

**Understanding Institutional Emergence:
Land Inheritance among Samburu pastoralists in Kenya**

Carolyn K. Lesorogol, Ph.D.
George Warren Brown School of Social Work
Washington University in St. Louis
August 2006

Introduction

The intergenerational transmission of wealth constitutes one primary avenue through which individuals gain access to productive resources necessary for their livelihoods. In the United States, for example, inherited wealth is a significant portion of overall societal wealth often representing a cumulative process occurring over several generations (Sherraden 1991, Rank 2004, Shapiro 2004). In many African pastoralist societies, such as the Samburu of northern Kenya discussed here, inheriting wealth in the form of livestock is the primary mechanism through which individuals (especially men) build herds on which they depend for survival. Differences in inherited wealth based on race, ethnicity, gender and socio-economic status are important in determining socio-economic differentiation among groups within and across societies. Those groups with greater access to wealth through inheritance are able to make significant investments in human and physical capital that help ensure their continued secure social status while those lacking such assets face greater risk and uncertainty regarding their and their offspring's social position.

In western industrial societies, inheritance practices have increasingly come under the purview of laws (including those regarding taxation) which codify historical practices. However, these are not static and do change over time depending on changing societal values and pressures for reform. In the west, a woman's right to own and inherit property has been increasingly recognized over the last century and laws have changed to reflect this recognition (Weissman 2005). In African societies, a variety of practices exist regarding inheritance of property. During and since the colonial era, modern legal systems have been imposed and developed in these countries, and many of these systems co-exist with "traditional" practices. In Kenya, for example, women's right to inherit property is acknowledged in some laws, but

customary laws are also recognized leading to practices that prevent women from inheriting or owning property (UN Habitat 2002, Kenya Land Alliance 2002).

Inheritance is an important institution within all societies and one that changes over time, but how and why do practices, and the norms that underlay them, change? What are the mechanisms through which new norms regarding social practices, in this case inheritance, arise, and furthermore, how do practices themselves become established as “the norm” in the sense of “the right way to do something”? This paper addresses these questions through an analysis of the emergence of new norms regarding land inheritance among Samburu pastoralists. This is a particularly apt case study due to the adjudication of formerly communally held land into individually owned, private parcels in the late 1980s. For the first time in this community, land became something that could be owned by individuals. This critical resource could now be bought, sold, leased, and inherited. This change in property rights, brought about by a particular historical trajectory (see Lesorogol 2002, 2003), created a space for institutional innovations in land use, including, importantly, land inheritance.

As some the original owners of land died in the 1990s and 2000s, inheritance began to occur (at least *de facto*), even though there were neither traditions of land inheritance nor much awareness about relevant national laws. Yet, the importance of inheritance for intergenerational transmission of wealth (land itself) and livelihood (access to land as a productive resource) are highly significant. Which practices of inheritance become established, and who gains and loses from them, will have important implications for land use and, more generally, social relations.

In the rest of the paper, I discuss recent research on emerging inheritance norms. The next section reviews theoretical perspectives on norms and institutional change, suggesting several key characteristics that constitute norms. This is followed by brief background

information on the Samburu and the process of privatization of land. Qualitative and quantitative findings on patterns of inheritance are then discussed and different inheritance practices are analyzed in terms of the key characteristics of norms in order to assess which practice(s) are likely to become normative. The final section draws conclusions and implications of the study.

Institutions, Norms and Change

Social institutions constitute a vast array of formal and informal “rules of the game” that are essential elements of social organization and function (North 1990). They are important because they specify the ways in which individuals are expected and allowed to behave as well as the consequences for not behaving appropriately (Ostrom 2005). In this sense they help to channel behavior in particular directions. This is critical for social order and cooperation because individuals’ actions are more predictable when rules are known and understood by members of the group. However, rules are only effective when they are enforced; thus, social institutions include what scholars call “enforcement characteristics”, essentially the range of sanctions or punishments that occur when rules are broken. Like the rules themselves, sanctions vary tremendously in their scope and scale ranging from disapproving looks, to fines, punishment, and social exclusion (prison or ostracism).

