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One law on the books, another on the ground:
Land tenure and land markets
in late- and post-colonial Kenya and Rwanda

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One law on the books, another on the ground: land markets and land tenure in late- and post-colonial Kenya and Rwanda

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ABSTRACT

This paper examines a paradox noticed in the development of land tenure systems in eastern Africa during the late- and post-colonial periods. The Kenyan state attempted to activate land markets in its Central Province, yet land transactions therein remained constrained; the Rwandan state attempted to restrict land markets, but land transactions multiplied. The paper explores this paradox through new institutionalist theories of institutional change. It argues that newly introduced formal land laws failed to achieve their land-market goals because they were less able to respond to the demands of economic actors than were the existing informal rules. Conceptual work in the new institutional economics explains why informal and formal land tenure institutions do not always cohere. From there, this paper moves to explain the two cases' informal land institutions by examining the demand-side factors of population density and commercialisation of agriculture in each area. It suggests that land market activity in the two cases was comparable due to similar demand-side pressures. As for the formal land laws, the paper, recognising the political nature of the supply side, offers hypotheses as to why the two states imposed the legal land tenure institutions that they did. It suggests that the holders of Kenyan political power had more to gain from land-market activation than did their Rwandan corollaries.

ABSTRACT

Diese Arbeit untersucht ein Paradoxon, das in der Entwicklung von Bodenordnungssystemen im östlichen Afrika der spät- und postkolonialen Periode zu beobachten ist. Trotz des Versuchs des Staates Kenia, in seiner Zentralprovinz einen Bodenmarkt aufzubauen, blieben Transaktionen in diesem Bereich begrenzt; in Ruanda hingegen, das versuchte den Bodenmarkt einzuschränken, vervielfachten sich die Transaktionen. Diese Arbeit versucht nun das oben beschriebene Paradoxon mittels neo-institutionalistischer Theorien über institutionellen Wandel zu untersuchen. Es ist anzunehmen, dass die neu eingeführten formellen Bodenrechte ihre gesetzten Ziele nicht erreichten, weil sie, im Gegensatz zu den bereits existierenden informellen Regeln, kaum in der Lage waren auf die Ansprüche der ökonomischen Akteure zu reagieren. Konzeptionelle Arbeit im Bereich der Neuen Institutionellen Ökonomie erklärt, warum informelle und formelle Institutionen der Bodenordnung nicht immer zusammen hängen. Weiterhin erläutert diese Arbeit die informellen Bodenbesitzinstitutionen anhand der zwei Fallstudien, indem sie zwei Faktoren auf der Nachfrageseite, (i) Bevölkerungsdichte und (ii) Kommerzialisierung der Landwirtschaft, in jedem Bereich untersucht. Es ist anzunehmen, dass Aktivitäten im Bereich des Bodenmarkts vergleichbar waren, weil in beiden Fällen ähnlicher Druck der Nachfrageseite vorhanden war. Die formellen Bodengesetze betreffend zieht die Arbeit die politische Natur der Angebotsseite in Betracht und stellt Hypothesen auf, welche die Frage behandeln, warum die beiden Staaten gerade diese Bodenordnungsinstitutionen einführten. Diese Arbeit kommt zu dem Schluß, dass die politischen Machtinhaber Kenias mehr aus der Aktivierung von Bodenmärkten zu gewinnen hatten als jene in Ruanda.

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INTRODUCTION

Land tenure in sub-Saharan Africa

Land is the fundamental factor of production. For this reason, the conditions under which land is held and used can significantly affect the economic behaviour of a society. Different land tenure systems can lead to widely different economic outcomes; accordingly, it is difficult to overstate the importance of their study. However, it would be incorrect to say that land is equally important in all places at all times. The significance of land – and of the rules surrounding its ownership and use – is greater in pre-industrial, agrarian economies. For the most part, the importance of land for economic development dwindles as societies become industrial and post-industrial.

It follows that land's significance has *not* markedly diminished in areas that have remained predominantly agrarian. Land matters are still critically important for many of the developing economies of the Third World. Consider sub-Saharan Africa. Even with the rapid urbanisation of the later twentieth century, throughout its history the region has always been and continues to be comprised of agrarian economies. This paper is interested in the development and evolution of land tenure systems in Africa, an agrarian region past and present.

Over the long term, the defining feature of land tenure in the history of sub-Saharan Africa has been the region's land abundance.¹ Though there are important qualifications to be made, in economic terms pre-colonial Africa was marked by land abundance and – its upshot – labour scarcity. It was a relatively lightly peopled continent, a situation exacerbated but certainly not solely caused by pre-colonial external slave trades.² Land abundance had profound implications for the

¹ For background reading on this African story of land abundance, see Gareth Austin, 'Resources, techniques, and strategies south of the Sahara: revising the factor endowments perspective on African economic development, 1500-2000', *Economic History Review* 61:3 (2008), pp. 589-90; Anthony G. Hopkins, *An Economic History of West Africa* (London: Longman, 1973), pp. 11-27; John Iliffe, *Africans: The History of a Continent*, new edition (Cambridge: Cambridge University Press, 2007), pp. 1-5.

² Some argue that external slave trades were the reason Africa was underpopulated; see e.g. Patrick Manning, *Slavery and African Life: Occidental, Oriental, and African Slave Trades* (Cambridge: Cambridge University Press, 1990); Nathan Nunn, 'The long-term effects of Africa's slave trades', *The Quarterly Journal of Economics* 123 (2008), pp. 139-76; Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture, 1972). However, the demographic data that exist for pre-colonial Africa are sparse, not very useful, and even reveal pre-slave-trade underpopulation, making this a difficult position to maintain; see Gareth Austin, 'The "reversal of fortune" thesis and the compression of history: perspectives from African and comparative economic history', *Journal of International Development* 20, p. 1001; Hopkins, *West Africa*, p. 17.

development of tenure systems. Without a scarcity value, there was little reason to have well-defined private property rights in land. Instead, land was usually held under systems of communal or free tenure.

As elsewhere, this situation was apt to change: land abundance was a feature that would not last in perpetuity, and so property rights would eventually require redefinition. Especially during the twentieth century – but in some places, well before – the general situation of land abundance underwent major upheavals as populations grew larger and agricultural activities more commercialised. In many places, land abundance began to make way for land scarcity.³ That this shift usually began during the colonial period meant that the onus was often on colonial governments to respond to it.

The ‘land question’ in Africa inspired different ‘solutions’ for different governments at different times.⁴ For some, individual property rights represented progress, and legally private tenure the most civilised way to deal with land.⁵ Nineteenth-century European theories of property rights in land posited a unilineal path at the end of which was full private property, the implication being that the European approach to land ownership was the highest approach. This idea acquired certain personification in some of the larger figures of colonial African history: in British West Africa, Lieutenant-Colonel Rowe was a most notable proponent;⁶ later, in East Africa, Minister of Agriculture Swynnerton held a similar position.⁷

Not all governments concurred, especially outside Anglophone Africa. If British administrators occasionally extolled the virtues of offering private property

³ Land scarcity was therefore a ‘natural’ occurrence in some areas. In others, especially the British settler colonies, land was also made artificially scarce; see Gareth Austin, ‘Sub-Saharan Africa: land rights and ethno-national consciousness in historically land-abundant economies’, in Stanley L. Engerman and Jacob Metzer (eds.), *Land Rights, Ethno-Nationality, and Sovereignty in History* (London and New York: Routledge, 2004), p. 279; Sara Berry, ‘Debating the land question in Africa’, *Comparative Studies in Society and History* 44 (2002), p. 639.

⁴ Catherine Boone, ‘Property and constitutional order: land tenure reform and the future of the African state’, *African Affairs* 106:425 (2007), pp. 560-566; John W. Bruce, ‘A perspective on indigenous land tenure systems and land concentration’, in S. P. Reyna and R. E. Downs (eds.), *Land and Society in Contemporary Africa* (Hanover, NH: University Press of New England, 1988), pp. 23-54.

⁵ Frederick J. D. Lugard, *The Dual Mandate in British Tropical Africa* (Edinburgh: W. Blackwood and Sons, 1922), p. 280.

⁶ Anne Phillips, *The Enigma of Colonialism: British Policy in West Africa* (Bloomington: Indiana University Press, 1989), pp. 120-3.

⁷ R. J. M. Swynnerton, *A Plan to Intensify the Development of African Agriculture in Kenya* (Nairobi: Government Printer, 1954).

to the African peasantry, the continental powers were often loath to extend such a European ideal to their overseas subjects. And so, for those more wary of the negative effects that could come with the radical individualisation of thitherto-communal systems, state-owned, indigenously governed land appeared a more attractive response. Strengthening and even reifying the existing indigenous systems of land tenure became a priority in the areas in which these policies were preferred.

The legacies of colonial land policies would imprint themselves upon the continent; even where radical land reforms eventually overturned them, these extreme ends of the policy spectrum would continue to shape the debate on land in Africa well into the present, and very imaginably beyond.

The cases: land markets in Central Province in Kenya and Rwanda

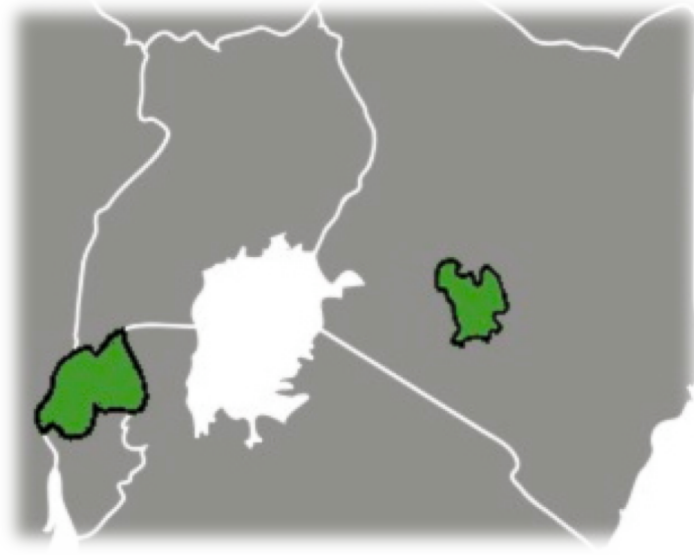
As stated above, the conditions under which land is held and used can affect the economic behaviour of an economy. The consequences that different land tenure systems have are especially great for agricultural productivity. Ostensibly, systems of private ownership are best for productivity: they increase tenure security for landholders, thereby making them more prone to invest in their holdings; they collateralise land, which in turn encourages the growth of rural credit necessary to fund investments; and they promote the development of markets in land.⁸ For the sake of feasibility, this paper focuses on this last point – the development of land markets – in two case studies in eastern Africa: (i) Central Province in Kenya; and (ii) Rwanda.⁹ The more individualised are land rights, the more land becomes a saleable commodity, and so the more active land markets should be. The cases invite comparison because they share similarities that should logically influence the evolution of land tenure systems: ecologically, both areas were fertile forested highlands;¹⁰ demographically, both were densely populated and grew all the more

⁸ Gershon Feder and Raymond Noronha, 'Land rights systems and agricultural development in sub-Saharan Africa', *World Bank Research Observer* 2 (1987), pp. 143-69; cf. Jean-Philippe Platteau, 'The evolutionary theory of land rights as applied to sub-Saharan Africa: a critique', *Development and Change* 27 (1996), pp. 29-86.

⁹ See Map 1 on the following page.

¹⁰ Different factor endowments influence the development of property rights and land-tenure institutions. In Africa, the forest/savannah distinction is particularly important. For a case from the Americas, see Stanley L. Engerman and Kenneth L. Sokoloff, 'Factor endowments, institutions, and differential paths of growth among New World economies: a view from economic historians of the

Map 1: Rwanda (left) and Central Province shown within Kenya (right)¹²



so (at continent-topping rates) as the twentieth century progressed.¹¹ Systems of land tenure in colonial and post-colonial Kenya and Rwanda followed similar paths on the ground (*de facto*), but very different paths on the books (*de jure*). These differences require explanation.

Briefly, late-colonial and post-colonial land legislation in Kenya sought to activate land markets. It did this by introducing land registration and thus making land previously held under customary tenure a saleable commodity. By contrast, land legislation in Rwanda in the corresponding periods sought to arrest the development of land markets. It did this by introducing exceptionally prohibitive conditions for land transactions.

Land markets developed unevenly across Kenya. They grew quite active in the former areas of European settlement, where registration and titling had existed from the early-twentieth century.¹³ Conversely, in Central Province, the first area to

United States', in Stephen Haber (ed.), *How Latin America Fell Behind* (Palo Alto: Stanford University Press, 1997), pp. 260-304.

¹¹ Austin, 'Land rights', pp. 280-1.

¹² Constructed by the author from the freely licensed BlankMap-Africa.svg file accessible at <http://upload.wikimedia.org/wikipedia/commons/f/f9/BlankMap-Africa.svg>, last accessed 20 June 2011; and the freely licensed Kenya_Provinces_Central.png file accessible at http://upload.wikimedia.org/wikipedia/commons/8/8d/Kenya_Provinces_Central.png, last accessed 20 June 2011.

¹³ Shem E. Migot-Adholla, Peter Hazell, Benoît Blarel, and Frank Place, 'Indigenous land rights systems in sub-Saharan Africa: a constraint on productivity?', *World Bank Economic Review* 5:1 (1991), p. 170; Shem E. Migot-Adholla, Frank Place, and W. Oluoch-Kosura, 'Security of tenure and land

undergo and complete the late- and post-colonial land registration process, land markets remained constrained by customary law, particularly on the former Native Reserves.¹⁴ Even with titled, individual ownership, many landholders felt they were not free to sell their land without consulting their communities or kin groups.¹⁵ Therefore, land markets in Central Province did not develop the way in which the architects of Kenyan land reform had hoped they would.

As for Rwanda, the land-transaction restrictions there could only be described as failures. Land markets developed in spite of the laws designed to limit them, and indeed the vast majority of land transactions in the post-colonial period did not meet the stringent criteria demanded by the legislation.¹⁶ Therefore, as in Central Province in Kenya, land markets in Rwanda did not follow the path envisioned by the country's legislators.

