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Origins and Outcomes of Electoral Institutions in African Hybrid Regimes: A Comparative Perspective

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**Origins and Outcomes of Electoral Institutions in
African Hybrid Regimes:
A Comparative Perspective**

Alexander Stroh, Sebastian Elischer and Gero Erdmann

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Abstract

In the early 1990s most African countries carried out extensive reforms of their electoral regimes. Adopting a historical institutionalist approach, this paper critically examines the role of institutional path dependence in accounting for the setup of six African electoral regimes. For this purpose, we distinguish between different types of path dependence. The paper further analyzes the extent to which the development of electoral institutions contributed to the regime-type outcome (democratic/hybrid/autocratic). The main emphasis herein is on so-called “hybrid regimes;” in other words, regimes existing in the grey zone between democracy and autocracy. The paper finds that, while institutional path dependence has a limited but important impact on the setup of the electoral regimes, it is ultimately the process of decision-making during critical junctures that accounts for the regime type outcome. Hybrid regimes lack long-term institutional ownership.

Keywords: hybrid regimes, democratization, historical institutionalism, electoral institutions, Africa

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Origins and Outcomes of Electoral Institutions in African Hybrid Regimes: A Comparative Perspective

Alexander Stroh, Sebastian Elischer and Gero Erdmann

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1 Introduction

This article examines the impact of past institutional trajectories on the setup of the contemporary electoral regimes of six African countries. We attempt to identify whether – and, if yes, how – institutional path dependence has contributed to the resilience of different regime types during the last two decades. Why have different regime types emerged in different African countries? In particular, why have a strong plurality of African states become hybrid regimes – that is, regimes in the grey zone between democracy and dictatorship (Karl 1995; Carothers 2002; Diamond 2002; Erdmann 2002; Bogaards 2009)?

Although the electoral regime is the essential component of a democratic regime (Dahl 2005; Merkel 2004; Bogaards 2009), we certainly cannot address the question of regime formation by reducing political regimes to electoral institutions alone. Our primary goal is more humble. We wish to provide a historically grounded analysis of the origins and the development of electoral regimes and the effects of electoral regimes on the emergence of different regime types. We refer to the ongoing “historical turn” in political science and make use of some recently refined concepts.¹ In particular, we draw on Capoccia and Ziblatt’s framework for “episode analysis,” which is well “attuned to capturing the causal complexity of institutional creation and the impact of democratic institutions, once created, on future political outcomes” (2010: 934).

We start from the premise that the early 1990s constituted a critical juncture for most African countries. The advantage of analyzing these important episodes of institutional decision-making two decades later is that we now know a lot about their medium-term consequences. We are thus aiming at “reading history forward” (Capoccia and Ziblatt 2010) by looking at the aspirations, intentions, and options of institutional decision-making in six systematically selected cases. These are two hybrid (Niger, Zambia) and four contrastive cases – in the latter of which a higher level of democratization has been achieved (Benin, Ghana) or the regime has remained authoritarian (Cameroon, Togo). We find that the degree and influence of path dependence varies across all cases. The decision-making process appears to have had a much stronger influence on the regime outcome than institutional path dependence has. Hybrid regimes are likely to result from those critical junctures in which the relevant actors failed to deliberate thoroughly about institutional reforms, in particular about their long-term impact. In more provocative terms, one might hypothesize that short-sighted institutional negligence causes a lack of ownership and, consequently, the emergence of hybrid regimes. We conceptualize this inductive finding by proposing the argument of “institutional ownership.” Institutional ownership by the main political actors is the consequence of a higher degree of reflection about how to create viable and sustainable electoral institutions.

The paper proceeds in four sections. First, we lay out our use of historical episode analysis. Subsequently, we present two episode analyses of hybrid regimes. This second part identifies the different types of institutional trajectories. In the third section we then outline the concept of “institutional ownership.” Having introduced our argument, we undertake a comparative review – that includes all six cases – of the consequences of the institutional decisions; this yields preliminary evidence that suggests that limited institutional ownership among the key actors contributes to the resilient rise of hybrid regimes. We conclude by outlining some of the general implications of our findings.

1 See for example Capoccia and Ziblatt (2010); Mahoney and Terrie (2008); Mahoney and Thelen (2010); Slater and Simmons (2010).

2 Approaching the Origins of Electoral Institutions

Electoral institutions have been studied from the perspectives of all three “new institutionalisms:” rational choice, sociological, and historical institutionalism (Hall and Taylor 1996). These approaches share an emphasis on actors–institutions–relations. However, only the most recently advanced theory – that of the “historical turn” (Capoccia and Ziblatt 2010) – in political science claims to “read history forward;” in other words, to systematically take into account the decision-making alternatives and the possible impacts of contingencies. Capoccia and Ziblatt argue that interests and social structures may not explain the full picture in retrospect. They propose the use of episode analyses instead. Hence, we have decided to apply this proposed methodology to the study of the impact of electoral institutions on the emergence of resilient hybrid regimes in Africa.

2.1 The “Historical Turn” and Episode Analysis

The classical historical institutionalism literature has raised awareness about the impact that antecedent conditions can have (Hall and Taylor 1996: 937–942). Institutional decisions can create path-dependent developments, which are more difficult to change the longer the institution has been in place. Thus, historical institutionalism has been able to explain institutional continuity in the face of changing circumstances, while it has nevertheless simultaneously been criticized for failing to explain institutional changes. Recent contributions have reacted to the critique and attempted to remedy the approach’s weaknesses (Mahoney and Thelen 2010; Streeck and Thelen 2005; Alexander 2001). Scholarly works that analyze critical junctures (Capoccia and Kelemen 2007) and processes of decision-making have significantly advanced the standard of historical analysis with regard to political institutions. Recent studies of regime development and democratization have shifted the analytical emphasis from pure continuity to the interplay of processes of change and continuity.

For the purpose of our study, there are two main lessons to be taken from the “historical turn” in democratization research. First, political regimes are created or recreated “piece by piece, institution by institution” (Bermeo 1992: 276). They are made one institution at a time (Ziblatt 2006), which is why an accurate analysis of regime development requires a separate historical analysis of each of the constituent parts of a political regime type (Bermeo 2010: 1120). Electoral institutions form the core part of democracy (Merkel 2004; Bogaards 2009), and the importance of historical knowledge for the analysis of electoral institutions is widely acknowledged (Kreuzer 2010; Boix 2010). Second, in order to systematically “read history forward,” Capoccia and Ziblatt (2010) have suggested engaging in episode analysis.² Episode analysis starts with the initial conditions that were present during a process of institutional decision-making and then inductively explores the alternatives that were available to the ac-

2 This roughly corresponds to Boix’s (2010) analysis of key moments in the theory and history of institutional choice.

tors and why they opted for the specific solutions that they did. Path dependence remains one of the possibilities. Actors might perceive the uncertain impact of institutional change as being too risky. Material interests may also count. We would add ignorance as a further possible source of institutional development paths.³ Actors might disregard specific institutions due to their freely chosen priorities or simply due to neglect. Episode analysis is thus able to embrace the whole range of possible explanations for eventual outcomes by analyzing the actors' alternatives and intentions when they were confronted with the necessity of making decisions.

2.2 Comparative Episode Analysis of African Regime Developments

While electoral institutions alone cannot explain the resilience of any regime type, they are nevertheless a core part of democracies (Merkel 2004; Schmitter 1995). Important studies support the hypothesis that the history of electoral experience – even when it has been limited by late statehood and long periods of authoritarian rule – matters for democratization (Bratton and van de Walle 1997; Lindberg 2006). At the same time, heightened uncertainty and ignorance about the consequences of institutional alternatives during the transition period of the early 1990s drove many African countries to model their institutions after those of their former colonial power (Hartmann 2007). This combination of uncertainty at critical junctures and evidence of path dependence is what has strongly encouraged us to engage in episode analysis.

We agree with Mozaffar and Vengroff (2002), who emphasize that electoral institutions are interrelated and who therefore suggest a “whole system approach.” Nevertheless, we need a pragmatic preselection of relevant and observable institutions. The key electoral institutions can be grouped into two main fields:

- a) the electoral system and its affiliated technical rules, such as district size, and
- b) institutions of electoral governance (see Mozaffar 2002: 87).

