Grievance Practices in Post-Soviet Kyrgyz Agriculture

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This article examines legal consciousness in action as expressed in grievances arising from commercial transactions among sellers and buyers in the new post-Soviet economy of Kyrgyzstan. Using focus groups, direct observation, and participant observation, I investigate the transformation of disputes between Kyrgyz vegetable growers and processors. My data show variation in the way grievances are dealt with among Kyrgyz farmers. Farmers opt out of the contractual relationship, remain in the relationship, or practice a combination of the two over time. The farmers included in this study did not seek legal remedies through the court system. Data also reveal that expressions of grievances transform in tandem with an evolution of feelings—from anger and distrust to understanding and even sympathy for the party responsible for the grievance.

INTRODUCTION

Imagine what it must be like to be faced with the prospect (and shock) of adjusting to a completely new set of economic, legal, and even social rules—without being entirely aware of what those rules are. Imagine that simultaneously your familiar association with your place of work is entirely disrupted: You are informed that you are now an “entrepreneur.” You soon...
learn this means that you, alone, are responsible for generating your income and providing for your family.

This scenario played out hundreds of thousands of times in former Soviet republics after the break up of the Soviet Union in 1991. Newly independent post-Soviet governments administered programs of mass privatization, which effectively dissolved prevailing market linkages in all sectors of the economy. Separated from suppliers by new borders, many privatized enterprises ceased to operate, shedding workers in the process. In some former Soviet republics, the distribution of land shares and other assets to employees accompanied the privatization of large collective and state farm enterprises. New business structures and owners were created to replace the collective and state farms.

Kyrgyzstan is a small, mountainous post-Soviet Central Asian state. In Kyrgyzstan, the population is struggling to sort out the purposes and reasons behind a new legal framework, which was not collectively designed. The codified-by-the-state legal institutions operative in Kyrgyzstan represents a means for ordering an economy and society entirely different from that which previously prevailed. The population applies familiar rules for conducting business to cope with foreign legal institutions. When applied, these norms and conventions assist buyers and sellers in working out conflicts created by the state's new legal-institutional framework.

In this article, I investigate how business is being conducted in Kyrgyzstan. Specifically, I examine disputes between newly private farmers and newly private food processors who are learning to negotiate contracts with each other. By examining the emergence and transformation of disputes, one may gain knowledge of the processes by which expectations are formed and injuries are perceived. Here I argue that beliefs drive the transformation of disputes. In a commercial relationship, beliefs about what seems best change over time as legal consciousness adapts to fit a specific institutional framework. I show that the parties' responses to grievances are informed by their evolving beliefs about new buyers and sellers, as buyers and sellers attempt to replace uncertainty in commercial relationships with predictability. In other words, expectations are not necessarily structured by the terms of parties’ contracts, but rather through a continuing process of working out misunderstandings during the course of the relationship. Disputes offer both parties opportunities to learn what their new and unfamiliar supplier-processor relationship is all about. They reveal the nature of an emerging legal consciousness.

Scholars are only just beginning to investigate how a new economic culture develops during the post-Soviet transition from socialism to capitalism (see Hendley, Murrell, and Ryterman 1999; Hendley 2002; Johnson, McMillan, and Woodruff 2002). Even less is understood about how new legal systems

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1. Not all post-Soviet governments administered the privatization of agricultural enterprises. The former Soviet republics, which did not adopt this reform measure, included Uzbekistan, Belarus, Tadjikistan, and Turkmenistan.
become instrumental to a population. Studies like this will, I hope, contribute to our knowledge on both fronts.

THE SOCIOLEGAL NEXUS AND INSTITUTIONAL CHANGE

The sociolegal literature on legal consciousness and legal mobilization intersects with theory on institutional change in important ways. According to sociolegal theorists, law is constitutive in that it influences the way people bring meaning to their experiences, and instrumental in that people apply the tools it offers to resolve conflicts (Sarat and Kearns 1995). In a similar way, an expanded definition of institutions beyond legal working rules that includes norms and conventions and property relations is also constitutive and instrumental (see Bromley 2006). The guiding assumptions underlying legal consciousness and legal mobilization research convey the essence of the institutional approach I use to understand socioeconomic change. The first assumption holds that “law’s power depends on the values, beliefs, and behavior of individuals.” The second assumption refers to law’s active quality in that it “carries with it the sanction of the state, which includes both the moral authority attached to the state’s legitimacy as well as the state’s monopoly of force.” The third assumption recognizes the limitations of law with respect to directing behavior. That is, law can enable and constrain individuals’ decisions about what courses of action seem best, but it cannot determine what those courses of action will be (Marshall and Barclay 2003, 623).

In the area of contract negotiation and dispute resolution during rapid market development that is the particular focus of my empirical research, Ian Macneil’s theory of relational contracting also has much to contribute. Macneil (1986) defines a contract as an instrument of social cooperation. In much the same fashion, John R. Commons (1934), an institutional economist, defines action in the economic realm as oriented towards conscious cooperation. Macneil, I think, would not disagree with Commons’s description of the sorting out of human interdependence to which I also subscribe:

They learn the custom of language, of cooperation with other individuals, of working towards common ends, of negotiations to eliminate conflicts of interest, of subordination to the working rules of the many concerns of which they are members. They meet each other . . . prepared more or less by habit, induced by the pressure of custom, to engage in those highly artificial transactions created by the collective human will (Commons 1934, 74).

The citizens Commons describes here are expressing Macneil’s obligations of good faith, solidarity, role integrity, and mutuality. It is clear from
Commons's statement that these citizens are practicing “presentiation,” in which they bring the future forward by collectively imagining it. In turn, they create a unified statement of agreement about what should be the purpose of a particular contractual relationship. That is, parties to a transaction agree to (1) negotiate a contract in good faith, (2) maintain predefined roles, (3) reciprocate according to establish norms, and (4) reinforce trust. Among Kyrgyz farmers, solidarity, or trust in contracts, is evident in the implied repeated nature of the contracting taking place. Mutuality, or reciprocity, is expressed in the allusion to a contractual history and a commitment to eliminate conflicts of interest.

In their well-known study, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . . ,” Felstiner, Abel, and Sarat (1980–81), among others, have noted that law is only one among a spectrum of tools, including norms, status, and kinship, which individuals can use to make decisions about courses of action in their daily lives. Norms constitute a culture of contracting and are of fundamental interest to both Commons and Macneil. Macneil writes, for example, “Over time, exchanges made with long-run motivations produce norms to which the participants expect to adhere and to which they expect adherence from other participants” (Macneil 1986, 579).

Macneil’s theory of relational contracting complements the “naming, blaming, claiming” framework in that it offers an examination of how individuals raise their legal consciousness in the process of working out conflicts that they encounter in the process of negotiating commercial transactions. Macneil’s concepts—good faith, solidarity, role integrity, and mutuality—are consistent with the elements of Felstiner et al.’s framework. They emphasize the interdependent nature of institutions and suggest that institutional change occurs during incidents of cooperation and conflict among citizens of a going concern.  

2. According to Macneil (1974, 589), presentiation is “a manner in which a person perceives the future’s effect on the present.” He goes on to say that this definition holds primarily for discrete transactions. For transactions that can be characterized as relational, he writes, “the participants never intend or expect to see the whole future of the relation as presentiated at any single time, but view the relation as an ongoing integration of behavior which will grow and vary with events in a largely unforeseeable future (1974, 595).” Macneil’s “presentiation” is similar to Commons's concept of “futurity,” which is incorporated into the course of action that leads to a specific transaction. Commons states it this way: “Transactions are based on expectations of the immediate or remote future . . . and available only after the closing of the negotiations which ends in the transaction” (Commons 1934, 86).

