ENTRENCHMENT

Wealth, Power, and the Constitution of Democratic Societies

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Contents

CHAPTER ONE

Understanding Entrenchment

L IKE MATERIAL OBJECTS, SOCIAL institutions and organizations vary in how they respond to stress. One political regime will be unyielding in the face of popular protests, while another crumbles. A centuries-old church that counts its followers in the hundreds of millions will survive a scandal that would destroy a more fragile organization. A corporation with deep reserves of capital will endure economic reverses and continue to dominate a market, or even become more dominant, while other enterprises flounder and never recover.

But unlike material objects that persist without human effort, the structures of society depend on people's continuing choices, practices, relations, and beliefs. Social facts are facts only insofar as people regularly reproduce them. Laws do not regulate social life just because they were once recorded in statutes. Wealth and power do not exert their influence only as a result of having once been accumulated. They must all be constantly renewed to have any force. Yet some foundational features of the social world are more tenaciously reproduced than others. They resist stress, they defy pressure, they overcome opposition. The process by which those features of society become stress-resistant is what I mean by entrenchment.

Entrenchment, like the closely related terms "lock-in" and "consolidation," can refer to any process whereby an institution,

a technology, a group, or a cultural form—any kind of social formation—becomes resistant to pressures for change. The focus of this book, however, is specifically on *hard-to-reverse change in constitutive aspects of society and politics*. I use the term "constitutive" in line with a distinction that John Searle, borrowing from Kant, makes about two kinds of rules. All rules regulate behavior (or are meant to do so), but some rules, like the rules of chess, are also constitutive: Take away the rules, and there is no game of chess. Other rules, such as highway speed limits, regulate activity that exists independently: Take speed limits away, and the road and traffic remain.[1] Constitutive choices are choices about the social and material basis of things, without which they would not exist in the same state, or at all. In the development of institutions and societies, a constitutive moment is a time when such high-stakes choices are made. But the full constitutive process, from the initial stages to their entrenchment, may be slow and incremental, and the significance of entrenching developments may be lost at the time they take place.

The historical cases that form the body of this book illustrate what I mean by "constitutive." In England and other European societies from the late feudal through the early modern era, the rules for the inheritance of rank and property, notably primogeniture and entail, were constitutive of the aristocratic, patriarchal, and monarchical order. The rules of racial slavery that emerged in colonial America were constitutive of the social system that became entrenched in the American South. Both of these were cases of oligarchic entrenchment, with political implications ranging from the local domain of aristocrats and slaveholding planters to their national governments. The rules of constitutional democracies—rules about rights and powers, elections, courts, and so on—have also been constitutive of both their governments and societies. Constitutional entrenchment is central to our story, but the terms "constitutional" and "constitutive" do not exactly coincide. The fundamental rules of property rights, family and kinship, labor, and social protection, while generally not encoded in political constitutions, have constitutive significance for those institutions and for society more generally.

Entrenchment places two kinds of constraints on change. The first is a constraint on reversibility. At a minimum, entrenchment

makes it difficult to undo a development or a decision. Second, it constrains further change, channeling it in particular directions. It may perpetuate features of a society that would otherwise have been expected to evolve. But entrenchment is not synonymous with complete stasis or inertia; it requires active reinforcement, renewal, and resilience. When the character in Lampedusa's *The Leopard* says that for "things to stay as they are, things have to change," he is talking about entrenchment, specifically the new steps needed to entrench privilege against the threat of a republic.[2] Inflexibility is never a good formula for survival.

Entrenchment is also not the same as institutionalization. The political power of concentrated wealth may be entrenched without being directly institutionalized. Power may be entrenched by brute force or through an overwhelming preponderance of resources. Conversely, institutionalization may not be sufficient for entrenchment; many things are institutionalized without becoming entrenched. A government may be set up one day and soon collapse; a principle may be encoded in law, but the law may trigger opposition and be repealed the next year or never be enforced. Institutions are systems of rules and practices, dependent on widely (though not necessarily universally) shared understandings. Unlike more voluntary aspects of culture, institutions have socially recognized and often formally organized means of identifying, enforcing, and changing rules. They therefore necessarily involve power and authority.[3] They give a stable form to fluid and variable relations and more predictability to social action—at least, they do to the extent they are effective. Whether they can withstand pressure for change at their foundations is a separate matter.

Entrenchment, in this view, refers not only to a condition but to a process, and it is always a matter of degree. The more all parties, even the powerful, are constrained by rules and see no possibility of reversing a constitutive development, the more thoroughly entrenched it will be. Determining where an institution, technology, or cultural form falls on that continuum is a formidable challenge. But if we think of entrenchment as a capacity to withstand pressure for change, one kind of evidence comes from what are, in effect, *stress tests*. A political regime's survival of stress—economic depressions, popular protests, changes in top leadership, military

defeats—is evidence of its entrenchment. Elections are stress tests for emerging democracies (and sometimes for established ones). A commonly used measure of the entrenchment of a democracy (democratic consolidation) is the peaceful transfer of power, even possibly a double turnover, that is, power transferred back and forth between parties. A test for the entrenchment of a law or policy is whether it survives a changeover from one administration or government to another. A test for the entrenchment ("lock-in") of a technology is whether it continues to dominate a market despite the availability of a more efficient design or substitute. A test for the entrenchment of a belief system is whether it continues to prevail despite contradictory evidence, dissonant experience, and social pressure for revision.

None of these tests is perfect, in part because entrenchment is greatest when an institution or belief system is subject to no challenge or stress whatsoever and people are not conscious of alternatives. We can conceive of any individual's actions, Jon Elster points out, as being subject to two "filtering processes." The first limits actions to a "feasible set"; the second influences choices within that set.[4] Entrenchment arises from the first type of filtering: A constitutive aspect of society is entrenched from an individual's standpoint if undoing it is not an option in the feasible set. That set of alternatives, however, depends not only on technical feasibility and the objective realities of power but also on individuals' knowledge and understanding. Social realities are entrenched if instead of being regarded as products of human will, they come to be treated as part of the order of the universe, aspects of a world where people as well as things have their natural and rightful place. Taken as given, some features of society may not even register in consciousness: they may be entrenched through invisibility. When people become aware of alternatives, that in itself may be a sign that the institution or condition is less entrenched than it once was.

My central concern here is with mechanisms that impede or constrain change in constitutive elements of society. We need not attribute entrenchment to the inherent nature of immutable cultural dispositions of a society. In Molière's *The Imaginary Invalid*, a physician explains that opium puts people to sleep because of its *virtus dormitiva*—its sleep-inducing nature. Some social explanations are of the

same type. Why do some societies adhere to traditions? Because they are "traditionalist." Why do others accept and even promote change? Because they are "modern" and "progressive." If this were a good way to account for entrenchment, we could stop right here.

A more satisfactory way to proceed is to identify the recurring mechanisms in the production of social regularities. People act under given historical conditions, and they remake those conditions. But despite the unending variety of history, there are patterns in how people respond to structural realities and then maintain or change them.[5] In offering the following framework for understanding the mechanisms of entrenchment, I begin with a straightforward distinction. Entrenchment is sometimes intended, sometimes unplanned and emergent, and most often a mixture of both. A concern for the intentionality of entrenchment focuses our attention on those who have the power to make hard-to-reverse changes in society's constitutive rules, and on the conditions that motivate and enable them to do so.

STRATEGIC ENTRENCHMENT

When entrenchment is deliberate and purposeful, I call it "strategic." In such cases, individuals and groups try not only to achieve an objective but also to ensure that the achievement sticks. They do that in part by anticipating their opponents' countermoves in an effort to make a subsequent reversal difficult or impossible. The choices they make may be unilateral and one-sided, or they may result from a settlement among conflicting parties. Strategic entrenchment is the pursuit of irreversibility: the conscious effort to make a change in a way that prevents it from being undone and sets the direction for the future.
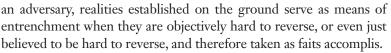
Creating Facts on the Ground

Strategically created facts on the ground are the most elementary basis of entrenchment. Whether through military power, population movements, or economic forces, states and societies may entrench themselves de facto in a territory or a market. Although usually a prologue to claims of legitimacy and sometimes to negotiations with

an adversary, realities established on the ground serve as means of entrenchment when they are objectively hard to reverse, or even just believed to be hard to reverse, and therefore taken as faits accomplis.