Norms represent a type of informal (usually unwritten) social institution consisting of shared understandings about proper behavior of individuals in a particular group. Their informal character does not mean that norms are unimportant or that violations of norms go unpunished. Compared to laws, which are usually found at very high levels of aggregation such as nation states, norms often exist at more localized levels and among small groups of individuals (e.g. you might find certain norms of behavior among the faculty in an academic

department or among family members). However, norms also occur at fairly high levels of aggregation such as cultural norms of dress, speech, and behavior that may be meaningful to thousands or even millions of people. In many African societies there have historically been no written statutes implying that all their social institutions are in that sense, informal, even though certain norms and practices might be dubbed “customary law”, particularly when they are referred to in modern laws.

Norms have a dual meaning—they refer both to practices that are commonly observed (what we “normally” do) as well as practices that have moral weight (what we “should” do) (Pillutla and Chen 1999). This is an important distinction because there may be practices that people normally do (like driving on the right or the left side of the road) that have little if any moral weight, although they are very important for maintaining social order and cooperation (in the case of driving rules, they help coordinate drivers actions to avoid accidents). These practices are sometimes called social conventions (North 1990) to distinguish them from value-laden norms. An interesting question is whether practices can move from being behavioral conventions, or regularities, to being norms (in the moral sense) or vice versa. Although both social conventions and norms are types of institutions, norms appear to be more meaningful while conventions are somewhat arbitrary in nature. For example, while one may obey driving rules out of fear of sanctions or the realization that it is safer to do so, one probably does not feel a moral commitment to following those rules. On the other hand, violating a norm of dress or language may induce internal guilt as one feels she is violating a moral precept.

A final characteristic of institutions that is important for this analysis is the distributional effects of institutions. Although social institutions are characterized by some level of consensus among those to whom they pertain, this does not imply that particular

institutional configurations are equally beneficial to all individuals or social groups. On the contrary, history is replete with examples of institutions that unequivocally benefited some groups more than others (e.g. slavery, voting rights, inheritance laws). Aside from blatantly unequal institutions, many institutions more subtly disadvantage particular groups (e.g. so-called glass ceilings that are often informal social networks that advantage “traditional” members such as white males, gender and racial stereotyping that affects job recruitment or hiring, property rights systems developed in one era that become less effective as population rises).

The unequal distribution of gains from institutions results from the unequal power among social actors who act to form and change institutions over time (Knight 1992, Ensminger and Knight 1997). Further, those who are disadvantaged by a particular institution have an incentive to challenge the status quo in hopes of improving their situation. This implies that institutional change will be an ongoing process and that conflict is an inherent part of that process. As a central feature of a system of property rights, norms of land inheritance clearly have distributional implications. Thus, it is important to consider which actors are involved in determining which practices are adopted and become “the norm”.

These characteristics of norms: regularity, moral weight, enforcement characteristics, and distributional consequences, should help to identify newly emerging norms of land inheritance among the Samburu. In the analysis below, I will distinguish the various practices of inheritance that are occurring along these lines in order to draw conclusions about which practice(s) appear likely to become “the norm”.

The Samburu and Land Privatization

Samburu are pastoralists living in north central Kenya. They number about 200,000, and herd cattle, sheep, goats, and in drier areas, camels. In terms of social organization, there is a primary division among people of the white cattle (nkishu naibor) and people of the black cattle (nkishu naarok) and these are further sub-divided into four sections each. Each section is composed of clans, sub-clans, and lineages. Clan identities are cross-cut by an age-set system, particularly important for men, in which boys are initiated in their teens into a named age-set in which they remain for life. Although members of clans tend to reside together and certain areas are associated with particular clans, Samburu have not historically been territorially organized according to clans. During the colonial period (1890-1963), the British government did attempt to create more of a territorial sense among clans by controlling grazing movements and appointing administrators (chiefs) according to clan. However, even through this period land remained communally held and there was considerable movement of people and livestock throughout Samburu territory (though colonial efforts at dividing and ruling ethnic groups did result in an overall decrease of territory accessible by Samburu as it was granted to other groups).