Most scholars of electoral engineering would object to one-size-fits-all solutions and would emphasize instead that the electoral system has no mechanical effects. The political effects of electoral systems are strongly related to a country's social structure. Despite the awareness that electoral designs must be profoundly context-sensitive, scholars often only defend their favored institution types.⁴ Electoral governance refers to the management of elections. A truly

3 For a similar argument see Hartmann (2007).

4 Advocates of proportional representation (PR) in medium or large constituencies emphasize the capacity of the system to guarantee fair representation for social groups, as well as to provoke broad-based, consensus-oriented coalitions after the elections (Lijphart 2004; Lindberg 2005; Reynolds 1995). Other scholars favor a plurality vote in single-member constituencies (see Barkan 1995; Quade 1991). They value the simplicity of the system and emphasize the need to coordinate and coalesce before the elections, which, theoretically, should create more stability and effective governance once the bodies of representation have been elected. Certainly, there is also advocacy for solutions that combine or share some of the features of the general formulas – that is, the PR and majoritarian systems – such as the alternative vote (Horowitz 2002; Reilly 2001).

independent management body is conducive to free and fair elections, particularly in newly democratizing states (Elklit and Reynolds 2005). In particular, nonpartisan electoral commissions appear to thwart institutionalized electoral fraud (Lehoucq 2003: 253). Further, given the extensive literature on African presidents who (attempt to) abolish two-term limits (Baker 2002; Bamfo 2005; Cheeseman 2010; VonDoepp 2005), we also consider the (c) eligibility requirements of presidential candidates to be the third most relevant institutional field.

We focus our analysis on Niger and Zambia, two regimes that fall into the hybrid category. We consider a comparative historical approach that includes a small number of systematically selected cases to be particularly fruitful. The selection of Niger and Zambia as resilient hybrid regimes provides for advantageous historical variance within Africa's median regime outcome over the last two decades.⁵ On the one hand, commonalities between two rather different – but equally resilient – hybrid regimes would suggest particularly strong evidence for possible generalizations. On the other, the variance also strengthens the possibility of discovering different causes of the same outcome. These two possibilities will both gain stronger relevance and support if the findings from our two hybrid cases differ from those of our contrastive cases; that is, the successful democratizers (Benin and Ghana) and the autocracies (Cameroon, Togo).

Given our interest in electoral institutions and regime change, the relevant episodes that need to be analyzed are the various transition processes, in which most African countries transformed from one-party dictatorships to multiparty regimes – albeit of different qualities. We examine the decision-making processes in these episodes by, first, distinguishing between types of institutional trajectories at the crossroads of path dependence and change.⁶ The institutional trajectory types are called:

- a) *legacy* if the institution remained unchanged, even though alternatives existed.
- b) *reactivation* if an institution that had been created and implemented in a previous period but which was abandoned in the period that preceded the critical juncture was reinstated.
- c) *resumption* if political decision-makers decided to reactivate a previous institution that had been formally created in the past but which was never actually implemented.
- d) *modification* if an already-existing institution was modified; the modification chosen constituted one of several possible alternatives.
- e) *innovation* if the institution was created during the critical juncture for the first time ever.

5 Both Niger and Zambia have remained in Freedom House's category of "partly free" states for almost two decades (<www.freedomhouse.org>). They differ, therefore, significantly from the four contrastive cases, which, for the best part of the last two decades, have fallen in the categories "free" or "not free." Benin has been considered "free" throughout the last 20 years, Cameroon has consistently been considered "not free." We use Freedom House categories as proxies for democracies (free), autocracies (not free), and hybrid regimes (partly free).

6 For further elaboration of the typology, see Erdmann et al. (2011).

The types a) legacy and e) innovation are the polar types. Types b) reactivation, c) resumption and d) modification classify trajectories that combine gradual elements of legacy and innovation. These types fill different parts of the space between the polar types. Path dependence – in the strict sense of unmodified continuity – corresponds to type a) only. At the other end of the spectrum, the presence of type e) institutions is indicative of the nonexistence of institutional path dependence.

As a second step, we link the identification of the type with the identification of the aspirations and intentions behind the institutional decisions at the moment that they were made. This includes discovering the alternatives between which the actors were able to choose, and the reasons they made the choices they did.

The presence of the real types implies that the origins of specific institutions may date back to an earlier point in time. Whenever possible, we thus also identify the original circumstances so as to complete the picture. We do this in depth for the hybrid regimes. The results of these two comparative episode analyses suggest that a general argument can be made about the consequences of “institutional ownership” in the decision-making process. This argument is subsequently checked against the contrastive cases.

3 Origins, Aspirations, and Intentions: Episode Analyses of Two Hybrid Regimes

The transition episodes of Niger and Zambia fall into the same historical period of global political change but differ with regard to their antecedents and their timing. Both countries represent resilient hybrid regimes. For most of the last two decades they have remained hybrid – as have the majority of states in sub-Saharan Africa. Economic decline affected most African states during the 1980s. As a result, the pressure for reform increased. Since the vast majority of incumbent governments ruled autocratically at that time, calls for economic reform eventually turned into advocacy for political reform in the context of global political change. However, the dynamics of change evolved differently from country to country. The Nigerien episode started with mass strikes that paralyzed Niamey in February 1990, whereas the first public demand for a return to multiparty competition marked the beginning of the Zambian episode at the end of December 1989. Both episodes ended with the inauguration of the elected branches of government after the first multiparty ballot, in October 1991 (Zambia) and March 1993 (Niger) respectively.

3.1 The Case of Zambia (1989–1991)

As national and international pressure on the one-party system escalated, President Kenneth Kaunda chose not to respond with the political repression of his opponents. Instead, he allowed a debate on the reintroduction of multiparty elections to take place at his United National Independence Party's (UNIP) Fifth National Convention, in March 1990. Three months

later, due to the increasing demands for change, he agreed to a public referendum about the future of the one-party state. The official appointment of a constitutional commission in October 1990 significantly heightened the various actors' capacity to have an impact on the country's future electoral institutions (see Phiri 2006: 175). This commission of inquiry, headed by Solicitor General Patrick Mvunga, had the mandate to review public opinion about the current political system and to propose reforms to it (Mwanakatwe 1994: 209–210). However, the opposition Movement for Multiparty Democracy (MMD) boycotted the Mvunga Commission, and the window of opportunity for change closed with the successful free and fair election that was held in October 1991; this resulted in a sweeping victory for the MMD and its chairman, Frederick Chiluba, becoming president (see Stroh 2007: 461; Mwanakatwe 1994: 222–223).

What happened during this critical juncture? To a large extent it was legacies that shaped the electoral institutions that were chosen. Most electoral institutions were barely modified, even though the episode's critical juncture would have allowed for more fundamental reforms to take place. However, since elections had always taken place at regular intervals since independence anyway – even throughout the period of the one-party state (1972–1991) – the need for essential reform appeared to be small.⁷ The easiest solution was to lift the ban on political parties other than the ruling UNIP and to keep the rest of the institutional setting. Indeed, the party ban was abolished in December 1990.⁸ Since institutional decisions were taken within the framework of the existing constitutional order (Meyns 1995: 20–21), it remained largely up to the UNIP to decide among the options available.

Given these circumstances, the MMD opted not to participate in the constitutional commission of inquiry, which it perceived as an instrument of the incumbent regime. Instead, it pressured the decision-making process from the outside. The intra-MMD compromise was to aggressively push for quick elections, which the movement correctly anticipated it would benefit from.⁹ The easiest way to achieve this goal was obviously to keep most of the institutional status quo in place (compare Rakner and Svåsand 2005; van Donge 1995). The actors within the movement who prevailed were those who did not consider deeper reflection on institution-building for sustainable democracy to be the first priority. Thus, the positions of the UNIP and the MMD opinion leaders converged with regard to the perceived necessary depth of institutional reforms. Indeed, seizing the short-term opportunity to remove Kaunda

7 The regular occurrence of elections prior to the critical juncture even allowed President Kenneth Kaunda to argue in 1990 that he should end his legal five-year term, which had only been renewed in 1988. However, under pressure from his own cabinet and society, he refrained from insisting on this (Interview with Mark Chona, Lusaka, 5 August 2010).

8 The UNIP government had, on 17 July 1990, already lifted the ban on organized political groups, but not on opposition political parties.

9 We thank Neo Simutanyi for reminding us that the MMD was composed of various factions with different goals. Those who advocated only limited changes obviously prevailed over the radicals and conservatives. Interview, Lusaka, 20 November 2009.

from office by electoral means became the MMD's primary goal. Those actors within the MMD who devoutly believed in liberal democracy and in having a more reformist steering capacity agreed to postpone any institutional amendments until later. Hence the movement abandoned more radical reform ideas, like the return to a parliamentary system of government or the introduction of a constitutional court (Bach 1994: 66; Meyns 1995: 22–29; Mwanakatwe 1994: 205–223). It also missed a window of opportunity to discuss alternatives to the inherited first-past-the-post system. It focused instead completely on the restoration of major participation rights and on the minimization of the risk that Kaunda could be reelected while parliament was simultaneously dominated by the MMD.¹⁰

As a result, decision-making in the Mvunga Commission became crucial with regard to the many issues that were not prioritized by the main conflict parties. To some extent, this resulted in more progressive outcomes than the MMD had advanced. The absolute majority rule for presidential elections (*legacy*), the continuity of the plurality vote for parliamentary elections (*legacy*), and the *innovation* of a two-term limit, which had mainly been inspired by the US American model,¹¹ passed undisputed through the process, as proposed by the commission. The electoral management rules attracted equally little attention. A minor *modification* moved some power away from the Elections Office – staffed with British-trained administrators who focused on their technical duties¹² – to the ad hoc electoral commission outside of the government structures, both of which had existed since independence. Hence, the 1991 elections were essentially managed by the government's Elections Office. The incumbent ruler obviously expected to win fair elections (Bach 1994: 35; Meyns 1995: 29; Mwanakatwe 1994: 224) and was shocked by his defeat. Since most observers had declared the government-organized poll largely “free and fair” (Bratton 1992: 91) and the security forces' choice as an “overwhelming vote for change” (Mwanakatwe 1994: 258), the possibility of blaming the Elections Office for malpractice was seen as too risky. Kaunda and the UNIP thus had to accept the defeat. This produced a high level of legitimacy for the incoming MMD government and for the institutional setting that was already in place.

