass of small farmers and small traders are often beholden in various ways to more powerful wholesalers, agents, and moneylenders, who govern via extralegal rules and the opaque patronage of the state.³⁰⁴ Given this two-tiered structure of dependency and control, analysts of India's informal markets in fact warn against distinguishing too sharply between self-employment and wage labor.³⁰⁵

The existing informal system is therefore not defensible, at least not in its entirety. I thus dissent somewhat from the famous Indian scientist and activist Vandana Shiva when she argues that “in a country with large numbers of people, and high levels of poverty, the [existing model] is the most appropriate in terms of ecological sustainability and economic viability,” without also offering critical suggestions for reform.³⁰⁶ Criticisms of West Bengal's commodity markets are both appropriate and necessary, and state policymakers should ask how a different set of

301. FOOD MOVEMENT OF 1959: DOCUMENTING A TURNING POINT IN THE HISTORY OF WEST BENGAL xi (Suranjan Das & Premansu Kumar Bandyopadhyay eds., 2004).

302. See Harriss-White, *supra* note 125, at 389.

303. For a similar argument, see James Ferguson, *Toward a Left Art of Government: From 'Foucauldian Critique' to Foucauldian Politics*, HIST. HUM. SCI., Oct. 2011, at 61, 65–67.

304. See Harriss-White, *supra* note 125, at 409.

305. See Jan Breman, *The Informal Sector*, in THE OXFORD INDIA COMPANION TO SOCIOLOGY AND SOCIAL ANTHROPOLOGY, *supra* note 110, at 1287, 1300.

306. VANDANA SHIVA, NAVDANYA & RES. FOUND. FOR SCI., TECH. & ECOLOGY, CORPORATE HIJACK OF RETAIL: RETAIL DICTATORSHIP VS. RETAIL DEMOCRACY 6 (2007).

rules could equalize, potentially in some ways formalize, and make them more genuinely competitive.

At the same time, I agree with Shiva and other Indian activists that the answer cannot be corporate domination. Most basically, supermarket-led development means that large retail chains will restructure markets in their own interests. There is plenty of evidence to suggest how this will unfold. Throughout the world, the unprecedented economic concentration in food retail has coincided with growing economic inequality in food distribution and consumption. As Philip McMichael and Harriet Friedmann argue, whereas the postwar turn to mass consumption in the industrialized countries of the West was at least informed by egalitarian ideals, our current food system explicitly “differentiates by creating distinctly different types of food for rich and poor consumers, including distinction by price (Whole Foods versus Wal-Mart), and nothing for those without money.”³⁰⁷ Indeed, at the same time as quality standards for privileged consumers threaten the livelihoods of small farmers across the Global South, “[w]orldwide, supermarket diets for the working poor converge on a narrowing base of staple grains, increasing consumption of animal protein, edible oils, salt and sugar, and declining dietary fibre”³⁰⁸ This growing divide between transnational classes of the rich and poor suggests deep inequalities and failures in the markets that link production and consumption at the most basic level of social reproduction.

Thus, the markets of West Bengal, and India more broadly, should not be seen as an evolutionary step towards the corporate driven markets of the West. Nor, however, should they be replaced with direct state control. Then-APMC chair Narayan Chatterjee, for example, proposed that in West Bengal the government could supplant both the corporate firm and the current extensive configuration of local traders by purchasing agricultural produce directly from farmers and arranging a cool chain and storage system throughout the state. “We try to destroy the middleman system” *and* “also to challenge the corporat[ion],” he explained; thus, the “government” will play “the role of the middleman.”³⁰⁹ This suggestion is not surprising: by long privileging certain elite local trading firms to engage in large-scale government procurements, the CPIM has prefigured the logic of the supermarket chain by insisting that food distribution requires certain kinds of highly centralized and capitalized interventions. But as Harriss-White rightly cautions,

307. McMichael & Friedmann, *supra* note 6, at 293.

308. *Id.* at 309.