3. By going concern, I am referring to John R. Commons’s conceptualization of groups of citizens who share a unified goal. The actions of citizens of a going concern are incorporated into new legal institutions through the negotiated rationing transactions of authoritative agents. Legal scholars describe this process as legal change from social change. It is generally accepted in the social sciences that law reflects society, and the going concern embodies “society” that influences legal decisionmakers so that society's values are communicated. The process of social and legal change is by its nature politically charged and is influenced simultaneously by those groups that outwardly oppose the status quo, outwardly endorse the status quo, and by those who keep their opinions silent.
Together, Commons, Macneil, and particularly Felstiner et al. furnish the components of the conceptual framework I use in my evaluation of contractual relations and disputes in Kyrgyzstan’s agricultural sector. Using theory on going concerns, institutional change, and relational contracting, I evaluate what factors influence the transformation of disputes. For the purposes of this study, contractual behavior comprises the decisions associated with entering a contractual relationship, managing that relationship and concluding that relationship. In Kyrgyz agriculture, these relationships are tenuous at best. At its current stage of development, my study is revealing in the way it suggests reasons for why so many grievances fall short of becoming disputes, instead ending in blaming or claiming.

CONCEPTUAL APPROACH: NAMING, BLAMING, AND CLAIMING IN KYRGYZ AGRICULTURE

Felstiner et al.’s conceptual framework helps me evaluate what social structural factors affect each successive transformation of an individual in the pursuit of a dispute. According to their framework, during the first transformation (the naming), the individual must become aware that s/he has been wronged. This transformation can occur immediately, or it can take years. Factors affecting the pace of this transformation include interactions with others, self-education, exposure to similar experiences, and so forth. During the second transformation (the blaming), the individual recognizes that the “wrong” is the result of wrongdoing by a separate party. The transformation associated with blaming involves believing that something can and should be done. Focus group discussions and observations in rural Kyrgyzstan indicate that awareness about possibilities for legal redress is increasing, but commercial disputes are rarely resolved outside of community circles in rural areas (Helvetas 2003). Instead, the subject of blame—the processor—is confronted. Blaming, that is, rarely transforms into an actual attempt to remedy a grievance. During the third transformation (claiming), the aggrieved party confronts those believed responsible for the grievance in an attempt to receive some kind of remedy. According to Felstiner et al., a claim only becomes a dispute if the claim is rejected. A claim can be rejected in a variety of ways. Among farmers I observed in Kyrgyzstan, rejection of a claim is expressed through silence, angry confrontation, or no repeat contract.

With each transformation, the aggrieved party has to decide on the next course of action. Factors affecting these decisions include social structures, such as social class, education, work situation, social networks, the relationship of parties, norms, and legal rules. In other words, each transformation is either enabled or constrained by an institutional
framework comprised of working rules, norms and conventions, and property relations.  

Felstiner et al.’s framework considers eight variables when evaluating the transformation process: (1) contractual parties, (2) ideology, (3) attributions or perceived reasons for grievance, (4) scope of conflict, (5) choice of audience, (6) objectives or motivation of aggrieved party, (7) support groups for aggrieved party, and (8) representatives and officials. These factors are all relevant to the post-Soviet Kyrgyz context where citizens are in the process of working out a new economic and social order. In the ensuing analysis I use these factors to evaluate the nature of contractual practices and the transformation of disputes in the agricultural sector of southern Kyrgyzstan.  

The transformation of disputes framework informs an analysis of the nature and structure of disputes over time. Through application of this framework to analysis of data gathered in a series of focus group discussions, I assess the factors that affect contractual practices and explore the underlying reasons for disputes. I use excerpts from the transcripts to illustrate the transformation that occurs once farmers acknowledge that they have been wronged by a processor. An evaluation of farmers’ contractual experiences with processors shows how beliefs about the nature of a grievance change over time. In the process, I investigate the legal meanings that farmers in southern Kyrgyzstan attach to their contractual experiences. Finally, I develop theoretical propositions that I can use in later stages of this research.

METHODS

During the summer of 2005, I conducted focus group discussions in four regions of Kyrgyzstan: Osh, Batken, Chui, and Issyk-kul. Focus groups offer a way to explore reasons for certain decisions, providing insight into beliefs and values of a particular community. Participants in a focus group discuss topics with the guidance of a moderator. The moderator facilitates group interaction in order to gather information about process and decisionmaking. At the same time, the moderator assesses the interaction between group participants in order to elicit more information than is accessible through interviews with individuals. 

The participant population consisted of private fruit and vegetable farmers who had some experience with selling to fruit and vegetable processing enterprises. With each group of six to fifteen participants I used similar protocols for assessing beliefs about the value of different contractual arrangements, what factors affect these beliefs, and the decision-making processes

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4. This definition of institutions was developed by Daniel Bromley (2006), who drew heavily on the institutional economics of John R. Commons. I introduce this conceptualization of institutions here, because it reflects the legal-economic-social nexus that influences behavior.
associated with a range of contractual possibilities. All focus groups were conducted predominantly in Kyrgyz, with some questions in Russian. The group discussions were recorded, translated from Kyrgyz into Russian, and simultaneously transcribed into English. The purpose of the discussions was made clear to the participants, and written and fully informed consent was obtained from all participants at the beginning of the discussions. To ensure confidentiality, all information that might identify participants in this analysis was removed or altered. Participants were acquainted with each other through membership in previously existing farmer groups that had been organized through donor-supported projects. Consequently, at the time of the focus group discussions, all participants had been exposed to the idea that a written contract with a processor can be good for their small agricultural enterprises.

My approach to conducting focus groups consisted of open-ended questions. I was careful not to suggest to participants that one contractual arrangement or strategy for approaching disputes was better than another one. At the suggestion of the Rural Advisory Service in Kyrgyzstan and the Helvetas-sponsored Local Market Development Program, focus group discussions were scheduled to coincide with planned training sessions to ensure participation by farmers during a busy planting or harvesting season. Representatives of these organizations voluntarily assisted with scheduling focus group sessions.

In the northern Chui and Issyk-kul oblasts, the majority of participants were Kyrgyz, with a few Dungan. In the southern Osh and Batken oblasts, the majority of participants were Kyrgyz, with approximately one-third Uzbek or Tajik. Approximately 40 percent of the participants were men, and 60 percent were women. The participants were not limited by age, but age appeared to be a factor in the nature of focus group discussions and will figure more prominently in the design of any subsequent focus groups.

Only focus group discussions with one processor’s suppliers, located on the border of Osh and Batken oblasts, are included in the following analysis. I chose to include only these twenty-eight private farmers, because they share the longest contractual relationships with the processor. With these experiences, I can evaluate contractual practices over time. This sample of private farmers, while not representative of all private farmers in Kyrgyzstan, provides insight into the beliefs of private farmers about the marketing opportunities available or not available to them. Further, the sample assists in identifying the key issues relating to the commercial relationships between private fruit and vegetable farmers and fruit and vegetable processors in Kyrgyzstan. Other sources employed in my analysis include discussions with

5. Respect for aksakals, or elders, is shown by allowing the voices of elders to represent the voices of younger members. This practice presents a problem when focus groups, designed to create an atmosphere that encourages free discussion, are comprised of participants representing a range of ages. In other words, the youngest participants demonstrated that they did not feel free to express their opinions with elders present.
local development workers and farmer group trainers. Additionally, I use personal observations of local marketing practices and observations from my participation in the Helvetas-sponsored workshop that gathered together stakeholders every two months to discuss issues of interest along the fruit and vegetable value chain in Osh and Batken oblasts, from input suppliers to producers to processors to distributors.