In its original military sense, entrenchment means digging in to resist assault, as when an army digs a line of trenches to defend the ground it holds. An entrenched position can result from any marshalling of power and presence that deters or defeats potential challenges. Like armies, social groups may entrench themselves by occupying an area without any recognized legal right, as invading tribes and empires did for millennia, often killing, expelling, or subjugating and enslaving indigenous populations. Colonization throughout the world and continental expansion in the United States involved establishing facts on the ground with settlers and arms. Today, as in Israel, groups and nations continue to use settlements as a means of creating facts on the ground and entrenching a position with an armed population.

In the economy as well, predatory groups and firms have also entrenched themselves de facto. Bandits, brokers, and cartels have occupied strategic economic positions or created a "constellation of forces" to bar potential rivals. Firms sometimes introduce products or promote practices of dubious legality, anticipating that if they become widely used, governments will have no choice but to accept them. It is not just possession, but practice, that is "nine-tenths of the law."

Power rarely leaves itself naked for long; it soon puts on the clothing of justice and the armor of institutions. But even where governments and dominant groups and firms make claims of legitimacy, the ultimate basis of entrenchment may lie in the facts they have created on the ground. The obedience of subjects may be a sign not of reverence but of resignation, as James Scott argues, quoting an Ethiopian proverb, "When the great lord passes, the wise peasant bows deeply and silently farts."[6]

Rules of Change

Although the significance of raw power should never be underestimated, the choice of rules in the design of institutions is the principal means of strategic entrenchment in modern societies. No rules are

more important for entrenchment than rules that confer power, especially those governing change.

A rule of change is a secondary or meta-rule determining how changes are made. Raising the procedural requirements for change is a means of entrenchment. For example, compared with the ordinary rules for enacting legislation, constitutional provisions are entrenched in the United States because the Constitution's rules of change—that is, the procedures for amendments—are especially onerous. The rules for changing regulations, laws, and constitutions may be arranged in a hierarchy of entrenchment according to the number of veto players (institutions or parties that can block change) and the thresholds of support required to overcome each potential veto. The higher the *threshold of adoption* for a change, the greater is the level of entrenchment.

Even without more demanding procedures, rules of change may entrench decisions by producing winners who have both the incentive and the power to keep the rules that have enabled them to win. For centuries, primogeniture produced winners with the power to maintain the rules of inheritance and succession that gave them control of landed wealth and power. A system of "first-past-the-post" electoral rules typically yields two major parties with the power and motivation to keep those rules in place, to the disadvantage of third parties that would benefit from a shift to proportional representation.

Economists and political scientists usually refer to basic rules as "rules of the game." Rules of change are rules of the game that determine how easy it is to change the game's other rules, so the term is more specifically relevant to entrenchment. The concept of a "rule of change" comes from H. L. A. Hart's theory of law. In Hart's analysis, law encompasses two sets of rules: primary rules, such as those of criminal law, which impose duties, and secondary rules, such as those of constitutional law, which confer powers. Besides rules of change, the secondary level includes rules of recognition, which identify sources of law, and rules of adjudication, which govern the application of law to cases. These secondary, power-conferring rules, Hart writes, "specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied and the fact of their violation conclusively determined."[7] Rules of change confer

powers on governmental bodies to modify laws, and they empower individuals and private organizations to adapt the law to different circumstances and create legally binding relationships—for example, through contracts, wills, and corporations. Through these legal facilities, people create private legislation and even private legal universes, with their own rules of change. Rules of change may be a means of entrenchment for a policy or institution by creating and empowering groups or constituencies likely to support it. While rules of change allow for flexibility, more exigent rules make change difficult. In other words, they represent an institutional procedure for strategic entrenchment.

The standard meaning of entrenchment in law is the establishment of a binding constraint on governance that cannot be overcome through ordinary politics culminating in a simple majority vote of a legislature. "Constitutional entrenchment" refers to two levels of constraint. In the most common usage, it means writing a rule into a constitution, which can then be changed only by a constitutional amendment. In addition, the constitutions of many countries entrench some clauses in an even stronger way by designating them as unamendable. For example, Article V of the U.S. Constitution bars any amendment depriving a state of its "equal suffrage" in the Senate; an effort to give more populous states greater representation would arguably have to replace the Constitution entirely through a new constitutional convention or a revolution. Germany's Basic Law includes an "eternity clause" prohibiting any change in certain fundamental provisions, such as those guaranteeing the inviolability of human dignity and human rights and the federal structure of the German state. Eternity clauses are the highest degree of entrenchment that law can attempt to provide. They are as close as modern government comes to aspirations of divinity.

Governments may also entrench power and policy through other kinds of rules of change. Legislatures may try to entrench a statute or procedural rule by attaching a stipulation that it can be modified or repealed only by a supermajority vote. The tendency of ordinary legislation to become entrenched may also reflect the number of veto players in a government. Compared with a parliamentary system with a dominant lower house and no division between the legislature and executive, the federal government in the

United States may have stronger tendencies toward status quo bias, making it hard to enact a major institutional change and perhaps even harder to repeal it.[8] In the most familiar kind of political entrenchment, incumbents may try to keep themselves in power by modifying the rules of change that determine who can vote, who can run for office, how votes are translated into representation, and other aspects of elections. In addition, laws and policies may be entrenched through the establishment of semi-autonomous governing institutions, such as supreme courts or central banks, or through adoption of an international treaty or entry into an international organization from which a state may not readily extricate itself. In all these cases, entrenchment means shielding from the pressures of ordinary (domestic) politics certain policies and means of governance, as well as the values and interests embodied in them.

The motivations for strategic entrenchment may seem so overwhelming as to make it ubiquitous. But there are risks in the use of entrenched rules to entrench power, even for decision-makers who may see immediate benefits from a particular change. The long-run effects of hard-to-reverse changes are hard to anticipate. A "veil of ignorance" may not just be a hypothetical constraint on decision-making about foundational rules; it may accurately describe how little decision-makers know at critical moments of institutional design. Even when the stakes seem to be clear, complications emerge. The prospect of entrenchment often arouses intense opposition. The opponent who would willingly concede the first round of a conflict may use every available resource to win that first round if it will be the only one and the outcome will be irreversible. The entrenchment of laws, policies, and institutional structures entails a loss of flexibility. Those who initially get what they want may be stuck with arrangements that do not work as they expected. Strategic entrenchment therefore carries a significant risk of regret. Conservatives may support a constitutional court with strong powers of judicial review as a safeguard of property rights, only to discover it gives priority to other rights. Socialists and liberals may be disappointed for the opposite reason. The history of institutional design is strewn with examples of miscalculation.

Faced with such risks, decision-makers may not always try to entrench rules or institutional arrangements. Their choices will

often depend on their expectations about changes in power and what the opposition would do if it gained control. If incumbents are confident about the future, unworried about the opposition, and anxious to preserve flexibility, they may not see sufficient reason to pursue the entrenchment even of highly partial rules and structures, with all the opposition that move will arouse and the inflexibility it may bring. But if they think that their power is at a peak and their successors cannot be trusted, they may decide that now is the time to try to entrench rules and arrangements they prefer. Entrenchment may serve as a kind of insurance policy against political change.
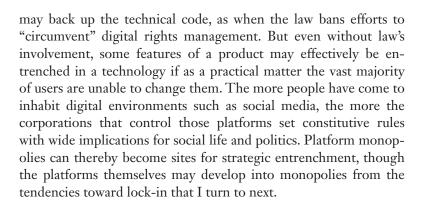
These considerations apply to such measures as the adoption of constitutions or constitutional amendments and restrictions on immigration. A party or group in society that thinks it is endangered by ongoing political or social trends may try to entrench itself with constitutive rules that limit what its successors can do, or even who succeeding generations are. Some of the same considerations apply to organizations of all kinds, even to private relationships. Both public bureaucracies and private organizations (for example, the media) may become a basis of entrenched power for whatever partisan, ideological, religious, or ethnic groups are able to colonize them and secure the adoption of rules and procedures that help perpetuate their own interests. "Managerial entrenchment" refers to the use of "lockup" devices such as "poison pills" and different classes of stock to make it difficult for outside investors to wrest control of a corporation from insiders.[9] In a more balanced way, entrenchment may make an agreement between two private parties hard to alter after the fact. In many private negotiations, the parties try to entrench agreed-upon rules by assigning dispute resolution to an independent party. Mandatory arbitration is an entrenchment device (in this case based on a rule of adjudication rather than a rule of change), though in practice it is often a means of entrenching one party's power at the expense of another.