Land-market activity in Central Province was *not* necessarily weaker than it was in Rwanda in absolute or even relative terms. The data available are inadequate to measure this with the most desirable precision, but Migot-Adholla et al. offer a provisional means through which land markets in Rwanda and Central province can be compared (see Table 1 on the following page). From surveys conducted in the late 1980s, one can ascertain a far deal of variety in land-market activity within the two areas, but the levels of land-market activity were broadly similar. This similarity is intriguing because it is unexpected: the respective land laws of the countries would have predicted *more* purchases/sales in Central Province and *fewer* in Rwanda. What is especially interesting is that despite being one of the first areas of Kenya to undergo registration, Central Province's land markets were more constrained than those found elsewhere in the country.

productivity in Kenya', in Shem E. Migot-Adholla and John W. Bruce (eds.), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), pp. 119-40.

¹⁴ Simon Coldham, 'The effect of registration of title upon customary land rights in Kenya', *Journal of African Law* 22 (1978), pp. 91-111; Migot-Adholla et al., 'Indigenous land rights', pp. 160-1; Thomas C. Pinckney, and Peter K. Kimuyu, 'Land tenure reform in East Africa: good, bad, or unimportant?', *Journal of African Economies* 3 (1994), p. 5.

¹⁵ Shem E. Migot-Adholla and John W. Bruce, 'Introduction: are indigenous African tenure systems insecure?', in Shem E. Migot-Adholla and John W. Bruce (eds.), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), pp. 1-13.

¹⁶ Catherine André and Jean-Philippe Platteau, 'Land relations under unbearable stress: Rwanda caught in the Malthusian trap', *Journal of Economic Behavior and Organization* 34 (1998), pp. 19-20; Benoît Blarel, 'Tenure security and agricultural production under land scarcity: the case of Rwanda', in John W. Bruce and Shem E. Migot-Adholla (eds.), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), pp. 71-95.

Table 1: Purchases as percentage of total land acquisitions (1987-1988)¹⁷

Rwanda	<i>Ruhengeri</i>	17.4
	<i>Butare</i>	2.3
	<i>Gitarama</i>	8.1
Kenya (Central Province)	<i>Kianjogu</i>	13.2
	<i>Mweiga</i>	6.0
Kenya (Elsewhere)	<i>Madzu</i>	28.6
	<i>Luma-Kanda</i>	26.0

The story becomes all the more fascinating when one considers the subjective opinions of landholders in the two areas. Though actual activity surrounding land transactions may have been rather similar, when asked whether they *felt* they were entitled to transfer their land via the market, across the board landholders in Central Province indicated that they were very restricted when it came to using the market to sell or lease their holdings. This belied their legal rights: after all, these inhabitants held land titles. In Rwanda, recorded impressions indicate that these restrictions were not nearly as acutely perceived, despite the fact they were indeed severe: surveyed inhabitants were not even landholders per se, given that they did not – *could not!* – possess titles conferring something approaching ownership.

In the late- and post-colonial periods, Kenya and Rwanda differed in their land-market goals: the former attempted to encourage markets in land, the latter to discourage them. In Central Province in Kenya, as in Rwanda the country over, the objectives went largely unmet. Paradoxically, custom constrained land markets where land was legally made into a commodity, and markets emerged where legally most transactions were not permitted. This paper explores this paradox by considering the evolution of *de jure* and *de facto* land tenure systems through new institutionalist theories of institutional change. It argues that newly introduced formal land laws failed to achieve their land-market goals because they were less able to respond to the demands of economic actors than were the existing informal rules. From there, it moves to explain why land-market activity in the two areas was broadly similar, and why the two respective governments' land-market goals were so different.

¹⁷ Adapted from Migot-Adholla et al., 'Indigenous land rights', p. 162.

Table 2: Percentage of GDP from agriculture¹⁸

	1965	2005
Developed Countries	5.0 ^a	1.7
Sub-Saharan Africa	24.6	16.4
Kenya	35.3	26.8
Rwanda	74.8	41.0

Notes:

a: 1971

Rationale

Paradoxes often offer pre-packaged research questions, and the one observed in Kenyan and Rwanda land markets is no exception. Paradoxes of the like are the substance of good history – they allow the historian to move from merely recounting events to solving historical puzzles.

The piecing together of such puzzles can indeed be its own reward. When curiosities are piqued, one hardly needs a more profound motivation to attempt to satisfy them. The activity of getting lost in the minutiae of history and subsequently trying to find one's way out can simply be interesting to the wanderer and require no greater impetus. If our wanderer is lucky, sorting through these travels and travails might results in *compelling* history, intriguing to others.

Should this present work succeed in accomplishing as much, that would be success enough. However, it would be foolish not to recognise that even the historical study of land is lent greater purpose when the subjects of inquiry are current agrarian economies. In such cases, history often blends and bleeds into the present.

Sub-Saharan Africa is both historically and presently an agrarian region. In the past decade, farming activities and livestock rearing have accounted for roughly 60 per cent of African's livelihoods.¹⁹ If one examines the contribution of the agricultural sector to gross domestic product (GDP), it is clear that sub-Saharan Africa (and the two countries that are the focus of this paper) can aptly be described

¹⁸ Development Data Group, The World Bank. 2008. *2008 World Development Indicators Online*. Washington, DC: The World Bank. Available at: <http://go.worldbank.org/U0FSM7AQ40>

¹⁹ African Union, African Development Bank, and Economic Commission for Africa, 'Framework and guidelines on land policy in Africa – Land policy in Africa: a framework to strengthen land rights, enhance productivity, and secure livelihoods' (Addis Ababa: AUC-ECA-AfDB Consortium, 2010), p. 7.

as agrarian, especially when compared with developed countries (see Table 2 on the previous page).

With such a sizeable proportion of GDP coming directly or indirectly from land, improving the productivity of agriculture (or of agricultural labour) can clearly make an agrarian economy richer. With such high levels of employment in agriculture, improving productivity can lead to increases in rural incomes and thus secure and improve rural livelihoods. Augmenting the productivity of land can also boost non-agricultural sectors by freeing more labour to engage in non-agricultural production.

The goal of this paper is not to prescribe which land tenure systems ought to be adopted or implemented in Rwanda and Central Province (or in Africa more generally), neither is it to reaffirm the positions of proponents of privatisation or leviathan policies, a debate-cum-false-dilemma populated by participants who have too often lost the ability to see in greyscale.²⁰ Avoiding normative statements is not to concede that making the correct recommendations is impossible. Quite contrarily, this paper takes the position that, though they surely vary by context, the ‘right’ recommendations exist in principle and are discoverable. However, those who delve into the new institutionalist literature are cautioned to tread softly when it comes to prescribing institutional arrangements, especially if such arrangements are to be transplanted.²¹ And those who explore the land tenure literature know that the political and economic contexts of certain countries’ land tenure systems provide enough twine to disentangle on their own, to say nothing of the social and cultural contexts, which can include nuanced relationships between land and spirituality, land and gender relations, and land and marginalised groups.²² Erring on the side of caution, this paper instead treads not at all.

²⁰ The facile idea that the “only way” to deal effectively with a common pool resource such as land is either through the freest of markets or biggest of states has been opposed by Nobel laureate Elinor Ostrom throughout her career. See e.g. Elinor Ostrom, *Governing the Commons: the Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), pp. 8-15; Elinor Ostrom, ‘Beyond Markets and States: Polycentric Governance of Complex Economic Systems’ – Prize Lecture (2009).

²¹ Peter J. Boettke, Christopher J. Coyne, and Peter T. Leeson, ‘Institutional stickiness and the new development economics’, *American Journal of Economics and Sociology* 67:2, pp. 331-58.

²² Regrettably, for want of space this paper pays short shrift to social and cultural contexts, though much promising work is being done in this area.

So, what is the point of researching land tenure systems and land markets if not to offer prescriptions as to how they might be improved? This is a fair question, and indeed it is agreed here that the long-term purpose of land tenure research ought ultimately to be to inform policy and help ensure the 'right' land tenure institutions are chosen and supported. However, before that long-term purpose can be fruitfully engaged with, there remains a significant amount of legwork to be done.

Development economists, governments (both colonial and independent), and a gamut of non-state actors have long acknowledged the importance of appropriately dealing with land issues in agrarian regions like sub-Saharan Africa. Yet, land reform efforts in the region have often proven dissatisfactory in terms of raising agricultural productivity and allowing for equitable distributions of land. As a consequence, land policy remains high on the agenda of many, including a number of prominent international organisations. In 2010, the African Union (AU), African Development Bank (AfDB), and United Nations Economic Commission for Africa (UNECA) released a publication entitled 'Framework and guidelines on land policy in Africa'.²³ Recognised therein is that one of the greatest impediments to effective land policy implementation is a lack of baseline data and carefully conducted research.²⁴ Similar lamentations have been made elsewhere. The goal of this paper is to make a modest contribution to the expanding knowledge base on land in Africa, and it will do so by situating itself in the new institutionalist literature, which has been making insightful inroads in this area. The paradox noticed in the development of land markets in Rwanda and Central Province offers the historian a pre-packaged research question, but further, the exploration of this research question can yield fruits ripe for the picking by policymakers and development economists. Indeed, any opportunity to gain historical perspective into contemporary development issues should always be emphatically welcomed. The historical approach offered by the paper aims to complement a diverse set of research initiatives in this area, which ideally will include comprehensive data collection, sociological research, legal research, as well as the contributions from many other fields. In sum, the hope of the broader research agenda is eventually to put together a comprehensive picture of

²³ AU, AfDB, ECA, 'Framework and guidelines on land policy in Africa'.

²⁴ Ibid., p. 32.

land tenure systems throughout space and time with which policymakers can best inform themselves as they design land policy implementation strategies, action plans, and even legislation. So while this paper soberly avoids making normative statements and prescriptions, it is emboldened by the underlying assumption that correct prescriptions can be made.

Plan

This paper is arranged in two parts. The first part is largely narrative and aims to set the scene. It contains two chapters, the first of which covers the history of land in Central Province in Kenya, the second of land in Rwanda. The focus of the discussion is the late- and post-colonial periods of both countries. However, the discussion stretches further back as necessary. A briefer time span would risk creating the impression that land tenure systems in the two cases were static until the watersheds occurring from the mid-twentieth century. Each chapter of the first part thus presents the history of land tenure and land reform in the particular case, describing first the pre- and early-colonial circumstances and changes, and then honing in on this paper's focus: land tenure and land markets in the late- and post-colonial periods.

The second part presents more of an analytical tract, digging deeper into the late- and post-colonial land tenure systems and reforms described in the previous part. It is organised into four chapters. The first of these justifies the use of the new institutional economics (NIE) as a theoretical framework for this paper's analysis. It does so by responding to an objection that may be levied against the applicability of the new institutionalism in African economic history. With the potential objection settled, the next chapter moves to present more thoroughly the heuristic devices this paper uses in its analysis: the new institutionalist concepts of induced institutional innovation (III) and the evolutionary theory of land rights (ELTR).²⁵ The analysis

²⁵ It should be noted at this point that there have been a number of historical tests of the theory of induced institutional innovation. A preliminary list of these includes: Gareth Austin, *Labour, Land and Capital in Ghana: From Slavery to Free Labour in Asante, 1807-1956* (Rochester: University of Rochester Press, 2005) on Asante; David Feeny, 'Competing hypotheses of underdevelopment: a Thai case study', *The Journal of Economic History* 39 (1979), pp. 113-27 on Thailand; Yuijiro Hayami and Masao Kikuchi, *Asian Village Economy at the Crossroads: An Economic Approach to Institutional Change* (Baltimore: John Hopkins University Press, 1982); and Kikuchi and Hayami, 'Inducements to institutional change in an agrarian community', *Economic Development and Cultural Change* 29 (1980), pp. 21-36 on the Philippines.

treats land tenure systems, both *de facto* and *de jure*, as institutions in an attempt to understand how they change over time. The third chapter in this part analyses the demand side of land tenure innovations in late- and post-colonial Central Province and Rwanda, the fourth chapter the supply side. Respectively, the three final chapters in this analytical part endeavour to explain the three key problems this paper's paradox poses: (i) why gulfs emerged between the informal and formal land tenure institutions of the cases; (ii) why informal institutions produced similar levels of land-market activity in Rwanda and Central Province; and (iii) why formal institutions favoured the activation of land markets in Central Province more than they did in Rwanda.

The final chapter summarises and concludes.

PART I: HISTORY

CHAPTER ONE: CENTRAL PROVINCE, KENYA

Pre- and early-colonial periods

As was the general story in pre-colonial sub-Saharan Africa, land in Kenya was abundant, and labour relatively scarce. This was true even of those most hospitable and populated locales: the fertile Kikuyuland (later Central Province) was a much more attractive area for human settlement than the semi-arid and arid stretches near to which it lay, but prior to the colonial period land shortages never posed a problem.²⁶ An effective system of land governance had spontaneously emerged in Kikuyu society: plots were managed, held, and acquired under the aegis of social units (singular: *mbari*) headed by a prominent elder, but land rights were easy to acquire for outsiders (as a common example: in exchange for labour to help clear new land). The phenomenon of landlessness was thus unprecedented, as even those without proper rights to cultivate land could gain access and use rights.

Though natural population growth would later play a part in upturning land-labour factor ratios in Kikuyuland, it was an exogenous force that caused the first real breaking point. The situation of land abundance met a shock with the area's incorporation into the British Empire in the late-nineteenth century. Over the next decades, a series of colonial policies and initiatives would hasten the crowding of central Kenya.

For the British, eastern Africa teemed with possibilities, both economic and strategic. But for many imperialists, these possibilities were unrealisable if the region were to remain unequipped with the proper infrastructure. Whether motivated by commerce²⁷ or control,²⁸ the British decided to finance the construction of a railway from the Indian Ocean at Mombasa to Lake Victoria in what would later become Uganda. If it helped the British secure the source of the Nile and maintain dreams of

²⁶ Robert H. Bates, *Beyond the Miracle of the Market: the Political Economy of Class and Economic Change in Kenya* (Cambridge: Cambridge University Press, 1989), p. 14; Gavin Kitching, *Class and Economic Change in Kenya* (New Haven and London: Yale University Press, 1980), pp. 8-16; Christopher Leo, 'The failure of the 'progressive farmer' in Kenya's million-acre settlement scheme', *The Journal of Modern African Studies* 14:4 (1978), p. 620.

²⁷ Thomas Pakenham, *The Scramble for Africa* (London: George Weidenfeld and Nicolson, 1991), p. xxiv.

