

FARMERS, MIDDLEMEN, AND THE NEW RULE OF LAW MOVEMENT

BRIAN JM QUINN*
ANH T.T. VU**

Abstract: This paper investigates the economic relationships between farmers and middlemen in Vietnam's Mekong Delta and places it in the context of the new rule of law movement. The new rule of law movement, which has grown in the wake of the collapse of formerly centrally planned economies, argues that the rule of law is a prerequisite for economic growth and that transition economies can only succeed by adopting strong formal legal rights and institutions. Notwithstanding more than two decades of an aggressive rule of law reform program, Vietnam's formal legal system remains weak. Using survey data from a sample of fruit farmers and middlemen we find that participants in the farm-gate market for pomelos carry out relatively complex transactions by granting buyers credit with little explicit reliance on formal legal structures. The development of complex markets for fruit in the Mekong Delta in the absence of strong legal rights provides lessons for proponents of the new rule of law movement. First, in the absence of formal structures, private parties find ways of structuring transactions in order to assure contract performance. Second, development of formal legal structures is a very long term proposition with uncertain results. And finally, the experience of farmers and middlemen suggests that formal law and the development of formal legal institutions appear to trail economic development and should not therefore be considered an essential component of short-term economic reform efforts.

* Assistant Professor of Law, Boston College Law School; Former Director of the Fulbright Economics Teaching Program in Ho Chi Minh City, Vietnam.

** Asia Programs Fellow, Harvard Kennedy School of Government; Director of Research at the Fulbright Economics Teaching Program in Ho Chi Minh City, Vietnam.

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INTRODUCTION[†]

This paper is a reflection on recent field research investigating the economic relationships between farmers and middlemen in Vietnam's Mekong Delta. Based on our study we find that participants in the farm-gate market for pomelos carry out relatively complex transactions by granting buyers credit with little explicit reliance on formal legal structures.¹ We also find that farmers do not yet rely to a large degree on reputation or extensive relationships. Instead, farmers appear to rely on a portfolio approach in their sales to generate information about new buyers.² As new buyers prove themselves reliable partners farmers shift more business to them. Further, as parties search for and find more reliable partners, the structure of this market appears to be migrating over time towards more relational contracting to support complex transactions. This snapshot of the fruit markets of the Mekong Delta suggests that first, notwithstanding the lack strong legal rights, parties are able to engage in complex transactions, and second, that developing formal legal structures is a complicated and long-term process with uncertain results.

Given the continuing debate over the importance of the formal legal system in creating conditions conducive to economic development, these conclusions are significant. Throughout the 1990s and until now, general components of the World Bank's prescription for developing and post-Soviet transition economies (the "Washington Consensus") include market liberalization and strengthening of the rule of law to support the development of markets.³ Critics of the Washington Consensus approach to rule of law reforms criticize its focus on formal legal

[†] Unless specified to the contrary, all references to Vietnamese law can be accessed at <http://vbqpp.l.moj.gov.vn/pages/vbpbq.aspx>. In addition, the authors provided all translations of Vietnamese, unless otherwise stated.

¹ Pomelos are a grapefruit-like fruit common in South East Asia. See Lynne Char Bennett, *Pomelos Offer Big Burst of Sweet Citrus Flavor*, S.F. CHRON., Feb. 14, 2010, at K3.

² See Brian JM Quinn & Anh T.T. Vu, *Survey of Forty-Seven Specialized Pomelo Middlemen and One-Hundred-Eighty Pomelo Farmers in Three Mekong Delta Districts Specializing in the Pomelo Trade (2005–06)* (unpublished raw data) (on file with authors).

³ See WORLD BANK, *FROM PLAN TO MARKET: WORLD DEVELOPMENT REPORT 1996*, at 9, 12, 22 (1996), available at <http://go.worldbank.org/XNB7977XR0> (follow "From Plan to Market" hyperlink; then follow "PDF" hyperlink); see also LEGAL VICE PRESIDENCY, WORLD BANK, *INITIATIVES IN LEGAL AND JUDICIAL REFORM 3* (2004), available at <http://go.worldbank.org/JEKV2Q1ZK0> (follow "Initiatives in Legal and Judicial Reform 2004" hyperlink; then follow "PDF" hyperlink) (providing a comprehensive review of the World Bank's activities in legal and judicial reform); John Williamson, *What Washington Means by Policy Reform*, in *LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED?* 7, 7–8 (John Williamson ed., 1990) (laying out the "Washington Consensus").

institutions in the form of legal transplantation and legal education as ineffective and a throw-back to the failed law and development movement of the 1960s and 1970s.⁴ To the extent there is controversy, it is a tension between the academy, once burned, and development institutions busily engaging in projects and lending activity.⁵

This Article does not intend to resolve the debate over the efficacy of this “new” rule of law movement. Rather, it calls into question whether the strong legal rights engendered in the formal legal institutions favored by its activist approach are a prerequisite for economic growth and whether projects intended to improve the rule of law should be a high priority reform item in the short term. Indeed the experience of farmers and middlemen in Vietnam’s Mekong Delta, far removed from the influence of legal reform projects and formal rule of law activities, suggests the creation of strong legal rights of the type endorsed by the new rule of law movement are a “trailing edge” reform rather than a “leading edge” reform.⁶ Thus, notwithstanding a perceived demand for

⁴ See William Easterly, *Institutions: Top Down or Bottom Up?*, 98 AM. ECON. REV., May 2008, 95, 95–99 (arguing that top down institutional reforms are hopelessly naïve). See generally CURTIS J. MILHAUPT & KATHARINA PISTOR, LAW AND CAPITALISM 27–44 (2008) (analyzing how the relationship between the legal system and the economic system relates to corporate governance); Lan Cao, *Culture Change*, 47 VA. J. INT’L L. 357 (2007) (arguing that culture, and not law, is the central determinant for economic growth); Dani Rodrik, *Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank’s Economic Growth in the 1990s: Learning from a Decade of Reform*, 44 J. ECON. LIT. 973 (2006) (likening the Washington Consensus to the failed law and development movement of the 1960s and 1970s); Alvaro Santos, *The World Bank’s Use of the “Rule of Law” Promise in Economic Development*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 253, 253–300 (David M. Trubek & Alvaro Santos eds., 2006) (noting the lack of consistency among various groups working on “rule of law” projects); David M. Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice*, to THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL, *supra*, at 1, 1–18 (arguing for a more nuanced understanding of the relationship between law and development); David M. Trubek, *The “Rule of Law” in Development Assistance: Past, Present, and Future*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL, *supra*, at 74, 74–94 (tracing the origins of the rule of law and identifying contradictions that have emerged); Brent T. White, *Rotten to the Core: Project Capture and the Failure of Judicial Reform in Mongolia*, 4 E. ASIA L. REV. 209 (2009) (criticizing rule of law efforts in Mongolia).

⁵ This tension is evident in the contributions of authors to the Northwestern University Law Review Colloquy’s symposium on the future of the law and development movement. See generally Symposium, *The Future of Law and Development*, 104 NW. U. L. REV. COLLOQUY 164 (2009) (discussing from multiple authors’ perspectives three main issues: whether “Law and Development” is really a field, what scholars have learned from this topic, and where attention should turn in the future).

⁶ See generally Thomas C. Heller, *An Immodest Postscript*, in BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW 382, 382–95 (Erik G. Jensen & Thomas

action, such measures should not be a high profile short term reform item.⁷

The new rule of law movement prescription starts from the assumption that strong legal rights are fundamental to a functioning market economy.⁸ The theoretical basis for the movement—that where legal rights are strong, parties can engage in anonymous market transactions with assurance that private contractual promises are backed by a reasonably efficient public enforcement regime—is attractive.⁹ Strong public enforcement institutions (that is, the “rule of law”) can provide a backdrop against which parties feel confident in engaging in transactions with strangers often with many terms still left undefined.¹⁰ Consequently, a system of strong legal rights working in the background can generate high levels of “generalized trust” even among strangers and translate into a greater willingness of economic actors to make long-term investments and engage in complex transactions, thus facilitating economic development.¹¹

The new rule of law movement found a home in the context of post-Soviet transition economies.¹² Following the shift to markets, formal legal structures designed to support central planning systems found themselves hopelessly obsolete.¹³ Because of this obsolescence, generalized trust suffered as formal structures and institutions were unable to keep up with changes on the ground.¹⁴ This economic transition pro-

C. Heller eds., 2003) (discussing the new rule of law and the possible extensions of its concepts to future reform programs).

⁷ Thanks to Thomas Heller of Stanford for this conceptualization of law as a “trailing edge” issue in the development process.

⁸ See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 50 (2003). Hernando de Soto is an eloquent proponent of the view that strong formal property rights are necessary for economic growth. He is, however, not the only proponent. See, e.g., Armen A. Alchian & Harold Demsetz, *The Property Right Paradigm*, 33 J. ECON. HIST. 16, 16 (1973) (“Capitalism relies heavily on markets and private property rights to resolve conflicts over the use of scarce resources.”).

⁹ See DE SOTO, *supra* note 8, at 54–55. Examples of such legal rights include property and contract rights. See *id.*

¹⁰ But see Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55, 63–65 (1963) (studying informal contracting practices among businesses in the United States).

¹¹ See Steven N. Durlauf & Marcel Fafchamps, *Social Capital*, in HANDBOOK OF ECONOMIC GROWTH 1639, 1646 (Philippe Aghion & Steven N. Durlauf eds., 2005) (defining “generalized trust”).

¹² See THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* 165 (1999) (describing the rising importance of rule of law programs in the aftermath of the collapse of centrally-planned markets in Eastern Europe).

¹³ See *id.* at 173–74.

¹⁴ See *id.*

vided an urgent impetus to rule of law activities that was missing during the height of the law and development movement.¹⁵ Such activities in transition countries included a host of top-down efforts to re-write legislation, as well efforts to reorient and train the judiciary not unlike many of the efforts of the law and development movement of the past.¹⁶

Vietnam is one such country in the midst of economic transition from central planning. Early on in its reform process, Vietnam embarked on an ambitious effort to remake its formal legal structures from the top-down to support the development of the new market economy.¹⁷ Though this effort has been aggressive in many respects, it has fallen short of a complete remake of Vietnam's legal system and institutions.¹⁸ Consequently, the country still has relatively weak formal legal institutions and confidence in its formal institutions remains low. Vietnam has enjoyed significant economic growth over the past two decades in the face of these challenges.¹⁹ The development of informal institutions in support of complex commercial relationships has played an important role in that success.²⁰

Economists John McMillan and Christopher Woodruff investigated informal structures supporting economic exchange amongst Vietnamese manufacturers in the mid-1990s through a series of surveys and interviews.²¹ This Article builds on their work and demonstrates that more than a decade later, and more than two decades since Vietnam initiated its economic and legal reform efforts, the task of creating

¹⁵ See *id.* at 182.

¹⁶ See LEGAL VICE PRESIDENCY, *supra* note 3, at 33–34; Brian JM Quinn, *Vietnam's Continuing Legal Reform: Gaining Control Over the Courts*, 4 ASIAN-PAC. L. & POL'Y. J. 431, 435–36 (2003).

¹⁷ See Quinn, *supra* note 16, at 435–36.

¹⁸ See *id.* at 442.

¹⁹ See *id.* at 882.

²⁰ See Edmund J. Malesky & Markus Taussig, *Where Is Credit Due? Legal Institutions, Connections, and the Efficiency of Bank Lending in Vietnam*, 25 J.L. ECON. & ORG. 535, 538 (2009). Complex transactions are transactions where performance occurs over time. Consequently, the second moving party in a complex transaction has an incentive, absent legal constraints or other informal constraining devices, to act opportunistically against the first moving party.

²¹ See generally John McMillan & Christopher Woodruff, *Dispute Prevention Without Courts in Vietnam*, 15 J.L. ECON. & ORG. 637 (1999) [hereinafter McMillan & Woodruff, *Dispute Prevention*] (relying on a 1995–1997 survey of privately owned manufacturing firms in Hanoi and Ho Chi Minh City); John McMillan & Christopher Woodruff, *Private Order Under Dysfunctional Public Order*, 98 MICH. L. REV. 2421 (2000) [hereinafter McMillan & Woodruff, *Private Order*] (reviewing anecdotal descriptions of private-order practices in various countries and analyzing surveys of entrepreneurs from Vietnam, Russia, Ukraine, Romania, Slovakia, and Poland).

strong legal rights and robust formal legal institutions is not a simple technical challenge.²² Informal legal institutions and private ordering, or “personalized trust,” dominate the economic lives of market participants in Vietnam despite the country’s aggressive reform agenda.²³ In that sense, nearly a quarter century of top-down rebuilding of formal legal structures has yet to take effective hold.

Similarly, our survey data from the market for pomelos in the Mekong Delta suggests that rather than conduct commerce in the shadow of formal legal institutions farmers engage in transactions with middlemen backed entirely by personalized trust. Although the majority of pomelo transactions are still carried out on the spot market, in about a third of sales, farmers structure complex transactions by the extending trade credit to middlemen. This credit is sometimes, but not always, backed by extensive relationships. In any event, farmers do not rely on formal legal structures to assure contract performance. In other words, farmers in the Mekong Delta contract with middlemen in the absence of the formal law and legal institutions, rather than in its shadow.²⁴

To the extent the new rule of law movement focuses on developing formal legal structures from the top-down, the movement threatens to repeat the mistakes of the law and development movement of the 1960s and 1970s.²⁵ The development of complex markets for fruit in the Mekong Delta is backed by a bottom-up private ordering process and not by any changes in formal legal structures. In fact, market participants appear to treat such structures as irrelevant for the most part. They rely neither on formal contracting nor on formal dispute mechanisms in their commercial dealings. Therefore, this Article suggests that by treating the development of legal institutions as a mere top-down technical problem that can generate the generalized trust required in a market economy, the new rule of law movement may repeat the mistakes of the past and ultimately fail to be of consequence.

Part I provides a brief overview of the new rule of law movement. Part II describes Vietnam’s reform efforts in the past several decades,

²² See MILHAUPT & PISTOR, *supra* note 4, at 4–8 (challenging the view that legal reform is a simple technical exercise).

²³ See generally Durlauf & Fafchamps, *supra* note 11, at 1646–47 (explaining that personalized trust, which arises from repeated interpersonal interaction takes time and effort to establish but does not always yield the most efficient outcome).

²⁴ When farmers are contracting in the absence of formal legal institutions, they are, in Rodrick’s terms, relying on “second-best institutions.” See Dani Rodrick, *Second-Best Institutions* 1–3 (Nat’l Bureau of Econ. Research, Working Paper No. 14050, 2008), available at <http://www.nber.org/papers/w14050.pdf>.

²⁵ See Trubeck & Santos, *supra* note 4, at 9.

focusing on relevant developments in reform of its legal system and introduces the work of McMillan and Woodruff, noting that their empirical study and subsequent research confirm that public confidence in formal legal institutions remains low in Vietnam notwithstanding many years of active engagement by the central government and foreign donors in legal reform programs. Part III details the structure of the fruit markets of the Mekong Delta, presenting findings and analysis from our survey of 180 pomelo farmers and forty-seven middlemen. Part IV demonstrates that, during the decade between the work of McMillan and Woodruff and our study, top-down rule of law activities appear to have had little impact on the operation of complex market transactions in the Mekong Delta. This Article concludes that the creation and development of strong legal rights through formal institutions is likely a trailing edge issue with an uncertain effect on the quality of economic growth over time. Our conclusion implies that the urgency of the new rule of law movement may be misplaced.

I. THE NEW RULE OF LAW MOVEMENT

The role of law in facilitating economic growth in developing and transition economies is controversial among academics and policymakers.²⁶ On the one hand, legal academics have largely discredited the law

²⁶ See, e.g., KENNETH W. DAM, *THE LAW-GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT* 273–77 (2006) (arguing that the origins of legal systems should not be determinative of economic development); MILHAUPT & PISTOR, *supra* note 4, at 5–8 (arguing for a more complex and contextualized understanding of the relationship between law and development); Stephen Haggard et al., *The Rule of Law and Economic Development*, 11 ANN. REV. POL. SCI. 205, 281 (2008) (reviewing the empirical work on the rule of law and economic development and arguing that formal legal institutions may not be a prerequisite for growth); Rafael La Porta et al., *The Economic Consequences of Legal Origins*, 46 J. ECON. LIT. 285, 326 (2008) (concluding that the origin of legal systems are important in economic development); Frank Upham, *Mythmaking in the Rule-of-Law Orthodoxy*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 75, 75–101 (Thomas Carothers ed., 2006) (arguing for a more contextualist understanding of the rule of law); see also CAROTHERS, *supra* note 12, at 163–77 (discussing the challenges of aiding other countries with rule of law development); Randall Peerenboom, *Varieties of Rule of Law: An Introduction and Provisional Conclusion*, in *ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S.* 1, 38–39 (Randall Peerenboom ed., 2004) (discussing the rule of law controversy as understood in the context of economic reform and transition in Vietnam and China); *LAW REFORM IN DEVELOPING AND TRANSITIONAL STATES* (Tim Lindsey ed., 2007) (arguing, in general, for a more contextualized approach to the rule of law debate); Trubek & Santos, *supra* note 4, at 3–14 (identifying and analyzing the role of law in economic development); Williamson, *supra* note 3 (laying out the “Washington Consensus” for the first time); *Economics and the Rule of Law: Order in the Jungle*, *ECONOMIST*, Mar. 15, 2008, at 83–85 (discussing the contradictory research regarding rules of law). *But see* Rodrik, *supra* note 4, at 986

and development movement of the 1960s and 1970s.²⁷ On the other hand, the collapse of the former Soviet Union and the transition of formerly centrally-planned economies to market economies along with interest by financial economists in the role of institutions has garnered new attention to the role of law.²⁸ This development followed logically as the formal legal structures of formerly centrally-planned economies were wholly out of touch with the emerging market economies in which they existed.²⁹ Rule of law projects have thus arisen all over the world as core components of international aid programs.³⁰ By one estimate, since 1990 the World Bank alone has invested approximately \$2.9 billion in rule of law technical assistance projects.³¹ Economic transition has provided a new generation of academics, particularly financial economists, opportunities to infer linkages between formal legal systems and economic development.³²

This movement places law and the creation of formal legal structures at the very center of the effort to generate and support economic growth in transition and developing countries.³³ The movement's proponents reason that centrally-planned economies lacked appropriate legal and regulatory structures to support markets and that efficient markets and economic growth in transition economies require the rule

(discussing the aftermath of the Washington Consensus); Mathew D McCubbins, Daniel B. Rodriguez & Barry R. Weingast, *The Rule of Law Unplugged* (Univ. of Tex. Law, Pub. Law Research Paper No. 154, 2009), available at <http://ssrn.com/abstract=1467797> (discussing the multidimensional and complex nature of rules of law).

