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INTRODUCTION

An endogenous theory of property rights: opening the black box of institutions

Peter Ho

From a neo-liberal paradigm, secure, formal and private property rights are crucial to foster sustained development. From this follows that institutions that fail to respond to shifting socio-economic opportunities are pushed to new arrangements. The enigma is posed by developments on the ground. Why would the removal of authoritarian institutions during the Arab Spring or Iraq war not increase market efficiency but rather cause the reverse, while China and India, despite persisting insecure, informal and common institutions, featured sustained growth? This collection posits that understanding these paradoxes requires a refocusing from form to function, detached from normative assumptions about institutional appearance. In so doing, three things are accomplished. First, starting from case studies on land, it is ascertained that the argument can be meaningfully extended to labor, capital and beyond. Second, the argument validates the ‘credibility thesis’ – that is, once institutions persist, they fulfill a function. Third, the collection studies ‘development, broadly construed’, by including the modes of production and beyond, the rural and urban, the developed and developing. This is why it reviews property rights from China to India, and from Mexico to Malaysia, covering issues such as customary rights, mining and pastoralism, but also state-owned banks, trade unions and notaries.

Keywords: development theory; disequilibrium; social welfare; labor and capital; power and conflict

1. The problem

The main issue of neo-liberal, neo-classical postulates of development is perhaps their apparently sensible appeal. The notion that formal, private and secure institutions are pre-conditions for growth sounds logical and commonplace. In the absence of legal title for property, one is not confident to purchase a house; when corrupt authorities evict people from their lands, one is unwilling to invest in it; and when natural resources belong to an overarching collective the individual will tend to free-ride. From these postulates, it is posited that institutions are pushed to change when formal, private and secure institutions are absent.

Yet the global reconfiguration of economic and geo-political power has placed neo-liberal postulates at a contradictory, and in fact untenable, position with institutional developments on the ground. Why would the ‘authoritarian foundations’ of the Chinese state persist for decades of growth, while a long-awaited ‘grassroots revolution’ in Syria or externally induced ‘democratic change’ in Iraq and Afghanistan leads to sustained societal tragedy? Similarly, why would a rapidly emerging yet notoriously ‘rent-seeking-riddled economy’ such as India, succeed in high gross domestic product (GDP) growth,

whereas Spain, which scores twice as high on transparency indices, is merely labeled one of the ‘European PIGS’?¹ In fact, apart from Portugal, Italy, Greece and Spain, why would a wide range of industrialized economies furnished with ‘best institutions’ tumble into sustained economic crises stretching from the 2000 dot-com bubble to the 2007 US credit crunch, and the 2009 Eurozone crisis? The neo-liberal and neo-classical models have no satisfactory answers to these questions, while developmental interventions and policies set forth from them may result in empty or non-credible institutions (e.g. Reerink and van Gelder 2010; Ho 2005; Andre and Platteau 1998).

Neo-liberal and neo-classical theorists have attempted to rethink and re-salvage the paradigm. For instance, following the *same* hypothesis posited in the *same* journal 12 years ago, Acemoglu and Robinson (2006, 326) assert:²

[T]here can be equilibrium changes in political institutions and thus de jure political power; but these induce offsetting changes in the distribution of de facto political power. Put differently, when elites who monopolize de jure political power lose this privilege, they may still exert disproportionate influence in politics ... , and thus ensure the continuation of the previous set of economic institutions.

In less opaque and lengthy wording, leaders can frustrate the natural tendency of institutions towards balance by force (i.e. dictatorial power). Due to this, institutions that would otherwise have tilted towards greater formality, security and privacy, thereby guaranteeing well-functioning markets and a stable society, are stalled in their development. Power can thus upset the natural equilibrium, leading to a state of imbalance. Seen from this perspective, inefficient institutions can persist due to the excessive power of dictatorial regimes. Yet this still raises the question why the removal of authoritarian institutions during, for example, the Arab Spring did not increase market efficiency but rather caused the reverse, while China, despite its persisting authoritarian institutions, has been so much more successful, in social, economic and humanitarian terms, by bringing down poverty, raising education and ensuring better health care (UNDP 2015; UN Country Team China 2004).

Against this background, could perhaps the notion of ‘second-best institutions’ do a better job in accounting for the contradictions around us? In this view:

[A]ppropriate institutions for developing countries are instead ‘second-best’ institutions – those that take into account context-specific market and government failures that cannot be removed in short order. Such institutions will often diverge greatly from best practice. (Rodrik 2008, 100)

Likewise, to the idea of excessive power as blocking institutional change, the notion of ‘second best’ is merely a reinvention (Lipsey and Lancaster 1956). Furthermore, some would take issue with the derogatory undertones of the term, as it implies the existence of ‘best’ (Western?) institutions. It is these teleological ramifications of Rostowian stages

¹PIGS refers to the economies of Portugal, Italy, Greece and Spain (Dainotto 2006, 2). On a scale from 0 (high corruption) to 100 (no corruption), the average corruption perception value for Spain was 65.64 points over 2001–2014 (minimum 59 in 2013 and maximum 71 in 2002). Over the same period, it was 32.07 points for India (27 in 2001 and 38 in 2014) (Global Economy 2014a, 2014b).

²As North (1994, 360–61) wrote: ‘Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least formal rules, are created to serve the interests of those with the bargaining power to create new rules’.

of development or Comteian laws of progress that one should be sensitive to. Even more, the terminology suggests some kind of *institutional eugenics*: intentional selection and nurturing of second-best versus best institutions.³ States and their advisors would be able to command methods, resources and techniques to improve the way institutions evolve. In fact, the explanation for why China and India could grow at breakneck speeds while having all the ‘wrong’ institutions is palatable only as far as they are ‘second best’ to the ‘best’ institutions that countries really need.⁴ That explanation not only appears overly apologetic (to the West, that is), it also continues to fail accounting for why countries with similar institutions can fare substantially worse – even after these have been removed through revolutions, uprisings or wars.

This paper proposes the collection’s theoretical, conceptual and methodological framework by dividing it into sections, each of which reviews one of the following:

- (1) The problem;
- (2) The postulates;
- (3) The argument;
- (4) The methodology;
- (5) The application.

The following second section thus begins by discussing the postulates of the neo-liberal and neo-classical paradigm while contrasting these with an opposing series of postulates. The third section comprises an exposition arguing to steer away from institutional form while investigating credibility and function. These concepts, together with the new postulates, aim for an alternative paradigm and theory for the analysis of development and institutional change. The fourth section assesses the implications of this paradigm for methodology – that is, how to operationalize the study of institutions and property rights. The fifth section discusses how the theory and methodology materialize for the collection’s different country cases (China, India, Mexico, Malaysia and Turkey), and for the different modes of production (land, labor and capital) and beyond (water and irrigation). The shift outside the bounds of land is critical, as it will show that the neo-liberal, neo-classical argument on the prerequisite of institutional form knows different versions. The related contributions demonstrate that the argument still does not hold ... despite the twist.

2. The postulates

The most probable reason why the concepts above fail to provide satisfactory explanations for the institutional developments we witness is because they are based upon similar, and faulty, axiomatic foundations. Inconsistent and contradictory explanations are often the result of assumptions that are at odds with the way institutional change likely takes

³Sir Francis Galton (1822–1911), cousin of Charles Darwin, is generally seen as the father of eugenics. A solid work on the history and controversies of eugenics was written by Carlson (2001).