In the 1970s the government embarked on a land adjudication program in Samburu district. This was consistent with the national goal of establishing individual freehold title to land in most areas of the country. However, it was acknowledged that individual land tenure did not make sense in the drier pastoral areas where large tracts of grazing land were necessary for livestock production. Instead, the government registered groups of households as members of “group ranches” wherein title to land went to the group as a whole and there were limits placed on the ability of the group to transact land (e.g. no sales allowed without consent of

most group members). This system of adjudication occurred primarily in the highland areas of Samburu district, Lorroki plateau, due to its higher rainfall and greater productive potential. Most Samburu people did not clearly understand the purpose or importance of adjudication and many were indifferent to the process. Others agreed to join the group ranches in order to safeguard their claims to the land against incursions from other groups.

During adjudication, a few individuals, most of whom had either been educated or employed outside the district, realized that there was a legal provision allowing individual land claims. Several individuals made claims without the knowledge of their communities and were granted individual land parcels. In one community, Siambu, located on the northwestern edge of the Lorroki plateau, thirty-seven individuals made claims to the best land in the area—a large, flat, plain. However, unlike the few individuals in other areas whose claims went unnoticed by their communities until adjudication ended, the community in Siambu discovered these claims and opposed them. Six years of conflict ensued as the community members opposed to the private claims tried to stop the 37 individuals (see Lesorogol 2002, 2003 for details). In the end, through the intervention of the government, a compromise solution was arrived at—the 37 individual claims were nullified and instead the land was to be evenly divided among all the 240 resident households. This decision was carried through and in 1992 title deeds were issued for 240 parcels each about 23 acres in size.

This dramatic shift in property rights, from communal to private, has had numerous consequences for community members in Siambu. Land use has shifted from primarily pastoral to a combination of pastoralism and agriculture. People continue to graze their animals on their plots, on neighbors' plots (through agreements) and on adjacent forest and group ranch lands to which they have access. Agriculture has become more common with

about two-thirds of household cultivating some crops, primarily maize and potatoes, on small areas of 1-2 acres. In addition, households in Siambu rely on a range of income earning strategies such as wage labor and trade (in foodstuffs, timber, firewood, charcoal, alcohol, etc.), although livestock trade and consumption of livestock products continue to provide from 20% to 60% of total income (including monetized home consumption of milk) (Lesorogol 2005b).

Privatization of land has also had effects on attitudes and norms in the community. One striking change of attitude was the finding that almost all community members speak very positively about private land, even those who opposed privatization (Lesorogol 2005b). There is a widely shared perception that owning land is “modern” and that people who do so are more “developed” than their counterparts on communal land or group ranches. While some adherents of this view are actively engaged in farming or building permanent houses or other development activities, many have not altered their strategies much but still voice the sentiments. Positive evaluations of private land center on the idea of the autonomy of the land owner—no one can control what one does on his land, including elders who have historically had considerable authority over land use. This displacement of elders’ authority has been confirmed by experiments designed to detect adherence to elders’ authority (Lesorogol 2005a). Another common attitude about land is that selling it is wrong, and the relatively small number of land sales (constituting about 2% of the land area over the first 10 years following privatization) bears it out in practice (Lesorogol 2005b). Transferring land outside the household is discouraged, but intergenerational transfers, inheritance, have begun to occur in the 1990s. The following section introduces three patterns of inheritance observed during research in 2004 and 2005.

Land Inheritance: Emerging Practices

Privatization of land in Siambu created a need for new rules regarding inheritance of land, which have never existed before among Samburu people. When land was adjudicated, it was registered in the name of the household head. In almost all cases, and consistent with most land registration practices worldwide, this was the male head of household. There were a few cases of widows being named on the register and title deeds. Thus, most cases of inheritance occur following the death of the male head of household and involve a transfer from him (the father) to either his widow or his children. It is also worth noting that in none of the cases of inheritance discussed here has the original title deed actually been altered to reflect a change in ownership. In many cases, the title deed has never been collected from the land office in Nyahururu (a day's travel away). In cases where the title deed is in the possession of the household members, most do not understand the procedure for changing the name on the title or splitting it among family members. Others claim that collecting the deed or making a change will be prohibitively costly. This finding is consistent with other research showing that people tend not to adhere to the bureaucratic procedures involved in land registration and titling after the initial registration (Bruce and Migot-Adholla 1994, Shipton 1988). The absence of a land office in Samburu district dealing with private land, necessitating travel to neighboring Nyandarua district in order to make changes, makes this more difficult.