²⁷ See John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 479–83 (1977); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WIS. L. REV. 1062, 1080–89 (1974).

²⁸ See DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 89–91, 107–12 (1990); Trubek, *supra* note 4, at 81–85.

²⁹ See Trubek, *supra* note 4, at 80–85. Douglass North received a Nobel Prize for his work analyzing the role of institutions in setting the rules of the game for economies. See generally NORTH, *supra* note 28. Rafael La Porta and his co-authors attribute the origin of legal systems to strength of legal rights and to economic success. See Rafael La Porta, Florencio Lopez-De-Silanes, Andrei Shleifer & Robert W. Vishny, *Legal Determinants of External Finance*, 52 J. FIN. 1131, 1149–50 (1997). See generally WORLD BANK, *supra* note 3, at 87–97 (noting the importance of developing new formal legal institutions for transition economies).

³⁰ See Trubek, *supra* note 4, at 82–86; see also CAROTHERS, *supra* note 12, at 331–43 (describing the aid programs, including rule of law programs, that have arisen as a result of the promotion of democracy). See generally LEGAL VICE PRESIDENCY, *supra* note 3 (providing a comprehensive review of the World Bank's activities in legal and judicial reform).

³¹ See Trubek, *supra* note 4, at 74.

³² See LEGAL VICE PRESIDENCY, *supra* note 3, at 2; Trubek, *supra* note 4, at 82–86.

³³ See Trubek, *supra* note 4, at 81–86.

of law and formal legal structures, in particular the protection of property rights and the efficient enforcement of contracts.³⁴ Curtis J. Milhaupt and Katharina Pistor highlighted the importance of formal legal structures to this view when they summarized the movement's rights-based argument in the following way: "[L]aw fosters economic activity (exclusively) by protecting property rights. A legal system that clearly allocates and protects property rights (a rule of law) precedes economic development and is a precondition to economic success. . . . The quality of property rights protections, in turn, determines economic outcomes."³⁵

In the context of transition economies, an assimilation of this point of view must be understood as a redefinition of the role of the state from that of participant to arbiter of the rules of the marketplace.³⁶ Rule of law support efforts are intended to increase a generalized sense of trust amongst market participants so that in the event they must rely on formal legal institutions to ensure contract performance or to protect property rights, "courts [will] have the power and the capacity to judge objectively and [such] judgments [will be] enforced."³⁷ In this way, the new rule of law movement embraces the state not as a market participant but more suitably as a market referee.³⁸

International financial institutions adopted this line of reasoning during the 1990s.³⁹ The World Bank, for example, funded over six hundred projects related to rule of law activities during the 1990s.⁴⁰ Key elements of such programs have included assisting development of the legislative process, legislative drafting exercises (focused mostly on developing legal rules for the economic sphere), support for modernizing and training the judiciary, and support for increasing the independence of judiciaries.⁴¹ These rule of law efforts espoused by the

³⁴ See MILHAUPT & PISTOR, *supra* note 4, at 4.

³⁵ See *id.*

³⁶ See Trubek, *supra* note 4, at 86–91. This differs from the general perspective on the role of law as an instrument of state policy that dominated the law and development movement. See *id.* (discussing these differences).

³⁷ See WORLD BANK, *supra* note 3, at 87. "The developing countries' transition toward market economies necessitated strategies to encourage domestic and foreign private investment. This goal could not be reached without modifying or overhauling the legal and institutional framework and firmly establishing the rule of law to create the necessary climate of *stability* and *predictability*." LEGAL VICE PRESIDENCY, *supra* note 3, at 2.

³⁸ See Trubek, *supra* note 4, at 91.

³⁹ See LEGAL VICE PRESIDENCY, *supra* note 3, at 3.

⁴⁰ See *id.*

⁴¹ See *id.* at 3–4. In Cambodia, for instance, the World Bank funded efforts to assist the Cambodian government establish a comprehensive legal and regulatory framework for the

World Bank became an integral component of the “Washington Consensus” and a central component of many countries’ transition and reform efforts.⁴²

Milhaupt and Pistor note that such efforts tend to treat law and legal reform as a technical, rather than a political or social, challenge.⁴³ They are right to be skeptical. Were the law and legal reform no more than a technical problem, like the size of the money supply, it would be possible to make a number of readily obvious changes to key legal institutions and then see the effect in the economy.⁴⁴ In fact, the law and development movement of the 1960s and 1970s focused its efforts on rebuilding developing country legal institutions along the lines of Western legal institutions with little success.⁴⁵ The failure of that movement lends credence to skeptics of its tenets.

Nevertheless, in some respects, post-transition rule of law efforts—that is, the new rule of law movement—mimic many of the strategies of the failed law and development movement.⁴⁶ Though the circumstances of transition make the impetus for rule of law efforts more obvious, to a large extent the efforts simply revive the failed approaches of the law and development movement’s “legal liberalism.”⁴⁷ To the extent this is true, it raises questions about the efforts’ ultimate utility. As previously noted, the law and development movement failed, in part, due to its heavy emphasis on the transplantation of formal legal institutions (particularly from the United States and Western Europe), legal

education sector. *Id.* at 26–27. In China, the World Bank financed efforts to assist the Chinese legislature in drafting laws in the following areas: contracts, insurance, partnerships, futures market, bidding, sole enterprises, and trusts and estates. *Id.* at 28–29. Additionally, in Tanzania, the Bank sponsored efforts in the Ministry of Justice and Constitutional Affairs through four activities—capacity building, international study tours for ministry staff, consultative stakeholder workshops, and a public awareness campaign on the changes in the legal system. *Id.* at 24–25. In Kenya, the World Bank supported efforts to assist Kenya to create an independent judiciary. *Id.* at 20.

⁴² Williamson, *supra* note 3, at 7–8. This consensus included a series of other policy and institutional reforms, protection of property rights among them, that if adopted were expected to lead to economic growth. *See id.* This view has been challenged by Rodrik among others. *See* Rodrik, *supra* note 4.

⁴³ MILHAUPT & PISTOR, *supra* note 4, at 20.

⁴⁴ *See id.* at 20–21.

⁴⁵ *See* Trubek, *supra* note 4, at 76–78.

⁴⁶ *See* David M. Trubek & Marc Galanter, *Scholars in the Fun House: A Reply to Professor Seidman*, 1 RES. L. & SOC. 31, 32 (1978).

⁴⁷ *See id.* Trubek and Galanter characterized “legal liberalism” in 1974 as a belief “that establishment in the Third World of legal systems similar to those of the United States and Western Europe promoted development because they would foster equality, enhance participation in public life, and lead to more effective mastery of the world.” *Id.*

structures, and legislation, and an inability to be culturally aware of the informal institutions that form the backbone of many legal cultures.⁴⁸ Therefore, to the extent the new rule of law movement translates its understanding of the law's role concretely in the form of project and programs, it threatens to devolve into the mere technical formalism of legislative drafting exercises, judicial training, and formal process thereby repeating many of the mistakes of the law and development movement.⁴⁹

Consider the similarities between the new rule of law movement and the failed law and development movement of the 1970s. First, both start from an assumption that strong legal rights are a prerequisite to economic growth and development.⁵⁰ Second, both include a focus on creating strong legal rights through a re-creation of aspects of U.S. and Western-styled formal legal institutions, including legislative drafting training of the judiciary and the bar, among other activities.⁵¹ This focus on formal institutions and formal structures is ultimately an oversimplification of the Washington Consensus, but the translation of a nuanced understanding of the development of formal and informal legal institutions to an action plan is often vulnerable to dangerous simplifications. Such simplifications are sometimes necessary to translate nuanced understandings of the interplay between institutions and development into projects and programs financed by bilateral and multilateral donors. These projects and programs are, however, then susceptible to a counting bias. They tend to be designed to facilitate the counting of outputs in the formal system rather than the deepening of informal institutions, hence the focus on legislative drafting and the training of judges and lawyers.⁵²

⁴⁸ See Trubek, *supra* note 4, at 78; Trubek & Galanter, *supra* note 27, at 1080.

⁴⁹ See Trubek, *supra* note 4, at 78–81; Trubek & Galanter, *supra* note 27, at 1080, 1082; see also Elliot M. Burg, *Law and Development: A Review of the Literature and a Critique of "Scholars in Self-Estrangement,"* 25 AM. J. COMP. L. 492, 498–511, 518–25 (1977) (surveying scholarship and literature on law and development).

⁵⁰ See Trubek & Galanter, *supra* note 27, at 1079.

⁵¹ See *id.* at 1080, 1082. Professor Brian Tamanaha describes modernization theory, a motivating force in the law and development movement, as a view that “development was an inevitable, evolutionary process . . . that would ultimately produce economic, political and social institutions similar to those in the West.” Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 AM. J. INT’L L. 470, 471 (1995) (reviewing LAW AND CRISIS IN THE THIRD WORLD (Sammy Adelman & Abdul Paliwala eds., 1993) and 2 LAW AND DEVELOPMENT: LEGAL CULTURES (Anthony Carty ed., 1992)). Although not explicitly adopting modernization theory, the new rule of law movement shares many of its attributes. See *id.*

⁵² See Quinn, *supra* note 16, at 456–57.

The world envisioned by rule of law advocates is one of high levels of generalized trust backed by protection of property rights by formal legal institutions permitting complex one-off transactions with strangers. Nevertheless, such a world does not exist. Following the demise of the law and development movement, legal scholars and economists began to focus on the role of private ordering and informal institutions over formal legal institutions and formal structures in order to develop a more nuanced understanding of legal culture.⁵³ Indeed, the definition of legal institutions, once narrow, has broadened to include these informal structures.⁵⁴ However, deepening such structures through technical assistance projects and donor-funded programs specifically presents many of the same challenges of an earlier era. Their informality presents challenges to donors designing fundable projects. In fact, forming or reforming social networks and informal legal institutions is neither a simple nor a short-term task.

⁵³ See, e.g., ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 6 (1984) (“The object of this enterprise is to develop a theory of cooperation that can be used to discover what is necessary for cooperation to emerge [so that] appropriate actions can be taken to foster the development of cooperation in a specific setting.”); ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 1 (1994) (attempting to add more realism and clarity to the theory that “demarcate[s] the domain of human activity that falls within—and beyond—the shadow of the law”); ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 18185 (1993) (examining the effect of social context on institutions); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 138 (1992) (examining “reputation bonds,” which back a portion of commercial contracts); Marcel Fafchamps & Bart Minten, *Returns to Social Network Capital Among Traders*, 54 OXFORD ECON. PAPERS 173, 174 (2002) (discussing the means by which social capital affects economic efficiency); Eric A. Feldman, *The Tuna Court: Law and Norms of the World’s Premier Fish Market*, 94 CAL. L. REV. 313, 314 (2006) (examining “whether, when, [and] why informal norms rather than state-created law prevail in certain settings”); Edward L. Glaeser, David Laibson & Bruce Sacerdote, *An Economic Approach to Social Capital*, 112 ECON. J. F437, F438 (2002) (discussing and explaining individual and social capital); Edward L. Glaeser, *The Formation of Social Capital*, in 15 *THE CONTRIBUTION OF HUMAN AND SOCIAL CAPITAL TO SUSTAINED ECONOMIC GROWTH AND WELL-BEING: INTERNATIONAL SYMPOSIUM REPORT* 381, 38384 (John F. Helliwell ed., 2001) (examining the differences between individual and community based capital); Janet T. Landa, *A Theory of the Ethnically Homogeneous Middleman Group: An Institutional Alternative to Contract Law*, 10 J. LEGAL STUD. 349, 34951 (1981) (discussing that law and institutions are central to the economics of property rights but that the practices of “traders in ‘traditional’ markets suggest[] that traders *personalize* or *particularize* exchange relations”); Macauley, *supra* note 10, at 5557 (analyzing contextual relations in commercial exchanges); McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 644 (explaining that Vietnamese private business owners have established their own “ad hoc strategy for economic development”); McMillan & Woodruff, *Private Order*, *supra* note 21, at 242122 (discussing the formation and roles of private order organizations).

⁵⁴ See Macauley, *supra* note 10, at 55–57.

One general conclusion of the recent scholarship in this area is that strong social networks and informal institutions can create opportunities for repeated interactions and thereby facilitate economic activity in the absence of formal legal structures.⁵⁵ This is because extensive relationships and relational contracting can provide important mechanisms for transmission of information about markets, reputations of market actors as well as the development of social norms.⁵⁶ In countries where legal rights are weak, trust generated by social norms and relational contracting can be highly personalized.⁵⁷ Participation in social networks facilitates the development of such trust and social capital because it provides opportunities for parties to develop extensive relationships with potential counterparties and to exchange information about other market actors.⁵⁸ Thus, personalized trust and social capital can be important in promoting economic activity in the absence of formal legal institutions.⁵⁹

In the language of private ordering, trust is an inherently calculative process.⁶⁰ Before one decides to commit to a transaction and leave herself vulnerable to opportunism, she must make a calculation—explicit or implicit—about the likelihood of the counterparty in the transaction to make good on his commitments.⁶¹ Where legal rights are weak, parties may hesitate to make long-term investments or engage in transactions with strangers lest they be unable to adjudicate their rights in the event of default.⁶² In such circumstances, high levels of personal-

⁵⁵ See PUTNAM, *supra* note 53, at 176; Glaeser, Laibson & Sacerdote, *supra* note 53, at F437–38.

⁵⁶ See Durlauf & Fafchamps, *supra* note 11, at 1645, 1653–56.

⁵⁷ See Landa, *supra* note 53, at 350–51.

⁵⁸ See *id.* at 357–61.

⁵⁹ See Durlauf & Fafchamps, *supra* note 11, at 1646.

⁶⁰ See RUSSELL HARDIN, TRUST & TRUSTWORTHINESS 3–7 (2002). Hardin refers to trust as an encapsulated interest; one trusts because the counterparty's interest encapsulates your interest. See *id.* at 3. Trust can be defined as “[a]n action that . . . creates the possibility of mutual benefit, if the other person is cooperative, and the risk of loss to oneself if the other person defects.” James C. Cox, *How to Identify Trust and Reciprocity*, 46 GAMES & ECON. BEHAV. 260, 263 (2004); see also HARDIN, *supra* at 11–12 (discussing that trust involves not only an expectation that someone will act for your benefit, but also relevant motivation that the person will act in that way, as well as a certain risk).

⁶¹ See Oliver E. Williamson, *Calculativeness, Trust, and Economic Organization*, 36 J.L. & ECON. 453, 463–65 (1993). Other authors, while not as explicit in their support of this economic view of trust, nevertheless embed concepts of an implicit calculation in their descriptions of trust. See HARDIN, *supra* note 60, at 3–7.

⁶² See Landa, *supra* note 53, at 358–60.

ized trust can be critical to successful contracting.⁶³ Groups, social, and trading networks can facilitate complex transactions by enlarging the shadow of the future.⁶⁴ In other words, as a trading pair's time horizon expands through networks that give rise to relational contracting, one can raise the expected value of continuing the relationships as well as the cost of a counter-party's defection.⁶⁵ The higher those costs, the higher the level of personal trust.⁶⁶

Extensive social and trading networks can also permit interactions with strangers by creating avenues for the development of reputation mechanisms.⁶⁷ Reputation can be an important device for generating personalized trust.⁶⁸ Parties with good reputations, who can credibly signal their value as a business partner, may find it easier to engage with strangers in complex transactions.⁶⁹ The existence of a reputation also extends the time horizon by permitting strangers engaged in one-off transactions to affect the future business prospects of a party who defaults on contractual commitments.⁷⁰ In a business segment where reputation is important, new entrants may make investments that gen-

⁶³ See Durlauf & Fafchamps, *supra* note 11, at 1648–49. The development of personalized trust in developing countries through the use of relational contracting and reputation mechanism has been studied by, among others, Landa and Fafchamps. See Marcel Fafchamps, *The Enforcement of Commercial Contracts in Ghana*, 24 *WORLD DEV.* 427 (1996); Landa, *supra* note 53.

⁶⁴ See AXELROD, *supra* note 53, at 124, 126–32 (arguing that “enlarging the shadow of the future” is among the strongest incentives to promote cooperation and self-enforcement of commitments). Dixit notes in his review of the literature that as the probability of meeting in the future rises so do the costs of defection. See AVINASH K. DIXIT, *LAWLESSNESS AND ECONOMICS: ALTERNATIVE MODES OF GOVERNANCE* 67–76 (2004). Bernstein and Landa both describe how social networks are the locus of the development of personalized trust and enlarge the shadow of the future and undergird economic activity. See Bernstein, *supra* note 53, at 119–24; Landa, *supra* note 53, at 350.

⁶⁵ See AXELROD, *supra* note 53, at 124, 126–32.

⁶⁶ See *id.*

⁶⁷ See AVNER GREIF, *INSTITUTIONS AND THE PATH TO THE MODERN ECONOMY: LESSONS FROM MEDIEVAL TRADE*, app. c at 428–30 (2006) (examining the relationship between reputation and social networks among medieval traders).

⁶⁸ See Adam Smith, *Lecture on the Influence of Commerce on Manners* (1776), *reprinted in* REPUTATION: STUDIES IN THE VOLUNTARY ELICITATION OF GOOD CONDUCT 17, 17 (Daniel B. Klein ed., 2000) (noting the importance of reputation in the conduct of business).