BACKGROUND

Kyrgyzstan is one of the poorest of the former Soviet republics. Over 80 percent of its economy was devoted to agriculture during the Soviet period. After independence, the government of Kyrgyzstan implemented reforms that shifted economic decision making from state control to the local level. Agrarian reforms consisted of agricultural enterprise privatization and land privatization. Farm privatization was often accompanied by the allocation of land shares and farm assets to former workers. Land privatization involved distributing plots to former collective and state farm workers along with the legal right to sell, bequeath, gift, or lease out this land to others. Agrarian reforms severed input and output channels in the agri-industrial complex that had formerly encompassed all agricultural enterprises—from that which supplied inputs to that which processed the raw agricultural products. During the early stages of agricultural restructuring in Kyrgyzstan, the government chose to emphasize reforms that affected agricultural producers rather than agricultural processors. Subsequently, privatization broke up the processing industry, which contracted and then lost several factories to bankruptcy. To obtain raw inputs for their operations, the processing enterprises that survived began to negotiate commercial transactions with the thousands of new private farmers.

The population of private farmers that formed after land privatization and farm restructuring is now facing serious challenges from an emerging market economy that confronts farmers with high barriers to entry due to their lack of basic capital, such as mechanized transportation and high transaction costs, including information and transportation costs. Bargaining power is also a factor in the ability of individual private farmers to negotiate themselves into stable, long-term relationships with local food processors. Processors, themselves, face their own challenges, such as obsolete equipment, inability to meet quality and quantity demands, and locating domestic and export markets.

The nature of the contractual relationship between farmer and processor is transformed over time with exposure to new information, socioeconomic pressures, and reevaluation of prior experiences. When grievances arise, emotions associated with the grievance can change along with these elements to affect the nature of the relationship. In the mid-1990s, rural Kyrgyz citizens
were exposed to many new ideas, as international donors began to implement projects that focused on facilitating the process of land privatization. Adult education initiatives concentrated on providing new landowners with information about their rights within a new legal context. Were it not for the technical assistance they received from various support organizations, many farmers admit they would never have considered contracting with a processor. For example, in one focus group discussion, farmers asked to describe their first experience negotiating a contract with a processor replied as follows:

A: We didn't make a contract with anyone.
B: We didn't know any processors. We only sold at the bazaar. This is our first year.
C: There were no contracts before this. Nobody made any kind of contract—not with anybody. We worked for ourselves. We brought to the bazaar.
D: Only to the bazaar.

The level of individual private farmer commitment to commercial agreements with processors is difficult to evaluate. While most farmers seemed to agree that contractual terms should be fulfilled, focus group discussion revealed inconsistency in this belief. According to focus group participants, it was unacceptable for a processor to fail to honor his agreement, but a farmer can back out of the contract for a number of reasons—all considered “acts of god.” Acts of god can include anything from the border with Uzbekistan being temporarily closed, in turn shutting off a channel for inexpensive inputs and increasing the price, to a pest invasion, to lack of irrigation, to a poor harvest—even though perhaps due to poor cultivation techniques—to transportation breakdown.

Processors also renege on contracts with farmers for a number of reasons. For example, they do not always provide transport on time, and farmers report that they change the price at time of delivery. A key challenge for processors is that they do not always fulfill their plans due to an inability to obtain the right quality (i.e., size and consistency) they need from local farmers. This is one reason why processors have begun to offer extension-like services. These services include providing technical assistance and inputs, such as seeds specific to the type of product they need, fertilizer, and plastic covers for greenhouse production. However, farmers who accept this type of in-kind “credit” do not necessarily view their acceptance as a commitment to return their harvest to the processor who provided the inputs. Many freely admitted that if the price were higher at the bazaar, they would take their harvest there. At this time, processors expect them to sell their produce at the highest available price.

Skepticism about contracts also arose from the fact that the quality of inputs the farmers obtained was not always satisfactory. It is hard to know
with certainty whether their complaints about the quality of inputs are legitimate or the outcome of generally disgruntled personalities. Some focus group participants suggested that when they accept inputs from a processor, they felt like they were in debt to that processor. They did not want to be in this indebted position.

Although farmers expressed a real disenchantment with selling to processors at a lower price than the product will sell for in the bazaar, they did not necessarily have success selling at the bazaar. One farmer candidly revealed the nature of this situation when he remarked, “We say that we sell in the bazaar, but when we sell in the bazaar, only 10 to 20 percent of the tomatoes with us are sold. The rest are not sold.” This comment was met with much agreement among other focus group participants. Another participant added, “Sometimes in the harvest there are small and not very good tomatoes, and at the bazaar, they [the customers] don’t agree to these. They say that these are small and don’t taste good. Therefore, we form a contract with the processing company.” Later, in informal discussion, it became clear that when farmers say that they want to go to the bazaar because the price is better, there could be other compelling reasons besides price. One reason is that a trip to the bazaar represents a social event that gives farmers a chance to talk with other sellers. Another reason is that a trip to the bazaar signals to the processor that the farmer is not entirely dependent on the processor.

**REASONS FOR GRIEVANCES IN COMMERCIAL DISPUTES**

The causes an aggrieved party assigns to a grievance influence courses of action in commercial disputes. A person’s belief about the causes of a dispute informs his or her perception of the experience. This perception changes over time along with changes in beliefs (Felstiner et al. 1980–81). Statements from farmers participating in focus groups document how the degree of blame that farmers assign to processors can change depending on the duration of experience with the processor.

Focus group discussions revealed two primary reasons for grievances among vegetable farmers. Reasons for grievances include nonperformance of contracts and unmet expectations regarding contractual terms. While these reasons are similar and may overlap, the distinction is important. Reasons for nonperformance of contracts from the perspective of the farmer include untimely or no transportation, lack of inputs, lack of specified quality. Reasons for unmet expectations include lack of awareness or understanding of contractual terms or legal rules and asymmetric information.

Felstiner et al. refer to the extent of discourse surrounding the grievance when they define the scope of the conflict. During focus group discussions, many participants extended the grievance from, for example, “the processor
changed the price” to a diatribe about poor quality inputs and delays in transport. In the excerpt below, one farmer described the nature of the conflict, beginning with a perceived unreasonable demand for the farmer to provide his or her own transportation. The farmer then goes on to describe the improbability of being paid on time and ends his statement with an accusation that the processor’s ineptitude is the cause for irreparable damage to the harvest.

Here is a monopolist. He says, “You pay for a car. You pay and transport the harvest, yourself,” he [the processor] says. If it would be possible for somebody to come, a good person who wanted to work, who came with his own vehicle, with his own scale. Let him do the weighing himself, and immediately settle the account. Let him make accounts and take the products away. When we truck them ourselves, we end up deprived. We end up bankrupted. All of our money is spent on the road. After we deliver, we wait. Within a month they will pay, within two months they will pay. It is not known. While we are delivering, the produce is spoiling. Literally, water is running from the produce. We lose so many kilograms.

Many focus group participants have multiple years of experience working with the processor, and for those farmers the scope of the conflict is multifaceted, encompassing a variety of problems associated with marketing and summed up with the term “monopolist,” which they use to describe the processor. The scope of the conflict narrows for focus group participants who have less experience with the processor.

An aggrieved party’s choice of audience to whom to voice blame is a function of the party’s objectives. Felstiner et al. argue that once the choice of audience is made and blame has been voiced, the “rules of relevance, cast of actors, delays, norms and remedies” (1980–81, 636) become known. Farmers in southern Kyrgyzstan have a range of choices when deciding to whom to voice blame. They can be silent, voice their blame to their friends and neighbors, to the director or representatives of the processing company, to local agricultural assistance programs, to foreign researchers, or they can seek assistance from rural legal assistance organizations. It follows that if the objectives of the aggrieved party change, then the choice of audience could change and vice versa. Among focus group participants, an expression of hopelessness or desperation initiated a transformation of objectives for farmers. In many instances, desperation led to quick forgetting and moving

6. A local development worker who helped me to arrange one of my focus groups and who observed part of it commented that in her experience, these farmers are eager to share accounts of their hardship with foreigners. Many of these farmers have had experience with foreign development practitioners who represent microcredit organizations and thus associate foreigners with access to credit. Although I related that my purpose was to conduct dissertation research, I was no exception.
beyond the incident, so that the choice of audience changed to silence—or no audience at all.

