

A Theory of Gradual Institutional Change

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Once created, institutions often change in subtle and gradual ways over time. Although less dramatic than abrupt and wholesale transformations, these slow and piecemeal changes can be equally consequential for patterning human behavior and for shaping substantive political outcomes. Consider, for example, the British House of Lords. This is an institution that began to take shape in the thirteenth century out of informal consultations between the Crown and powerful landowners. By the early nineteenth century, membership was hereditary and the chamber was fully institutionalized at the center of British politics. Who would have thought that this deeply undemocratic assembly of aristocrats would survive the transition to democracy? Not the early Labour Party, which was founded in 1900 and understandably committed to the elimination of a chamber from which its constituents were, more or less by definition, excluded.

We are grateful to the participants in the Workshop on “Explaining Institutional Change: Ambiguity, Agency, and Power in Historical Institutionalism” at Northwestern University in October 2007. The empirical chapters presented at that event, and the stimulating discussions they provoked, provided the inspiration for many of the ideas laid out in this chapter. For subsequent written comments on this essay, we thank Tullia Falletti, Peter Hall, Alan Jacobs, Adam Sheingate, Theda Skocpol, and Dan Slater. We benefited as well from valuable input from Suzanne Berger, Nancy Bermeo, Giovanni Capoccia, Bruce Carruthers, Edward Gibson, Desmond King, Richard Locke, Ann Orloff, Paul Pierson, Dick Samuels, Ben Schneider, and the participants in the Comparative Historical Social Science workshop at Northwestern University and in seminars at Oxford University and M.I.T.

Yet Labour did not dismantle the House of Lords – despite recurring opportunities to do so during the twentieth century. Instead, the institution was reformed over time in a series of more measured moves that, successively: circumscribed its powers (especially in 1911 by a Liberal Party government), altered its composition (especially in 1958 under a Conservative government, with the addition of life peerages), and rendered it less unwieldy and – in the eyes of some – more legitimate (in 2000 under a Labour government, by reducing dramatically the number of hereditary peers). The cumulative effects of these changes have allowed the chamber not just to survive but to position itself as a significant player in, of all things, the defense of civil liberties in Britain (*The Economist*, February 11, 2006, 51). This is quite a change – from undemocratic bastion of traditional interests to champion of individual rights – and it illustrates that incremental shifts often add up to fundamental transformations.

While institutional analysis has earned a prominent place in contemporary social science, the vast literature that has accumulated provides us with precious little guidance in making sense of processes of institutional change such as occurred in Britain's House of Lords. We have good theories of why various kinds of basic institutional configurations – constitutions, welfare systems, and property right arrangements – come into being in certain cases and at certain times. And we have theories to explain those crucial moments when these institutional configurations are upended and replaced with fundamentally new ones. But still lacking are equally useful tools for explaining the more gradual evolution of institutions once they have been established. Constitutions, systems of social provision, and property right arrangements not only emerge and break down; they also evolve and shift in more subtle ways across time. These kinds of gradual transformations, all too often left out of institutionalist work, are the focus of this volume.

In the literature on institutional change, most scholars point to exogenous shocks that bring about radical institutional reconfigurations, overlooking shifts based on endogenous developments that often unfold incrementally. Indeed, these sorts of gradual or piecemeal changes often only “show up” or “register” as change if we consider a somewhat longer time frame than is characteristic in much of the literature. Moreover, when institutions are treated as causes, scholars are too apt to assume that big and abrupt shifts in institutional forms are

more important or consequential than slow and incrementally occurring changes. As the chapters in this book show, these conclusions are in need of fundamental rethinking. Gradual changes can be of great significance in their own right; and gradually unfolding changes may be hugely consequential as causes of other outcomes.

An emerging body of work provides ideas on which we can build to understand gradual institutional change. New insights have grown out of the literature on path dependence and the ensuing debate over this framework (e.g., North 1990; Collier and Collier 1991; Arthur 1994; Clemens and Cook 1999; Mahoney 2000; Pierson 2004; Thelen 1999, 2004). Among other things, this work has led analysts to theorize the circumstances under which institutions are – and are not – subject to self-reinforcing “lock-in.” Important strands of this literature suggest that path-dependent lock-in is a rare phenomenon, opening up the possibility that institutions normally evolve in more incremental ways. Likewise, works such as Pierson’s *Politics in Time* (2004) discuss various slow-moving causal processes (e.g., cumulative causes, threshold effects, and causal chains) that do not evoke the punctuated equilibrium model of change that is frequently embedded in conceptualizations of path dependence (see also Aminzade 1992; Abbott 2001). Inspired by these works, Streeck and Thelen (2005) have offered an inventory of commonly observed patterns of gradual institutional change that allows us to classify and compare cases across diverse empirical settings.

If theorizing is going to reach its potential, however, institutional analysts must go beyond classification to develop causal propositions that locate the sources of institutional change – sources that are not simply exogenous shocks or environmental shifts. Certain basic questions must be addressed. Exactly what properties of institutions permit change? How and why do the change-permitting properties of institutions allow (or drive) actors to carry out behaviors that foster the changes (and what are these behaviors)? How should we conceptualize these actors? What types of strategies flourish in which kinds of institutional environments? What features of the institutions themselves make them more or less vulnerable to particular kinds of strategies for change? Answering these basic questions is a critical next step if scholars are to theorize the sources and varieties of endogenous institutional change.

In this chapter, we advance answers to these questions. We begin by noting that all leading approaches to institutional analysis – sociological institutionalism, rational-choice institutionalism, and historical institutionalism (Hall and Taylor 1996) – face problems in explaining institutional change. We then consider how a power-distributional approach to institutions, common in historical institutionalism and present as well in some strands of sociological and rational-choice institutionalism, provides a basic motor for change. To account for actual change, however, this power-distributional approach needs to be supplemented with attention to issues of compliance going well beyond the usual concern for *level* or *extent* of compliance. We argue that institutional change often occurs precisely when problems of rule interpretation and enforcement open up space for actors to implement existing rules in new ways. Expanding our focus to include these concerns allows us to observe and theorize forms of incremental change that are routinely overlooked in most institutional analysis.

Our discussion culminates in the presentation of a new model of institutional change. The model elaborates a set of propositions that link particular modes of incremental change to features of the institutional context and properties of institutions themselves that permit or invite specific kinds of change strategies and change agents. The model sees variations in institutional properties as encouraging different types of change strategies, which are in turn associated with distinctive change agents who work to foster specific kinds of incremental change.

The Challenge of Explaining Change

Despite many other differences, nearly all definitions of institutions treat them as *relatively enduring* features of political and social life (rules, norms, procedures) that structure behavior and that cannot be changed easily or instantaneously. The idea of persistence of some kind is virtually built into the very definition of an institution. This is true for sociological, rational-choice, and historical-institutional approaches alike. The connection between institutions and persistence makes it natural for all of these approaches to focus on explaining continuity rather than change. Nevertheless, the three major institutional approaches do vary in subtle ways in how they conceive of institutions and this turns out to have important implications for their ability to theorize institutional change.

The Common Problem: A Focus on Stability and Exogenous Shocks

Sociological institutionalism considers a broad range of institutions, focusing attention on noncodified, informal conventions and collective scripts that regulate human behavior. Definitions of institutions in this tradition routinely spotlight their self-reproductive properties. For example, according to Powell (1991, 197), “Things that are institutionalized tend to be relatively inert, that is, they resist efforts at change”; for Jepperson (1991, 145), “Institutions are those social patterns that, when chronically reproduced, owe their survival to relatively self-activating processes.” For some scholars in this broad tradition, institutions are tied to codes of appropriateness, and reproduction occurs as actors are socialized or otherwise learn to follow them (March and Olsen 1984). For others, the self-reproducing properties of institutions are cognitive in nature; institutions may be so routine and “taken for granted” that they are beyond conscious scrutiny (Berger and Luckmann 1967; Zucker 1983, 2). In addition, sociological institutionalists argue that actors often reproduce the same institutional logic across various domains. With organizations, for instance, new organizational forms are “isomorphic” with (i.e., similar to or compatible with) existing organizations (DiMaggio and Powell 1983; Dobbin 1994; Scott 1995). Actors carry their existing scripts forward when building new institutions even when doing so is not “efficient.”

While quite powerful as tools for explaining continuity, the mechanisms of perpetuation used in sociological institutionalism provide few clues about possible sources of endogenous change. If a convention is reified, how might it change? If isomorphism encourages new institutions to take the same form as old ones, where is the locus of dynamism and innovation? To explain transformation, therefore, sociological institutionalists often point to an exogenous entity or force – for example, new interpretive frames imported or imposed from the outside (e.g., DiMaggio and Powell 1983; Hannan and Freeman 1989) or the evolution of broader political, legal, and market “fields” (Fligstein 1996). Studies of change in this genre often provide very compelling accounts in which new actors manage to unsettle dominant practices or scripts and impose their preferred alternatives (e.g., Zorn et al. 2008). But what such accounts typically omit is a set of general propositions about what properties of institutional scripts make some of them, at some times, more vulnerable than others to this type of displacement.

Rational-choice institutionalists also face quandaries when confronted with institutional change. As Levi (2008) points out, “Rationalists have long recognized the importance of understanding equilibrium change, but their analyses have generally involved comparative statics rather than a more dynamic approach” (see also Weingast 2002, 692). The basic difficulty here is related to a view of institutions as coordinating mechanisms that sustain particular equilibria (Shepsle 1989, 145; Calvert 1995, 218; Levi 1997, 27). As Greif and Laitin put it, “A self-enforcing institution is one in which each player’s behavior is a best response. The inescapable conclusion is that changes in self-enforcing institutions must have an exogenous origin” (2004, 633; see also Bates et al. 1998, 8). This perspective has an obvious affinity to punctuated equilibrium models of institutional change. But such models tend to draw a sharp line between the logic (and analysis) of institutional reproduction and that of change, and thus make it difficult to conceptualize and theorize gradual processes of endogenous change.

Greif and Laitin’s (2004) work represents one of the most explicit efforts to deal with the problem from a rational-choice perspective. The analysis they offer stresses indirect institutional effects – or “feedback effects” – that either expand or reduce the set of situations in which an institution is self-enforcing; thus, their solution to thinking about endogenous change is to redefine (some) of the exogenous parameters as endogenous variables (i.e., “quasi-parameters”). Greif and Laitin can in this way account for the stability (or breakdown) of different institutional equilibria (their cases address the decline versus the resiliency of social order in Venice and Genoa and the decline versus persistence of ethnic cleavages in Estonia and Nigeria). But their framework does not make clear how scholars would be able, *ex ante*, to distinguish quasi-parameters from parameters, or to identify which quasi-parameters are more likely to be affected by the operation of the institution.

Historical institutionalists have also grappled with the problem of institutional change. And they have also traditionally stressed continuity over change. Much of the empirical work on path dependence, for example, has been organized around explaining the persistence of particular institutional patterns or outcomes, often over very long stretches of time (for literature reviews, see Mahoney 2000; Pierson 2004; Thelen 2004). While historical institutionalists acknowledge the

cultural components of institutions, as well as the coordinating functions that institutions may perform, these scholars view institutions first and foremost as the political legacies of concrete historical struggles. Thus, most historical institutionalists embrace a power-political view of institutions that emphasizes their distributional effects, and many of them explain institutional persistence in terms of increasing returns to power.

When it comes to explaining change, historical institutionalists frequently call attention to “critical junctures,” often understood as periods of contingency during which the usual constraints on action are lifted or eased (Capoccia and Kelemen 2007). Explanations of change focusing on such episodes are sometimes also linked to arguments about the relative weight of agency versus structure in various phases. Ira Katznelson, for example, sees institutions as mostly constraining in periods of “stable” politics, but argues that critical junctures open up opportunities for historic agents to alter the trajectory of development (Katznelson 2003).

In other words, in the historical-institutionalist literature, too, scholars have tended to fall back on a discontinuous model of change in which enduring historical pathways are periodically punctuated by moments of agency and choice. These arguments thus often have the same drawbacks as discussed earlier for other punctuated equilibrium models, obscuring endogenous sources of change and encouraging us to conceive of change as involving the “breakdown” of one set of institutions and its replacement with another.

All three varieties of institutionalism, in short, provide answers to what sustains institutions over time as well as compelling accounts of cases in which exogenous shocks or shifts prompt institutional change. What they do not provide is a general model of change, particularly one that can comprehend both exogenous and endogenous sources of change.

Institutional Stability as a Political Problem and a Dynamic Political Outcome

If institutions are changed not just in response to exogenous shocks or shifts, then their basic properties must be defined in ways that provide some dynamic element that permits such change. The foundation on which we build here is one that conceives institutions above all else as

distributional instruments laden with power implications (Hall 1986; Skocpol 1995; Mahoney 2010; see also Hall [this volume]). As noted, this view of institutions is commonplace in historical institutionalism but it is also consistent with some rational-choice perspectives that emphasize power over cooperation (e.g., Knight 1992; Acemoglu, Johnson, and Robinson 2005; Moe 2005), as well as some sociological accounts that focus on the political-distributional underpinnings of specific cultural or normative practices (e.g., Stinchcombe 1987, Fligstein forthcoming). In our approach, institutions are fraught with tensions because they inevitably raise resource considerations and invariably have distributional consequences. Any given set of rules or expectations – formal or informal – that patterns action will have unequal implications for resource allocation, and clearly many formal institutions are specifically intended to distribute resources to particular kinds of actors and not to others. This is true for precisely those institutions that mobilize significant and highly valued resources (e.g., most political and political-economic institutions).

Existing work has drawn out many implications of this conceptualization for understanding institutional genesis and continuity. Concerning genesis, actors with different endowments of resources are normally motivated to pursue the creation of different kinds of institutions. And the institutions that are actually created often reflect the relative contributions of – and often conflict among – these differentially motivated actors. In some cases, the power of one group (or coalition) relative to another may be so great that dominant actors are able to design institutions that closely correspond to their well-defined institutional preferences. But institutional outcomes need not reflect the goals of any particular group; they may be the unintended outcome of conflict among groups or the result of “ambiguous compromises” among actors who can coordinate on institutional means even if they differ on substantive goals (Schickler 2001; Palier 2005).