During research conducted in 2004 and 2005, patterns of land inheritance were investigated through in-depth interviews with those involved in sixteen cases of land inheritance (all that have occurred in Siambu to my knowledge). Interviews revealed three practices, each with an accompanying justification, that were most common: eldest son inherits father's land, youngest son inherits, and all sons inherit. First, there were those who believed

that inheritance of land should follow the norms of livestock inheritance, which, among the Samburu, is a form of primogeniture where the oldest son inherits his father's remaining livestock (and other possessions) upon his death. Not surprisingly, those who most strongly supported this view of inheritance were oldest sons who stood to benefit most if this system were extended to land ownership. However, even those who were not oldest sons recognized the logic of extending existing rules to the new situation, and many admitted that oldest sons had a strong claim based on the livestock precedent.

Second, some younger sons argued that they should inherit their father's land. Their argument hinged on the fact that at the time of privatization of land, only adult men received parcels. This meant that while many oldest sons received land, many younger sons (who were minors at the time) did not. Their claim to inherit land is based on an argument from fairness—since they did not receive land in the initial allocation, they should be the ones to inherit upon their father's deaths.

A third proposal was that land should be divided among all the sons in the family. Again, this argument was made from an equity standpoint—all sons are deserving of receiving land from their father. Some informants, generally younger and more educated ones, argued that equal inheritance was the national law and should, therefore, be followed. In addition, there were some informants who recognized that land is qualitatively different from livestock and that this means it may be undesirable to apply the same rules. For example, since land is not movable and does not increase (though it could become more productive) like livestock do, it should not be continuously sub-divided because this would result in uneconomically small parcels over time. This view would counter the idea of subdivision among all sons, though it is neutral regarding which son might inherit.

Informants were also asked about daughters' right to inherit. In almost all cases, the response was that daughters should not inherit because they leave the father's homestead upon marriage (which is generally patrilocal) and that their welfare is then the responsibility of the husband. Some acknowledged that unmarried daughters (an increasingly common phenomenon among Samburu) might be given some land to cultivate if they remained in the father's homestead. An exception to this was one widow who said she planned to divide her land among all her children, including daughters.

From Practice to Norm:

One way to assess the likelihood that one particular practice will become the norm for inheritance is to examine the existing practices in terms of the characteristics of norms discussed above and to discern which appears more likely to achieve normative status.

Frequency

The first characteristic of norms is that they are common regularities of behavior. There are still relatively few cases of inheritance in Siambu; the sixteen cases I discovered constitute about six percent of the total parcels, so it is difficult to generalize from these (though by its nature inheritance is something that only occurs gradually over time). The following table shows the distribution of cases by heir:

Table 1: Cases of Inheritance by Heir

Heir	Oldest son	Youngest son	All sons	Wife	Daughter	Other	Total
Number of Cases	5	2	2	5	0	2	16

The most common practice was for the oldest son or the widow to inherit. It is important to note that in most cases the widow is seen as holding the land on behalf of her sons. This is an

interesting parallel to the practice of men allocating livestock to their wives after marriage and wives passing these livestock on to their children (again, primarily sons). Indeed, in some interviews with widows and their sons it was clear that the sons viewed the land as theirs and did not see their mother as having any control over how land would ultimately be divided. Youngest sons have a special relationship to their mothers as they are the designated caretakers for their elderly mothers according to Samburu tradition. When asked to describe Samburu norms of inheritance many informants replied that oldest sons inherit from the father while youngest sons inherit from the mother, referring both to transfers of property but also to responsibilities that are allocated among sons. The oldest son not only inherits his father's remaining livestock at death, but also assumes his social responsibilities as head of the family including settling any outstanding debts and credits. The youngest son is responsible for the care of his elderly mother and thus may be favored by his mother as she passes on livestock to him throughout his life.

