The Institutionalization of a New Prostitution Regime—Theoretical Insights from an Ideational Perspective on Gendered Institutional Change

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Introduction

Gendered ideas, institutions and structures continue to permeate societies throughout the world. For scholars in the field of gender and politics an important challenge is to understand how political measures can change society and improve gender equality. Feminist institutionalism has recently emerged as an approach that is helpful for gaining an understanding not only of why gendered structures are so persistent to change, but also of how institutions can change insofar as they improve gender equality and reduce gendered bias (e.g. Mackay, Kenny, and Chappell 2010, Kook and Mackay 2011, Mackay and Waylen 2014b, Chappell 2006, Franceschet 2011, Bjarnegård 2013). Feminist institutional change or gender-equitable changes are instances when formal or informal institutions change in a way which lessens gender inequalities (Waylen 2014, p. 213).

Although there are numerous of studies addressing institutional change in the field of New institutionalism (e.g. Steeck and Thelen 2005, Mahoney and Thelen 2010, Hacker, Thelen, and Pierson 2013), studies about the mechanisms that promote gender-equitable institutional change are still scarce (see however Kenny 2013, Mackay 2014, Waylen 2014). Mackay and Waylen emphasise in a recent themed issue of Politics & Gender devoted to these questions that there is a need for a greater understanding of how gendered institutional change, particularly gradual and endogenous change, takes place and how feminist strategies can influence processes of such change (Mackay and Waylen 2014a).

A specific type of gendered institutional change that has received little attention until now is the process when an individual idea becomes an institution, which may also be termed the institutionalization of new ideas. I claim that this type of process is of particular interest from a feminist institutional perspective since ideas play an essential role in many processes of gendered institutional change. Firstly, processes of gendered change often occur in a gradual endogenous way, and in such processes ideational change often comprise an important component, and second, gendered change is often initiated by feminist actors who engage for new gendered ideas.

In this paper I argue that we need to pay more attention to examining and theorizing gradual ideational changes in processes of gendered institutional change. The aim is to show how an ideational approach to gendered institutional change can give us new insights to mechanisms conducive to gender-equitable change and feminist strategies favourable for such
change. Revisiting a case study of gendered institutional change in Swedish prostitution policy this paper outlines two idea-based mechanisms—consensus of the problem framing and gendering of the problem.

Feminist institutional change

Feminist institutionalism (FI) combines the insights from institutionally focused feminist political science and new institutionalism (Mackay, Kenny, and Chappell 2010, Krook and Mackay 2011, Mackay and Waylen 2014b). An interest in institutional processes and their effects from a gendered perspective comprises the common denominator of research in this field. While FI scholars endorse most of the basic assumptions of new institutionalism regarding the roles of formal and informal institutions as “the rules of the game”, they have critiqued existing approaches for their lack of a gender perspective (Mackay, Kenny, and Chappell 2010). FI places the gendered logic of institutions at the centre of the analysis, and is interested both in how institutions work and produce gendered outcomes and in how they are maintained and changed (Krook and Mackay 2011, pp.1). The present study relates in particular to the growing body of FI research interested in gendered institutional change and in the mechanisms which are conducive to such change (Mackay 2014, Mackay and Waylen 2014b, Waylen 2014).

Analysing institutional change is often regarded as a challenge for institutional scholars and to study the specific nature of gendered institutional change is even more challenging since the additional dimension of gender is added (Waylen 2014, p. 212, Mackay, Kenny, and Chappell 2010, p.577). An often raised critique against the established variants of new institutionalism (Rational Choice Institutionalism, Sociological Institutionalism, and Historical Institutionalism) is that they have focused primarily on institutional stability rather than on change (Mackay, Kenny, and Chappell 2010, p.577, Schmidt 2008, Schmidt 2010). Part of this critique directs the scarce interest in gradual endogenous processes of institutional change. Until recently, institutionalists interested in change have focused mainly on exogenous shocks that bring about radical institutional change, overlooking those changes that come about incrementally as a result of endogenous developments (see however e.g. Steeck and Thelen 2005, Mahoney and Thelen 2010, Hacker, Thelen, and Pierson 2013). Gradual changes seem to be particularly important for gendered institutional change and the recent work in new institutionalism in this regard has paved the way for new knowledge about
institutional changes that contribute to lessening gender inequalities, or so-called gender equitable change (Waylen 2014, p.213).