²⁸ Ronald Robinson, John Gallagher, and Alice Denny, *Africa and the Victorians: The Official Mind of Imperialism* (New York: St. Martins Press, 1961), pp. 283-351.

a Cairo-to-Cape-Town sphere of influence in eastern and southern Africa, the railway was nevertheless enormously costly. This did not sit easily with frugality-minded Victorian Britain, the disdainful murmurs of which beckoned redress. The decision to construct the railway thus left the British colonial government with a challenging task: making it profitable.²⁹

One chosen solution was the promotion of Kenya as an area of European settlement in Africa. It was thought that a sizeable European community on the railway line could act as an economic palliative for a project that was bleeding money. Farmers would grow crops for global markets and purchase British manufactures; in providing the necessary transport infrastructure for both ends, the existence of the railway would be vindicated. The idea was sensible enough in theory, however it overlooked a crucial detail: Kenya was not as naturally attractive a destination for Europeans as were Britain's two southern African settler colonies, South Africa and Rhodesia.³⁰ In order to entice prospective settlers to relocate to Kenya, the colonial government needed to engineer an inviting economic climate. To this end, the best agricultural land was alienated for Europeans and offered at low prices.

The colonial government laid the foundations for a legal framework that allowed the state to alienate native Kenyans from their land, and subsequently permitted European settlers to acquire legally the best land made available from this alienation process.³¹ The relevant enactments relegated the Kikuyu to land on Native Reserves in what would become Central Province as Europeans took root on what became known as the White Highlands.

While the process of estranging Kikuyu from the Highlands certainly left European settlers with a wealth of high-potential land at their disposal, it did not

²⁹ Paul Collier and Deepak Lal, *Labour and Poverty in Kenya: 1900-1980* (Oxford: Clarendon Press, 1986), p. 27.

³⁰ South Africa had long held appeal as a strategic point of trade, and later as a miner's dream. Rhodesia was thought (though erroneously) to have also been rich in valuable mineral deposits on the eve of European settlement there, and its proximity to South Africa facilitated settlement significantly. Central Kenya, by contrast, was neither mineral-rich nor easy to access; its greatest appeal lay in the fertile topsoil of some of its parts, but other British settler colonies (e.g. Canada, Australia, New Zealand) also vied for the agriculturalist's attention. See George Jabbour, *Settler Colonialism in Southern Africa and the Middle East* (Khartoum: The University of Khartoum, 1970), pp. 7-14; Dane Kennedy, *Islands of White: Settler Society and Culture in Kenya and Southern Rhodesia, 1890-1939* (Durham: Duke University Press, 1987), pp. 19-33.

³¹ Collier and Lal, *Labour and Poverty*, p. 27.

leave them with the means to realise this potential. Land, of course, is a necessary but insufficient ingredient in agricultural production: the settlers faced a situation of land abundance and labour scarcity.³² In order to make their agricultural endeavours viable, it was hastily realised that they would require African labour. Settlers thus traded land access and use rights for African labour obligations. This created a scenario of migrant labour that was generally positive for both the settlers and Kikuyu involved throughout the early years of the arrangement.³³

This agreeable situation was not to last, changing abruptly in the 1920s and 1930s. Population growth and land concentration on the Native Reserves led to more Kikuyu leaving the Reserves to seek land and employment as migrant labourers (or as squatters, in the parlance of the day). On the settler farms, rising commodity prices encouraged European landholders to enter mixed farming. This required more land and labour, so squatter plots shrank in size, and labour obligations ballooned.³⁴ Owing more labour for less land on the settlers' farms spurred labour migrants to go back to the Reserves. However, return migrants were met with a dispiriting homecoming: during their absence, the situation on the Reserves had also worsened considerably.

Squatters attempting to return to the Native Reserves encountered a situation of land scarcity in which land rights had become harder to reacquire (or, as was often the case, acquire for the first time). Population pressure and the growing commercialisation of agriculture on the Reserves made those with land there seek to limit access to land.³⁵ The acquisition of land rights became increasingly restricted, even to members of kin groups.³⁶ Landlessness, unheard-of before the arrival of settlers, was now very real and growing. As early as 1930, there were more than thirty thousand landless squatters.³⁷

³² Ibid., p. 29.

³³ Tiyaambe Zeleza, 'The colonial labour system in Kenya', in W. R. Ochieng' and R. M. Maxon (eds.), *An Economic History of Kenya* (Nairobi: East African Educational Publishers, Ltd., 1992), p. 177.

³⁴ Ibid., p. 178.

³⁵ M. P. Cowen and R. W. Shenton, 'Development doctrine in Africa: the case of Kenya', in M. P. Cowen and R. W. Shenton (eds.), *Doctrines of Development* (London and New York: Routledge, 1996), pp. 334-8.

³⁶ Bates, *Beyond the Miracle*, p. 29.

³⁷ Zeleza, 'Colonial labour system', p. 178.

Troubles on the Native Reserves were further aggravated by colonial agricultural policies. Africans were not permitted to grow cash crops, for settlers could not compete with local production. This was because many of the cash crops (such as coffee) did not benefit from economies of scale; large-scale settler agriculture did not have any comparative advantage over small-scale African farms.³⁸ African farmers were thus barred from producing those crops in which they could be most competitive. Instead, they could only engage in farming activities either as subsistence agriculturalists, or as disadvantaged competitors in selected commercial agriculture endeavours.

Hence, the situations of both the Africans on the Native Reserves and those squatting on the settler farms had degenerated significantly by the 1950s. Landlessness, peasant immiseration and rural disgruntlement blistered apace, ultimately combining to explode into the Mau Mau Rebellion, a Kikuyu-led anti-colonial revolt.³⁹ The leaders of Mau Mau demanded greater African representation in the governance of the colony, and, at heart, greater living conditions for the impoverished, landless masses. Demands initially went largely unheeded, the British confident that their own military superiority would preclude any viable uprising. However, it was not long before the disenfranchisement engendered violence, which soon resulted in European casualties. Fearful now for their own security, British apprehensions grew to match the severity of the situation. In 1952, a state of emergency was declared in Kenya.

Late- and post-colonial periods

Faced with the emergency, the British colonial government had to respond. One arena of response was in the thitherto-prohibitive agricultural policies. From 1935, the government had already begun to allow elite African farmers to plant coffee, and restrictions were further eased from 1946 in order to take advantage of the post-war coffee boom.⁴⁰ Central Kenya still faced these restrictions, however, until coffee

³⁸ Collier and Lal, *Labour and Poverty*, p. 28.

³⁹ Bates, *Beyond the Miracle*, pp. 11-40.

⁴⁰ Cowen and Shenton, 'Development doctrine', p. 339; David Hyde, 'Paying for the Emergency by displacing the settlers': global coffee and rural restructuring in late colonial Kenya', *Journal of Global History* 4 (2009), p. 83.

production was expanded in an effort to appease revolutionaries and to counter the insurgencies of the Mau Mau Rebellion.

Through a mix of politicking of the like and – to be sure – force, the British were ultimately victorious against the Mau Mau insurrection, formally quelling the uprising in 1956. But the spectre of Mau Mau, and the threat of a new incarnation of it, lent urgency to deal further with the land problems that helped ignite the Rebellion in the first place. It was acknowledged that only the initial steps had been taken, and that sweeping changes to colonial land policy were the way forward if peasant livelihoods were to be improved.

Accordingly, there was also a more critical post-Rebellion response that involved land reforms. There were two types of land reform: the first involved the individualisation (via consolidation, registration, and provision of ownership) of land on the former Native Reserves of Central Province, an intended effect being the appeasement of those with rights in land. The second involved the selling of European-owned land to Africans, which was in part meant to combat landlessness. This second type of land reform is important and shall be revisited later. It is, however, the first type of land reform that is this paper's main focus.

During the 1950s and 1960s, the late- and post-colonial governments of Kenya introduced radical land reform policies designed to expand imported forms of private tenure.⁴¹ The conversion to private tenure, as envisaged by Minister of Agriculture Swynnerton in his eponymous 1954 plan, was expected to lead to greater agricultural productivity,⁴² in so doing enriching the landed Kikuyu enough to the point that revolution no longer seemed in their best interests. Swynnerton suggested that private tenure would help Central Province improve productivity by providing landholders greater access to credit (with land as collateral), by promoting investment in improvements (through greater land security), and through the creation of well-functioning markets in land. Therefore, one of the key goals of the Swynnerton Plan and of subsequent colonial and post-colonial land legislation was to encourage active land markets.⁴³

⁴¹ Bruce, 'Indigenous land tenure', p. 23.

⁴² Swynnerton, *A Plan*, para. 13.

⁴³ Ibid.; Frank Place and Shem E. Migot-Adholla, 'The economic effects of land registration on smallholder farms in Kenya: evidence from Nyeri and Kakamega districts', *Land Economics* 74:3 (1998), p. 361.

The recommendations of the Swynnerton Plan were pursued after the Mau Mau Rebellion had been formally put down. The Native Lands (Registration) Ordinance entered into law in 1959, and the post-independence government later expanded its provisions with the Registration of Titles Act in 1963. However, despite a legal framework designed to facilitate them, land markets in Kenya would not develop evenly across the country in the post-colonial period. Especially in the former Native Reserves of Central Kenya, well-functioning land markets did not clearly emerge.⁴⁴ Instead, customary law continued to dictate the way in which most inhabitants dealt with land, even where landholdings were largely registered.⁴⁵ Indeed, indigenous values were apt to persist in the face of national land reform legislation, as many landholders continued to feel as though they were not permitted to sell their *titled* land without the approval of their families and kin groups.⁴⁶ This likely had much to do with the fact that, despite registration, fragmentation of land continued to occur, and many people still acquired access rights to land – even though these rights were absent from the register.⁴⁷

The land tenure situation in post-colonial Kenya emerged from a history of settler colonialism and resultant violent conflict. As tensions came to a head, the colonial government introduced private-property rights in land through registration, a policy whole-heartedly accepted by the post-colonial government. Yet the inhabitants of central Kenya continued to behave as though land was not a fully saleable, privately owned commodity. The *de jure* and *de facto* tenure systems of post-colonial Central Province were not one and the same.

⁴⁴ Migot-Adholla et al., 'Security of tenure'.

⁴⁵ Coldham, 'Effect of registration', p. 110.

⁴⁶ Migot-Adholla and Bruce, 'Introduction'.

⁴⁷ Angelique Haugerud, 'The consequences of land tenure reform among smallholders in the Kenya highlands', *Rural Africana* 15-16 (1983), pp. 65-89.

CHAPTER TWO: RWANDA

Pre- and early-colonial periods

It was noted that there were important qualifications to the general situation of pre-colonial land abundance in sub-Saharan Africa. Rwanda was one of those qualifications. In the late-nineteenth century, German colonial officials recognised the area that would become known as Rwanda as one of the most densely populated parts of the continent, even if their population estimates were subsequently found to be exaggerated.⁴⁸ Later inquiries found the basic claim of high population density to be robust, and further investigations into the longer demographic history of the area would reveal historic population levels befitting of modern Africa's most densely populated country. 'Lightly-peopled' may have been an appropriate descriptor for pre-colonial sub-Saharan Africa in general, but not so for Rwanda in particular.⁴⁹

The forested hills of Rwanda offered a natural endpoint for many of the frontiersmen of Africa's prehistory: a confluence of factors not easily disentangled (e.g. precipitation levels, elevation, fertility of soil) produced an area less hostile to human life and settlement than the jungles or savannahs elsewhere in surrounding locations. Patterns of pre-colonial settlement duly reflected as much. Later in the pre-colonial period, the rate of population growth appears to have accelerated. Indirect indices such as the clearance of new lands, and the emergence of new tenure arrangements reveal that the Rwandan population was rising during the eighteenth and nineteenth centuries.⁵⁰ This growth resulted from two distinct phenomena: firstly, from migrations from the northwest; secondly – and indeed especially – from the adoption of new higher-yield cultigens.⁵¹

Faced with the pressures of exceptional population growth, ways of life and patterns of behaviour in pre-colonial Rwanda could not remain static. Dramatic social and land-tenure-related changes ensued in the nineteenth century, and these

⁴⁸ W. M. Roger Louis, *Ruanda-Urundi 1884-1919* (Oxford: Clarendon Press, 1963), pp. 107-9.

⁴⁹ Nevertheless, pre-colonial Rwanda may still have been land-abundant in the sense that land availability did not constrain production. The implication here is rather that Rwanda was identifiably denser in human inhabitants than was the continent in aggregate in the pre-colonial period.

⁵⁰ Jan Vansina, *Antecedents to Modern Rwanda: The Nyinginya Kingdom* (Madison: University of Wisconsin Press, 2004), pp. 127-9.

⁵¹ The adoption of new-world cultigens also increased the agricultural productivity and population of neighbouring pre-colonial Burundi; see Hubert Cochet, 'Burundi: quelques questions sur l'origine et la différenciation d'un système agraire', *African Economic History* 26 (1998), pp. 15, 44-5.

played out in an arena in which ethnic and social identities had been growing progressively more salient. Increasing land scarcity led to *uburetwa*,⁵² a land arrangement through which the demographically weaker Tutsi pastoralists enserfed the majority Hutu agriculturalists.⁵³ The Tutsi had previously come to possess vast swathes of land to accommodate their large cattle holdings, usually through the expropriation of land from the Hutu.⁵⁴ This had resulted in the swelling of Hutu landlessness, and so emerged *uburetwa*, a system of patron-client relationships between the landed Tutsi and landless Hutu, to accommodate the growing landless contingent and to enrich further Tutsi aristocratic lineages. The arrangement compelled the Hutu to provide bound labour services, agricultural produce, and certain goods (typically beer) in order to receive access to land. It should be noted that insofar as there were also landless Tutsi in pre-colonial Rwanda, they were exempt from subjugation under *uburetwa*. This was the system in place on the eve of the first European incursion into the area.

German colonialists were the first Europeans in Ruanda-Urundi (the historical entity referring to modern-day Rwanda and Burundi), and as they lost their African possessions in the wake of World War I, Belgium assumed formal control of the territory in 1924.⁵⁵ Both German and Belgian rule meddled little with the existing land tenure arrangements that had developed in pre-colonial Rwanda. The Germans introduced private ownership of land, but the scale was minute, applicable only to the possessions of a few German missionaries. While a cursory glance at the laws of Ruanda-Urundi under Belgian control would indicate a more proactive approach, this would be misleading. Most Belgian land policies were first concocted for the neighbouring Belgian Congo, to be applied later to Ruanda-

⁵² *Uburetwa* is not to be confused with *ubuhake*, a contemporaneous feudal-like arrangement in Rwanda that did not implicate land. Instead, the patron in the contract (also Tutsi in this case) would provide the client (a Hutu) with protection or rights to cattle in exchange for labour services. See Jacques J. Maquet, *Le système de relations sociales dans le Rwanda ancien* (Tervuren: Musée royal du Congo, 1954); Gérard Prunier, *The Rwanda Crisis: history of a genocide 1959-1994* (London: Hurst, 1995), pp. 13-4.