309. Interview with Naren Chatterjee, Chairman, West Bengal State Marketing Board, in Kolkata, West Bengal (Nov. 11, 2010).

“state trading and storage institutions and cooperatives do not have a distinguished track record of regulating private markets by means of competition.”³¹⁰ What, then, are the alternatives? Must we assume that the actors and rules governing markets—be they via the state or local private institutions—should invariably favor capital concentration? That is, must we assume that production and distribution of food is, as Marc Levinson writes, “a job for the big”—big business, a big state, or, in some regulatory combination, both—but not a job for the small?³¹¹

From the vantage point of state regulation, there are two basic legal approaches to answering this question (which, again, I only sketch here). The first is grounded in theories of consumer welfare. Proponents of this approach argue that the proper scale, size, and capital concentration of markets depend on what will produce maximally “efficient” prices for consumers. This idea of consumer welfare is now rapidly globalizing throughout the developing world.³¹² Its roots, however, are in American history, culture, and politics.³¹³ Historian Lizabeth Cohen, for example, traces the rise in postwar America of the “purchaser consumer,” who would advance economic recovery and national wellbeing literally by spending on consumption.³¹⁴ In the 1970s and 1980s, the interests of the purchaser consumer became governed by the law and economics idea of “optimal prices” enshrined in our now dominant interpretations of anti-trust law expounded most famously by Robert Bork and Richard Posner.³¹⁵ The idea, in brief, is that large-scale economic concentration is permissible, even desirable, provided it produces competitive consumer prices. It is this legal and political ideology that has enabled the retail

310. Barbara Harriss-White, *Collective Politics of Foodgrain Markets in South Asia*, INST. DEV. STUD. BULL., July 1993, at 54, 61.

311. LEVINSON, *supra* note 46, at 12.

312. See Roger D. Blair & D. Daniel Sokol, *Welfare Standards in U.S. and E.U. Antitrust Enforcement*, 81 *FORDHAM L. REV.* 2497, 2502 (2013) (suggesting that within antitrust/competition law “it seems to be consumer welfare that is the standard on which there is increasing international convergence”).

313. See James Q. Whitman, *Consumerism Versus Producerism: A Study in Comparative Law*, 117 *YALE L.J.* 340, 343 (2007).

314. LIZABETH COHEN, *A CONSUMER’S REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POSTWAR AMERICA* 18–19 (2003). Cohen contrasts the “purchaser consumer” with the “citizen consumer” who demanded rights, safety, and equal treatment in the marketplace, but ultimately, she argues, became a less dominant paradigm for consumption in the United States. *Id.*

315. See generally ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 81 (1978) (arguing for “consumer welfare as an exclusive goal”); RICHARD A. POSNER, *ANTITRUST LAW: AN ECONOMIC PERSPECTIVE* 22 (1976) (describing “efficient monopolies”). I should add that among U.S. antitrust scholars there have been extensive and complex debates about whether and how this idea of consumer welfare accommodates considerations of the total surplus value that an economy generates. For a review of some of these debates, see Louis Kaplow & Carl Shapiro, *Antitrust*, in 2 *HANDBOOK OF LAW AND ECONOMICS* 1073, 1166–69 (A. Mitchell Polinsky & Steven Shavell eds., 2007); Herbert Hovenkamp, *Implementing Antitrust’s Welfare Goals*, 81 *FORDHAM L. REV.* 2471 (2013).

configuration of very large corporations that we have today.³¹⁶

Of course, the very idea of consumer welfare—what kinds of economic arrangements and opportunities best serve people in their identities as consumers—is far more complex than I can adequately dissect here. Suffice it to say, however, that it need not be defined narrowly as the lowest possible prices in the immediate term,³¹⁷ but rather can be made contingent upon a range of social and political conditions that inform what constitutes “efficient” production, circulation, and hence prices, and which can change over time affecting the competitive advantages of different—and differently sized—firms. These conditions may include environmental costs, land and food supply sustainability, existing infrastructure, such as roads and means of transportation, as well as compliance with labor, minimum wage, and antidiscrimination laws, and the ability to produce and trade with or without state subsidies. Likewise, a consumer welfare perspective can accommodate explicit distributional considerations. Consider, for example, these comments by Peter Timmer:

[T]he ultimate impact of supermarkets in developing countries will be on the level and distribution of improved welfare for consumers What happens to small farmers, traditional traders, and family-run retail shops will be factors in both the size of welfare gains and their distribution, but many other factors will also come into play. . . . A political process, informed (we hope) by good economic analysis, will then determine the nature of compensatory actions needed so that

316. Whitman, *supra* note 313, at 372 (“The primacy of consumer economic interest [in U.S. antitrust law] has come to seem so self-evident that it hardly requires any effort at justification.”). It is worth noting that some analysts argue that market concentration in the United States has produced less competitive, higher food prices, suggesting a failure of antitrust regulation. See, e.g., MITCHELL, *supra* note 51, at 136 (arguing that “[b]etween 1991 and 2001, consumer prices rose by 28 percent, while the producer price index for groceries, which approximates the wholesale price paid by supermarkets, increased by only 14 percent. The culprit was likely the massive wave of mergers that occurred during the 1990s”); Rigoberto A. Lopez et al., *Market Power and/or Efficiency: A Structural Approach*, 20 REV. INDUS. ORG. 115, 123 (2002) (studying U.S. food processing industries and arguing that greater concentration increases price in most sectors). See also PATEL, *supra* note 297, at 104; KATY MAMEN, STEVEN GORELICK, HELENA NORBERG-HODGE & DIANA DEUMLING, RIFE FOR CHANGE: RETHINKING CALIFORNIA’S FOOD ECONOMY 20 (2004).

317. Nor, I should add, is it clear that supermarkets in developing countries will invariably provide more competitive prices than traditional markets, particularly for fresh products. See Sukhpal Singh, *Controlling Food Inflation: Do Supermarkets Have a Role?*, ECON. & POL. WKLY., Apr. 30, 2011, at 20 (summarizing empirical studies of supermarket prices in several developing countries that report higher prices for fresh fruits and vegetables as well for other items). Moreover, even if supermarkets offer competitive consumer prices for staple goods, not all consumers will benefit equally. See, e.g., Minten et al., *supra* note 62, at 1784–85 (reporting mostly competitive prices for basic foods in supermarkets in Delhi but observing that in traditional markets, poor consumers can “negotiate lower prices . . . as compared to richer customers,” and are unlikely to gain from supermarkets’ focus on branded and prepackaged items or bulk sales).

losers in this revolution do not end up in poverty.³¹⁸

The basic claim here is that markets should be structured to allow economic actors to generate a maximum amount of “welfare” for consumers *and* that some of these gains should be redistributed via political means to compensate those who find themselves newly unemployed.³¹⁹

But consumer welfare—in any of its myriad political and social formulations—is not the only market discourse currently at play in India. The competing approach places greater emphasis on Indians in their identities as producers. Given the very high number of Indians who work in agriculture and retail—again the two largest employment sectors in the country—ideologies of consumer welfare are unlikely to capture broad-based political support unless they consider producer security and the livelihoods of small farmers and traders *at the outset*—that is, not as a matter of *ex post* compensation but rather as intrinsic principles to organize agricultural and retail markets.