For these reasons, there is nothing automatic, self-perpetuating, or self-reinforcing about institutional arrangements. Rather, a dynamic component is built in; where institutions represent compromises or relatively durable though still contested settlements based on specific coalitional dynamics, they are always vulnerable to shifts. On this view,

change and stability are in fact inextricably linked. Those who benefit from existing arrangements may have an objective preference for continuity but ensuring such continuity requires the ongoing mobilization of political support as well as, often, active efforts to resolve institutional ambiguities in their favor (Thelen 2004). Dan Slater's analysis (this volume) of the stability of authoritarianism in Indonesia under Suharto is an excellent case in point. The phenomenal durability of this regime was not a matter of self-enforcement or even of increasing returns to power; rather, this outcome depended on the active creation and nurturing of (over time, different) coalitions and institutional supports for the regime. Ironically, as Slater shows, the political balancing that allowed Suharto to concentrate autocratic power paved the way for later regime collapse by compromising the independent coercive capacities of the co-opted institutions and organizations.

Given a view of institutional stability that rests not just on the accumulation but also on the ongoing mobilization of resources, one important source of change will be shifts in the balance of power (e.g., Knight 1992, 145, 184; Thelen 1999). This can happen in straightforward ways as, for instance, through changes in environmental conditions that reshuffle power relations. Beyond this, however, a number of scholars have drawn attention to less obvious aspects of such shifts, emphasizing for example that actors are embedded in a multiplicity of institutions, and interactions among them may allow unforeseen changes in the ongoing distribution of resources. Resource allocations from one set of institutions may shape the outcomes of distributional conflicts over resource allocations connected to a different set of institutions. Pierson and Skocpol (2002, 696) note the importance of hypothesizing "about the combined effects of institutions and processes rather than examining just one institution or process at a time." Actors disadvantaged by one institution may be able to use their advantaged status vis-à-vis other institutions to enact change.

Other strands of scholarship in this broad tradition examine how the expected operation of institutions itself sometimes generates pressures for change. This can occur if the over-time distributional effects of institutions trigger divisions among institutional power holders. Or change can occur if institutions disadvantage subordinate groups to the point that they organize and come to identify with one another, thereby

increasing their power and capacity to break prevailing institutional arrangements. Between them, these two possibilities correspond to the themes of “divided elites” and “united subordinate groups” that are sometimes emphasized in explanations of change (e.g., Yashar 1997).

Compliance as a Variable in the Analysis of Institutional Change

Beyond balance-of-power shifts (either exogenous or endogenously generated through feedback effects), we especially call attention to forms of change that are linked to issues of *compliance*. On this point there is a rather important difference between the power-distributional perspective of institutions we are advancing here and some prominent alternatives discussed earlier. In some versions of sociological institutionalism, for example, compliance and enforcement appear to be nonissues. If institutions involve cognitive templates that individuals unconsciously enact, then actors presumably do not think about not complying.¹ In fact, it is their very taken-for-grantedness that makes these institutions self-enforcing. In rationalist accounts, sanctions and monitoring do play a role as mechanisms to prevent free riding and promote collective action (Ostrom 1990). However, in much of this work, compliance is built into the definition of the institution under consideration. In other words, what institutions *do* is stabilize expectations (among other ways, by providing information about the probable behavior of others), and thus enforcement is endogenous in the sense that the expected costs and extent of noncompliance are factored into the strategic behavior of the actors in a particular institutional equilibrium (North 1990, 1993).

If, instead, we break with a view of institutions as self-reinforcing (through whatever mechanism) and put distributional issues front and center, compliance emerges as a *variable*, and a variable that is crucially important to the analysis of both stability and change. The need to enforce institutions carries its own dynamic of potential change, emanating not just from the politically contested nature of institutional rules but also, importantly, from a degree of openness in the interpretation and implementation of these rules. Even when institutions are

¹ We owe this insight regarding compliance and its different valence in different varieties of institutionalism to Wolfgang Streeck, who made these points at a workshop on institutions held in Italy in 2006.

formally codified, their guiding expectations often remain ambiguous and always are subject to interpretation, debate, and contestation.² It is not just that unambiguous rules are enforced to greater and lesser degrees. Rather, struggles over the meaning, application, and enforcement of institutional rules are inextricably intertwined with the resource allocations they entail.

In many cases, there is simply a great deal of “play” in the interpreted meaning of particular rules or in the way the rules are instantiated in practice. This view parts ways with power-oriented rationalist accounts like that of Knight, who acknowledges the ambiguity of rules as a site of conflict but who assumes that such ambiguity will decline over time (1992, 76, 186) or be resolved through the formalization of the rules (1992, 176) or both. We see ambiguity as a more permanent feature, even where rules are formalized. Actors with divergent interests will contest the openings this ambiguity provides because matters of interpretation and implementation can have profound consequences for resource allocations and substantive outcomes. As abortion politics in the United States (associated with the defense of “individual rights” and attached to different beliefs on when “life” is taken to begin) amply demonstrates, competing interpretations of one and the same rule can mobilize quite different coalitions (see also Weir 1992). Coalitions form not only as representatives of alternative institutions but also as movements seeking particular interpretations of the ambiguous or contested rules of a given institution.

Existing historical-institutional work and especially the contributions in this volume suggest several implications that follow from treating compliance as a variable in this expanded sense. First, compliance is inherently complicated by the fact that rules can never be precise enough to cover the complexities of all possible real-world situations. When new developments confound rules, existing institutions may be changed to accommodate the new reality. These changes can involve rule creation, or they may simply entail creative extensions of existing rules to the new reality. This insight and its implications for institutional change are underscored by Adam Sheingate’s contribution to

² The ambiguity of institutional rules is also a theme in a recent edited volume by Skowronek and Glassman (2007). Beyond the introduction by the editors, see especially the essays by Sheingate (2007) and Carpenter and Moore (2007) in that volume.

this volume. Sheingate's analysis focuses on key changes in the rules governing the U.S. Congress. He challenges a large body of work that sees congressional rules as mechanisms that allow actors to coordinate among themselves – above all, to credibly commit to one another to achieve joint gains (Weingast and Marshall 1988). Such accounts presuppose unambiguous rules; differences in the content of rules produce different equilibrium outcomes.

By contrast, Sheingate sees rules as ambiguous and therefore themselves the objects of political skirmishing. While these rules certainly establish important constraints on action, Sheingate emphasizes that they are not unequivocal. The ambiguities they embody provide critical openings for creativity and agency; individuals exploit their inherent openness to establish new precedents for action that can “transform the way institutions allocate power and authority” (Sheingate, this volume). Through three episodes of institutional change, Sheingate shows how actors devised new applications and interpretations of old rules in order to bend outcomes in their preferred direction. In each instance, the new interpretation had massively important implications for congressional decision-making structures, in particular for the relative power of the Speaker of the House and minorities within the legislature.

A second, closely related point concerns the cognitive limits of actors themselves. Even when institutional rules have been created to accommodate relatively complex situations, actors face information-processing limitations and certainly cannot anticipate all of the possible future situations in which rules written now will be implemented later. The account in this volume by Alan Jacobs of the development of U.S. Social Security provides a case in point. He shows that FDR initially devised the idea of contributory financing on which the system was based as a way of fending off the challenges that elites at that time faced from populists. Contributory financing made it impossible for politicians to expand the program recklessly in response to populist urges. Years later, long after the populist threat had waned, these same provisions provided an unanticipated safeguard against conservative retrenchment. As Jacobs emphasizes, the contributory principle contained within it multiple moral and political logics, not all of which were anticipated by its designers but which later proved crucial to

the (changing) coalitions that both sustained and reshaped this set of institutions over the longer run.

Third, institutions are always embedded in assumptions that are often only implicit. Emile Durkheim's notion of "the non-contractual basis of contracts" points to these implicit understandings held by the relevant community that are necessary for rules to have efficacy. Such shared understandings may exist to differing degrees and may themselves shift over time, which can often trigger a *de facto* institutional change even though formal rules remain intact. This is a major message of Ato Onoma (this volume), who notes that in the absence of such shared understandings, institutional "predators" can systematically undermine rules by exploiting their letter while violating their spirit. Here we need to recognize that institutional stability ultimately depends not only on continuity in the rules themselves but also on the ways in which those rules are instantiated in practice (Hacker 2005; Streeck and Thelen 2005).

Fourth, the fact that rules are not just designed but also have to be applied and enforced, often by actors other than the designers, opens up space (as both an analytic and a practical matter) for change to occur in a rule's implementation or enactment. Robert Lieberman (2006) has provided an excellent example of this in his analysis of equal opportunity/affirmative action legislation in the United States. Lieberman documents that the provision in the 1964 Civil Rights Act that created the Equal Employment Opportunity Commission (EEOC) was deeply contested and nearly failed. A political compromise, the version that Congress did pass was weak in the extreme, more or less by design. Once enacted, however, bureaucrats charged with the implementation and enforcement of the legislation worked with civil rights groups to bring cases to courts, which then, through expansive interpretations of the law, stretched the parameters and scope of the legislation. The result was to transform a weak legislative rule into one of the strongest affirmative action regimes in the world. The general point is that enforcers must decide how and when rules are to be implemented, and this implies possibilities for change – in both directions as it were, either through "slippage" or through expansive interpretations and applications. Actors such as the bureaucracy and the judiciary, charged with implementation, interpretation, and

enforcement, have large roles to play in shaping institutional evolution (see also Carpenter 2001).

In short, we propose that the basic properties of institutions contain within them possibilities for change. What *animates* change is the power-distributional implications of institutions. However, where we expect incremental change to emerge is precisely in the “gaps” or “soft spots” between the rule and its interpretation or the rule and its enforcement. This is an analytic space that other conceptions of institutions (as behaviors in equilibrium, or as scripts) essentially rule out by definition, but as a practical matter this is exactly the space in which contests over – and at the same time within – institutions take place (Thelen 2009).

The emphasis on compliance also opens new avenues for theorizing the actors and the coalitions that drive institutional change. Clearly, institutional “winners” and “losers” have different interests when it comes to interpreting rules or dedicating resources to their enforcement. But more important for the analysis of institutional change, compliance problems can blur the lines between winners and losers. When the enforcement of an institution is contested and uncertain, or when the meaning of an institution is undecided, an actor’s interest in institutional continuity may be equivocal and mutable. As the meaning and enactment of an institution change, so too may actor preferences. Putting issues of compliance at center stage, then, forces us to think about the distributional effects of institutions in more complicated ways than simply “winners” and “losers.” New categories that go beyond this simple dichotomy must be created to depict and analyze the actors, coalitional patterns, and political conflicts that drive the politics of institutional change. Carrying out this conceptual work is among the tasks we pursue in the next section.

Explaining Patterns of Institutional Change

A distributional approach suggests that dynamic tensions and pressures for change are built into institutions. However, the approach does not itself specify the different modes of change that such dynamism permits or unleashes. Nor does it embody an explanation for why one kind of change occurs rather than another. The purpose of this section is accordingly to build on the discussion so far by offering a

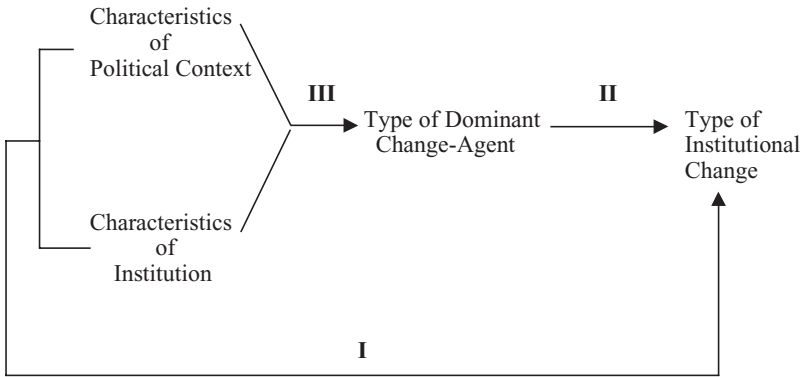


FIGURE 1.1. Framework for Explaining Modes of Institutional Change.

new framework for identifying and explaining types of institutional change.

Our basic model is sketched in Figure 1.1. Here the characteristics of both the political context and the institution in question together drive the type of institutional change we can expect. Political context and institutional form have these effects because they shape the type of dominant change agent that is likely to emerge and flourish in any specific institutional context, and the kinds of strategies this agent is likely to pursue to effect change. In the following discussion, we elaborate this argument, focusing our remarks on the three key causal connections identified in Figure 1.1 (indicated by I, II, and III in the figure). We begin, though, by considering different modes of institutional change.

Modes of Institutional Change

Following Streeck and Thelen (2005), we delineate four modal types of institutional change: displacement, layering, drift, and conversion. As Table 1.1 suggests, each type is defined by asking about the locus of institutional transformation. The dimensions in the table generate the four types:

1. Displacement: the removal of existing rules and the introduction of new ones
2. Layering: the introduction of new rules on top of or alongside existing ones

TABLE 1.1. *Types of Gradual Change*

	Displacement	Layering	Drift	Conversion
Removal of old rules	Yes	No	No	No
Neglect of old rules	–	No	Yes	No
Changed impact/enactment of old rules	–	No	Yes	Yes
Introduction of new rules	Yes	Yes	No	No

3. Drift: the changed impact of existing rules due to shifts in the environment
4. Conversion: the changed enactment of existing rules due to their strategic redeployment

Understanding these different types of institutional change – including the roles that institutional supporters and challengers typically play within each – sets the stage for explaining why and how one type rather than another typically occurs.

Displacement is present when existing rules are replaced by new ones. This kind of change may well be abrupt, and it may entail the radical shift that is often featured in leading institutional theories. The rapid, sudden breakdown of institutions and their replacement with new ones that accompanies revolutions obviously involves displacement. Yet displacement can also be a slow-moving process. This may occur when new institutions are introduced and directly compete with (rather than supplement) an older set of institutions. New institutions are often introduced by actors who were “losers” under the old system. If institutional supporters of the old system prove unable to prevent defection to the new rules, then gradual displacement may take place. For instance, the advance of market-oriented institutions in China and Cuba pits a new institutional system against an older one. As more and more actors defect to the market institutions, they may erode and slowly overtake the previous state-controlled arrangements.