⁵³ Iliffe, *Africans*, p. 190; Maquet, *Le système de relations*, pp. 109-11.

⁵⁴ Johan Pottier, 'Representations of ethnicity in post-genocide writings on Rwanda', in O. Igwara (ed.), *Ethnic Hatred: Genocide in Rwanda* (London: ASEN Publications, 1995), pp. 42-5.

⁵⁵ Belgium contested Germany's occupation during the war as well, and had *de facto* control of the area as early as 1916. Jean Rumiya, *Le Rwanda sous le régime du mandat belge (1916-1931)* (Paris: Éditions l'Harmattan, 1990).

Urundi.⁵⁶ However, colonial land policy in the Congo centred on mineral wealth and mining concessions, and so its application to land in Ruanda-Urundi was much more a matter of legal convenience than it was of practical utility. In keeping with this disposition toward the convenient, the Belgians left the vast majority of land in the country to be governed by customary law, upheld the Tutsi-dominated tenure system, and indeed ruled indirectly through Tutsi elites, to the social and economic detriment of the Hutu majority.⁵⁷ Land relations in Rwanda would change little throughout the greater part of the colonial experience: *uburetwa* continued unabated for decades. This arrangement would last until the twilight of the era of Belgian rule.

Late- and post-colonial periods

In 1959, social relations in Rwanda changed drastically as the Hutu Revolution ended Tutsi hegemony.⁵⁸ This revolution warrants some elaboration, as it set the stage for all developments – including those surrounding land relations – in Rwanda in the post-colonial period. In broad terms the revolt was waged as a response to ostensible Tutsi privilege and Hutu hardship, but more concretely the basis for the revolution was a push for majority voting under Belgian rule, the result of which would naturally benefit the Hutu-heavy population. Indeed, the Tutsi-headed political landscape in Rwanda prior to the revolution meant that some eighty per cent of the population faced political exclusion and few if any opportunities to participate in governance.⁵⁹ The idea of revolution thus naturally held appeal for Rwanda's majority ethnic group. But it also appealed to the Europeans present in Rwanda – especially the white Catholic clergy – who played a large part in assisting (some would say 'engineering') the revolution.⁶⁰ While the reasons revolution garnered European support were plentiful, a particularly strong motivator was dissatisfaction with the prevailing system of land relations in the colony. In essence a

⁵⁶ Afrika Instituut Leiden, *Land Tenure Symposium Amsterdam 1950: Tropical Africa – Netherlands East Indies before the Second World War* (Leiden: Universitaire Pers Leiden, 1951), p. 2.

⁵⁷ Jean-Pierre Chrétien, *The Great Lakes of Africa: Two Thousand Years of History*, trans. Scott Straus, (New York: Zone Books, 2003), pp. 281-6.

⁵⁸ *Ibid.*, pp. 300-6.

⁵⁹ René Lemarchand, 'Exclusion, Marginalization and Political Mobilization: The Road to Hell in the Great Lakes', Occasional Paper for the Centre of African Studies, University of Copenhagen (Copenhagen, 2000), p. 3.

⁶⁰ Prunier, *Rwanda Crisis*, pp. 41-3.

relic of pre-colonial social and class relations, and perhaps too reminiscent of the then long-discarded feudal systems of Europe, *uburetwa* had begun to be seen as economically inefficient by the Europeans present in Rwanda.⁶¹ A cash economy had been developing in the colony from the late-colonial period, largely a result of the Belgians' desire to profit from their colonial possessions during the Second World War. *Uburetwa* seemed to the Europeans to preclude the optimal functioning of this cash economy, a goal that would be better achieved by social structures that favoured the majority Hutu agriculturalists. In short, the Hutu Revolution was championed by both Hutu and Belgian alike.

In the period of violence following the revolution (typically perioditised in the literature from the official overthrow in 1959 to colonial withdrawal in 1962), the Tutsi faced pogroms, exile, and were for the most part successfully defended against when those in exile attempted to return. For their part, the Tutsi that remained in Rwanda were subsequently shut out of the political and economic processes of the country, the Belgian colonial government supporting the emergence of Hutu dominance. With the earlier years of colonialism in Ruanda-Urundi as a vantage point, this was a *revirement de situation* to say the least. Apropos land relations, the final land law of the colonial era was passed, deep in the throes of revolution, in 1960: it formally ended the quasi-feudal system of land tenure that the Tutsis had dominated, and with the exception of the few parcels held under private tenure, rendered all land in the area property of the state.⁶² Though formally belonging to the state, most land was still technically governed under the aegis of customary tenure. The key difference was that now Hutu elites, rather than Tutsis, held control of land, and no patron-client system arose to replace the disposed *uburetwa*. Also of note was that any inhabitant wishing to transfer their customary holdings required state approval.

Independence came to Rwanda in 1962.⁶³ A Hutu government headed the independent republic, a legacy of the late-colonial revolution. In regards to land

⁶¹ Ibid.

⁶² Décret du 11 juillet 1960, 'Régime foncier', *Bulletin Officiel de Ruanda-Urundi* (1960), p. 1136; Catherine André, 'Évolution des droits fonciers au Rwanda: une main invisible?', in *Croissance, Répartition, Environnement: Quelles Regulations Pour Un Développement Durable?*, Onzième Congrès des Économistes Belges de Langue Française (Louvain-la-Neuve, 1994), pp. 6-7.

⁶³ Chrétien, *Great Lakes of Africa*, p. 304.

tenure systems, the transition to independence represented no watershed, as the post-colonial government accepted the land laws it had inherited. This was to be expected, as the major changes to land relations that a Hutu government may have sought – namely the removal of *uburetwa* and the successful jockeying for Hutu land privileges – had already been delivered with the revolution.

Moving forward, land as a legal entity in Rwanda was not dynamic. The issue of land rarely came up as a legal issue in the first decades of independent Rwanda, and when it did, ‘reform’ was not on the agenda. The only post-colonial legislation concerning land tenure in Rwanda was passed in 1976.⁶⁴ This law reaffirmed and intensified restrictions placed on the operation of land markets. Conditions on sales and purchases became fixed: one could only sell one’s land rights if, after the transaction, the seller would retain a minimum of two hectares of land; conversely, one could only buy land rights if, after the transaction, the buyer would not come to possess more than two hectares. In land-scarce Rwanda, a place noted for its high density in the early years of European presence, these minimum-possession conditions were decidedly anti-land-market, and very few landholders fulfilled them.⁶⁵ Indeed, in 1984, the countrywide average size of a landholding was only 1.2 hectares.⁶⁶ The story of scarcity was even more extreme in certain areas: half a decade later, in a study of one of Rwanda’s *mille collines*, it was found that the average size of a landholding was less than half of a hectare.⁶⁷

Even with a legal framework designed to restrict them, land markets developed at a quick pace in the post-colonial period. Research based on 1988 farm surveys revealed that land purchases were increasing over time, and that customary land tenure systems had largely evolved toward individualisation.⁶⁸ Despite a lack

⁶⁴ Décret-loi numéro 09/76 du 4 mars 1976, ‘Achat et vente de droits coutumiers sur les terres ou de droits d’occupation du sol’, *Journal Officiel* (1976), p. 198; Stephen Leisz, ‘Rwanda country profile’, in John W. Bruce (ed.), *Country Profiles of Land Tenure: Africa, 1996* (Madison: University of Wisconsin, 1998), p. 182.

⁶⁵ André, ‘Droits fonciers’; André and Platteau, ‘Land relations’.

⁶⁶ World Bank, *Sub-Saharan Africa – From Crisis to Sustained Growth* (Washington, DC: World Bank, 1989).

⁶⁷ André and Platteau, ‘Land relations’, pp. 19-20.

⁶⁸ It was found in 1988 that land acquired in the previous decade was almost nine times as likely (20.4 per cent) to have been purchased than land owned for over 25 years (2.4 per cent). See Benoît Blarel, ‘Tenure security and agricultural production under land scarcity: the case of Rwanda’, in John W. Bruce and Shem E. Migot-Adholla (eds.), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), pp. 71-95.

of land registration and the severe restrictions on land sales, over sixty per cent of the farmers surveyed felt fully entitled to land rights, including the right to sell their holdings.⁶⁹ The land laws could indeed be extremely ineffectual: every sale of land observed in one case study was illegal according to the criteria of the 1976 legislation.⁷⁰

The land tenure situation in post-colonial Rwanda grew out of the outcomes of the late-colonial Hutu Revolution. The quasi-feudal *uburetwa* system was removed, but nearly all land was made the legal property of the state. The post-colonial situation trended toward greater control over land, as land markets became ever more legally restricted in the 1970s. This did not, however, stop informal land rights from becoming privatised and saleable, nor did it stop an informal land market from sprouting. As with Central Province in Kenya, a chasm existed between Rwanda's *de jure* and *de facto* tenure systems.

⁶⁹ Ibid.

⁷⁰ André and Platteau, 'Land relations', pp. 19-20.

PART TWO: ANALYSIS

CHAPTER THREE: THE SUBSTANTIVIST OBJECTION

It was announced in the introduction that the paradox noticed in land markets in Central Province and Rwanda would be analysed using concepts from the new institutional economics. While it is hoped that the discussion demonstrates how fruitful the new institutionalism can be when it comes to understanding land matters, a task of the first order is to justify the approach.

While this paper is unable to follow every issue that its subjects present,⁷¹ some of these announce themselves strongly enough to warrant comment. Land markets did not develop strongly in Central Province, and seemingly at a cost to economic efficiency – at least according to the architects of Kenyan land reform. If landholders were not acting as efficiently as possible, even with a legal framework designed to facilitate such efficiency, then temptations might predictably arise to bat that ball of thread so familiar in African economic history: economic anthropology's substantivism versus formalism debate. Within this debate lies a potential objection to using the new institutional economics to organise the analysis.

Formalism vs. Substantivism

It is uncontroversial that, much to the chagrin of some economists, the arena in which economic behaviour unfurls is not a vacuum, but rather, an unremittingly cultural context – a plenum of culture. At least that much is fact. But from this fact, a key question of economic history generally emerges: does culture affect economic behaviour? The negative answer – 'No, culture does not affect economic behaviour' – tends to posit the universality of economically rational behaviour. As the perspective goes, actors in the economic sphere may indeed make different decisions based on their circumstances and cultural environments, but at base all actors are rational and so, *ceteris paribus*, they should make the same decisions.

⁷¹ For instance, the idea that rational-choice political economic approaches to history should be reserved for analyses of the locales from which they spawned. Some suggest that NIE is too inherently Eurocentric a theory for the study of African, and indeed any non-Western, economic histories. See Gareth Austin, 'Reciprocal comparison and African history: tackling conceptual Eurocentrism in the study of Africa's economic past', *African Studies Review* 50:3 (2007), pp. 3-5; more generally see Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000). For want of space, this paper cannot address these criticisms.

At the other end of the spectrum, the affirmative answer – ‘Yes, culture affects economic behaviour’ – posits the *historicity* (rather than universality) of economically rational behaviour. Though a tendency to behave according to economic rationality may be observable in some capitalist societies, such a tendency is far from the ‘default setting’, according to this perspective. In the pre-capitalist societies of pre-colonial Africa (and, extending this further, any society in which economically rational behaviour is not blatantly on display), economic behaviour is heavily ‘embedded’ in culture. That is, culture’s influence on economic behaviour is inestimably large.

These rival perspectives both achieved a great level of sophistication in the African economic historiographical tradition.⁷² The economically rational/market-based perspective has come to be known as the *formalist* perspective. In global economic history, this perspective can at the very least be traced as far back to Adam Smith, who noted the human tendency to ‘truck and barter’.⁷³ If Smith were correct, people would have reason to at least use economic rationality as a starting point for observations of behaviours across time and space. Market-focused economic historiography of Africa began in the 1950s with K. O. Dike’s doctoral thesis on the political economy of pre- and early-colonial Nigeria.⁷⁴ This work might aptly be described as the genesis of the rational-choice tradition as applied to sub-Saharan Africa.

The other pole has acquired the name of the *substantivist* perspective, and it has been most thoroughly developed in the African context by Karl Polanyi, George Dalton, and Paul Bohannon. Substantivists argued that economically rational behaviour, though observable in certain societies, is specific to capitalist societies – therefore expounding economic rationality’s *historicity*, and arguing against its universality. This does not mean that substantivists denied the existence of market

⁷² It is worth noting that, rival though they were, they were both borne of the era of African decolonisation (that is, during the 1950s and 1960s). For historians of Africa, especially pro-nationalist ones, this was a time during which showing that ‘Africa had a history’ ranked high on the research agenda. Proponents of both perspectives attempted to illuminate Africa’s longer-term history, though in radically different ways.

⁷³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, in R. H. Campbell, A. S. Skinner, W.B. Todd (eds.), (Oxford: Clarendon Press, 1976 [originally published 1776]).

⁷⁴ K. O. Dike, *Trade and Politics in the Niger Delta, 1830-1885* (Oxford: Clarendon Press, 1966).

places in pre-capitalist societies;⁷⁵ rather, they suggested that markets were merely peripheral to economic life.

This poses a potential large objection to this paper's approach to the Kenya/Rwanda land-market paradox. The new institutional economics being an outgrowth of neoclassical economics, it accepts economic rationality and utility maximisation among its foundations. However, if the substantivist perspective is correct and more useful in terms of explaining land-market behaviour in Central Province, then the basis of this paper's analysis is potentially flawed. As such, the 'substantivist objection' is one to which a response is absolutely required. Before moving to address the land-market behaviour noticed in twentieth-century Central Province in particular, let us begin by examining the record of the substantivist school in sub-Saharan Africa's economic history in general.

Formalism vs Substantivism: Pre-Colonial Africa

Karl Polanyi and Paul Bohannon and George Dalton are responsible for the key works of the substantivist school,⁷⁶ and much of their work has included examinations of African societies. Polanyi examined prices in Dahomey (the territory of which approximated that of modern Bénin) and concluded that, despite its ports that teemed with commerce and trade, Dahomey could not appropriately be described as a market economy: prices were fixed by the rulers; they were not set by the forces of supply and demand.⁷⁷ Such a price-setting system is antithetical to the economic rationality of a market economy.