Some farmers are so doubtful that a resolution of their grievance is possible that over time they begin offering themselves justification that the processor is not to blame. Farmers’ descriptions of their grievances reveal a range of beliefs about how to move from naming to blaming. Beliefs are on a continuum from complete blame placed on the processor to a belief that they, themselves, are to blame for the grievance. This result is not surprising in light of interview data that suggest that around 1996, farmers became aware that they could not count on anybody but themselves for survival. In the excerpt below, farmers discussed why they were to blame.

A: When [the processor] forms a contract, the price is higher than the bazaar price by ten tien. And it is always the same. If in the bazaar it is three soms, in the contract the old price is written again. If in the bazaar cucumbers are twelve soms then [the processor] will pay six soms.

B: He does it po-kyrgyzski. He doesn't fulfill his contractual obligation.

C: No, it is this way. He speaks the truth. We have already worked with [the processor] for five or six years. And earlier transportation cost 300 to 250 soms. Now they charge 500 to 600 soms one-way—and we travel as far. And if you don't pay that amount, transportation does not come. And you need to pay without fail because he [the processor] uses up the benzin [gasoline] immediately. This is a minus for us. And I want to say that if you go to [the processor], he will tell you, “let him [the farmer] not fulfill our plan, we don’t need tons. Let him return the chemicals and plastic covers that we gave him.” Do I speak the truth?

All: Yes.

In this discussion farmers admitted to not always following through with their side of the contract with a processor. This demonstrated lack of commitment to a contractual relationship suggests to the farmers that they were at fault. The following excerpts from focus group discussion transcriptions offer some insight into what some farmers believed were the reasons for nonfulfillment.

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7. The year 1996 marked a time of recovery for many families in rural Kyrgyzstan. During interviews and casual conversation with farmers in 2005 and 2006, I listened to farmers from different regions of the country explain to me that it was around 1996 when they began to believe that waiting for government assistance was futile. They explained that the year 1996 marked a shift in their mentalitet, or way of thinking, about how to move forward. It was then that some farmers began to believe that if their standard of living were to improve, they, themselves, would have to seek out ways and resources with which to make that happen.

8. Tien is national currency in Kyrgyzstan. One hundred tien is equivalent to one som.

9. Som is national currency in Kyrgyzstan. As of December 2006, one U.S. dollar is equivalent to 41.5 soms.

10. This term refers to the Kyrgyz way of operating. In this context, the farmer is suggesting that it is Kyrgyz to delay the fulfillment of contractual obligations.
of contractual terms by the processor. The statements suggest a spectrum of reasons, from dissatisfaction at the debt the farmers owe the processor to the farmers’ own inability to get the transport and deliver the fruits and vegetables on time. Below, one farmer complained about the long distance to the processing factory.

The product ripens earlier in Kadamzhaiskii Raion, and farmers there have time to sell products to them [the processor] first. We only have time to go one or two times to the factory. We don’t have enough time to go five or three times before the factory closes [for the season]. They . . . the factory says that they have already fulfilled their plan. We take [the produce] to the bazaar and the price falls. Then the factory says that they don’t have any more jars. It is better to give it to our cows.

One of the focus group participants explained that it was farmers’ willingness to comply with unfair demands of the processor that was the cause of their problems. Therefore, they were to blame for unpredictable contract fulfillment.

For example, we come to the Farmer School. We train. And in my opinion, I am beginning to understand these contracts that we are just beginning to form. From Europe they come to train us. They also have farms. They also work like this. Let them tell us about their experience. It doesn’t happen this way for them probably. Probably, they [the processors in Europe] come, clean the harvest, and take it away. Probably, they [the farmers in Europe] don’t lower themselves like we do when we deliver our harvest with donkeys.

Once the blame shifts from the processor onto the farmers themselves, the transformation from blaming to claiming is truncated. The audience becomes moot. The objective of the aggrieved party can be reason for self-improvement or self-pity. Though farmers suggested that they had been dissatisfied with the processor for a long time, few expressed any intention to opt out of the relationship. Those who did opt out of the relationship either believed that the bazaar was more profitable for them or that it was better to raise a different crop or livestock.

RESOLUTION OF GRIEVANCES IN COMMERCIAL DISPUTES

During focus groups, I asked farmers to describe their experiences with resolving disputes. Discussion suggests that few farmers turn to the court

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11. Kadamzhai is a geographic region located about forty kilometers south of the processing factory.
system for assistance. Aside from the state court system, none of the participants mentioned any of the nonstate legal organizations that can assist with commercial disputes, such as the aksakal courts, the treteiskii courts, or the Legal Assistance to Rural Citizens (LARC) offices. The absence of discussion in focus groups about legal organizations suggests either a belief that these organizations do not serve an instrumental purpose or a lack of awareness that they exist. The aksakal courts are a traditional part of Kyrgyz culture and address disputes at the village level. The treteiskii courts are also a familiar legal structure but only recently became a prominent source of legal redress because of a United Kingdom Department for International Development (DFID)-funded project designed to provide infrastructure and resources for third-party arbitration courts. LARC is a post-Soviet phenomenon, funded in part by the United States Agency for International Development (USAID) and Helvetas, which, through a network of regional offices, aims to inform citizens of their new legal rights.

In recent years, the aksakal courts have been the preferred instrument for resolving disputes in rural areas. Aksakal courts, or courts of elders, existed before the 1917 revolution, but are also relics of the Soviet Union. During the Soviet period, they were part of the “Comrade Court” system that assisted the Soviet authorities in educating the population about what it meant to be a proper Soviet citizen. After the collapse of the Soviet Union, the aksakal courts were reinstated, but its current agenda still reflects the educative role it played during the Soviet period. Its primary objectives are to: (1) reinforce social order, (2) develop better spiritual traditions, (3) educate citizens through persuasion and social influence, (4) resolve conflicts in a just manner, and (5) not contradict legal rulings (Bobukeeva 2005).

The aksakal courts are convenient for residents of rural areas, because they can avoid paying the cost of travel to a regional court to resolve a dispute. Furthermore, aksakal court services are free of charge. The judges residing in aksakal courts are selected from among the most respected elders (almost exclusively men) in a community, they are not legally trained, and resolve disputes using tenets of Islamic law and generally accepted social norms. While written law can be included when deciding a case, the aksakal court judges are often not knowledgeable of the most recent legal doctrine, which sometimes conflicts with customary law. If codified rules are inadequate, judges will invoke generally accepted social norms so long as peace is achieved (Giovarelli and Akmatava 2002).

One farmer described her experience when a dispute arose not with the processor, but with a neighbor. In this case, the neighbor's carelessness prevented her from fulfilling her contractual obligation to the local processor. She explained that the neighbor had inadvertently flooded her squash field after carelessly irrigating his neighboring land plot one night. The farmer addressed a request for compensation for her ruined field to the aksakal court. She related with satisfaction how the next day the village aksakal
came to the field to discuss matters with her and the neighbor. The *aksakal* ruled that the neighbor was guilty and in compensation was obligated to give the aggrieved farmer half of his harvest or five tons of carrots. This ruling was written and signed by the *aksakal*. The aggrieved farmer then approached the processor, asking that she be released from her supply obligation due to an act of god. The processor agreed.\textsuperscript{12} When asked if she had ever used other legal services, she responded that she was not aware of any others.