Layering occurs when new rules are attached to existing ones, thereby changing the ways in which the original rules structure behavior (Schickler 2001; Thelen 2003). Different from displacement, layering does not introduce wholly new institutions or rules, but rather involves amendments, revisions, or additions to existing ones. Such

layering can, however, bring substantial change if amendments alter the logic of the institution or compromise the stable reproduction of the original “core.” For example, adding a voucher option to an existing school system while maintaining other features intact is likely to set in motion changes that over time interfere with the stable reproduction of neighborhood-based schools and associated local financing. Processes of layering often take place when institutional challengers lack the capacity to actually change the original rules (or, as in displacement, to set up an explicit alternative institution or system). They instead work within the existing system by adding new rules on top of or alongside old ones. While defenders of the status quo may be able to preserve the original rules, they are unable to prevent the introduction of amendments and modifications. Each new element may be a small change in itself, yet these small changes can accumulate, leading to a big change over the long run.

Drift occurs when rules remain formally the same but their impact changes as a result of shifts in external conditions (Hacker 2005). When actors choose not to respond to such environmental changes, their very inaction can cause change in the impact of the institution. For instance, shifts in population across established electoral districts in many democracies can lead to problems of malapportionment, distorting election outcomes by magnifying the representation of some constituencies over others. In Japan, the Liberal Democratic Party consolidated and maintained its dominance in electoral politics in part by actively neglecting to reapportion Diet seats toward cities in response to urbanization. Politicians who resist efforts to revise district boundaries in the face of population movements are promoting change through drift, since their inaction has the effect of altering substantive outcomes.³

Conversion occurs when rules remain formally the same but are interpreted and enacted in new ways (Thelen 2003). This gap between the rules and their instantiation is not driven by neglect in the face of a changed setting (as is true with drift); instead, the gap is produced by actors who actively exploit the inherent ambiguities of the institutions. Through redeployment, they convert the institution to new

³ We thank Alan Renwick and Giovanni Capoccia for this example.

goals, functions, or purposes. The “old institutionalism” in sociology is replete with examples of institutional innovators working with existing materials to craft solutions to new problems. In some cases, conversion results from the incorporation of new supporters or the assumption of power by a new political coalition that, rather than dismantle old institutions, uses them in new ways (Selznick 1949). Think of the way the YMCA was redirected over a long period of time and in response to secularization from a primarily religious mission to a broader-based community-oriented organization (Zald and Denton 1963; Zald 1970). In this case, new elites came to power and orchestrated the shift from within. However, in some cases even those who are disadvantaged by an institution can get traction out of conversion strategies. Lacking the capacity to destroy an institution, institutional challengers may be able to exploit its inherent ambiguities in ways that allow them to redirect it toward more favorable functions and effects.

Link I: Political Context, Institutional Characteristics, and Modes of Change

Differences in the character of existing institutional rules as well as in the prevailing political context affect the likelihood of specific types of change. The key issue is how to conceptualize the dimensions of institutions and of political context that matter the most for explaining variations in modes of institutional change. We can ask two broad questions:

1. Does the political context afford defenders of the status quo strong or weak veto possibilities?
2. Does the targeted institution afford actors opportunities for exercising discretion in interpretation or enforcement?

The answers to these two questions produce the analytic space depicted in Table 1.2, which we adopt (with modifications) from Hacker (2005). As the table suggests, differences in veto possibilities and the extent of discretion in institutional enforcement and interpretation are associated with different modes of institutional change.

Taking each dimension separately, let us first discuss the issue of veto possibilities, which can derive either from especially powerful veto *players* or from numerous institutional veto *points* (e.g.,

TABLE 1.2. *Contextual and Institutional Sources of Institutional Change*

		Characteristics of the Targeted Institution	
		Low Level of Discretion in Interpretation/ Enforcement	High Level of Discretion in Interpretation/ Enforcement
Characteristics of the Political Context	Strong Veto Possibilities	Layering	Drift
	Weak Veto Possibilities	Displacement	Conversion

Tsebelis 2002). Either way, veto possibilities are high where there exist actors who have access to institutional or extrainstitutional means of blocking change. These actors may have access to veto capabilities regarding both changes in the (formal or informal) rules themselves and changes in the rules’ enactment in practice. Actors with strong veto capabilities vis-à-vis a given institution, however, may not enjoy this strength vis-à-vis other institutions. For example, an independent central bank may be a powerful veto player with respect to changes in financial institutions but not welfare institutions.

Where would-be agents of change face political contexts with myriad veto possibilities, it will be difficult for them to mobilize the resources and assemble a coalition that can displace the existing institutional rules. Hence, displacement is unlikely in the context of strong veto possibilities. Likewise, efforts at active conversion will be difficult in such a context, since veto powers also apply to the realm of rule enactment. Instead of displacement or conversion, drift and layering are more promising as strategies of change in political environments with strong veto players. This is true because drift and layering do not require making any direct changes to the old institutions and do not rely on altering the rules themselves or actively shifting their enactment.

With drift, institutional change grows out of the neglect of an institution, or more precisely, the failure to adapt and update an institution so as to maintain its traditional impact in a changed environment. Powerful veto players may be able to defend existing institutions against

outright displacement, but their veto powers are often insufficient to prevent drift since doing so typically requires supporters to take active steps to shore up support for an institution as the social, economic, or political context shifts. Monarchical political institutions, for instance, were gradually rendered into mere institutional vestiges as royal powers time and time again proved unable to successfully defend the old ways in a changing environment marked by rising parliamentary forms and their supporters.

With layering, institutional change grows out of the attachment of new institutions or rules onto or alongside existing ones. While powerful veto players can protect the old institutions, they cannot necessarily prevent the addition of new elements. Thus, for example, Social Democrats across Europe have successfully prevented conservatives from dismantling public pension schemes, but they have not been able to stop the addition of voluntary supplemental pensions alongside the public system, which conservatives hope will tilt the balance toward the latter over the longer run (Clark and Whiteside 2003; Hacker 2005).

The other explanatory dimension concerns differences in the extent to which institutions are open to contending interpretations and variations in their enforcement. As we have argued, adopting a distributional approach to institutions means treating compliance with institutional rules as a variable that can change over time. In practice, nevertheless, the degree to which actors have discretion in implementing rules will vary from one institution to the next.⁴ For example, enforcing and implementing unemployment benefits typically involve some discretion on the part of those who administer such benefits. If benefits are attached to a requirement that recipients be “actively seeking work,” what exactly does that mean (King 1995)? If workers can receive benefits only so long as they cannot find “*appropriate* alternative employment,” what types of jobs might a person be expected to take? The sources of variation in the scope of discretion that rules allow are of course themselves quite varied: the complexity of the rules, the kinds of behaviors regulated by the rules, the extent of resources

⁴ The degree of discretion embedded in different institutional configurations also “maps onto” broad differences between common law and civil law traditions. The importance of this difference for a variety of substantive outcomes has been explored by a number of scholars (e.g., La Porta et al. 1998 for finance and development).

mobilized by the rules, and so on, all matter. In the present context, however, we are concerned simply with the variation in the extent of discretion that actors have at the interpretation and enforcement levels and not with identifying the sources of such variation.

Differences in levels of discretion in the interpretation or enforcement of rules help explain modes of institutional change. If would-be agents of change face an institution in which there is very little room for discretion in enforcement, then the outcomes of conversion and drift are less likely. Conversion normally occurs when rules are ambiguous enough to permit different (often starkly contrasting) interpretations. As scholars of American political development have noted, contending interpretations of the Constitution's commerce clause (a simple one-liner that gives Congress power "to regulate commerce with foreign nations and among the several states") have been harnessed in support of rather massive changes in economic and social policy in the United States, including the consolidation of labor rights during the New Deal as well as important advances in civil rights in the 1960s (Orren 1991; Mettler 1998; Skrentny 2002).⁵

Drift can occur when a gap opens up between rules and enforcement (in this case, often a gap due to neglect). For example, and as observers of labor relations in the United States have noted, different presidential administrations have been associated with wildly different outcomes with respect to workplace safety, depending on how vigorously the Occupational Safety and Health Administration (OSHA) enforces existing laws. The same observation has been made about union organizing under different presidents, depending on whom they appoint to lead the National Labor Relations Board (NLRB) that is charged with interpreting and enforcing labor laws in this country (see, especially, Freeman 1985; Klein and Wagner 1985, esp. 79–83; Moe 1987). In those cases and many others like them, there is tremendous space for diverse outcomes even under stable rules, given different interpretations (narrow/broad) and enforcement (vigorous/lax) of those rules.

In short, administrative capacities may be especially important for conversion and drift, because weakness on these fronts can create

⁵ And since the 1990s, interpretations of the commerce clause have taken another, conservative, turn – being used by the Rehnquist Court to limit the areas in which Congress can legislate. We thank Dan Galvin for this observation.

strategic openings for those who oppose the rules on the books. By contrast, the other two modes of change, layering and displacement, do not rely on exploiting ambiguities in the rules themselves. These outcomes are likely strategies for change agents who realize that transformation cannot occur by taking advantage of a disjuncture between rules and enforcement. With layering, the old institution remains in place but is amended through the introduction of new rules. With displacement, the old institution is simply replaced – outright and abruptly or gradually over time. Either way, change occurs in a manner that does not entail shifting the interpretation or enforcement of rules that remain intact.

Link II: Change Agents and Institutional Change

Addressing questions of institutional change and contemplating the kinds of strategies that are most likely to drive such change in diverse institutional settings also raises the question: exactly who are the agents behind such change? And why do they carry out behavior that leads to transformation? From a distributional perspective on institutions, as we have seen, a starting answer is that institutional losers drive change precisely because they benefit from such change. Yet we have also seen how the notion of winners and losers is often too simple for real situations. The ambiguities inherent in institutions and the uncertainties concerning institutional enactment complicate assessments about which actors are advantaged and disadvantaged. And the fact that actors are simultaneously embedded in multiple institutions often leaves them winners in some arenas but losers in others. We need a framework for thinking about change agents that goes beyond the crude dichotomy between winners and losers.

We also need to disentangle actors' short-run behaviors from their long-run strategies.⁶ We should not, for example, confuse immediate rule-conforming behavior with the overall goal of institutional maintenance. Actors may, instead, pursue a strategy of short-run conformity in the service of long-run insurrectionary goals. We further need to be mindful that institutional change need not emerge from actors with transformational motives. Rather, institutional change can be an

⁶ We thank Alan Jacobs for emphasizing the importance of this to us.

TABLE 1.3. *Types of Change Agents*

	Seeks to Preserve Institution	Follows Rules of Institution
Insurrectionaries	No	No
Symbionts	Yes	No
Subversives	No	Yes
Opportunists	Yes/No	Yes/No

unintended by-product that grows out of distributional struggles in which no party explicitly sought the changes that eventually occurred.

We find it useful to posit four basic change agents: insurrectionaries, symbionts (either parasitic or mutualistic), subversives, and opportunists.⁷ We define these actors formally by asking two basic questions:

1. Does the actor seek to preserve the existing institutional rules?
2. Does the actor abide by the institutional rules?

The answers to these questions link up to the strategies just discussed and are specified in Table 1.3.

Identifying change agents is useful for explanatory purposes: each agent type is associated with a particular mode of institutional change, as well as a particular preferred strategy for effecting such change. These associations exist because the contrasting interests or behaviors of the change agents vis-à-vis institutional continuity foster different patterns of change. In other words, different types of change agents emerge in different institutional contexts, and where they are successful specific modes of institutional change are likely to follow.

Insurrectionaries consciously seek to eliminate existing institutions or rules, and they do so by actively and visibly mobilizing against them. They reject the institutional status quo and do not always abide by its regulations. Insurrectionaries may be especially likely to emerge when groups of individuals are disadvantaged by multiple institutions that reinforce one another, linking their identities to overall positions

⁷ Clearly, any given actor may occupy different roles in the context of different institutional politics – for example, adopting an opportunist stance in one arena but assuming the role of insurrectionary in another context or at another time. Thus, the change agents we identify refer to roles rather than fixed identities.

within complexes of institutions. These objective similarities can provide a basis for subjective identification and thus coordinated collective action.

The insurrectionary variety of institutional innovator is widely theorized and represents the way that many institutionalists think about change agents when explaining abrupt patterns of change. Indeed, when insurrectionaries prevail in conflicts, they may lead critical-juncture periods that see the rapid overturning of the institutional status quo in favor of radically new rules. Insurrectionaries, therefore, may be especially linked to patterns of outright *displacement*. Moreover, the rapid displacement of institutions is precisely their goal. If displacement occurs gradually, it is likely because insurrectionaries are unable to make things change as quickly as they would like.

Symbionts come in two varieties – parasitic and mutualistic – and in both instances rely (and thrive) on institutions not of their own making. In the parasitic variety, these actors exploit an institution for private gain even as they depend on the existence and broad efficacy of the institution to achieve this gain. While they rely on the preservation of the institution, parasites themselves carry out actions that contradict the “spirit” or purpose of the institution, thus undermining it over the longer run. Parasites can flourish in settings where expectations about institutional conformity are high, but the actual capacity to enforce those expectations is limited. Indeed, parasites will not persist if institutional supporters are able to maintain and shore up institutions to address these gaps in compliance. As a result, parasites are especially associated with *drift*, or the neglect of institutional maintenance in the face of slippage between rule and practices on the ground.

In their mutualistic incarnations, symbionts also thrive on and derive benefit from rules they did not write or design, using these rules in novel ways to advance their interests. In this case, however, symbiotic activity does not compromise the efficiency of the rules or the survival of the institution. Rather, mutualists violate the letter of the rule to support and sustain its spirit – in contrast to parasites, who exploit the letter of the rule while violating its spirit.⁸ Mutualists are not associated with institutional change through drift; in fact, they

⁸ We thank Bruce Carruthers for underscoring the alternative possibility.

ordinarily contribute to the robustness of institutions, expanding the support coalition on which the institution rests.⁹

The chapter in this volume by Ato Onoma provides a vivid illustration of the logic of the parasitic variety of symbiotic agency and its implications for institutional stability and change. Onoma contests prevailing accounts of property rights institutions as rationally designed to secure efficient economic outcomes. In line with the view of institutions advanced in this volume, he instead depicts property rights regimes as laden with conflict. He shows that in Kenya “con men” and “tricksters” systematically exploited a newly institutionalized system of land documentation, playing on people’s beliefs in the validity of documents to defraud them by exchanging fake documents for money. Kenya’s property rights regime thus underwent drift, as politicians systematically neglected slippage in the enactment of the regime. Indeed, far from bringing the full powers of the state to bear to suppress such parasitic behavior, politicians themselves embraced the logic and the strategies of these con men, exchanging protection of property for political support. In cases like this, parasitic behavior (as in the natural world) can compromise the stability of the system itself. For while stable property rights might survive isolated infractions of this sort, the multiplication of fraudulent claims compromises the very beliefs on which the fraudulent practices rely. The result for Kenya, as Dan Slater colorfully noted at the workshop out of which this volume grew, was “the tragedy of the con men.”