In sum, Zambian decision-makers overlooked this opportunity to pass more radical reforms. This conservative behavior had the unintended effect of generating a subsequent, and endless, political struggle over possible constitutional corrections. Legitimated by the successful transition of power in 1991, the strongly institutionalized presidential center of power prevailed. As a consequence, the incumbents were able to defend the initial path dependency

10 This was the major reason for blocking institutional innovations; that is, due to the advantages that these might create for the head of the executive (cabinet members from outside parliament, the House of Chiefs as the second chamber of parliament, the independent constitutional court).

11 According to an interview with the head of the commission, Mphanza Patrick Mvunga, Lusaka, 17 November 2004.

12 Interviews with Gabriel R. Phiri, civil servant at the Elections Office since independence, who headed the office up until his retirement in the early 1990s, Lusaka, 26 July 2010, and Judge Bobby M. Bwalya, first head of the Electoral Commission of Zambia (1996–2003), Lusaka, 6 August 2010.

of the electoral institutions. However, some fundamental rights were strengthened during the transition, particularly in the realm of civic participation. The government was therefore placed in a position wherein it had to balance public support against the rise of the opposition. On the one hand, the government was able to block electoral system reforms as the inherited system was advantageous for the incumbents while also not openly undemocratic. On the other, it was difficult for it to object to an independent electoral management body (EMB) without losing its democratizers' legitimacy. This struggle for an equilibrium that would ensure the maintenance of power led to the retention of the hybrid regime status and renewed fears of a return to autocracy (Panter-Brick 1994). Since then, all the MMD presidents have continued this hybrid balancing by blocking major reforms to the electoral institutions, as previously promised by themselves and as proposed by various constitutional commissions. From an institutionalist point of view, it appears unlikely that President Sata, who was elected in 2011, will introduce any fundamental changes to this balancing act as he is surely not ready to put his recently achieved power at risk.

3.2 The Case of Niger (1990–1993)

Following the death of military dictator Seyni Kountché (who ruled from 1974 to 1987) in November 1987, the military junta initially established a one-party state under the firm grip of the military-led *Mouvement National pour la Société du Développement* (MNSD). In mid-1989 the first (and only) election held in the one-party state took place. The establishment of a single-party state constituted an initial step towards regime liberalization. Genuine democratic reforms became an option in February 1990 when the trade unions of public workers and students organized mass strikes and consequently paralyzed Niamey (Robinson 1991). Although largely driven by protests against the harsh austerity measures of the Bretton Woods institutions, the protestors soon also demanded the reintroduction of multiparty democracy. The first multiparty elections in February 1993 – which were largely considered free and fair – marked the end of the transformation period. Mahamane Ousmane was the first civilian and democratically elected president in the history of Niger. The election results and the semi-presidential system forced him into a tension-fraught coalition with the MNSD. The time period between 1990 and the successful conduct of a free and fair election in 1993 thus constitutes the critical juncture.

In contrast to Zambia, Niger's post-transitional electoral setup has been characterized by institutional innovations and reactivations. The country's experience with elections dates back to the pre-independence period (1957 and 1958); these elections were heavily influenced by the French, though the secondary literature is vague with regard to how electoral rigging was actually brought about (van Walraven 2009; Fuglestad 1983; Raynaut 1990). The elections of 1960, 1965, and 1970 were contested only by one party, the incumbent *Parti Progressiste Nigérien* (PPN), and its presidential candidate, Hamani Diori. Although the constitution

provided for multiparty contests, alternative electoral choices were severely lacking. Between the military coup d'état of April 1974 and the first free and fair elections in 1993, no multiparty elections took place. Hence, before 1993 Niger never experienced free and fair multiparty elections.

The 1989 constitution was passed into law in a referendum in September of that year, and thus several weeks *before* the fall of the Berlin Wall and the far-reaching consequences of the political upheavals occurring in neighboring Benin.¹³ In the December 1989 elections, the MNSD was the only electoral option. One fixed party list was presented to the electorate in each of the eight provinces (*régions*). By contesting the elections under the rubric of a political party, the movement merely attempted to conceal its military background. However, the evolution of the global political situation coincided with domestic protest and, therefore, significantly increased the pressure for change. In reaction, the military government allowed for wide-ranging institutional reforms, after consultation with a constitutional reform committee.

The timing of the decision-making, as well as information obtained from confidential documents, suggests that external factors – in particular, the holding of the National Conference in neighboring Benin in February 1990 and Mitterrand's famous La Baule speech on 20 June 1990¹⁴ – were decisive in prompting the government to establish a multiparty system. The reform commission explained the introduction of multiparty competition by referring to the ongoing political changes in the region. The commission further highlighted the political demands that were being made by external partners, in particular France: "*Le multipartisme nous permettra d'être en accord avec l'environnement politique africain actuel et de répondre aux sollicitations de certains de nos partenaires extérieurs*" (Comité de Réflexion sur la Révision de la Charte et de la Constitution 1990).¹⁵ Thus, in its final report of June 1990 the committee decided that the economic and political problems of the nation had become too much for the military to handle, and as a result called for a national conference and a transition to civilian rule.

However, debates about political personnel and national reconciliation distracted Niger's National Conference and kept it from paying sufficient attention to institutional issues. The conference, which took place between July and November 1991, failed to put forward any ideas for possible future institutional designs. This topic became the exclusive domain of the Commission des Textes Fondamentaux (CTF), which was a group of experts.

Prospective changes to the electoral institutions did not incite much interest and comparatively little time was dedicated to the topic.¹⁶ As a consequence, most institutional decisions

13 For an overview of the National Conference in Benin and its consequences for Niger, see Robinson (1994).

14 Media reports from that time indicate the pressure under which Niger's military junta was acting. See, for instance, *Jeune Afrique*, 1538, 32.

15 "Multipartyism will allow us to comply with the current political environment in Africa and to answer to the solicitations of certain foreign partners" (authors' translation).

16 Interviews with Oumara Mamadou, the Supreme Court of Niger, Niamey, 15 August 2010, and Soly Abdramane, Vice President of the Supreme Court of Niger, Niamey, 13 August 2010. During the National Conference delegates were less interested in the future institutional setup of the country and more focused in-

were not discussed in any notable way by all of the relevant stakeholders. Instead, the CTF opted to focus on the formulation of electoral rules, which subsequently passed undisputed through the transition process.

The presidential electoral system was copied from Niger's first republic (1960–1974), where an absolute majority runoff system had been in place. The system had always been politically irrelevant as the incumbent, President Diori, was the only candidate running for election and, unsurprisingly, received an absolute majority three consecutive times. The current system, therefore, constitutes a *reactivation* that – most likely – goes back to the French example, which had been copied at independence.

The CTF reformed the previous electoral system to make it fit for parliamentary elections and also established a proportional representation system.¹⁷ This was an *innovation*. Yet the new rules kept the antecedents of closed lists and the delimitation of electoral districts: the multimember constituencies remained congruent with Niger's eight provinces (Chaibou 2000).

The most important institutional *innovation* was the setting of the presidential term limit. Although the term limit had its origins in the 1989 constitution, which had established Niger's short-lived one-party state, we classify the stipulated term limit as an *innovation* as it had only existed for a few months before the critical juncture.¹⁸ The committee charged with drafting the constitution of the so-called "Second Republic" wished to avoid the centralization of power, a feature that had characterized Nigerien politics since independence.

Little political attention was given to the design of the EMB.¹⁹ The first free and fair elections in 1993 were controlled by an interim body, the Commission Nationale de Contrôle et de Supervision des Opérations Référendaires, Électorales, et Post-électorales (COSUPEL). The COSUPEL was newly created (*innovation*), with the intention of shifting power away from the Ministry of the Interior, the traditional EMB in francophone countries.

The window of opportunity for institutional change ended with Niger's first free and fair elections in 1993. This closure also put an end to the political influence that expert committees had. The National Conference had decided to exclude all the interim leaders of the transition period from running for the presidency. Voluntary discontinuity thus marked the end of the critical juncture. As a result, the incoming leadership was unable to rely on any trust that had been gained during the democratization struggle.

stead on examining the past crimes of the Nigerien army. Interviews with various participants in the National Conference. All interviews conducted in Niamey in August 2010. See also Robinson (1994).