Rules of change may also be encoded in devices and software, denying users the ability to modify a program or a device. Like institutions, technologies are systems of rules that include rules of change. Entrenching a feature in a technology, like a constitution, may be a way of trying to make a system tamper-proof. Legal code

may back up the technical code, as when the law bans efforts to "circumvent" digital rights management. But even without law's involvement, some features of a product may effectively be entrenched in a technology if as a practical matter the vast majority of users are unable to change them. The more people have come to inhabit digital environments such as social media, the more the corporations that control those platforms set constitutive rules with wide implications for social life and politics. Platform monopolies can thereby become sites for strategic entrenchment, though the platforms themselves may develop into monopolies from the tendencies toward lock-in that I turn to next.

LOCK-IN AND THE COSTS OF CHANGE

People may be unable or unwilling to undo a decision not because the rules make it difficult to switch, but because the costs of switching are too high. The costs may be too high because of increasing benefits from sticking with an earlier choice, even though that choice may not, in retrospect, have been the best. Increasing returns help explain how technologies, industrial locations, and institutions that had a head start or other early advantages continue to dominate alternatives that, if adopted, could have yielded equal or better results. Increasing returns, however, have less application to contexts where the outcome depends less on net social costs and efficiency than on the power of parties with conflicting interests. Costs may deter change because of the resisting power of those who would bear the losses and the weakness and disorganization of the potential beneficiaries. In concrete historical cases, the opportunities for constitutive change are not constant but depend on continually shifting configurations of forces. After decision-makers have seized a moment ripe for change, the costs of undoing their choices may become prohibitive when the window of opportunity closes.

In all these cases, the outcomes are path dependent—that is, they depend on the nature and timing of contingent events that might have sent developments down one of several paths. Path dependence per se does not necessarily lead to lock-in; some path-dependent processes have fragile outcomes that are easily disrupted. Some

outcomes may also be circumvented or converted to other ends without being directly confronted and formally overturned. Lock-in depends on the difficulty (that is, the cost in the broadest sense of that term) of getting off one path and onto another.
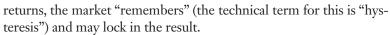
Following the usage in economics, I use the term "lock-in" for entrenchment that results from high costs of change that emerge over time, whether through increasing returns or from other effects. Lock-in is a potential outcome of any self-reinforcing process, such as cumulative advantage ("the rich get richer"). Any institution is likely to have "feedback" effects that positively or negatively affect its stability; positive feedback (self-reinforcing) effects lock in a choice only when they are significant enough to shut off alternatives. The term "lock-in," however, lends itself to two misunderstandings. First, it suggests that once selected, a particular technological or institutional form does not evolve. What gets locked in, though, is usually not a static institution or technology but one element of its design or structure, while the institution or technological system continues to develop, perhaps reaching other branching points. While reversing those earlier choices is difficult, lock-in doesn't usually bring development to a full stop. Second, the term "lock-in" highlights whatever emerges as dominant, but the same processes also produce exclusion, marginalization, and subordination. The flip side of cumulative advantage is cumulative disadvantage.[10] Lock-in implies lock-out.

Path Dependence with and without Lock-In

Big effects, we often assume, must have equally big causes. But in a path-dependent process the outcome may hinge on minor, random events or on the sequence in which events occur. By definition, path-dependent development begins with more than one potential outcome. It is the path taken—the intermediate events, rather than the initial conditions—that determines where the process comes to rest. Multiple equilibria are possible, and path dependence explains which of those equilibria emerges. Under diminishing or constant returns and perfect competition, the market would "forget" chance events or their order of occurrence—their effects would average out. But when the effects of those events are magnified by increasing

returns, the market "remembers" (the technical term for this is "hysteresis") and may lock in the result.

Lock-in thus contradicts standard expectations about markets: a technology, institutional form, or industrial location may continue to dominate despite the availability of more efficient alternatives that market forces would ordinarily lead producers and consumers to adopt. Under standard conditions, increasing production leads to diminishing or at best constant returns; for example, as farmers plant more acres of a crop, they may bring less-fertile land into production, and the yield per acre falls. But the opposite happens in many situations where returns per unit increase as production increases or as others adopt the same technologies and institutions.

Increasing returns result from several well-established mechanisms.[11] *First*, if production involves high fixed or setup costs, returns will increase as those costs are spread over a larger volume. High fixed costs are typical in large industrial plants and communication and transportation networks as well as knowledge-intensive goods for which the bulk of the cost goes into creating the prototype or first copy. *Second*, both producers and consumers may "learn by doing and using," improving their mastery of techniques as they gain experience. Such learning economies may be especially important during early stages of adoption, as in the most famous (albeit trivial) case of technological lock-in, the QWERTY keyboard, which became standard for typewriters in the late nineteenth century.[12] *Third*, and also relevant to the QWERTY case, the value of a particular option may increase if many people make the same choice (these are called coordination effects or network externalities). In a communications network, for example, the value of owning a device to connect with others increases as more people join the network. The location of an industry may become locked in as new firms develop near the industry's pioneering companies, the region's labor pool with relevant skills expands, and workers move from one firm to another. *Fourth*, if people expect an option to emerge as dominant, that expectation may be self-fulfilling. Such "adaptive expectations" come into play, for example, if buyers anticipate that one format for a new electronic device will win out over rivals.

The development of nuclear-reactor technology, as described in the work of Robin Cowan, is a good example of how institutions

become locked in through increasing returns. Nearly all of the elements in increasing-returns path dependence figure in the history: rival technological designs, early events leading to the adoption of an alternative that many experts doubt was the best, and increasing returns as a result of high fixed costs, learning economies, network externalities, and adaptive expectations. In the early 1950s, several competing designs for nuclear power—light-water, heavy-water, and gas-graphite reactors—were under consideration in the United States and Europe. One of those technologies, however, had a head start because the U.S. Navy had chosen a light-water design for its nuclear-powered submarines, the first of which, the *Nautilus*, was launched in 1954. Worried at that time about Soviet nuclear advances, the U.S. government made civilian nuclear power an urgent priority, sought to have a nuclear power plant built quickly, and chose the light-water design, the only one with which it had experience. This early sequence—military use first, civilian second—proved crucial: "The effects which followed from the military's definition of 'best' have been felt ever since," Cowan writes. The light-water design benefited from government subsidies of early research and development costs as well as from substantial learning economies during early commercialization; the result was a "bandwagon market" for light-water nuclear plants. In 1958, when a group of six European countries decided to cooperate with the United States in developing nuclear power, Britain and France gave up on the gas-graphite design in favor of light water. Network externalities in information influenced adoption decisions; according to a report on nuclear power by the International Atomic Energy Agency, "The best countermeasure against technical problems is to have a production system which is common all over the world." By the time the "other, potentially superior, technologies were developed to the point of being marketable," Cowan concludes, "it was too late. Light water was entrenched."[13]

Other examples of institutions intertwined with technologies subject to increasing returns come from the development of network industries, such as electrical-power transmission and transportation systems.[14] Once commitments to a network design have been made, it often becomes extremely costly to switch, especially to an alternative that would destroy the value of sunk investments.

As a result, choices among technological alternatives may get locked in at an early stage before the full implications of the choices are known. That does not mean the choices are a dead end: the technologies and policies may co-evolve. The term "lock-in" still applies, as long as the switching costs block the development of other technologies that might have had greater potential.

