A NEW STORY FOR

CONTRACTS

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INTRODUCTION

CONTRACTS & AGREEMENTS IN AGRICULTURE

Entering a contract to ensure the sale of one's crops seems extremely reasonable, so why aren't they ubiquitous in the food system? Contracts can yield many benefits for farmers, including: securing a market or access to new markets, reducing price-related risks, and establishing written expectations that both parties can use for planning (MacDonald, 2004). However, contracts don't magically produce those benefits, and many farmers are weary of entering a legally binding contract with a buyer. The reasons for this are unique to each farmer, but the most common are:

- **Fear of losing flexibility to sell to alternative buyers.** A farmer could become dependent on a buyer that turns out to be unreliable, making their position vulnerable.
- **Weary about committing to specific delivery requirements because farming is subject to so many uncertainties** If a farmer is unable to meet contractual obligations, they can face harsh penalties for noncompliance. Sometimes, those expectations are difficult to account for during the growing season, and other times the contract is so opaque that it is hard to decipher exactly what is expected.
- **Misaligned power dynamic between farmers and buyers**. Oftentimes, a buyer has many options to source from, whereas a farmer may not have the time or resources to find multiple buyers. This results in unequal bargaining power between a producer and a buyer, where the farmer may not have any leverage to get a fair deal (FAO, 2021).

Clearly, contracts can have different outcomes for farmers than buyers, but perhaps the problem is that the food system has been using contracts with the wrong mindset. Is it possible to change how contracts have historically been used to create a truly mutually beneficial agreement between producers and buyers?

CONTRACTS CAN PROMOTE REGENERATIVE AGRICULTURE

Regenerative agriculture is an attempt to break away from the traditional commodity system that has historically been built on extraction and exploitation. With that in mind, it is possible that contracts are an opportunity to achieve this transformation. By shifting the way we interact with and think about contracts, we can use them as a tool to create mutually beneficial, holistic agreements that serve farmers, buyers, consumers, and the land. The New Story for Contracts is a useful paradigm for approaching this transformation, in which the ‘old story’ includes mindsets that perpetuate a misaligned power dynamic in the food system, and the ‘new story’ is a recommended approach that can leverage markets to create a regenerative paradigm shift.

BY SHIFTING THE WAY WE THINK ABOUT AND INTERACT WITH CONTRACTS, WE CAN USE THEM AS A TOOL TO CREATE MUTUALLY BENEFICIAL, HOLISTIC AGREEMENTS THAT SERVE FARMERS, BUYERS, CONSUMERS, AND THE LAND.

OLD STORY	NEW STORY
Contact	Agreement
Opaque	Transparent
Negotiation	Co-negotiation
Offset	Inset
Externality	Internality
Discount	Premium
Risk-bearing	Risk-sharing
Short-term	Long-term

THE CONCEPT

THE NEW STORY FOR CONTRACTS

The New Story for Contracts is a paradigm that both producers and buyers can use to help create a written document that benefits multiple stakeholders:

- Farmers get a trusted market and a fair price
- Buyers get a trusted source of supply and a fair price
- Consumers get healthy food for a fair price
- Communities build true wealth
- The land is stewarded and cared for

The paradigm names the 'business as usual' way of approaching contracts as the old story, and the desired way of approaching contracts as the new story. Here is how it works:

CONTRACT → AGREEMENT

The word contract implies that both parties are working in their own self interest to get the best deal for themselves. However, producers typically have lower bargaining power than buyers, so this approach can lead to unfair terms for farmers. The Old Story approaches the process with a "what's in it for ***me***" attitude, whereas the New Story incorporates a "what's in it for ***we***" mindset. Therefore, it could be helpful to think of a deal as an agreement instead of a contract. Although simply semantics, an agreement means establishing a partnership mentality with a shared vision and objectives. One example of this is GoFarm's Supplier Agreement (GoFarm, 2015). GoFarm is a food distributor who requires every producer they source from to sign an agreement that they meet and will maintain certain environmental stewardship, work conditions, and food safety expectations. It also specifies that farmers can set their own prices based on their cost of production and product availability, and does not mandate minimum supply requirements. Through this agreement, farmers are afforded flexibility and fair prices, while simultaneously providing GoFarm with verifiable, sustainable products.

INSTEAD OF APPROACHING CONTRACTS WITH A "WHAT'S IN IT FOR **ME**" ATTITUDE, APPROACH IT WITH A "WHAT'S IN IT FOR **WE**" MINDSET.

OPAQUE → TRANSPARENT

Contracts are also notoriously opaque and confusing; they are often filled with technical language, as well as terms and conditions that could be subject to interpretation. Again, this poses problems for producers who have less leverage to decide the terms and conditions of the deal, and if a disagreement surfaced, producers may have less power to dictate how the contract should be interpreted. The New Story for Contracts encourages transparency to help level the playing field, especially during negotiations. One potential strategy is to agree to open book negotiations, where each party shares its costs to determine fair prices for both the producer and the buyer. Naturally, a farmer wants a high price for their crops, and a buyer wants to pay the lowest possible price for the supply. If both parties are transparent with their costs they can better understand each other's margins and agree to a deal that satisfies both parties.

NEGOTIATE → CO-NEGOTIATE

As mentioned above, farmers and buyers have unequal bargaining power in the marketplace. Farmers often don't have as many viable market channels to pursue, or they don't have the resources and time to explore their options. On the other hand, buyers can oftentimes more easily find supply, and as a result, have higher bargaining power. To alleviate this tension, the paradigm encourages co-negotiation through alternative bargaining models. Examples of this include collective bargaining through cooperatives or coalitions made up of multiple farmers, workers, and/or processors which can help the historically disempowered receive a fair return (Center for American Progress, 2019). In Wyoming, farmers and ranchers used this technique when they were approached by wind-energy developers who wanted to buy rights to build wind turbines on their land. In response, farmers and ranchers pooled their land together and established a coalition to sell their land to developers for a better deal (PON Staff, 2020).