Subversives are actors who seek to displace an institution, but in pursuing this goal they do not themselves break the rules of the institution. They instead effectively disguise the extent of their preference for institutional change by following institutional expectations and working within the system. From the outside, they may even appear

⁹ Mutualists are sometimes therefore associated (like opportunists, discussed later) with *conversion*. In some cases, the emergence of symbionts is a function of feedback effects, as actors who were not involved in an institution’s design become invested in the institution and develop an interest in its survival. Thelen’s (2004) study of vocational training in Germany provides an example. The country’s union movement opposed the creation of a firm-based training system in the late nineteenth century, but as the ranks of unions swelled with workers who had earned their credentials in that system, the unions developed an interest in maintaining and controlling this institution rather than dismantling it. The overall result was to render the system more robust by expanding its support coalition.

to be supporters of the institutions. But they bide their time, waiting for the moment when they can actively move toward a stance of opposition. As they wait, they may encourage institutional changes by promoting new rules on the edges of old ones, thus siphoning off support for the previous arrangements. In this sense, subversives may be especially associated with patterns of layering, in which new institutional elements are grafted onto old ones. Yet depending on the features of the political-institutional context, they may also encourage institutional conversion and the kinds of neglect that promote institutional drift. Either way, subversion brings change as developments on the periphery make their way to the center.

Chapter 2 (this volume) by Tulia Falleti provides an illustration of change via subversion. As she demonstrates, the shift in Brazil from a fragmented (but centralized) health care system to a universal (but decentralized) regime did not take place abruptly with the nation's transition from authoritarianism to democracy. Instead, she identifies long-percolating developments at the local level during the authoritarian period, in which advocates of a municipality-based system infiltrated the existing institutions and laid the foundation for a wholly different kind of regime. While operating within the broad parameters of the existing system, these activists exploited crucial gaps and openings for action at the local level to put in place a more decentralized system alongside and within the existing system, but whose logic was completely different from the prevailing one. The actions of subversives were crucial to later outcomes, and yet it is important to underscore that these changes were not the result of heroic agents operating "against all odds." Rather, as Falleti makes clear, there were significant features of the previous authoritarian institutions (above all, the attempt to penetrate the countryside) that proved crucial to the ability of subversives to work *against* the system from *within* it.

Finally, *opportunists* are actors who have ambiguous preferences about institutional continuity. They do not actively seek to preserve institutions. However, because opposing the institutional status quo is costly, they also do not try to change the rules. Opportunists instead exploit whatever possibilities exist within the prevailing system to achieve their ends. Indeed, the weight of opportunists within an institution can be a major source of institutional inertia. Their preference for

making use of existing possibilities over the riskier strategy of mobilizing for change makes opportunists – through their inaction – “natural” (de facto) allies of an institution’s supporters. Thus, beyond the power asymmetries noted earlier, opportunists help explain why changing an institutional status quo is often far more difficult than defending it.¹⁰

When they do emerge as agents of change, opportunists often engage in strategies of conversion: ambiguities in the interpretation or implementation of existing rules provide the space for them to redeploy these rules in ways unanticipated by their designers. The ultimate fate of the Auroux Reforms, a package of laws passed by a Socialist government in France in 1981, provides an example of this (Howell 1992). These laws were designed to shore up the country’s historically weak trade unions and strengthen collective bargaining by bolstering the voice and power of labor at the plant level. However, as Chris Howell (1992) shows, the paradoxical outcome was something like the opposite: in a context of economic crisis and deep antipathy on the part of French employers toward organized labor, firms seized upon and exploited ambiguities in the law to promote the development of firm-specific forms of labor representation that competed with unions – thus in fact further marginalizing unions and weakening collective bargaining.¹¹

In sum, we can generalize about the affinity between particular kinds of actors and modes of change as follows: Insurrectionaries seek rapid displacement but will settle for gradual displacement. Symbionts seek to preserve the formal institutional status quo, but their parasitic variety carries out actions that cause institutional drift. Subversives seek displacement but often work in the short run on behalf of layering. Opportunists adopt a wait-and-see approach while pursuing conversion when it suits their interests.

¹⁰ We are grateful to Giovanni Capoccia for this insight.

¹¹ Moreover, and consistent with the arguments laid out earlier, Howell (1992) traces this result to ambiguities that were built into the law as a result of the complex coalition that presided over its passage, which in this case fatefully included a minority of actors representing an older tradition within the French left committed to worker self-management. Howell notes that “the final [legislative] package was . . . a compromise and a hodge-podge of elements” (p. 183), and he attributes its paradoxical effects to “a certain plasticity of law” in which key provisions became “Trojan horses” for strategies that were antithetical to the law’s express purposes (pp. 182, 185).

TABLE 1.4. *Contextual and Institutional Sources of Change Agents*

		Characteristics of the Targeted Institution	
		Low Level of Discretion in Interpretation/ Enforcement	High Level of Discretion in Interpretation/ Enforcement
Characteristics of the Political Context	Strong Veto Possibilities	Subversives (layering)	Parasitic Symbionts (drift)
	Weak Veto Possibilities	Insurrectionaries (Displacement)	Opportunists (Conversion)

Link III: How Context and Institutions Shape Change Agents

Pulling together aspects of context and types of actors, we can also generate some general propositions concerning the kinds of environments in which different agents are likely to emerge and thrive. As Table 1.4 suggests, the character of existing institutional rules and the prevailing political context are again the key explanatory factors. Change agents become the intervening step through which the character of institutional rules and political context do their causal work.

First, *insurrectionaries* can emerge in any setting, but they are more likely to flourish in environments characterized by low discretion and weak veto possibilities. Low discretion is quite compatible with strategies of outright displacement (as opposed to conversion or drift), while fewer veto possibilities means that defenders of the status quo who can be expected to resist change will not be well positioned to counter insurgent efforts aimed at displacement.

Second, *symbionts* of the parasitic variety are the mirror image of this, thriving in environments characterized by strong veto possibilities and high enforcement discretion. Since parasitic symbionts wish to retain the formal institutional status quo, strong veto players (many veto points) help to secure this outcome. At the same time, however, parasitic symbionts need high discretion in enforcement, because this allows them room to alter the valence and meaning of institutionalized rules.

Third, *subversives* can be expected to emerge and thrive in contexts in which the existence of strong veto possibilities and few rule interpretation and enactment opportunities makes it difficult for opposition actors to openly break or even bend the rules of an institution. In this environment, change agents must work within the system to achieve their goals.

Finally, *opportunists* tend to thrive in settings where there is a great deal of discretion in how institutions are enacted and there are few veto players or points to prevent actual institutional change. In this setting, institutional supporters may turn a blind eye to those who willfully convert institutions for their own purposes so long as they do not oppose outright the institutional rules. Moreover, institutional challengers do not need to pursue insurrectionary strategies since gaps between rules and enactment are available for them to exploit. Rather than oppose institutions outright, then, institutional challengers capture resources by acting as opportunists who redeploy the prevailing rules for their own purposes.

Coalitional Dynamics and the Politics of Institutional Change

The foregoing discussion has developed broad propositions about the conditions under which particular types of change agents are likely to emerge as dominant, and it has also identified the kind of change that is associated with each agent. In reality, of course, change agents often do not work alone. Rather, they must act in concert with other institutional actors – other defenders and opponents of existing institutions. Because of the status quo bias of institutions – rooted in Shepsle’s (1986) “wedge of uncertainty” as well as in increasing returns to institutionalized power – the success of various kinds of agents in effecting change typically depends crucially on the coalitions they are able to deliberately forge or that emerge unexpectedly in the course of distributional struggle. As Peter Hall (this volume) notes, the relative power of various actors is enormously important in affecting their ability to assemble the coalition they need to change (or defend) existing arrangements. While these coalitions are inevitably shaped by the particular setting in question, it is possible to make generalizations about how different transformative actors can and cannot forge alliances with those who benefit and do not benefit from the prevailing rules. Table 1.5 presents the logic of these alignments by asking, broadly, whether a

TABLE 1.5. *Coalitional Alignments*

	Allies with Institutional Supporters	Allies with Institutional Challengers
Insurrectionaries	No	Yes
Symbionts	Yes	No
Subversives	No	No
Opportunists	Yes/No	Yes/No

given actor will seek alliances with an institution's supporters or its challengers, bearing in mind that part of the task is often to mobilize latent defenders or opponents into action.

Some of the connections here are straightforward. For example, the interests of insurrectionaries are by definition at odds with those of the defenders of the status quo. Insurrectionaries must seek alliances with other institutional challengers who have their own reasons (possibly substantively quite different) for opposing existing arrangements. Opportunists, by contrast, are available for all kinds of alliances, including alliances with insurrectionaries, depending on the political winds. In fact, the success of insurgencies often depends crucially on their forging an alliance with opportunists who are in principle not committed to existing institutions. Opportunists can be brought into such a coalition, however, only if insurrectionaries can convince them that change is likely or even inevitable – at which point opportunists will take up the insurgent cause. This is in fact one of the lessons that emerged from the literature on the transition from communism in Eastern Europe. Kuran (1991), for example, showed that the success of prodemocracy forces hinged crucially on signs that a critical mass of support for change had been assembled by the insurrectionaries; as change began to appear more likely, citizens' revealed preferences shifted dramatically. Beissinger (2002) documents a similar "cascade" effect in which a successful revolution in one region emboldened insurgents in neighboring countries and (we would add) in the process brought opportunists into the alliance for change.

Other aspects of the coalitional politics implied by the framework in this chapter are even more intriguing. For example, subversives (such as those in Tulia Falletti's chapter) need to work to the extent possible under the radar of the dominant actors. This means that, despite their preference for change, they may not align themselves

(certainly not openly) with insurrectionaries. Instead, they work on their own, behind the scenes or in the shadows. As Pierson pointed out during our workshop, the effects are like those of “termites in the basement” – the changes these actors have wrought may appear only with a delay, and then come to light suddenly (in Falletti’s example, with the transition to democracy), even though the process of change itself was gradual.

Finally, symbionts are in some ways the most interesting of the change agents we have explored here. In both varieties (mutualistic and parasitic), the interests of symbionts are broadly consistent with (and in many ways rely on) the preservation of status quo institutions. This makes them ready allies of defenders of the status quo and opponents of insurrectionaries. But because the *substantive* goals of symbionts are frequently at odds with those of current institutional supporters, strange coalitions can emerge. Alan Jacobs’s chapter provides a good example of this type of “Baptist-bootlegger” coalition. In his account, a key feature of the U.S. Social Security system – contributory financing – was jointly shored up in a period of instability (the 1950s) by an unlikely alliance of social progressives and fiscal conservatives. For progressives, contribution-based funding provided a compelling political and moral logic for maintaining and incrementally expanding the program, while conservatives embraced this same feature for the way it prevented that expansion from going too far. These kinds of alliances are not uncommon for symbionts, who “come around” to supporting institutions created by others and with different purposes in mind.

Conclusion

Building on previous conceptual work and harnessing the lessons we can draw from the analysis of concrete instances of institutional change, this chapter has presented a theory of gradual institutional change. The argument emphasizes the interaction between features of the political context and properties of the institutions themselves as crucially important for explaining institutional change. It also calls attention to the different types of change agents – and associated strategies – that are likely to flourish in particular institutional environments.

The theory suggests a potentially broad agenda and invites further research on gradual institutional change. It offers new concepts and causal propositions for scholars to draw on and put to use in their

own investigations. Indeed, rather than promote abstract debate about metatheory or definitions, this framework is intended to stimulate and aid in the substantive analysis of institutional change – whether in individual cases or across sets of cases. Ultimately, the arguments we have put forward can be evaluated only through the analysis of concrete cases and actual episodes of institutional change. Conversely, it is through their application that the concepts and propositions we advance can be further refined and elaborated.

Empirically assessing the theory in these substantive ways is something that can and should be carried out by institutionalists of all stripes in the social sciences. Although we have built on ideas developed in the field of historical institutionalism (and the chapters that follow originate mostly in that tradition as well), our propositions can be explored with equal profit by sociological and rational-choice institutionalists. Whatever the current disputes among scholars associated with alternative strands of institutionalism, their views are not so different as to prohibit a common research agenda focused on gradual institutional change. As Peter Hall's concluding chapter suggests, institutional analysts from different schools all stand to benefit by combining their best insights in the shared pursuit of valid explanation. Whatever extensions and revisions emerge from the use of the framework we have laid out here, this volume will have served its purpose if it stimulates more scholars to explore broad-ranging questions about gradual institutional change across diverse times and places.

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The Contradictory Potential of Institutions

The Rise and Decline of Land Documentation in Kenya

Ato Kwamena Onoma

I wanted a [land] document because it is like a marriage certificate for a woman. It gives you [the husband] confidence that no one will ever bother you.

An old farmer in Taita Taveta, Kenya, in a 2005 interview with author

[Land titles] are mere pieces of paper.

William ole Ntimama, minister of local government, Kenya, “The Indigenous and the Natives,” *Weekly Review* (Nairobi), July 9, 1993.

Introduction

The gradual decline of institutions that secure property rights presents us with an interesting puzzle. These institutions have a number of features that should display positive-feedback effects and ensure their continued strength. Land documentation systems, which constitute key components of these institutions, can aid informed and well-connected members of society in acquiring swathes of land, giving these actors an incentive to perpetuate such documentation systems (Scott 1998, 48).

I thank Peter Hall, James Mahoney, Yaba Ndiaye, Abbey Steele, Kathleen Thelen, Elisabeth Wood, and the participants in the Workshop on Historical Institutionalism held at Northwestern University (October 26–27, 2007), as well as members of the Yale Comparative Politics Workshop, for comments on this paper. Research for this paper was partly funded by an International Dissertation Research Fellowship from the Social Science Research Council.