⁴A variation to second-best institutions is that institutions in ‘dictatorships’ may protect economic rights, but fail to protect political freedom. As a result, property rights in dictatorial countries ‘do not elicit as much investment and economic advance as would have occurred if everyone were confident that they would last’ (Olson cited in Palomar 2002, 2, note 2). Thus, it is implied that the Chinese (and Indian) economy could grow even faster than the double-digit growth rates over the past decades. For reasons unknown, Olson’s original text has been removed from the Center for Institutional Reform and the Informal Sector research center’s website.

place.⁵ Furthermore, one cannot arrive at more acceptable explanations of institutional change if the efforts to arrive at them are basically attempts to (re)salvage the paradigm. It is like adding another 20 additional floors on a building originally designed for 20 floors. Doubling the number of floors creates immediate problems in terms of elevator shafts.⁶ Simply adding floors damages the original architectural concept, as spacing and design did not account for them. What would be needed is to go back to the beginning and redo the building's foundations – or, to search for a new paradigm.⁷

This is not the first time that scholarly discussion has grown convoluted because it is uncertain what one argues for or against. Therefore, a first important step is to clarify the axioms as opposed to which this collection's postulates have been formulated. It is *not* being insinuated that a single body of literature exists that represents the 'neo-liberal' or the 'neo-classical' theory that is consistent in its entirety (Lawson 2013). Instead, their premises comprise diverse inconsistencies and constituent elements that may concur or be contradictory in nature (Ho 2013, 1089–90). However, it *is* asserted that certain neo-liberal, neo-classical postulates or assumptions exist around which scholarly debate *and* regular empirical validation occur. These wield significant ascendancy over developmental policy and intervention. These postulates include: (1) institutions can be designed exogenously (i.e. intentionally) and subsequently enforced; (2) institutional change is characterized by equilibrium; and (3) the form of institutions (i.e. formal, secure and private property rights) is imperative for development and growth. By contrast, alternative postulates are put forward:

- (1) Institutions are the resultant of *endogenous, unintentional* development. Although actors have intentions there is no agency that can externally design institutions, as all actors' actions are part of the same autonomous, spontaneously ordered game. Institutions emerge as an unanticipated outcome of actors' multitudinous interactions, and in effect are the result of an *endogenous, Unintended Intentionality*.⁸
- (2) Institutional change is driven by *disequilibrium*. Contrary to the notion that institutions settle around equilibrium, actors' interactions are seen as an ever-changing and conflicting process in which stable status is never reached. One could see it as a 'Dynamic Disequilibrium' or institutional change as *perpetual* alteration, yet with alternating speeds of change: sometimes imperceptibly slow, sometimes sudden and with shocks.⁹

⁵The words 'most likely' are used here as every theory is an interpretation of socio-economic realities.

⁶This is exactly what happened to the In Tempo luxury tower in Benidorm (Spain), hyped to be the tallest residential building in the European Union (Patalong 2013).

⁷As, for instance, Freeman and Carchedi (1995, viii) would also deem necessary for neo-classical attempts to rethink equilibrium in terms of dynamic or punctuated forms.

⁸See also, for instance, Grabel (2000) on endogeneity and, of course, Ferguson's (1782) seminal eighteenth-century book, which in turn inspired writers such as Adam Smith and Carl Menger. As the latter wrote: 'How can it be that institutions which serve the common welfare and are extremely significant for its development come into being without a common will directed toward establishing them?' (1883, 146). Ironically and paradoxically, Ferguson's idea of spontaneous order was used by neo-liberal writers such as Friedrich Hayek to defend the principle of a free market.

⁹This view radically departs from conflict as the outcome of inefficiency, and concurs with contemporary (thus, apart from Marxian) analyses of conflict in society and economy. See also Myrdal (1957, 12); Berger (2009); Freeman and Carchedi (1995); Arestis (1992); Fisher (1989). Or, as Coser (1956, 31) eloquently phrased it: 'Far from being necessarily dysfunctional, a certain degree of conflict is an essential element in group formation and the persistence of group life'.

- (3) Institutional form is subordinate to function. In other words, the use and disuse of institutions over time and space is what matters for understanding their role in development, not their appearance.

3. From form to function

In light of the above, it is proposed to redirect research away from the form of institutions. It is why this collection aims to validate what elsewhere has been posited as the ‘credibility thesis’, or the hypothesis that:

What ultimately determines the performance of institutions is not their form in terms of formality, privatization, or security, but their spatially and temporally defined function. In different wording, institutional function presides over form; the former can be expressed by its credibility. (Ho 2014, 13–14)

Credibility is hereby defined as the collective expression of the functionality of institutions, or, more specifically, the reflection of actors’ cumulative perceptions of endogenously emerged institutions as a common arrangement (Ho 2014, 16). This definition contains various critical elements. For starters, we are dealing with perceptions at an *aggregate* level, which sets credibility apart from the individual’s views about institutions such as land lease, communal irrigation, corporate boards, laws or policies. In addition, credibility is ‘always secured endogenously ... rather than exogenously’ (Grabel 2000, 1), differentiating it from legitimacy, which bears greater connotation to intentional, externally induced governance (Ho 2013; Dogan 2003; Stillman 1974). Lastly, credibility is about actors seeing the working of institutions as a *common* arrangement that is shared by two or more parties.

In sum, whereas an individual actor may, for instance, oppose communal arrangements in favor of individualized rights (e.g. private ownership or tenure security), the same actor might unwittingly opt for rules that transcend or even contravene his or her interests in favor of a larger collective (e.g. informal, customary tenure). This inherent tension between individual and collective propels a process of alternating fast *and* infinitely slow institutional change characterized by conflict that endlessly destabilizes, yet in its momentum escapes immediate collapse.¹⁰ It is a matter of Dynamic Disequilibrium: an ongoing imbalance, perpetually pushed forward through a certain tension, yet by which the *velocity of change* differs. The term ‘dynamic’ should be read with a dual connotation, implying: (1) a forward-moving process, or something that is in continuous motion; and (2) a process that advances or accumulates, which could be seen in social, economic or environmental terms. *That* is the essence of credibility, a status of two least evils that at times appears stable or stagnant, and at times engenders bursts of explosive development and growth, or upheaval and crisis.

However, due to inordinate focus on appearance, the neo-liberal and neo-classical paradigms deem institutions a black box, unchanged and unopened as it were over time and space. Its focus fails to capture the nature of development and growth. Their derived conventional modeling suffers from an inability to account for the inconsistencies that they themselves engender. In this sense, the conventional paradigm has maneuvered itself into an awkward position. Its argument that ‘institutions need form → then there is

¹⁰See also Massachusetts Institute of Technology-based economist Fisher’s (1989, 6) very apt observation in this regard.

growth → if form is not met → then institutions will change’ leads to an immediate paradox:

- Form is met, but there is no growth;
- Form is not met, but institutions do not change.

Trying to save the paradigm by including (dictatorial) power or second-best into the conceptual equation deteriorates matters:

- Second-best exceeds best;
- Dictatorship is removed, but there is no growth.