Bohannon and Dalton, for their part, observed a number of 'special-purpose' currencies in Africa and subsequently conceptualised pre-colonial African societies as segmented into limited "spheres of exchange".⁷⁸ For them, a 'general purpose' currency is the hallmark of a market economy, for it serves to facilitate exchange of different commodities and even different factors. If the only currencies of sub-

⁷⁵ To be sure, such an assertion would have severely discredited their position.

⁷⁶ Indeed, Polanyi could be considered the godfather of substantivism, with one of his works the foundational text: Karl Polanyi, *The Great Transformation: the Political and Economic Origins of Our Times* (Boston: Beacon Press, 1944).

⁷⁷ Karl Polanyi and Abraham Rotstein, *Dahomey and the Slave Trade: An Analysis of an Archaic Economy* (Seattle: University of Washington Press, 1966).

⁷⁸ Paul Bohannon and George Dalton, *Markets in Africa* (Evanston: Northwestern University Press, 1962).

Saharan Africa were 'special-purpose' (i.e. could only be used in the acquisition of a single type of good or a very limited range of goods), then this, as with Polanyi's observation of price setting, would not be indicative of a market economy.

These positions regarding the behaviour of price behaviour and currencies in Africa did not sit well with those of the formalist school. But among the merits of these propositions were that they were in principal testable and, therefore, falsifiable. Those wishing to test the substantivist proposition of unwavering prices needed only to ask 'Were nominal prices in pre-colonial Africa indeed stable?' If empirical evidence indicated they were not, then Polanyi's argument that prices were fixed either by command or custom is falsified. Similarly, regarding currencies, a formalist could ask whether the commodity currencies of Africa (e.g. cowries and gold dust) were used as facilitators of exchange as in a market economy, or if they were truly confined to limited spheres of exchange, as in the substantivist view.

Typically succeeding their substantivist antagonists by years if not decades, formalists in the African economic history tradition often had the advantage of greater empirical evidence from which to draw. And so, on the strength of more robust data, they: overturned Polanyi's description of price-setting in Dahomey, finding instead that nominal prices fluctuated in accordance with supply and demand;⁷⁹ discovered that most West African currencies alleged to be 'special-purpose' were in fact 'general-purpose';⁸⁰ and, perhaps most notably, even uncovered linguistic evidence to prove that pre-colonial African societies had vocabularies necessary for the conceptual categories to think in economically rational ways.⁸¹

The explanatory power of the substantivist approach to African economic history was eroded by successive formalist publications. When Anthony G. Hopkins put together his comprehensive formalist account of West African history and pre-

⁷⁹ Robin Law, 'Posthumous questions for Karl Polanyi: price inflation in pre-colonial Dahomey', *Journal of African History* 33:3 (1992), pp. 387-420.

⁸⁰ A. J. H. Latham, 'Currency, credit and capitalism on the Cross River in the pre-colonial era', *Journal of African History* 12:4 (1971), pp. 599-605.

⁸¹ Michele D. Wagner, 'Trade and Commercial Attitudes in Burundi before the Nineteenth Century', *International Journal of African Historical Studies* 26:1 (1993), pp. 149-66. Formalists also dug up intriguing primary sources to support this claim. A most notable one was an Asante-language dictionary compiled by a Swiss missionary: it even included an entry for 'capital'. See Austin, *Labour, Land, and Capital*, p. 135.

history in the 1970s,⁸² it sounded the knell for substantivist primacy in economic anthropology. Substantivism, despite its great contributions to advancing the debate, had its place rather conclusively and irreversibly usurped; it was no longer tenable as a mainstream opinion, because while it boasted impressive conceptual backing, it did not have the empirical robustness to match.

Formalism vs. Substantivism: Land in Twentieth-Century Central Province?

The preceding reply to the substantivist objection might strike the reader as superfluous in the context of this paper: if the substantivist position primarily informed the debate on pre-colonial (and pre-capitalist!) African economic history, and even then was ultimately discarded in favour for the formalist position, how could the substantivist position possibly pose a real objection to using a market-economy approach to late- and post-colonial central Kenya? Whether or not imperialism had been the destroyer of pre-capitalist modes of production and ways of life, capitalism had clearly arrived, and agriculturalists very often produced for the market.

It cannot be denied that Central Province had met market forces by the late-colonial and post-independence periods that are the subject of this paper. The market mechanism was certainly alive and well. However, the substantivists had not not been put to bed just yet: there could still be important qualifications to be made, and land figured among them. George Dalton, an aforementioned member of the substantivist school, observed in the 1950s and 1960s that in “tribal Africa, products [were] frequently marketed, but factors almost never”.⁸³ This is to say, the fruits of one’s labour, land, or capital may certainly enter the market and be exchanged according to the laws of supply and demand and scarcity, but one’s labour, land, or capital *themselves* tended to enjoy a certain isolation from these forces.

A foundational description of land relations in 1930s sub-Saharan Africa, deemed representative of Kikuyu society in Kenya even in the 1960s and beyond, reveals this isolation:

⁸² Hopkins, *West Africa*.

⁸³ He also quite poignantly states that “Indigenous market exchange in Africa might better be called market-place exchange to point up the absence of labor and land markets”. George Dalton, ‘Traditional production in primitive African economies’, *Quarterly Journal of Economics* 76:3 (1962), pp. 365, 373.

Every household-head has an exclusive right to land for building his home and for cultivation. Generally he can take up such land for himself within the area controlled by his sub-chief or headman, provided that he does not encroach upon land already occupied or cultivated by others. Failing this, it is the duty of his headman to provide him gratuitously with as much land as he needs... He also has the right, subject to the approval of his headman, to give away part of it to a relative or friend, or to lend it to someone else. But he can never sell it or dispose of it in any other way in return for material considerations. Should he finally abandon the spot, his land reverts to the tribe as a whole and can subsequently be assigned to someone else. The only other way in which he can lose his right to land is by confiscation, if he is found guilty of some serious crime.⁸⁴

Land seldom changed hands, and when it did it was not through the market mechanism. Now, this on its own does not complicate the formalist position. For pre-colonial Africa, Hopkins had very satisfactorily reconciled the non-existence of markets in particular commodities and factors with economic rationality through a marginalist logic of relative scarcity: there would be no impetus for a market in land to emerge if land were abundant. But this same logic runs short of explanatory power in twentieth-century Central Province: by the time of the Mau Mau Rebellion, land was anything *but* abundant, so a lack of land-market activity there could not possibly be chalked up to relative scarcity.

The Substantivist Objection, the Institutional Response

The substantivist objection is duly noted: it seems counterintuitive to identify outwardly non-market behaviour (in this case, a weak land market despite land scarcity) and then to propose that an approach from market economics is best suited to deal with it. How, then, to reconcile the economic contradiction *and* justify the approach suggested here?

The brief review of the formalist/substantivist debate in the pre-colonial African context showed that the assumption of economic rationality has tended to provide a better starting point for inquiry than the alternative. But even if Hopkins and his fellow formalists were convincing in their dismissal of substantivism, they

⁸⁴ I. Schapera and A. J. H. Goodwin, 'Work and Wealth', in I. Schapera (ed.), *The Bantu-Speaking Tribes of South Africa* (London: Routledge, 1937), p. 157. This was an account of the Bantu of South Africa, but such a description of land relations was held to be equally apropos for the Kikuyu of Kenya. See Paul Bohannan, 'Africa's Land', *The Centennial Review* IV (1960); Jomo Kenyatta, *Facing Mount Kenya* (London: Secker and Warburg, 1938).

had merely changed the direction of scholarship in African economic history – they did not conclusively settle it. Indeed, for a time even the formalist position fell largely out of favour as a theoretical influence in African economics and economic historiography. Approaches from market economics faded in prominence during the 1970s and 1980s, when radical pessimism enveloped African historians (and observers of Africa more generally): independence had rarely generated the economic fruits that had been hoped of it, and indeed in many countries real growth tragedies could be identified. Reacting to these disappointments, historians and economists turned away from traditional market economics and toward approaches thought best able to explain the depressing record: dependency theory; modes of production theory; and Marxist theories more generally. It looked as though formalism received from the pessimists the same rejection it had previously delivered to substantivism.

The apparent rejection of formalism, however, was neither to be full nor long-lived. This was because, at least as potential foundations for economic policy, radically pessimistic approaches to African economics did not have a long shelf life. Even if they were correct,⁸⁵ upturning international relations and reorganising the economic world order – actions that a full acceptance of some of the pessimistic theories would seem to demand – were not practical approaches to policy formulation. And so, after a number of years spent out of fashion, market economics once again became the dominant policy influence in the 1980s through the 2000s, though not as a straight rebirth of the old market approach (which, of course, had done little to help avert Africa's growth tragedy, and still was unable to account for observed economic inconsistencies – i.e. apparently economically irrational behaviour). In its stead, a market approach that included a more explicit political economy element emerged and, year by year, swelled with publications. This was where the new institutional economics came in.

The project of new institutional economics, in essence, is to update the formalist position by not completely ignoring behaviour and observations that might be inconvenient to the formalist argument. In this way it has been described by some as a sort of middle ground between the formalist and substantivist schools,

⁸⁵ A debate if ever there were one!

though definitely closer in kin to the former.⁸⁶ It starts with the assumptions of economic rationality and utility maximisation, and then seeks to explain deviations from these assumptions. Its general usefulness as an economic perspective receives testament from its mountainous and expanding literature. But its applicability in this paper's specific case is also pronounced. As will be described below, the new institutional economics explicitly acknowledges the role *constraints* play in shaping economic behaviour. With land activity indeed constrained in Central Province, a new institutionalist approach appears especially apt.

⁸⁶ Mark Granovetter, 'Economic action and social structure: the problem of embeddedness', *American Journal of Sociology* 91:3 (1985), pp. 481-510.

CHAPTER FOUR: THEORETICAL FRAMEWORK

New Institutional Economics, the Theory of Induced Institutional Innovation, and the Evolutionary Theory of Land Rights

With the substantivist objection responded to, and new institutional economics appropriately characterised as a market-economy approach to historical problems that revises (while never rejecting) formalism, the paper can move to elaborating upon the theoretical framework it will use to analyse the paradox noticed in eastern African land markets. It begins by introducing the new institutional economics and associated theories of institutional change.

Neoclassical economic theory – fundamentally and significantly – assumes scarcity and thus competition for factors. As such, it has important things to contribute to the understanding of land economics. But it also assumes complete information and efficient factor markets, neither of which exist in reality. Indeed, informational asymmetries and transaction costs abound in the historical record.⁸⁷ The new institutional economics (NIE) is an attempt to modify neoclassical economics into a theory that includes incomplete information and transaction costs, and thus into a theory that recognises the human imposition of constraints that structure exchange.⁸⁸ These constraints are institutions, defined as the rules through which economic activity is organised. Institutions can be formal rules (as in laws and regulations) or informal constraints (as in customs and norms).⁸⁹ It is clear then that land tenure systems are institutions: they provide the rules through which land can be held, used, transferred, acquired, shared, etc. Therefore, NIE can help one understand changes in formal and informal land tenure systems, and so provides a theoretical framework with which to tackle this paper's questions.

Institutions change over time, and North and Thomas are concerned with the causes of these changes.⁹⁰ Innovators adapt or replace existing institutions when the

⁸⁷ Ronald H. Coase, 'The nature of the firm', *Economica* 4:16 (1937), pp. 386-405.

⁸⁸ Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); idem, 'The new institutional economics and third world development', in John Harriss, Janet Hunter, and Colin M. Lewis (eds.), *The New Institutional Economics and Third World Development* (London and New York: Routledge, 1995), pp. 17-26.

⁸⁹ North, *Institutions*, chaps. 5-6; idem, 'Third world development', p. 23.

⁹⁰ Douglass C. North and Robert Paul Thomas, 'An economic theory of the growth of the western world', *The Economic History Review* 23:1 (1970), pp. 1-17; idem, *The Rise of the Western World* (Cambridge: Cambridge University Press, 1973).

benefits of innovation exceed their costs. In a state of equilibrium, costs exceed benefits and so accordingly there is no demand for innovation. *Disequilibria*, such as changing factor prices, create demand. So, North establishes a theory of institutional innovation wherein he suggests that demand for change comes about as a result of fundamental shifts in relative factor prices.⁹¹ Population growth is the primary cause of altered factor-price relations.⁹²

Following the leadership of North, and North and Thomas, development economists Ruttan and Hayami seek to understand how institutional innovations come about in rural areas of developing economies in their construction of “a theory of induced institutional innovation [III]”.⁹³ As do their predecessors, they see institutional change as largely (though not exclusively) endogenous. Changes in relative factor endowments and prices, as well as technical change, induce demands for institutional innovation. When economic actors anticipate that adapting or creating institutions to deal with changed factor endowments, factor prices, and technical change will result in gains, institutional innovations are demanded.⁹⁴

Innovations must also be supplied. Some new institutionalists acknowledge that comprehending the supply of innovations is more challenging.⁹⁵ A reason it is more challenging is that NIE often overlooks the most important aspect of the supply side: the political arena in which institutions operate and are selected. One of the weightiest critiques against the new institutionalism is that it is markedly apolitical, that it is based upon the choices of economic actors, and not upon the constraints they face.⁹⁶ This assumption ignores the role of the state as supplier (and, indeed, often *imposer*) of institutions. In turn, this analytical omission makes it difficult to understand why some socially inefficient institutions are chosen. As the political scientist Robert Bates repeatedly points out, the explanation of many

⁹¹ North, *Institutions*; idem, *Structure and Change in Economic History* (New York: W. W. Norton, 1981).

⁹² Idem, *Institutions*, p. 84.

⁹³ Ruttan and Hayami, ‘Induced institutional innovation’.

⁹⁴ Ibid., p. 204.

⁹⁵ Ibid., pp. 205, 213.

⁹⁶ Robert H. Bates, ‘Social dilemmas and rational individuals: an assessment of the new institutionalism’, in John Harriss, Janet Hunter, and Colin M. Lewis (eds.), *The New Institutional Economics and Third World Development* (London and New York: Routledge, 1995), pp. 45-7.

institutional outcomes “requires political, not economic, analysis”.⁹⁷ The demand for institutional change may come from changing factor-price relations and technical change, but the supply of it often cannot help but come from the polity.