17 The earlier system was plurality-based in large multimember constituencies (Basedau 1999) and thus strongly favored concentration. Historically, Niger did not experience multiparty elections after independence. Hence, the effect remains only theoretical.

18 Hence, this incongruence with the overall transition episode underlines the fact that the delimitation of parameters for episodes that include the history of multiple institutions remains fuzzy, something which is to a certain extent unavoidable.

19 Interviews with the respective decision-makers in Niamey, August 2010.

Overall, the various technocrat committees' main intention was to implement a democratic system that could accommodate and appease the domestic and external pressure for political change. President Saïbou supported this line of action. However, the CTF in particular missed the chance to provide for sustainable regulation. The commission did not deliberate on the potential advantages and pitfalls of alternative institutional designs. It merely "recycled" elements of antecedent institutions and complemented them with the crafting of opaque innovations. The establishment of the interim COSUPEL, for example, created a new institutional path while leaving the door open for future institutional advancement towards an independent EMB. The half-hearted institutional reforms were further weakened by the fact that the new power-holders did not participate in the decision-making processes that were responsible for bringing the institutional changes about. For instance, the new head of state, President Mahamane Ousmane, had not been a member of the 1,200-strong National Conference.

Although Niger's various technical committees may have contemplated any and all possible long-term consequences of the prospective electoral institutional reforms, the beneficiaries of the new rules nevertheless did not "own" these institutions. Accordingly, they had difficulty coping with their consequences. The semi-presidential system combined with a two-ballot runoff system for the presidency is widely seen as having led the country into a difficult cohabitation of political foes (Gazibo 2004; Idrissa 2008; Basedau 1999). The interim EMB, as well as other institutions such as the constitutional judiciary, were not strong enough to mitigate the effects of the political results.

4 Trajectories, Consequences, and Reforms from a Comparative Perspective

So far, we have examined the key episodes of decision-making in two independent hybrid regimes. We find that the trajectories that electoral institutions were to take were highly dependent on the availability of antecedent solutions, while the types of institutional trajectories vary between the respective cases. In order to check for general trends, we also applied the same form of analysis to the four contrastive cases.²⁰ A comparison of the trajectory types and institutional outcomes – which we can present here only briefly – shows, on the one hand, a great variance of institutional solutions and, on the other, similar individual trajectories across all six cases, such as the (re)introduction of a presidential two-term limit. There is no particularly unique degree of innovation or legacy related to the hybrid regimes alone.

Thus, what implications can be derived from the institutional trajectories observed in the six selected cases? When we compare the different institutional developments in the period after the critical juncture, we find that a lack of ownership of the electoral institutions (a) distinguishes hybrid regimes from democratic and autocratic cases and (b) contributes to the resilience of hybrid regimes.

²⁰ The episode analyses for Benin, Cameroon, Ghana, and Togo can be found in the annex.

4.1 The Electoral System

The comparison of the contrastive cases reveals two key findings with regard to the electoral system. First, the type of system used for legislative elections has, at most, a weak impact on the quality of political contestation. For instance, while Ghana and Zambia opted – like many other Anglophone countries in Africa – for plurality elections in single-member constituencies, the intentions of the major political actors diverged significantly; for example, the long-term technocratic considerations supported by the then-ruling elite in Ghana versus the short-term power-seeking and subsequent power-maintenance ambitions in Zambia.

Meanwhile, Benin and Niger chose proportional representation (PR) in multimember constituencies. In Benin, the highly fragmented party system that emerged was aligned with the decision-makers' aspirations and, indeed, supported democratization. The relevant actors "owned" the new institutions. In Niger, technocrats decided via a black box and politicians neglected to engage in any institutional decision-making. In the two autocratic cases power maintenance was achieved partly through the use of the electoral system and partly with the help of electoral fraud and political repression. The latter appeared in reaction to the opposition's ownership of the electoral institutions, while, particularly in Cameroon, the incumbent regime, in part at least, understood how to mold the electoral system in such a way as to support its intention of sustaining power.²¹

In line with the theoretical expectations of classical historical institutionalism, Niger's electoral system was locked in at the end of the critical juncture. The same can be said of the system for assembly elections in Zambia. However, the Nigerien actors simply neglected the electoral system after the transition period. Therefore, the partly innovative PR system in eight large districts survived all coups and constitutional revisions after 1993,²² whereas the Zambian first-past-the-post legacy became a constant topic of debate. The Zambian system facilitated the maintenance of the majority that the MMD had won in the 1991 opening elections. As a consequence, the dissatisfied post-transition opposition resumed its calls for those PR elements originally introduced by a MMD minority group during the transition. However, the new ruling party's interest in PR rapidly shrank after its landslide victory. The locking in of the plurality system – the result of neglect that failed to produce institutional ownership – was thus reinforced; this allowed the incoming MMD rulers to maintain power with the help of an institutional choice that provided initial democratic legitimation. Since the new power-holders now commanded a two-thirds majority, they could even channel the constitutional review that had been promised to the MMD minority group so as to serve their own interests.

Second, those autocrats who maintained power after the transition, such as President Biya of Cameroon, refused to accede to the introduction of absolute majority systems for presi-

21 See for example Albaugh (2011); Mehler (1993).

22 Niger has remained a hybrid regime despite three military coups since the transition period. Two coups (1999, 2009) led to the restoration of multiparty democracy, while the other one (1996) broke the political deadlock between the opposition and the government.

dential elections. President Eyadéma of Togo preemptively restored a one-round plurality system as soon as he regained full political control (between 1999 and 2002). As his camp had never accepted the reformed presidential poll system, they felt at liberty to increase repression and perpetuate electoral fraud – so as to undermine implementation and in order to frustrate the opposition – until they had regained the legal means to reinforce the simple plurality system. This was the system that the incumbent autocrats “owned.”

Unlike his Togolese counterpart, incoming President Chiluba of Zambia and his camp did not “own” an institutional idea of the presidential electoral system. They quickly adopted Mvunga’s proposal for the majority system. Only after the transition did Chiluba’s camp realize that a simple plurality solution would temper the dangers of losing office again. The earlier neglect of certain decisions and Chiluba’s enforcement of the plurality rule in the 1996 constitution against the wish of his own government’s new constitutional commission²³ contributed to a long-term institutional debate that has hampered democratization and kept Zambia a hybrid regime.²⁴ In Niger, the absolute majority system has existed under all seven of the Nigerien constitutions established since independence. The main actors in the critical juncture completely ignored this legacy’s consequences. Two examples: First, simple plurality would have saved Niger from the 1993 cohabitation that caused the 1996 putsch.²⁵ Nevertheless, no debate about the electoral system occurred. Second, presidents Maïnassara and Tandja did not curb their attempts to rule autocratically by introducing a plurality system. All in all, the electoral system’s impact remained minimal and should not be exaggerated. However, the lack of institutional ownership has the potential to make the absolute majority rule a “loose cannon” in future elections if a first round winner refuses to accept his defeat in the second ballot. Due to the lack of experience, the major political players have been unable to institutionalize the practice of accepting defeat.²⁶ A high level of uncertainty remains. The successful democratizers – Benin and Ghana – deliberately opted for absolute majority systems; they have since kept them in place without further discussion.

4.2 Presidential Term Limit

In all six countries, much more attention was given to the limits on the eligibility of presidential candidates than to the complex electoral system itself. All countries introduced a two-term limit in the early 1990s. However, both autocratic regimes successfully abolished the limit soon after their presidents had regained two-thirds majorities in parliament (Cameroon in 2007; Togo in 2002). Institutionalized repression and fraud contributed greatly to this. In

23 The Mwanakatwe Commission, 1994–1996 (see Zulu 1997: 136).

24 In November 2011, newly elected President Sata appointed the fifth constitutional reform commission since Mvunga (“Sata Names Constitution Technical Committee,” *Times of Zambia*, Lusaka, 17 November 2011).

25 Tandja would have won in the first round and could have formed a government led by his own MNSD party.

26 Since the opening election, the winner of the first ballot has always won the runoff.

the hybrid cases, presidents Chiluba and Tandja both narrowly failed to take the liberty of a third elected term. However, the abolition attempt is not unique to the hybrid cases, nor has the introduction of term limits had a systematic impact.²⁷ The democratizers do at least differ in terms of degree. In Benin, the supposition alone that President Kérékou intended to delete the two-term limit provoked mass protests by civil society (Madougou 2008). Political commitment to and the will for alternation appeared to be stronger there than in Zambia. Both Benin's and Ghana's decision-makers clearly favored making alterations to who sat at the helm. In Benin, the lively debate on the additional upper age limit of 70 years provides specific evidence that further distances the case from that of Zambia.²⁸ Although the same age limit was introduced in Niger's 2010 constitution, it came long after the crucial transition period and without the same public attention or popular support as in Benin.