As a set of legal rules governing markets, producerist policies have more affinities with the capitalist legal systems in continental European countries such as Germany and France.³²⁰ From this perspective, competition laws may legitimately protect supply-side market actors against “unfair” trade practices and, for that reason, potentially limit the market share of dominant firms.³²¹ Likewise, to protect the interests of smaller competitors, retail laws may prohibit loss leader strategies (selling goods under cost); regulate store hours, square footage, what kinds of goods are offered, and when sales may be announced; and limit store density and predatory pricing in a given jurisdiction.³²² “Producerist” legal systems, in other words, prioritize a different set of (internally diverse) economic interests. Like more “consumerist” legal systems, they too can overlap with left and right political ideas, but they all refuse “to treat . . . threats to the consumer economic interest as the most important threats facing the law.”³²³ As James Whitman thus argues in his comparative analysis of American and continental European legal systems governing markets: “the real debate is not about some clear economic choice for the community” but rather is “one between two incommensurable

318. C. Peter Timmer, *Do Supermarkets Change the Food Policy Agenda?*, 37 *WORLD DEV.* 1812, 1813 (2009).

319. *But see* Martha T. McCluskey, *Dreaming the Big Pie: How Efficiency Versus Equity Mystifies Class Conflict* (unpublished manuscript on file with author) (arguing that policy analysts who distinguish growth from distribution in this way often envision a fictitious idea of growth that is separate from class conflict and intrinsic distributional tradeoffs in the first instance).

320. *See generally* Whitman, *supra* note 313, at 348.

321. *Id.* at 375–76.

322. *Id.* at 376–94.

323. *Id.* at 369. Whitman shows how producerist values can map onto socialist as much as fascist political systems. *Id.* at 357–60.

visions of what counts as justice in a modern economy.”³²⁴

Many Indian activists have expressed their opposition to corporate retail in producerist terms.³²⁵ To offer a few better-known examples, the Frontline journalist V. Sridhar and the historian Vijay Prashad have argued that in India it is the wealthy who “have the option of being consumers first, the poor are primarily producers eking out a living”—growers, traders, retailers, and others who depend upon the existing supply chain.³²⁶ Or the policy analyst Mohan Guruswamy and his coauthors put the point like this: “It is true that it is in the consumer’s best interest to obtain his goods and services at the lowest possible price. But this is a privilege for the individual consumer and it cannot, in any circumstance, override the responsibility of any society to provide economic security for its population.”³²⁷ In this particular estimation, broad-based economic security turns on supply-side access to livelihoods, not demand-side access to consumption. West Bengal Finance Minister Asim Dasgupta captured some of these ideas in his 2010–2011 budget speech setting forth priorities for state governance when he called for an “alternative policy” concerned not only with “the growth of production as such, but growth of production in a manner that increases employment as high as possible” and that reduces “monopolistic powers and create[s] . . . opportunity for a wide number of producers.”³²⁸

Alongside, and often embedded within, these invocations of producerist interests in India is another set of concerns that likewise cannot be captured in a consumer welfare paradigm—namely, that economic policy should be concerned not only with growth or even distribution, but also with the kinds of economic arrangements that allow individuals greater political control over their own lives and communities. For example, the Indian “Movement for Retail Democracy,” an alliance of traders, hawkers, farmers, workers, and civil society allies, invoked the famous “Quit India” resolution against British colonialism when it issued its own “Quit Retail” resolution against all corporations.³²⁹ This political association has pledged to uphold “people’s own

324. *Id.* at 371.

325. To that end, some commentators have encouraged India to look at German competition and retail laws that provide protection for small and medium economic actors rather than emulate laws in the United States. See Anuradha Kalhan & Martin Franz, *Regulation of Retail: Comparative Experience*, *ECON. & POL. WKLY.*, Aug. 8–14, 2009, at 64.

326. Sridhar & Prashad, *supra* note 67, at 1794.

327. Guruswamy et al., *supra* note 57, at 622.

328. Asim Kumar Dasgupta, Minister-in-Charge, Finance, Government of West Bengal, 2010–11 Budget Statement 6–7 (Mar. 22, 2010).