Further, because titles and other forms of land documents and records can help them hold onto their property, we can expect landowners to invest in ensuring the efficacious operation of these systems. Beyond helping resolve issues of ownership, record systems create incentives for their perpetuation by facilitating the productive use of land and the transformation of land rights into capital (de Soto 2000). People involved in these modes of using land thus have an interest in upholding effective record systems. Also, by rendering such exploitation of land more profitable, these institutional arrangements draw new actors to these land uses and so increase the pool of those dedicated to institutional stability. For these reasons, the development of land documentation systems should foster changes that reinforce rather than undermine property rights.

Against this background, the history of the documentation of land rights in Kenya presents a real conundrum. Introduced by the colonial administration in the early 1900s to aid the commercial activities of European settlers, land documentation was later extended to the African population and was warmly embraced and reinforced by the postcolonial government after independence in 1963. But instead of demonstrating the expected trajectory of increasing the stability of institutions that have positive-feedback effects, the practice of title registration gradually eroded and, by 2004, had fallen into disrepute (Kenya 2004, 189). Many have been quick to blame the exogenous shock of multiparty democratization in 1991 for this decline (Klopp 2000, 2002; Kenya 2004, 82).¹ This focus on exogenous shocks is consistent with much of the literature on change in institutions that display positive-feedback effects (Mahoney 2000; Katznelson 2003). If such institutions operate to increase support for their own continued existence, then their decline must be due to factors external to their workings.

Yet this focus on the exogenous shock of redemocratization in Kenya is a mistake. In May 1991, months before the announcement of multiparty democracy in Kenya, the exploitation of documentation

¹ Many policymakers that I interviewed similarly attributed this decline wholly to the redemocratization process of the 1990s. Interviews with an official of the Ministry of Lands in Nairobi (Ken 1), February 14, 2005, and a land control board member in Nyeri District (Ken 18), March 3, 2005.

systems and subsequent cancellation of hundreds of title deeds by Kenya's High Court had led one contributor to the reputable Nairobi newspaper *Weekly Review* to wonder whether the assumption that a title gives one indefeasible rights to property was still true.² Even more important, much of the fraudulent exploitation of land documents and property rights that followed redemocratization mirrored (and maybe even copied) similar activities in the 1970s. So why did this institution, which should display strong positive-feedback effects, change over time?

To answer this question, I highlight the contradictory potential of institutions in explaining gradual change. By the "contradictory potential of institutions" I mean the ability of institutions to simultaneously cultivate and sustain dominant coalitions that support perpetuation of these institutions and to engender marginal groups that thrive on subverting these institutions. These marginal groups take advantage of institutional rules by covertly violating the rules' intended purpose – they are precisely the parasitic variety of "symbionts" to which Mahoney and Thelen refer in the introduction to this volume. In the struggles between institutional backers and parasitic actors, exogenous shocks can play a role, but not always as the sole or even the main causes of institutional change. Exogenous shocks often only exacerbate the existing advantage of one group or trend over others.

The first part of this chapter details the state's attempt to introduce and expand land documentation in Kenya and the positive-feedback effects these efforts had over time. The aggressive efforts of colonial and postcolonial state officials popularized land documents in Kenya (Meek 1949, 93–94; Kenya 2004). But by the late 1990s, following a long process of erosion and drift, the efficacy of land documents had dramatically declined (Kenya 2004, 189). The second part of this empirical section thus details how the system of land documentation contributed over time to its own decline. I locate a significant cause of the decline in the efficacy of land documents in Kenya in the gradual activities of parasitic forces nurtured and sustained by the very system of land documentation that these forces were undermining. The promotion of land documentation in the Kenyan environment produced and empowered a dominant constituency of white settlers

² "What Value a Title Deed?" *Weekly Review* (Nairobi), May 31, 1991.

and new black landed elites who supported land documentation and forcefully advocated the “sanctity of land titles” (Kenya 2004, 16). Vigorous efforts by the colonial and postcolonial state to encourage land documentation created the popular expectation that possession of a particular piece of paper could confer certain rights to a specific land parcel (Kenya 2004, 16). But, at the same time, land documentation fostered the rise of marginal con men dedicated to its exploitation. By cleverly manipulating beliefs about land documentation and the legal instruments that underpinned them, con men, working from the relative safety of their offices, were able to exchange fake land documents for money and thereby defraud people across the country.³

By the 1970s, well-connected politicians, copying the con men, brought the subversive exploitation of land documents closer to the mainstream of Kenya’s political economy. They used land documents to amass and deploy political support. Issuing and selling fake documents became an excellent way of raising cash for electoral campaigns, for buying the support of various individuals and groups, and for dissuading would-be opponents. Supplying land documents to people without actually giving them the land turned out to be an excellent way to get them to attend political rallies. Moreover, by promising land to document holders in various areas of the country, the politicians could change the makeup of electoral constituencies.⁴

This embrace of the fraudulent exploitation of land documentation by politicians compromised the *willingness* of the state to crack down on this activity. Thus the problem was not just one of weak state capacity. Nor was it that the system of land documentation was not well-established in the first place. The problem was that as people close to the state adopted the con men’s techniques, state agencies became increasingly less willing to use their powers to stop the fraudulent exploitation of land documentation by these people. The activities

³ Letter from the district commissioner, Kwale, to the district officer of the Coast Division, Kwale, April 4, 1968, Kenya National Archives (hereafter KNA) CC/12/47; letter from J. M. Masesi of Garissa to the minister for lands and settlement, June 25, 1968, KNA CC/12/47; and letter from the managing director of the Kenya Express Land and Estate Agent to Mr. James Crispus, April 5, 1968, KNA CC/12/47.

⁴ “Vanity Shares,” *Weekly Review* (Nairobi), June 20, 1980; “Bogus Companies,” *Weekly Review* (Nairobi), May 23, 1980; and “Ngwataniro at Crossroads as Internal Problems Surface,” *Weekly Review* (Nairobi), December 12, 1977.

of politically well-connected land-buying company executives underpinned a process of gradual institutional drift. State leaders failed to adequately shore up the institutions threatened by the widespread parasitic activity. When senior state leaders embraced similar activities after the exogenous shock of redemocratization in the 1990s, it only furthered a process that was already undermining the efficacy of the land document system in Kenya.

The conclusion of this chapter examines the implications of the contradictory potential of institutions for the literature on the political economy of Kenya, as well as on institutional change and stability more generally. As is clear from the analysis here, the extreme emphasis on exogenous shocks such as redemocratization to explain change in institutions that display positive-feedback effects is mistaken and overlooks endogenous processes that drive change over time. Given the constant possibilities for change that the contradictory potential of institutions allows, the excessive focus on so-called critical junctures in the study of institutional change also needs further appraisal. There are more openings for and processes of change than such accounts, steeped in the punctuated equilibrium model of change, permit.

The Contradictory Potential of Institutions

Streeck and Thelen (2005, 1–2) point out that a dominant strain of research on change in institutions that display positive-feedback effects emphasizes the consequences of sudden discontinuous changes sparked by exogenous shocks. Such institutions are said to be characterized by strong periods of stability produced by their positive-feedback effects (Mahoney 2000; Pierson 2000). These periods of stability are punctuated by disruptive moments of change – critical junctures – when exogenous shocks break down the institutions, creating episodes of contingency that allow agents to choose between alternatives (Pierson 2004, 144). This emphasis on exogenous sources of institutional change is grounded in an understanding of institutions as unambiguous entities that structure behavior in coherent and uniform ways (Arthur 1994; North 1990, 94; Pierson 2000, 76–77). They are said to exert what Schneiberg (2005, 103), in critical mode, has called “isomorphic pressures” on agents through incentives and distributional consequences that create and reinforce constituencies dedicated

to the survival of these institutions, and that shrink and raise the costs to those who might be interested in institutional change.⁵

A small but growing body of work has raised the possibility of gradual instead of abrupt change, and has suggested that endogenous factors might play a significant role in generating change in institutions with positive-feedback effects (DiMaggio 1988, 13; Greif and Laitin 2004, 634; Thelen 2004; Schneiberg 2005, 128; Streeck and Thelen 2005; Schneiberg and Clemens 2006, 218). Such analyses are partly grounded in an understanding of institutions as ambiguous entities (see Comaroff 1980, 107; Thelen 2000, 105; Ngugi 2004, 472; Jackson 2005, 229). One dimension of the ambiguity of institutions is that institutional forms do not necessarily dictate specific functions and render all other functions impossible (Thelen 2000, 105). As Thelen (2000, 105) has pointed out, an institution's role can change over time as new interests come into power or as the environment facing old interests is altered.

I take this line of argumentation a step further by pointing out that self-reinforcing institutions can contain internal contradictions that offer the potential for change. Institutions can engender and sustain dominant constituencies who support their continued existence and *simultaneously* foster parasitic groups that thrive on exploiting them in ways that may ultimately contribute to the institutions' decline. This view draws insights from but also shifts away from the idea of "temporal segregation"⁶ found in works that subscribe to what DiMaggio (1988, 13) calls the "internal logic of contradiction" in the process of institutionalization (Barley and Kunda 1992, 386; Schneiberg 2005, 106). According to this idea, the factors that are responsible for an institution's rise at time 1 then contribute to its decline at time 2. Here, however, I show that some of the very things about institutions that produce dominant coalitions invested in their perpetuation also concurrently create and sustain subordinate parasitic groups whose activities subvert the institutions. The coexistence of these forces makes an institution, even at the height of its influence, subject to contention and exploitation by subversive groups.

⁵ Leblebici et al. (1991, 336) and Thelen (1999, 392–396) point out this same portrayal of how institutions work.

⁶ I am using a term that Stephen Barley and Gideon Kunda (1992, 386) borrow from David Maybury-Lewis (1989).

Institutions with positive-feedback effects create stable expectations and material conditions that, ironically, can engender their own subversion by groups that exploit these beliefs. These groups rely on others to play by rules that they themselves ignore. Many institutions, including property rights systems, work by creating certain expectations in the minds of agents about the meanings and implications of specific acts and symbols. Thus the success of an institution depends on and can be measured by how tenaciously people hold onto the expectations that the institution engenders. For instance, a system of land title registration succeeds to the extent that it leads parties to believe that various documents represent rights to pieces of land. These beliefs and expectations enable titling systems to facilitate market transactions involving land. However, some of these same expectations can also make it easier for parasitic agents to feed on institutions in ways that undermine their overall efficacy and strength. In Brazil, for example, con men exploited the trust of American and European environmentalists and sold the foreigners worthless “titles” to state-owned land in the Amazon. One particularly successful con man was able to sell “titles” to an area the size of Ireland.⁷

The workings of a self-reinforcing institution can also create material conditions whose exploitation by parasitic actors causes the institution to drift from its intended purpose. Institutions may, for example, restrict the supply of a good or suppress competition for certain goods. When this occurs, opportunities for parasitic activity may result. For instance, by suppressing suppliers of alcohol, Prohibition in the United States created highly profitable opportunities for bootleggers. Whereas the bootleggers embraced Prohibition because of the high profit margins it gave them, their activities subverted the effort to prevent the consumption of alcohol – the main point of Prohibition.⁸

This perspective calls on us to move beyond the prevalent view that institutional failure occurs only because some actors who are disadvantaged by or who detest particular institutions set out to destroy them (Thelen 2000, 107; Schneiberg 2005, 120–121; Schneiberg and

⁷ “Brazil Hunts Amazon Land Thief,” *BBC News*, January 9, 2001, <http://news.bbc.co.uk/2/hi/americas/1107272.stm> (accessed June 12, 2007).

⁸ Yandle (1983) sheds light on these situations where “bootleggers” and “Baptists” coincide in their support for institutions even though their attitudes toward the ultimate goals of those institutions are opposed to each other.

Clemens 2006, 218). For instance, in noting how institutions can contribute to their own demise, Clemens (1993, 757) points to the way in which self-reinforcing institutions with distributional consequences create grievances through the same exclusionary features that attract “winners” invested in perpetuating these institutions. But I make the point here that change can also be unwittingly brought about by symbionts of the parasitic variety. These are agents who harbor no grievances toward the institutions they are involved with. In fact, they depend on these institutions for their survival and so embrace them. Yet despite their need for these institutions, their parasitic activities can, over time and cumulatively, end up ruining the health of their hosts. The efforts of some con men to prevent others from engaging in similar con games can be understood in this light. Although themselves engaged in rackets that exploit certain institutions, they seek to maintain the health of those institutions by keeping others from similarly feeding on them.

Recognizing the contradictory potential of institutions allows us to explore ways in which such endogenous processes highlighted above and exogenous factors collaborate to engender and shape institutional change (Streeck and Thelen 2005, 22). While self-reinforcing institutions may simultaneously foster parasitic groups that gradually undermine them, these groups may have only a limited capacity to inflict damage. These agents may be only marginal actors innovating with institutional forms and operational logics on the periphery. Exogenous changes that impact the distribution of preferences and power in favor of these agents, however, can aid in bringing formerly marginal forms and logics from the periphery to the center (Streeck and Thelen 2005, 22). Such exogenous shocks could be shifts in the political environment that encourage members of dominant groups to adjust their preferences in ways that bring them in line with those of parasitic groups. These more powerful actors can then bring their power to bear against the institutional system.

Alternatively, shocks such as defeats in major elections could erode the power of dominant groups, allowing parasitic forces to take over and fundamentally undermine institutions. As can happen in cases of parasitic behavior, the very success of the parasitic agents can lead to a total institutional collapse that eliminates the agents’ own host institutions. For instance, where con men gain unhindered freedom to

exploit land documentation, popular belief in the efficacy of land documents will drastically decline over time, eventually making it almost impossible for the con men to profit from the fraudulent deployment of these documents and resulting in a sort of “tragedy of the con men,” as Dan Slater has termed it.⁹

The Establishment of Land Documentation in Kenya

By land documentation, I refer to a system by which information about the locations, dimensions, and various rights to parcels of land are noted in record systems in documents issued to relevant parties. Land documents in Kenya encompass titles, letters of allotment, and letters of offer issued by the Ministry of Lands (Kenya 2004, 13), as well as share certificates issued by private land-buying companies.¹⁰ I adopt this broad definition, which goes beyond land title deeds, in part because people employ many forms of documents as indicators of their right to land (Kenya 2004, 12–13).