Fortunately, new institutionalists who deal explicitly with institutional change accept this. Ruttan and Hayami suggest that in a given society, the cost of reaching social agreements has a great bearing on the supply of innovations.⁹⁸ The power structure of society is a primary determinant of this cost. In order to supply major institutional changes, innovators must mobilise considerable political resources. They hypothesise that institutional innovations will be supplied when the expected gains to be enjoyed by the political entrepreneurs exceed the costs of mobilising the necessary resources. North agrees that those with the greatest bargaining power are the ones who modify and create institutions, and, naturally, the modifications and creations serve this group’s interests.⁹⁹ Seldom are institutions socially and economically efficient, because the political arena rarely approximates the prerequisites for efficiency.¹⁰⁰

Briefly, then, changing factor-price relations are the primary inducers of the demand for institutional innovations. If appropriate institutional innovations were supplied in concert with the demand for them, efficient institutional arrangements would result. However, given the political nature of the supply of innovations, institutional arrangements are less likely to be economically efficient, and more likely to benefit the holders of political power.

One can thus understand why economically inefficient institutions are supplied. However, some institutions are quite simply inefficient *altogether* – that is, they do not succeed in structuring or constraining exchanges because economic actors ignore them. This is a point deserving particular pause in the context of this paper’s motivating paradox. The most striking feature about the land tenure systems of both Central Province and of Rwanda is that the formal institutions (the legislated rules) and the informal institutions (the customs to which inhabitants adhered) did not cohere: someone who read the relevant laws would not have an accurate picture

⁹⁷ Ibid, p. 46; see also Bates, *Beyond the Miracle*, p. 11.

⁹⁸ Ruttan and Hayami, ‘Induced institutional innovation’, p. 213.

⁹⁹ North, ‘Third world development’, p. 20.

¹⁰⁰ Ibid.; idem, ‘A transaction costs theory of politics’, *Journal of Theoretical Politics* 2:4 (1990), pp. 355-67.

of inhabitants' actual behaviour pertaining to landholding; conversely, someone who observed land markets in action "on the ground" would have little inkling into how land relations might look "on the books". Indeed, the rules had an almost ethereal sense to them, floating in the legislation, "suspended in mid-air",¹⁰¹ lightly scratching the ground if they touched it at all.

North explains that occasionally formal rules change (e.g. new laws are introduced) but informal rules remain the same, effectively muting the attempted change.¹⁰² The suppliers of institutional innovations can introduce formal rules designed to supersede existing informal constraints. Occasionally this works, especially if the new rules respond to gradual shifts in the informal rules, but such a course of action is unlikely to produce its intended effects if the new rules represent a drastic, unsolicited alteration to the old. Radical impositions of new formal rules often go ignored by economic actors: "many informal constraints [...] have great survival tenacity because they still resolve basic exchange problems among the participants, be they social, political, or economic".¹⁰³ Following up on North's work on informal and formal institutions, Claudia Williamson empirically investigates (through a process of 'mapping') the relationship between the two.¹⁰⁴ Vindicating North, she concludes that formal institutions are more prone to function (i.e. they succeed in their goal of constraining behaviour) if they map onto previously existing informal rules, less prone where they do not.

There can thus be a situation in which a dual set of institutions exists – one formal, one informal, with only the latter holding sway. In such a scenario, the *de jure* institution is a product of the supply side, the *de facto* more likely a product of demand. As regards land, this provides insight into how formal and informal tenure systems need not necessarily cohere.

¹⁰¹ This imagery is borrowed from Goran Hyden, who originally used it to evoke the superficiality of African states/state structures left in the wake of colonial retreat. Goran Hyden, *No Shortcuts to Progress: African Development Management in Perspective* (London: Heinemann, 1983), p. 7.

¹⁰² North, *Institutions*, p. 91.

¹⁰³ Ibid.

¹⁰⁴ Claudia Williamson, 'Informal institutions rule: institutional arrangements and economic performance', *Public Choice* 139 (2009), pp. 371-87; for another update (and reaffirmation) of North's ideas on formal and informal institutions, see Boettke, Coyne, and Leeson, 'Institutional stickiness'.

It is worth noting that III has been explicitly applied to land-rights institutions. The evolutionary theory of land rights (ELTR) is an outgrowth of III.¹⁰⁵ Unlike its more general parent theory, it concerns itself uniquely with how *land-rights* institutions change over time. As with its parent theory, ELTR contends that population growth and the increasing commercialisation of agriculture play critical roles in directing institutional change: both contribute to the demand for the greater individualisation of land rights.¹⁰⁶ Demand alone, however, is not enough to ensure that the process advances successfully. For its part, the state must supply the necessary institutional innovations, namely systems of land registration and titling. The state has an incentive to supply these because as the demand for land-rights individualisation grows, the state is faced with an increasing number of costly tasks (e.g. the settlement of land disputes). While initially land registration itself is too expensive to warrant the institutional change, the benefits of change begin to outweigh the costs and demand increases. ETLR is thus the application of III to land rights. However, given the aforementioned critiques of the new institutionalism, it is clear that ELTR oversimplifies the conditions surrounding the supply of land-rights innovations.

To understand the evolution of both *de facto* and *de jure* land tenure systems in Central Province and Rwanda, the theories described above can be useful. The goal here is not to validate or even necessarily to test either theory, but to use them as heuristic devices, as inspiration for questions that will draw out the compelling stories of land tenure in the two cases. In the late-colonial and post-colonial periods of both countries, the two states, as suppliers of institutional innovations, followed divergent paths. At the same time, the landholders of Central Province and Rwanda behaved in ways contrary to those that their respective statutory institutions would have dictated. The supply of institutional innovations did not respond to the demand for them – the new formal rules represented too much of a break from the informal rules already in place. For the purposes of economic efficiency, there was not enough land-market activity to warrant the comprehensive, obligatory land-registration programme in Central Province; conversely, there was too much activity

¹⁰⁵ This is the theory supported by the World Bank; see World Bank, *Sub-Saharan Africa*. For both a summary and critique of ELTR, see Platteau, 'Evolutionary theory of land rights'.

¹⁰⁶ Feder and Noronha, 'Land rights systems', p. 143.

to justify its restriction in Rwanda. Accordingly, gaps emerged between the laws on the books and the 'laws' on the ground. When this point was reached, the demand side continued to shape the *de facto* institutions while the supply side shaped only the *de jure* ones.

From this insight, this paper's issue splinters into two distinct problems: it calls for an understanding of the two areas' informal, *de facto* land tenure institutions, as well as an understanding of the formal, *de jure* institutions. III and ELTR can offer further perspective by exploring, respectively, the demand and supply sides of the land-rights innovations observed.

CHAPTER FIVE: THE DEMAND FOR INSTITUTIONAL INNOVATIONS

III and ELTR both suggest that changing factor-price relations are key causes of the inducement of the demand for institutional innovation. As land grows scarcer and more valuable, landholders demand less ambiguous private property rights in land. Though the demand side may not explain the evolution of formal, *de jure* institutions (because of the inherently political arena in which they are supplied), an understanding of the demand side should help in understanding the informal, *de facto* institutions that exist.

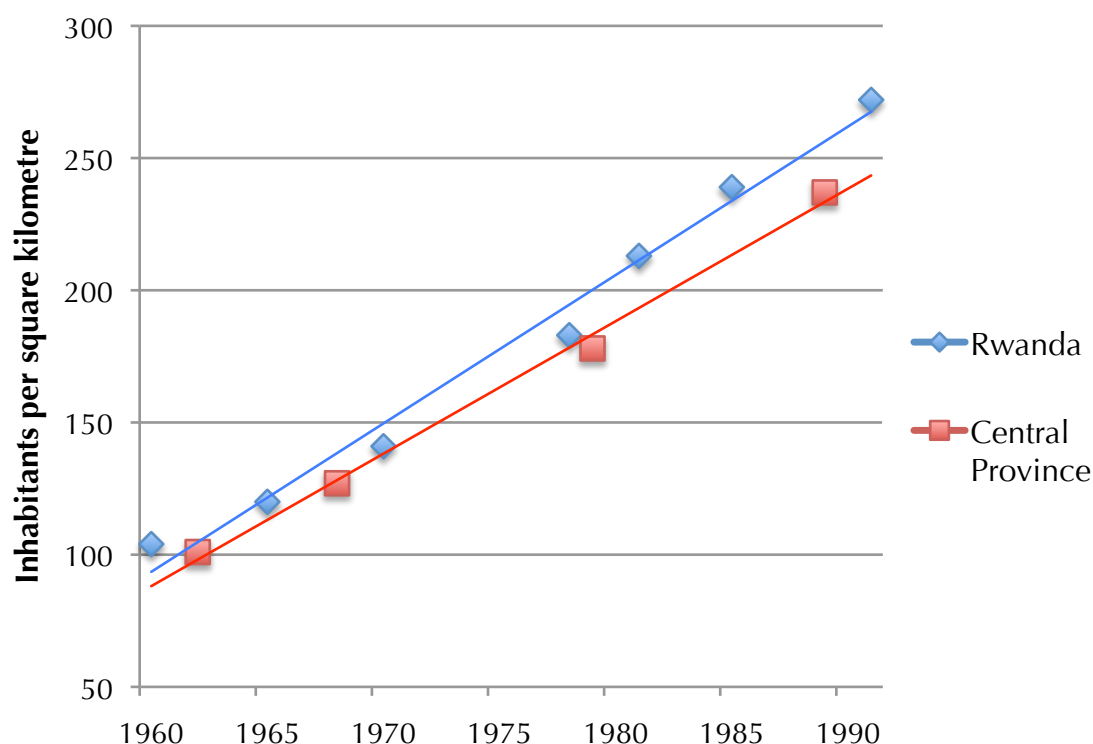
Land markets grew more active than predicted in post-colonial Rwanda, but remained more constrained than predicted in Central Province, Kenya. That said, data from the 1980s show that land-market activity in the two areas was broadly – if unexpectedly – similar.¹⁰⁷ Land is more fully saleable when rights to it are more individualised. III and ELTR would suggest that given similar levels of market activity, the combinations of land scarcity and land values in each area must have led to comparable degrees of demand for individualised land rights. This hypothesis can be explored through a time-series comparison of the two areas' populations as well as the respective degrees to which agricultural was commercialised. Population growth increases land scarcity,¹⁰⁸ and agricultural commercialisation leads to the growing value of land.

Population density

With comparable levels of land-market activity in Rwanda and Central Province, one might hypothesise that the areas' population densities (and thus degrees of pressure on land) were similar in the decades following independence. It is, of course, necessary to use population density (rather than total population) as a measure because Rwanda and Central Province differ in total area, the former being about double the size of the latter.

¹⁰⁷ Migot-Adholla et al., 'Indigenous land rights', p. 162.

¹⁰⁸ Unless the pressures are so extreme as to lead to a Geertzian agricultural involution. See Clifford Geertz, *Agricultural Involution: The Processes of Ecological Change in Indonesia* (Berkeley, Los Angeles, and London: University of California Press, 1963).

Figure 1: Population Density, 1960-1990¹⁰⁹**Table 3: Population Density, 1960-1990**

	Central Province	Rwanda
1960	101 ^a	104
1970	127 ^b	141
1980	178 ^c	213 ^d
1990	237 ^e	272 ^f

Notes:

a: 1962; b: 1969; c: 1979; d: 1981; e: 1989; f: 1991

It should be noted at this point that a more satisfactory analysis of population density would take into account the *quality* of land on which inhabitants lived. As a simple illustration of why this makes a difference, consider the comparability between 100 inhabitants living on a single square kilometre plot of a fertile highland and 100 inhabitants living on a single square kilometre plot in a desert. Clearly, *actual* population density and *practical* population density are two quite different measures.

¹⁰⁹ Constructed from: Republic of Kenya, *Kenya Population Census, 1962* (Nairobi: Ministry of Economic Planning and Development, 1966); idem, *Kenya Population Census, 1969* (Nairobi: Ministry of Finance and Economic Planning, 1970); idem, *Kenya Population Census, 1979* (Nairobi: Central

Regrettably, though there exists a thorough breakdown of land area by productive potential in Central Province,¹¹⁰ no such equivalent for Rwanda has been compiled as of yet. Even if one had been, the dynamic nature of land's productive potential would limit the usefulness of such a resource in an examination of practical population density over decades (though, to be sure, it would still be very welcome). Thankfully, any differences in actual and practical population density in the two cases will not be as extreme as those in the highland/desert example above. As Central Province and Rwanda are both largely made up of fertile forested highlands, using actual population density as a direct (though imperfect) proxy for practical population density is acceptable until the research gap is filled.

Though the Kenyan government published national population estimates annually, disaggregated figures for Central Province only exist for years during which censuses were conducted: 1962, 1969, 1979, and 1989. These reveal a population density climbing from 101 inhabitants per square kilometre in 1962 to 237 inhabitants per square kilometre in 1989.

Figures for the Rwandan population are more readily available. These include the results of two censuses (1978, 1991), a post-census inquiry (1981), and estimates made every five years by the country's *Office National de la Population*. These show a population density climbing from 104 inhabitants per square kilometre in 1960 to 272 inhabitants per square kilometre in 1991.

Population densities in Rwanda and in Central Province grew at similar rates from 1960 to 1991 (see Figure 1 and Table 3 on the previous page). If all available data points are included in the analysis,¹¹¹ the trend line for Rwanda's population indicates an average annual growth rate of 3.43 per cent over the period. For Kenya, the trend line denotes only slightly slower growth at 3.26 per cent per annum.

Bureau of Statistics, 1981); idem, *Kenya Population Census, 1989: Volume I* (Nairobi: Central Bureau of Statistics, 1994); Office National de la Population, *Le Problème Démographique au Rwanda et le Cadre de sa Solution* (Kigali: Office National de la Population, 1990), p. 10; République Rwandaise, *Recensement général de la population et de l'habitat, 1978: résultats définitifs* (Kigali: Bureau National de Recensement, 1978); idem, *Enquête démographique post-censitaire: Août 1981* (Kigali: Ministère du Plan, 1987); idem, *Recensement général de la population et de l'habitat au 15 août 1991: résultats provisoires* (Kigali: Service National de Recensement, 1991); idem, *Recensement général de la population et de l'habitat au 15 août 1991: résultats préliminaires* (Kigali: Service National de Recensement, 1992).

¹¹⁰ Food and Agriculture Organization, *Agro-Ecological Land Resources Assessment for Agricultural Development Planning: A Case Study of Kenya Resources Data Base and Land Productivity: M: Main Report* (Rome: FAO, 1993).

¹¹¹ If only the earliest and latest data points are considered for both areas, Central Province's average annual growth rate is actually slightly higher than that of Rwanda.

Nevertheless, throughout the period Rwanda's density was always the greater of the two, and the last available census figures reveal a substantial difference (272 inhabitants per square kilometre in Rwanda, 237 in Central Province). Thus, according to III and ELTR, population figures and rates of growth for the period would expect, *ceteris paribus*, land rights to be relatively more individualised, and land markets more active, in Rwanda than in Central Province.