One might wonder why the neo-liberal and neo-classical paradigms continue adhering to form, in spite of unresolved debates and contradictory evidence. For one, treating institutions as an ‘unopened’ and independent variable allows for straightforward modeling. Supplanting institutional variation (i.e the proverbial ‘institutional shades of grey’) with dichotomies of formal/informal, secure/insecure, or private/public institutions opens the way for direct measurement. It constitutes the conceptual basis for analyses on the effects of titled tenure on land value; democracy and transparency indices on GDP; or well-defined intellectual property rights and patents on foreign direct investment (FDI). Undermining that basis implies shaking the methodological and theoretical foundations of an entire field of studies.¹¹

What is needed is an Archaeology of Institutions – in other words, an approach by which the change of institutions is meticulously recorded, interpreted and studied through the collection of data from every possible source, regardless of whether that is socio-economic, historical, ethno-anthropological, geographical, psychological or legal-political. Close to 90 years ago, one of the original institutionalists phrased it as:¹²

[C]oming into closer touch with facts and embrac[ing] broader ranges of data than ‘orthodox’ economics has hitherto done. It must establish touch with these data, either by becoming more inductive, or by much verification of results, or by taking over the accredited results of specialists in other fields. (Clark 1927, 221)

Opening the black box is tantamount to gauging institutions’ accorded aggregate meaning, and understanding what they do in a given context.

From this follows an important premise: institutions that exist and *persist* fulfill a function, and *are* credible; otherwise they would have fallen into disuse or shifted into other types. For instance, the historical ‘persistence’ of share-cropping (Byres 1983) led Cheung (1968) to conclude that it *is* efficient (i.e. credible and functional).¹³ *That* premise turns around the neo-liberal, neo-classical argument, but by no means entails

¹¹Others have also argued that there are ideological reasons for why the neo-liberal and neo-classical paradigms adhere to certain postulates (e.g. Chang 2003). Or, as Freeman and Carchedi (1995, ix) maintain: ‘Official economics, for deep material reasons, is an ideological endeavour. It sanctions what is; if it fails to do so then sooner or later it does not get paid’.

¹²Groenewegen and Vromen (1997) provide a clear discussion of the distinction between ‘new’ and ‘neo’ institutionalists, whereby the former is defined as those opposing ‘original’ or ‘classical’ institutionalism, and the latter as the later followers of original institutionalism.

¹³Cheung defined this efficiency under conditions of competition and no transaction costs.

that credibility or functionality is equal to harmony and peace. Contrarily, credible institutions are essentially conflict-ridden, as conflict is 'inherent in any property rights arrangement, even those with important efficiency implications' (Libecap 1989, 2).

What the credibility thesis *does* imply, however, is that one should try to stay clear from moral judgment, as it may cloud contextualized analysis. Labeling human sacrifice as 'cruel' will help us no further in understanding the society in which the Maya lived, no more than naming Chinese market institutions 'perverse' will aid in comprehending their role in the economy.¹⁴ Leaving behind notions of 'good' and 'bad' is no sinecure, as there is a dangerously thin dividing line between analyzing and legitimizing. Signaling an empirical paradox of high growth coupled to high corruption can be easily mistaken for an ideological defense in favor of 'bad' institutions.¹⁵ Rosenbloom (2009, xv) termed it a 'mixed bag' from 'functional and normative perspectives'.¹⁶

The 'morality issue' circumscribes scholarly argumentation and government action. In a different wording, due to the value-ladenness of socio-economic phenomena, these may shape the way scientific questions are framed, data are selected and interpreted, and methodologies are devised. Similarly, it shapes the array of developmental interventions undertaken by governments that may run fully counter to societal reality. It is the reason why the removal or subversion of authoritarian institutions does not automatically lead to growth, and, in some cases, may be replaced by institutions that strikingly resemble what was overturned.¹⁷ Likewise, it is also the reason why the formalization of property rights does not necessarily lead to more investments or might give way to a symbolically modernized informality.

Let us be clear, to account for apparent cohesion, stability or 'persistence' of institutional structures one need not adhere to neo-classical or Parsonsian equilibrium, as much as one does not need to conform to principles of intentionality and dysfunction to explain change, conflict and crisis (as, for instance, Merton did).¹⁸ The crux of the matter lies in what was said above: the *pace* of change.

4. Methodology: opening the black box

How can we study the workings of institutions in their context? To address this question, the following section will lay out the foundations for a methodology on institutional function and credibility. In so doing, it starts by clarifying the discourse and way of wording towards which the methodology aims to move. Subsequently, the methodology is discussed in terms of its analytical object, the nature of research, data sources, scales and dimensions, and measurement.

¹⁴For the term 'perverse' institutions, see Furubotn (1989, 25).

¹⁵As, for instance, political scientist Wedeman (2012, x) pointed out.

¹⁶Or, as he also duly noted: '[P]olitical practices that are widely condemned as corrupt may have beneficial "latent" functions. Corruption can also be instrumental in producing infrastructure, public goods, and the private wealth that funds museums, public libraries, and valuable research' (2009, xv).

¹⁷It is what Thelen (2002, 101) described as a 'remarkable resilience of some institutional arrangements even in the face of huge historic breaks'.

¹⁸Parsons named it a 'boundary-maintaining system' (1951, 23, footnote 7). As he described it: '[T]his maintenance of equilibrium, as we have seen, revolves about two fundamental types of process', which he termed 'socialization' and 'social control' (Parsons 1951, 324). Parsons did include change, but posited that change occurs in a relatively smooth way. His theory is seen as insufficiently capable of explaining phenomena as distributional conflict, social discontent and revolutions (Mayhew 1982). To better account for conflict and crisis, Merton (1949, 61) introduced a distinction between function and non-function (dysfunction), and intended (manifest) and unintended (latent) functions.

4.1. A short dictionary of neo-liberal terminology

The credibility thesis' implications for methodology hold a first critical step to consider: vocabulary. As so often, the devil is in the details, and careful wording is inevitably required to avoid confusion. Perhaps even more so, as the neo-liberal paradigm – in its efforts to reinvent and reinvigorate itself – paradoxically incorporates concepts diametrically opposed to its own constitutive postulates (e.g. endogeneity and context-specificity). For this reason, some of the vocabulary and terminology of the neo-liberal paradigm, which analysis of institutional function may seek to avoid, is described below (see [Boxes 1–3](#)).

Box 1. Efficiency.

Noun (ɪ'fɪj.ən.si UK/US)

1. Ratio of output to input of any system;
2. Skill in avoiding wasted time and effort.

(Antonyms: stagnation, blockage, inefficiency)

Example:

'Profit-making private enterprises remained small and ephemeral, hindering the formation of stable coalitions capable of bargaining with the state. ... The consequent organizational stagnation turned into a huge handicap for the region because the efficient exploitation of modern technologies required large and perpetual companies, which could not be founded under Islamic law' (Kuran 2012, 1086 and 1094).

Explanation

The credibility thesis disagrees with this view as it posits that *persisting* institutions perform a function and are thus credible. It is why the thesis cautions against precipitous institutional intervention in apparent situations of 'economic inefficiency', 'authoritarianism', 'non-transparency' and 'exploitation' even though these may contradict Western norms and values of 'free markets', 'good governance', 'democracy' and 'civil society'. Credibility neither passes moral judgment *nor* does it intend to justify or conserve an institutional status quo. In contrast, it aims to explain why development interventions, procedures and codes that strive to remedy human rights' abuse, labor exploitation, or forced evictions get stuck in institutional minefields even when done with the best of intentions.

Box 2. Causality.

Noun (kɔ:'zæ.l.i.ti UK, kɔ:'zæl.ə.ti US)

1. The concept that there is a cause for all that happens;
2. The agency of a cause; the action of a cause in producing its effect.

Note: Often used in combination with terms related to intentionality and externality such as to devise, design, restructure or stimulate.

Example:

'Institutions are *causal* in the sense that a poor country that is able to revise the rules of the game in the direction of strengthening the property rights of entrepreneurs and investors is likely to experience a lasting increase in its productive capacity' (Rodrik 2004, 1, emphasis added).