In order to gauge attitudes about inheritance from a larger sample than the sixteen actual cases, questions were asked on a structured survey that was administered to a random sample of 70 land owning households in 2005. Informants were asked to rank three possible practices of land inheritance in order of their preference. The three norms were: "oldest son inherits", "youngest son inherits", and "all sons inherit equally". Informants were also given the option to name another norm and include it in the ranking. The responses to this question are shown in Table 2. "Oldest son inherits" was ranked number one by almost 60% of informants, followed by "all sons inherit equally" with 28%. Only ten percent of informants chose "youngest son

Table 2: Rankings of Possible Inheritance Practices

Practice/Rank	1 n=69	2 n=66	3 n=65	4 n=5
Oldest son inherits	58%	35%	6%	0%
Youngest son inherits	10%	58%	28%	40%
All sons inherit equally	28%	6%	66%	40%
Other	4%	2%	0%	20%

inherits” as their top choice. Only five informants named another practice of inheritance, and usually it was “all children inherit”, including girls. The fact that very few informants named other practices suggests that the three practices are indeed the relevant ones under consideration at this time.

These results indicate that “oldest son inherits” is the most preferred option, with 85% of informants ranking it one or two. Almost a third of informants ranked “all sons inherit” as their first choice, but 66% ranked it last—perhaps demonstrating a split of opinion over this option. “Youngest son inherits” was ranked second or third by most respondents. However, it should be noted that the informants are land owners (or their spouses) and thus may not adequately represent the views of the youngest sons who lost out in the land sub-division originally. Preliminary analyses do not show strong correlations between gender or men’s birth order and their rankings of the norms. Oldest son inherits is the most common (with widows) practice actually observed and is also the most preferred option according to the survey data. Thus, in terms of a regularity of behavior, oldest son inheriting land is the strongest contender to become the normal practice.

Moral Weight

Moral weight is a characteristic that differentiates social conventions (or behavioral regularities) from norms. Thus, although oldest sons inheriting land from their fathers may be the most common practice at this time, it is important to consider the moral weight attached to each of the practices. Doing so requires us to look more closely at the practice of livestock inheritance as there is clearly moral weight attached to it and most informants refer to livestock inheritance as the backdrop against which to discuss land inheritance.

At first glance, oldest sons inheriting land appears to be a direct application of the principle of first sons inheriting livestock. That is, land is simply added on to the wealth of the father and transferred to the oldest son as part of his overall inheritance. Indeed, many oldest sons who are heirs refer to the process this way and by doing so make a claim for themselves as the rightful heir to the land as well as the livestock. Since no one who disputes that oldest sons have the right to inherit their father's livestock and that this is the right and proper way for inheritance to occur, this practice for land appears to have strong moral weight due to its consistency with existing, strongly shared, norms.

There are, however, some further complexities to consider. First, even though oldest sons inherit their father's remaining livestock at his death; most men transfer the bulk of their livestock to their sons (all of them, not just the oldest) during their lifetimes, either directly or through allocating it to their wives who then pass it on to their sons. Even girls receive a few head of livestock from their parents. This means that pre-mortem inheritance is very important in the case of livestock and, further, there is an expectation that all sons will receive livestock wealth from their father at some time.

Second, many men make declarations about the disposition of their possessions shortly before death. These oral wills are at the discretion of the man and offer an opportunity for him to diverge from the norm of oldest son inheriting. There is even a Samburu story about an oldest son who neglected to come to his father's home in time to hear his oral will (though he had been instructed by his father to come) and, as a result, the father left all his possessions to the youngest son (who showed up—having been told by his mother to do so!). Several informants related how their fathers had left oral wills regarding the disposition of their land. In one case, the father apparently told his youngest son that he, not the oldest son, would inherit his land. In the event, the oldest son has insisted on his claim to the father's land and this conflict remains unresolved.