Drawing on Streeck and Thelen (2005) Waylen (2014) argues that certain types of institutional change hold more promise for gender reform efforts than others. She argues that institutional change strategies of *layering*—change in which new rules are introduced alongside or on top of existing ones without being in conflict with the, and *conversion*—when ambiguities in the existent institutional configuration are used to make institutions change from within and behave differently, are more likely to be successful gender equity strategies insofar as they proceed gradually, are endogenous, and require less force than more radical institutional changes. According to Waylen *displacement*, which means the wholesale replacement of old rules with new ones, is unlikely to be a common gender change strategy because gender equity actors rarely have sufficient power or the opportunity to achieve such radical changes in the absence of strong opponents. Likewise *drift*—when the rules remain the same but their impact changes due to shifts in the environment, is unlikely to be an efficient gender equity strategy since it is slow moving and relies on the external environment (Waylen 2014, pp.218).

Scholars in the field of FI have also made important contributions in regard to how historical legacies and intersecting institutions impact upon purposive institutional change strategies (Mackay 2014, pp. 554, Kenny 2013).

While there have been important developments in understanding processes of gendered institutional change, there has been limited attention to processes of institutional change in which an individual idea becomes institutionalised. Discursive and constructivist institutionalists claim that ideas and discourse are important factors in explaining processes of endogenous institutional change (Hay 2006, Schmidt 2008, Schmidt 2010), and feminist versions of discursive institutionalism highlight the roles of gendered ideas and discourses as well as discursive strategies in institutional processes (Kulawik 2009, Freidenvall and Krook 2011). Building on these insights, I argue that paying attention to gradual ideational shifts in processes of change can give us new insights to mechanisms and strategies conducive to gendered institutional change. For example, by identifying idea-based mechanisms.

**An ideational approach to gendered institutional change**

Subsequent to the work of North (1990) and many others, institutions are often defined as “the rules of the game” that comprise the cognitive, normative, and regulative structures and
activities that give meaning, shape, and stability to social and political behavior (Scott 2008). These consist of formal institutions that are codified and officially sanctioned, such as criminal laws, regulations, and policies, as well as informal institutions that comprise uncodified regulations which are socially shared and sanctioned, including norms, practices, and intersubjective ideas.

Institutions have an ideational foundation and can be seen as codified systems of ideas and the practices they sustain (Hay 2006, Larsson 2011). Another way to put it is that when a set of ideas become dominant in a given context to the extent that it regulates actors’ conduct, this set of ideas has acquired the status of an institution.

A relevant distinction in this discussion is the one between, on the one hand, subjective ideas, which are expressed by individuals or organizations and have limited influence on other actors’ conduct, and, on the other, institutions which are codified intersubjective ideas with regulative functions. In contrast to Lowndes and Roberts (Lowndes and Roberts 2013, pp.67) who question whether discursive versions of new institutionalism are institutionalists at all because of their focus on institutions’ ideational foundation, I see the concepts as interlinked and analytically complementary in line with Schmidt (2008, 2010) and Hay (2006). Since institutionalisation is not a dichotomous concept but rather a matter of degree (Kenny 2013, p.29), the relation between ideas and institutions is best described in terms of a sliding scale of degrees of institutionalization. Subjective ideas can thus become institutions if they acquire regulative functions and generate sanctions.

In the light of this discussion the creation of new institutions is often a gradual process in which a set of subjective ideas, initially advocated by perhaps a single actor or small group of actors, successively gains influence to become intersubjective (cf. Hay 2006, Erikson 2015). It is thus the step from individual idea to intersubjective, shared understanding which anticipates the emergence of a new institution. The process by which ideas become intersubjective, and the point at which they are turned into institution and begin to regulate the behaviour of actors, is an empirical question. While such institutional change processes are often endogenous and gradual, the outcome can be radical and transformative. Ideational shifts characterise such processes of change— the general understanding of an issue is transformed step by step to the point when a new understanding has achieve sufficient support to become an institution (formally or informally). Some steps in this chain of events are more important than others because they shape the subsequent route in a significant way. These I term idea-based mechanisms of change.
Institutional change which is the result of the institutionalisation of individual ideas has scarcely been analysed from a feminist institutional perspective before even though this type of institutional change may be especially important for gendered institutional change. First of all, processes of gendered change often occur in a gradual endogenous way, and in such processes successive ideational shifts often comprise an important component, and second, insofar as gendered change often is initiated by feminist actors who engage for new gendered ideas, it is imperative to pay attention to these gendered ideas and how they interact with the prevalent institutional context.