The court system that resolved commercial disputes during the Soviet period was the *arbitrazh*, or the Gosarbritrazh, during perestroika. The *arbitrazh* was a system of economic courts with both judicial and administrative powers. Case decisions were a product of a judge's duty to see that the economic plan was fulfilled. When the regional *arbitrazh* court system in Kyrgyzstan was abolished in 2002, the judicial and administrative powers pertaining to commercial transactions were absorbed into the Supreme Court. The third-party arbitration court, or *treteiskii* court, replaced the regional *arbitrazh* court system in the regions. *Treteiskii* courts are considered to be more appropriate within the context of a market economy than the former *arbitrazh* system (Kenebaev 2004). Like the *arbitrazh* court system, *treteiskii* courts hear only commercial disputes. In Kyrgyzstan, governmental and nongovernmental organizations are implementing campaigns and providing local assistance so that citizens become more familiar with this legal tool. There are currently fourteen offices of the nongovernmental organization, which is funded by DFID, located in rural areas to further this objective. Despite these efforts, farmers with whom I spoke were unaware of *treteiskii* courts or what purpose they serve.

LARC is designed to provide legal assistance with legal disputes to citizens in Kyrgyzstan. LARC offices began operating in southern Kyrgyzstan in 2003; since then, offices have been opened in every region. LARC offices are staffed with local lawyers who are trained to assist rural citizens with their legal questions, especially legal questions related to land rights (Helvetas 2003). Staff at LARC offices in Osh and Batken oblasts has responded to an increase in concerns raised by rural clients who are discouraged by disputes with food processors. This agenda shift of an internationally funded support organization is important for two reasons. First, it suggests rural citizens believe that they need assistance. Second, it suggests that these citizens believe that LARC is effective at providing assistance. However, since LARC began to address the issue of commercial disputes, its international funding has ceased, and it has begun to charge for its consultation services. The effect this will have remains to be seen.

\textsuperscript{12} This account was related to me during field interviews in Chui Oblast on May 22, 2006.
Interaction with representatives of legal services and support groups can transform aggrieved parties’ disputes in the way that it situates the dispute in the wider social environment. Felstiner et al. argue that support groups can turn an individual grievance into a collective one. A support group can influence the objectives of the aggrieved party and temper or intensify the perception of injury.

In Kyrgyzstan, support groups that can address citizens’ legal concerns are a new phenomena. Organizations with objectives ranging from education to credit provision to conflict resolution have taken root in southern Kyrgyzstan and other parts of the country. Rural citizens are informed about their rights to land, rights to water, and women’s rights. They can attend workshops and adult education programs or “schools” to learn about making and marketing handicrafts, farm management, and the legal rules that regulate these activities. Some farmers are aware of these opportunities and some are not.

While a few statements by farmers suggest a disengagement from operating within a formal “legal” framework, these same farmers are actively seeking training in response to frustration over unfulfilled agreements. One farmer explained, “Now, in order for these foxes not to deceive us, we come to the Farmer School in order to learn. So that they don’t deceive us. So that they don’t eat us.” In a discussion with other farmers about legal training, however, it becomes clear that there is not a universal belief that training is beneficial or instrumental.

A: We come here. We wish there was a trainer of law, who would teach us about our rights.
B: About the constitution.
C: In addition to this one [nodding towards the trainer].
D: But people did come here who were prepared to teach us about our rights. But we ourselves did not come. But the teachers come. They come.
E: Even if we learn about this we won’t be able to use it. Let’s say they taught us. Let’s say we found out about our rights. You go there [to the processor] and someone is sitting there, who will not listen to us. They will step on us. I am very tired of this.

The above discussion suggests that the frames that farmers use to guide decisions about marketing their fruits and vegetables are constantly evolving. Training exposes them not just to ideas about their legal rights, cultivation techniques, pest management, and farm management, but also creates opportunities to interact with trainers who pass on information about input acquisition and marketing and with development workers who introduce new frames of thinking about credit and laws. Furthermore, training provides a forum in which farmers can interact with each other and share experiences and beliefs.
TRANSFORMATION OF DISPUTES AS A REFLECTION OF A NEW LEGAL CONSCIOUSNESS

Experience creates beliefs, which influence the nature of the legal/institutional lenses through which we view situations (Marshall and Barclay 2003). For many of the farmers with whom I spoke, experiences with contracts are a big disappointment. For other farmers, the repeated nature of their contractual relationship with a processor led to predictability. No matter the nature of the relationship, parties to the contracts described here are using their experiences with buying and selling to inform the emergence of a post-Soviet legal consciousness. According to the passages below, disappointing experiences with contracting can influence the emergence of the belief that employing a written means of selling produce only leads to unfulfilled promises and sustained uncertainty. One farmer put it this way, “In general we no longer make contracts. Our heads would ache.” Another farmer described the situation differently:

I form a contract. When I form a contract they [the processor] give me plastic covers, chemicals [fertilizer] and seeds. And if I take all of this, if I take it, the factory would think, “this person, he took so much, he is in so much debt to me,” and the factory will pay attention to him. At any time after this these plastic covers, chemicals and seeds can be taken away. And if I don’t take anything ahead of time and form a contract then they will buy from the farmers who don’t have contracts and fulfill their plan that way. And when you later try to sell your vegetables to them, they say, “Well, and what of the fact that you have a contract? You had a contract, but go away. I don’t have a debt to you, and you don’t have a debt to me.”

In this statement, a farmer reflects on his experience with a processor to describe how he recognized a problem, assigned responsibility to the processor for the problem, and confronted the processor about it. Subsequently, the processor’s reasoning that their agreement meant nothing paralyzed him. The processor rejected the claim of responsibility, which left the farmer impotent in the face of a legal system that the farmer regarded with skepticism. Another farmer discussed why he was apprehensive about forming contracts.

Contracts . . . well, how can I explain? We do not believe in contracts. If they [the processor] promise . . . they should keep their word. It happens like this: if I do not bring enough tons, the factory will not buy from me. And he [looking to neighbor] will stop believing me. And therefore we can't negotiate. We are afraid.

This statement shows how social pressures influence a farmer’s decision to negotiate contracts with the processor. A farmer will decide to negotiate a
contract, involving his family and friends in the process, and when the outcome is less than satisfactory, can feel shameful and responsible for the ill fortune of his social group. When this farmer said “we are afraid,” he was indicating as much fear of an unsatisfactory outcome with the processor as he was suggesting fear of social ostracism. When the farmer said “we can’t negotiate,” he was expressing resignation at the low prospect for any sort of resolution. Other farmers described their aggravation at processor demands and unfulfilled agreements.

A: When they [the processor] say, “Bring your produce here,” we can’t do it because we have only one cart and donkey. So many carts are needed! And if he [the processor] would say, “I will give you a vehicle, but you have to put the gas in yourself,” then we would bring the harvest. Also, there are no crates. There is none of that. None of this. But he [the processor] forms a contract.

B: If I go to [the processor] and say that I need a vehicle for the day after tomorrow, because we are gathering tomatoes ourselves, on the gathering day the vehicle doesn’t come.

All: Yes. It doesn’t come.

C: They [the processor] will say that they are coming.

B: Yes, they will say that they will come, but they don’t come.

In this discussion, focus group participants discussed their frustration at negotiating a delivery time with the processor, harvesting their tomatoes in anticipation, and then realizing that the processor is not coming after all. The discussion does not include any statements about how to confront the processor. The farmers expressed the belief that there is no strategy for recourse. They did not challenge what had become the status quo for them.13

The farmers with whom I worked in the summer of 2005 reacted in a variety of ways to the agronomic and social challenges that they confronted on a daily basis. Their varied experiences influenced the way they perceived their legal and economic culture. It was a time of painful discovery in some cases. For farmers, making sense of the multifaceted institutional changes requires the interpretation of new legal rules and norms. This interpretation informs the creation of a new economic order with a corresponding set of expectations. These expectations assist rural citizens with negotiating commercial transactions. Along with these changes emerges a legal consciousness based on the corresponding institutional framework.