But lock-in does not necessarily follow from path dependence, as another example of path dependence—information cascades— illustrates. Information cascades arise when people make choices sequentially, knowing only the prior actions of other people, not the information they had. Suppose as a stranger in a town, with no local knowledge or access to reviews, you are looking for a place to eat and come upon two restaurants. If one of them is crowded and the other is deserted, you will likely infer that the first is the better choice. When a choice is sequential, those who make decisions later may base their choices on inferences from what others have done, even setting aside their own information. As a result, the individuals who act first may set in motion an information cascade, whether or not their choices are the best.[15]

Two demonstrations of path dependence illustrate the difference between increasing returns and information cascades. The classic example of increasing returns, from the work of the mathematician Gyorgy Polya, involves an urn of infinite capacity, which starts out with one red marble and one white marble. Without looking inside, an individual chooses one marble in each round, returns it to the urn, and adds another marble of the same color as the one picked at random. After each round, the probability of the next marble being red exactly equals the proportion of red in the urn. Depending on early random choices, the makeup of the urn will become locked in as marbles of one color or the other come to dominate.[16]

In a second demonstration—this time of an information cascade—an urn containing three marbles may be either majority-black (two black, one red) or majority-red (two red, one black). Unable to observe the contents, subjects draw one marble from the urn, put it back, and announce their guess to onlookers as to whether the urn is majority-black or majority-red. The onlookers cannot see which color marble has been drawn. If the first subject

draws a black marble and makes her best guess, she will announce that the urn is majority-black. If the second subject also draws a black marble, his best guess will be the same. But if the third subject then draws a red marble, she may put aside her own information because her best guess, based on the two earlier picks, will still be that the urn is majority-black. In fact, the urn may be majority red, but by that point, chance events—the first two subjects each drawing a black marble—will have started an information cascade.[17]

This kind of path-dependent process unfolds in many situations of sequential choice, as people who act later base their choices on what they know about earlier choices, not simply out of mindless imitation but because they infer that the earlier choices reflect more or better information. For example, in an online experiment testing social influence, visitors to a music website were invited to download free songs by little-known bands and then randomly assigned to eight different "worlds." In worlds where visitors could see the cumulative downloads of previous visitors, songs that got an early lead rose to the top—but in other worlds, different songs rose and remained at the top. The stronger the social influence, the more unequal and unpredictable were the outcomes. "Quality" mattered less than luck and cumulative advantage.[18]

Although increasing returns and information cascades both exhibit path dependence, the mechanisms and outcomes are different. While direct benefits drive the increasing-returns process, information effects—inferences from other people's previous choices—drive the cascade. And since the inferences reflect limited information, the outcome of the cascade is vulnerable to additional information, which may not be costly. For example, if the subjects in the second urn experiment were to announce the color of the marbles they each draw instead of their guess about the makeup of the urn, the cascade would end, and the group would quickly arrive at the right answer. So while increasing returns often lead to lock-in, the outcomes of cascades are highly changeable. Cascades primarily explain short-term phenomena such as fads and fashions, though they may have lasting effects if they trigger an institutional or political change that becomes entrenched through other means.[19]

Chance, Choice, and Political Lock-In

The idea of increasing-returns path dependence has had wide influence in the analysis of social and political institutions.[20] The model has been so influential, in fact, that it has been stretched to apply to cases of path dependence that are fundamentally different. Like some technologies, institutions and societies have key branching points in their history when contingent events or minor influences may tilt development in one direction or another, leading to an outcome that becomes increasingly costly to undo. Those costs may result partly from the mechanisms responsible for increasing economic returns. Like industrial plants and complex technological systems, political institutions have large setup costs.[21] Just as firms achieve learning economies from experience in production, so party leaders and high-level bureaucrats may acquire mastery in organization. And just as there are coordination effects in the economy, there are bandwagon effects in politics. Adaptive expectations have their direct counterpart in Carl Friedrich's "rule of anticipated reactions": Those in power often do not need to exercise it because others change their behavior in anticipation of what the powerful would do.[22]

But especially in the political cases of path dependence, there may be no increased utility or efficiency from sticking with an earlier choice. If choices about institutions become locked in, it may be because of self-reinforcing effects on power and beliefs and on the distribution of the gains and losses between winning and losing parties. The early choices may have initiated a chain of decisions that is difficult to unravel because of the elaborate web of arrangements that has grown as a result, entangling the interests of diverse groups. Wittingly or not, decision-makers may have set in motion self-reinforcing processes that, for better or worse, are hard to reverse. The economic model of lock-in is an amendment to the theory of perfect competition; the social and political cases of lock-in have no such reference point. What gets locked in is not necessarily any more or less efficient or functional than what would have happened otherwise.

Historically minded studies of path dependence often see the inflection point of change as a *critical juncture*, the outcome of

which leaves *legacies* that shape future development. Such studies tend to conceptualize social change as an alternation between relatively short bursts of change and long periods of stability, a pattern sometimes called "punctuated equilibrium," after the concept from evolutionary biology.[23] The focus on critical junctures, however, is not a necessary aspect of the theory; it works for some cases and not for others. It has served primarily as a way of reintroducing chance and choice—contingency and agency—into social explanations that are otherwise structural and deterministic.[24] In the increasing-returns model, chance events give an edge to one of several alternatives, and increasing returns to that choice drive the system from openness to closure. In political models of path dependence, choice matters because contingent historical events expand the feasible set of alternatives for whoever has power at the time choices open up. Critical junctures, Giovanni Capoccia and Daniel Keleman write, are moments when structural constraints are "significantly relaxed for a relatively short period, with two main consequences: the range of plausible choices open to powerful political actors expands substantially and the consequences of their decisions for the outcome of interest are potentially much more momentous."[25]

Still, even after such "momentous" choices are made, there may be opportunities for a variety of counterstrategies to limit or redirect institutions that are otherwise entrenched. When barriers to outright reversal are high, the opponents of a policy or institution may succeed in blocking adaptations in response to new practical realities, producing a condition Jacob Hacker calls "drift." For example, as work has evolved in the past half century away from standard, full-time employment, the opponents of broad protections for workers have limited their extension to people with part-time or other contingent jobs. Short of formal revision, the opponents of an institution or policy may also try to convert it to different purposes.[26] Adopted to protect the rights of African Americans after the Civil War, the Fourteenth Amendment became a basis for upholding the rights of corporations.

The development of institutions is politically path dependent and results in lock-in when two conditions are fulfilled: Historical contingencies motivate and enable political actors to change institutions

and choose among alternative rules and structures, and the long-run institutional outcome "remembers" those choices because of self-reinforcing effects that constrain further change. The historical contingencies may arise because of chance events, the sequence in which events occur, or the intersection between changes in different spheres (for example, between international conflict and domestic politics, as when a war enables leaders to raise taxes and make other changes they could not make in peacetime). A large class of events, originating both internally and externally, can break down entrenched structures and create opportunities for alternative constitutive choices. Examples include international and civil conflicts, economic crises, and natural disasters. Not all such moments are brought about by adversity; growth spurts in population and wealth may also become critical junctures by simultaneously creating new pressures and opportunities for change. Foundings of various kinds—the creation of new states, colonies, and communities; the establishment of new forms of political and social organization, new taxes, and public programs; and the advent of new technologies—are among the prime occasions for the formulation of new constitutive rules and forms of organization.

In some cases, critical junctures may just be switch points between "alternative tracks" that have already been laid out in other societies or other domains of the same society. But to see critical junctures exclusively in these terms is to underestimate the potential for social and political creativity. New paths may emerge. Critical junctures may be constitutive moments when alternatives are invented and designed and the history of ideas intersects the history of power. When old institutions and practices no longer work—or at least when people come to power who hold that belief—the window may be open for those in power to search for new ideas, and for new ideas to find their way to power.[27] People in search of solutions are not necessarily limited to ideas developed within the domain of the immediate problem at hand. They often have multiple roles and relationships, live in societies with competing institutions and ideas, obtain information from a distance as well as locally, and have the capacity to recognize failure and reflect critically on a range of experience. While "learning by doing" does generate increasing returns, people learn different lessons from other people's doing as well as their own, which they sometimes remix and apply across domains.