Explanation

The credibility thesis would not mention agency – whether that is the state or any other actor – that could 'revise' institutions to 'strengthen property rights', as credibility *by definition* precludes intentionality while including interaction (not causality). Stated differently, through the multitudinous interactions of intentional actors, institutions emerge endogenously and unintentionally. Thus, the example above would probably be rendered as: 'Institutions are *interactive* and *endogenous* in the sense that a developing country can only hope to strengthen property rights of entrepreneurs and investors inasmuch as these newly desired institutions are perceived as credible by actors on the ground'.

Box 3. Equilibrium.

Noun (.i:.kwɪ'lib.ri.əm, UK, ek.wɪ-, US). Slightly formal.

1. Equality of weight or force;
2. A state of rest or stability produced by the mutual counteraction of two or more forces.

Example

'[S]ocial norms, political states, economic contracts, and organizational architecture may potentially evolve respectively as multiple equilibria', while institutions are 'an *endogenous equilibrium* outcome of the game' (Aoki 2007, 2 and 6, italics added).

Explanation

The credibility thesis adheres to the notion of dynamic disequilibrium as driving institutional change at alternating speeds of change that in its continuous movement evades immediate breakdown or disintegration. This implies that static, stable, dynamic, punctuated, equilibrium path, or even endogenous equilibrium are rejected as explanatory notions, as these are merely conceptual variations of equilibrium within a similar paradigm.

4.2. The object

For the neo-liberally, neo-classically trained scholar, opening the black box of institutions is like unlocking Pandora's box. It opens a gateway to an academic purgatory of uncertainty, unpredictability and unbalance. It undermines positivistic endeavor at grand theory that can be used without having to know much about the contexts in which it is applied, regardless of whether that is India or Iceland, Brazil or Burkina Faso. It is why concepts such as 'functional equivalents' or 'second best' are popular, as they allow for easy categorization while leaving the unknown uncovered.

Not so for credibility and institutional function – notions that zoom in on the institutions in their environments, over time and space, extending to micro and macro. Such a multi-dimensional, multi-scalar effort can only work when limiting the object of study. Hence the need to focus on the institution, and particularly: a *single* institution. For our purposes, an institution can be best defined as:

A set of rules that endogenously shapes and is shaped by actors.

Defined along these lines, a formal law or right of ownership is an institution inasmuch as informal, customary law regarding forest, fisheries or mining may be deemed an institution. In addition, one should be reminded that terms like 'contract' or 'ownership' frequently refer to (Western) conceptualizations of how institutions should appear based on certain axioms or political considerations.¹⁹

It is significant to recognize that an institution is regarded as a 'set of rules' or, otherwise stated, a series of rules. Thus, for example, a customary rule that commuters in the Beijing

¹⁹For instance, various legal-anthropological studies have demonstrated how Western norms and values define the concept of ownership, and how ownership may be conceptualized quite differently in other cultures and societies (Van Vollenhoven 1909; Sonius 1963; Von Benda-Beckman 1979). Also, in the case of imperial China, for which reliable, empirical material is difficult to obtain, studies have discovered differences in the conceptualization of property. Zelin (1986, 20, 31–32), for example, has indicated that the contemporary notion of 'private property' did not exist in rural, imperial China; instead there was a form of common property jointly owned and exploited by a farm household. See also Pomeranz (2005).

subway should stand on the left side of the escalator and walk on the right side if they are in a hurry is, therefore, not perceived as an institution. Contrarily, all rules that determine how people behave in the subway, including the boarding and alighting of trains, the neglect or acknowledgement of on-board beggars, and the queuing to buy tickets, is defined as an institution. Similarly, also rural share-cropping or a federal reserve can be considered institutions in that they represent a *set* of rules instead of a single rule on how, respectively, peasants minimize environmental and socio-economic risk in collaborative agricultural production, and financial markets are to be regulated through interest rates, credit flows and monetary supply. In addition, their operations are also guided through (written and unwritten) internal rules varying from communication to membership, allocation and penalty.

It is also vital to see that an institution is spontaneously (i.e. endogenously) *shaped and being shaped* by *different* stakeholders. Thus, the institution spontaneously emerges as the interaction of different interest groups. The institutional arrangements that shared tenancy and the federal reserve represent not only bind together its leadership and members, but are simultaneously the outcome of the interaction with other political, economic and societal stakeholders. It is what the aggregate nature of actors' perceptions of an institution as a common arrangement signifies. From this it logically follows that the question of 'whose credibility?' is not so much of interest for its divergences *per interest group* – as their perceptions obviously may vary – but from the vantage point of a total, *accumulative outcome* for an institution. Ergo, the credibility of shared tenancy and the federal reserve is not gauged by merely asking respondents on the (village and city) street, but by probing respondents' perceptions from *all* the interest groups that shape and *are shaped* by its rules, and from it hermeneutically read what its workings are at that aggregate level.

4.3. *The process*

Opening the black box of institutions is never easy as it takes time and effort. Understanding the workings of institutions is not equal to merely stating that, for instance, village meetings have a role in community forestry, banks have a role in fueling speculation, or informal settlements fulfill a function in social security. An institution's function does not exist as an *a posteriori* truth, but as a phenomenological interpretation to be made only after having studied it in depth. It is because, as Kiser and Ostrom aptly worded it, institutions only 'exist in a language shared by some community of individuals rather than as the physical parts of some external environment' (1982, 179). This interpretative exercise can be done inductively *and* deductively, in a reiterative process in which empirics and praxis, hypothesis and theory, definition and interpretation uninterruptedly interact and alternate. It is an open, ever-renewed process that can produce different, and often contradictory, results, which when carefully followed is likely to disorient (see: circular arrow in [Figure 1](#)).

4.4. *The sources*

Contradictory data are the outcome of actors' conflicting interests and the differences in perceptions at different levels of aggregation. For the reasons above, the 'multi-angulation' of information (MA, see [Figure 1](#)), for that matter, is vital to enhance the reiterative process of interpretation. At the same time, one needs to cluster and interpret data according to interest groups (state, corporate, non-governmental, societal) and the level of analysis (micro-meso-macro) from which information was gathered, as that might aid in accounting for encountered contradictions.

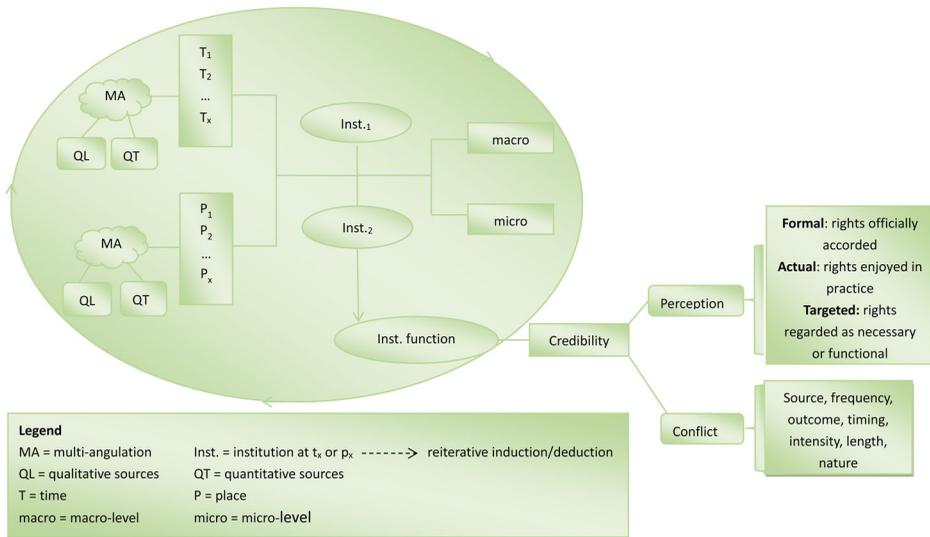


Figure 1. Analytical scheme of institutional function and credibility.
 Source: Author’s illustration.