One farmer believed that an agreement with a processor that was not fulfilled according to contract terms was simply an example of the workaday in Kyrgyzstan. To express this, he used the term po-kyrgyzskii. Roughly

13. During field research, I repeatedly listened to disgruntled farmers share their experiences with negotiating contracts. I wondered why I did not hear more stories about farmer resistance to unfavorable contract outcomes.
Last year, the director told me, “give me apples—as many as you want. For seventy to eighty tiens you can buy from other farmers. Then bring them here and I will buy them for one som and ten tiens.” And I went and formed a contract with the director. But he didn’t give me even one som. Left wondering, I came and brought two and one half tons of apples. After I brought the apples, the director wasn’t in his place. The weigher wasn’t there either, but the accountant was. He had someone take his place. They weighed [the apples] on the scale. After the weighing, they wrote everything down for me and gave me a piece of paper. We negotiated for ten tiens and one som, but the factory did not pay one som and ten tiens. [Laughter] With us it happens po-kyrgyzskii. He says to bring the goods and I bring them. With us it happens po-kyrgyzskii. Our affairs should go this way. You will now better understand.

In this story, po-kyrgyzskii is a term used to justify a perceived injustice. It takes the blame off of the processor and places it on society instead. In other words, po-kyrgyzskii is a social norm that society reinforces. What is legal seems to be dictated by a rigid set of social rules that indicates that those with more, be it power, money, prestige, get more of the breaks. In his statement above, this farmer seemed resigned to a social situation that placed him, an individual with little power, money, or prestige, in a position where he had no recourse but to submit to the whims of the processor.

During field research, these social dynamics were expressed well by a resident of Jhalal-Abad when she related an anecdote about driving norms in southern Kyrgyzstan. She described how, at an intersection, vehicles would be given the right of way based on the following factors listed in order of importance, starting with the most important: (1) the size and make of the vehicle—an SUV and Mercedes take priority; (2) the status of the person driving the vehicle or the status of the passenger in the vehicle; (3) your relationship to the driver or passengers of the other vehicles or their relatives. This anecdote is a metaphor for the social hurdles faced by farmers as they try to make sense of what course of action is best to take following a contract dispute by a processor. While driving rules and rules of conduct in commercial transacting are admittedly two strikingly different contexts, a farmer and a driver of the ubiquitous Lada share similar positions in the social hierarchy. In the same way a typical farmer is the last to access the formal legal system, the driver of the Lada is the last to cross the intersection, even despite the green light. The “law on the books” following legal reforms suggests equal
protection to all—the metaphorical green light—but is as irrelevant in the minds of poor farmers facing a contract breach, as the green traffic light is to the driver of the Lada.

The belief that a legal system that enforces formal legal rules is on the periphery of farmers' workaday is expressed below in two separate exchanges between two farmers. These particular farmers did not seem interested in working out differences or establishing the foundation for a long-term relationship. In a sense, they were in the process of discovering the type of role integrity that is appropriate for a new set of circumstances. The norms and conventions, working rules, and property relations that constituted Soviet-period role integrity are becoming compromised as a result of contractual behavior that contradicts expectations rather than matches them. Moreover, beliefs about what the appropriate rules of conduct are have yet to surface in any unified conception.

First exchange
A: Even if we form an exact, legal contract, we can't legally force him [the processor] to pay.
B: The authorities will not do it. They will not listen to us. If people of power would only work honestly then we would also work well. We are not in a position to take them to court. But they can force the situation. They simply take it. We'll see what they will do the next time.

Second exchange
A: I got in an argument with one [processor]. In short, I am tired. At the top, they don't listen. “Well, okay, calm down, come,” they say. And, therefore, I don't make contracts.
B: It makes no sense to go to court. Whoever gives more money is the one who will win. They won't look at us.

These statements indicate how farmers see themselves within the social hierarchy to which they belong. In their own words, these farmers suggested that they are beneath the “people of power.” They acknowledge that not just low-status, but also lack of money with which to pay off officials, renders them helpless to resolve contract disputes through formal legal means. One farmer, who sought to resolve a robbery through formal legal means, described an experience that influenced his belief of the inefficacy of the legal system for someone of such low-status as he: “I lost a cow, and went to the court. I found the robber and I brought him by the hand to the police. And even then I couldn’t receive payment for my cow. And that is how it ended up.”

A different farmer, when asked if he would ever consider taking a dispute to court, replied, “There is no point. We don't trust anyone.”

Not all farmers related stories of negative experiences contracting with processors. Some farmers suggested that a contractual relationship with a processor can be fruitful. One farmer described her experience:
Even if it is bought cheaply, if you form a contract, even if the factory cheaply buys it, at that time, if the harvest is delivered we get a little money. We work hard to meet the delivery goals in September so that we can provide clothes and books for our children who need to prepare for school. Therefore, five or six people from among us have a contract with the factory.

This statement from a farmer with several years of contracting experience with a processor indicates that some farmers regard their contracts with a processor in an advantageous way. In this case, the farmer suggested that a contract can offer predictability. If the objective is to have enough profit with which to buy school supplies for children, a supply contract reduces the uncertainty that the farmer would otherwise experience.

One consequence of opting out of contracts with processors is a truncation of perceived marketing choices for farmers. They would rather tempt their fate at the bazaar than engage with processors who make their “heads ache” and “eat them like foxes.” But not all farmers opt out of contractual relationships. Other farmers described how the value of a contract is in the opportunities a contractual relationship creates for credit. For example, the following discussion ensued when one farmer explained his reason for annually forming a contract with a processor.

A: Every year I form a contract. A plus of a contract is that at any time when I need money I can go to the processor. Let it be in the winter or in the summer. Five thousand when I really need it. I go and they give me money.
B: Is it Anvarbek\textsuperscript{15} [director of local processing company]? Yes?
A: This year, in February I went and said that I needed money.
C: None of the rest of us can do that.
A: I said that I need two thousand. Go. They will forward it to you.
C: You have become a trusted face.

This experience suggests that beliefs vary among suppliers to this processor. Here is an example of a farmer with reason to make this relationship work. Another farmer commented that this is a trustful relationship. Trust is an important element of commercial relationships (see Gambetta 1988; Landa 1997), but focus group participants suggest that trust is rarely present in the contractual relationships between processors and the farmers that supply them with fruits and vegetables. Farmers below described an experience that influenced their belief about the value of a written contract.

\textsuperscript{15} Name has been changed to preserve anonymity.
A: There are contracts, but in the contract there probably isn’t a stamp.\textsuperscript{16} We need to speak the truth.
B: It is a false agreement. [Laughter] Not so long ago, I made a contract for thirty tons of tomatoes. I will plant on one hectare.\textsuperscript{17}
A: Is there a stamp or not?
B: They wrote on paper and placed it in my hand. After I left and looked, it was just a blank piece of paper.
C: And there wasn’t a stamp.
B: There wasn’t a stamp [Laughter].

The prevalence of mistrust between farmers and processors constrains the development of stable contractual relationships. Focus group participants were discouraged by the slow development of trust with processors. For example, one participant claimed: “Only after two or three years of work with the factory, then they will trust you.” Mistrust, combined with sustained poverty, leads to short-term decision making that damages potentially long-term contractual relationships. Many focus group participants described experiences that have led them to mistrust the processors with whom they work. One participant recounted, “We formed a contract, but they didn’t give us what had been indicated in the contract.” Now, participants are skeptical: “Of course, it is important for us that the factory does not deceive, of course.”

The nature of contractual relationships in southern Kyrgyzstan between suppliers and food processors stands in contrast to a description, provided by a foreign development consultant, of the typical relationship between a food processor and its suppliers.