4.3 The Electoral Management Body

In Benin and Ghana more effective independent electoral management bodies emerged than had done in Niger and Zambia. In Ghana, responsibility for the management of elections had always been assigned to an independent technical commission that enjoyed the trust of all major actors. Thus, institutional legacy enhanced the quality of the electoral process. In Benin, electoral management was transferred from the Ministry of the Interior to the Commission Électorale Nationale Autonome (CENA) after the founding election. A very pluralistic political landscape in which the government lost its majority in parliament made this step possible, even against the will of the head of state. Additionally, the strong Constitutional Court – another institutional innovation – supported the CENA's law (Badet 2000: 130–133; Adjovi 1998: 86) and was the recipient of the necessary means to supervise the elections with its own observers. Conversely, the autocratic regimes of Cameroon and Togo were able to constantly and consciously derail or block the creation and work of independent EMBs until they had managed to restabilize their hold on power, and until they had restored sufficient self-confidence to be able to control a formally more independent EMB.

Differently from the contrastive cases, electoral management reforms in Niger and Zambia remained incomplete and ineffectual until international pressure increased significantly. As a consequence of this pressure, independent electoral commissions were created in both countries in the mid-1990s. They gradually improved and tightened their functionality over time (Hounkpê and Fall 2010; Rakner and Svåsand 2005). However, we argue, from a comparative perspective, that the reforms came too late, were hampered by the post-transition

27 All two-term limits were either innovations or resummptions, which are, additionally, not systematically distributed according to regime type. Thus, no case had ever experienced the effects of forced alteration prior to the transition period.

28 A large majority of the population explicitly supported this decision in the 1990 constitutional referendum. There, the main intention was to block the return of any pre-Kérékou presidents.

power relations, and were not owned by the relevant actors. In Zambia, the 1996 constitutional amendments formally established the Electoral Commission (ECZ) as a permanent body. This decision originated in the mistrust felt towards the UNIP administration, and the ECZ's upgrade was considerably donor-driven. Niger's democratically elected government simply did not care about the unsustainable interim nature of the EMB that had organized the electoral process on which the new regime's legitimacy was based. Paradoxically, it was the military junta led by Ibrahim Baré Maïnassara that created the Commission Électorale Nationale Indépendante (CENI) in 1996. The CENI was not only a "copy and paste" of the body from neighboring Benin, but was also owned by the military government, which, even more paradoxically, subsequently dismissed and reinstalled the new body at will.²⁹ Only the next military junta to emerge on the scene, led by Daouda Malam Wanké, constitutionalized the CENI before then handing power over to President Tandja's democratically elected government.

5 The "Institutional Ownership" Argument

The degree and quality of electoral experience before the critical juncture is not systematically linked to the eventual regime outcome. If we tried to predict the individual cases by extrapolating Bratton and van de Walle's (1997) and Lindberg's (2006) probabilistic arguments³⁰ then Niger would not be a hybrid regime due to its lack of pre-transition experiences; Zambia would not be a hybrid regime given its previous routine of semi-competitive elections; Cameroon would not be an autocracy given its long-term experience with elections; and Ghana would not be one of the most successful countries in terms of democratization, given the sporadic occurrence of elections between 1960 and 1992.

Instead, we find that it is the decision-making process during the critical juncture that marks the major difference between the hybrid regimes and the contrastive cases. The episode analyses have shown that the relevant actors in both hybrid regimes missed the opportunity for what we inductively conceptualize as "institutional ownership." We borrow the term "ownership" from development policy discourse. It is a notion for which there is no standard definition (see Faust 2010); however, the core idea is that actors systematically reflect on, and are committed to, the long-term consequences of their decisions.³¹ Thus it is our

29 Presumably due to the unfavorable results for interim leader Maïnassara, his military regime decided to interrupt the counting of the votes in 1996, sacked all CENI officials, and conducted the rest of the count with personnel chosen from within its own ranks (Interview with Amadou Magagi, CENI Permanent Secretary General, Niamey, 9 August 2010). This intervention led to the boycott of the subsequent parliamentary elections. Eventually, Maïnassara was ousted in another coup due to his failure to advance the country economically and democratically (Idrissa 2008: 181–194).

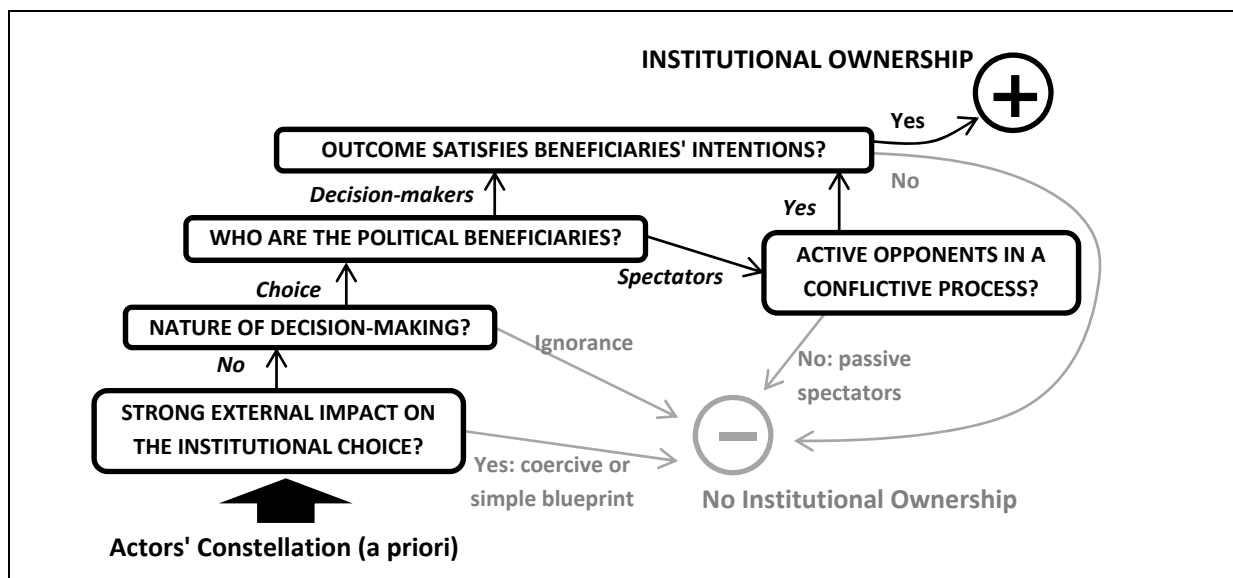
30 Roughly speaking, these authors found that what matters is the competitive quality of electoral experiences before the transition and the number of elections, respectively.

31 We nevertheless attempt to avoid the normative part of the developmentalist approach, which often links ownership to good governance.

argument that the absence of ownership of sustainable electoral institutions contributes to the emergence and resilience of hybrid regimes, as the purpose of the institutions is constantly being redefined. Since electoral institutions constitute the core part of a democratic regime, the ownership effect is particularly relevant. Without ownership, neither democratic nor authoritarian rules can be institutionalized. Decisions made in transition periods are taken amid great uncertainty. The relevant actors in both hybrid regimes opted for quick and easy solutions instead of reflecting on sustainable institutions for long-term democratization (or its prevention). The major beneficiaries of the transitions did not engage much, if at all, in designing electoral institutions. They sought only to accommodate short-term demands for change – in other words, coming into power – and delegated important decisions to detached agents. Thus, the relevant actors did not “own” the intention of building institutions and, therefore, they obstructed the emergence of sustainable democracy. However, as in criminal science, one should speak of this as a “failure to render assistance” rather than as an intentional action.

To achieve institutional ownership, several conditions must first be fulfilled. If not, the process fails to produce the identification with long-term intentions for institutional reform, which we consider necessary to avoid hybridity. Figure 1 provides a simplified assessment scheme for the identification of institutional ownership in a decision-making process.

Figure 1: Conditions for Institutional Ownership



Note: The figure illustrates a logical sequence of steps. In the empirical world the sequence may deviate, but the answers must conform. Answer options are strongly simplified: black arrows indicate answers leading towards institutional ownership; grey answers lead to the negative outcome.

Yet, prior to decision-making, the configuration and power relations limit the various actors' chances of becoming of “central importance” (Huntington 2009: 42). The number of relevant actors also depends on the mode of transition and the room for maneuver that this mode

opens to new actors (Bratton and van de Walle 1997: 169). The literature has not been conclusive on the effects of different modes of transition; however, it tends to agree that the chances of sustainable democracy emerging are better if the number of capable actors is limited (Karl and Schmitter 1991: 282; Munck and Leff 1997: 358–359; Bermeo 1997: 305). The actors may include representatives of the ancien régime as well as progressive contenders. We do not revisit the consequences of different modes, but who the relevant actors are depends on this mode of transition as well as on the prior constellations of actors. It is of particular importance that the actors who are relevant *immediately after* the transition fulfill the ownership conditions.