In Kenya, land documentation started as a primary means through which the British colonial administration sought to attract European settlers to the country.¹¹ To facilitate the subjugation of Kenya following the declaration of the Protectorate of East Africa in 1895, the British East Africa Company and colonial administrators moved aggressively to encourage European settlement and agriculture (Arnold 1974, 54; Hazlewood 1979, 1; Berman and Lonsdale 1992, 335). The resulting expropriation of land from Africans caused massive landlessness and land hunger among Africans.

The reasons given for documenting the land rights of Europeans in Kenya resembled contemporary arguments supporting title registration and property rights security. European farmers had to have secure property rights to persuade them to invest in agriculture and to facilitate their use of their land rights as collateral for loans (Kenya 1941, 1–3). As a result, settlers’ organizations like the Settlement Committee, the Convention of Associations, and the Nairobi Chamber of

⁹ Comments by Dan Slater on an earlier draft of this paper at the Workshop on Historical Institutionalism at Northwestern University, October 26–27, 2007.

¹⁰ “Vanity Shares,” *Weekly Review* (Nairobi), June 20, 1980.

¹¹ This was in addition to the subsidization of European settlers with heavy taxes levied on Africans. See Leys (1931).

Commerce all lobbied the authorities for a land documentation system (Kenya 1941, 1–13).

Ultimately, the East African (Lands) Order in Council (1901), the Crown Lands Ordinance (1902 and 1915), and the Land Titles Ordinance (1908) were passed to provide for the registration of documents for lands seized from Africans for exclusive European use (Kenya 2002, 21–23). In addition, the colonial administration created survey departments, registries, and assorted boards to govern land transactions. By 1919 the colonial government was recording land titles and granting them to Europeans on a large scale (Meek 1949, 93–94).

Africans were initially excluded from these efforts at documentation. However, at the height of the Mau Mau liberation war (1952–1960), the Swynnerton Plan of 1954 extended land documentation to the Native Reserves, where Africans were allowed to possess land (Atieno-Odhiambo 2002, 238). An honest and perceptive colonial official portrayed the Swynnerton Plan as a counterinsurgency weapon aimed at creating a new Kenyan, who will “become the anchor of the tribe, the solid yeoman farmer, the land owner who knows that he has too much to lose if he flirts, however lightly, with the passions of his nationalistic friends” (quoted in Branch 2006, 28).

At independence in 1963, Jomo Kenyatta’s postcolonial government (1963–1978) warmly embraced and promoted land documentation (Kenya 1966). Laws such as the Land Adjudication Act (Cap 284), the Land Consolidation Act (Cap 283), the Land (Group Representatives) Act (Cap 287), and the Registered Land Act (Cap 300) ensured the continuation of documentation. The Land Adjudication and Settlement Department continued to register titles for land parcels in trust land areas.¹² Records were strictly kept for plots in the state’s settlement schemes, including the Million Acre, Z-Scheme, Shirika, and Haraka schemes, which settled more than two hundred thousand families on approximately three million acres by 2005.¹³ In many

¹² Interview with an official of the Ministry of Lands and Settlement, Nairobi (Ken 5), February 18, 2005; and “Recent Land Reforms in Kenya” (paper given by the Kenya delegate at the Seminar on Land Law Reforms in East Africa, June 4, 1968, p. 10), Kenya National Archives (KNA), BN/81/87.

¹³ Interview with an official of the Ministry of Lands and Housing, Nairobi, (Ken 29), March 15, 2005.

districts, land registries were created to facilitate the registration of land rights.

By the late 1960s, land documents had become a common part of Kenyan life (Kenya 1966). A total of 3.1 million titles had been issued by 1999,¹⁴ and the use of land documents in financial transactions was pervasive (Kenya 2004, 65). Banks that granted loans for the acquisition and operation of agricultural, real estate, and tourism concerns accepted titles to properties as collateral (Wanjohi 1985, 13; Kenya 2004, 65).¹⁵

The Positive-Feedback Effects of Land Documentation

Land documentation systems often have positive-feedback effects by virtue of their ability to distribute land in certain ways and make certain modes of using land easier and more profitable (de Soto 2000, 6–7; World Bank 2002, 4–8; Ngugi 2004, 477). Beneficiaries can transform some of their economic benefits into political instruments to reinforce the structure and integrity of land documentation. Land documentation within the context of land hunger and landlessness in Kenya had such positive-feedback effects. It gained the support of many Kenyans with large landholdings by reducing threats to their new holdings posed by rival claimants (Ngugi 2004, 502). This protection was critical.

¹⁴ “How To Get Out of the Quagmire,” *East African Standard* (Nairobi), March 11, 2002.

¹⁵ This urge to use titles to get loans from the Agricultural Finance Corporation (AFC) and other financial institutions was a big part of what motivated many community leaders to ask the state to carry out land documentation in their area. See letter from Chief Zephaniah Malit of East Karachuonyo to the assistant land adjudication officer of South Nyanza, September 8, 1968. The chief was asking for adjudication and documentation in the area to allow people to use their title deeds to get AFC loans. See KNA BV/156/2. Also, interview with a farmer and member of a group ranch in Taita Taveta, (Ken 62), May 12, 2005; and “Back to Square 1,” *Weekly Review* (Nairobi), May 20, 1981. Also see “Kenyan Ministers” Row Over ‘Grabbed’ Forest Land Deepens Divisions in Narc,” *The East African* (Nairobi), April 4, 2005; and “Kenya Starts Process To Cancel 12,000 Title Deeds,” *The East African* (Nairobi), February 28, 2005. These stories reported the concern of the Kenya Bankers’ Association over threats by the government to cancel titles because of the monies they had lent out on titles. Also see comments by Joseph Wanyela, chairperson of the Kenya Bankers’ Association, in “How Should the Ndung’u Report Recommendations Be Implemented? What Kenyans Say,” *Land Update* 3(4) October–December 2004. Nakuru: Kenya Land Alliance. http://www.oxfam.org.uk/resources/learning/landrights/downloads/kla_land_update3_4.pdf (accessed May 8, 2009).

Many large estates, such as the Taveta Sisal Estate of Basil Criticos and the Ziwani Estate of the Kenyatta family, existed side by side with large populations of squatters. As they sought to keep out squatters, who often had strong historical claims to the land parcels (Ngugi 2004, 502), the owners of these estates quickly adopted the “sanctity of land titles” language first used by European settlers.

Land registration in Kenya, like that in many other places, also acted as a cover beneath which the well-connected and knowledgeable could redistribute land in their own favor. Their education and their positions within the state machinery gave them a deep understanding of land administration procedures, as well as the ability to take advantage of these procedures.¹⁶ Many bureaucrats and politicians registered titles to pieces of land that the state had procured for settling poor Kenyans, using the guarantee of the security offered by the titles to shield themselves from challenges.¹⁷ They also exploited land documentation to acquire huge commercial concerns. The family of Kenya’s first president, Jomo Kenyatta, acquired, among other properties, the Gicheha Farms in Kiambu District¹⁸ and the Ziwani Estate in Taita Taveta District,¹⁹ properties that covered tens of thousands of acres. Kenya’s second president, Daniel arap Moi, acquired, among others, Kabarak Farm in Nakuru District²⁰ and Ziwa Farm in Uasin Gishu District.²¹

The ease with which land titles could be procured throughout the country meant that many Kenyans could use their land as collateral for loans from the Agricultural Finance Corporation (AFC), the Settlement

¹⁶ “Moi Suspends Land Allocations, Raises Hopes About Land Reform,” *Weekly Review* (Nairobi), September 22, 1978.

¹⁷ “No Cheer,” *Weekly Review* (Nairobi), August 7, 1981; and letter from J. H. Angaine, minister for lands and settlement, to the director of settlement, January 7, 1975, KNA BN/81/135.

¹⁸ “Land: Who Owns Kenya?” *East African Standard* (Nairobi), October 1, 2004.

¹⁹ “Land: Who Owns Kenya?” *East African Standard* (Nairobi), October 1, 2004; and interview with an official of one of the land administration agencies in Taita-Taveta District (Ken 63), May 13, 2005.

²⁰ “Land: Who Owns Kenya?” *East African Standard* (Nairobi), October 1, 2004; “A Choice of Seven Grand Homes: Which Will Moi Opt For?” *Daily Nation* (Nairobi), January 28, 2002; and “Six Cows Stolen from Moi’s Farm,” *East African Standard* (Nairobi), June 4, 2005.

²¹ Interview with a divisional officer in Uasin Gishu District (Ken 35), April 21, 2005; and “A Choice of Seven Grand Homes: Which Will Moi Opt For?” *Daily Nation* (Nairobi), January 28, 2002.

Fund Trustees (SFT), and various private institutions (Wanjohi 1985, 13).²² The banks and financial institutions involved in such borrowing also became big supporters of land documentation.²³

Land documentation produced and empowered significant constituencies that were dedicated to its continuance (Ngugi 2004, 502). Defending the sanctity of land titles spread from its initial base within the European settler community to the black Kenyan community (Kenya 2004, 16; Ngugi 2004, 502; Branch 2006, 28). The African delegates to the Lancaster House Conferences, where independence was negotiated, accepted the “sanctity of private property,” and Kenyatta himself went to the European redoubt of Nakuru to assure the settlers there that the state would respect land titles and would not expropriate property (Arnold 1974, 65). These moves were unsurprising. Representatives from the crucial Central Province who had been elected in 1957 and 1958 had depended on electoral support from African yeomen advocates of private property who had just received “newly issued land titles” (Branch 2006, 43). Over time, these supporters would try to stamp “an imprimatur of legal invincibility” on land title deeds (Kenya 2004, 16). Yet the development of this dominant constituency of black and white elites and commoners in support of efficacious land documentation went hand in hand with the development of a marginal constituency that thrived on the subversion of land documentation.

The Parasitic Exploitation of Land Documentation:

Peripheral Innovators

Land documentation, while displaying positive-feedback effects, also created opportunities for its own subversion by parasitic elements. Kenya’s colonial and postcolonial governments succeeded in creating exploitable expectations through their introduction and promotion of land documentation. Parasitic elements whose activities ultimately

²² “Fifteen Years of Land Settlement,” *Weekly Review* (Nairobi), October 20, 1978; and “No Hanging On, Moi Tells Land Companies,” *Weekly Review* (Nairobi), April 4, 1985. In fact, this urge to use titles to get loans from the AFC and other financial institutions was a big part of what motivated many community leaders to ask the state to carry out land documentation in their area. See note 15.

²³ “How Should the Ndung’u Report Recommendations Be Implemented? What Kenyans Say,” *Land Update*, Nakuru (Kenya): Kenya Land Alliance. October–December 2004 (p. 13). Also see (Kenya 2004, 66).

undermined the system of land documentation embraced these opportunities with zest and inventiveness.²⁴ As often occurs with innovation in the face of dominant institutions (see Leblebici et al. 1991, 345),²⁵ marginal actors operating at the periphery took the lead in introducing an alternative logic into the structure of land documentation. Already by 1968, we find state authorities in communication about the activities of petty fraudsters who, taking advantage of widespread belief in the efficacy of land titles, were selling worthless pieces of paper to land-hungry Kenyans.²⁶ These minor con men, lacking political clout, were bent on accessing some of the benefits of the dynamic land market of the 1960s and 1970s. In one example, in 1970, a con man fooled a certain Kariuki into buying “title” to two hundred acres of land in Lunga Lunga Location; the land, however, turned out to be Crown Land to which the seller had had no right.²⁷ The District Commissioner of Kwale was to tell Kinuthia later that “the legality of the written agreement between you and the seller is very questionable.”²⁸ In another example, three men sold some Kamba people land that turned out to be Trust Land belonging to Shimba North Location.²⁹ The proliferation of fraudulent sales in Kwale led the district commissioner to request assistance from local chiefs in combatting the practice.³⁰

²⁴ Ngugi (2004, 472) also argues that land registration in Kenya faced significant opposition. But his argument concerns how various social actors sought to blunt some of the implications of land registration that posed major challenges to existing social arrangements. As he points out, “These social sectors refused to accept all the implications of registration, such as near-absolute powers of the individually registered owner. They organized, invented and mobilized customary norms to frustrate complete operation of the new formal regime of tenure arrangements.”

²⁵ See the interesting work of Leblebici et al. (1991, 345) on how alternative logics and structures are first innovated at the periphery and gradually seep into the center.

²⁶ Letter from the chief of Chimba North Location to the district commissioner of Kwale discussing the illegal sale of state land by con men in Msulwa, October 18, 1968, p. 277, KNA CC/12/47; letter from J. C. Kariuki to the district commissioner of Kwale concerning 200 acres of land, May 29, 1970, KNA CC/12/47; and letter from the district commissioner of Kwale to the district officer of the Coast Division, Kwale, April 4, 1968, KNA CC/12/47.

²⁷ Letter from J. C. Kariuki to the Ministry of Lands and Settlement, May 15, 1970, KNA CC/12/47.

²⁸ Letter from the District Commissioner of Kwale to Mr. Kariuki if Mariakani, May 29, 1970, KNA CC/12/47.

²⁹ “Msulwa Report,” by the Shimba North Location chief to the district commissioner, Kwale, October 18, 1968, KNA CC/12/47.

³⁰ Letter from the district commissioner, Kwale, to the district officer of the Coast Division, Kwale, April 4, 1968, KNA CC/12/47.

Eventually, these institutional entrepreneurs began to invent more complex schemes to exploit the credulity created by land documentation. The “company” that called itself the Kenya Express Land and Estate Agent was a sophisticated example of this trend. With an eye-catching name and a postal address in Nairobi it set about its business of harvesting the fruits of Kenyans’ belief in the validity of land documents. It placed at least two advertisements in the influential *Taifa Leo* newspaper (March 23 and April 5, 1968) offering to sell fifty-acre parcels of land in Kwale District.³¹ The ads invited people to bring or send in the 1,170 shillings for the land, a 20-shilling registration fee, a 2-shilling stamp fee, and a 200-shilling agent fee “in one lump sum – no installment.”³² Their letter of April 5, 1968, to one customer prominently noted that buyers will be issued with “Title-deed[s].”³³ When a would-be buyer in Garissa inquired about visiting Kwale to see the plots he was informed that “owing to unforeseen circumstances the land in question is not yet available and therefore it will be a waste of time for you to come to Nairobi. We will inform you in the future if it will be necessary for you to come.”³⁴ At other times company employees passed themselves off as the agents of the “Local government of Kwale.”³⁵ At least a few victims and would-be victims wrote to officials, including the district commissioner of Kwale and the Kenyan minister of lands and settlement, inquiring or complaining about this company. In response to all inquiries, the district commissioner’s representative wrote: “There are no 50 acre plots being sold in Kwale at all. Watch out for rogues who go around deceiving people that they have lands to sell.”³⁶

These subversive institutional innovations by shady “land merchants” on the periphery would gradually move closer to the

³¹ Letter from J. M. Masesi of Garissa to the minister for lands and settlement, June 25, 1968, KNA CC/12/47.