Commercialisation of agriculture

Population growth leads to land scarcity – one cause of the demand for individualised property rights. Another cause is the growth of land values. The increased commercialisation of agriculture leads to this.

Measuring the extent to which agriculture is commercialised is a difficult task. While finding figures for marketed surplus is simple enough, finding the relative share of total agricultural output they represent is much more complicated. The problem lies in finding the non-marketed or informally marketed share, something formal economic indicators do not capture. One must rely on indirect methods: asking questions about market integration or labour markets, for instance, can help reveal the degree to which agriculture is commercialised.

Unfortunately, if finding the extent to which agriculture in one area is commercialised is difficult, finding adequate data for a time-series comparison between two areas is all the more challenging. Further complicating the issue for this paper's comparison is that one area (Rwanda) requires data at the national level, the other (Central Province) at the provincial level. The latter proved a challenge, as disaggregated Kenyan data appropriate for the task were difficult to locate.

Examining prices in multiple areas in a country can show if there is price convergence. Price convergence indicates market integration. A lack of market integration would suggest that agriculture is not very commercialised. A comparison between Rwanda and Central Province using agricultural price data was not possible because the data available for Rwanda only indicate prices in Kigali, and thus are insufficient to test convergence.¹¹²

¹¹² Data were presented thusly in e.g. République Rwandaise, *Bulletin de Statistique Numéro 1 Juillet 1964* (Kigali: Ministère du Plan de la Coopération et de l'Assistance Technique, 1964); idem, *Bulletin de Statistique Numéro 56 Janvier 1978* (Kigali: Ministère du Plan, 1978); etc.

Examining labour markets is another indirect way to determine the extent to which agriculture is commercialised. If a labourer is receiving wages to work on a farm, it is fair to assume that said farm is not merely engaged in subsistence agriculture. A comparison between Rwanda and Central Province using labour-market data was not possible because for Central Province, data for wage labourers by sector and industry were available, as were data for wage labourers by province and district, but no data existed for wage labourers by sector/industry and province/district.¹¹³

Another approach is to determine the proportion of land devoted to certain crops. Some crops are classified as export crops or non-food cash crops. While a time-series comparison is not possible for want of ample Central-Province data, data do exist for the mid-1970s. In Rwanda in 1973, 5.1 per cent of arable land was devoted to export crops and non-food cash crops.¹¹⁴ In Central Province in 1974, 19.7 per cent of arable land was devoted to export crops and non-food cash crops.¹¹⁵ This hints at greater commercialisation in Central Province than in Rwanda. Of course, surpluses need not head to foreign markets for agriculture to be commercialised, and indeed a great deal of surplus in both countries was destined for domestic markets. The task of finding another proxy that can help determine in which area agriculture was more commercialised remains.

Looking at rates of urbanisation in the two areas can be helpful. With a higher rate of urbanisation comes a greater domestic market for agricultural production (because a smaller proportion of the population produces food for its own consumption), and so it stands to reason that agriculture is likely to be more commercialised in areas that are more highly urbanised. In the post-colonial period, Rwanda's population was never very urbanised: under 5 per cent in the 1970s and just over 5 per cent by 1991.¹¹⁶ By contrast, Central Province had over 5 per cent of its

¹¹³ Data were presented thusly in e.g. Colony and Protectorate of Kenya, *Statistical Abstract*, 1960 (Nairobi: East African Statistical Department, 1960); Republic of Kenya, *Statistical Abstract*, 1990 (Nairobi: Central Bureau of Statistics, 1990); etc.

¹¹⁴ Joachim von Braun et al., *Commercialization of Agriculture Under Population Pressure: Effects on Production, Consumption, and Nutrition in Rwanda* (International Food Policy Research Institute, 1991), p. 8.

¹¹⁵ Republic of Kenya, *The Integrated Rural Surveys 1976-79: Basic Report* (Nairobi: Central Bureau of Statistics, 1981), pp. 109-13.

¹¹⁶ République Rwandaise, *Enquête démographique*; idem, *Résultats préliminaires*.

population living in urban areas in the 1970s, and almost 10 per cent by 1989.¹¹⁷ The difference becomes all the more pronounced when the national rates of urbanisation in Kenya are considered (15 per cent in the 1970s, and 18 per cent in 1989). With Nairobi sitting just at the border of Central Province, a great deal of agricultural surplus in Central Province would have been destined to the Kenyan capital.

With more arable land devoted to export crops and non-food cash crops and with higher rates of urbanisation creating a larger domestic market for agricultural production, it is reasonable to suggest that Central Province boasted higher levels of agricultural commercialisation than did Rwanda in the post-colonial period. *Ceteris paribus*, this would suggest that there should have been greater demand for individualised land rights, and a stronger emergence of land markets, in Central Province than in Rwanda.

Remarks

III and ELTR would suggest that given the similar emergence of land markets in Rwanda and Central Province, there must have been similar demand for individualised property rights. A time-series comparison between the two areas' population densities shows that Rwanda was more densely populated than Central Province throughout the post-colonial period, and therefore land was always scarcer there. Though the commercialisation of agriculture in both places could not be measured with as much precision, the general impression is that agriculture was more commercialised in Central Province, and thus land was ostensibly more valuable there.

Unfortunately, ELTR is a broad theory, and does not weigh the relative importance of land scarcity and growing land values – it states only that the two forces lead to the demand for individualised land rights.¹¹⁸ Nevertheless, this section's findings make the similar degrees of *de facto* individualised land rights, and by extension land-market activity, at the very least reconcilable: Rwanda was to some extent more densely populated than Central Province, but agriculture was more commercialised in Central Province. These demand-side factors thus appear to

¹¹⁷ Republic of Kenya, *Kenya Population Census, 1989: Volume VI – Migration and Urbanization* (Nairobi: Central Bureau of Statistics, 1994), pp. 35-42.

¹¹⁸ Platteau, 'Evolutionary theory', pp. 34-6.

explain the growth of similarly sized land markets in the cases, one land market much more modest than formal laws would have predicted, and another much more vibrant than formal laws would have allowed.

CHAPTER SIX: THE SUPPLY OF INSTITUTIONAL INNOVATIONS

When applied to land rights, the demand side of III and ELTR is reasonably well understood: changing factor-price relations and technical change induce the demand for modified or entirely new property-rights institutions. As land becomes scarcer and more valuable, landholders demand stronger, less ambiguously defined private property rights. Land markets should develop as a result. Still, formal institutional innovations must also be supplied. The dynamics of the supply side are more complicated.

Though many new institutionalists have ignored this,¹¹⁹ institutional innovations require the mobilisation of significant political resources. Bates, North, and Ruttan and Hayami understand that economic institutions are inherently political and that they operate within the political arena. Institutional innovations are only supplied when gains to those with the power to supply them exceed the costs of bringing about change. The complexion of the members of society holding political power accordingly has a decisive influence on the supply of innovations, and on the nature of innovations supplied. This means that efficient formal institutions may not be supplied at all, and, indeed, economically inefficient institutions may be supplied in their stead. It also means that the formal institutions risk being ignored in favour of existing, more efficient informal institutions, as appeared to be the situation in this paper's cases.

A step is thus taken toward understanding why the formal land-market institutions supplied by the Kenyan and Rwandan states in the late- and post-colonial periods did not appear to respond to the corresponding economic demands. From here, this paper offers hypotheses, necessarily tentative, as to why the two states supplied the formal land-market institutions that they did.

Central Province

In 1954, the Swynnerton Plan proposed land reform in the Native Reserves of Central Province. The reforms called for the registration of land, one result of which was to be the activation of land markets. The Plan did not only anticipate

¹¹⁹ For criticisms of the new-institutionalist tendency to understate the role of politics in the adaptation and creation of institutions, see e.g. Pranab Bardhan, 'The new institutional economics and development theory: a brief critical assessment', *World Development* 17:9 (1989), pp. 1389-95; Jack Knight, *Institutions and Social Conflict* (New York: Cambridge University Press, 1992).

landlessness, but celebrated it: the development of landed and landless classes was considered part of the modernisation process; those who acquired more land would ostensibly be the best farmers.

With the Native Lands (Registration) Ordinance of 1959, the late-colonial Kenyan state supplied the institutional innovation of private ownership of land, through registration and titling, to the inhabitants of Central Province. The post-colonial Kenyan state embraced the idea, extending the provision of private ownership elsewhere in the country with the Registered Land Act of 1963. The legislative debates in council that preceded both land-registration laws indicate that a key reason the holders of political power wanted individualised land tenure was to activate land markets. Prior to the adoption of the former law, the Minister of African Affairs offered his vehement support for it, praising how it would “provide facilities which native law and custom [did] not, for transfer and other dealings in land”.¹²⁰

So the governments attempted to promote the development of land markets, despite a clear lack of demand for them in terms of economic behaviour. As established earlier, land markets in Central Province were constrained before and after land was made a legally saleable commodity.¹²¹ This fact was not lost on the supporters of land-market activation: government officials noticed the weak demand for land markets at multiple junctures before and after they were encouraged.¹²²

ELTR would suggest that the state supplied land markets when the *de facto* land-market activity was enough to justify the cost. This was not the case, but, as recognised earlier, ELTR wrongfully downplays the political nature of the supply of innovations. Taking into consideration the political nature of the supply side of institutional innovations, NIE would suggest that promoting the development of

¹²⁰ Colony and Protectorate of Kenya, *Legislative Council Debates Official Report, 11th Council Inaugurated October, 1956: Volume LXXX (Part I) – Third Sessions 21st April, 1959, to 23rd May, 1959* (Nairobi: Government Printer, 1959), p. 64.

¹²¹ Lars-Erik Birgegård, ‘Natural resource tenure: a review of issues and experiences with emphasis on sub-Saharan Africa’, *Rural Development Studies* 31 (1993); Coldham, ‘Effect of registration’; Haugerud, ‘Consequences of land tenure reform’; Migot-Adholla and Bruce, ‘Introduction’; Migot-Adholla et al., ‘Security of tenure’; Frank Place and Shem E. Migot-Adholla, ‘The economic effects of land registration on smallholder farms in Kenya: evidence from Nyeri and Kakamega districts’, *Land Economics* 74:3 (1998), pp. 360-73.

¹²² Government of Kenya, *The Million-Acre Settlement Scheme, 1962-1966* (Nairobi: Government Printer, 1966), p. 25.

land markets was perceived as beneficial to the holders of Kenyan political power. Even though the supply was not in response to an economic demand for land markets, and thus to create an institutional framework that was more economically efficient, the state might have supplied the innovation because the benefits of such an innovation would accrue to the politically powerfully – those with influence over the supply.

Of course, one should not ignore the stated intentions of the architects of land reform. It was suggested that land markets would put land in the hands of the best farmers, and in so doing they would increase agricultural productivity in the areas in which they were activated.¹²³ There was also the recognition that land markets would provide a source of income for the government, as the government would collect stamp duties for approving land transactions.¹²⁴ In addition to these justifications, this paper puts forth another hypothesis.

The laws that called for the registration of land hitherto held under customary tenure in Central Province must be seen as part of a larger process of land reform that included the settlement schemes in the former White Highlands. Hence, in essence there were two types of land reform in post-colonial Kenya: the individualisation of land on the former Native Reserves, and the distribution of formerly European-owned land to Africans.

Individualisation of land was to be achieved through its registration, at which point a registered parcel became subject to British (rather than customary) law, and became a fully saleable commodity. This last point is crucial, and the need for unconstrained land markets was repeated time and again by the proponents and architects of private tenure in Kenya. In the 1950s, the East Africa Royal Commission decried the idea of ethnic groups restricting transactions to members of the same group: “Positive action must be taken by Governments to induce these exclusive communities to put land within their boundaries to full use themselves, or to make it available for others”.¹²⁵ Later, in the 1960s, the authors of the *Report on the Mission on Land Consolidation and Registration* affirmed: “Registration must... lead to greater mobility in the transfer of land among all the people of Kenya without restriction as

¹²³ Swynnerton, *A Plan*.

¹²⁴ Kenya, *Million-Acre*, p. 25.

¹²⁵ Great Britain Colonial Office, *East Africa Royal Commission 1953-1955 Report*, Cmd. 9475 (London: H. M. Stationery Office, 1955), p. 348.

to tribe".¹²⁶ In principle, registered lands on former Native Reserves in Central Province were to be part of the same non-exclusive land market as those on the former White Highlands.

The Africanisation of the Highlands was the second type of land reform in post-colonial Kenya. The government purchased land from departing European farmers and then implemented a number of settlement schemes – the Million-Acre Settlement Scheme the largest and most well known of these – to populate the then-vacant tracts of land with African farmers.¹²⁷ Though certain schemes endeavoured to give land to the landless or land-poor, it was always the already rich (and, often, politically powerful) who received the best land, the larger tracts of land, and the most help in developing it.¹²⁸ Many of the 'winners' of the settlement schemes were part of the post-colonial government's power base.

Large farmers were thought to be the most productive, and indeed were helped to be so.¹²⁹ Land markets were thought to put land in the hands of the most productive, leaving only the least productive (and least wealthy) landless.¹³⁰ The registration of land in Central Province put all land legally in the same land market as those favoured farmers in the Highlands. Had land markets not remained constrained by custom, their activation through registration could have been to the economic benefit of the government's power base in the Highlands by giving them control over more land – the newly registered land in Central Province. Indeed, in practice this occasionally occurred: there are examples of subsistence farmers on the edges of Central Province transferring their land to large landholders in the Highlands.¹³¹ The intention may well have been to make this kind of disequalising land transfer occur more frequently.

It is worth repeating that given the nature of the supply side of institutional innovations, hypotheses about why the land tenure innovations of Kenya were

¹²⁶ Government of Kenya, *Report on the Mission on Land Consolidation and Registration in Kenya 1965-1966* (Nairobi: Government Printer, 1966), p. 25.

¹²⁷ Kenya, *Million-Acre*.

¹²⁸ Leo, 'Failure of the 'progressive farmer''; Jennifer A. Widner, *The Rise of a Party-State in Kenya: From "Harambee!" to "Nyayo!"* (Berkeley and Los Angeles: University of California Press, 1992).

¹²⁹ Leo, 'Failure of the 'progressive farmer'', p. 623.

¹³⁰ Swynnerton, *A Plan*.