I suggest that paying attention to gradual ideational shifts in processes of gendered institutional change can give us new insights to the dynamics of such processes. Although the contribution of this article is to identify ideational mechanisms, a comprehensive analysis of institutional change needs to include both ideas and actors (see Erikson 2017). Below, I will assess gradual ideational shifts in a case study of Swedish prostitution policy, to show the usefulness of an ideational approach in order to understand processes of gendered institutional change. Drawing on these results I will outline two mechanisms conducive to gender-equitable change. I claim that these mechanisms can also be helpful to formulate feminist strategies conducive to change.

**Revisiting gendered institutional change in Swedish prostitution policy**

In 1998 Sweden became the first country in the world to criminalise the purchase of sexual services, although it remained legal to sell sex. Previously prostitution was conceived of as a socio-economic problem which was handled through social measures of support, drug prevention and education. Regardless of normative considerations the 1998 ban is indeed an intriguing case from a feminist perspective since one stated purpose of the law was to acknowledge the gendered logic of prostitution and to change society’s attitudes towards prostitution in a more gender-equal way. The law represented a new prostitution regime that problematized power relations in prostitution as inherently gendered and hierarchical and made the male buyers of sexual services responsible for the act of prostitution, not the women who sold sex. Although it was based on new gendered ideas about prostitution its effects for women in prostitution have been disputed (for a review of research on the ban’s effects see Skilbrei and Holmström 2013, p.69). Nevertheless, the law constitutes an instance of gendered institutional change in the sense that the new regime was based on a gendered
understanding of prostitution, and considered feminist by actors involved at the time. The anticipated changes in the norms surrounding prostitution in society were as important as the penal legislative change itself.

The path to institutionalisation started with a subjective idea held by single actors — that the client in prostitution should be criminalised. Due to actors’ continuous work and strategies, this idea successively gained influence and intersubjective status via gradual ideational shifts, and in the end it was formally institutionalised. We will take a closer look at the ideational shifts of this gradual path to institutional change.

**Ideational shifts**

The demand for criminalisation was first raised in the 1970’s outside parliament by feminist organisations, but later it came to be advocated by women from political parties when it reached the parliamentary agenda in the 1980s. In the beginning the opposition in Parliament against criminalization was massive and only a small number of women from various political parties engaged in the issue, but gradually the claim was gaining support.

All along there was an ongoing struggle over meaning. This struggle was about how to conceive of and understand prostitution and the problems associated with prostitution. Should prostitution be seen as problem in itself? What kind of problem? and, Who or what was responsible? A first important dividing line in the initial debate was whether prostitution in itself should be considered a problem or not. In the 1970’s a few proponents of legalisation of brothels and of deregulation of sexual activities challenged the view that all kinds of prostitution were inherently problematic. However, since both proponents of status quo—a socio-economic understanding of prostitution, and advocates of the new criminalisation ideas shared the understanding of prostitution as a problem in itself which needed to be eliminated, this problem frame eventually became established as a master frame of the debate in the 1980s. Even though many dividing lines in the debate remained regarding for example the nature, cause and solution to the problem, this shared understanding of the overarching problem became a baseline for the debate. This ideational shift was significant for the later process insofar as the entire debate from this point onwards took place within this master frame. The fact that consensus of the problem was reached was an important prerequisite for the final institutional change for two reasons; (1) change was perceived as necessary since status quo obviously had not been enough to handle the problem; (2) opposition was limited to discuss measures since the problem as such was not questionable anymore.
Another important dividing line in the debate was gender. From the very beginning a few feminist actors viewed prostitution as a gendered problem caused by unequal gendered structures in society, but this was not the dominant understanding which rather took a socio-economic perspective. Feminist actors inside and outside parliament struggled to gain broader support for a gendered view and managed eventually to change the overarching debate and understanding of prostitution insofar as gender became intrinsically linked to prostitution by the 1980s. Since the mid 1980’s all actors, opponents as well as advocates of change discussed prostitution in terms of gender although they very divided in their views. It should be noted in this regard that all actors were not feminists; they just talked about prostitution in terms of men and women. This was an important step in the processes of gendered institutional change for two reasons; (1) it enabled support for further ideational shifts of importance for the final outcome, such as an understanding of male buyers as the driving force of prostitution; (2) it rendered feminist actors and women’s organisations as legitimate stakeholders in the legislative processes, which gave them a platform that they previously did not have.