³² Letter from J. M. Masesi of Garissa to the minister for lands and settlement, June 25, 1968, KNA CC/12/47.

³³ Letter from the managing director of the Kenya Express Land and Estate Agent to Mr. James Crispus, April 5, 1968, KNA CC/12/47.

³⁴ Letter from J. M. Masesi of Garissa to the minister for lands and settlement, June 25, 1968, KNA CC/12/47.

³⁵ Letter from Kinuthia Njoroge to the district commissioner of Kwale, May 4, 1968, KNA CC/12/47.

³⁶ Letter from the district commissioner of Kwale to J. K. Ithagu, May 4, 1968, KNA CC/12/47.

mainstream of institutional practice after they were adopted by wily and politically ambitious land-buying company executives in the 1970s.

Refining and Exporting Technologies

Institutional innovations by marginal actors do not necessarily become dominant. How did the institutional logics and forms invented by uninfluential crooks move from the margins, where they were deliberately hidden from the glare of the law, to the mainstream of Kenya's political economy? An important step in the migration of institutional innovations from the periphery to the mainstream is often the adaptation of these institutional forms by actors with more clout who are trying to solve new problems. These actors, who have the power to avoid punishment by state authorities, can shield new institutional logics and forms from attack in a way that marginal actors cannot. The aura of impunity that surrounds the behavior of these influential actors then encourages imitation by others. In the 1970s in Kenya, powerful, politically ambitious land-buying company (LBC) executives in Central and Rift Valley provinces played this critical role.

The leading LBC executives had little to do with small-time crooks even as they adapted the crooks' fraudulent logics. Because of the executives' political ambitions they found the economic exploitation of land documents useful, but they needed to maximize its political effectiveness. To this end, once they had gotten Kenyans to purchase land documents, they impressed on the buyers that the documents' worth depended on the new owners' "correct" political behavior. In effect, the LBC executives removed the guarantee of rights inherent in various land documents and the administrative institutions that supported them, and transferred it to themselves. This gave the executives the benefit of monies and support that people had already tendered for the papers. It also had the advantage for politicians of transforming people who held land documents into captive populations who had to obey the politicians over the long term so that the rights promised by the land documents could be actualized and protected.

The evolution of LBCs in Kenya represents an interesting case of what Hacker (2005) and Streeck and Thelen (2005) have called institutional "drift." LBCs are registered under the Companies Act (Cap 486). Departing white settlers often sought to sell their farms in large

chunks, and poor peasants, many of whom had been rendered landless by massive seizures of land for exclusive European use, could not afford to enter the land market as individuals. Land-buying companies were devised as a way for people to pool their resources by buying shares in a company. Revenues from the sale of shares could then be used by the company to purchase farms that would be subdivided among shareholders according to the number of shares they held (Wanjohi 1985, 13; Kenya 2002, 38). LBCs had tremendous success in enabling many poor Kenyans to pool their money and acquire land in the 1960s.³⁷ It is this success that explains why people were subsequently willing to buy into the schemes of crooked executives.

This institutional structure of the land-buying company was in the 1970s taken over by fraudsters and politicians and used for political ends through the systematic subversion of land documentation. In Kenya, many parliamentarians and aspiring parliamentarians formed LBCs. Thus, Ngengi Muigai, MP for Gatundu, formed the Gatundu Development Company³⁸ John Michuki, who wished to be the MP for Kangema, formed the Kangema Farlands Company.³⁹ George Mwicigi, the assistant minister for agriculture and livestock development, formed the Kandara Investment Company.⁴⁰ Waruru Kanja, Nyeri MP and assistant minister for local government and urban development, formed Burguret Arimi Limited.⁴¹ Kihika Kimani, who aspired to be MP for Nakuru, formed the notorious Ngwataniro Land Buying Company. There were some 320 and 700 LBCs in the provinces of the Central Valley and the Rift Valley, respectively, by the late 1970s.⁴² Kihika Kimani's Ngwataniro LBC alone was estimated to have as many as 30,000 members in 1979;⁴³ the Uiguano wa Mumbi

³⁷ "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980, and "Ultimatum: Directors Told To End Land Problems," *Weekly Review* (Nairobi), August 29, 1980.

³⁸ "Land Issue," *Weekly Review* (Nairobi), May 9, 1980, and "Opting Out," *Weekly Review* (Nairobi), March 26, 1980.

³⁹ "Michuki Takes the Plunge," *Weekly Review* (Nairobi), May 4, 1979.

⁴⁰ "Mwicigi Resigns," *Weekly Review* (Nairobi), January 25, 1985.

⁴¹ "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

⁴² "No Hanging On, Moi Tells Land Companies," *Weekly Review* (Nairobi), April 4, 1986; "Act Two: Nyeri Land Squabbles Continue," *Weekly Review* (Nairobi), September 5, 1980; "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

⁴³ "Shocking Revelations: Company Allegedly Lost Millions Of Shillings," *Weekly Review* (Nairobi), March 30, 1979.

Company was thought to have 3,604 members;⁴⁴ and Ngengi Muigai's Gatundu Development Company had around 23,000 members.⁴⁵

Land-buying company executives sold "vanity shares" to amass money for political campaigns.⁴⁶ They used the money to influence attendance at political rallies and how and where people voted.⁴⁷ "Vanity shares" were share certificates that were supposed to but that did not actually give people access to land. Shareholders sometimes found that their access to land depended not on their owning share certificates, but on their performance of services, such as rendering political support to LBC executives. The existence of "vanity shares" led to widespread doubts about the legitimacy of LBC share certificates. In 1980, 30,032 people registered with the district commissioner of Nyeri alone, claiming that they had been defrauded by LBC executives.⁴⁸ Of seventy-three known LBCs in Nyeri District in 1980, the directors of forty-one were under investigation for fraudulent activities. The heads of the other thirty-two had simply disappeared, leaving little evidence of their companies' activities beyond the irate peasants they had defrauded.⁴⁹

LBCs were transformed into excellent instruments for raising money for political action. Share certificates were issued for which there were no corresponding land parcels, providing company executives with money for their political activities but leaving purchasers with worthless documents. In 1980, 1,370 shareholders in Burguret Arimi, the LBC headed by Waruru Kanja, complained to the Nyeri district commissioner. They had purchased shares in the company but had received no lands for their shares.⁵⁰ The mammoth Gatarakwa Farming Company, headed by the powerful Ndungu Gicheru, a freedom

⁴⁴ "Land Ultimatum: Directors Told To End Land Problems," *Weekly Review* (Nairobi), August 29, 1980.

⁴⁵ "Land Issue: Shareholders' Patience Running Out," *Weekly Review* (Nairobi), May 9, 1980.

⁴⁶ "Vanity Shares" was the title of a story in the *Weekly Review* (Nairobi), June 20, 1980.

⁴⁷ "Campaign Against JM Rumors," *Weekly Review* (Nairobi), May 5, 1975, and "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

⁴⁸ "Vanity Shares," *Weekly Review* (Nairobi), June 20, 1980.

⁴⁹ "Act Two: Nyeri Land Squabbles Continue," *Weekly Review* (Nairobi), September 5, 1980.

⁵⁰ "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

fighter during the Mau Mau liberation war, produced even more landless shareholders. Only a third of the company's 6,000 members had received their plots by May 1980. The rest crowded the office of the Nyeri district commissioner to complain about their worthless share certificates. More than a thousand shareholders in Weru-ini Land Limited, a company headed by the governor of the Central Bank of Kenya, Duncan Ndegwa, similarly trooped to the district commissioner's office to complain about not receiving the land presumably guaranteed by their share certificates.⁵¹ Some LBC executives put the same plot number on multiple ballots, which led to more than one person's drawing "rights" to the same piece of land.⁵² About 300 members of the Githunguri Constituency Ranching Company actually got land title deeds from their executives but found no corresponding lands. Another 3,250 company members received neither titles nor land parcels.⁵³ Most shareholders in LBCs in the 1970s eventually came to the same painful conclusion pithily expressed by Mzee Mathenge, a victim of the Ngwataniro LBC: "The land just was not there."⁵⁴

The fortunate few shareholders and titleholders who actually got land often soon realized that their troubles were not over. In many cases, avaricious company directors, eager to profit one more time before they relinquished actual land, used the titles to shareholders' land as collateral for massive loans that they made no efforts to repay. As a result, the few lucky people who had gotten those parcels discovered that they had to repay those loans to avoid foreclosure by the bank. In essence, they had to pay for the land twice to avoid losing it. Members of the Ngwataniro LBC, however, did not lose their newly acquired plots to the banks that held the titles as collateral, thanks to President Moi's intervention on their behalf.⁵⁵

Allegations that some of the proceeds from these fraudulent activities had been used "in the last two parliamentary and civic elections"

⁵¹ "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

⁵² Interview with three land control board members and former shareholders in LBCs in Nyeri District (Ken 26), March 9, 2005.

⁵³ "No Hanging On, Moi Tells Land Buying Companies," *Weekly Review* (Nairobi), April 4, 1986.

⁵⁴ "Vanity Shares," *Weekly Review* (Nairobi), June 20, 1980.

⁵⁵ "No Hanging On, Moi Tells Land Buying Companies," *Weekly Review* (Nairobi), April 4, 1986.

were widespread.⁵⁶ Given the involvement of many LBC executives in local and national politics these allegations were not surprising. LBCs had become cash cows for politicians seeking to acquire or maintain positions in the ruling Kenya African National Union's (KANU) competitive one-party system.

But the political uses of LBCs went beyond the companies' serving as a reliable source of cash for aspiring politicians. LBCs became instruments for holding shareholders as political captives who could be manipulated in various ways. The idea was to collect payment from shareholders but delay the distribution of share certificates or titles or both, as well as the land parcels that were supposedly guaranteed by these documents. Politicians could then use the undistributed certificates, titles, and parcels as bait to get people to attend rallies and to vote in certain ways. The case of John Michuki is particularly instructive here. When the former head of the Kenya Commercial Bank decided to contest the Kangema parliamentary seat in 1979, he called a meeting of his Kangema Farlands Company to discuss share certificates. But when members of the six thousand-member-strong LBC gathered at Michuki's home, they had to endure a well-choreographed performance at which share certificates never came up for discussion. Instead, after refreshments were served, a series of speakers mounted the podium to beseech Michuki to run for the parliamentary seat. Michuki finally agreed to do so and announced his intention to unseat the incumbent MP, J. J. Kamotho.⁵⁷

The use of LBCs to gerrymander electoral constituencies was one of the contributions of the man who would become the poster child for the ills of LBCs in the 1970s. Kihika Kimani was the founder and chief executive of what the *Weekly Review* called the "all-pervading business cum political organization" Ngwataniro LBC.⁵⁸ Kimani manipulated the character of voting constituencies in Nakuru District by moving members of his LBC around the company's vast properties during revision of the voters' roll in 1977. Promising land to those who cooperated and threatening the rights of those who refused, Kimani allegedly transported voters from other constituencies to his

⁵⁶ "Bogus Companies," *Weekly Review* (Nairobi), May 23, 1980.

⁵⁷ "Michuki Takes the Plunge," *Weekly Review* (Nairobi), May 4, 1979.

⁵⁸ "Kihika Kimani To Face Uphill Battle," *Weekly Review* (Nairobi), April 27, 1979.

own in Nakuru North, where they registered to vote and boosted his support.⁵⁹

Kihika Kimani used his LBC to rise from obscurity to the heights of Nakuruan and national politics. He created the Ngwataniro LBC after losing his initial bid to unseat the influential Nakuru East MP Fred Kubai in the 1969 parliamentary elections. To raise money for his political activities, he oversubscribed his company's shares, leaving many members with no land. He also threatened to evict company members who opposed his political ambitions and gave company land to many people who were not shareholders but who supported him politically. Using these techniques he expertly executed his plan to replace three of the four incumbent Nakuru District MPs with Ngwataniro members in the 1974 parliamentary elections.⁶⁰ By the middle of the 1970s he was the most influential politician in Nakuru and had set his sights on national politics. He was elected organizing secretary of the powerful Gikuyu, Embu and Meru Association (GEMA), which was very influential during the reign of President Kenyatta. Formed in 1971 to further the social welfare of the Gikuyu, Embu and Meru ethnic groups, GEMA became a powerful and feared political association with an active investment arm, GEMA Holdings.⁶¹ When the prominent Nyandarua North MP J. M. Kariuki was murdered, Kimani launched a series of meetings in the Rift Valley to quell widespread rumors that senior state officials were involved in his assassination. Ngwataniro funds and vehicles were thought to have been used in organizing those meetings.⁶² Kihika Kimani's most significant foray into national politics was his founding of the Change the Constitution Movement in 1977, which hoped to prevent Vice President Moi from automatically succeeding President Kenyatta in the event of the president's death.⁶³

⁵⁹ "Ngwataniro at Crossroads as Internal Problems Surface," *Weekly Review* (Nairobi), December 12, 1977.

⁶⁰ "Campaign Against JM Rumors," *Weekly Review* (Nairobi), May 5, 1975, and "Mr. 100 per cent," *Weekly Review* (Nairobi), January 12, 1979.

⁶¹ "GEMA speaks out on politics," *Weekly Review* (Nairobi), May 19, 1975; "What Went Wrong at GEMA Holdings," *Weekly Review* (Nairobi), February 2, 1979.

⁶² "Ngwataniro at Crossroads as Internal Problems Surface," *Weekly Review* (Nairobi), December 12, 1977.

⁶³ "1977 Limping to the Finish in Kenya," *Weekly Review* (Nairobi), December 26, 1977.