A person who wants to work on contract is one who doesn’t want to risk, and is sure about production. Let’s say a farmer likes to take a risk on the “casino” bazaar. The price could be anything. A contract provides the base subsistence level. The open market is additional. We need to create a market for where there is a choice. There are two ways to enforce contracts: the legal system, the arbitration system . . . you have to agree to arbitrage—to the outcomes of faster and less expensive arbitrage. Fulfillment of contracts is generally based on quality, quantity and delivery times. There need to be established grades and standards. Contracts cause things to be more transparent. Quality and quantity are easier to manage than the market factors. We can control for quality and quantity. Market information is the most important. A general blacklist should be created among the donor organizations to provide processors and assistance groups with the information needed to identify farmers who don’t fulfill contracts. Every contract should have escape

\textsuperscript{16} A “stamp” refers to the imprint of the ubiquitous rubber stamp that is used on all official documents in Kyrgyzstan.

\textsuperscript{17} One hectare is equivalent to approximately 2.47 acres.
provisions. What releases a farmer or processor from an obligation? Need to think about these provisions.18

The above statement reflects what this foreign development consultant perceived to be the economic situation on the ground for processors and farmers. The consultant presented the conventional theory about what is risky and how risk affects choice. For Kyrgyz farmers the situation is different than expressed here. For example, this analysis has repeatedly shown that farmers are not the only ones who do not fulfill contracts. Processors do not always meet contractual obligations either. The nature of this situation suggests that contracting can be as risky as going to the “casino bazaar.”

Farmers are conflicted about their relationship with processors. Sometimes, they expressed frustration and even anger when relating how the processor exploits them. Other times they allowed that without the processor, they would not be able to sell their less attractive fruit and vegetables. Despite the dissatisfaction with processors, one farmer related how when he formed a contract with the processor, the processor told him, “You sell well in the bazaar. Except for the rotten ones, give the rest to us.” The farmers regarded the processor’s willingness to accept less than perfect fruit and vegetables as an advantage to working with the processor. At the same time, they were quick to complain about the processor. For example, one participant claimed that it is better to take products to the bazaar than to enrich the local processor by even one som, displaying strong animosity. But this farmer, earlier in the discussion, agreed that selling to the processor has its advantages when the processor accepts produce that cannot be sold at the bazaar.

This analysis suggests that when farmers “opt out” of contractual relationships, they are retaliating against perceived injustice wrought by the processor. In retaliation, they use one of the only means of redress they have— withholding their supply of fruits and vegetables. By restricting access to fruits and vegetables, farmers are expressing their dissatisfaction at being in such a subordinate and dependent relationship with the processor.

The functionality of alternative order-creating institutions, such as operating po-kiryzyzkii, creates a disincentive for Kyrgyz farmers to rely on the legal system. When the new legal order falls short of expectations, Kyrgyz farmers search for nonlegal means for resolving contractual disputes. I have shown that farmers are more inclined to resort to standard operating procedures that reinforce a social hierarchy than seek legal redress. Examples of the

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18. Text is extracted from personal notes taken at a seminar workshop organized by Helvetas, a Swiss nongovernmental development organization. Participants included representatives of the fruit and vegetable value chain, including input suppliers, growers, processors, traders, and development practitioners working on microcredit, seed distribution, and farmer training activities.
standard operating procedures applied to a situation of contractual disputes include quietly complying with processor demands, broadcasting the bad reputation of the processor, or opting out of the contractual relationship. Evidently, from the focus group discussion, the legal means available to farmers are not useful.

The ways Kyrgyz farmers are making sense of their legal system reflects their legal consciousness at a point in time. Importantly, legal consciousness is a product not just of experience with “laws on the books” and a formal legal system, but also of experience with other social structures and norms. The methods that Kyrgyz farmers apply to their commercial transactions demonstrate a propensity towards disengagement from the legal system. They are not convinced that it is instrumental.

THE INFLUENCE OF IDEOLOGY ON COMMERCIAL TRANSACTIONS

Since 1991, Kyrgyzstan has adopted extensive legal reforms, including rewriting the Civil Code and the Land Code. In the twelve years since the adoption of these new laws, there has been an ideological shift among a portion of the population. A sense of entitlement has shifted, influenced in part by deliberate governmental and internationally financed campaigns to inform citizens of the new rules. A key element in this shift was the transformation of property relations, which made ordinary citizens land owners. But processors and growers do not share the same experiences, have the same background, or share the same sense of entitlement. Their different ideologies are not mutually held, because they were not mutually socialized. It is no wonder that processors and farmer/suppliers find themselves more often in conflict than in cooperation.

During the Soviet period, managers of processing companies and directors of collective and state farms were linked by contracts. They used the courts to resolve disputes. For Soviet managers, the purpose of the law was never to assure efficient business transactions (Gray and Hendley 1997). Rather, it was to advance state economic objectives. The arbitrazh was the network of courts that heard these commercial cases. Liability in Soviet contract law was based on a fault doctrine, which imposed liability only when the breach was intentional or resulted from negligence. Despite this doctrine, Kroll (1988, 357) noted that in practice, “arbitrazh organs have been explicitly instructed that references to a lack of inputs or transport do not, as a rule, excuse the supplier from failure to perform.” This interpretation of the law could empower processor entrepreneurs at the expense of private farmers. If the court system is regarded as detrimental, it is likely that parties to commercial activities will not want to use the law in any instrumental way, instead opting to operate in the shadow of the law.
In one study on Soviet commercial contracts (Kroll 1988), the author found that in contractual disputes, often the reneging party is successful at convincing the damaged party not to pursue a claim for the recovery of sanctions for contract violations. The author calls this behavior "the practice of mutual amnesty." This generally accepted practice has implications for how incentives to perform a contract according to contract terms are played out. The practice of mutual amnesty alludes to the nature of the commercial relationship between buyers and sellers in a sellers market. The author surmises that this type of relationship suggests an informal system of dispute resolution, such that buyers are careful "to avoid antagonizing suppliers upon whom [they] depend[s] for inputs" (Kroll 1988, 358). This description of buyers and sellers during the Soviet period takes, as given, a relatively balanced power relationship among suppliers and processors, with trained administrators or lawyers negotiating the commercial relationship. The supplier and the processor shared the same objective—to further state plan objectives.

In commercial relationships, post-Soviet agricultural product suppliers and food processors do not share the same power balance. In some cases, they do not even share the same objectives. While the foreign development consultant mentioned in the previous section describes how a profit-maximizing, private farmer calculates the risk among marketing choices before entering a contractual relationship, he disallows the possibility that many farmers are negotiating commercial relationships using different decision rules. Many Kyrgyz farmers do not have the luxury of choosing their market. In the discussion above, farmers suggested a few reasons for entering a contract: (1) to have cash in hand with which to buy children’s clothes for school in September, (2) to gain access to credit in the winter, and (3) to obtain agricultural inputs such as seeds and fertilizer. These reasons may not serve the profit-maximizing processor's economic interests, but they do partially explain some of the “commitment” challenges to negotiating contracts in the Kyrgyz agriculture sector.

Nonperformance of contracts is commonplace in Kyrgyz agriculture. Enforcing contractual terms is a challenge. When the state is regarded as a weak enforcer of legal rules, coping strategies are created that serve to establish a parallel system where socially accepted behavior, rather than legally imposed regulation, directs conduct in business (Randall 2001). In the absence of enforceable legal sanctions, transactions occur in a “state of nature” comprised of “any situation in which individuals and groups must arrange their transactions . . . without the aid of an independent enforcement mechanism whose powers are significantly greater than their own” (Kronman 1985, 7). In such an environment, there is space for a variety of different contractual arrangements. Macaulay (1963) calls these arrangements noncontractual relationships. When researching economic transactions during both the Soviet and post-Soviet periods, scholars have consistently pointed out the importance of noncontractual forms of business agreements.
(see Kroll 1988; Greif 1995; Hendley, Murrell, and Ryterman 2000; Johnson, McMillan, and Woodruff 2002; Belova 2001). At the same time, these scholars note the common practice of using the courts only as a final resort if a dispute arises.