Multi-angulation also implies the use of multiple sources, such as government documents, parliamentary minutes and legal interpretations (legal-political sources); unwritten, customary and formal, bureaucratic rules (cultural-organizational sources); market regulations and (informal) contracts (economic sources); or perceptions and attitudes (socio-psychological). These multiple sources can be divided into *quantitative* information (QT) gathered through surveys or data mining, or available in government or enterprise statistics, and *qualitative* data (QL) gathered through interviews, participatory observation, focus groups, literature and archival research.

4.5. Scales: time, level and space

Change is *a priori* a process in which a situation or an entity shifts from one into the other. The study of institutional change is thus one *over time*, by which the institution and its effects are described and analyzed at multiple time-points, that is at $t_1, 2 \dots x$ (depicted in Figure 1 as t_1 and t_2).²⁰ One should be reminded, however, that institutions as they are endogenously shaped through actors’ intentions, actions and interactions never emerge overnight, but are formed through a long, evolutionary process in which a half century can, in fact, be considered momentary. This entails that the timescale of analysis should be set as long as possible. For instance, detailed study of the Chinese cadastre (or land registry) not only shows that the state’s intentions never came to fruition, it also demonstrates that its institutional change can be traced back to close to 100 years ago (Ho 2015). Similarly, irrespective of whether one looks at the institutional development underlying the Indian Constitution or suffrage in the United States, one will see long, protracted processes of endogenous change (Austin 2000; Keyssar 2000).

²⁰Relevant in this regard is also Hodgson’s (2001) thorough analysis of the issue of time in mainstream economics, or rather the neglect of it.

In a fully controlled, ideal-type research environment, one would follow the change of a particular institution by, let us assume, conducting a survey and interviews of actors' perceptions of that institution at t_1 , while following up with a survey and interviews with the same, representative panel of respondents at t_2 (e.g. 25 years later). However, economy and society are not laboratories with controlled conditions, and there will be issues of data availability due to the logistics and resources that such an operation requires. Apart from acknowledging that one misses data (which might be a virtue in itself), another option would be to compensate while ensuring that the alternative data are valid replacements. Suppose we have quantitative data at t_2 (e.g. frequencies of investors who prefer to buy housing without legal title in 2015) but lack those at t_1 (same data but for 2000). We can then attempt to probe respondents' recollection of experiences at t_1 , with the caveat that human memory has its own limitations as a tool to generate data (Tulving and Craik 2000).

Against this backdrop, an alternative tool in studying institutional function is by replacing time with place: p_1, p_2, \dots, p_x (p_1 and p_2 in Figure 1). In this case, the missing data at t_1 are counterbalanced by conducting the survey and interviews at t_2 in different places p_1 and p_2 , hypothesized to represent the conditions at t_1 and t_2 . Let us assume that the percentage of rural labor to the total population is of influence on actors' aggregate perception of land-based institutions as a means of social security, rather than as a means for commodity transactions. Due to industrialization and urbanization, that percentage decreases over time as surplus rural labor is transferred to industries and the services sector in a Lewisian fashion – a process that can take many decades to take effect (Stevens and Jabara 1988). This temporal development could be modeled by conducting a survey and interviews in place p_1 with a labor proportion similar to what may be present at t_1 (e.g. 90 percent working in agriculture), while doing the same survey and interviews in place p_2 with conditions representative of t_2 (e.g. 30 percent).

Finally, there is the level of analysis (micro-macro). As stated above, the perceived function of institutions as common arrangements matters most at an aggregate level. Thus, when analyzing an institution it is important to distinguish the level about which one aims to make an interpretation. The question of whose credibility is thus not so much a matter of the interest group, but much more one of level. Let us stay with the example above.

The perception of informal, communal land-based institutions as a credible institutional arrangement can differ per city and per village. This could imply that land performs different functions at the aggregate village and city level, varying from social welfare in agriculture-dependent locations to a commodity in service- and industry-dependent locations. However, taken to a higher aggregate level (e.g. the national level), it may turn out that in the majority of locations such institutions *are* perceived as credible. This might lead to the conclusion that also at a higher aggregate level informal, communal institutions perform a function in contrast to titled and privatized institutions. That conclusion, in turn, may hold important implications for which development intervention is going to work.

Shifting between the levels of analysis can also be important in dealing with missing data over time. Suppose we strive to describe the trajectory of privatization of financial institutions over time. However, we only have qualitative data at t_2 (e.g. parliamentary discussions in 2016 about intentions to privatize land), and lack those at t_1 (similar data for 1916). What can be done is to shift to another analytical level (let's say from national to provincial). Through historical research we might find archival records that detail provincial

governments' intentions about this issue which could be aggregated to compensate for, or complement, the lacking macro-level data at t_1 . In sum, the study of institutional credibility and function propagates a fluid approach in which different analytical levels are combined in lieu of adhering to a more fixed macro- or micro-level study.²¹

4.6. The measurement

If institutions and their workings exist only as an interpretation, how can we know them? It might be achieved by using proxies – that is, by assessing their level of credibility ‘conceptualized as a theoretical continuum that varies between “fully” or “partially credible” to “non-credible”’, or ‘even empty institutions, which exist on government, non-governmental, or firm paper only’ (Ho 2014, 16). Thus, for instance, if informal housing is perceived as having some level of credibility, it can be regarded as performing a certain function as opposed to registered housing as an institutional arrangement, or vice versa.

A first important indicator of credibility is conflict, which can be defined in social, economic and eco-environmental terms.²² This indicator can be divided into: (1) its source, defined as the type of conflict; (2) frequency, defined as the incidence or number of times a type of conflict appears during a given period; (3) outcome as the result of conflict (e.g. solved, partly solved, unsolved, unknown); (4) timing, defined as the perceived period of most frequent conflict (e.g. linked to historical events); (5) intensity, which can be expressed in terms of economic/social costs or the level of litigation (mediation, petitioning, taking to local/provincial/high/supreme court); (6) duration (time that a conflict lasts measured in days, weeks, months or years), and (7) nature (i.e. violent/non-violent, which can be further divided into civil disobedience – such as vandalism, roadblocks, picketing, demonstrations, and occupation of buildings and facilities – or acts of open violence such as beatings, kidnappings and murders). A detailed description of the methodology to measure institutional conflict is given in Ho (2014).

A second crucial indicator for assessing institutional credibility is through the perceptions of actors' property rights, seen as a right to a certain benefit. This covers the modes of production (i.e. land, labor and capital) and beyond. That is, it is irrespective of whether that property right pertains to a right of access to the benefit(s) of housing and land; others' or one's own labor; companies, banks and machinery; transportation and energy infrastructures; and technologies, such as for information, communication or genetic modification. The critical dimensions along which the credibility of property rights could be assessed can be condensed into the FAT institutional framework (see Figure 2), or the study of ‘the Formal’, ‘the Actual’ and ‘the Targeted’. These dimensions can be summarized in the following questions:

- Formal: What property rights *should one enjoy*? (e.g. what rights have been officially accorded?);²³

²¹For more information on levels of analysis, see also Kiser and Ostrom (1982); Alexander et al. (1987).

²²Whereby, as stated above, it is not assumed that a credible situation is equal to no conflict, and a non-credible one with total conflict.