Moi was well aware of the political significance of these LBCs and of their fraudulent manipulation of land documentation and property rights in the struggle for control of the Kenyan state. One of his first actions on succeeding Kenyatta as president was to launch a sustained attack on the LBCs that had enabled his opponents to form the Change the Constitution Movement. Moi knew that the power of these LBC executives came from their frauds involving share certificates, titles, and land parcels. By going after the manipulators he set out to liberate the captive shareholders on whose backs the LBC executives stood (Wanjohi 1985, 14). He thus worked diligently on property institutions in areas influenced by LBC executives, seeking to hinder their efforts to exploit land to garner political support.

Moi repeatedly criticized LBCs and their fraudulent activities, going so far as to compare the LBC executives to Kenya's former colonial masters.⁶⁴ He compelled the companies to register everyone who bought shares from them as shareholders, not just the executives. In its 1977 returns, for instance, GEMA had listed only seven shareholders, all of whom were executive members. The 6,980 others who also held shares were left off the list. By not registering the vast majority of their shareholders, LBC executives kept these "sleeping partners" in legal limbo, denying them the legal standing to challenge the executives.⁶⁵ Moi also forced LBC executives to issue titles to their members and immediately parcel out farms to the rightful shareholders (Wanjohi 1985, 14).⁶⁶ He even deployed state officials to aid the subdivision of parcels and registration of titles wherever executives seemed unwilling or unable to undertake these tasks. Such was the case with the Gatarakwa Farming Company in Nyeri District. Moi went there himself in 1986 to distribute titles to members but refrained from doing so because of problems with the documentation. He then sent state officials to give out land to shareholders and register

⁶⁴ "Beware Conmen," *Weekly Review* (Nairobi), October 5, 1979.

⁶⁵ "Company Rules Tightened: Sleeping Partners To Get Protection," *Weekly Review* (Nairobi), February 23, 1979.

⁶⁶ "Company Rules Tightened: Sleeping Partners To Get Protection," *Weekly Review* (Nairobi), February 23, 1979; "Beware Conmen! President Warns Kenyans," *Weekly Review* (Nairobi), October 5, 1979; "Ultimatum: Directors Told To End Land Problems," *Weekly Review* (Nairobi), August 29, 1980; and "Progress," *Weekly Review* (Nairobi), April 22, 1983.

their rights.⁶⁷ Earlier, in April 1983, Moi had traveled to Bahati in Nakuru to distribute share certificates to members of the Ngwataniro LBC.⁶⁸ In addition, he ordered the deregistration and dissolution of LBCs once they had completed issuing land and titles to their shareholders.⁶⁹ Moi thus tried to free tens of thousands of people from the control of LBC executives. However, given his own similar ruthless manipulation of property rights in the years to come, one can only assume that his effort to save LBC shareholders was motivated more by an interest in undermining his LBC opponents than by any genuine interest in empowering land-hungry Kenyans.

Moi's efforts paid off for him handsomely. As some of the most notable LBC executives lost their ability to manipulate shares and titles, they experienced a rapid decline in their political fortunes. Kihika Kimani's dramatic downfall exemplifies this. On April 21, 1979, his long reign as director of Ngwataniro LBC ended when he refrained from contesting the directorship under pressure from his opponents.⁷⁰ In addition, after Moi had nullified KANU Nakuru Branch elections in 1979, Kimani declined to contest his long-held seat, thus allowing Moi's favored candidate, Kariuki Chotora, to run unopposed.⁷¹ That same year, Kimani lost his Nakuru North parliamentary seat to Koigi wa Wamwere, who received thrice as many votes as he had.⁷² Finally, in 1985, Kimani was convicted of mismanaging Ngwataniro funds and imprisoned.⁷³

It is important to note that state-issued land title deeds did not escape the disrepute into which land documents had fallen. The country's High Court nullified hundreds of title deeds issued after an adjudication exercise in Mosiro, Kajiado District, in 1991 because Ministry

⁶⁷ Interview with an official of a land control board in Nyeri District, (Ken 26), March 9, 2005; "Action for Gatarakwa," *Weekly Review* (Nairobi), June 13, 1986; and "Progress," *Weekly Review* (Nairobi), April 22, 1983.

⁶⁸ "Progress: Ngwataniro Members Finally Get Share Certificates," *Weekly Review* (Nairobi), April 22, 1983.

⁶⁹ "No Hanging On, Moi Tells Land Companies," *Weekly Review* (Nairobi), April 4, 1986.

⁷⁰ "Kihika Kimani To Face Uphill Battle," *Weekly Review* (Nairobi), April 27, 1979.

⁷¹ "Kihika Steps Down," *Weekly Review* (Nairobi), June 8, 1979.

⁷² "Dixon Kihika Kimani Bids for Come-back," *Weekly Review* (Nairobi), November 19, 1982.

⁷³ "Kihika Appeals," *Weekly Review* (Nairobi), January 31, 1985.

of Lands officials had handed out titles to relatives and friends with no right to land in the area.⁷⁴ The cancellations prompted the reputable *Weekly Review* magazine to ponder the validity of the popular expectation that “a title deed gives the holder irrevocable ownership of a piece of land.”⁷⁵

This parasitic exploitation brought land documentation in Kenya under tremendous stress by 1992, following redemocratization. Widespread belief in the efficacy of land documents had played a significant role in facilitating this subversion.

Arriving at the Heart of the Mainstream

The exogenous shock of redemocratization in 1991 did not suddenly cause the subversion of land documentation in Kenya, as some have argued (Klopp 2000, 8–9).⁷⁶ It contributed to an ongoing process by giving even more senior KANU leaders an incentive to embrace, as they struggled to shore up their political dominance, practices similar to those of LBC executives (Klopp 2000, 8). This similarity supports the significance that some scholars give to imitation as an explanation for how peripheral institutional forms and logics move to the mainstream.

The 1992 and 1997 elections pitted KANU politicians against opponents from new parties like the Democratic Party (DP) and the Forum for the Restoration of Democracy (FORD). KANU officials at the highest levels of government resorted to issuing worthless or encumbered land titles and letters of allotment in exchange for money and political support, threatening and evicting title-bearing opponents, and using land documents to influence voting patterns in various constituencies (Kenya 2004, 37–40, 75).⁷⁷ They filled their campaign chests and

⁷⁴ “Land Questions,” *Weekly Review* (Nairobi), May 24, 1991.

⁷⁵ “What Value a Title Deed?” *Weekly Review* (Nairobi), May 31, 1991.

⁷⁶ Internal Displacement Monitoring Center (IDMC), “‘I Am a Refugee in My Own Country’: Conflict-induced Internal Displacement in Kenya” (Geneva Switzerland, December 19, 2006), [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/AF919E45D789BD0BC125724900350687/\\$file/Kenya%20Special%20Report%20Dec06.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/AF919E45D789BD0BC125724900350687/$file/Kenya%20Special%20Report%20Dec06.pdf) (accessed June 4, 2007), pp. 13–20. There is also a popular discourse ascribing the subversion of land documents and other forms of corruption in the land market to redemocratization in the 1990s. Various interviewees held this view. These included a staff member of an NGO involved in advocacy on land issues (Kenya 2), February 15, 2005; and an official of the Department of Lands (Kenya 1), February 14, 2005.

⁷⁷ IDMC, “‘I Am a Refugee in My Own Country,’” pp. 13–20.

sought political support by issuing more than one title or allocation note for the same piece of land (Kenya 2004, 9–14, 80).⁷⁸ To facilitate this fraud, the Ministry of Lands included a disclaimer in letters of allotment in 1993 absolving itself of its responsibility to give people alternative plots of land when the parcels indicated in the allotment letters were already occupied.⁷⁹ Officials also took to changing entries in title registers to benefit their supporters (Kenya 2004, 37–40, 75).

To better tie people to KANU, leading party officials let it be known that the efficacy of a holder's land documents depended on his or her political leanings. In this vein, the minister of local government and influential KANU Narok MP William ole Ntimama threatened many of the title-bearing Gikuyu residents of Narok who were seen as anti-KANU with eviction when he told them to "lie low like an envelop or face grave consequences."⁸⁰ Lying low meant "proper" political behavior. As Ntimama pointed out, "These people are doing lucrative business in all sectors, but recently they have been wanting to control the politics of the area."⁸¹ To those who harbored the vain hope that a title would protect them from victimization if they supported opposition candidates or parties, Ntimama boldly proclaimed that land titles were "mere pieces of paper" in 1993.⁸² This public belittling of supposedly indefeasible titles provoked panic and led the opposition Masai politician John Keen to comment that devaluing land title deeds was "like opening a Pandora's box and ultimately means that no one has a right to own anything in Kenya."⁸³ Ntimama, however, was not trying to deny the existence of property in Kenya. In line with methods first invented by LBC executives like Kihika Kimani, he was attempting to influence title bearers by sapping their documents of the guarantee of security and making such guarantees dependent on "proper" (pro-KANU) political behavior.

⁷⁸ Interestingly, the state simultaneously bought lands at highly inflated prices from allies of leading politicians who had acquired these parcels from the state at very low prices.

⁷⁹ Interview with an official of the Department of Lands (Ken 1), February, 14, 2005.

⁸⁰ "The Narok Saga and Its Implications for Land Policy," *Weekly Review* (Nairobi), March 1, 1991.

⁸¹ "Narok: Background to Ethnic Conflict," *Weekly Review* (Nairobi), March 1, 1991.

⁸² "The Indigenous and the Natives," *Weekly Review* (Nairobi), July 9, 1993, and "The End of Tribal Talks," *Weekly Review* (Nairobi), July 9, 1993.

⁸³ "The Indigenous and the Natives," *Weekly Review* (Nairobi), July 9, 1993.

Title-bearing Gikuyu who refused to heed Ntimama's calls for compliance were violently evicted from Enoosupukia in Narok District.⁸⁴ Similar evictions and clashes preceded the 1992 and 1997 elections and spread across the country, driving home the point that only titles held by those involved in pro-KANU political activities would be respected (Ajulu 2002, 264–265; Klopp 2002, 274–275).⁸⁵ By 1993 clashes in areas such as Nakuru, Turkana, Nandi, Kericho, Uasin Gishu, and Taita Taveta are thought to have led to fifteen hundred deaths and three hundred thousand displacements.⁸⁶ The deliberate depreciation of the worth of land titles was further revealed when KANU elites, including Ntimama and Kipkalya Kones, vowed not to allow title-bearing Gikuyu clash victims to return to their farms until political questions between the communities were settled.⁸⁷

The land clashes that punctuated the elections of 1992 and 1997 led to massive displacement and violence but did not mark the beginning of the subversion of land titles and other land documents. They merely continued a process that had been long underway, one that had proceeded hand in hand with, and had been facilitated by, the promotion and development of land documentation in Kenya.

Conclusion

This chapter builds on an understanding of the contradictory potential of institutions to demonstrate how the success of land documentation in Kenya contributed to its own gradual demise. I argue that the institution of land documentation in Kenya produced and sustained dominant agricultural, real estate, and tourism interests that were dedicated to the “sanctity of land titles” in Kenya. But the success of land documentation created a belief in the efficacy of land documents that was easily exploited by fraudsters and politicians intent on exchanging worthless or encumbered land documents for economic and political gain. The abuse of land documentation by these groups was only exacerbated by the reintroduction of democratization.

⁸⁴ “Resettlement for Victims,” *Weekly Review* (Nairobi), November 19, 1993.

⁸⁵ IDMC, “I Am a Refugee in My Own Country,” pp. 13–20.

⁸⁶ IDMC, “I Am a Refugee in My Own Country,” p. 13.

⁸⁷ “End of Tribal Talks,” *Weekly Review* (Nairobi), September 15, 1995, and “New Fears and Suspicions,” *Weekly Review* (Nairobi), September 1, 1995.

This reflection on the contradictory potential of institutional structures gives us a good way to reflect on the endogenous contributions to change in institutions with positive-feedback effects. It allows us to understand how institutions demonstrating strong positive-feedback effects also contribute to their own downfall. This does not totally rule out the impact of exogenous factors, but shows that, sometimes, these exogenous factors speed along or exacerbate processes that are underway because of endogenous causes.

Recognition of the contradictory potential of institutions has both a theoretical and a methodological implication. On the theoretical front, it forces us to reexamine the conceptualization of critical junctures. Critical junctures are defined as moments of great historical significance during which change occurs and actors chose between various alternatives, unlike normal periods that are marked by the structural reproduction of paths (Mahoney 2000, 513; Thelen 2004, 30). The contradictory potential of institutions reduces the historical significance of “critical” junctures. It infuses the periods of supposed stability with greater significance by showing that agency often operates outside of critical junctures in instances where the process of change unfolds gradually (see also Thelen 2004, 32; Streeck and Thelen 2005, 4; Mahoney and Thelen, this volume). On the methodological front, the story told here about the contradictory potential of institutions forces us to rethink the historical periods in which we concentrate research on institutional change. If change is an ever-present possibility because of the very nature of institutions, and can occur gradually over time, then concentrating research on critical junctures marked by big exogenous shocks and obvious drastic changes might produce misleading conclusions about the sources of change.

Focusing on periods outside of those thought of as critical junctures is important because institutions that display contradictory potential inherently contain the germs of conflict that generates change. By simultaneously fostering parasitic agents and those dedicated to the proper functioning of institutions, institutions create the constant possibility of conflict and contestation. This view of institutions opens up opportunities for conflict and change in even more ways than do accounts that portray institutions as unambiguous structures and that influence behavior in uniform ways. Here the contradictory forces nurtured by institutions do constant battle, and the stable persistence of

institutions even at the height of their acceptance by societal actors is not a foregone conclusion. As shown with Kenya's LBC executives, where such "friends" of institutions happen to be subversive parasites, their warm embrace and exploitation of prevailing institutions may well contribute to drift and gradual institutional decline.

At the heart of the examination in this chapter of the abuse of property rights institutions by con men and LBC executives is recognition of some of the ends to which actors may put the subversion of titles and other forms of land documents. The literature on property rights is replete with works emphasizing the beneficial effects of property institutions like titles. They portray titles as instruments that facilitate productive activities and allow the transformation of real property into capital through its use as collateral (de Soto 2000; World Bank 2002; Joireman 2007). Little attention has been paid to the question of how these same institutions can be manipulated to serve ends that systematically disempower and rob people, undermine markets, and create social disorder. A key dividend of recognizing the contradictory potential of institutions is that we can understand how these institutional structures may be used for different purposes with diverse practical effects and dissimilar ethical valences.

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