⁶⁹ See Bernstein, *supra* note 53, at 119–24.

⁷⁰ See Paul Resnick & Richard Zeckhauser, *Trust Among Strangers in Internet Transactions: Empirical Analysis of eBay's Reputation System*, in *THE ECONOMICS OF THE INTERNET AND E-COMMERCE* 127, 142–44 (Michael R. Baye ed., 2002) (examining the development and use of reputation among strangers on the eBay auction markets).

erate positive reputations in order to stimulate business opportunities.⁷¹

The key lesson of the work examining social networks is that strong formal legal rights and institutions may not be a prerequisite for sustained economic growth. If that is the case, then new rule of law efforts motivated by the perceived need to provide nascent market economies with formal protection of property rights and contract enforcement may be misplaced. At the very least, to the extent more subtle and complex understandings of the rule of law and its relationship to economic growth are lost in the translation to technical assistance projects and activities, the new rule of law movement risks suffering the irrelevance of the law and development movement. This is particularly true as the object of attention—social networks and informal institutions—are almost by definition impossible to quantify in a way that motivates the funding agencies at the center of the new rule of law. The experience of Vietnam with reform of its economy and legal system provide an important point of reference for the new rule of law movement with respect to how market participants rely on social networks and relational contracting in the absence of strong formal legal institutions. Indeed, following nearly a quarter century of legal reform, the present provides an opportune moment to take stock of the new rule of law developments in Vietnam.

II. VIETNAM IN TRANSITION

Vietnam began its transition from central planning to a market economy in the mid-1980s.⁷² The *Doi Moi*, or Renovation, era has been characterized by increasing liberalization of the economic arena.⁷³ By 1989, for example, Vietnam had substantially freed up agricultural production by almost completely privatizing the agricultural sector.⁷⁴ This was followed by across the board price liberalizations, devaluation

⁷¹ See Bernstein, *supra* note 53, at 140–42 (describing how ethnic and cultural ties dominate reputation markets in New York’s diamond industry); Landa, *supra* note 53, at 355–57 (describing how family and ethnic ties can facilitate the transmission of information about reputation).

⁷² See Dao Xuan Sam, *New Steps in the Change to the Market Economy (1979–2007)*, in *RENOVATION IN VIETNAM: RECOLLECTION AND CONTEMPLATION* 23, 25 (Dao Xuan Sam et al. eds., Dang The Truyen et al. trans., 2008).

⁷³ See *id.* at 51 (discussing the beginnings of the *Doi Moi* era).

⁷⁴ See Gabrielle Lipworth & Erich Spitaller, *Viet Nam—Reform and Stabilization, 1986–92*, at 7 (Int’l Monetary Fund, Working Paper No. WP/93/46, 1993).

of the exchange rate, and a reduction in subsidies to state enterprises.⁷⁵ As a result of successful implementation of the reform program, Vietnam enjoyed a period of rapid growth averaging between eight to nine percent per year over the past two decades.⁷⁶

Agriculture has been one of the most important beneficiaries of Vietnam's economic reform program and is an important part of the country's economic life.⁷⁷ The economic liberalization of the late 1980s helped spur a massive expansion in rice output, allowing Vietnam to move from a net rice importer in 1988 to the world's third largest rice exporter in 1989.⁷⁸ During the 1990s with the growth in the production of coffee, Vietnam became the second largest coffee exporter in the world, behind only Brazil.⁷⁹ Notwithstanding the success of its agricultural sector, just over twenty percent of the country's gross domestic product is generated by the agricultural sector.⁸⁰ Overall, Vietnam remains a mostly poor, rural country with more than seventy-three percent of its population residing in rural areas.⁸¹

Formal institutions and legal structures designed for a centrally planned economy are generally inappropriate for a post-transition economy where markets, and not the central plan, dictate allocation of capital and investment decisions. Indeed, in the context of central planning, formal legal institutions were not appropriate avenues for commercial or economic disputes. Under that rubric, when actual production of goods or services deviated from the plan, parties had their disagreements resolved by higher authorities or the planning ministry rather than courts or the formal legal system.⁸² Instead, the primary function of the formal legal system in centrally planned regimes was to manage criminal law issues on behalf of the state, not to protect private

⁷⁵ See Le Dang Doanh et al., *Explaining Growth in Vietnam* 16 (June 2002) (unpublished manuscript, on file with the Central Institute for Economic Management in Hanoi, Vietnam); D.M. Leipziger, *Awakening the Market: Viet Nam's Economic Transition* 6 (World Bank, Discussion Paper No. 157, 1992).

⁷⁶ See David O. Dapice, *Overview of Vietnam's Economy After the Crisis* 1 (June 2000) (working paper, on file with the Kennedy School of Government); see also *National Accounts and State Budget*, 2008 STAT. Y.B. VIETNAM (Gen. Stat. Office of Vietnam) 71 (listing the growth rates of the GDP).

⁷⁷ See Dao Xuan Sam, *supra* note 72, at 25–26.

⁷⁸ See Leipziger, *supra* note 75, at 6.

⁷⁹ See ANTONY WILD, *COFFEE: A DARK HISTORY* 6, 285 (2004).

⁸⁰ *National Accounts and State Budget*, *supra* note 76, at 72.

⁸¹ See United Nations, *Vietnam: Key Development Challenges*, <http://www.un.org.vn> (follow "Site Map" hyperlink; then follow "Key Development Challenges" hyperlink) (last visited Apr. 15, 2010).

⁸² See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 640–41; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2443.

property rights or assure the performance of private parties in contract.⁸³

Consequently, when Vietnam undertook a transition to a market economy in 1986, its formal legal institutions were wholly discordant with the requirements of the market.⁸⁴ The backwardness of its formal structures can account for the frenetic pace at which the country's legislature has passed a host of legislation over the past two decades. In fact, since the reform effort began in 1986, the National Assembly of Vietnam has passed 216 laws and codes (*luat* and *bo luat*).⁸⁵ This is a vast increase in legislative productivity compared to the twenty-seven laws and codes passed by the National Assembly during the entire thirty-three year period from 1953 to 1986.⁸⁶

Much of this legislation passed by the National Assembly has aimed at modernizing the country's regulation of its economic sphere in support of Vietnam's effort to build a legal state ("*xay dung nha nuoc phap quyen*").⁸⁷ For example, the first important piece of legislation following the beginning of the reform agenda was the 1987 Foreign Direct Investment Law.⁸⁸ This law created a legal framework to provide foreign investors some degree of legal certainty and transparency in an effort to stimulate direct investment in Vietnam. By 1990, the company and private enterprise laws permitted domestic investors to incorporate private enterprises subject to certain constraints.⁸⁹ A series of laws focused on reorganizing the structure of the state and the judiciary followed in 1992.⁹⁰ Five of the eight laws passed by the National Assembly that year dealt with the structure and function of formal legal institutions, including the People's Courts, the State Procuracy, the Govern-

⁸³ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421.

⁸⁴ See Pham Chi Lan, *Development for the Legal Environment in Vietnam- Memorable Paths*, *supra* note 72, at 181–83.

⁸⁵ See Ministry of Justice of Vietnam, Legal Documents, <http://vbqpl.moj.gov.vn/Pages/vbqpl.aspx> (last visited Apr. 15, 2010) (containing a comprehensive list of codes, laws and other legal documents).

⁸⁶ See *id.* Between 2002 and 2006, the legislature was particularly active, passing more than 100 of the 216 laws and codes passed since 1953. *Id.*

⁸⁷ See Truong Hoa Binh, *Reforming the Courts*, VIETNAM L. & LEGAL F., May 2009, at 4 (discussing the important role of the courts in creating a legal state).

⁸⁸ See LUẬT THUẾ XUẤT KHẨU, THUẾ NHẬP KHẨU [Law on the Export Tax and the Import Tax] Số: Không số [No Number] (1987) (Vietnam).

⁸⁹ See LUẬT DOANH NGHIỆP TƯ NHÂN [Law on Enterprise] Số: Không số [No Number] (1990) (Vietnam); LUẬT CÔNG TY [Law on the Company] Số: Không số [No Number] (1990) (Vietnam). The Private Enterprise Law of 1990 and the Company Law of 1990 were amended and replaced in whole by the 1999 Enterprise Law. Nguyen Thi Anh Van, *An Overview of Vietnam Enterprise Law*, 190 NAGOYA J.L. & POL. 1, 4 (2001).

⁹⁰ See Truong Hoa Binh, *supra* note 87, at 4.

ment, the National Assembly and elections.⁹¹ Land and property rights were the subject of legislative attention in 1993 and 1994.⁹² Further, the National Assembly adopted the Civil Code in 1995 to address contract and economic relations among private parties.⁹³ In sum, the focus of most of this legislative activity was to adapt existing regulatory structures to the changes in the real economy in an effort to build a “legal state” in Vietnam.⁹⁴

Although Vietnam’s initial steps towards reforming its formal legal structures were internally generated, international donors have also sponsored a series of rule of law initiatives in the country.⁹⁵ The United States, for example, has actively supported rule of law activities in Vietnam. Implementation of the bilateral trade agreement between the United States and Vietnam has required and spurred an increase in legislative activity in Vietnam.⁹⁶ In furtherance of these efforts, the United States Agency for International Development (“USAID”) has sponsored a series of initiatives to “improve the rule of law in Vietnam,

⁹¹ See LUẬT TỔ CHỨC VIỆN KIỂM SÁT NHÂN DÂN [Law on the Organization of the People's Procuracy] Số: Không số [No Number] (1992) (Vietnam); LUẬT TỔ CHỨC TOÀN AN NHÂN DÂN [Law on the Organization of the Peoples' Court] Số: Không số [No Number] (1992) (Vietnam); LUẬT TỔ CHỨC CHÍNH PHỦ NƯỚC CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM [Law on the Organization of the Government of the Socialist Republic of Vietnam] Số: Không số [No Number] (1992) (Vietnam); LUẬT TỔ CHỨC QUỐC HỘI [Law on the Organization of the National Assembly] Số: Không số [No Number] (1992) (Vietnam); LUẬT BẦU CỬ ĐẠI BIỂU QUỐC HỘI [Law on the Election of Deputies of the National Assembly] Số: Không số [No Number] (1992) (Vietnam).

⁹² LUẬT THUÊ CHUYÊN QUYỀN SỬ DỤNG ĐẤT [Rental and Land Transfer Law] Số: Không số [No Number] (1994) (Vietnam); LUẬT ĐẤT ĐAI [Land Law] Số: Không số [No Number] (1993) (Vietnam).

⁹³ BỘ LUẬT DÂN SỰ CỦA NƯỚC CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM [Civil Code of the Socialist Republic of Vietnam] Số: Không số [No Number] (1995) (Vietnam).

⁹⁴ Xuân Dân & Nguyễn Thanh Bình, *Xây dựng nhà nước pháp quyền xã hội chủ nghĩa của dân, do dân, vì dân dưới sự lãnh đạo của đảng* [Building a Rule of Law Society of the People, by the People, for the People, Under the Leadership of the Party], Tạp chí Cộng sản, Jan. 18, 2007, http://www.tapchicongsan.org.vn/details.asp?Object=17134687&News_id=18159424 (last visited Apr. 20, 2010) (discussing the important role of the courts in creating a legal state). In the *Rechtsstaat*, instrumentalist views of law dominate such that the rule of law becomes rule by law. See BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 92–93 (2004).

⁹⁵ See, e.g., UNITED NATIONS DEV. PROGRAMME, SECTOR DEVELOPMENT SITUATION: JUSTICE/LEGAL REFORM 1 (2005), available at <http://www.undp.org/eo/documents/ADR/ADR/ADR-working-site/VIETNAM/Desk-ResearchOutputs/Sector%Analysis%20Justice%20and%20Legal%20Reform.doc> (describing efforts to further the rule of law movement in Vietnam); Xuân Dân & Nguyễn Thanh Bình, *supra* note 94 (describing the Vietnamese government’s efforts to build socialist rule of law).

⁹⁶ See Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations, U.S.-Vietnam, July 13, 2000, Temp. State Dep’t No. 02-9, 2001 WL 1792868.

as mandated by the WTO and other international commitments.”⁹⁷ USAID has undertaken efforts with respect to legislative drafting and legal education among others.⁹⁸ Likewise, the American Bar Association also sponsors a rule of law initiative in Vietnam that provides support to local bar associations, law schools and government departments in the form of legal education programs.⁹⁹

Even so, the United States is not alone in supporting rule of law activities in Vietnam. International donors have sponsored various rule of law projects in Vietnam since the beginning of economic reform.¹⁰⁰ These projects ranged from training and capacity building in the judiciary, to support for enforcement of Vietnam’s new anti-corruption legislation, to increasing public education with respect, to legal rights and legislative drafting exercises among many others.¹⁰¹

Notwithstanding all of these domestic and international efforts that have gone into building a series of formal legal institutions since 1986, confidence in these institutions remains low. The question remains whether, after more than two decades of reform, rule of law projects will succeed in the creation of strong formal legal institutions and the perception of an effective legal state.¹⁰²

A. Vietnam’s Formal Legal System

Vietnam’s courts form the backbone of its formal legal structure.¹⁰³ There are three levels of courts in the system. Presently, there

⁹⁷ See USAID & STAR-Vietnam, Support for Trade Acceleration, <http://www.starvietnam.org> (last visited Apr. 15, 2010). United States Agency for International Development (USAID) is an independent federal agency that supports foreign policy objectives by promoting *inter alia* democracy, economic growth, agriculture and trade. See USAID, About USAID, http://www.usaid.gov/about_usaid (last visited Apr. 20, 2010).

⁹⁸ See USAID & STAR-Vietnam, *supra* note 97.

⁹⁹ See, e.g., Am. Bar Assoc., ABA Rule of Law Initiative—Vietnam, <http://www.abanet.org/rol/asia/vietnam.html> (last visited Apr. 20, 2010) (detailing programs to improve legal education and support legal institutional development).

⁹⁹ See *id.*

¹⁰⁰ See, e.g., United Nations Dev. Programme, Viet Nam, Project Listings, <http://www.undp.org.vn/what-we-do/more-projects-summaries/?&languageID=1&categoryName=Rule-of-law-and-Access> (last visited Apr. 20, 2010) (listing various projects sponsored by the United Nations Development Programme).

¹⁰¹ See UNITED NATIONS DEV. PROGRAMME, *supra* note 95.

¹⁰² See *infra* Part III.C.

¹⁰³ See Penelope Nicholson, *Judicial Independence and the Rule of Law: The Vietnam Court Experience*, 3 AUSTL. J. ASIAN L. 37, 41 (2001); Quinn, *supra* note 16, at 434; Brian JM Quinn, Note, *Legal Reform and Its Context in Vietnam*, 15 COLUM. J. ASIAN L. 219, 221 (2002).

are 678 district and village level courts, the lowest level trial court.¹⁰⁴ There are sixty-three provincial level courts, the next highest level.¹⁰⁵ These provincial courts have both trial and appellate jurisdictions.¹⁰⁶ Litigants and criminal defendants are limited to only one appeal at the level higher than the one that heard the case at trial.¹⁰⁷ So, for example, parties to cases heard at the district and village level may appeal only once, exclusively, to the provincial courts.¹⁰⁸ Finally, there are three courts at the highest level, the Supreme People's Court, which sits in Hanoi with offices in both Ho Chi Minh City and Danang.¹⁰⁹ The Supreme People's Court is made up of 116 judges who sit in panels to hear appeals from the provincial courts and in rare circumstances also act as a trial court.¹¹⁰

The courts in Vietnam are faced with numerous challenges, some technical in nature, others structural. The most important structural challenge relates to the lack of independence in the court system. Although by statute, courts in Vietnam are independent, they are not so in fact.¹¹¹ Independence is lacking in at least three important ways.

¹⁰⁴ See LUẬT TỔ CHỨC TOÀ ÁN NHÂN DÂN [Law on the Organization of the People's Court] Số [No.]: 33/2002/QH10, Điều [Clause] 11 (2002) (Vietnam); Quinn, *supra* note 16, at 437; Truong Hoa Binh, *supra* note 87, at 5.

¹⁰⁵ See Truong Hoa Binh, *supra* note 87, at 5.

¹⁰⁶ See LUẬT TỔ CHỨC TOÀ ÁN NHÂN DÂN [Law on the Organization of the People's Court] Số [No.]: 33/2002/QH10, Điều [Clause] 11; Quinn, *supra* note 16, at 437.

¹⁰⁷ See LUẬT TỔ CHỨC TOÀ ÁN NHÂN DÂN [Law on the Organization of the People's Court] Số [No.]: 33/2002/QH10, Điều [Clause] 11.

¹⁰⁸ See *id.*

¹⁰⁹ See The Supreme People's Court of Vietnam, Benchbook Online: Supreme People's Court, Sept. 7, 2006, http://www.sotaythamphan.gov.vn/view_index.php (follow "1.1.1 Supreme People's Court" hyperlink).

¹¹⁰ See Truong Hoa Binh, *supra* note 87, at 5–6.

¹¹¹ See LUẬT TỔ CHỨC TOÀ ÁN NHÂN DÂN [Law on the Organization of the People's Court] Số [No.]: 33/2002/QH10, Điều [Clause] 11 (requiring that courts adjudicate cases without outside interference). While many recognize the lack of court independence, there remains hope:

In reality, in many cases, the judges and citizen jurors are negatively influenced by lawyers, organizations, individuals, and government organizations in violation of the procedural rules, with large implications to the operations of the court in favor of themselves. For that reason, judges must be aware that they are responsible for the content and public nature of the court process. Because of that judges must be courageous and must stand against these outside influences . . . and should not permit any individual or government agency to interfere in the work of court for any reason.

Vũ Thị Ngọc Hà, TĂNG CƯỜNG TÍNH ĐỘC LẬP CỦA CÁC THẨM PHÁN TRONG HOẠT ĐỘNG XÉT XỬ Ở VIỆT NAM [Strengthening Independent Actions of Judges in Trial Work in Vietnam], THÔNG TIN PHÁP LUẬT DÂN SỰ [Civil Law Network Blog], <http://thong-tinphapluatdansu.wordpress.com/2009/08/14/3624/> (Aug. 14, 2009).