These recombined and transposed ideas may then become the basis for the emergence of new institutions, technologies, and cultural forms.[28] These are moments not of path dependence but of path departure, or at least of paths bent in new directions. Yet while ideas are crucial to such transformations, they are also subject to their own tendencies toward entrenchment.

SOCIAL STRUCTURE AND CULTURAL ENTRENCHMENT

Changing our beliefs might seem easy to do. After all, believing something different requires no physical effort, no expenditure of resources, and no originality of thought; merely accepting someone else's beliefs will do. Yet beliefs are often tenacious because we cannot separate what we believe from who we are, and we generally do not hold beliefs by ourselves alone. Many of our core beliefs we hold in concert, together with other people, often under the sway of institutions that have inculcated those beliefs from an early age. When we share beliefs with others, we often share rituals and holidays, moments of grief and celebration, and rules for living. Those shared beliefs and experiences may be constitutive of our sense of self and community—they define who we are in one another's eyes. Giving up a belief may set off a chain of consequences that threatens our faith and identity, closest relationships, and public standing—possibilities that may be so painful as to be literally unthinkable.

From a logical standpoint, a belief system is entrenched when people do not change their beliefs, or make only superficial adjustments, in the face of contradictory evidence. If we are unsympathetic, we may describe their responses as "dogmatic" or "ideological." Even the most perfectly rational individual, however, would not necessarily give up an entire belief system on the appearance of a single piece of contrary evidence. Rationally, the response should also depend on other evidence in favor not only of that belief but of other beliefs that are logically interconnected. In general, one belief is more epistemically entrenched than another in a belief system when an individual rationally holds on to that belief despite conflicts between the two, perhaps because the first is more useful in explaining a wider range of phenomena.[29]

From a sociological viewpoint, beliefs are entrenched when they persist despite the stress of contradictory evidence, dissonant experience, and social pressures for revision. Cultural entrenchment arises from a combined epistemic and social process: the binding together of beliefs and practices with social ties and institutions, entangling them in bundled systems that emerge historically and resist pressure for change. Those bundled systems may also include technologies and other material features of the built world. At the individual level, beliefs are embedded in social relations and social structure and, at an institutional level, incorporated into dominant institutions and propagated by them. The mechanisms of entrenchment at these two levels are different, and they do not necessarily produce the same result.

Embedded Beliefs

On many matters of opinion and taste, people may hold a belief one day and change it the next without worrying about being consistent or occasioning any distress for themselves or others. They may drift from one opinion to another on public issues depending on their recent experiences or what they have heard on the news, particularly from figures they respect. But beliefs that sit at the core of individual and group identity, or that serve as well-recognized symbols of membership and shared worldviews, are not so easily given up. The threshold of adoption for new constitutive beliefs and related symbols of identity and social practices is likely to be high. Reaching that threshold may require reinforcement and affirmation from others, perhaps even a severing of old ties and the formation of new ones.

The concept of a "threshold of adoption" for a change in beliefs is analogous to the impediments created by onerous rules of change and high costs of change.[30] None of these guarantees permanence; they create hurdles for constitutive change, whether in institutions, technologies, or cultural forms. By the same token, they may enable a change, once adopted, to become entrenched in turn. So just as we have asked what mechanisms lead to exigent rules of change and to high costs of change, we can inquire into the mechanisms that raise the threshold of adoption for new beliefs.

Individual and group identities arise, in the first instance, from the bonds people form, usually at an early age, from their immediate social relations. These attachments, Clifford Geertz writes, stem from the "assumed givens" of kinship and locality, of being born into a religious community, speaking a particular language or dialect, and following particular social practices—"congruities of blood, speech, custom, and so on [that] are seen to have an ineffable, and at times overpowering, coerciveness in and of themselves."[31] When I noted earlier that some aspects of social reality are taken to be natural and objective aspects of the world, I was referring to the same phenomenon of "assumed givens." It is from those givens that people derive many of the beliefs that they *think with* (for example, social categories), as opposed to the beliefs they *think about*. The taken-for-granted categories include distinctions between "us" and "them," which define who belongs and can be trusted and who is an outsider and perhaps an enemy.
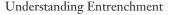
Stepping outside those givens is inherently difficult for anyone who inhabits them. To be sure, many people now remake their identities during their lives, especially when they live in diverse communities or are able to move to one. But the social networks and hierarchies of more homogenous communities may considerably raise the costs of breaking away. Accepting a new belief may risk a loss of social connections and reprisals from the group, especially from people with greater power. Beliefs are more strongly entrenched when an individual's social ties are more embedded. In a social network, an embedded tie is a tie between individuals whose neighbors (in a social, not necessarily a geographical sense) also have ties with one another, as in a close-knit community where neighbors all know one another. People with dense, embedded ties are likely to have less exposure to new beliefs, and if they are exposed to alternatives, a high threshold for adopting them. The result may be the "closure" of a network and the local entrenchment of beliefs—resistance to change introduced from outside. The threshold of adoption will be greater still if the locally powerful are determined to keep out disruptive external influences.

Different thresholds of adoption affect how beliefs spread. When a new belief or new piece of information fits readily into existing frameworks and confirms preexisting biases, the threshold of

adoption is generally low. Like highly contagious viruses, such be-
liefs can spread through a single contact—old-fashioned word-of-
mouth sped up today by social media. People may learn more from
casual acquaintances who have new information than from kin and
close friends, whose knowledge is likely to be redundant with their
own. This is the "strength of weak ties," the interpersonal basis on
which new information and memes can jump from one group to
another.[32]

But when new information and beliefs conflict with existing
frameworks, and accepting them entails substantial personal cost, a
single contact with a weak tie is unlikely to be enough to get peo-
ple to change. Before they will revise beliefs that affect their iden-
tity, faith, and social position, they may require multiple sources of
activation and reinforcement—for example, from early converts
who lend legitimacy to new beliefs and provide alternative sources
of solidarity and emotional energy.[33] Consequently, the diffusion of
such identity-changing and socially disruptive beliefs usually takes
a different form, involving intensive, locally focused communica-
tion and personal relationships. Religious and political movements
that have sought to change people's identities and commitments
have necessarily proceeded on that basis. Here we come full circle,
back to questions about strategic entrenchment, now in connection
with the cultural constitution of power.

Institutional Deepening

The dominant institutions in a society do not necessarily reach
deep into most people's lives. They may reach only the metropoli-
tan centers, not the countryside; just the higher social strata, not
those below them; only what people say publicly, not what they say
in private, much less what they think. In Czarist Russia, according
to Florian Znaniecki, "the vast majority of peasants were utterly
unconscious that they were supposed to belong to a Russian soci-
ety united by a common culture."[34] The French Revolution may
have "invented" the modern nation-state, but France's national cul-
ture, according to Eugen Weber, penetrated rural areas slowly. So
persistent were local languages and dialects that French was a for-
eign language for nearly half the children reaching adulthood in

the late 1800s.[35] Mass conscription into national armies, national educational systems, and national media in the twentieth century all contributed to the deeper cultural penetration of the nation-state into local communities, individual lives, language, and popular consciousness.

Institutional deepening, as I will call this process, is not limited to the state's penetration of society. The term "democratic deepening" refers to the integration of democratic ideas into popular thought and political practice.[36] Technological systems may become so pervasive that the assumptions embodied in them become a cultural subconscious. The market can also vary in how deeply it permeates social relations and everyday thinking, even thinking about the self (or, as a marketing consultant might put it, your personal brand). Political, religious, and economic institutions often become entrenched in a society's metropolitan core and among its elite before extending to its periphery and down to subordinate groups. This was the pattern in Europe from the late medieval to the modern era in the spread of manners governing interpersonal relations, basic bodily functions, and eating (the classic case is the spread of the fork from court society to the middle classes).[37] Institutional deepening is not synonymous with hegemonic imposition and social control; the sources of institutional deepening come from below as well as above. Adopting the ways of dominant classes and institutions is for many people the means of escape from poverty or stifling parochialism and entry into more varied and complex cultural experiences.