A third complication is that, although oldest sons inherit their father's livestock, they are also expected to assume a caretaker role for the younger children (and wives) in the family. Many informants (including some oldest sons) emphasized this aspect of inheritance, and that it was wrong for the oldest son to be selfish with the wealth he inherited. Rather, as the new head of the family, he had a responsibility to attend to the welfare of younger siblings. If the father had many livestock, the oldest son might keep a few and give some to the other sons. He was also responsible for organizing the initiation of younger sons and the marriages of sons and daughters. Acknowledging this caretaker role, some oldest sons reported that although they had (rightfully) inherited their father's land, they intended to divide it among the younger sons to ensure that everyone had some land. Some of these intentions, however, have yet to materialize and are a source of conflict in several families as there is no agreement on which sons should be given and how the land should be divided. Indeed, most of the conflicts I observed over inheritance occurred when oldest sons were seen not to be exercising their

caretaker role adequately. Although oldest sons inheriting land appears to have considerable moral weight due to its consistency with livestock inheritance practices, much is expected of oldest sons including fair distribution of the father's assets among sons. This means, on the one hand, that failure to carry out these responsibilities often leads to dissatisfaction and conflict within the family and, on the other hand, that people also value equitable sharing of wealth.

This value placed on equitable sharing suggests that inheritance of land by all sons has some moral weight even though it does not fit as neatly into Samburu traditions of livestock inheritance. Since land is generally not transferred pre-mortem (at least not in a formal sense, though sons may live on and use their father's land) as livestock is, this equal sharing could only be achieved following the father's death. However, this practice is hindered by at least two factors. First, most sons who were adults at the time of adjudication have already received their own land parcels in their own names. From the standpoint of owning land, they already have a fair share. From the standpoint of equal inheritance, though, they would still be entitled to a portion of their father's land. Due to the way land was divided initially, inequality among sons has been built into the system. Some families recognize this and argue that the father's land should only go to those sons who did not receive land originally. Some oldest sons, though, do not agree, and are able to cite their right to inherit from their father as a means to get access to this additional land (even though many claim they will share it with their younger brothers).

The second factor hindering equal division of land among sons has to do with family structure and the nature of land. In polygynous families there are more claimants to land and, arguably, less desire by oldest sons to deal fairly with "step" brothers. In a couple of cases, younger sons have worked to cultivate their relationship with their father in order to safeguard

an inheritance. In one case, a younger son assisted his father to have a will written that names him as the heir, and he is in possession of his father's title deed (the father is still alive, though over 100 years old!). A few informants also worry that dividing the land among many individuals will lead to uneconomically small parcel sizes. At 23 acres, the parcels are fairly adequate for crop cultivation, at least compared to farm sizes in more densely populated areas of Kenya which are often less than one acre. For livestock grazing, of course, these parcels are small, but people continue to have access to pasture outside their private parcels so this has not become a critical issue, yet. This concern would suggest maintaining the integrity of parcels, often the rationale for primogeniture in landed systems historically (e.g. in Europe).

To sum up, equal inheritance by boys (or even, radically, by girls) resonates somewhat with livestock inheritance norms in that livestock are distributed (though not necessarily equally) among the sons, with daughters getting a few livestock as well. This pattern, however, differs from livestock inheritance in that it removes the role of the oldest son or mother as caretaker and is not done pre-mortem. Equal inheritance is also recognized in contemporary Kenyan law, and a few informants are aware of this. Thus, those seeking to adhere to government policy may be more likely to choose this pattern. Also, it may be simpler since it avoids the potential conflicts involved in the caretaker role of oldest brother or mother.