First, the court system derives its authority from the legislative body directly above it and is not an independent constitutional body.¹¹² Accordingly, the Supreme People's Court does not hear constitutional cases nor is it in a position to constrain the behavior of either the executive or the National Assembly.¹¹³ Indeed, in some recent cases the National Assembly has attempted to exert its authority over the courts to order the Supreme Court to rehear a case that Assembly members perceived to be "incorrectly" decided.¹¹⁴ Similarly, the sixty-three courts at the provincial level submit to the authority of each of the provincial

¹¹² HIẾN PHÁP CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONST. OF THE SOCIALIST REPUBLIC OF VIETNAM] art. 83 (indicating that the courts are subject to the oversight and control of the National Assembly).

¹¹³ See Quinn, *supra* note 16, at 437.

¹¹⁴ See, e.g., Lê Kiến, *Tìm cơ chế sửa bản án "không được sai" [Searching for Mechanisms to Fix a Verdict "Can't Be Wrong"]*, PHÁP LUẬT, Aug. 13, 2009, at 3 (describing how the National Assembly has inserted itself in the legal process); Mai Minh, *Bảy năm đeo đuổi một vụ án [Seven Years Chasing One Case]*, PHÁP LUẬT, Aug. 14, 2009, at 5 (recounting the underlying facts of a contract dispute); Nghĩa Nhân, *Án đưng trần" vẫn có thể xử lại [A Case Stood in Its Tracks Can Still be Reheard]*, PHÁP LUẬT, Aug. 17, 2009, at 3 (detailing an interview with the Chairman of National Assembly Judiciary Committee regarding the potential review of a contract case). A recent contract case between two domestic parties provides an example of how the National Assembly at times exerts its influence over the courts in cases of particular interest. See Mai Minh, *supra*. In 2002, Chau Tuan, a private company entered into a contract to sell one metric ton of unrefined sugar with a sugar content of forty-eight percent to another company, Tien Son. *Id.* Chau Tuan sourced the required sugar from a middleman two steps removed from the manufacturer and took delivery without testing the actual sugar content and made delivery to Tien Son six months after signing the contract. *Id.* Tien Son accepted the delivery without testing the actual sugar content and in turn sold the unrefined sugar on to another middleman. *Id.* The unrefined sugar was resold a number of times until it was ultimately sold to a Chinese buyer. *Id.* Prior to taking delivery at the border, the Chinese buyer tested the actual sugar content and found it to be less than forty-four percent sugar. *Id.* The Chinese buyer refused delivery. *Id.* This set off a cascade of lawsuits as middlemen began suing for damages associated with the deficient product with damages being passed down the line of contract succession. *Id.* Ultimately, Tien Son sued Chau Tuan seeking 800 million Vietnamese Dong (approximately 54,000 U.S. dollars) in damages. *Id.* In 2004, the provincial court of Ha Tinh heard the case and awarded Tien Son the damages sought. *Id.* Chau Tuan appealed the award to the Supreme People's Court (the next highest level) and sent letters to various government agencies and party bodies seeking assistance. *Id.* In 2006, the Supreme People's Court denied Chau Tuan's final appeal and the original damages award was left in place. *Id.* The award, however, was not enforced against Chau Tuan. Nghĩa Nhân, *supra*. Recently, the Law and Justice Committee of the National Assembly undertook an investigation of the case and found numerous mistakes of process and substantive law with respect to both the trial and appeal. *Id.* The National Assembly committee used its report into the deficiencies associated with this case to urge the Court to find a way to reconsider its decision in this particular case. *Id.* This has led the Chief Justice to suggest that the Supreme People's Court change its procedures in order to permit it to rehear special cases at the request of the National Assembly following their final disposition. *Id.*

assemblies.¹¹⁵ At the district and village level, local governments have ultimate authority over the operations of the courts. This bureaucratic dependence on the executive decreases the ability of the courts to remain independent in high profile cases that may involve the interests of local governmental authorities.¹¹⁶

Second, the enforcement of final judgments has been a continuing problem in the formal legal system. An essential element of a system of strong legal rights is the ability, once having had a dispute adjudicated, to have the judgment enforced in a timely and efficient manner. Although formal legal institutions exist to enforce judgments in Vietnam, they are unable to function appropriately.¹¹⁷ The structure of the enforcement regime makes it difficult for parties with judgments against state agencies to seek enforcement.¹¹⁸ Private parties even run into difficulties seeking enforcement of simple judgments against other private parties.¹¹⁹ This enforcement dilemma is a major stumbling block to the strengthening of formal legal rights in Vietnam.¹²⁰

¹¹⁵ See Truong Hao Binh, *supra* note 87, at 5.

¹¹⁶ See Truong Trong Nghia, *The Rule of Law in Vietnam: Theory and Practice*, in THE RULE OF LAW IN ASIA: PERSPECTIVES FROM THE PACIFIC RIM 123, 131 (2000), available at http://www.mansfieldfdn.org/programs/rol/rol_perspectives.htm ("The socialist Rule of Law state does not separate its power but unites it in the legislative branch . . . which has the authority to make laws, but delegates the administrative authority to the government and judicial authority to the court.").

¹¹⁷ See *Law on Enforcement of Civil Judgments*, VIETNAM L. & LEGAL F., May 2009, at 19. Members of the bar in Vietnam are hoping to rectify this long-standing problem with the passage of a new enforcement law to replace the 2004 Ordinance on Enforcement of Civil Judgments. *See id.*

¹¹⁸ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 23, at 653.

¹¹⁹ See, e.g., Van Đoàn, *Hơn Bảy Năm Không Thi Hành án [Seven Years of Not Enforcing an Order]*, PHÁP LUẬT, Aug. 15, 2009, at 10 (describing a recent case that provides an example of the difficulties private parties have in enforcing simple judgments against other private parties). In March 2006, a district level court in Long An province awarded the plaintiff in a dispute over a land sale, title to the land, which he had bought but which was then subsequently occupied by the defendant. *See id.* As part of the judgment, the court ordered the defendant to vacate the land and to disassemble any structures he had illegally built upon the land. *See id.* The plaintiff immediately sought to have the judgment enforced. *See id.* Nevertheless, three years later, the local judgment enforcement had not enforced the judgment, citing the necessity of the defendant to voluntarily give up his right to the land. *See id.*

¹²⁰ See *Law on Enforcement of Civil Judgments*, *supra* note 117, at 19 (describing the weaknesses of the current Vietnamese Ordinance on Enforcement of Civil Judgments which led to confusion and ineffective coordination among civil judgment management agencies and the necessity for legal reform).

Third, although the courts are required to hear and decide cases without outside influence, this ideal is not always met in practice.¹²¹ Notwithstanding the requirements of the law as written, courts are subject to the control of the Communist Party through the *tham van* or *thinh thi an* (pre-trial conference) “system.”¹²² Through the *tham van* system judges, prosecutors, and the party apparatus meet to discuss the important aspects of cases of particular importance to the Communist Party prior to the public court hearing.¹²³ At these meetings, which are closed to representatives of the defendant (in criminal matters), judges are susceptible to pressure to ensure the outcome of proceedings.¹²⁴

B. Perceptions of Effectiveness of Formal Legal System

The lack of structural independence in the judiciary helps create a perception locally that the formal legal system is corrupt and unreliable or at least in certain cases that the actual facts and law will not be determinative of the final outcomes.¹²⁵ In reality, the current local per-

¹²¹ See Brian JM Quinn, *Soccer, Glitter, and Corruption* 1, 11 (Mar. 20, 2006) (Boston College Law School, Working Paper), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=998869 (citing LUẬT TỔ CHỨC TOÀ ÁN NHÂN DÂN [Law on the Organization of the People’s Court] Số [No.]: 33/2002/QH10).

¹²² See *id.* The Vietnamese version is a formalized version of what happens in Chinese courts or previously in the former Soviet Union, where it is known as “telephone justice.” See Kathryn Hendley, “Telephone Law” and the “Rule of Law”: *The Russian Case*, HAGUE J. ON RULE L. 241, 242 (2009) (describing the Soviet system of “telephone law” in which outcomes of cases allegedly come from orders issued over the phone by those with political power rather than through the application of law). Dang Van Luan, in a 2006 interview, noted that judges are not required to comply with the results of the *thinh thi an* or the *tham van* process. See Phương Thảo, *Ngành Tòa án Trước hết Phải Tự tin [The Court System Above Needs Self-Confidence]*, VIỆT BÁO, Dec. 4, 2006, available at <http://vietbao.vn/Xa-hoi/Nghanh-Toa-an-truoc-het-phai-tu-tin/30156009/126/>.

¹²³ See Quinn, *supra* note 121, at 11.

¹²⁴ See *id.* The system is potentially subject to abuse. See *id.* Tan Ngoc Suong, a well-known figure in Vietnam’s Mekong Delta was recently prosecuted in a very controversial case. See *Uterior Motives Hinted at in Verdict Against Labor Hero*, THANH NIÊN, Nov. 27, 2009, available at <http://www.lookatvietnam.com/2009/11/ulterior-motives-hinted-at-in-verdict-against-labor-hero.html>. Tan Ngoc Suong, the director of a model cooperative farm, was convicted by a local court of illegally establishing and maintaining a slush fund at the Song Hu farm and sentenced to prison time. See *id.* On appeal, the verdict was upheld. See *id.* In response to what Vietnamese observers viewed as an injustice, members of the central government called on the National Assembly to review the case. See *id.* Local rumors held that parochial land interests motivated this prosecution. See Pha Lê, *Vụ án bà Sương Cần Được Xem Xét ở Cấp Cao Hơn [The Case Should be Considered at a Higher Level]*, PHÁP LUẬT, Nov. 25, 2009, available at <http://www.vnexpress.net/GL/Phap-luat/2009/11/3BA16064/> (noting the rumors); *Uterior Motives Hinted at in Verdict Against Labor Hero*, *supra*.

¹²⁵ See Pha Lê, *supra* note 124; *Uterior Motives Hinted at in Verdict Against Labor Hero*, *supra* note 124.

ceptions of the formal legal system in Vietnam are poor and the perceived strength of legal rights so weak that one might expect economic growth to have suffered as a consequence if in fact strong legal rights and formal institutions were a prerequisite to economic growth.¹²⁶

The work of McMillan and Woodruff helps to explain the seeming paradox of Vietnam's economic growth.¹²⁷ In a series of papers, they reported the results of surveys of private manufacturing firms conducted in Vietnam's two major urban centers, Ho Chi Minh City and Hanoi, from 1995 to 1997.¹²⁸ In general, these papers revealed an economy dominated by relational contracting and a lack of trust for the formal legal system.¹²⁹ The picture painted by McMillan and Woodruff's survey results illustrated widespread reliance on informal contracting to accommodate the perceived weakness of the formal legal structures.¹³⁰ Indeed, few market participants expressed a belief that they could contract in the shadow of the law.¹³¹ Less than ten percent of respondents thought that the courts or any other governmental agency could assist them in contract enforcement.¹³² In addition, McMillan and Woodruff found that Vietnamese firms compensated for the inadequacy of formal legal structures and weak legal rights through a combination of relational contracting and other informal institutions.¹³³ Self-enforcement incentives in the form of reputation and intensive screening of potential business partners were the most common informal institutions that parties reported relying upon.¹³⁴

Since McMillan and Woodruff's study, others have investigated the perceived strength of formal legal institutions in Vietnam and have also

¹²⁶ See Quinn, *supra* note 121, at 12–13.

¹²⁷ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 637; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421–22, 2430–32.

¹²⁸ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21 at 637; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421.

¹²⁹ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 637–38, 644; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421, 2430–32.

¹³⁰ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 640–42; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2431–34.

¹³¹ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 640; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2431.

¹³² See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 641; McMillan & Woodruff, *Private Order*, *supra* note 21, at 2431. In the words of one respondent: “[courts] normally just create more problems . . . [I]n Vietnam no one believes we have a good legal system.” McMillan & Woodruff, *Dispute Prevention Without Courts*, *supra* note 21, at 640.

¹³³ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 638.

¹³⁴ See *id.* at 644. Parties sometimes structure transactions with incentives for self-enforcement through the use of intermediaries (delivery/payment agents) and buying groups. See *id.* at 647.

found them wanting.¹³⁵ According to a survey conducted by the United Nations Development Programme (UNDP) in 2004, only 20% of respondents in rural areas stated that judgments of the courts are “just and fair.”¹³⁶ Instead, there is a clear perception that the formal legal system is corrupt and unreliable.¹³⁷ For instance, 74% of respondents indicated that the honesty of judges was important to the outcome a formal legal proceeding, while only 65% thought having the law and facts on one’s side was important.¹³⁸ Furthermore, according to the World Bank, a simple contractual dispute requires an average of 295 days to each resolution in the courts.¹³⁹ The cost of resolving such a dispute is often equivalent to 31% of the contract’s value, thus making resort to courts ineffective as a business matter.¹⁴⁰ Even if one were to get resolution through the courts, the enforcement process is likely to denude the contract of any remaining value.

The lack of confidence in the formal system is shared by firms.¹⁴¹ A 2009 survey of business in Vinh Long Province conducted as a part of the Vietnam Chamber of Commerce and Industry’s (VCCI) competitiveness study, found confidence in the formal institutions to be relatively low.¹⁴² For example, only 11.5% of respondents felt that local authorities were usually or always predictable in their implementation of central laws.¹⁴³ Thirty-six percent reported that government officials used compliance with local regulations to extract rents.¹⁴⁴ The perception of widespread corruption in the formal system likely has an effect on the firms’ perception of the formal legal system. For example, only 27.86% of respondents from Vinh Long felt that the formal legal system always or usually provided a mechanism for firms to appeal the

¹³⁵ See UNITED NATIONS DEV. PROGRAMME, ACCESS TO JUSTICE IN VIETNAM: SURVEY FROM A PEOPLE’S PERSPECTIVE 15 (2004), available at http://www.undp.org.vn/digitalAssets/4/4667_A2J_EngL.pdf; McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 644.

¹³⁶ See UNITED NATIONS DEV. PROGRAMME, *supra* note 135, at 13–15.

¹³⁷ *See id.*

¹³⁸ *See id.* at 13.

¹³⁹ See THE INT’L BANK FOR RECONSTRUCTION AND DEV. (IMF) & THE WORLD BANK, DOING BUSINESS 2010: REFORMING THROUGH DIFFICULT TIMES 162 (2009), available at <http://www.doingbusiness.org/documents/fullreport/2010/DB10-full-report.pdf>.

¹⁴⁰ *See id.*; Van Doan, *supra* note 119, at 10.

¹⁴¹ VIETNAM CHAMBER OF COMMERCE & INDUSTRY (VCCI) & VIETNAM COMPETITIVENESS INITIATIVE (VNCI), THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2009: MEASURING ECONOMIC GOVERNANCE FOR PRIVATE SECTOR DEVELOPMENT 87 (2009).

¹⁴² *See id.*

¹⁴³ See USAID & Vietnam Competitiveness Initiative (VNCI), 2009 Vietnam Provincial Competitiveness Index Data, http://www.pcivietnam.org/download_file.php?file=1263976946_PCI%202009%20data.xls&uploadname=report (last visited Apr. 20, 2010).

¹⁴⁴ *See id.*

corrupt behavior of officials.¹⁴⁵ Only 61% of respondents were confident that the legal system would uphold property or contract rights.¹⁴⁶ Not surprisingly, merely one-third of Vinh Long respondents reported using the courts or other formal legal institutions to resolve disputes.¹⁴⁷ A 2005 survey by the Vietnamese Communist Party on perceptions of corruption found it to be rife, especially in the courts.¹⁴⁸ Fifty percent of respondents who dealt with the courts reported having had to make payments to court officials in connection with having their cases heard.¹⁴⁹

The reality of corruption in the court system reinforces these perceptions.¹⁵⁰ The case of Mr. Pham Cong Bang, former chief judge of Phu Ninh district in Quang Nam province, is a representative example.¹⁵¹ Judge Bang was accused of accepting six million Vietnamese Dong from a litigant at his home. In exchange for the cash payment, Mr. Bang was asked to help force the settlement of an economic dispute in favor of one of the parties.¹⁵² Although crooked judges like Mr. Bang can be apprehended, such progress is undercut by the fact that success in prosecuting corruption cases is not high.¹⁵³ A report from Dong Nai Province noted that nine of the thirteen corruption cases handled by the courts in that province in 2009 ended in the Vietnamese equivalent of a hung jury (*huong an treo*).¹⁵⁴

Given the level of activity directed at reforming them and the challenges formal legal institutions in Vietnam continue to face, this Article revisits the role played by informal actors and informal institutions. This Article extends the work of McMillan and Woodruff of more than a decade ago by investigating contracting relationships of fruit farmers

¹⁴⁵ See *id.*

¹⁴⁶ See *id.*

¹⁴⁷ See *id.*

¹⁴⁸ See Swedish Int'l Dev. Agency (SIDA) & Comm. for Internal Affairs of the Communist Party of Vietnam, Report of the Survey on Corruption in Vietnam 32 (Nov. 2005) (unpublished draft, on file with authors).

¹⁴⁹ See *id.*

¹⁵⁰ See Đào Minh Khoa, *Truy tố nguyên Chánh án TAND huyện Phú Ninh (Quảng Nam) [Former Head Judge of the People's Court of Phu Ninh, Quang Nam Indicted]*, CÔNG AN NHÂN DÂN [PEOPLE'S POLICE], Dec. 18, 2009, <http://www.cand.com.vn/vi-VN/phapluat/2008/4/123962.cand>.