The predictability of law is a hallmark of mature legal systems. This predictability is reflected in how interdependent legal, economic, and social systems are. In contrast, a new legal system, replete with new legal rules, creates a legal and economic environment to which expectations have yet to be attached. Alena Ledeneva paraphrases Kasianova’s (1994, 71–72) description of post-Soviet Russians’ attitudes toward these new rules. She writes,

Russians are not only confused about the distribution of functions between institutions, modes of their interaction and subordination, but often refuse to recognize the very principle of their functioning: as long as we can try to “manage” without them, solving problems by our own “means.” (1998, 83)

Apparently, the instinct is to operate outside the new legal realm, because it is not understood. Given the unpredictability of new rules, the legal system is pushed to the periphery. In its place emerges a more familiar system that is based on an understanding of previous legal rules and norms.

THE CONSTITUTED NATURE OF BELIEFS AND DISPUTES

If a belief is useful, then it is true. If a belief is useful, it is a belief upon which an individual is prepared to act. One indication of the usefulness of a particular belief for an individual is whether or not it matches our created imaginings about the future or our “expectations.” When the belief fails to be useful or if doubt arises about the belief’s usefulness, an inquisition takes place until a fixed belief is once again achieved. This fixed belief informs the selection of a dominant imagining that we can consider to be a final cause, or “an outcome in the future for the sake of which particular action now seems justified” (Bromley 2006, 193).

When a belief is deemed useful, if expectations are met, whatever method was used to carry out the transaction is reinforced. In other words, an expectation is met or the dominant imagining is implemented, and the course of action remains the same. The implication is that if an expectation were not met, then the course of action would be called into question; the belief that suggested that course of action would be frustrated.

From this experience, individuals derive the lesson that a new course of action is in order, and an individual inquiry will begin into possible changes in the institutional framework (i.e., working rules, norms and conventions,
Individuals reason from effect to cause in search of a “better” belief. They arrive at reasons for a better belief through evaluation of the existing institutional framework and through conversations with other members of a going concern. In my evaluation of institutional change, I seek to discover these reasons for the motivations behind this evolution of beliefs among individuals, because it is the evolution of beliefs that yields new courses of action selected from domains of choice, and one cannot change beliefs without good reason.

Individuals, themselves, cannot create “appropriate” (or inappropriate, for that matter) rules of conduct. Only society, operating through collective action, can construct institutions, such as norms and conventions. Norms and conventions are associated with collective action, because in the context of post-Soviet Kyrgyzstan, the legal working rules that partially comprise the existing institutional framework were not the manifestations of collective action in the same way as norms and conventions are.

It is easy to see how individuals in Kyrgyzstan are habituated to these institutions (i.e., norms and conventions), because these institutions are manifestations of citizens acting collectively. Conversations and debates occurred to create these noncodified rules. In contrast, it is difficult to conceive of Kyrgyzstani citizens as being yet habituated to the legal working rules, which were introduced into the existing institutional framework by an elite group of individuals. Ordinary citizens were not included in the discussion. The change in working rules and property relations was so fast and so rapid that among the Kyrgyz population, which is becoming habituated to these institutions, there is unawareness of legal working rules. This unawareness can lengthen the process of habituating.

Hendley (1997, 246) notes that to truly modify behavior and rely on the law, post-Soviet Russians will have to let go of “established patterns of behavior,” and to do so they have to be convinced that letting go is a good idea. The origins of these behavioral patterns stem from necessity and stick because they predictably achieve desired ends. Over time, these behaviors persist as much due to their effectiveness as due to a demonstrable preference for specific routines. The essence of these statements is that they allude to the real issue supporting the process of institutional change—that of transforming perceptions about what seems best to do under a given set of circumstances at a given time.

CONCLUSION

This analysis explored how post-Soviet Kyrgyz farmers address grievances with the processors with whom they transact. Felstiner et al.’s “naming, blaming, claiming” framework was applied to evaluate the transformation
of disputes. The choice farmers face when grievances arise is twofold—to be silent or to claim redress. The subsequent choice farmers face is to exit the contractual relationship or to remain. While legal sanctions backed by a strong state deem a choice obligatory, there are other factors that influence long-term contractual relations. I have examined how factors, such as reputation, moral sanctions (i.e., ostracism), and personal beliefs, affect choices to pursue a particular course of action.

The farmers in this evaluation addressed grievance claims with the processor with whom they contracted in a couple of ways. In one approach, farmers confronted the processor, more often voicing the grievance to the accountant, the weigher, or to some other representative of the processor rather than to the director. The purpose of this approach is to vent anger at perceived injustice. None of the farmers who adopted this approach indicated that they thought that angry confrontation would resolve the problem. Following this claiming transformation, farmers engaging this approach would either try to continue their formalized contractual relationships—not perceiving any other choice—or they would opt out of negotiating contracts with the processor altogether. Farmers with the longest experience contracting with the processor expressed less interest in opting out of a formalized contractual relationship than those with a year or two of experience. Congruently, farmers with relatively long-term contractual relationships were also those participants who offered explanations on behalf of processors for their discrepancies—not so much defending them as acknowledging the challenges that processors face as they also negotiate an unstable and uncertain market.

A second approach was to forego angry confrontation, or the claiming phase, and immediately opt out of the formal contractual relationship. That is, stop signing any dubious piece of paper agreeing to deliver so many tons at a certain time. Instead, continue in the next season the common practice of selling at the bazaar when the price is higher, and selling to the processor when it announces that it is accepting, and the processor's price suits them. This approach serves a couple of purposes. First, it signals to the processor that the farmer is not as dependent on the processor as he might think. Second, it signals to family and neighbors, which the farmer might have involved in this marketing experiment, that she or he is not such a fool as to continue to be deceived by the processor.

19. In a personal communication with a local development practitioner involved with rural market development for fruit and vegetable producers and processors, I was told that meetings between growers and the processor they supplied did occur. The development practitioner went on to say that these meetings frequently resulted in angry confrontations between growers and processors.

The analysis shows that the duration of experience negotiating contracts with a processor affects the approach farmers in southern Kyrgyzstan adopt when they address a perceived grievance. Over time, their feelings evolve and can transform from anger and distrust to understanding and even sympathy for the perpetrator of their problems—the processor. The participants who arrived at sympathetic feelings expressed a stronger commitment to their relationship with the processor than those participants who addressed their grievances through angry confrontation. A strong commitment to commercial relationships is generally valued as positive and suggestive of the effectiveness of some sanction or the presence of trust or reciprocity. However, the passively peaceful dependence on the processor of the silent farmer with a long-term contractual relationship is not necessarily the type of commitment that creates sustainable relationships.

Beliefs about the nature of contracting evolve in tandem with the evolution of feelings described here. Felstiner et al. (1980–81, 633) suggest that transformations toward a dispute “may be nothing more than changes in feelings, and feelings may change repeatedly, the process is unstable.” They argue that what makes this process so complex is ambiguous behavior, faulty recall, uncertain norms, conflicting objectives, inconsistent values, and complex institutions. The discussion of twenty-eight farmers’ experiences with negotiating contracts in southern Kyrgyzstan reveals that these same factors influence the evolution of beliefs about what courses of action are best under a set of circumstances characterized by rapid change accompanied by acute uncertainty about the future. Amidst such a turbulent environment, new agricultural entrepreneurs are working in conflict and cooperation with processors and new legal institutions to arrive at some predictability. In turn, a new economic and legal order is being created with the active participation of Kyrgyzstan’s citizens.

REFERENCES


21. Ian Macneil suggested that an analysis of exchange relations must address both solidarity and reciprocity. The two elements of relational contracting are mutually reinforcing (see Macneil 1986).


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