**Time sequencing and path dependence**

The process revisited here was characterized by two important ideational shifts. In order to identify such formative shifts and assess their significance for the subsequent process the time sequence and path dependency of ideas must be taken into account (Cox 2004, Hay 2006).

First of all, the ideational changes were gradual in the sense that an ongoing struggle of meaning continued over the entire legislative process and shifts in the dominant view of prostitution occurred at an incremental pace although corresponding legislative changes were absent. These shifts can be observed for example in the descriptions and viewpoints expressed in parliamentary documents, debates and in committee reports which over the course of the years changed step by step. In isolation each of these changes are of little significance but put together in a chain of events they constitute a slow moving process of ideational change and ultimately institutional change. Although it is important to see the entire process of gradual alteration, some shifts stand out as more important than others.

Second, some of the shifts were path dependent for the route of the later process in the sense that they influenced the character and content of the process in ways which had not occurred in the absence of these shifts. Scholars in the field of new institutionalism have remarked that the concept of path dependency is particularly useful when addressing the role
of ideas in social and political processes since ideas are always path dependent in the sense that they are products of or influenced by previous ideas and seldom entirely new (Cox 2004, Hay 2006).

If we return to the case revisited here, two shifts mentioned above stand out as particularly important; consensus of the problem of prostitution and the gendered frame. However, although these changes were important in isolation of each other, their mutual time sequence is also of outmost importance to understand the development of the subsequent process leading to institutional change. I will exemplify how. The introduction of a problem frame viewing prostitution as a problem in itself, before the gendering of the debate was critical in a number of ways. First of all, it forced the opposition to criminalisation from an early point to discuss legislative changes within that problem frame, which in practice meant that the opponents were limited to a discussion about measures that could be used to eliminate prostitution since common agreement of the basic problem prevented them from questioning this overarching aim. If the gendered frame would have been institutionalised before the problem frame, we might very well have seen opposition to client criminalisation in terms of sex-work legitimisation. Proponents of prostitution as sex-work often take women’s right to self-determination as a starting point, and this has been a gendered frame successfully used in other countries that are opposed to criminalisation. However, the Swedish debate set off from the position that prostitution was a problem, and this excluded such gender perspectives. For advocates of criminalisation, it was likely easier to discuss measures than to discuss the ideological foundations of prostitution with sex-work advocates.

Second, the problem frame in combination with a gender perspective favoured the understanding of prostitution associated with client criminalisation. Stated otherwise, it made possible an analysis of male clients as the cause of prostitution. Elsewhere I argue that these later changes depended to a large extent on the first two ideational shifts, which had oriented the process in a specific direction and made certain choices more plausible than others (Erikson 2017, forthcoming). However, the government’s final decision to formally change the prostitution regime must also be viewed in respect to a number of feminist actors’ strategic work for client criminalisation. This included for example the Social Democratic government’s own women’s party section, which had succeeded in gaining the support of the Social Democratic Party congress in this regard. The broader national and international debate on women’s issues should also be taken into account in the effort to understand the final outcome of the political process in parliament, for this was a time when women’s bodily
integrity was on the political agenda. Yet, the ideational shifts constitute important prerequisites for the actors.

**Two idea-based mechanisms conducive to gendered institutional change**

In the case revisited here two ideational shifts stand out as particularly important for the outcome; consensus of the problem and gendering of the problem. I argue that these shifts are general enough to be of relevance for other cases as well. Another way to put it is that they can be seen as mechanisms conducive to gendered institutional change. By mechanisms I mean links in the chain of events which are of particular importance for the final outcome insofar as they generate a specific route of the process (cf. Mayntz 2004). Erikson 2017 claim that these mechanisms where decisive for institutional change in the case of Swedish prostitution policy, this paper argues that they are likely to be important in other cases as well, and that they can be used as strategies for gendered institutional change.