OFFSET → INSET

Traditionally, contracts do not take into account non-tangible impacts that often stem from food production and distribution- like greenhouse gas emissions. For instance, it is common for companies to reduce their carbon footprint by purchasing carbon offsets from a third party, external and unrelated from its operations- like funding a wetlands restoration or tree-planting project. Using this system, offsets are completely separate from a business's supply chain, and it does not address actual impacts in the communities that the company operates in. This leads to the idea of carbon insetting, which incorporates carbon offset projects within a company's own value chain ("What is Carbon Insetting," 2021). Taking this concept a step further, insetting could be applied to any environmental stewardship outcome beyond carbon reduction, and if it created value for a buyer, it could be woven into a supply agreement. Therefore, a company is addressing the impacts that affect the people, land, and communities it works in to improve its environmental footprint.

EXTERNALITY → INTERNALITY

An externality is, "when the production or consumption of goods and services imposes costs or benefits on others which are not reflected in the prices charged for the goods and services being provided" (OECD, 2021). This is a classic result of market failure, and it shows up in our food system when the consequences of destructive farming practices are not reflected in the cost of goods sold. For much of history in the United States, there has been little recognition of the environmental and societal costs of agriculture, and there has been no effort to align farming practices accordingly (Buttel, 2003). These hidden costs include water pollution, pesticide toxicity, chronic health diseases, and antibiotic resistance (UNEP, 2020). Internalizing costs in a supply agreement is an opportunity to address and be accountable for the true costs of agriculture. This is a radical undertaking, because the costs and benefits of agriculture are difficult and costly to track. However, once the true cost of food is understood, true pricing can be determined to integrate externalities in prices (Hendriks, 2021). True pricing and internalities would incentivize farmers to grow food that is beneficial for people and the planet.

DISCOUNT → PREMIUM

Almost every commodity contract contains a discount schedule- a list of penalties for poor outcomes that result in a price reduction. Essentially, farmers are penalized for crops that don't meet certain quality standards, and then they get paid less for those crops. Although this protects consumers from bad quality or even dangerous food, there are no incentives for farmers to achieve anything beyond the bare minimum. But what if a farmer's crop measures above and beyond quality expectations? This is where a premium schedule comes into play. The premium, or additional payments on top of the base price, can be based on a sliding scale to reward different levels of quality. For instance, a farmer could receive a premium for high levels of protein or test weights in their grain. This would financially reward producers for high quality crops and incentivize farmers to grow crops that are not just safe to consume, but also healthy and tasty.

RISK BEARING→ RISK SHARING

Compared to other actors in a food supply chain, farmers bear a lot of risk. For example, if a farmer wants to use a more complex production system with multiple crop rotations to keep the soil healthy, it is unlikely that each crop in the rotation has a strong market. Some crops that are beneficial for soil health don't have a fair market value- like rye, buckwheat, or clover ("Crop Rotation", 2020). However, if farmers aren't supported to improve management practices or outcomes, then our food system will be stuck in its current state forever. To better distribute risks, producers and buyers can incorporate risk sharing methods like whole crop rotation contracts. Engaging in a whole crop rotation agreement means that buyers are purchasing all of crop varieties that a farmer grows. Ideally, a farmer is engaging with a multitude of buyers to continue to de-risk their offtake. Whole crop rotation agreements could provide farmers with reliable market channels for all of their crops, but more research is needed to determine its efficacy in specific applications. For now, it is simply a useful concept to consider as our food system tries to provide better support for farmers.

PREMIUM SCHEDULES CAN REALIGN INCENTIVES TO REWARD HIGH QUALITY CROPS

FORCE MAJEURE CLAUSES CAN HELP SHARE RISKS BETWEEN PRODUCERS AND BUYERS

SHORT-TERM → LONG-TERM

Farms operate inline with the seasons, which means that farm management decisions are slow and methodical. Short-term contracts work against this, and impede a producer's ability to gain access to finance, invest in production systems to adapt to climate change, and address environmental externalities. For most farmers to be successful, they need to make plans well in advance about what they should grow, how much they should plant, and to whom they can sell to. One way to support this is through long-term agreements. Multi-year supply agreements can be an extremely effective, mutually beneficial tool to achieve positive transformation in the food system. They can lower total transaction costs and improve profitability, help achieve sustainability goals, decrease price volatility, decrease supply risk, improve access to financing and insurance, and spur innovation through joint planning and collaboration (Clay, 2018). It is also important to note that long-term agreements can be flexible based on both party's priorities and do not have to be an all-or-nothing proposition. Overall, investing in a better future means investing in long-term commitments with our farmers.

LONG-TERM AGREEMENTS CAN IMPROVE PROFITABILITY, HELP ACHIEVE SUSTAINABILITY GOALS, DECREASE PRICE VOLATILITY, DECREASE SUPPLY RISK, & SPUR INNOVATION

MOVING FORWARD

This paradigm is presented to spark conversations and critical thinking about contracts; it is by no means a silver bullet. Contracts are simply one leverage point that can be used to break away from extractive transactions in the food system. Using the New Story for Contracts paradigm, it is possible to make supplier agreements that support farmers, buyers, consumers, and the land to build a more just and healthy food system. So what are we waiting for? We urge producers and buyers to start thinking about how they can use agreements to make transformative change and begin building a food system that we can be proud of.

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