As institutions develop, they often demand more of people even as they create wider opportunities for them. As I noted earlier, those who control wealth and power cannot just sit on their accumulations; they have to renew them lest they become vulnerable to challengers. Eliciting moral commitments from others, in part by elevating institutions to a sacred trust and a higher cause, is part of the continuing process of replenishing institutional power.[38] Institutional deepening also typically involves systematizing beliefs and practices, turning them into the more structured form of an ideology. Ideologies are weaponized ideas, critical to the identity-shaping ambitions of proselytizing religions, revolutionary parties, and nationalist movements.

Since states have to categorize people for administrative and statistical purposes, they are necessarily in the business of shaping individual and group identities. Both the distinctions they make and the inferences they draw from those distinctions are important political choices. Religion or race, for example, may be either highlighted or banned as a relevant category for decisions about employment, educational admissions, and other purposes. The social categories states adopt, or allow private decision-makers to use, affect how people organize themselves in relation to government. If politics is partly about who gets what, the choice of official categories affects who the who is in the first place. Asked to fill out official forms from an early age, people learn who they are partly from the options presented to them. The choice of categories used in censuses and other official data also affects what becomes known and measurable in a society, which has its own consequences. The more extensive the scope of state intervention in social and economic life, the more its categories are likely to frame both personal identity and the understanding of how society as a whole is constituted.[39]

The two social processes I have been describing for the formation of individual and group identities are not cleanly separated. The attachments Geertz wrote about, which he called "primordial," typically descend not from time immemorial but from long-forgotten political struggles that shaped the structures of kin and community. Social categories and identities that start out at the level of social relations may move up to the dominant institutions; those that start out in the dominant institutions may move down to everyday relations. At the individual level, Andreas Wimmer points out, an ethnic boundary consists both of categories that divide the social world into "us" and "them" and of social scripts that indicate how to relate to members of different groups.[40] At any given time, though, the officially drawn social boundaries may not match the boundaries the people in those groups draw for themselves. The official and local "maps" may not agree on who belongs where, much less on how they ought to act toward one another. This potential dissonance applies more generally. Beliefs entrenched locally do not necessarily match beliefs entrenched in the state or other dominant institutions. The results of different processes of entrenchment may be in tension with each other—or outright

contradiction—and rather than being incidental misalignments, those conflicts may be of central significance to a society.

ENABLING CONSTRAINTS, TRAPS, AND CONTRADICTIONS

Institutions last, according to some theories, because they fulfill the needs of society or satisfy demands for efficiency. As should be clear from the preceding discussion, I do not adopt either of those views, but it is a pity they are not correct. If an unfailing social or economic logic predictably weeded out dysfunctional and inefficient institutions, all societies would be more harmonious and efficient, and progress would be universal. History has not been so kind. Dysfunctional and inefficient institutions have often been highly agreeable to people with sufficient power to maintain them. Nor have societies had the unity and coherence that these and other theories suggest. If a single imperative force, like a great magnet, pulled all the elements of a society into alignment, social explanation would certainly be easier. We would only need to understand the magnet, whether it was individual rationality, class interest, or a hegemonic culture.

Instead, competing forces push institutions in different directions, often with contrary effects that have been historically overlaid on one another. Many aspects of a society are like the meandering streets of old cities: the entrenched results of paths of activity laid down long ago for reasons no one remembers, persisting because people have grown attached to their own ways and byways, and the costs of tearing them up and carrying out a master plan would be too great.

While not necessarily advancing interests in efficiency, functionality, or unity, the mechanisms of entrenchment I have set out do enable constitutive rules and other foundational elements in a society to withstand pressure for change. Strategically creating facts on the ground may make the outcome of conflict a fait accompli and consequently deter challenges; the deliberate adoption of onerous rules of change may make foundational decisions hard to undo. Early choices about technologies and institutions may get locked in because of increasing returns. Other choices may get locked in politically because of who happens to hold power or to

acquire it at a moment of constitutive choice, before the window of opportunity closes and a do-over becomes impossible. Embedded social ties raise the local threshold of adoption for new beliefs about core questions of identity, while dominant institutions propagate social categories and cultural forms, impressing them more deeply in social structure and popular consciousness.

These mechanisms of entrenchment fall into a pattern (see table, "Summary of Conceptual Framework"). Under each of the general forms (strategic entrenchment, lock-in, and cultural entrenchment), there are paired types, varying in the extent to which they rely on institutionalized systems of authority and claims of legitimacy. The use of brute facts on the ground for strategic entrenchment relies on raw power and a preponderance of resources. Increasing returns lock in path-dependent outcomes through material advantage. Embedded social ties entrench beliefs through local and direct interpersonal pressure. The second set of mechanisms—rules of change, political lock-in, and institutional deepening—all

Summary of Conceptual Framework

	Strategic entrenchment	Lock-in	Cultural entrenchment*
Force/material advantage/pressure	Created facts on the ground; faits accomplis	High costs of change from increasing returns, cumulative advantage/ disadvantage	High threshold of adoption for new beliefs and identities from embedded social ties
Institutionalized system of legitimate authority	Exigent rules of change; deliberately institutionalized supporting interests	Political lock-in; high emergent costs of change from choices at critical junctures	High threshold of adoption for new beliefs and identities from institutional deepening

Note: The terms listed in each box are illustrative, not exhaustive.
* Cultural entrenchment may develop through strategic action (as in religious or ideological proselytizing) or through cumulative and emergent effects.

call for more complex formal institutions. These are all ways in which foundational rules and relations become resistant to pressure for change.

To acknowledge that institutions, technologies, and cultural forms become entrenched is not tantamount to endorsing any form of historical or structural determinism. None of these mechanisms spells the end of history. They create tenacious structures, not eternal ones. As the following chapters illustrate, entrenched structures may ultimately fall victim to external shocks like wars and depressions; to cumulative changes in economic and social conditions that prevent rules and arrangements from working as they had in the past; to their own internally destabilizing effects; and to transformations in moral beliefs and political regimes to which the institutions are closely linked. Entrenched regimes may have vulnerabilities that no adversary has yet figured out how to exploit. "Entrenchment," Steven Teles points out, "is the joint product of the structure of the incumbent regime and the failures of rival agents"—if, that is, there are rivals of any consequence.[41]

Understood in this way, entrenched institutions have a range of possible consequences that can be divided, from a moral and political standpoint, into three general types, according to whether they enable or constrict freedom and human welfare, or are internally contradictory.

Ideally, entrenchment is a basis of enablement—enabling not the powerful alone but society as a whole, and especially those with less wealth and power, to secure opportunities for greater flourishing. This is the vision of constitutionalism as a set of enabling constraints, ultimately empowering to those who would otherwise have no power at all. Entrenchment, as I suggested earlier, implies constraints on the reversibility of past decisions and on paths of future development, and those constraints may suggest that entrenchment only shrinks the set of feasible options for individuals and societies. But especially when entrenched constraints reflect mutual agreement or a public deliberative process, they may also create new alternatives that would otherwise be infeasible, and they may improve the quality of decisions from the standpoint of democratic values.

The concept of an enabling constraint is fundamental to the ideal of the rule of law, and indeed to any system of binding rules.

People are able to act together more effectively when they have greater clarity about the behavior of others and means of holding them to expectations. By constraining changes in rules, entrenchment may take this institutional solution to collective-action problems to a higher level. An entrenched constraint is enabling if it filters out options for later changes that the affected individuals or groups, knowing their own limitations, would rationally prefer to have closed off.

It may seem counterintuitive that people would willingly choose to deny themselves alternatives, but there are well-recognized reasons for making precommitments.[42] In the paradigmatic case of a self-imposed constraint, Ulysses has his crew bind him to the mast and tells them to ignore his cries when their boat comes within earshot of the Sirens. A more prosaic example is setting your alarm clock for an early hour and putting it too far away for you to reach from bed. In both cases, the precommitment reflects an anticipated weakness of will.

Mutually imposed constraints sometimes reflect the same logic. People enter into marriages and other binding relationships in part because they anticipate their own limitations as well as the other party's and expect to enjoy reciprocal benefits in return for credible commitments that they themselves will find hard to break. Constitutionalism ideally follows similar principles. In constraining its own powers, a liberal government announces that it is tying its own hands, anticipating weakness of will in the future, when, for example, circumstances might tempt its leaders to abrogate individual rights.