¹⁵¹ See *id.*

¹⁵² See *id.*

¹⁵³ See *id.*

¹⁵⁴ C.T., *Dong Nai: Đa Số Bị Cao Phạm tội Tham nhũng Duoc Huong an Treo [Dong Nai Province: Majority of Those Accused of Corruption Get Mistrials]*, CÔNG AN NHÂN DÂN [People's Police], Dec. 17, 2009.

in the Mekong Delta.¹⁵⁵ In particular, it seeks to understand the role of informal legal institutions in backing trading relationships and preventing or resolving disputes. In general, the results of our study confirm that economic actors rely little on formal legal institutions. In the absence of strong legal rights these actors are nonetheless able to find private ordering solutions to assure reasonable levels of contract performance.¹⁵⁶ The results of our study reinforce the point made by Milhaupt and Pistor among others that legal reform is a very long road measured in decades and not a simple technical fix.¹⁵⁷

III. MEKONG DELTA FRUIT MARKETS

The structure of the market for pomelos in the Mekong Delta is characterized by a high degree of competition.¹⁵⁸ The few thousand pomelo farmers in the region sell what are essentially undifferentiated commodities to hundreds of buyers.¹⁵⁹ There are some 300 or so specialist middlemen who float the canals and riverways of the Delta buying fruit from farmers.¹⁶⁰ Middlemen transport the fruit by boat to local floating markets elsewhere in the Mekong Delta—Cai Rang and Phong Dien being the best known of these markets—or to larger wholesale markets in Ho Chi Minh City, approximately 135 kilometers to the north.¹⁶¹ Ninety-five percent of pomelos are consumed domestically.¹⁶² Fruit that is not consumed domestically is sold to local fruit processors for canning and export.¹⁶³ Middlemen play a critical role in connecting isolated Delta farmers to each of the local, regional and international markets.¹⁶⁴

¹⁵⁵ See generally McMillan & Woodruff, *Dispute Prevention*, *supra* note 21; John McMillan & Christopher Woodruff, *Interfirm Relationships and Informal Credit in Vietnam*, 114 Q.J. ECON. 1285 (1999) (discussed *infra* Part III); McMillan & Woodruff, *Private Order*, *supra* note 21.

¹⁵⁶ See Quinn & Vu, *supra* note 2.

¹⁵⁷ See generally MILHAUPT & PISTOR, *supra* note 4 (discussed *supra* Part I).

¹⁵⁸ See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, THE VALUE CHAIN OF POMELOS OF VINH-LONG PROVINCE 9 (2006), available at <http://www.ipsard.gov.vn/images/2007/07/Phan%20tich%20chuoai%20gia%20tri%20buoi%20Vinh%20Long.pdf>. Where not otherwise noted, data in this section comes from the authors' survey of 180 pomelo farmers in the Mekong Delta. See generally Quinn & Vu, *supra* note 2.

¹⁵⁹ See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 9.

¹⁶⁰ See *id.* at 18; Quinn & Vu, *supra* note 2.

¹⁶¹ See Quinn & Vu, *supra* note 2.

¹⁶² See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 7.

¹⁶³ See Quinn & Vu, *supra* note 2.

¹⁶⁴ See *id.*

We conducted surveys in 2005 and 2006 of 180 pomelo farmers and forty-seven middlemen in three districts at the center of fruit production in Vietnam: Binh Minh and Tra On (in Vinh Long Province) and Chau Thanh (in Hau Giang Province).¹⁶⁵ Located just north of Can Tho, Vietnam's fourth largest city, Binh Minh and Tra On districts have relied for many years on fruit production for much of their income.¹⁶⁶ In 2005, more than half (54.8%) of Vinh Long's provincial income came from agriculture and fisheries, including approximately 14% from the production of varieties of fruit, including lychees, longans, rambutans, mangoes and pomelos.¹⁶⁷ That same year, an area of about 35,000 hectares in Vinh Long was reserved for growing a variety of fruit, 5300 hectares of which was dedicated to pomelo cultivation.¹⁶⁸ Though the Mekong Delta has long been a producer of fruit, the large-scale cultivation of fruit, including pomelos, is a relatively recent phenomenon, only developing significantly since the 1990s.¹⁶⁹ Our surveys provide information about typical pomelo farmers and their market transactions.¹⁷⁰ In particular, these surveys shed light on how, in the absence of strong legal rights, farmers and middlemen structure their transactions.¹⁷¹

A. *Typical Farmer*

By almost any definition, farmers' investments in the cultivation of fruit trees are a long-term investment.¹⁷² Fruit trees take time to grow and then give fruit (approximately three years to bear fruit).¹⁷³ Investing in fruit is also mutually exclusive with other uses for a farmer's garden—uses that might be more short term in nature (for example, rice production).¹⁷⁴ Consequently, farmers investing in fruit production must be reasonably assured that there is a stable market for their fruit

¹⁶⁵ *See id.*

¹⁶⁶ *See id.*

¹⁶⁷ *National Accounts, Finance and Bank*, 2007 STAT. Y.B. VIETNAM (Vinh Long Stat. Office) 46; *Agriculture, Forestry and Fishery*, 2007 STAT. Y.B. VIETNAM, *supra*, at 63–64.

¹⁶⁸ *Agriculture, Forestry and Fishery*, *supra* note 167, at 94.

¹⁶⁹ *See* INT'L FOOD POLICY RESEARCH INST., FRUITS AND VEGETABLES IN VIETNAM: ADDING VALUE FROM FARMER TO CONSUMER 1–4 (2002), available at <http://www.ifpri.org/publication/fruits-and-vegetables-vietnam> (follow "dr200207.pdf" hyperlink). This is in part due to the pace of economic reform in Vietnam. *See id.* Until the early 1990s, there remained strict controls over agricultural land use in Vietnam's rural areas. *See id.*

¹⁷⁰ *See* Quinn & Vu, *supra* note 2.

¹⁷¹ *See id.*

¹⁷² *See id.*

¹⁷³ *See* DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 5.

¹⁷⁴ *See* Quinn & Vu, *supra* note 2.

before making such an investment.¹⁷⁵ Even so growth in the production of pomelos in recent years has been rapid.¹⁷⁶ In recent years, the amount of land in Vinh Long province dedicated to the cultivation of fruit trees, particularly pomelos, grew by 24.75% per year.¹⁷⁷

The Mekong Delta is the agricultural center of Vietnam.¹⁷⁸ Though rice is a staple commodity, fruit production is the primary source of income for many of the Delta's farmers.¹⁷⁹ Farmers grow a wide variety of fruit, including pomelos, mangos, litchees, rambutans, among many others.¹⁸⁰ For the most part, farmers who grow fruit do so for commercial purposes, selling 91% of their annual harvest for cash.¹⁸¹ A few thousand such farmers in the Mekong Delta grow pomelos.¹⁸² Two varieties of pomelos—*Nam Roi* and *Da Xanh*—account for almost 95% of all cultivation of pomelos.¹⁸³

Pomelo farmers in the survey group grow pomelos on plots averaging 6900 square miles, less than one hectare, in size.¹⁸⁴ Pomelo trees are long-lasting, living between ten and twenty years and giving fruit after just three.¹⁸⁵ Unlike other crops, like rice, pomelo trees require lower intensity to cultivate and are hardy.¹⁸⁶ Farmers report average annual revenues from pomelo sales in the range of 30 million Vietnamese Dong, or approximately \$1875, per year.¹⁸⁷ When compared to the cultivation of rice, pomelo cultivation is a profitable endeavor for farmers.¹⁸⁸

¹⁷⁵ See *id.*

¹⁷⁶ See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 6.

¹⁷⁷ See *id.*

¹⁷⁸ See INT'L FOOD POLICY RESEARCH INST., *supra* note 169, at 2–2 to –5.

¹⁷⁹ See Quinn & Vu, *supra* note 2.

¹⁸⁰ See *id.*

¹⁸¹ See INT'L FOOD POLICY RESEARCH INST., *supra* note 169, tbl.2–16. This survey was carried out on 1505 fruit and vegetable producers between October and November 2000 by the Ministry of Agriculture and Rural Development (MARD) and the International Research Institute for Fruit and Vegetables (IRIFV). *Id.* at 1–7.

¹⁸² See Quinn & Vu, *supra* note 2.

¹⁸³ See *id.*

¹⁸⁴ See *id.*

¹⁸⁵ See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 5.

¹⁸⁶ See Quinn & Vu, *supra* note 2.

¹⁸⁷ See *id.* Calculations in this Article were made assuming an exchange rate of 16,000 Vietnamese Dong to one U.S. dollar (the approximate exchange rate at the time of the authors' study).

¹⁸⁸ See *Investment*, 2008 STAT. Y.B. VIETNAM, *supra* note 76, at 95; *National Accounts and State Budget*, *supra* note 76, at 63, 64, 73. Revenues from fruit sales compare favorably with annual family income from farming for a family of five in Vinh Long, which is approximately \$791 per year. See *Investment*, 2008 STAT. Y.B. VIETNAM, *supra* note 76, at 95; *National Accounts and State Budget*, *supra* note 76, at 63, 64, 73.

The typical farmer in the Mekong Delta is isolated. The Delta is comprised of a network of interlaced canals and riverways that make road travel between villages difficult, if not impossible, in some areas.¹⁸⁹ In 2000, for example, only slightly more than 61.7% of communes in Vinh Long province had paved roads that could support automobile transportation to the village center.¹⁹⁰ Even fewer had roads that could support automobile traffic to households outside the commune center.¹⁹¹ Moreover, with less than 100,000 phone lines (86,452 land and 9930 cell) for a population of over 1,000,000 (as of 2006), few farmers have direct access to much by way of market information.¹⁹² Most must rely on middlemen for such information.¹⁹³ Farmers with boats, however, have the ability to sell at least a portion of their fruit on the local markets, floating markets in the Delta, or to the wholesale markets in Ho Chi Minh City.¹⁹⁴ Yet, the large majority, 85%, report that they sell their fruit to the market exclusively through middlemen.¹⁹⁵

B. *Typical Middleman*

Middlemen are crucial players in the commerce for fruit. There are approximately 300 middlemen who travel throughout the Mekong Delta buying pomelos from farmers and transporting them to floating and regional markets in the Mekong Delta, markets in Ho Chi Minh City, or to fruit processing factories for the export market.¹⁹⁶ The survey conducted by the authors in 2006 included forty-seven middlemen in Binh Minh, Tra On, and Chau Thanh districts who specialize in buying and selling pomelos.¹⁹⁷ This survey provides information about the typi-

¹⁸⁹ See Quinn & Vu, *supra* note 2.

¹⁹⁰ See GEN. STAT. OFFICE OF VIETNAM, RATE OF COMMUNES IN RURAL AREA HAVING MOTOR WAY TO CENTRAL OF COMMUNES 1998–2000 BY PROVINCE, http://www.gso.gov.vn/default_en.aspx?tabid=484 (follow “Survey on Infrastructure of Communes in Rural Area 1998, 1999, and 2000” hyperlink; then follow “Rate of Communes in Rural Area Having Motor Way to Central of Communes 1998–2000 by Province” hyperlink) (last visited Apr. 20, 2010).

¹⁹¹ See *id.*; Quinn & Vu, *supra* note 2.

¹⁹² See *Population and Labour Force*, 2007 STAT. Y.B. VIETNAM, *supra* note 167, at 22; *Transport–Postal Services and Tele-communications*, 2007 Y.B. VIETNAM, *supra* note 167, at 160. Ho Chi Minh City, by comparison, had almost two million phone lines for an official population of 6.6 million. See *Population and Employment*, 2008 STAT. Y.B. VIETNAM, *supra* note 76, at 38; *Transport and Postal Services, Telecommunications*, 2008 Stat. Y.B. Vietnam, *supra* note 76, at 520.

¹⁹³ See Quinn & Vu, *supra* note 2.

¹⁹⁴ See *id.*

¹⁹⁵ See *id.*

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

cal middleman operating in the Mekong Delta and his market transactions.¹⁹⁸

On average, these middlemen have been in the pomelo business for almost eleven years.¹⁹⁹ Middlemen tend to specialize, with 97.8% of respondents report buying and selling only a single variety of pomelo.²⁰⁰ Many are also pomelo farmers themselves.²⁰¹ As a result, they are very attuned to the market and fruit quality.²⁰² More than 95% of middlemen claim that they have a better sense of the quality of the fruit they are buying than the farmers selling it.²⁰³ In addition, middlemen are unanimous in their opinion that they have better market and price information than farmers.²⁰⁴

Though barriers to entry and exit from the middleman business are relatively low, they are not insignificant. There are no special licensing requirements for middlemen nor are there any formal trade associations or informal ethnic associations that might limit participation in the market.²⁰⁵ There are, however, three real barriers to entry. First, middlemen face the expense of a boat. The average sized boat is forty-three tons and can cost between \$3000 and \$5000.²⁰⁶ Fifty-five percent of surveyed middlemen report owning their own boat, a substantial long-term capital investment, the type which parties might be hesitant to make if the risk of opportunism was high enough.²⁰⁷

A second barrier to entry is access to credit. Middlemen are highly credit constrained. They require capital to finance their transactions during the two week period they spend traveling through the Delta making purchases from farmers. Such capital requirements can be substantial. The average middleman, for instance, collects fourteen tons of fruit per month.²⁰⁸ Assuming an average price of approximately 3000 Vietnamese Dong per kilogram, the middleman must be able to fi-

¹⁹⁸ See Quinn & Vu, *supra* note 2.

¹⁹⁹ *See id.*

²⁰⁰ *See id.*

²⁰¹ *See id.*

²⁰² *See id.* According to middlemen, the thick appearance of the skin and the heavy weight of the fruit are the most important indicators of quality. *See id.*

²⁰³ See Quinn & Vu, *supra* note 2.

²⁰⁴ *See id.*

²⁰⁵ *See id.* That is not to say that ethnic trading specializations never existed in Vietnam. Prior to 1979, for example, trade in rice was commonly understood to be monopolized by ethnic Chinese middlemen in Vietnam's south. See E.S. Ungar, *The Struggle Over the Chinese Community in Vietnam, 1946-1986*, 60 PAC. AFF. 596, 604-06 (1987-88).

²⁰⁶ See Quinn & Vu, *supra* note 2.

²⁰⁷ *See id.*

²⁰⁸ *See id.*

nance forty-two million Vietnamese Dong, approximately \$2,600, for up to a month while he collects and then markets his fruit.²⁰⁹ Because most middlemen do business as sole proprietors or without any business registration at all, they lack the ability to fund their own capital requirements through formal credit lines at banks. Middlemen often sell their pomelos to wholesalers in the Ho Chi Minh City market on a consignment basis placing further pressure on the capital requirement. Interviews with wholesalers in Tam Binh, the main pomelo wholesale market in Thu Duc District in Ho Chi Minh City, reveal that the majority of wholesalers receive credit from middlemen, sometimes even up to 100%.²¹⁰

A third barrier to entry is access to a trading network in regional and wholesale markets in Ho Chi Minh City. Interviews by the authors with middlemen in the three biggest floating markets in the Mekong Delta, namely Cai Rang, Phong Dien, and Phung Hiep, reveal that some middlemen find it difficult to sell their pomelos in the largest markets in Ho Chi Minh City because they lack reliable partners there.²¹¹ Generally, the longer a middleman has been in the business, the more likely he is to develop useful social networks and relationships with wholesalers in the Tam Binh market in Ho Chi Minh City.

C. Typical Transaction

Farmers normally do not harvest fruit until they have found a buyer.²¹² Pomelos can be left on the tree for some time without fear of the fruit going bad.²¹³ This allows farmers to wait on the market and, within limits, entertain offers from a number of potential buyers. Farmers can harvest all or just a portion of their crop at any given point once they are ripe. In addition, pomelos also have a relatively long "shelf life" once they have been harvested; their thick skins permit the fruit to hold moisture for a relatively long period, thereby extending

²⁰⁹ See *id.*

²¹⁰ See *id.* Given the constraints faced by middlemen the provision of credit by farmers to middlemen is critical to the proper functioning of the fruit market. See McMillan & Woodruff, *supra* note 155, at 1287.

²¹¹ See Quinn & Vu, *supra* note 2.

²¹² See generally INT'L FOOD POLICY RESEARCH INST., *supra* note 169, at 2-1 to -3, 2-5 to -13 (discussing patterns and trends in fruit and vegetable production).

²¹³ See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, *supra* note 158, at 4. Leaving the fruit on the trees for too long, however, may have a negative effect on productivity for the following season.

the post-harvest period during which farmers might be able to entertain market offers.²¹⁴

Farmers have at least three ways of selling their crop. First, they can sell it on the retail market.²¹⁵ When selling to retail consumers, farmers typically price by the piece. Selling fruit directly to the retail market, however, can be an expensive proposition. To do so requires adequate transportation, typically in the form of a large boat, as well as time because a large number of sales may be needed to dispose of a few tons of pomelos on the retail market. Additionally, farmers can sell their fruit to middlemen who ply the waterways of the Mekong Delta.²¹⁶ Middlemen will then resell the fruit in larger markets. A typical purchase arrangement requires the middleman to buy a farmer's entire garden, not simply fruit of particular sizes or quality.²¹⁷ One of the authors observed a middleman buying a garden. In this representative transaction, a middleman made an unsolicited approach to a farmer and offered to buy his fruit.²¹⁸ Then, the middleman and the farmer walked around the garden together while the middleman quickly counted and evaluated the general quality of fruit on the trees. They then estimated the total kilos in the garden and agreed upon a price for the whole garden and the payment terms. Another common method of sale is similar to the second, but the farmer agrees to sell something less than his entire garden to the middleman.²¹⁹ From the middleman's perspective, this is less than optimal as it raises the costs associated with filling his boat.

Typically, when middlemen make purchases, they leave a deposit, up to thirty percent, and promise to return in several days, or even weeks, while the farmer harvests the garden.²²⁰ When the middleman returns to collect the fruit, he will usually complete payment and the farmer and middleman then part ways.

²¹⁴ See *id.* at 4–5. This is a significant difference from other fruits which may tend to spoil quickly. See generally INT'L FOOD POLICY RESEARCH INST., *supra* note 169, at 3–14 to –19.

²¹⁵ See INT'L FOOD POLICY RESEARCH INST., *supra* note 169, at 3–19 to –20.