Thus, if ownership means that the relevant actors are seriously committed to the process of institutional decision-making,³² there are two possible ways to preclude this ownership: neglect and the external imposition of particular institutional setups. If institutions are coerced from the outside, the lack of institutional ownership is evident. One stereotypical example might be the imposition of an independent auditing authority by an external agency such as the IMF. All other obstacles to ownership can be related to neglect. Also from the external dimension, the blind reproduction of blueprints taken from foreign models – as observed in the case of Niger – expresses neglect and fails to produce ownership. Another stereotypical example might be the copying of the former colonial power's electoral system due to a lack of further information or simply due to apathy. Zambia comes close to this. As a consequence, the absence of a strong external influence on the institutional choice constitutes the first necessary condition for ownership. Actors ought to arrive at their institutional solutions on their own. The four contrastive cases support this hypothesis.

The second condition concerns the willingness to deal with an institutional issue. If the decision-makers widely ignore an institution, this often leads to legacies or quick blueprints and institutional ownership cannot, therefore, unfold. The episode analyses have shown that we should at least consider the possibility that the important political players do not significantly care about the decisions delegated to specialized and detached agents.

From this it follows that, third, the beneficiaries of the process should either be the decision-makers themselves or those active opponents who have been excluded from decision-making but who still hold their own institutional agenda. The fourth and final condition for institutional ownership is, then, that the beneficiaries of the transition must be satisfied with the real impact of the institutions. If the aspirations of the beneficiaries fail to materialize, they may refrain from institutional ownership. However, satisfaction with the initial implementation of the rule should be sufficient. Once the effects of institutional decisions, which one commits to or even claims authorship of, have been welcomed, future alienation is made more difficult.

32 We define "serious commitment" as a situation in which historical evidence allows us to assume that there is rational interest in, and willful reflection about, the properties and effects of the institutional choices. We do not assume the aspirations attributed to institutional choice to be clinically correct or totally plausible. Hence all intentional activities of more than a ritual nature fall into the category of "serious commitment."

6 Conclusion

This paper has examined the origins and reforms of electoral institutions in sub-Saharan Africa, as well as their impact on the longest period of overall regime type resilience witnessed since independence. Particular attention has been devoted to hybrid regimes, a type located between democracy and autocracy. Since the onset of democratic change in the early 1990s, hybrid regimes have constituted the median regime outcome in Africa. The resilient character of this regime type over the last two decades has been unexpected, because most analysts have perceived hybrid regimes to be a transient phenomenon. We have investigated if and how the trajectories of electoral institutions have contributed to this outcome.

We have employed episode analyses (Capoccia and Ziblatt 2010) in order to assess the impact of institutional pathways on regime development after the critical juncture. The comparative episode analysis contrasted two hybrid regimes with four nonhybrid regimes. Indeed, all six countries passed through a critical juncture in the early 1990s that, in principle, empowered the respective agents to choose between a broad variety of institutional options. The individual institutional pathways have differed significantly. Overall we find path dependence – that is, direct institutional continuity – but, moreover, we find a strong influence from earlier institutional experiences that date back to a previous era and which were for one reason or another interrupted. Legacies have intermixed with several innovations, some based on a willful dissociation from earlier experiences. However, we also find institutional neglect and disinterested decision-making, which have produced a crucial lack of institutional ownership.

The major difference distinguishing the selected hybrid regimes from all other cases is the degree of political attention that was dedicated to the design of the electoral rules. We call this institutional ownership. The type of institutional legacy, and whether the institutional design constitutes path dependence or an innovation, matters but does not systematically define the hybrid regimes. In Zambia, decision-makers missed the opportunity to create sustainable institutional ownership. Actors who thought little about long-term consequences and whose main aim was to oust the incumbent president prevailed. Those who had advocated for wider reforms agreed to postpone such decisions. Niger's political and civil elite largely ignored the chance to influence the new institutional setup. They left the decision-making on electoral institutions to military juntas and their technocrats. In both hybrid regimes, no deep political discussion about the adequate institutional answers to past experiences preceded the institutional outcome. This was markedly different in all of the contrastive cases.

The lack of institutional ownership among key political actors and the low level of attention given to electoral institutions seem to have contributed to the unexpected resilience of hybrid regimes. However, only a more comprehensive comparison with the level of attention to other important institutional elements – and cross-comparison with further hybrid regimes – can validate whether these preliminary findings can ultimately be generalized or not.

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Annex

a) Benin (Democratic)

The capacity of decision-makers to impact future electoral institutions significantly was heightened in November 1989, when the ruling autocratic regime decided to abandon the Marxist–Leninist state structure and to call a reformist National Conference (19–28 February 1990). The main window of opportunity for change closed in March 1991, when Nicéphore Soglo was elected president of the republic as the successor to former autocratic head of state Mathieu Kérékou. This period hence complies with the academic definition of a critical juncture (cf. Seely 2005). The post-transition electoral institutions of Benin have been shaped by a mixture of major innovations and corrections of earlier experiences.

Due to the previous noncompetitive one-party system, the modification of the electoral process was a precondition for any peaceful solution to the troubled political situation that had existed prior to the transition. However, ballots had already been reintroduced by the one-party state's Marxist–Leninist constitution of 1977 in order to legitimize the rulers. Elections had also taken place in the 1950s and 1960s but never at regular intervals. From 1979 onward, popular approvals of one-party lists took place every five years. The last of these elections permitted the entry of reformers into the National Revolutionary Assembly in 1989, which eventually led to their inclusion in the government and, as a result, increased their influence (see Bierschenk 2009).

Many decision-makers and certain sections of the military associated the multiparty system with the political instability of the 1960s. However, the return to liberal multiparty politics without Kérékou at the helm was the key goal of the reformers. Therefore, the quality of negotiations between different groups of actors at the National Conference became decisive. It was moderate and credible leaders who facilitated the success of the transition. The strong relationship between the incumbent head of state Kérékou and National Conference president de Souza led to the taking of responsible action, averted a military coup against the conference, and enabled liberal reformers to prevail. At the same time, the reformers subtly incorporated the concerns of potential adversaries. For example, an amnesty law that protected Kérékou was decreed. Also, a contentious age clause – aimed at blocking those actors who were perceived as being responsible for Benin's chaotic politics during the 1960s – was introduced: presidential candidates must now be between 40 and 70 years old. This double-sided age limit was a complement to the presidential two-term limit, a clear innovation to facilitate political alternation.

Having set the major targets, the National Conference eventually appointed a constitutional commission headed by the independent and well-respected constitutionalist Maurice Ahanhanzo-Glèlè, who was responsible for fixing the institutional details. Glèlè was well connected to the reformers and did not leave politics after the transition period was over.

The mastermind behind the constitution eventually became a constitutional judge and thus worked for the ongoing protection of his “own” creation.

Alongside clearing the way for multiparty politics, the prevention of pro-Kérékou electoral fraud was the opposition’s second major concern. Reformers designed the sequence of the first elections in such a way as to get the administration under control before the vote on the key power position was held. To this end, local elections were scheduled first – to be followed by parliamentary and finally presidential elections (see Allen 1992: 50; Banégas 2003: 180; Glèlè 1993: 176). This is also why the legacy of electoral management did not concern the reformist decision-makers. In 1991 it was decided that the Ministry of the Interior – already under control of the reformers – would remain in charge. Additionally, the presidential electoral system – though simply resumed from 1968 (absolute majority) – was designed to facilitate change, because Kérékou could not win with a simple plurality of votes. The intention with regard to the parliamentary electoral system was to back smaller parties in order to prevent the reproduction of the tripartite party system of the 1960s. The constitutional commission quietly opted for proportional representation (PR) in medium-to-large constituencies; this was another innovation.

The successful constitutional referendum and the presidential elections of March 1991 sealed the completion of the transition and provided the constitutional order with a high potential for self-reinforcement. The referendum had explicitly legitimized the most contested of the institutional decisions. The election had been won by the reformist leader Soglo, who was immediately recognized by the second-round loser, outgoing President Kérékou.

In sum, elections have been successfully institutionalized as the only legitimate means of accessing power in post-transition Benin. Innovative electoral institutions constituted effective remedies to what in the past had been negative experiences. Indeed, the main goal was to establish a democratic regime. Today, key institutions supporting alternation (presidential eligibility limits) are off limits when it comes to amendment. However, the short-term goal of pushing Kérékou out of office dominated decision-making as soon as the reformers had prevailed. Ignorance about a sustainable, independent electoral management body during the critical juncture produced a path that later hampered the introduction of an adequate institution for this purpose. Imperfect compromises, reliant on the support of further pro-democratic institutions – in particular the Constitutional Court (Adjovi 1998: 86; Badet 2000: 130–133), which had been stipulated in the constitution but was only established in 1993 – were the consequence.