The actual motivations for entrenchment, however, often do not meet this high standard. In practice, entrenchment is liable to capture, with more malign consequences in some cases than others. Rather than tying their own hands, the parties interested in entrenching rules frequently want to tie someone else's hands, generally those of rivals and potential successors they distrust. Choices about institutional design are no different from other political decisions in being subject to capture by interests that hold power when the decisions come up. Concessions to preexisting power are the price that many democracies have had to pay to resolve conflicts at the moment of their founding. Constitutional provisions

often consequently protect wealth and privilege acquired in a pre-democratic period. The rules that constitutions entrench for that purpose—including rules for electoral and counter-majoritarian institutions, cases I take up later—may not turn out in the long run to serve the interests that sought them. But like the capture of regulatory agencies by the industries they are supposed to regulate, constitutional capture has at times succeeded, and it is an ever-present risk to democracies—as it is today.

Entrenchment fails in a particularly disastrous way when it results in institutional traps, arrangements that not only foreclose collective gains to society but also provide no means of self-correction. A repressive regime may condemn its subjects and itself to a low level of economic development if ruling elites seek to entrench themselves by blocking productive innovation out of fear that it will reduce their power.[43] "Opportunity hoarding" and other forms of elite social closure may deny excluded groups skills and other capacities that would redound to the advantage of society as a whole.[44] Increasing returns may perpetuate technological and institutional infrastructures that threaten a society's long-term prosperity and even its survival.

This is exactly the problem with the dirty-energy trap today. Sunk investments in the existing carbon infrastructure provide a massive base for increasing returns, simultaneously creating incentives to keep investing not just in fossil fuels but in fossil-fuel innovation (fracking, for example) and generating the political power to stymie alternative policies at the level that would be needed to overcome the fossil-fuel economy's self-reinforcing tendencies.[45] Health-care policy in the United States has some of the same features.[46] Escaping an institutional trap requires political power, but the very reason the institutions in these cases block an escape is that they are politically self-reinforcing—unless there are vulnerabilities in the incumbent regime that opponents can be mobilized to exploit.

In an institutional trap, a society is caught in a loop and cannot readily get out of it, but entrenchment can go wrong in another way as well, when institutions develop on the basis of principles that are in outright contradiction to each other. A social contradiction is not just a matter of moral hypocrisy (professing one thing

and doing another) or logical inconsistency (professing two things that cannot both be true). In a social contradiction, opposed principles and forms of organization clash with each other, lead to overt conflict, and make change unavoidable. Opposed elements on both sides may be entrenched, as was true in the struggle over slavery in the United States, in which case the resolution requires transformative change at the deepest constitutive level.

Like democratic governments, democratic societies require a "constitution," not a single formal document but a body of entrenched principles, rules, and arrangements that counteract tendencies toward personal and class domination and the monopolization of wealth and power. The struggles over the constitution of society would deserve our attention for their historical interest alone, but they are all the more important because of their continued bearing on freedom and human welfare. In the next two chapters, I take up two cases of oligarchic entrenchment that stood in the way of democracy as we have come to understand it—Europe's landed aristocracies and the slaveocracy of the American South. I then turn in the following two chapters to the entrenchment of core features of constitutional democracy and the welfare state—to democracy's many compromises with wealth, and wealth's many compromises with democracy in the liberal order that developed in the nineteenth and twentieth centuries. Whether that order will survive or a substantially different one will emerge in its place is the subject of a final chapter on oligarchy and populism, constitutional capture, and the politics of entrenchment today.

Notes

Introduction

1. John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son and Bourn, 1861), 127–128.

Chapter One. Understanding Entrenchment

1. John R. Searle, *Mind, Language and Society: Philosophy in the Real World* (New York: Basic Books, 1998), 123–124. The application of this distinction to society departs from the original Kantian meaning in that social institutions are not objects of pure intuition. When applied to social rules, the constitutive/regulative distinction defines a range rather than a binary.

2. Giuseppe Tomasi di Lampedusa, *The Leopard*, tr. Archibald Colquhoun (New York: Pantheon, 1960), 40.

3. This conception implies a rejection of other conceptions of institutions as self-enforcing conventions or as shared scripts for action. For a relevant discussion (although a still more circumscribed definition of institutions), see Wolfgang Streeck and Kathleen Thelen, "Introduction: Institutional Change in Advanced Political Economies," pp. 1–39 in Wolfgang Streeck and Kathleen Thelen, eds., *Beyond Continuity: Institutional Change in Advanced Political Economies* (Cary, NC: Oxford University Press, 2005).

4. Jon Elster, *Ulysses and the Sirens: Studies in Rationality and Irrationality* (Cambridge: Cambridge University Press, 1979), 77, 113.

5. Peter Hedström and Peter Bearman, "What Is Analytical Sociology About? An Introductory Essay," in Peter Hedström and Peter Bearman, eds., *The Oxford Handbook of Analytical Sociology* (New York: Oxford University Press, 2009), 3–24.
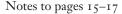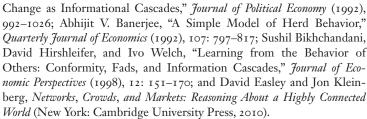
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7. H. L. A. Hart, *The Concept of Law* (New York: Oxford University Press, 1963), 78–95 (quotation: 92).

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10. On the forms of cumulative advantage, see Thomas A. DiPrete and Gregory M. Eirich, "Cumulative Advantage as a Mechanism for Inequality: A Review of Theoretical and Empirical Developments," *Annual Review of Sociology* (2006), 32: 271–297.

11. W. Brian Arthur, "Competing Technologies, Increasing Returns, and Lock-In by Historical Events," *Economic Journal* (1989), 99: 116–131; W. Brian Arthur, *Increasing Returns and Path Dependence in the Economy* (Ann Arbor: University of Michigan Press, 1994). Paul Krugman disputes Arthur's claims of originality. See "The Legend of Arthur: A Tale of Gullibility at *The New Yorker*," *Slate* (January 15, 1998), at https://slate.com/business/1998/01/the-legend-of-arthur.html.

12. Paul A. David, "Clio and the Economics of QWERTY," *American Economic Review* 75 (1985), 332–337. More recent research has called into question various aspects of the "QWERTY legend," including whether the original design was intended to slow down typists. See Koichi Yasuoka and Motoko Yasuoka, "On the Prehistory of QWERTY," *Zinbun* (2009/2010), no. 42, 161–174.

13. Robin Cowan, "Nuclear Power Reactors: A Study in Technological Lock-In," *Journal of Economic History* (1990), 50: 541–567 (quotations: 552, 567).

14. Paul A. David and Julie Ann Bunn, "The Economics of Gateway Technologies and Network Evolution: Lessons from Electricity Supply History," *Information Economics and Policy* (1988), 3: 165–202.

15. On information cascades, see Sushil Bikhchandani, David Hirchleifer, and Ivo Welch, "A Theory of Fads, Fashion, Custom, and Cultural

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16. Brian Arthur et al., "Path Dependence Processes and the Emergence of Macro-Structure," *European Journal of Operational Research* (1987), 30: 294–230.

17. For the original experiment, see Lisa R. Anderson and Charles A. Holt, "Information Cascades in the Laboratory," *American Economic Review* (1997), 87: 847–862.

18. Matthew J. Salganik, Peter Sheridan Dodds, and Duncan J. Watts, "Experimental Study of Inequality and Unpredictability in an Artificial Cultural Market," *Science* (2006), 311: 854–856.

19. In other words, cascades may have long-term consequences, but it is not the cascade itself that locks in those consequences. For an example of the application of the model to a political revolution, see Susanne Lohmann, "The Dynamics of Information Cascades: The Monday Demonstrations in Leipzig, East Germany, 1989–91," *World Politics* (1994), 47: 42–101. For a model showing how unpopular norms may be socially enforced (that is, through interpersonal pressure rather than top-down authority) as a result of a cascade, see Damon Centola, Robb Willer, and Michael Macy, "The Emperor's Dilemma: A Computational Model of Self-Enforcing Norms," *American Journal of Sociology* (2005), 110: 1009–1040. This is a model of "pluralistic ignorance," a condition in which a majority privately disbelieves in a norm but thinks others uphold it. In the model, the "false believers" become aggressive enforcers out of personal insecurity that they will be outed—and they drive what may appear to be lock-in of the norm. But because the root of the phenomenon is interpersonal ignorance, it takes only the willingness of people to disclose their true beliefs to break lock-in ("look, the emperor has no clothes"). So, like other information cascades, this is a case where the outcome is fragile—unless top-down authority reinforces the outcome of the cascade.