¹³¹ Colin Leys, 'Politics in Kenya: The Development of Peasant Society', *British Journal of Political Science* 1:3 (1971), p. 320.

supplied can only be tentative at best. However, it seems reasonable to suggest that they were supplied in spite of (and, indeed, with the recognition of) the lack of economic demand for them because land markets would: (i) ostensibly improve agricultural productivity; (ii) offer a source of income through the approval of transactions; (iii) if activated, put more land in the hands of Kenya's power base, and thus improve their economic circumstances.

Rwanda

In 1960, the Belgians abolished the quasi-feudal, Tutsi-dominated system of landholding and introduced in its stead a less hierarchical property-rights regime.¹³² The benefits of this change accrued to the demographically dominant Hutu agriculturalists. This new favouritism would prove a defining colonial legacy: Hutus would monopolise political power as Rwanda entered its post-independence period.

Ethnic identities were particularly salient in Rwanda.¹³³ Though it was much more flexible in the pre-colonial period, the Hutu/Tutsi distinction was indeed a real one, to be further reified by the Belgians in the colonial period.¹³⁴ This strengthened division survived the transition to independence. Throughout the country's post-colonial history, political power tended to be dominated by one of these two largest ethnic groups. This would be to the social, political, and economic detriment of the other group. As regards land tenure institutions, it is significant that it was a Hutu government that passed the only post-colonial legislation concerning land in 1976.

With the land-transaction restrictions of 1976, the Hutu government did not supply the institutional innovation to support the emergence of land markets. Instead, it attempted to constrict land markets, despite a demand for them in terms of economic behaviour. Taking into consideration the political nature of the supply side of institutional innovations, NIE would suggest that restricting the

¹³² 'Régime foncier', p. 1136; André, 'Droits fonciers', pp. 6-7.

¹³³ Gareth Austin, 'The effects of government policy on the ethnic distribution of income and wealth in Rwanda: a review of published sources', unpublished report (World Bank: 1996), p. 1; Chrétien, *Great Lakes of Africa*, pp. 281-2.

¹³⁴ For descriptions of the flexibility and malleability of ethnicities in pre-colonial Rwanda, and pre-colonial Africa more generally, see e.g. Mahmood Mahmood, 'From conquest to consent as the basis of state formation: reflections on Rwanda', *New Left Review* 216 (1996), pp. 3-36; idem, *Citizen and Subject* (Princeton: Princeton University Press, 1996).

development of land markets was perceived as beneficial to the Hutu government, even if at a cost to economic efficiency.

As with Kenya, the stated intentions of the legislators must be considered. Article 3 of the 1976 law itself rather unambiguously reveals these: land markets were discouraged to prevent the creation of sub-economic plots (would-be sellers must retain a minimum of two hectares), and to prevent land concentration (would-be buyers must not come into possession of more than two hectares).¹³⁵ This paper puts forth a hypothesis as to why land concentration was unwelcome.

Despite the fact that they were the victors of the Hutu Revolution, the Hutu government in the post-colonial period was publically wary of the ostensibly advantaged position the Tutsi held in society. In the post-colonial period, national newspapers warned how Tutsis were richer, and had better access to bank loans and rural credit.¹³⁶ This was, of course, a dubious assumption. Though one survey from the 1950s revealed that Tutsis were nearly 5 per cent richer than Hutus on average,¹³⁷ their marginally superior position all but certainly declined following the Hutu Revolution. There is little empirical evidence suggesting that Tutsis enjoyed the better share of the ethnic distribution of national income in the post-colonial period.¹³⁸ However, if the government did in fact believe Tutsis were richer and had better access to rural credit, then insight into the 1976 law emerges.

If the impression was alive with Hutu power that the Tutsi population was generally wealthier and had better access to credit than the Hutu population, then Tutsis were thought more likely to be on the benefitting side of disequalising land transactions, with the Hutu peasantry bearing the brunt of resultant sub-economic plots and potential landlessness. In a country with low levels of urbanisation in which upward of 90 per cent of the population has consistently derived its livelihood from agriculture,¹³⁹ ownership of land was crucial to economic power. Allowing an unconstrained land market would have removed power over the land

¹³⁵ 'Achat et vente', p. 199.

¹³⁶ Jean-Pierre Chrétien et al. avec *Reporters sans frontières, Rwanda: Les médias du génocide* (Paris: Éditions Karthala, 1995), pp. 145-6.

¹³⁷ Austin, 'Effects of government policy', p. 7; Prunier, *Rwanda Crisis*, p. 50.

¹³⁸ The official censuses did not track the distribution of income by ethnic group.

¹³⁹ 94.2 per cent in 1965, 93.4 per cent in 1973, and 92.8 per cent in 1980. World Bank, *Trends in Developing Economies, 1992* (Washington, DC: World Bank, 1992), p. 468.

from the Hutu government, and would have potentially given the rival ethnic group an opening to reacquire some of the economic power lost in the 1959 rebellion. It can thus be hypothesised that the Hutu government introduced the heavy land-transaction restrictions of 1976 in an attempt to preserve its support base's economic power.

As with Kenya, hypotheses about why a Hutu government chose to restrict land markets can only be tentative at best. However, it seems reasonable to suggest that they were restricted despite the economic demand for them because land markets would: (i) lead to sub-economic plots and peasant landlessness; and (ii) if activated, ostensibly put more land in the hands of Tutsis to the detriment of Hutus, thereby compromising the economic power of the Hutu government's support base.

CHAPTER SEVEN: CONCLUSIONS

Land is the fundamental factor of production, and the conditions under which it is held and used can significantly affect the economic behaviour of a society. Land's importance is particularly pronounced in predominantly agrarian economies, including those of most of sub-Saharan Africa past and present. Histories of land tenure in Africa provide points of intrigue to the economic historian and development economist alike.

At the broadest level, this paper has helped – ever modestly – to fill the gap of baseline data and research on land in Africa so lamented by other researchers in the field. In so doing, it has contributed to the rapidly expanding literature on land tenure by demonstrating the explanatory power new institutionalist theories have in regards to the behaviour and rules surrounding land. If it can help to encourage the relevant actors to conceptualise of land tenure systems as institutions in the NIE sense, then innovations in this realm will stand a greater chance of joining the ranks of successful new institutions (i.e. effective land policies and laws). While policymakers and lawmakers may well intuit that future recommendations and implementations will only be heeded and respected if they take stock of the reality on the ground, one of NIE's merits is that it provides a robust theoretical backing to this intuition. Going further, it also explains *why* this is the case – priceless knowledge for anyone trying to construct positive and effective land policy.

More narrowly, this paper addressed a particular point of intrigue noticed in the development of east African land tenure systems. It presented twin, paradoxical phenomena that occurred in the region's land markets in the post-colonial period. In Central Province, Kenya, land markets remained constrained despite a legal framework designed to activate them. In Rwanda, land markets developed despite laws designed to restrict them. This paradox was analysed by treating land tenure systems (both *de jure* and *de facto*) as institutions, and then scrutinising them through new institutionalist theories of institutional change, notably the theory of induced institutional innovation (III) and the closely-related evolutionary theory of land rights (ELTR).

The paradox required a tripartite explanation. It asked: (i) why gulfs emerged between informal and formal land tenure institutions of the cases; (ii) why informal institutions produced similar levels of land-market activity in Rwanda and Central

Province; and (iii) why formal institutions favoured land markets in Central Province.

The first phenomenon was most striking: *de jure* land tenure institutions did not line up with the *de facto* ones. Formal land laws did not dictate economic behaviour, and economic behaviour seemed not to influence the creation of land laws. Some conceptual work in the new institutionalism acknowledges the inherently political nature of the supply of institutional changes. The supply of *de jure* institutions is not necessarily in concert with the demand – the economic behaviour that shapes *de facto* land tenure arrangements. *De facto* institutions are apt to persist despite the introduction of new formal rules if those rules are too revolutionary. Thus, NIE clarifies how there could be a chasm between *de facto* and *de jure* land tenure systems. From there, the issue splintered into two: understanding the informal land tenure institutions (which should be influenced by the demand side) and understanding the formal institutions (which should be dictated by the supply side).

The demand side is well understood by III and ELTR. According to these theories, increasing land scarcity and growing land values drive the demand for private property rights in land. With private property rights comes the right to transfer land without restriction. The population densities of the two subject areas, gleaned from official censuses and other sources of demographic data, indicate that – *ceteris paribus* – land rights should have been more individualised (and so land markets more active) in Rwanda than in Central Province. But all was *not* equal. Data that were available for the commercialisation of agriculture suggest that agriculture was more commercialised in Central Province. The combinations of varying levels of population density and commercialisation of agriculture make comprehensible the similar emergence of individualised land rights and land markets in the two cases.

The demand-side findings invite further research in at least three ways. Firstly, it was noticed that there was a data gap that necessitated the use of actual population density in place of practical population density, the latter of which would be more insightful for conclusions. Central Province has had its land area thoroughly analysed and broken down by productive potential, but Rwanda has not. Therefore, the discussion remained limited to a comparison between actual

population densities, for which good data exist in the forms of censuses and related demographic enquiries.

Secondly, the commercialisation of agriculture section reads like a laundry list of limitations. That (probable) higher commercialisation in Central Province can only be established in the mid-1970s is a weakness. A more systematic time-series comparison would help make the findings more robust, and perhaps reveal a dynamism that could not be captured with one-off reference points. Moving forward, satellite mapping of crop rotations could indeed help reveal commercialisation, insofar as certain crop groups are accepted plainly as either commercial or subsistence. Unfortunately, a dearth of historical agricultural maps makes the endeavour tricky if one wishes to prod *back* in time.

As a third invitation to further research, it was noticed that there is an opening in III and ELTR that warrants filling. Current iterations of the theories do not state the relative importance of growing land scarcity versus rising land value when explaining the demand side of land-rights innovations. Of course, this might be a concession to the fact that the relative importance may vary just as surely as the contexts do. Nevertheless, it would be enlightening to explore this apparent gap in the theories, and future research may make clearer the weight one should assign population density vis-à-vis the commercialisation of agriculture for the demand for individualised land rights.

The supply side of institutional innovations is more difficult to explore. What is clear is that it strongly influences the existence of *de jure* institutions. Work in NIE that recognises the political nature of the supply side explains why institutional innovations are not always supplied in response to demand: what is regarded as beneficial for the suppliers of institutional innovations may not necessarily be most economically efficient; the interests of suppliers may be considerably out of step with the generalised demand of an economy.

From this understanding, the paper proceeds to tender hypotheses as to why the Kenyan and Rwanda states supplied the innovations that they did. The suggestions made here are just that: suggestive. Though these should be treated with caution, this paper offers the hypotheses that: (i) the Kenyan government supplied the institutional innovation of land registration in Central Province, despite no clear demand for it, because it would render land part of single land market to which the

power base of the government would have access; and (ii) the Rwandan Hutu government restricted land markets because it feared the rival Tutsi ethnic group would benefit disproportionately from disequalising land transfers and thus gain economic power. Future research may better, more systematically elucidate why the politically powerful groups supplied the institutional innovations they did. At this juncture, this paper transmits a familiar theme in the literature on induced institutional innovation: the challenge of comprehending the supply side.

In the meantime, what is important to reiterate is that *de jure* institutions do not always respond to economic demand – they are not always economically efficient – precisely because those with political power control their supply. Some new formal rules represent such a break with the existing informal constraints that the former are ignored. This realisation is key in comprehending this paper's motivating paradox. A chasm emerges between the *de jure* and *de facto* land tenure systems of a country when the supply of land tenure institutions does not provide an appropriate response to the demand for them. This paper illustrated how this was the case in Kenya and in Rwanda, but the idea can be further extended and investigated in other contexts across space and time. What was found to be true of Central Province and of Rwanda is almost certainly true elsewhere in sub-Saharan Africa and in the wider world: there is often one law on the books, another on the ground. This paper has shown that insights from the new institutional economics can be used rewardingly in the investigation of such discrepancies.

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EDUCATION

Universität Wien

MA Global Studies

Vienna, Austria
10/2010 – Present

- Top classification of 1 – ‘Sehr Gut’ (predicted)
- Key subjects: development economics; institutional economics; economic history

London School of Economics and Political Science

MSc Global History

London, United Kingdom
10/2009 – 09/2010

- Postgraduate Merit
- Distinction-grade dissertation
- Key subjects: economic globalisation; African and South Asian economic development

Dalhousie University

BA International Development

Halifax, Canada
09/2005 – 05/2009

- First Class Honours
- Studied abroad in eastern and western Africa
- Key subjects: development studies; African history; French

RESEARCH EXPERIENCE

United Nations Industrial Development Organization

Intern, Europe and NIS Programme

Vienna, Austria
04/2011 – 05/2011

- Supported programme chief in meeting with delegation from Kazakhstan
- Conducted research to draft programme’s official response to high-level query from President of Uzbekistan
- Prepared notes for file and donor/recipient profiles for various programme countries

Intern, Research and Statistics Branch

01/2011 – 03/2011

- Analysed quantitative and qualitative industrial performance data
- Proofread, revised, and edited documents under demanding time constraints
- To be credited on forthcoming UNIDO working paper and Industrial Development Report

Crisis States Research Centre

Research Assistant

London, United Kingdom
10/2009 – 09/2010

- Designed project on land tenure systems with scholars and legal consultant
- Long-term research: collected and evaluated data for seven country trials over one year
- Co-authored Data Collection Manual; produced progress reports

CONFERENCES & WORKSHOPS: SELECTED ATTENDANCES

- | | | |
|--|------------------|-------------------|
| • Erasmus Mundus Global Studies Convention (presenter) | Leipzig, Germany | Upcoming: 11/2011 |
| • ‘The Effects of Climate Change on Developing Countries’ | Köthen, Germany | 07/2010 |
| • ‘Transitional Justice: International Criminal Tribunal for Rwanda’ | Karpacz, Poland | 12/2009 |
| • ‘The Future of Africa Considered’ (three-part lecture series) | Halifax, Canada | 10 & 11/2008 |
| • World Vision Seminar: ‘Reconciliation in Post-Genocide Rwanda’ | Niamata, Rwanda | 05/2007 |

AWARDS & CERTIFICATES

- | | |
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| • Travel Grant to present at Erasmus Mundus Global Studies Convention | 11/2011 |
| • European Commission’s Erasmus Mundus Grant | 10/2009 – 07/2011 |
| • Certificate of Proficiency in French, Dalhousie University’s French Department | 08/2009 |
| • Club of New York Scholarship | 09/2008 – 05/2009 |
| • Dalhousie University Entrance Scholarship | 09/2005 – 05/2006 |