²³‘Formal’ meaning extending beyond the legal and statutory.

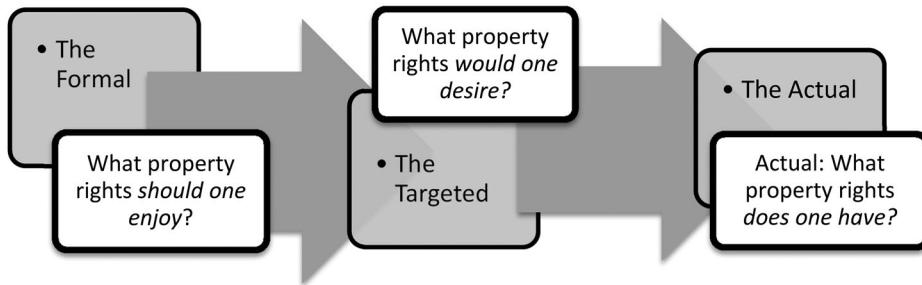


Figure 2. The Formal, Actual and Targeted Institutions (FAT) institutional framework.

- Actual: What property rights *does one have?* (e.g. what rights are enjoyed in practice?)
- Targeted: What property rights *would one desire?* (e.g. what rights are regarded as functional or seen as necessary?)

Based on all of the above, the entire research process and methodology on institutional function and credibility can be visualized in the analytical scheme above (see Figure 1).

5. Applying institutional function and credibility

An important portion of the studies on property rights in development is devoted to issues of land reform and agrarian change (e.g. Sjaastad and Cousins 2009; Sikor and Lund 2009; Bromley 2005). However, instead of solely focusing on land in the agrarian realm, this collection aims to widen the debate on property rights and institutions. This is necessary to ascertain and become aware of the various versions and twists of the neo-liberal form of argument. In this light, we start the analysis with a solid series of case studies on land, and subsequently move to the other modes of production and beyond.

5.1. Land

The premise that persisting institutions have a function does *not* imply that institutions and their credibility are fixed in stone. When functions change, institutions change, and thus also the levels of credibility – a process evident in shifts in conflict. Contrarily, when an actor forcefully aims to change institutions against the functions that other actors accord to it, the result will be a struggle of power. The first contribution in the ‘Land’ section by Ho presents a conceptual framework to analyze this process through the concepts of the ‘empty institution’ and ‘non-credible institution’. These concepts are subsequently applied to the empirical case of (semi)nomadic herders in China. It is ascertained how the Chinese state imposed new, yet contested, ecological conservation measures (i.e. the Grazing Ban) to gain increased control over mining and grass-land, the nation’s largest, and arguably most strategic, land resource.

The following paper by Nor and Ho uses the FAT institutional framework as described above to analyze the change of customary rights of a Malaysian indigenous community into a private property regime. To implement a large dam project, the federal state used the Formal (i.e. environmental impact assessment or EIA) to delegitimize the Targeted (i.e. customary rights to shifting cultivation and hunting/gathering), in lieu of the Actual (i.e. private and formal title). In the process, the function of (flexible, mobile) land rights as a means of social security was undermined. The result is reminiscent of the preceding paper: social

cleavage, conflict, and the emergence of empty and non-credible institutions. At a different analytical level, the two papers also underscore that – in opposition to neo-liberal, neo-classical thought – institutions do not settle around equilibrium. Instead, due to actors' never-ending, multitudinous interactions, institutions are subject to an ever-changing and ever-conflicting process, essentially propelled forward by *dynamic disequilibrium*.

To prevent empty institutions from arising, recognition of the way function is shaped by actors' aggregate perceptions of institutions as a common arrangement might be crucial. This point is illustrated in the following contribution on local environmental perceptions in two dryland communities in Northwest China. Under comparable circumstances of land degradation prevention measures and restricted resource use, Zhao and Rokpelnis demonstrate that local knowledge, as reflected in perceptions of similar environments, can highly differ. Their study suggests that a more inclusive understanding of endogenous knowledge can contribute to the emergence of more credible institutional arrangements.

The last two contributions in the 'Land' section are showcases of the way in which an institutional archaeology over time and space could be performed. At the same time, one of these contributions also scrutinizes a different version of mainstream economics' preoccupation with form: competition. By interrogating the allegedly 'monopolist', thus 'inefficient and rent-seeking', notary sector in urban Mexico, Monkkonen puts the credibility thesis to the test. To address the question why monopolist, rent-seeking notaries persist, he opens 'the black box of institutions' by providing a thick 'Geertzian' description of notaries' time- and space-dependent function in Mexican society. In so doing, Monkkonen questions the neo-liberal notion that a competitive notary sector is essential for effective financial transactions. Or, conversely, that monopolistic behavior, inefficiency and rent-seeking by definition impede economic growth. In fact, the presented data suggest a positive correlation between the presence of notaries, titling of property, and growth in the Mexican context.²⁴

Levy's paper extends Monkkonen's analysis in space towards an analysis over time (i.e. $t_1, 2, 3 \dots x$). This is achieved by delving into the nineteenth-century history of the Mexican notary, with particular reference to its function in the agrarian economy of Yucatan (renowned as a center of Mayan civilization). Despite the upheaval of the Mexican Revolution, a profitable agribusiness evolved around henequen, Yucatan's main cash crop.²⁵ Interestingly, the resulting economic boom occurred in the absence of formal banking and credit institutions.²⁶ Levy argues that the missing link can be found in the notaries, who performed these institutions' function by arranging the contracts for lending. They could do so because of their traditional position as scrivener and record keeper. It provided them with crucial, yet informal, knowledge about clients' financial background. This, in turn, allowed notaries to resolve the problem of asymmetric, incomplete market information. Despite the boom, the generated wealth (mainly constituted by agricultural collateral) was not equally distributed. Levy shows it favored Mexicans of Hispanic and European descent more than the

²⁴Of course, with the acknowledgment that statistical correlation need not necessarily be causal.

²⁵Henequen is an agave, a plant species native to southern Mexico and Guatemala. Its fibers are processed as a textile to obtain a range of products for domestic, agricultural and industrial use. Until the mid-twentieth century, henequen processing was a major industry, after which it went into decline. Its juice can be distilled into liquor similar to tequila, and it also contains steroidal chemicals that can be used in the pharmaceutical industry.

²⁶In her book, Levy shows that non-bank lending institutions like pawnshops and loans arranged through intermediaries continued to provide credit, despite the fact that the Mexican Revolution had destroyed the incipient formal financial system (Levy 2012).

indigenous Mayas. In that particular fact, one may already discern the workings of a dynamic disequilibrium ...

5.2. *Labor, capital and beyond*

The different contributions pooled together here are a testimony to the continuing relevance of land in the analysis of development and institutional change. At the same time, this collection contends that the analysis could as well be extended to the other modes of production, *and* beyond.²⁷ Or, as Ribot and Peluso (2003, 173) suggested, one should open up the study of property towards other ‘power relations that can affect rights-based mechanisms of access’, identified as ‘access to technology, capital, markets, labor.’

In this context, the section starts with a contribution on labor institutions. In this regard, one should take note of yet another crucial twist of the neo-liberal form argument. In the case of land, formalization and security of tenure are seen as conditional for economic growth. Paradoxically, in the case of labor, the desired forms are posited to be *less* security (of employment) and *less* formalization (read: unionization). As, for instance, Heckman and Pages (2000, 2) confidently assert in a study on Latin American job markets: ‘job security policies have substantial impact on the level and the distribution of employment in Latin America. They reduce employment and promote inequality’.