329. *History*, INDIA FDI WATCH, http://indiafdiwatch.org/?page_id=157 (last visited Aug. 22, 2013).

self-organizational capacities.”³³⁰ In this sense, it recalls *swadeshi*—the early twentieth century independence movement that in Bengal became an important vehicle to protest colonial partitioning by, among other things, boycotting foreign products.³³¹ *Swadeshi* later became an important Gandhian idea of economic self-sufficiency as a precondition for self-rule.³³² As phrases like “retail democracy” or “Quit India” suggest, these arguments on behalf of producers demand that policymakers attend to the political consequences of the concentration of economic power in domestic and transnational corporations, and they imply that core political freedoms can depend on smaller-scale, local production, and control.³³³

So where does this survey of conflicting interests and legal ideologies leave India’s food markets? A key premise of this article has been that attention to local (legal and extralegal) practice is necessary to make sense of political resistance to, and the social and distributional stakes of, economic change. It thus used ethnographic analysis of the micro-practices of production and trade among farmers and wholesalers in West Bengal to examine macro-regulatory questions, including the creation of formal food economies and the centralization and consolidation of food supply chains. To be sure, one case analysis does not suffice to form national policy recommendations (although policymakers have proceeded on less). What this case does, however, plainly suggest is that as states like West Bengal continue to refuse to legalize contract farming

330. *Id.*

331. See SUMIT SARKAR, *THE SWADESHI MOVEMENT IN BENGAL 1903–1908* (1973) (chapter three: “Swadeshi Enterprise and Boycott”).

332. See, e.g., Manu Goswami, *From Swadeshi to Swaraj: Nation, Economy, Territory in Colonial South Asia, 1870 to 1907*, 40 *COMP. STUD. SOC’Y & HIST.* 609, 611, 623–31 (1998). See also BIPAN CHANDRA, *THE RISE AND GROWTH OF ECONOMIC NATIONALISM IN INDIA: ECONOMIC POLICIES OF INDIAN NATIONAL LEADERSHIP, 1880–1905*, at 122–41 (1966).

333. These arguments also recall the anti-chain movement in the United States. In the 1930s, there were defenders of small retail who took seriously the political consequences of economic concentration. Most famously, Louis Brandeis described the “curse of bigness,” namely the idea that large-scale economic arrangements not only undercut economic independence but, as a consequence, a nation’s capacity for democratic self-governance. See, e.g., LOUIS D. BRANDEIS, *THE CURSE OF BIGNESS: MISCELLANEOUS PAPERS 140–41* (Osmond K. Fraenkel ed., 1935) (“[W]e cannot successfully grapple with the problem of democracy if we confine our efforts to political democracy [S]ide by side with political democracy comes industrial democracy.”). Or as Richard Schragger writes, “[i]t was still possible in the 1930s to imagine and advocate local power to regulate local economic circumstances in pursuit of an ideal of citizenship and economic self-sufficiency, even if that regulation led to higher prices.” Richard C. Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920–1940*, 90 *IOWA L. REV.* 1011, 1015 (2005). For a contemporary (and Western) defense of this idea, see generally MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* (1996). Sandel asks: “What economic arrangements are hospitable to self-government?,” and he reviews the American anti-chain store movement in his analysis. *Id.* at 6–7, 227–31.

and to permit foreign direct investment in the retailing of food (issues being intensely debated as this article goes to press), there will be no clear, let alone clearly desirable, road from the present configuration of small-scale capitalism to the corporate dominance of food markets that we currently experience in the West. Nor should we anticipate or allow simple invocations of consumer welfare to readily or automatically serve as a policy trump in favor of capital concentration. To the contrary, in India, ideas of social welfare remain intricately tied to populist political strategies, activist demands for democratic self-governance, and the economic self-interest of the hundreds of millions of entrepreneurial Indians whose livelihoods depend on servicing the country's existing food supply chains. Taken together, these forces may yet materialize into a sustained ideological and economic challenge, if not also some practicable suggestions for market reform.