The third practice of inheritance—land being transferred from father to youngest (or younger) son(s) draws moral weight from its association with both equal division of wealth among sons and also the idea of the youngest son inheriting from his mother. In a couple of cases, when the father died during the adjudication process, his parcel was put in the name of a younger wife (in polygynous families), with the intention that she would hold the land for her sons. Interviews with these women reveal that they see their role primarily as caretaker for their

sons (in one case, daughters also). However, this practice is based on the particular way land was divided in Siambu originally so that younger sons missed out, and it seems unlikely to be sustained into the future. Most informants who currently have young children claim that they will leave the land to their oldest son or all their sons. Youngest son inheritance is appealing to the current young generation, the Lmooli, who missed out on land during the initial division. It is based on an argument of equity, which does have moral weight, but this argument will likely not hold for the next generation.

The underlying moral precept regarding resources, whether livestock or land, appears to be that all sons should get access to at least some resources to secure a livelihood. Thus, livestock are transferred pre-mortem, both directly from the father and through the mother, as well as post-mortem to the oldest son, who has caretaker responsibilities for other family members. While oldest son inheriting land has most resonance with traditional practice for livestock, in moral terms either oldest son inheriting or all sons inheriting would appear to have significant moral weight whereas youngest son inheriting appears to be an artifact of the particular historical process that brought about land privatization.

Enforcement Characteristics

With established social norms violations are punished in some way and the sanctions are familiar to members of the community. Among Samburu, norm violations are often punished with fines, but there are more intangible forms of punishment as well. For example, if the wishes of a parent expressed near death (the oral will) are not followed, there is a belief that the parent may exact punishment after death through a curse (Straight, in press). The absence of clear sanctions for violations of land inheritance “norms” is one signal that there is no clearly established norm as yet.

There are, however, conflicts over inheritance and these appear to hinge on perceived unfairness in the process, particularly in terms of the role of oldest sons as caretakers. In one case, the oldest brother continues to assert his land claim to his father's land even though most of the family believes the father intended the land to go to two younger sons. This case is complicated by the intransigent personality of the oldest son whom the community elders have been unable to deal with. In another case, an oldest son made initial assurances that he would divide some of his own land among his younger brothers (his father's land was left to the younger wife when he died during the adjudication process) but as his own (nuclear) family expands, his brothers suspect that he will renege on those assurances and instead only allocate land to his own sons. In a third case, an oldest son has refused to agree on any disposition of the father's land among himself and his brothers. Some of these cases have been referred to the sub-clan elders of the area, but no clear decisions have been taken; perhaps reflecting the lack of precedent for and experience with such cases. Other cases have been pursued with the government chief, but again, no definitive action is forthcoming. There appears to be a vacuum in terms of enforcement, indicating a need for further institutional innovation as well as greater consensus around what constitutes the "right" way to do land inheritance.

Distributional Consequences

The final consideration in determining how a norm becomes a norm has to do with the distributional consequences and the implications for social action. Clearly, access to land is important for livelihoods and it is clear from interviews and observations that everyone in Siambu values land ownership. It is also fairly clear that in actual cases of inheritance different actors behave strategically in order to secure land for themselves. Oldest sons stake their claims to their father's land based on livestock traditions. Youngest sons argue that they should

get land since they were left out during the original division. Some younger sons intentionally approach their fathers to make an oral or written will that makes them heir to the land. Widows hold the land for their sons. It is striking, however, that few people have actually attempted to change the names on title deeds, thus effecting a legal change of ownership. I think this is primarily due to their lack of understanding about the legal requirements and procedures as well as resource constraints. In several cases, though, informants made much of the fact that they were in possession of their dead father's national identity card, as if this somehow guaranteed that they would inherit! There is a vague understanding that they must be able to prove the death of the land owner in order to transfer land (though what is actually required is a death certificate) and possession of the ID card seems to be construed as evidence of that.

While individuals pursue their interests within their own families, there is little evidence of broader collective action to press for adoption of one particular norm. When asked whether they had discussed the issue of land inheritance outside their family, most said they had not. As noted above, the few cases that have been brought to the elders have not led to any definitive decisions neither for the specific cases nor in terms of a general rule. It is only the younger age-set, the Lmooli, who appear to be discussing the issue as a group, which perhaps is due to their relative lack of bargaining power in terms of both land and influence in the community. Beyond discussions, there was no evidence of concerted action among this group to press their case for land. Collective action might also be hindered due to the gradual and episodic nature of land inheritance—it is not something that happens to everyone at once and therefore has a low level of urgency in the community. This is ironic, given that the long term consequences of inheritance are of high importance to all community members.