20. For some influential, formative works in the migration of path dependence into historical institutionalism, see Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (New York: Cambridge University Press, 1990); Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 2002 [1991]), 27–39; and Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton, NJ: Princeton

University Press, 2004). Others adding to, modifying, and criticizing the theory of path-dependent development include Jack A. Goldstone, "Initial Conditions, General Laws, Path Dependence, and Explanations in Historical Sociology," *American Journal of Sociology* (1998), 104: 829–845; James Mahoney, "Path Dependence in Historical Sociology," *Theory and Society* (2000), 29: 507–548; B. Guy Peters, Jon Pierre, and Desmond S. King, "The Politics of Path Dependency: Political Conflict in Historical Institutionalism," *Journal of Politics* (2005), 67: 1275–1300; and Scott E. Page, "Path Dependence," *Quarterly Journal of Political Science* (2006), 1: 87–115.

21. North, *Institutions, Institutional Change, and Economic Performance*, 95.
22. Carl J. Friedrich, *Man and His Government* (New York: McGraw-Hill, 1963), 203.
23. For the biological theory, see Stephan Jay Gould and Niles Eldredge, "Punctuated Equilibrium Comes of Age," *Nature* (1993), 366: 223–227. For examples of the borrowings by social scientists, see Stephen D. Krasner, "Approaches to the State: Alternative Conceptions and Historical Dynamics," *Comparative Politics* (1984), 16: 223–246; Frank Baumgartner and Bryan Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993).
24. For example, James Mahoney writes that in historical sequences characterized by path dependence, "contingent events set into motion institutional patterns or event chains that have deterministic properties." Mahoney, "Path Dependence in Historical Sociology," 507.
25. Giovanni Capoccia and Daniel Keleman, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* (2007), 59: 341–369 (quotation: 343).
26. Jacob S. Hacker, "Privatizing Risk Without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States," *American Political Science Review* (2004), 98: 243–260; see also Kathleen Thelen, "How Institutions Evolve: Insights from Comparative-Historical Analysis," in James Mahoney and Dietrich Rueschemeyer, eds., *Comparative Historical Analysis in the Social Sciences* (New York: Cambridge University Press, 2003), 208–240; Eric Patashnik, *Reforms at Risk: What Happens After Major Policy Changes Are Enacted* (Princeton NJ: Princeton University Press). Patashnik uses the term "entrenchment" for one of four scenarios for post-enactment politics, along with erosion, reversal, and reconfiguration.
27. This is prime territory for "constructivist" or "constitutive" analyses of institutional change. The importance of "constitutive moments" is a central theme in my book *The Creation of the Media: Political Origins of Modern Communications* (New York: Basic Books, 2004). For discussions of constructivist and constitutive analysis, see Colin Hay, "Constructivist Institutionalism," in Sarah A. Binder, R. A. W. Rhodes, and Bert A. Rockman,

eds., *The Oxford Handbook of Political Institutions* (New York: Oxford University Press, 2009).

28. John F. Padgett and Walter W. Powell, eds., *The Emergence of Organizations and Markets* (Princeton, NJ: Princeton University Press, 2012). For a typology of "gradual but nevertheless transformative change," see Streeck and Thelen, "Introduction: Institutional Change in Advanced Political Economies."

29. Peter Gardenfors, *Knowledge in Flux* (Cambridge, MA: MIT Press, 1988), 87.

30. For the key work in this area, see Mark Granovetter, "Threshold Models of Collective Behavior," *American Journal of Sociology* (1978), 83: 1420–1433. Here I am particularly indebted to Damon Centola, "The Social Origins of Networks and Diffusion," *American Journal of Sociology* (2015), 120: 1295–1338.

31. Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973), 259. Geertz calls these ties "primordial," taking the term from Edward Shils, "Primordial, Personal, Sacred and Civil Ties: Some Particular Observations on the Relationships of Sociological Research and Theory," *British Journal of Sociology* (1957), 8: 130–145.

32. Mark Granovetter, "The Strength of Weak Ties," *American Journal of Sociology* (1973), 78: 1360–1380; Duncan J. Watts and Steven H. Strogatz, "Collective Dynamics of 'Small-World' Networks," *Nature* (1998), 393: 440–442.

33. Damon Centola and Michael Macy, "Complex Contagions and the Weakness of Long Ties," *American Journal of Sociology* (2007), 113: 702–734.

34. Florian Znaniecki, *Modern Nationalities* (Urbana: University of Illinois Press, 1952), 82; quoted in Philip E. Converse, "The Nature of Belief Systems in Mass Publics," in David E. Apter, ed., *Ideology and Discontent* (New York: Free Press, 1964), 237.

35. Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, CA: Stanford University Press, 1976), 67.

36. Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999), 18.

37. Norbert Elias, *The Civilizing Process*, rev. ed. (London: Blackwell, 1994 [1939]).

38. What I call "institutional deepening" has some overlap with Phillip Selznick's concept of "thick institutionalization." See *The Moral Commonwealth: Social Theory and the Promise of Community* (Berkeley: University of California Press, 1992), 235.

39. This paragraph draws on the first article I wrote on entrenchment: "Social Categories and Claims in the Liberal State," in Mary Douglas and David Hull, eds., *How Classification Works: Nelson Goodman Among the Social Sciences* (Edinburgh: Edinburgh University Press, 1992). A slightly expanded version appears in *Social Research* 59 (1992), 263–295.

40. Andreas Wimmer, "The Making and Unmaking of Ethnic Boundaries: A Multilevel Process Theory," *American Journal of Sociology* (2008), 113: 970–1022.

41. Steven Teles, *The Rise of the Conservative Legal Movement: The Battle for the Control of Law* (Princeton, NJ: Princeton University Press, 2008), 270.

42. For systematic discussions, see Jon Elster, *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* (New York: Cambridge University Press, 2000), and Stephen Holmes, "Precommitment and the Paradox of Democracy," in Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995).

43. Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012).

44. The term "opportunity hoarding" comes from Charles Tilly, *Durable Inequality* (Berkeley: University of California Press, 1998).

45. Daron Acemoglu et al., "The Environment and Directed Technical Change," *American Economic Review* (2012), 102: 131–166.

46. See my discussion of the "American health policy trap" in *Remedy and Reaction: The Peculiar American Struggle over Health Care Reform*, rev. ed. (New Haven: Yale University Press, 2013).

Chapter Two. Aristocracy and Inherited Wealth

1. Roy Porter, *English Society in the Eighteenth Century* (Harmondsworth: Penguin, 1984), 71.

2. Alexis de Tocqueville, *Democracy in America*, tr. Henry Reeve (New York: Schocken, 1961), 1: 39.

3. John G. Fleming, "Changing Functions of Succession Laws," *American Journal of Comparative Law* (1978), 26: 233–238 (quoting an unpublished paper by Friedman); for Friedman's later work on the subject, see Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Stanford, CA: Stanford Law Books, 2009).

4. Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Harvard University Press, 2014), 377–409; Robert J. Gordon, *The Rise and Fall of American Growth* (Princeton, NJ: Princeton University Press, 2016).

5. Jack Goody, Joan Thirsk, and E. P. Thompson, eds., *Family and Inheritance: Rural Society in Western Europe, 1200–1800* (New York: Cambridge University Press, 1976); Jack Goody, "Strategies of Heirship," *Comparative Studies in Society and History* (1973), 15: 3–20.

6. Henry Maine, *Ancient Law* (New York: Dutton, 1917 [1861]); Henry Cabot Lodge, "The Anglo-Saxon Land Law," in Charles Francis Adams, ed., *Essays in Anglo-Saxon Law* (Boston: Little, Brown, 1876), 55–120; David M. Rabban, "From Maine to Maitland via America," *Cambridge Law Journal* (2009), 68: 410–435.