Although they are “idea based”, which means that their foundation is discursive, they influenced actors in a concrete way as they acquired intersubjective status and even the function of informal institutions which formed the subsequent process. It should be noted that subjective ideas rarely function as a mechanism insofar as they are tied to the individuals who hold them, and their range of influence over other actors is therefore limited (Gofas and Hay 2010). Intersubjective ideas on the contrary reside between individuals as collective shared meaning, and can therefore have an impact on actors and processes as they become part of the context (Hacking 1999). Sometimes intersubjective ideas acquire the status of informal institutions and regulate the behavior of actors in a more concrete way. The mechanisms found here functioned as informal institutions as they regulated the conduct of both advocates’ and opponents’ to criminalisation who adapted their behavior to them according to a logic of appropriateness (March and Olsen 2008), and in interviews, actors involved maintain that social sanctions existed for those who approached the problem of prostitution in alternative ways (Erikson forthcoming 2017).

An interesting feature of the mechanisms found here, is that the timing was of outmost importance. I suggest that time-sequencing and path dependence is of particular importance to identify and assess the impact of idea-based mechanisms, since they operate within a larger discourse and their meaning must be seen in relation to the broader context. As discussed above, a contra-factual chain of events in which gendering of the problem had occurred before
the consensus of the problem, had probably generated a very different processes insofar as opponents could have used the sex-work argument to question the criminalization position. Yet, although the mechanisms identified here always must be seen in their context, I claim that there are reasons why they should be considered as conducive to institutional change, and gendered institutional change in particular. Below they will be discussed in turn.

**Consensus of a problem**

In policy analysis it is a well-known insight that the representation of the problem is of outmost importance for which solutions that become considered as viable in the policy process (Bacchi 1999, Mehta 2011, Rochefort and Cobb 1994, Schön and Rein 1994). Institutional processes of change are no exception and especially in processes where formal institutional change is a result of political decisions, I claim that problem representations are important. In the light of this discussion, agreement on the problem representation becomes an important first step in order to gain support for a new understanding which may generate institutional change.

In the case revisited here an important mechanism in the process of gendered institutional change was that a shared understanding of the problem of prostitution was reached early in the process. There was consensus of the understanding that prostitution was a problem in itself, regardless of the type of prostitution or context. This problem frame was the foundation of the new prostitution regime and it was important for the chain of events insofar as it acquired the function of an informal institution which regulated actors’ behavior and the subsequent process in a direction which favoured gendered institutional change. I suggest that consensus of a problem representation is an important mechanism of institutional change because (1) change becomes perceived as necessary since status quo obviously has not been enough to handle the problem; (2) opposition becomes limited to discuss measures since the problem as such is not up for discussion. Although this mechanism is not gendered, I claim that it is important for any process of gradual institutional change including gender-equitable changes.

In respect of strategies for gendered change, Erikson 2017 shows that while it was difficult to find support for institutional change initially, it was possible to reach agreement on the problem framing ant that made institutional change possible at a later stage. For feminist actors it is thus an important strategy to work towards a broad shared understanding of the
problem favourable for a given gendered institutional change, this is much easier than to get support for radical institutional changes directly. As noted by Waylen institutional change by displacement, which means the wholesale replacement of old rules with new ones, is unlikely to be a common gender change strategy because gender equity actors rarely have sufficient power or the opportunity to achieve such radical changes in the absence of strong opponents (Waylen 2014, pp.218). However, in the case revisited here displacement took place but it did so as a result of gradual process of ideational change. Consensus of the problem was an important mechanism in this process.

**Gendering the problem**

Previous research maintain that gendering the debate is of importance for how well women’s organisations and feminist organisations manage to get support for their claims in politics (Lovenduski 2005, Outshoorn 2004, McBride and Mazur 2010). Sauer finds for example empirical evidence which suggest that gendering of the problem is important not only for how successful women’s movements are in terms of impact on policy output, but also for the women’s organisation actors’ access to the policy process (Sauer 2010, pp.211). In the light of these findings I suggest that gendering the problem may function as a mechanism conducive to gendered institutional change. It is important for two reasons (1) it enable support for further feminist ideational shifts of significance for gendered institutional change, (2) it render feminist actors and women’s organisations legitimate stake holders in the legislative processes.