Furthermore, it was not until 1995 that the new political elite protected the electoral process by introducing the Autonomous National Electoral Commission (CENA), albeit against the will of the then incumbent president. Nevertheless, this delayed innovation came sufficiently early (that is, before the second set of elections) to give credibility to those who argued that the CENA would strengthen the democratic achievements of the National Conference and of the liberal constitution.

b) Cameroon (Autocratic)

The period between April 1990 and October 1992 constituted the period in which democratic change was a viable option (Albaugh 2011; Mehler 1993; Melone and Minokoa and Sindjoun 1997). President Biya's autocratic one-party state underwent a serious crisis from the spring of 1990 onward, when democratic forces in the country started to agitate for political change. As of March 1990 political protests erupted all over the country in the form of demonstrations and strikes. Biya's response to these events came in April 1990, when he rejected outright the whole idea of multiparty democracy. Between May 1990 and September 1991 Cameroon was rocked by mass protests and general strikes ("*villes mortes*"). Although he was under great pressure from insiders within the one-party machine – and even greater pressure from the unrest on the streets – Biya managed to avoid calling a national conference; instead, the regime invited civil society and opposition parties to engage in tripartite talks (October–November 1991) with the government. The talks resulted in some vague agreements being made about possible future constitutional changes; there was, however, no timeframe put into place that outlined when these changes were to be formulated, let alone implemented. Another outcome of the talks was multiparty elections in 1992. In October 1992 Biya was reelected, despite extensive evidence that his victory had been rigged. His inauguration as president constituted the end of the critical juncture. The electoral institutions that were chosen constitute either reactivations or legacies.

Between independence and the onset of the critical juncture elections took place on a regular basis. The electoral framework that had been put in place after independence ensured the continuous reelection of the Ahidjo, and later the Biya, government. Ever since independence the elections had been conducted by the Ministry of the Interior. The electoral system consisted of a complicated mix of PR and first-past-the-post (FPTP) – a combination that was designed to favor the incumbent leader. The electoral management body and the electoral system remained largely in place despite the demands of the opposition to the contrary. Before the critical juncture, there was no presidential term limit (Albaugh 2011; Mehler 1993; Melone and Minokoa and Sindjoun 1997).

For as long as possible after the outbreak of protest, the Biya government tried to maintain the status quo (in other words, to have no reform). At no point was it interested in facilitating democratic change. The opposition called for the establishment of an independent electoral commission and the implementation of a two-term limit on the presidency. However, it failed to put forward alternatives to the electoral system for both the presidential and the legislative elections. According to some of its leading figures, it simply failed to adequately reflect on the nature and consequences of this institution.

The key actors involved in the transformation period included the Biya government – in particular the security apparatus – and democratic opposition parties. Civil society organizations were either run by the state or were too weak to have any significant impact. Due to enormous pressure from the street as well as from inside the governing party, Biya invited

the democratic opposition to so-called tripartite talks (government–opposition parties–civil society), which lasted from October to November 1991. As noted above, the result was a very vague agreement about future political reform and multiparty elections in 1992. The promised reforms suffered from enormous delays in realization. The opposition was heavily divided (ethnically and regionally) internally, and could never actually agree on a united course of action.

The electoral system for parliamentary elections, established by the 1991 electoral law, remained the same complicated mix of PR and FPTP depending on the location of the constituency. It represented a reactivation of the electoral system that had already been in place between 1960 and 1972; the 1972 electoral law transformed the country into one constituency (Kitchabo 1989). Any changes in constituency boundaries normally occur immediately before the elections, or even after they have gotten under way (Joseph 1977; Bayart 1979; Melone and Minokoa and Sindjoun 1997; Albaugh 2011).

The electoral system for the presidency is a simple majority system, which has been in place since the constitutional changes of 1982 (legacy). The plurality system is widely seen as benefiting President Biya, given the rapid disintegration of the opposition during the critical juncture – a situation that also plagued the democratic opposition during the 1960s, due to the high salience of ethnicity (Takougang 2003).

Cameroon's electoral commission has undergone numerous changes since the early 1990s, yet it continues to drastically fall short of ensuring a bare minimum of political independence. During the critical juncture no reforms took place in this field. Institutional developments with regard to the electoral commission thus constitute legacies. The institutional framework in place did not change during the critical juncture, and the piecemeal reforms since then have not changed the influence of the executive on the electoral outcome. In essence, the electoral commission serves the interests of the president and has done so since independence.

The introduction of a two-term limit on Biya was one of the opposition's major goals (Melone and Minokoa and Sindjoun 1997). The decision to amend the constitution in favor of the demands of the opposition constituted a compromise not only between the regime and the opposition but also between hardliners and liberals inside the governing party. It was the amended 1996 constitution that introduced the two-term limit.

The contested reelection of Biya in 1992 heralded the end of the period in which political reforms were an option. Biya managed to cling to power despite a close election contest and clear evidence of electoral fraud. At this stage, the opposition was still strong and, yet, already fragmented; it was thus unable to yield a serious challenge to Biya's autocratic rule.

Overall, the transition process in Cameroon failed to create an institutional framework conducive to democratic rule. The government used extensive violence to suppress the democratic opposition. From the beginning of the demonstrations against his regime, Biya ar-

gued against multiparty reforms. The few compromises reached between government and opposition were never implemented in earnest.

As a result, the transition period did not lead to any changes in the constellation of the actors. All institutions remained weak and prone to government interference. To this day, no independent electoral management body is in place (Commonwealth Secretariat 2004; IFES 1998). The newly created two-term limit was abolished in 2007; this was possible because Biya's ruling *Rassemblement Démocratique du Peuple Camerounais* managed to secure a two-thirds majority in the 2004 National Assembly elections (Republic of Cameroon 2009). The abolishment of the two-term limit thus allowed President Biya to stand in the 2011 elections, which would have been the first elections in which the two-term limit had applied.

c) Ghana (Democratic)

Ghana's electoral regime underwent significant changes during the period between 1987 and 1992. Due to pressure from democratic opposition groups, the government, under military dictator Jerry Rawlings, introduced elections to the district assemblies as part of its decentralization program in 1987.³³ Simultaneously, the Rawlings dictatorship (1981–1992) initiated a nationwide debate about Ghana's possible future political system (Afari-Gyan 1995; National Commission for Democracy 1991; Nugent 1995). Eventually, this process led to the drafting of the constitution of the Fourth Republic, and to the democratic elections of 1992. These elections constituted the end of the critical juncture. Given the country's previous experiences with multiparty democracy (1957–1960, 1969–1972, 1979–1981), most electoral institutions constitute reactivations.

Between 1981 and 1992 Ghana was a military dictatorship; the Rawlings government ruled by decree. Previous democratic interludes had led to the formation of stable political parties, a vibrant civil society, and a lively media. The representatives of these organizations now had to operate underground, yet they remained vocal advocates of political change throughout the 1980s. The return to a constitutional order was never seriously under threat. After all, it was the Rawlings government that initiated consultation with the population at large from the late 1980s onwards. The most contentious topic was whether the future political setup should include multiparty elections. The Rawlings government advocated a system where political representatives should not belong to different political parties. However, the majority of the population, in contrast, argued in favor of multiparty politics. Eventually the government accepted their demands. Those pushing for democratic reform were internally divided between those who favored an FPTP system and those who favored a PR one. Both sides made extensive references to experiences from elsewhere across the globe as well as to previous experiences in Ghana (Afari-Gyan 1995; Committee of Experts 1991).

The key actors during the critical juncture were the Rawlings government and the democratic opposition. That Ghana's professional associations were the strongest defenders of the democratic reform process is a fact deserving of recognition. Once the elections to the district assemblies had taken place, the government began consultation with the population at large on the future political setup of the country. This occurred with the help of regional fora, which took place between July and December 1990. A committee of experts drafted a first version of the new constitution between June and July 1991. A consultative assembly – composed of representatives from both civil society and the government – debated the draft and made several amendments. The consultative assembly met several times between August 1991 and March 1992. The final document was passed in the national referendum of April 1992.

33 It should be noted that, from its inception, the Rawlings government saw military rule only as an interim solution. Inside the regime, plans for a legal framework had been in circulation since 1984. Interview with Obed Asamoah, Rawlings' former foreign minister, Accra, 20 May 2010.

As a result, a multiparty system was put into place. The only contested issue proved to be the electoral system for parliamentary elections. The constituent assembly – a conglomeration of representatives from all sides of Ghanaian political life, which was to outline the final version of the constitutional draft – was in favor of keeping the former FPTP system; the majority of the assembly thought that a new system would be confusing for most voters and thus reactivated the previous majoritarian system. Although the new electoral system was a contested issue, the debate was not motivated by ulterior political agendas on behalf of either Rawlings or the democratic opposition. All participants accepted the outcome of the conference. As in previous republics, the president still required an absolute majority over two rounds (reactivation) in order to be elected. The rules governing presidential elections did not generate any debate throughout the entire critical juncture. The electoral system for presidential elections was a reactivation from the Third Republic (1979–1981). All actors wanted that system to remain in place.