However, the notions that more job security, unionization and guarantees on wages, social welfare and working contracts are *a priori* detrimental for the labor market has been contested by a variety of studies (e.g. Santos 2009; Freeman 2005). The non-contextual, non-historical approach of mainstream economics fails to account for the variation *and* persistence of labor institutions over time and space, as much as it fails to account for the variation and persistence of land tenure arrangements. In the course of agrarian change, this variation and persistence is clearly visible, regardless of whether one examines trade unions, contemporary serfdom, child labor or laws on minimum wages.

Miyamura’s paper on labor institutions in India is another attempt to validate the credibility thesis expounded here. Opposed to neo-classical economics, he proposes an alternative, materialist approach. In effect, rather than engaging in debates whether unionization, as a pre-required institutional form, is harmful or conducive to the functioning of labor markets, he uncovers the conditions under which different labor institutions persist, diversify and perish. This is accomplished through a multi-variate analysis of changing forms of labor institutions in relation to their drivers (such as enterprise relocation, industrial disputes, and breakdown in bargaining). Through this effort, Miyamura demonstrates how functionality and credibility could be more insightful concepts in accounting for the existence of institutions, instead of analyses focused solely on form.

The following contribution by Marois and Güngen moves the collection’s analysis from labor to capital, with a special focus on a country at the midst of global attention: Turkey. While heated debates occur over the refugee crisis and whether Turkish democracy might revert back to authoritarianism (e.g. Brownlee 2016), an interesting feature of Turkish institutions has escaped scholarly examination: the property rights structure of banks. The US credit crunch and ensuing Eurozone crisis have posed a significant challenge to financial systems across the globe. In this context, Marois and Güngen’s contribution can be of relevance and value. Via a fine-grained, socio-historical study, their paper demonstrates how

²⁷See for example Smith (1776, chapter 6: Of the component parts of the price of commodities, paragraph I.6.9).

state-owned banks helped to overcome the oversupply of lending in the private sector, channel low-interest credits to priority areas, contribute to public revenues, and maintain financial developmental capacity. In this context, it is demonstrated that the banking sector’s state ownership – and *not* private ownership – was instrumental in buffering the shock of the US credit crunch, which hit Turkey in 2008/2009.

With the final contribution in this collection, we move beyond the traditional means of production. Mollinga focuses on water and irrigation rights in India. Whereas there are abundant studies on land tenure, the property rights of water in India have been much less researched. A reason for this is that British colonial and Indian post-colonial rule did not treat water as a property in the same way as land. The assumption is that water rights – although formally defined as state-owned – have been customarily linked to the land, implying that landlord and tenant had automatic access to the rights to extract, use and appropriate water. Over the decades of urbanization and agricultural commodification, this situation has changed. Water has become a scarce resource due to over-extraction, industrial and agricultural pollution, and climate change. To solve the problems, the state’s general response has been to introduce market forces, including measures such as pricing, establishing formal markets and privatization. Through an in-depth study of the political economy of irrigation systems in Karnataka, Mollinga ascertains how formal, ‘clear’ rights are only as secure as the context allow them to be, while neither nationalization nor privatization provides an effective solution to the problem of a skewed, contested distribution of water.

6. CSI: checklist for a developmental ‘no-go’

The papers in this collection represent cases drawn from countries across an extended developmental spectrum. At one end, we find Malaysia, ranked 44th and considered a ‘high developed country’ according to the Human Development Index (HDI). At the other end, there is India, at rank 123 and seen as ‘medium developed’ with a GDP per capita approximately 5 times less than that of Malaysia (see Table 1). As important is the fact that the papers uncover the institutional arrangements and property rights cutting across the modes of production, land, labor and capital, while eventually moving away from them.

In so doing, the collection crosses the divides between the rural and the urban, and the developing and the developed. Regardless of whether one looks at indigenous land rights in Malaysia, herders and traditional pastoralism in China, state-owned banks in Turkey, notarization of property in urban Mexico, or labor unions and irrigation in India, the conclusion

Table 1. GDP per capita and HDI for the country-cases.

| Country | GDP per capita (PPP; USD; 2014) ^a | Rank GDP/capita | HDI (2015) |
|----------|--|-----------------|------------|
| Malaysia | 25,639 | 44 | 62 |
| Turkey | 19,788 | 59 | 72 |
| Mexico | 17,315 | 66 | 74 |
| China | 13,206 | 85 | 90 |
| India | 5701 | 123 | 130 |

Source: for GDP figures (World Bank 2015); for HDI (UNDP 2015, 47–49).

Note: ^aGross Domestic Product calculated in USD against purchasing power parity; that is, it allows estimates of the exchange rate between USD and the domestic currency at par with the purchasing power of the two countries’ currencies. PPP, Purchasing Power Parity; USD, United States Dollar.

is similar. There is no evidence that certain prescribed institutional forms (whether that relates to private property or flexible work contracts; competitive notaries or formal title) are conditional to credible development. Ergo, what we need to look at is not institutional form, but how institutions have functionally adapted to their time- and space-specific environment.

Let us consider this. Whereas some papers show the failure of private property to replace other property regimes as a credible institution (cases of dam-building in Malaysia, and irrigation in India), another shows the credibility of institutional arrangements other than private property (state-owned banks in Turkey). Each of these papers, in its own way, raises questions about the primacy of private property as suggested by neo-liberal and neo-classical thought. Does this mean that common property (in the case of Malaysia) or state ownership (in the case of Turkey and India) is the 'best' institutional arrangement, inasmuch as private property is only a 'second-best' or inferior option?

One should be careful *not* to idolize state or common property, lest one commits a mistake to the same degree that neo-liberal and neo-classical thought idolize private property. Rather than overemphasizing state-led or communal development as a panacea for economic and societal ills, the assembled studies have a fundamentally different story to tell: private property rights are *not* as important as the neo-liberal, neo-classical paradigms want us to believe, as other ownership types have equally critical roles in development. It all depends on time and place. Yet state, communal and private ownership should *never* be regarded as a given or precondition, but like any other institutional arrangement, they change endogenously according to the function they fulfill under ever-shifting socio-economic, political and cultural environments.

We should view the papers on labor and notaries with the same lens. Indian trade unions and Mexican notaries critically deviate from neo-liberally required forms (flexible and limited job security for the former; competitive, time- and cost-efficiency for the latter). Despite their economically 'perverse' forms, it is ascertained that these institutions are credible. For the Mexican cases, that credibility exists as a functional adaptation to an environment *without* title insurance companies and formal lending institutions; for the Indian case, it is an adjustment to variations in the technological and socio-economic conditions of a 'traditional' versus a 'modern' industry. The importance of these papers lies in their effort to verify institutional function over space *and* time: the Indian trade unions are charted in geographical locations varying from the West to the East over 1950 kilometers apart, whereas the Mexican notaries are described in a mid-nineteenth-century, agrarian context *vis-à-vis* a contemporary, urban setting.

Apart from abandoning preoccupation with institutional form in the praxis of development, there might be another lesson to take home from this collection: Contrary to neo-liberally inspired notions, credible institutions cannot be exogenously designed or enforced, as credibility is essentially endogenously formed (Gabel 2000, 1). The paper on the effects of ecological conservation measures on Chinese herders and farmers, as well as the paper on the eviction of a Malaysian indigenous community, is a clear demonstration of this. If endogenously evolved functions of institutions are disregarded, while significant differences in power enable consequent imposition of new institutional arrangements, the emergence of empty or non-credible institutions is a likely result.