It should be noted that gendering the problem means that a problem is broadly discussed in terms of men and women and their mutual relationships, basically a gender perspective. A gendered problem framing is thus broad enough to include many different gender analyses and it does not necessarily mean that the framing is feminist.

In the case revisited in this article the political debate on prostitution became gendered in the middle of the process. Although gendered understandings of prostitution appeared in the debate from the very beginning they were initially subjective ideas advocated by a number of feminist actors. What happened in the mid 1980’s was that a gendering of the problem became the dominant and shared understanding of prostitution. From this point onwards all actors engaged in prostitution, regardless of their normative stance, discussed prostitution and its aligned problems in terms of a gendered problem. The gendered problem framing attained the function of an informal institution with regulative functions. For example even male
representatives from right-wing parties with no previous connection to the women’s movement justified their statements in terms of gender (Erikson forthcoming 2017, p.80). As already discussed this shift was of great importance for the subsequent process, for later ideational shifts and for the final outcome.

Although gendering of the problem itself is not an automatic support for feminist claims of gendered institutional change, it is still an important step and prerequisite. I would even argue that it is an efficient feminist strategy to reach agreement on a broad gendered understanding of the problem insofar as it is more easily supported and renders less opposition at the same time as it enables support for more radical gendered framings and gender equitable institutional changes. As demonstrated in the revisited case, gradual ideational changes can result in radical outcomes.

**Conclusion**

From a constructivist perspective ideas and institutions have many things in common. Institutions can in fact be seen as intersubjective ideas with regulative functions. Departing from the notion that the relation between ideas and institutions is best described in terms of a sliding scale of degrees of institutionalization, I claim that ideational changes are particularly important in many processes of gendered institutional change.

In this paper I argue that if we need to pay more attention to examining and theorizing gradual ideational changes in processes of gendered institutional change to further our understanding of such processes. I suggest that an ideational approach to gendered institutional change can give new theoretical insights for example of idea-based mechanisms conducive to gender-equitable change.

Revisiting a case of gradual institutional change the paper demonstrates how studying the process when an individual idea is turned into an institution, can give us new theoretical insights about the nature and character of processes of gender-equitable institutional change. For example, two idea-based mechanisms have been specified—consensus of the problem and gendering of the problem. These were important in order to understand the gradual process of institutional change which resulted in a gender-equitable outcome in the Swedish case, but they are also likely to be important in other cases as strategies for gender-equitable institutional change.
Both these idea-based mechanisms functioned as informal institutions which shaped and regulated the process and the actors involved, furthermore they can be used as strategies for gender-equitable change.

In the light of the broader theoretical discussion of gender-equitable institutional change this paper contributes with new knowledge about the character of institutional processes that are conducive to gender-equitable change. Waylen’s discussion of how processes of institutional change which proceed gradually, are endogenous, and require less force are more likely to be favourably influenced by gender equity strategies than more radical institutional changes, can be developed conceptually in the light of the present study. By making an analytical separation, consistent with Steeck and Thelen (2005), where they make a distinction between the character of the process and the outcome we gain a more fine-grained understanding of how gendered institutional change takes place. The process revisited in the present paper proceeded through gradual ideational changes, but it resulted in a radical gendered change, or what Streeck and Thelen’s describe as an “incremental change with transformative results” (Steeck and Thelen 2005, p.9). Although the process we have examined meets Waylen’s criteria, it clearly cannot be defined as marginal institutional change, as would be the case with layering or conversion. Rather, it is a kind of displacement, that is, the replacement of one institutional configuration with another, which according to Waylen is unlikely to be a common gender change strategy. What is interesting in this case is that, although the final outcome is displacement, the process is not characterised by an open struggle between (powerful) gender equity actors and strong veto players, instead it is a process characterised by gradual ideational changes taking place quite unnoticed, which created favourable conditions for the final radical institutional change. This is a very encouraging finding in respect to the chances to achieve gendered change. The findings constitute a call for increased theorisation concerning various types of processes and the possibilities for gendered institutional change.

References