Conclusion

According to this consideration of the characteristics of norms, oldest sons inheriting land from their fathers appears the most likely to become the established norm over time. It is one of the most frequently occurring practices (along with widows inheriting land, which often converts to oldest son's inheritance over time), it is the most preferred practice at this time, and it has considerable moral weight and resonance with existing inheritance norms. For all that, however, it may end up being a rather contentious practice, because notions of equity (for all sons—and maybe even daughters) and priority (of the oldest son) are co-mingled in ways that bring siblings into conflict. The absence of pre-mortem inheritance by parents means that oldest sons have greater responsibility and autonomy in how they deal with land and, at present, this is a common source of conflict. A further caveat to this conclusion is that many younger land owners claim they will divide land among all their sons. If these plans come to fruition, especially if written enforceable wills become more common, then equal inheritance may challenge primogeniture for normative status. This case also brings out the difficulties faced by a community where a de jure change in property rights creates a space for institutional innovation which is not rapidly filled. Although inheritance of land is ultimately of signal importance for everyone's livelihoods in Siambu, at present there is no sense of urgency to decide collectively on the "right" way to do it, leaving a considerable degree of uncertainty about who will benefit from land in the future.

References

- Bruce, John W., and S. Migot-Adholla, eds., 1994, *Searching for Land Tenure Security in Africa*, The World Bank: Kendall/Hunt
- Ensminger, J. and J. Knight, 1997, "Changing Social Norms: Common Property, Bridewealth and Clan Exogamy", *Current Anthropology*, Vol. 38 (1): 1-24.
- Kenya Land Alliance, 2002, *Gender Aspects of Land Reform: Constitutional Principles*, Nakuru, Kenya: Kenya Land Alliance.
- Knight, J., 1992, *Institutions and Social Conflict*, Cambridge: Cambridge University Press.
- Lesorogol, C., 2002, *Cutting up the Commons: The Political Economy of Land Privatization among the Samburu of Kenya*, unpublished doctoral dissertation, Washington University.
- Lesorogol, C., 2003, Transforming Institutions among Pastoralists: Inequality and Land Privatization, *American Anthropologist* 105(3): 531-542.
- Lesorogol, C., 2005a, Experiments and Ethnography: Combining Methods for Better Understanding of Behavior and Change, *Current Anthropology* 46(1): 129-136.
- Lesorogol, C., 2005b, Privatizing Pastoral Lands: Economic and Normative Outcomes in Kenya, *World Development* 33(11): 1959-1978.
- North, D., 1990, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.
- Ostrom, E., 2005, *Understanding Institutional Diversity*, Princeton: Princeton University Press.
- Pillutla, M., and X. Chen, 1999, Social Norms and Cooperation in Social Dilemmas: The Effects of Context and Feedback, *Organizational Behavior and Human Decision Processes* 78(2): 81-103.
- Rank, M., 2004, *One Nation, Underprivileged: Why American Poverty Affects Us All*, Oxford: Oxford University Press.
- Shapiro, T., 2004, *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality*, Oxford: Oxford University Press.
- Sherraden, M., 1991, *Assets and the Poor: A New American Welfare Policy*, New York: M.E. Sharpe.
- Shipton, P., 1988, "The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Private Property", in Downs, R.E. and S.P. Reyna, eds., *Land and Society in Contemporary Africa*, Hanover: University Press of New England.
- Straight, B., in press, *Elusive Souls: Miracles and Extraordinary Experience in Samburu*, Philadelphia, PA: University of Pennsylvania Press.
- United Nations Habitat, 2002, *Rights and Reality*, New York: UN Habitat.
- Weissman, K., 2005, Property and Gender in the Inheritance Patterns of a Southern Appalachian Community: Boone County West Virginia 1865-1924, *Journal of Family History* 30(1): 48-65.