²¹⁶ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2446–47 (stating that wholesalers intermediate ten percent of all sales in Vietnam).

²¹⁷ See Quinn & Vu, *supra* note 2.

²¹⁸ See *id.*

²¹⁹ See INT'L FOOD POLICY RESEARCH INST., *supra* note 169, at 3–17.

²²⁰ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2432 (discussing that deposits mitigate damages for farmers when middlemen renege on contracts); Quinn & Vu, *supra* note 2.

When middlemen are unable to get access to working capital, or when the market price is unknown to the middlemen, farmers will sometimes agree to defer receiving payment until after the middleman sells all of the fruit in the floating markets of the Mekong Delta or the wholesale markets in Ho Chi Minh City.²²¹ The time period over which credit is granted spans anywhere from three days to three months.²²² During this period the farmer bears the risk that the middleman might not return to complete payment.²²³

Through their studies, McMillan and Woodruff find a correlation between the granting of credit and the degree of lock-in between business partners.²²⁴ They conclude that high switching costs are the motivating factors for the granting of credit.²²⁵ Economic lock-in creates a second period effect in what might otherwise be a one-off transaction.²²⁶ In such a situation, lock-in can constrain opportunistic behavior.²²⁷ Yet, monopoly buying practices in fruit markets appear to be extremely rare and there appears to be little economic “lock-in” of the sort envisioned by McMillan and Woodruff.²²⁸ In fact, more than 60% of middlemen report that the market to buy pomelos from farmers is moderate to very competitive.²²⁹ Farmers report a similar story.²³⁰ More than 60% report being approached by more than four middlemen every year, with 46% percent reporting being approached by more than six middlemen every year. 6.8% of farmers report one or fewer approaches per year.²³¹

McMillan and Woodruff’s hypothesis suggests that farmers enjoying fewer approaches from middlemen, indicating greater lock-in, should be more willing to grant credit than farmers with enjoying more competitive environments.²³² Here, however, a correlation between the lack of competition—that is, high switching costs—and willingness of

²²¹ See *infra* tbl.1, *Middlemen Delayed Payment Terms*. The provision of credit by the farmer to the middleman transforms what would otherwise be a spot transaction into a complex transaction. See *id.*

²²² See *id.*

²²³ See *id.*

²²⁴ See McMillan & Woodruff, *supra* note 157, at 1287.

²²⁵ See *id.* at 1307–09.

²²⁶ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2426.

²²⁷ See *id.* at 2455–56.

²²⁸ Compare McMillan & Woodruff, *Private Order*, *supra* note 21, at 2422, with Quinn & Vu, *supra* note 2.

²²⁹ See Quinn & Vu, *supra* note 2.

²³⁰ See *id.*

²³¹ See *id.*

²³² See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2431.

farmers to grant credit is lacking. Instead, farmers appear to be uniformly willing to grant credit to middlemen with little regard to the degree of competition for their fruit. Farmers in more competitive markets (greater than six approaches per year) are just as likely to grant credit as farmers in less competitive markets.²³³

1. Contracts

The form of contract used in the Mekong Delta is befitting of the setting: informal.²³⁴ Only about 10% of farmers report relying on written contracts. 46.1% of farmers rely on oral contracts while 42.2% report no agreement at all with buyers, the functional equivalent to an oral contract.²³⁵ Middlemen report a similar experience, with 85% relying on oral contracts.²³⁶ The prevalence of oral contracts in this market is intriguing because delayed payment terms create risks that are exacerbated by the lack of written documentation, thus giving rise to the potential for disagreement as memories fade.

The survey data further highlights a relationship between reliance on written versus oral contracts and the amount of competition in the market.²³⁷ Farmers who report little to moderate competition for their fruit (zero to two approaches per year) rely exclusively on oral contracts to document their sales to middlemen.²³⁸ Farmers who report extremely competitive markets, on the other hand, are more likely to rely on written contracts.²³⁹ 44.4% of farmers who entertain offers from more than twenty middlemen per year also report relying on written contracts.²⁴⁰ Where there is less economic lock-in and competition is more prevalent, it appears clear that buyers are more likely to attempt to protect their positions and demand written contracts.²⁴¹ The strength of the legal rights created by these written contracts is less obvious.

2. Dispute Resolution

Disputes between farmers and middlemen are not unexpected. Indeed, 45% of middlemen report knowing of disputes in which a

²³³ See *infra* tbl.2, *Middlemen Approaches to Farmers*.

²³⁴ See Quinn & Vu, *supra* note 2.

²³⁵ See *id.*

²³⁶ See *id.*

²³⁷ See *id.*

²³⁸ See *id.*

²³⁹ See Quinn & Vu, *supra* note 2.

²⁴⁰ See *id.*

²⁴¹ See *id.*

farmer broke an agreement.²⁴² Thirty-four percent of middlemen report having had problems with farmers themselves.²⁴³ Of the middlemen who report having performance problems with farmers, half report that farmers cancelled contracts in order to sell the contracted upon fruit to another buyer for a higher price.²⁴⁴ Other problems relate to disputes about price and quality of fruit upon delivery.²⁴⁵

Although cheating by middlemen is not altogether common, it is not distant from the minds of many farmers.²⁴⁶ Farmers also report having trouble with middlemen, though in smaller numbers. While only 10% of farmers report having had difficulties with middlemen in the previous five years, nearly a third, approximately 31%, of farmers in the survey report knowing someone who was cheated by a middleman.²⁴⁷ The most common problem reported by farmers is the failure of middlemen to make complete payment for fruit that they take.²⁴⁸

For the most part, farmers manage disputes by simply bearing their losses and moving on. Of those farmers who reported problems with middlemen, 44% terminated their business relationship without resorting to any third-party for assistance.²⁴⁹ The next most common response was to attempt to negotiate a solution with the middleman without third-party assistance.²⁵⁰ Of those farmers who went to third-parties, only 22% of farmers went to either the formal dispute resolution system (for example, courts) or a quasi-formal system (for example, local law enforcement or government officials) for help in resolving a contract dispute.²⁵¹ Given the itinerant nature of middleman and the high costs of tracking down those who default, formal dispute reso-

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See Quinn & Vu, *supra* note 2.

²⁴⁵ See *infra* tbl.3, *Farmer Problems with Middlemen*. Here the problems faced by middlemen might be caused by moral hazard. See Quinn & Vu, *supra* note 2. Farmers might skim the highest quality fruit to sell on the retail market themselves or help dispose of their neighbor's lower-than-average quality fruit by adding it to their sale thus leaving middlemen with lower than expected quality fruit for the agreed price. See *id.*

²⁴⁶ See Takamasa Akiyama, *Coffee Market Liberalization Since 1990*, in WORLD BANK, COMMODITY MARKET REFORMS: LESSONS OF TWO DECADES 83, 85 & 118 nn.3, 6 (Takamasa Akiyama et al. eds., 2001) (noting the persistence of the cheating middleman stereotype in countries such as Vietnam despite the apparent weakness of empirical evidence of actual cheating of farmers by middlemen).

²⁴⁷ See Quinn & Vu, *supra* note 2.

²⁴⁸ See *infra* tbl.4, *Farmer Problems with Middlemen*.

²⁴⁹ See *infra* tbl.5, *Dispute Resolution Methods (Farmers)*.

²⁵⁰ See *id.*

²⁵¹ See *id.*

lution would not often be cost effective and moving on might be the only option reasonably available to farmers.²⁵²

In the absence of strong legal rights and an effective dispute resolution system, one would expect farmers to rely on private ordering structures, like relational contracting, to increase the likelihood of contract performance. Vietnam's pomelo farmers, however, do not. The farmer's live-and-let-live approach has implications for the way farmers do business and make investments often leading them to make sub-optimal investments in fruit cultivation.²⁵³ In theory, weak legal rights and a lack of reliance on private ordering structures could limit upward growth potential.²⁵⁴ One would suspect that this is not an equilibrium position for market participants. The farmer's approach, however, does not extend to doing additional business with a middleman with whom the farmer had had a previous dispute. In those situations, more than 95% of farmers refused to transact.²⁵⁵

Middlemen, on the other hand, exhibit different tendencies with regard to dispute resolution. Where nearly half of farmers will simply bear a loss and move on, only 16% of middlemen are willing to do so in the event of a default by a farmer.²⁵⁶ More than 80% will attempt to negotiate an equitable solution or go to third parties to seek a resolution.²⁵⁷ The difference in the approaches of farmers and middlemen in resolving contract disputes is likely a function of the variation in enforcement costs.²⁵⁸

Unlike farmers, middlemen seek performance of their contracts when confronted with disputes from identifiable and stationary counterparties.²⁵⁹ Because farmers are easily located, middlemen can cheaply

²⁵² See *id.*

²⁵³ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2424–35 (discussing the impact of the “shadow of the future”—here, the potential for middleman default and the low probability of redress—on the economic decisions of actors); see also Quinn & Vu, *supra* note 2. Because a farmer approaches every transaction with the understanding that she will likely have no recourse in the event of dispute (for example, middleman avoiding payment), the present value of the farmer's enterprise is less than it might otherwise be. See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2424–35.

²⁵⁴ But see Ulrike Malmendier, *Law and Finance “at the Origin,”* 47 J. ECON. LIT. 1076, 1092–94 (2009) (analyzing corporate structures in ancient Rome and suggesting that the presence or absence of formal legal rights is not determinative of the potential size of enterprises). Malmendier argues that law is just one of many factors influencing firm growth, and not necessarily a decisive one. See *id.*

²⁵⁵ See Quinn & Vu, *supra* note 2.

²⁵⁶ See *id.*

²⁵⁷ See *infra* tbl.5, *Dispute Resolution Methods (Farmers)*.

²⁵⁸ See *infra* tbl.6, *Dispute Resolution Methods (Middlemen)*.

²⁵⁹ See *infra* tbl.5, *Dispute Resolution Methods (Farmers)*.

initiate negotiations or bring in third-parties, like local policemen, in order to resolve a contractual dispute.²⁶⁰ In this context, written contracts become valuable, not so much for their legal force, but rather for their moral force.²⁶¹ Without this moral force it can be difficult for a middleman, an outsider, to engage a third party, like a policeman, to assist in negotiations with the defaulting farmer, an insider.²⁶²

Conversely, for farmers, written contracts in complex transactions are less valuable.²⁶³ If the middleman absconds on a promise to pay, he is unlikely to return. Farmers are then left holding an empty promise. Since middlemen are itinerant, farmers' enforcement costs against middlemen are prohibitively high.²⁶⁴ Farmers are unlikely to be able to expend the resources necessary to track down middlemen to seek performance.²⁶⁵ It is no surprise that, in such situations, farmers put little stock in written contracts and formal legal rights.²⁶⁶ Furthermore, one can see that, absent other changes, more efficient formal legal structure may not do much to address the disparity in enforcement costs that dissuades farmers from attempting to access the formal system.

3. Reputation and Relational Contracting

Where legal rights are weak and parties are engaging in complex transactions, one expects to see parties rely on private ordering struc-

²⁶⁰ See Quinn, *supra* note 103, at 255 (discussing the role of police in dispute resolution).

²⁶¹ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2436 (discussing decreased future business in community as retaliation for breach of agreement).

²⁶² See *id.* at 2436; Quinn, *supra* note 103, at 255 (discussing the role of third parties in dispute resolution).

²⁶³ See *infra* tbl.4, *Farmer Problems with Middlemen*. Only half of farmers negotiate with the middleman or seek resolution from the court system, local government or police. *Id.*

²⁶⁴ See Quinn & Vu, *supra* note 2; *infra* tbl.4, *Farmer Problems with Middlemen* (44.4% of farmers do nothing to resolve disputes with middlemen, suggesting the futility of an attempt).

²⁶⁵ See Quinn & Vu, *supra* note 2. One expects that a farmer seeking to maximize his investments should want to pair with a middleman in a long-term relationship, thereby creating incentives to guarantee performance. See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2426. Nevertheless, only 21% of farmers who report being cheated in the past five years have since established long-term contracting relationships with middlemen. See Quinn & Vu, *supra* note 2. This result is counter-intuitive as only 27% of farmers in the larger sample rely on relational contracting. See *id.* This may indicate that farmers, having been cheated, become less willing to enter into relational contracts until they have more information about the quality of their counterparty. See *infra* Part III.C.2-3.

²⁶⁶ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2431 (discussing farmers' lack of trust in the legal system).

tures, like reputation mechanisms or relational contracting.²⁶⁷ Reputation and relational contracting provide parties with an extended time horizon over which to do business, thereby reducing the value of acting opportunistically.²⁶⁸ The deterrence provided by an extended time horizon can be a powerful and reasonably low-cost self-help strategy.²⁶⁹ Where legal rights are weak, these low-cost contracting strategies can provide a reasonable alternative to formal enforcement mechanisms.²⁷⁰

Not surprisingly, farmers report in large numbers that a buyer's reputation is important in their decisions whether or not to do business.²⁷¹ Yet, in order for reputation to have a valuable incentive effect, buyers and sellers must be able to costlessly generate and transmit credible reputation information to potential counterparties.²⁷² Social institutions can often facilitate functioning reputation markets. In the Mekong Delta, however, it is not clear that there exists an efficient mechanism for middlemen to transmit reputation information—either directly or indirectly—about their quality as business partners to farmers with whom they intend to do business. Rather, highly localized social institutions of the Mekong Delta appear ill-suited to function as efficient reputational intermediaries in the region's fruit markets for many reasons.

First, farmers are relatively isolated. Their communications and transportation links are not good.²⁷³ Although farmers can gather informally with their close neighbors and share information among themselves about the reputations of middlemen, such information is

²⁶⁷ See DIXIT, *supra* note 64, at 12, 62.

²⁶⁸ See *id.* at 12 (“[R]eputational considerations can deter opportunistic behavior.”).

²⁶⁹ See *id.* (“If the same parties interact with each other repeatedly, and they value the future significantly highly relative to the present, then the prospect of a long-term collapse of the relationship can control the temptation to obtain a short-term gain.”).

²⁷⁰ See *id.* at 62 (noting that relation-based governance has low total costs and works well in small groups within less-developed economies); McMillan & Woodruff, *Private Order*, *supra* note 21, at 2425 (providing that “[i]n countries with dysfunctional legal systems . . . relational contracting may replace the law altogether”).

²⁷¹ See Quinn & Vu, *supra* note 2. Farmers report that they would not do business with someone if they had heard that she had either not paid or otherwise cheated another farmer (90% and 92.2%, respectively). See *id.*

²⁷² See DIXIT, *supra* note 64, at 67–74 (noting that “good information networks” are needed for loss of reputation to deter cheating behavior); McMillan & Woodruff, *Private Order*, *supra* note 21, at 2422–30 (“In close-knit communities, where people interact with each other frequently and information flows freely, people may adhere to social norms of cooperation because it is in their long-term interest to do so.”).

²⁷³ See Quinn & Vu, *supra* note 2.

highly localized.²⁷⁴ Furthermore, a poor reputation in one area will not likely affect a middleman's reputation in another because farmers, limited in terms of transportation and communications, have little ability to convey such information beyond their immediate circle of relationships absent some other intermediary.²⁷⁵

Second, whereas in other well-known studies of private ordering, strong ethnic, cultural or family ties bind buyers and sellers together, such ties are not significant barriers to entry into Vietnam's fruit trading business.²⁷⁶ In general, the continuity of social relationships and the threat of exclusion from a group can create a powerful incentive for self-enforcement equivalent.²⁷⁷ Where buyers and sellers are bound together by such ties, reputation can be a powerful mechanism. In the fruit business, however, there is no evidence that any particular ethnic or family ties bind farmers to middlemen with whom they do business.²⁷⁸ Instead, the area studied was dominated by farmers of the majority *Kinh* group.²⁷⁹ The lack of significant entry barriers in the trading business suggests that it would be difficult, if not impossible, to exclude bad actors through ostracism by a group.²⁸⁰

Though there are a number of formal institutions that have the potential of facilitating reputation information, none presently do so. In any event, participation in such institutions is relatively low. For example, only twenty-two percent of farmers report being members of any formal organization at all.²⁸¹ The most common of these is the produc-

²⁷⁴ See DIXIT, *supra* note 64, at 67–74 (noting the more localized information is, the less useful it is in supporting reputation-based governance).

²⁷⁵ See *id.*

²⁷⁶ Compare Quinn & Vu, *supra* note 2, with GRIEF, *supra* note 67, at 279 (explaining that for medieval traders, family and cultural ties formed the basis for the social institutions that underlay long-distance trade), and Bernstein, *supra* note 53, at 139–41 (discussing diamond traders who were connected by a common cultural and ethnic background), and Landa, *supra* note 53, at 355–56 (discussing ethnic Chinese merchants tied together by common ethnicity and family ties).

²⁷⁷ See Bernstein, *supra* note 53, at 138–44; Landa, *supra* note 53, at 351.

²⁷⁸ See Quinn & Vu, *supra* note 2.

²⁷⁹ See *id.*

²⁸⁰ See *id.* In other contexts, trading activity in the Mekong Delta had been dominated by ethnic Chinese, but this is not the case in the fruit markets. See Landa, *supra* note 53, at 351; Quinn & Vu, *supra* note 2. Where a majority group does not dominate, ostracism is a more powerful deterrent. See Bernstein, *supra* note 53, at 33 (explaining that in markets where contract enforcement depends on social or reputational damage, the formation of an extralegal contract depends on formation regarding the reputations of market participants).