Neo-classically and neo-liberally inspired thought holds that endogeneity and spontaneous order imply conservatism – that is, preservation of the status quo. Bluntly put, no matter whether informal, customary land rights or child labor is involved, endogeneity allegedly assumes an autonomous evolution in which any development intervention is

futile. That is *not* the message that the papers convey, nor is it the case. As aptly worded by Aligica and Boettke (2009, 25): ‘Design and spontaneous order are not irreconcilable’.

In effect, more effective development policy and intervention hinge on the recognition of endogeneity and spontaneous order, rather than ruling out their existence as ordained by the paradigm. In development and agrarian change, governments intervene and must intervene at critical moments through new policies, laws and regulations. Likewise, at similarly critical moments, society benefits from a ‘nurturing’ approach, or even a ‘no-go’ to development intervention. What the papers tell us is that the approach should be guided by the endogenously evolved context, not by the morality and orthodoxy of a pre-defined institutional form. In this sense, none of the papers advocates *or* excludes state-driven or communal approaches, nor do they promote or disapprove of non-intervention or formalization. What matters is context, as that determines the impact of the chosen approach.

This brings us back to the credibility thesis. Driven by the use and disuse of their function, institutions spontaneously arise, persist and vanish, much like ocean currents arise, persist and vanish. However, in sailing the currents of development, good seamanship is indispensable, which entails knowing which waters are easy to negotiate, and which waters are not. That knowledge signifies comprehension or, minimally, the recognition of the array and scales of development interventions that can be used, in relation to the endogenous conditions under which they may produce an effect or are likely to fail.

In this context, the collection puts forward a possible ‘checklist’ for a ‘no-go’ that links levels of credibility to possible intervention *and* non-intervention. It is hoped that this ‘Credibility Scales and Intervention’ (CSI)²⁸ checklist can assist policymakers in becoming aware of, and better reviewing, their opportunities and constraints. As Table 2 depicts, on an ideal-type scale ranging from interventionist to non-interventionist, governments and other decision-making bodies preside over developmental measures that vary from:

- (1) Ordaining, or commanding what must be done;
- (2) Prohibiting, or dictating what cannot be done;
- (3) Facilitating, or supporting what needs to be done;
- (4) Co-opting, or formalizing what is done;
- (5) Condoning, or accepting daily praxis.

Let us illustrate the table through the example of informal land tenure as it may have emerged as an institution for social welfare amongst a group of actors. Such property rights arrangements generally arise in contexts where there is a high proportion of (low-educated) rural labor to the total labor force. If – based on a solid ‘institutional archaeology’ – it is ascertained that this property rights arrangement rallies high credibility among this group of actors, there is a ‘no-go’ to development intervention. Put differently, the preferred intervention would be *non-intervention*: condoning or accepting daily praxis with a ‘hands-off approach’.

If credibility is medium-high or decreasing from high to medium-high, it could be more suitable to co-opt or formalize that what is already being practiced. In this regard, one might think of the formalization of customary land as a social right coupled to additional measures, such as targeted social assistance and subsidized housing (land) (see e.g. Ondetti 2016).²⁹

²⁸Not related to the eponymous television series.

²⁹For instance, in the Chinese context, the right to housing land on which peasants can freely build their homes is included in the Chinese State Council’s 1982 Administrative Regulations on

Table 2. Credibility scales and intervention (CSI) checklist.

| Credibility level/trend | Institutional intervention | Desired effect |
|-------------------------|----------------------------|---|
| High | Condoning | Accepting praxis by <i>non-intervention</i> |
| Medium high | Co-opting | Formalizing what <i>is</i> done |
| Neutral | Facilitating | Supporting what <i>needs to be</i> done |
| Medium low | Prohibiting | Dictating what shall <i>not</i> be done |
| Low | Ordaining | Commanding what <i>must be</i> done |

Source: Author.

Co-opting and condoning are institutional interventions that differ primarily in intensity. Whereas co-opting still requires some degree of government action, through formalization, incorporation and the up-scaling of local norms and customs into statutory rules, condoning is a matter of keeping one eye open, and the other closed. It is a subtle form of intervention that treads a narrow divide between action and non-action, by leaving daily praxis undisturbed while trying to negotiate the framework within which that praxis is permitted. Co-opting and condoning are suitable options when there are wide divergences between what is institutionally desired versus the function(s) that institutions perform on the ground.

Another possible situation occurs when credibility for informal land tenure is neutral. Meaningful intervention may then consist of facilitating or supporting what *needs to be done*, for instance by subsidizing small-holders to convert informal tenure into collective arrangements in which private interests are more formally included. In this context, one could think of the establishment of shareholding cooperatives (by converting land assets into formal shares registered in the name of individual peasants, while upholding the collective nature of land governance). Facilitating is in the majority of cases a reasonable option, but even more so when significant institutional innovation is taking place.³⁰ It is important that authorities recognize such new developments that signal the rise of new functions, while nurturing and protecting them by providing resources and space for experimentation.

When credibility of informal land tenure is found to be medium-low or decreasing from medium to medium-low, one can resort to prohibiting, or dictating what *cannot be done*; and, lastly, when informal land tenure rallies a low credibility, one can ordain or command what *must be done*. Such situations could occur in highly industrialized and urbanized settings with a minimal proportion of rural labor to the total population, when land no longer caters for social welfare, but as a vehicle for trade and investment.³¹ In fact, in highly industrialized and urbanized settings, it is not so much the access to land but the access to housing that determines social welfare (Davy and Pellissery 2013). Under these conditions, formalization of informal land tenure is not likely to result in social cleavage and marginalization and could, in fact, be used as a measure against the concentration of land into the hands of an elite few.

Residential Construction Land for Villages and Towns, and was later formalized in the 1986 Land Administration Law.

³⁰A textbook example of such local innovation was the emergence of the Township and Village Enterprises as the main driver of China's rural industrialization, and the nation's entire economy. For a good overview on China's rural industrialization, see Edin (2004).

³¹For instance, as in Japan and The Netherlands with, respectively, 4.0 and 2.6 percent of the total labor force still active in agriculture (Hayami and Godo 2002, 1; Statline 2014).

Typically, ordaining and prohibiting belong to a mode of institutional intervention that will only work when the function of what is intended already concurs with what locally exists as actors' aggregate perceptions. Ironically, in the face of societal pressure, private gains and political ambition, governments often chose ordaining and prohibition in a symbolic demonstration of resolve or to strike deals with other powerholders. The outcome is a contested institution lacking credibility, or an empty institution decoupled from actors' daily praxis. As rightfully noted by a prominent legal anthropologist, institutions such as '[J]aw may on occasion move in the sphere of symbolism and magic rather than in the everyday sphere of practical solutions to practical problems' (Aubert 1966, 115).³²

It needs emphasis that credibility should be conceptualized as a continuum (see section 4.6 above) and, by consequence, can shift on that continuum. Therefore, the various categories of institutional interventions and intended effects are never to be considered in absolute terms. Stated differently, depending on the circumstances, a blend of interventions is imaginable or even a necessity. If one ever hopes to have a better chance of knowing the outcome of interventions as they endogenously arise from a myriad of actors' interactions, one must know the context, and the spatio-temporal dimensions to which interventions stand in its relation. It means that one can intervene, but that the option of non-intervention must always be left open. It also means being sensitive to the fact that institutional form follows from function, and not vice versa, a principle that holds for all the modes of production and beyond.

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³²Examples of how this institutional mechanism works are provided in studies by Aubert (1966) on the Norwegian Housemaid Law, by Aalders (1984) on the Dutch Nuisance Law, and by Ho (2005) on the Chinese Grassland Law.

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