In the run-up to the first elections in 1992 there was widespread fear that electoral rigging and fraud would take place. The independent control of the electoral process was thus a key issue for the democratic opposition. Given the fact that it had already seemed apparent during the deliberations about the new constitution that Rawlings would contest the 1992 presidential elections, various representatives and the committee of experts decided to place special emphasis on the future role of the electoral commission. To this end, articles 43 to 54 of the 1992 constitution reestablished an independent electoral commission. Its structure was laid out explicitly in the 1993 Electoral Commission Act, which prescribed a permanent commission. The establishment of this electoral commission constitutes a slight modification. Ever since independence Ghana had an electoral commission in place that was separate from the rest of the administration. The main institutional feature that was changed was the number of leaders: prior to the 1993 Electoral Commission Act the commission had been headed by one individual, whereas now seven people were to be in charge of announcing the final results. This amendment was driven by technocratic motives: it allowed a vote on contested issues and was seen as making the commission more resilient to any outside interference.

After the second military coup by Rawlings in 1981, the Electoral Commission of Ghana (ECG) became the National Commission for Democracy (NCD), which was made up almost exclusively of Rawlings' revolutionary cadres and defense committees. The NCD's final report (1991) stressed the commitment of the population to freedom of association and to multiparty democracy. Rawlings accepted these findings. With the exception of the 1992 elections, all election results have been accepted by the winners and losers. While the opposition condemned the conduct of the 1992 presidential elections and boycotted the subsequent 1992 parliamentary elections, accusations of electoral rigging have never been wholeheartedly confirmed (IFES 1993). The Ghanaian presidents since 1992 have accepted the two-term limit (Article 66 of the 1992 constitution), which constitutes an institutional resumption. It was part of all constitutions after 1969 (Second Republic) and was introduced in response to the

abuse of presidential power by Nkrumah in the 1960s. Since then, its existence has been uncontested. Prior to the critical juncture the term limit could never be implemented in earnest as all previous democratic experiments had eventually been abandoned by the military. The opportunity for change came to an end with the successful conclusion of the first free and fair elections of the Fourth Republic, in December 1992. Since then no major political actor has challenged the political order that is in place.

Overall, the political reform process was a peaceful one. This is not to deny that the government orchestrated several attempts to intimidate the opposition so as to influence the reform debates in its favor (Afari-Gyan 1995; Nugent 1995). The Rawlings government remained in office, as it had won the 1992 elections. The institutions proved to be strong, mainly because they had already been in place previously. As a result, all political actors played according to the political rules. A successful takeover of power by the opposition has now occurred twice in Ghana (2000 and 2008), and the credentials of the ECG in being able to guarantee a free and fair process are beyond doubt. Institutionalized electoral fraud has, as a result, remained absent.

a) Togo (Autocratic)

The actors' capacity to impact future institutions heightened significantly when authoritarian president Eyadéma Gnassingbé appointed a constitutional commission in October 1990. Eyadéma's decision was a reaction to mass youth protests on 5 October 1990, which were the "decisive explosion" (Tété-Adjalogo 2006: 253; see also, Heilbrunn 1993: 287) after a long period of decline in governmental legitimacy. The political space perished not later than with Eyadéma's successful maintenance of control over the presidency and the parliamentary majority as a result of a Supreme Court ruling in April 1994 (Murison and Englebert 2009). Today Togo's electoral institutions are shaped by innovations and major modifications. However, only some of them emanate from the transition period (the critical juncture) – during which there was ultimately a failure to democratize or hybridize the regime (see Seely 2005). Other electoral institutions were significantly revised after the critical juncture.

In late 1979, after a period of 13 years without any constitution, the government arranged the one-party regime's so-called "democratization." In reality, the new constitution formalized the authority of the autocratic regime. Eyadéma loyalists drafted a text that fixed "the head of state and party's illimitable omnipotence so blatantly that it was probably unparalleled in sub-Saharan Africa" (Ziemer 1984: 162). However, the constitution reintroduced regular elections as an instrument by which to legitimize the rulers. Domestic observers critical of the government even considered the second parliamentary elections of 1985 to have probably been "cleaner" and better organized than any of the subsequent multiparty elections. Independent challengers of President Eyadéma could win seats. Even during escalating political turmoil, the third elections took place in a normal manner in March 1990. Thus, the necessary modification was to reschedule the first multiparty parliamentary elections and to reorganize the presidential elections.

Beginning with Eyadéma's first review commission of October 1990, both internal demands and the external political environment pushed Togo towards the liberalization of political rights. In principle, the existing institutions did not need to undergo massive reform in order to make multiparty elections possible. The lifting of the ban on opposition parties was the predominant necessity. However, due to the radical confrontation between sections of the (exiled) opposition and Eyadéma's dictatorship, simple solutions were impeded. Human rights issues steered other institutional decisions, including those about the establishment of electoral institutions that should, first of all, guarantee the fall of the despised regime.

After Eyadéma's constitutional commission failed, pressure increased to hold a Benin-style national conference – which eventually commenced in July 1991. However, regime supporters perceived the conference as being a hostile body and, as a result, were unable to negotiate any consensual decisions. The subsequent constitutional commission – which was described as professional and nonpartisan by high-ranking members and observers – reintegrated certain representatives of the regime. Yet, as a consequence of being perceived as a product of the National Conference, the commission's authority remained limited. Mean-

while, continued repression of the moderate opposition during the transition reaffirmed the radicals' resolve. The three major groups of actors (supporters of the incumbent regime, moderate opposition, radical forces) "owned" different institutional solutions that they were unable to reconcile or even simply compromise on.

Decision-makers did not prioritize the design of electoral institutions in the early part of the critical juncture. The National Conference defined three specifications for elections. Two of them – the revision of the electoral roll and the invitation of foreign observers to monitor proceedings (CNS 1991: 19) – implied short-term agency rather than the institutionalization of any rules. Later, the constitutional commission brought in an absolute majority system for presidential elections (innovation) and retained the same system in single-member constituencies for parliamentary elections (legacy). It also introduced a two-term limit that was a resumption of the second Togolese constitution of 1963.

The National Conference mandated the creation of an supervisory electoral body. Similar bodies had been in existence ever since independence. The 1992 Electoral Code made the composition of the National Electoral Commission – as the body was now called – less dependent on the executive, but it retained its purely supervisory mandate. Additionally, a second modification before the first multiparty elections maintained the supervisory role and focused on a more balanced composition. The fragile compromise of the "Ouaga III Accord" (J.O.25bis of 16 August 1993) could not ensure that presidential elections were acceptable to all parties – chiefly because Eyadéma won. Discontent continued and resulted in a permanent struggle over the design of electoral management according to was expected to better serve the various actors' proper ends.

The opportunity for change had already been almost entirely lost on 16 July 1991, when the National Conference unilaterally declared its sovereignty, even though the radical opposition that dominated the conference knew that the incumbent president would never accept the "Beninese way." The Togolese version precluded a sustainable consensus and prescribed many of the revisions of the post-transition institutions to the benefit of authoritarian power maintenance.

In sum, both sides were more interested in holding onto power than in building a democratic framework, and they "owned" the manipulative institutions that were designed or claimed to this end. To this day, the opposition aspires to win elections with the aid of an independent electoral commission that is biased in favor of civil society organizations and opposition parties. The power-holders' aspiration is to stay in power by maintaining control of the electoral process. The consequence of this polarity has been a very weak and dysfunctional electoral management structure, one which reduces the quality of the electoral regime and therefore hampers the hybridization – not to mention the democratization – of the regime.

Only institutionalized repression and other forms of power abuse guaranteed Eyadéma's continuance in office, even though the critical juncture increased the financial costs of political repression. Meanwhile, the dysfunctional system of electoral management that existed

under conditions of informally institutionalized polarization within the political landscape – reinforced by the National Conference – translated into an electoral boycott by the opposition in 1999, which brought about a super-majority for Eyadéma’s former unitary party in parliament. Consequently, the ruling party was able to legally amend the undesirable institutional novelties – such as the absolute majority rule for presidential elections and, above all, the two-term limit. Predictably, the opposition strongly objected to the amendments.

Eyadéma eventually died in 2005. His son, Faure Gnassingbé, succeeded him by way of extraconstitutional means (see Banjo 2008). Since then, President Faure has attempted to maintain power by increasing his legitimation. He has made some institutional concessions, such as concluding the Accord Politique Général (APG) in 2006. The agreement was intended to calm the opposition and to satisfy the donor community. His “gift” to the opposition was the introduction of PR in 31 multimember constituencies before the 2007 assembly elections. However, PR has improved the situation very imperfectly, while the promised resumption of the two-term limit and the absolute majority vote still awaits realization. Electoral reforms that could produce more credibility and enhance the quality of the electoral regime were omitted or have been further delayed. The agreed reform of the electoral commission was only implemented in 2009, after mistrust and political polarization had been further institutionalized.

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