²⁸¹ See Quinn & Vu, *supra* note 2. National and regional associations can play an information sharing role because they can provide information to farmers who might otherwise be highly localized. See Landa, *supra* note 53, at 359–60. Though there are a number of

tion cooperative (*hop tac xa*), the main function of which is to provide technical and extension services.²⁸² Few farmers who participate in these cooperatives report that these organizations provide information about the marketplace, reputations of middlemen, or serve to resolve potential problems with middlemen.²⁸³ The Vietnam Fruit Association, a trade association for fruit farmers and the fruit industry, also fails to play a significant role as a reputation intermediary.²⁸⁴ Although, the association is less localized than cooperatives and might be well placed to provide reputation information, it does not play a gatekeeping role for either farmers or middlemen.²⁸⁵ In name, it is a “national” association but it is not truly present in many farming communities.²⁸⁶ Even where it is present, it does not appear to be organized to coordinate information sharing of the type that would be useful to farmers or middlemen in assessing the quality of a potential trading partner.²⁸⁷

Finally, as noted above, barriers to entry and exit for middlemen are low.²⁸⁸ Ordinarily, market access and the threat of market exclusion can be important incentives for market participants to conform to expectations.²⁸⁹ Middlemen neither benefit from, nor are they constrained by, natural territorial monopolies.²⁹⁰ They are itinerant, ranging great distances in their buying and selling activities, and can drop in and out of the business at will.²⁹¹ A majority of middlemen lease their boats, fur-

formal associations for farmers, there are no associations presently acting as reputation intermediaries between farmers and middlemen. See Quinn & Vu, *supra* note 2.

²⁸² See Quinn & Vu, *supra* note 2.

²⁸³ See *id.*

²⁸⁴ See *infra* tbl.7, *What Information Do You Get From Local Organizations?*. Outside the fruit market, there are examples of trade associations playing a role as a reputation intermediary. See GREIF, *supra* note 67, at 300; Bernstein, *supra* note 53, at 132–35, 138–39. In those cases, however, membership in the association is required to participate in the business activity. See GREIF, *supra* note 67, at 279; Bernstein, *supra* note 53, at 132–35, 138–39. In the diamond industry, participation in the diamond association is required in order to participate in the market. Bernstein, *supra* note 53, at 119; see Barak D. Richman, *Ethnic Networks, Extralegal Certainty, and Globalisation: Peering Into the Diamond Industry*, in LEGAL CERTAINTY BEYOND THE STATE (Volkmar Gessner, ed., forthcoming).

²⁸⁵ Compare Bernstein, *supra* note 53, at 133–34, 138–44 (examining the diamond association’s role in the market), with Quinn & Vu, *supra* note 2 (finding a lack of a role of the Fruit Association in the market).

²⁸⁶ See Quinn & Vu, *supra* note 2. Less than twenty percent of farmers report being members. See *id.*

²⁸⁷ See *infra* tbl.7, *What Information Do You Get from Local Organizations?*; see also Quinn & Vu, *supra* note 2.

²⁸⁸ See Quinn & Vu, *supra* note 2.

²⁸⁹ See Bernstein, *supra* note 53, at 138–44; Landa, *supra* note 53, at 351–52.

²⁹⁰ See Quinn & Vu, *supra* note 2.

²⁹¹ See *id.*

ther increasing the variability of their participation.²⁹² To compound matters, there are no administrative regulations that govern their business activity or formal organizations that they might be required to join to enter this business.²⁹³ Nor is there any formal or informal association of traders that might act to filter bad actors out of the market.²⁹⁴ In sum, these low barriers to entry and exit make the threat of exclusion of bad actors difficult, if not impossible to effectively enforce.²⁹⁵

Farmers' networks in the Mekong Delta fail to perform private ordering functions for two reasons. First, farmers and their networks do not necessarily overlap with the networks of middlemen.²⁹⁶ Whereas buyers and sellers in other markets, like the diamond markets of New York City, share important social and cultural ties outside of the diamond trade, that is not necessarily the case in the Mekong Delta.²⁹⁷ Farmers and middlemen, though they share cultural and ethnic traits, are brought together almost exclusively for the purpose of transacting business. Second, farmers are unable to exclude bad actors from the trade. While in the case of diamond traders, exclusion from the social and cultural group, and thus effectively from the diamond trade, is an effective deterrent to opportunistic behavior, no such power of exclusion exists in the fruit markets of the Mekong Delta.²⁹⁸ Although there are barriers to entry for middlemen, none are controlled by farmers.²⁹⁹ In the absence of an excludable common social network, there is little

²⁹² See *id.* 55.3% of middlemen do not own the boats that they use. See *id.*

²⁹³ Compare Bernstein, *supra* note 53, at 119–20 n.6 & 121 nn. 11, 13 (discussing the by-laws of the association regulating the diamond marketplace), with Quinn & Vu, *supra* note 2 (finding a lack of regulations).

²⁹⁴ Compare Bernstein, *supra* note 53, at 119–21, 138–43 (noting both the formal and informal bonds within the diamond business), with Quinn & Vu, *supra* note 2 (finding a lack of any informal or formal associations). While this is true at the farm-gate, there is some evidence from interviews with middlemen that at the wholesale level—for example at the Ho Chi Minh City markets—middlemen face higher barriers to entry. See Quinn & Vu, *supra* note 2.

²⁹⁵ Compare Bernstein, *supra* note 53, at 138–41 (contending that diamond traders were connected by a common cultural and ethnic background that made reputation a powerful mechanism for self-enforcement), and Landa, *supra* note 53, at 349, 351–52 (providing that Chinese merchants were bound by common ethnicity and family ties that constrained market behavior), with Quinn & Vu, *supra* note 2 (finding a lack of barriers to entry and exit into the market for middlemen in the Mekong Delta).

²⁹⁶ See Quinn & Vu, *supra* note 2.

²⁹⁷ Compare Bernstein, *supra* note 53, at 139–41 (describing the cultural and reputational bonds between those in the diamond markets), with Quinn & Vu, *supra* note 2 (finding a lack of any informal association).

²⁹⁸ See Richman, *supra* note 284; Quinn & Vu, *supra* note 2.

²⁹⁹ See Quinn & Vu, *supra* note 2.

room for reputation to be an effective deterrent.³⁰⁰ Finally, farmers' networks tend to be highly localized while middlemen can range great distances.³⁰¹ The intense localization of reputation information means that the costs to a middleman for opportunistic behavior can be heavily discounted.³⁰²

At the time of the survey, few farmers appear to have already established long-term relationships with middlemen.³⁰³ Only 27% of farmers surveyed report selling their entire gardens to repeat buyers and a far larger percentage, 68%, report selling their garden to multiple buyers.³⁰⁴ Although they appear willing to make such investments, farmers report only a minimal premium on the value of a long-term relationship.³⁰⁵ This value can be ascertained by the size of the premium required to cause a farmer to switch from one buyer to another. In our study, farmers report that they would be willing to leave their current middleman and move to a new middleman for an average price increase in the range of only 5–10%.³⁰⁶ It may well be that farmers are under pricing the value of relational contracting, particularly if, by entering into complex transactions with middlemen that enable middlemen to access more valuable markets at greater distance.³⁰⁷

Notwithstanding the problem of pricing the value of a relational contract, farmers remain faced with the challenge of determining whether a stranger seeking a complex transaction is a good risk or a bad one. In this context, reputation is not a reliable signal and parties have not developed robust relationships. Therefore, to develop relational contracting and move beyond spot market transactions, farmers must engage in other approaches.

³⁰⁰ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2440 (stating that without community cooperation in refusing to trade with those in bad standing, reputation-based sanctioning ceases to function as a deterrent to future cheating).

³⁰¹ See Quinn & Vu, *supra* note 2.

³⁰² See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2440 (noting that “since checking on the status of each potential trading partner is a costly activity, traders had to be given an incentive not to free ride”). This is not necessarily the case with middlemen who may be able to use interactions with other middlemen at wholesale markets higher in the commodity stream to trade information about farmers. See *id.* at 2457 (noting that competition gives middlemen strong incentives to monitor clients).

³⁰³ See Quinn & Vu, *supra* note 2. Given the relatively young life of the pomelo market it is not entirely surprising that the survey instrument may have captured a snapshot of a market in development. See *id.*

³⁰⁴ See *id.*

³⁰⁵ See *id.*

³⁰⁶ See *id.* Eighty percent of farmers report that they would switch from one middleman to another in order to get the small premium. See *id.*

³⁰⁷ See *id.*

Our survey indicates that farmers appear to diversify their sales in order to generate information about potential business partners—a first step towards relational contracting.³⁰⁸ Diversification is a common strategy adopted by farmers around the world to reduce the intensity of bad outcomes.³⁰⁹ Farmers can employ diversification strategies to manage exogenous risks, like weather or crop disease.³¹⁰ One of the most significant risks that Mekong Delta fruit farmers face is contract default in transactions with middlemen.³¹¹ Thus, it is not surprising that Vietnamese farmers would likewise adopt a pattern of diversifying their sales to mitigate the risk of contract default. The pattern of diversification minimizes the costs of contract default across the farmer's portfolio of sales and permits farmers to provide credit to strangers in the absence of strong legal rights or other private ordering mechanisms.³¹²

³⁰⁸ See Quinn & Vu, *supra* note 2.

³⁰⁹ See Boris E. Bravo-Ureta, Horacio Cocchi & Daniel Solís, *Output Diversification Among Small-Scale Hillside Farmers in El Salvador* 1 (OME Office of Evaluation & Oversight, Working Paper OVE/WP-17/06, 2006), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=912167> (noting that diverse agricultural strategies are used in less developed regions to reduce various risks including pest and disease and lessening price fluctuations).

³¹⁰ See MARCEL FAFCHAMPS, FOOD AND AGRICULTURE ORGANIZATION, RURAL POVERTY, RISK AND DEVELOPMENT 8 (1999) (describing the manner in which rural farmers seek to manage their exposure to risk through “portfolio diversification,” including “plant[ing] different crops, or several varieties of the same crop to obtain a more stable output”); BBC World Serv. & Natural Res. Inst., *In the Field, Sustainable Livelihoods: Vulnerability, Complexity and Diversification*, <http://www.nri.org/projects/InTheField/vulnerability.htm> (last visited Apr. 20, 2010) (explaining that farmers reduce risk by diversifying their crop production, sale markets, and income sources).

³¹¹ See Quinn & Vu, *supra* note 2.

³¹² See S. TIMOTHY KOCHIS, WEALTH MANAGEMENT: A CONCISE GUIDE TO FINANCIAL PLANNING AND INVESTMENT MANAGEMENT FOR WEALTHY CLIENTS 97 (2007) (summarizing the economic principles behind the concept of portfolio diversification). A Vietnamese farmer's approach to its portfolio of contracts with middlemen is rooted in the same economic principles governing, for example, an individual investor's approach to purchasing stock. *Cf. id.* (“[W]ithin any general investment category, such as common stocks or bonds, effective diversification will eliminate unsystematic risk.”) The farmer's portfolio of contracts represents a set of risky assets just as an investor's portfolio of securities does; in both instances diversification decreases the amount of downside risk because underperformance by one contract or one type of stock is hedged against by the performance of the rest of the portfolio of assets, taken as a whole. *See id.* Consequently, when either a Vietnamese farmer or a securities investor evaluates whether to include a particular asset in the portfolio, the risk of that investment is assessed “in relation to the overall portfolio, not just the individual risk in isolation.” *See id.* In the specific case of Vietnamese farmers conducting business without relying heavily on relational contracting or other risk-mitigating approaches, the management of risk through portfolio diversification allows the farmer to make ostensibly “riskier” economic decisions (that is, providing credit in speculative sales to strangers), which they otherwise might not make without the hedge of a diversified portfolio of contracts. *See* Quinn & Vu, *supra* note 2; *cf.* KOCHIS, *supra*, at 97 (explaining portfolio diversification in terms of stocks and bonds).

A large majority of farmers, sixty-eight percent, adopt this portfolio approach to their sales. In doing so, farmers consciously split their garden into smaller lots and sell each of these lots to multiple buyers—strangers as well as those with whom they have extensive relationships.³¹³ Selling in smaller lots, raises costs at the margin for buyers. Accordingly, this pattern of sales appears to be driven by farmers, not middlemen.³¹⁴ Farmers can maximize the expected value of their sales while minimizing the costs of the downside risks of contract default by allocating sales among different classes of buyers, including providing credit in speculative sales to strangers.³¹⁵ In that way, the portfolio strategy provides farmers with cheap insurance against default.³¹⁶

Diversification of sales, however, is not an efficient private ordering strategy.³¹⁷ Even though it may mitigate *ex ante* the expected costs of default, diversification does nothing to alter the *ex post* incentives in a way that might promote self-enforcement by buyers.³¹⁸ Unlike relational contracting or reliance on reputation, buyer default does not result in the buyer incurring any direct or indirect costs that might otherwise act as a deterrent. Diversification may result in a stable portfolio of farmer sales over time but it does not lead to durable individual con-

³¹³ See Quinn & Vu, *supra* note 2. Predictably, a very small minority of farmers, four percent, sell their entire garden to strangers in the fashion described above. *See id.*

³¹⁴ *See id.* It is more profitable for middlemen to cut short the collection period and fill their boats with the fewest number of purchases possible rather than to accept large numbers of small lot purchases. As a result it seems clear that the portfolio approach is driven by farmers, not middlemen. *See id.*

³¹⁵ See KOCHIS, *supra* note 312, at 97; *supra*, note 311.

³¹⁶ See generally FAFCHAMPS, *supra* note 310 (describing the manner in which rural farmers seek to manage their exposure to risk through “portfolio diversification”); see also Williamson, *supra* note 3, at 485–86 (“Commercial contracting will be better served if parties are cognizant of the embeddedness conditions of which they are a part and recognize, mitigate, and price out contractual hazards in a discriminating way.”). Other authors, while not as explicit in their support of this economic view of trust, nevertheless embed concepts of an implicit calculation in their descriptions of trust. See HARDIN, *supra* note 60, at 11–12; Cox, *supra* note 60, at 263. Trust can be defined as “an action that . . . creates the possibility of mutual benefit, if the other person is cooperative, and the risk of loss to oneself if the other person defects.” HARDIN, *supra* note 60, at 11–12; see Cox, *supra* note 60, at 263.

³¹⁷ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 642–43 (suggesting that an inability to monitor trading partners leads to a reluctance to sanction the business partner, thereby encouraging opportunism and undermining cooperation); McMillan & Woodruff, *Private Order*, *supra* note 21 at 2423 (stating that private ordering is ‘not feasible’ where parties can easily enter and leave the marketplace because alternative trading partners are readily accessible).

³¹⁸ See McMillan & Woodruff, *supra* note 155, at 1311–12 (noting that the time-dependent effects of product sales to suppliers parallel those made to customers where concentrated sales of one product are subject to greater risks from market fluctuations).

tracts.³¹⁹ Consequently, farmers engaging in this type of contracting are not likely in an equilibrium position.³²⁰

While diversification does not lead directly to sustainable contracting, it does create opportunities for farmers to seek out good middlemen.³²¹ Farmers engaging in diversification of their sales are able to test multiple buyers in order to determine which buyers might be good long-term business partners.³²² By relying on diversification, farmers are able to provide credit to a stranger with whom they have previously not done business and thereby test the trustworthiness of multiple trading partners without bearing the excessive costs associated with default.³²³ Dealing with strangers in this way creates opportunities for parties to gradually develop long-term relationships with the best trading partners while revealing the unreliable and ceasing to send business their way.³²⁴

Consistent with that tacit strategy, middlemen report that initial purchases from farmers tend to be small and increase over time.³²⁵ Particularly, they report placing smaller average orders with farmers with whom they have not done previous business. In fact, the average size of purchases from initial sellers is only thirty-five percent of the average size of purchases from repeat sellers.³²⁶ Furthermore, more than ninety percent of farmers report that they would not continue to do business with a middleman who they felt cheated them.³²⁷

Taken together with the high turnover of trading partners, this data suggests farmers are using diversification strategies to search for reliable business partners.³²⁸ As a middleman proves his reliability, farmers may move more of their business to him. Those who default on their promises have the prospect of future business taken away.³²⁹

³¹⁹ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 648–49 (noting that where a business partner sells customized products to another, there is a willingness to sanction the customer who cheats; notably, however, the effect of such sanctions is not significant).

³²⁰ See Quinn & Vu, *supra* note 2.

³²¹ See *id.*

³²² See *id.*

³²³ See *id.*

³²⁴ See AXELROD, *supra* note 53, at 12–13, 20–21.

³²⁵ See Quinn & Vu, *supra* note 2.

³²⁶ See *id.*

³²⁷ See *infra* tbl.8, *Average Quantities Purchased Over Past Three Years (Tons)*.

³²⁸ See Quinn & Vu, *supra* note 2.

³²⁹ Cf. AXELROD, *supra* note 55, at 20–21 (describing such a strategy in the context of computer simulations). Axelrod found that a “tit-for-tat” strategy beginning with “small clusters of individuals” can spread and establish the basis for cooperation across the board. *Id.* Following a tit-for-tat strategy, parties should be quick to extend trust to strangers but

IV. FARMERS, MIDDLEMEN AND THE RULE OF LAW MOVEMENT

The experience of farmers and middlemen in Vietnam's Mekong Delta helps provide answers to some of the questions raised by the new rule of law movement. First, after twenty-five years of pursuing an aggressive legal reform agenda with a focus on the development of legal institutions appropriate to a market economy, formal legal rights and supporting institutions in Vietnam are still weak.³³⁰ In the decade following the work of McMillan and Woodruff, although there has been a substantial amount of activity in the legal development area, there has not been demonstrable improvement in the perceived quality of formal legal institutions and formal legal rights.³³¹ Notwithstanding efforts to develop and reform the formal dispute resolution system through the courts system or the delineation of formal legal rights through the drafting of legislation, market participants in the Mekong Delta have little or no expectation that written contracts have sufficient force to compel performance and, as a result, do not rely on them.³³² Clearly after a quarter-century of effort, legal reform and the development of formal institutions in Vietnam is still a work in progress. Moreover, the work of developing these formal legal institutions is appropriately defined as a long-term effort. Trubek and others correctly suggest that given the long-term potential payout, investments in the formal legal system have to be long-term and made for their own sake, not with the misperception that such investments will result in improved economic results in the short or medium term.³³³

Additionally, notwithstanding the lack of effective formal institutions farmers, middlemen, and other economic actors are willing to make long-term investments of the type one might not expect were it

then punish quickly by withholding future business. *See id.* Counter-parties who prove themselves trustworthy are rewarded by additional cooperation in subsequent rounds. *See id.*

³³⁰ *See* Quinn & Vu, *supra* note 2; *see also* Seth Mydans, *Rural Ventures in Vietnam Suffer in the Global Crisis*, N.Y. TIMES, Sept. 29, 2009, at A8 (stating that Vietnam's entrance into the World Trade Organization in 2007 was "a step that required revisions of [Vietnam's] legal infrastructure, banking system and regulations that are still causing pain as they reapplied").

³³¹ *See* McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 637-38.

³³² *See* Quinn & Vu, *supra* note 2. In a high-trust society like the United States, market participants may also forego written contracts when doing business. *See* Macauley, *supra* note 10, at 58. Though, in such situations parties are able to adopt this informal stance because they are, in effect, contracting in the shadow of the law. *See id.* at 62.

³³³ *See* Trubek, *supra* note 4, at 74-76, 93-94; *see also* Tamanaha, *supra* note 51, at 484-85.

true that formal legal systems are a prerequisite to such activity.³³⁴ Farmers, for example, are willing to make long-term investments in fruit trees with no assurance that in the out years, middlemen will make good on their commitments to purchase fruit.³³⁵ For their part, fifty-five percent of middlemen appear willing to make long-term investments in capital assets namely, their boats. Therefore, if law and formal legal structures were a prerequisite for economic activity and economic growth in a post-transition economy, neither the farmer nor the middlemen would be expected to make such long-term investments.³³⁶

Further, in the absence of formal legal rights, market participants find ways to structure their interactions in order to raise the probabilities of performance.³³⁷ Farmers appear willing to do business with strangers.³³⁸ This differs from other contexts where outsiders have difficulty establishing the relationships required to enter into commercial relationships with insiders.³³⁹ Vietnamese fruit farmers demonstrate an openness to doing business with strangers that is shared with their urban cousins in private manufacturing enterprises.³⁴⁰ This farmer risk-taking is likely part of an implicit strategy to develop relational contracts with middlemen. Farmers, for example, appear to take chances on unknown middlemen and provide them with a small amount of credit.³⁴¹ In the event middlemen make good on their promises, farmers continue to do business and increase the size of their subsequent contracts.³⁴² Again, this strategy is not dissimilar to contracting strategies undertaken by manufacturing enterprises in urban areas sampled by McMillan and Woodruff.³⁴³

Finally, farmers and middlemen tend not to rely on formal institutions for the resolution of disputes. Instead, parties rely more on direct negotiation to resolve disputes or simply write off losses and move

³³⁴ See Quinn & Vu, *supra* note 2.

³³⁵ See *id.*

³³⁶ See *id.*

³³⁷ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421–23.

³³⁸ See Quinn & Vu, *supra* note 2.

³³⁹ See Landa, *supra* note 53, at 354–55, 356.

³⁴⁰ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 651.

³⁴¹ See Quinn & Vu, *supra* note 2.

³⁴² See *id.*

³⁴³ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 652 (describing, through anecdotal accounts, the process by which new trading partners become accustomed to one another and expand their trading relationships and noting that “[e]xperience in dealing with a trading partner substitutes for preexisting . . . connections.”).

on.³⁴⁴ Of course, rural market participants are typically more remote from formal legal structures than perhaps urban market participants, so the fact that they eschew reliance on formal legal structures should not be altogether surprising.³⁴⁵ Farmers and middlemen who were the focus of the survey here are not, however, dissimilar to other economic actors who show a willingness to make long-term investments despite the weakness of formal legal institutions.³⁴⁶

If one examines Vietnam's external relationships, for instance, one finds a similar pattern of risk taking in the presence of weak legal systems—precisely the type that should theoretically be forewarned by inadequate legal structures.³⁴⁷ In the area of foreign trade, Vietnam has enjoyed rapid growth in trade relations over the past decade notwithstanding predictions that weak formal legal structures would inhibit such growth.³⁴⁸ Though Vietnam and the United States have only recently adopted their bilateral investment agreement, the benefits for Vietnam of this market-opening treaty are obvious.³⁴⁹ Trade with the

³⁴⁴ See *infra* tbl.5, *Dispute Resolution Methods (Farmers)*; *infra* tbl.6, *Dispute Resolution Methods (Middlemen)*.

³⁴⁵ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 644; see also UNITED NATIONS DEV. PROGRAMME, *supra* note 135, at 7, 9, 11, 15 (noting the discrepancy between urban and rural areas in Vietnam with respect to awareness of judicial institutions, awareness of legal reforms, access to judicial institutions, and, most tellingly, confidence in judicial institutions).

³⁴⁶ See Quinn & Vu, *supra* note 2.

³⁴⁷ See INT'L BUS. PUBL'NS, USA, VIETNAM: FINANCIAL AND TRADE POLICY HANDBOOK 149 (4th ed. 2008) (describing the legal difficulties associated with the development of a more market-oriented economy in Vietnam, which include confusion among officials implementing the laws, varying interpretations, shortages of lawyers, law-graduate judges, and law professors, and inadequate dissemination of information about the laws); Lisa Toohey, *Stepping Stones and Stumbling Blocks: Vietnam's Regional Trade Arrangements and WTO Accession*, in CHALLENGES TO MULTILATERAL TRADE: THE IMPACT OF BILATERAL, PREFERENTIAL AND REGIONAL AGREEMENTS 65, 73–74 (Ross Buckley et al. eds., 2008) (detailing Vietnam's intense desire to integrate into the global trading system, as evidenced by its pursuit of bilateral and multilateral trade agreements as well as its accession to the WTO in 2006, and revealing that Vietnam is still understood to be transitioning toward the rule of law); see also DIXIT, *supra* note 64, at 3 ("Of course economic activity does not grind to a halt because the government cannot or does not provide an adequate underpinning of law. Too much potential value would go unrealized . . .").

³⁴⁸ Compare McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 639–40 (contending that despite the obstacles Vietnam faces as a transition economy, a thriving private sector has emerged), with DIXIT, *supra* note 64, at 65–67, 80–84 (suggesting that in the absence of strong legal rights there should be a negative relationship between geographic distance and the amount of trade).

³⁴⁹ See Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations, *supra* note 96.

United States has grown rapidly since 2000.³⁵⁰ This growth, however, is likely a consequence of the market opening features of the treaty rather than the treaty's indirect effect on the development of Vietnam's formal legal system.³⁵¹

Foreign direct investment in Vietnam is an area where one finds a similar willingness to make long-term commitments, regardless of the lack of adequate formal legal protections. Foreign direct investment is highly illiquid, and unlike trade, investors need to be willing to stay in place for the long-term.³⁵² Were formal legal structures and formal legal rights a precondition for foreign direct investment, then one would expect Vietnam to exhibit low levels of investment. Yet, in fact, during the period following *doi moi*, Vietnam has enjoyed very high levels of foreign direct investment.³⁵³ This suggests that foreign investors—who are likely to be more “legally oriented” than Mekong Delta farmers—are not dissuaded from making long-term investments in the absence of strong legal rights and durable formal legal institutions.³⁵⁴

All of this demonstrates that formal legal institutions and formal legal rights are a trailing edge rather than a leading edge issue. In transition, economic actors will find ways to structure transactions to assure performance rather than wait for governmental authorities to establish

³⁵⁰ See *Trade, Price and Tourism*, 2008 STAT. Y.B. VIETNAM, *supra* note 76, at 452 (statistics on exports from Vietnam to the United States demonstrate a steady upward trend since 2000).

³⁵¹ See Data Dissemination Branch, U.S. Census Bureau, *Trade with Vietnam: 2001*, April 13, 2010, <http://www.census.gov/foreign-trade/balance/c5520.html#2001> (statistics on Vietnamese imports into the United States show a sharp increase from 2000 to 2008); *Trade, Price and Tourism*, *supra* note 349, at 452.

³⁵² See WORLD BANK, *supra* note 3, at 63–65; see also Trubek, *supra* note 4, at 82–84.

³⁵³ See WORLD BANK, *supra* note 3, at 21; *Investment*, *supra* 189, at 103 (statistics demonstrate a high rate of foreign direct investments in Vietnam). The demonstrable drop off in foreign investment during the period starting in 1997 corresponds with the Asian Financial Crisis of 1997–1998. See Vikas Bajaj & Keith Bradsher, *Asia Sails Smoothly Through Debt Waters*, N.Y. TIMES, Feb. 8, 2010, at B1; Shawn W. Crispin, *Vietnam as Asia's First Domino*, ASIA TIMES, Feb. 10, 2010, http://www.atimes.com/atimes/Southeast_Asia/LB10Ae01.html.

³⁵⁴ See LEGAL VICE PRESIDENCY, *supra* note 3, at 21, 63–65; *Investment*, *supra* note 189, at 103; fig. 3, *Registered Foreign Direct Investment in Vietnam (1988–2007)*; see also Donald C. Clarke, *What Kind of Legal System Is Necessary for Economic Development?: The China Puzzle*, in LAW REFORM IN DEVELOPING AND TRANSITIONAL STATES 65, 65–67, 75–77 (Tim Lindsey ed., 2007). For example, Intel invested \$1 billion in the world's largest semiconductor plant in Vietnam. See Margie Mason, *Intel to Invest \$1 Billion in Vietnam as Country Strives to Raise High-Tech Profile*, USA TODAY, Nov. 18, 2006, http://www.usatoday.com/tech/news/2006-11-18-vietnam_x.htm. The experience of Vietnam is similar to China. See WORLD BANK, *supra* note 3, at 70–71. Notwithstanding the weakness of formal legal structures, China has been able to both attract foreign direct investment and achieve sustained economic growth. See Clarke, *supra*, at 65–67, 75–77 (discussing China's economic success in the face of a weak legal regime).

perfect conditions in which to contract. That is not to say that rule of law activities are not useful, but rather, that they are not an imperative prerequisite for growth in a transition economy and market actors will not idly await them.³⁵⁵ Thus, such activities are trailing edge. In their absence, parties appear to find ways to rely on private ordering strategies or second-best institutions.³⁵⁶ David Trubek and Alvaro Santos similarly note that rule of law activities are of ambiguous value in the near term.³⁵⁷ They suggest that proponents of such activities should pursue them for their own sake and not because they necessarily result in more economic development or the medium-term development of democratic institutions.³⁵⁸

Nonetheless, it may well be true that the lack of formal legal rights places an upward bound on economic development activity. Such a conclusion is truly an attractive justification for reliance on formal legal institutions. Such a statement is, however, likely as true as the efficient markets hypothesis has turned out to be in economics and finance.³⁵⁹

CONCLUSION

The new law and development movement's suggests that in the absence of strong formal legal rights, participants should find it difficult to engage in complex transactions. We, however, find that participants in the pomelos market in Vietnam's Mekong Delta carry out rela-

³⁵⁵ See McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 639–40 (describing how despite legal and economic obstacles, Vietnam's private sector is "thriving").

³⁵⁶ See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2421–24.

³⁵⁷ See Trubek, *supra* note 4, at 74, 93–94; Santos, *supra* note 4, at 253, 255–57.

³⁵⁸ See Trubek, *supra* note 4, at 93–94; Trubek & Santos, *supra* note 4, at 3–5, 17–18.

³⁵⁹ See Nicholas Barberis & Richard Thaler, *A Survey of Behavioral Finance*, in 2 *ADVANCES IN BEHAVIORAL FINANCE* 63–64 (Richard H. Thaler, ed., 2005) (concluding that the efficient markets hypothesis was a naive view); Burton G. Malkiel, *The Efficient Market Hypothesis and Its Critics*, 17 *J. ECON. PERSP.* 59 (2003) (explaining that investors strive to uncover information about individual stocks and the market as a whole as this information is reflected into the market because the markets are never as efficient or predictable as proponents of the Efficient Capital Market Hypothesis maintain). At the height of its importance, economist Eugene Fama declared that "the evidence in support of the efficient capital market hypothesis is extensive, and . . . contradictory evidence is sparse." Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 *J. FINANCE* 383, 416 (1970). Of course, behavioral economists and behavioral finance academics spent the next twenty years poking holes in the theory and pointing out its shortcomings. See Barberis & Thaler, *supra*, at 63–64. The same may ultimately be true of the necessity of law for economic development: while attractive in theory, there are too many examples of growth in the absence of strong legal rights to maintain that the link between formal legal rights and growth is beyond reproach. See Landa, *supra* note 53, at 349–50; McMillan & Woodruff, *Dispute Prevention*, *supra* note 21, at 639–40; Rodrik, *supra* note 4, at 975.

tively complex transactions by granting buyers credit with little explicit reliance on formal legal structures.³⁶⁰ Farmers appear to rely on novel private ordering structures—a portfolio approach—to generate information about potentially reliable partners.³⁶¹ As new buyers prove themselves reliable partners, farmers may shift more business to them, migrating gradually towards more relational contracting to support complex transactions as parties search for and find reliable partners.³⁶² This snapshot of the fruit markets in the Mekong Delta suggests that first, in spite of the lack strong legal rights, parties are able to engage in complex transactions, and second, that developing formal legal structures is a complicated and long-term process with uncertain results.

These conclusions are important given the continuing debate over the importance of the formal legal system in creating conditions conducive to economic development. Throughout the 1990s and until now, general components of the World Bank's Washington Consensus include market liberalization and strengthening of the rule of law to support the development of markets.³⁶³ Critics of the Washington Consensus approach to rule of law reforms criticize its narrow focus on formal legal institutions in the form of legal transplantation and legal education as ineffective and a throw-back to the failed law and development movement of the 1960s and 1970s.³⁶⁴ While this Article does not intend to resolve the debate over the efficacy of this new rule of law movement, it does question whether strong legal rights engendered in the formal legal institutions favored by this approach are a prerequisite for parties to engage in welfare-enhancing economic activity.³⁶⁵ Indeed, rather than being a prerequisite, the experience of farmers and middlemen in Vietnam's Mekong Delta suggests that the creation of strong legal rights of the type endorsed by the new rule of law movement are a

³⁶⁰ See Quinn & Vu, *supra* note 2.

³⁶¹ See *id.*

³⁶² See McMillan & Woodruff, *Private Order*, *supra* note 21, at 2426 (explaining that there is an increase in relationship progress as people learn to trust each other and noting that “[a]fter two years of dealings, the amount of trade credit offered is on average fourteen percentage points higher than at the start of the relationship”).

³⁶³ See CAROTHERS, *supra* note 12, at 53–58; John Williamson, *A Short History of the Washington Consensus*, 15 LAW & BUS. REV. AM. 7, 11 (2009); *Economics and the Rule of Law: Order in the Jungle*, *supra* note 26, at 83.

³⁶⁴ See CAROTHERS, *supra* note 12, at 53–58 (noting the existence of criticism that current U.S. political development aid “strongly resemble[s] programs of decades past.”); Haggard, *supra* note 26, at 221 (“Rather than a movable technical apparatus, law is a set of institutions deeply embedded in particular political, legal, economic, and social settings.”); McCubbins et al., *supra* note 26, at 40–47.

³⁶⁵ See *supra* Part IV.

trailing edge reform rather than a leading edge one. In the absence of strong legal rights, market participants are able to adapt and find second-best solutions.

The new rule of law movement stands to make the same mistakes of the law and development movement of the 1960s and 1970s to the extent that it focuses on developing formal legal structures, legislative transplantation, and legal training. In the Mekong Delta, farmers might be better off if time and energy was spent investing in improving the efficiency of information flows about potential counterparties than in building up formal legal rights. Indeed, bottom-up approaches can reinforce the work of private actors and possibly help develop appropriate indigenous institutions over time. By treating the development of legal institutions to support markets as a mere top-down technical problem that can generate generalized trust in a market economy, the new rule of law movement may ultimately fail to be of consequence.

Those who eschew an instrumentalist view on the role of law in the development process and argue the rule of law project is a long term, even decades long, effort with unlikely outcomes are more likely to be correct. The rule of law rather than a precursor to economic growth and development in transition economies is likely to be a result over time. Such a process is almost entirely endogenous—developed from the ground up by farmers, middlemen, and other economic actors over time. Moreover, the process is one in which the role of outsiders may be of little consequence, diminishing their status from that of prime mover to that of attentive observer.

TABLES

Table 1: Middlemen Delayed Payment Terms	
Immediate settlement	68%
Pay 3-4 days after receipt	10.4%
Pay 5-15 days after receipt	8.3%
Pay 1-2 months after receipt	3.3%
Pay in installments over three month period	5.5%
Other	4.2%

Table 2: Middlemen Approaches to Farmers		
No. of Approaches	% of Farmers	% Farmers willing to grant credit
0	3.4%	0.0%
1	3.4%	1.2%
2	5.1%	1.8%
3	11.4%	4.8%
4	12.5%	4.2%
5	13.1%	5.4%
6-10	32.4%	8.9%
11-20	13.6%	4.8%
>20	5.1%	1.8%

Table 3: Middlemen Problems with Farmers	
Farmer sells to other buyer	50.0%
Price problems (renegotiation)	18.8%
Poor quality fruit	18.8%
Other	12.5%

Table 4: Farmer Problems with Middlemen	
Middleman failed to pay	43.4%
Disagreements over quality	16.6%
Pricing Problems	11.1%
Other	16.6%

Table 5: Dispute Resolution Methods (Farmers)	
Forget it and move on	44.4%
Negotiate with middleman	27.8%
Go to court, local government, police	22.2%
Other	5.6%

Table 6: Dispute Resolution Methods (Middlemen)	
Forget it and move on	16.3%
Negotiate with farmer	41.9%
Go to police, court, local gov't.	41.9%

Table 7: What Information Do You Get from Local Organizations?	
Extension services	66.7%
Credit	9.5%
Market information	11.9%
Dispute resolution	11.9%

Table 8: Average Quantities Purchased Over Past Three Years (tons)			
Seller	2004	2005	2006*
Repeat seller	104.93	113.53	79.05
First time seller	45.21	41/67	16.00
Other	15.00	10.00	5.00
* Through June of 2006.			

