

**THE TRANSITION MECHANISM OF THE LIMITED ACCESS ORDER – THE
EMERGENCE AND EVOLUTION OF INSTITUTIONS IN KENYA**

by

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JBXSIS001

SUBMITTED TO THE UNIVERSITY OF CAPE TOWN

In partial fulfilment of the requirements for the degree

Master of Commerce in Economic Development

Faculty of Commerce

UNIVERSITY OF CAPE TOWN

Date of submission: February 2018

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ABSTRACT

The purpose of this dissertation was to study the institutional transmission mechanism of the limited-access social order in Kenya. This was motivated by the theory of new institutional economics, which views differences in institutions as fundamental in explaining differences in the level of economic development across countries. However, this theory often faces criticism in as far as it provides weak or no evidence pertaining to the direction of causality between institutions and economic development. This is because the theory tends to neglect the problems of political instability and the process state formation. In the social order framework, the problems of violence and instability underpin state formation and consequently institutional development. The limited access theory suggests that openness to the political and economic spheres of influence at early stages of development serves to increase instability and the level of violence in a society, and this may lead to a deteriorating quality of institutions, hence further economic stagnation. Using the theoretical framework of social orders and public choice theory a Vector Autoregressive Model was applied in order to evaluate this prediction of the limited access order theory. The results indicate that in inheriting colonial institutions and using them to bolster their elite networks through patronage, African leaders invariably inherited the contradictions embodying colonial rule, whereby open access to customary economic rights is disruptive to elite capital accumulation, thereby leading to political instability. Additionally, while the literature on postcolonial African states suggests that colonial institutions have been persistent, the results indicate that postcolonial Kenya has better institutions than colonial Kenya, in terms of economic and political rights. Moreover while the theory mainly attributes violence to elite competition, the findings highlight the importance the increase in political consciousness in the postcolonial state in explaining the evolution of institutions.

1. INTRODUCTION

This dissertation uses and slightly extends the theoretical framework of social orders of North, Wallis, and Weingast (2006; and 2009) with insights from public choice theory in order to analyse the evolution of political and economic institutions in limited access order societies. Specifically it seeks to analyse how the internal logic of a limited access society transmits itself into a country's political and economic institutions. In doing so, this dissertation drops the assumption that a social order in a certain territorial boundary (i.e. a country) is underpinned by a nation state which has a legitimate monopoly on systemic violence. Instead, it analyses the process through which the monopolization of legitimate force is attained and in turn how the nation state, along with its institutions, emerges. Generally, an institutional structure based on a limited access order seeks to achieve political and economic stability through limiting access to political and economic institutions. Limiting access, in economic terms, is imposing entry barriers in economic and political institutions in order to limit competition, thereby creating and maintaining economic rents for the political elite. Circumscribing access to the economic and political spheres of influence, in turn, serves to limit and regulate competition and to instil incentive-compatibility conditions among powerful individuals in society in order to achieve political stability. The powerful members of society are defined by their ability to stabilize or destabilize a broad-based, voluntary, incentive-compatible, market system of creating and distributing economic rents. In particular, power is characterised by the ability of individuals or groups to exert or withstand (hold out) violent coercion. The hallmark of the theory is that it allows an analysis of political and economic institutions that define access to political power and the extent of economic competition and the division of labour (Wegner, Mechergui, and Mechergui, 2013).

The economic development and the new institutional economics (NIE) literature has reached a broad consensus that institutional differences are likely to explain the staggering differences in economic development among nations. This consensus, however, does not extend to the specific set of institutions which enable some countries and not others to achieve advanced levels of economic development (Khan, 2013). Some commentators claim that open and stable political and economic institutions, such as representative democratic and strong property rights systems are necessary or sufficient for the development and advancement of market-based economic systems. This is because open and stable, economic and political institutions serve to reduce uncertainty, and therefore transaction costs, while also

enabling long-term planning and investment (Bardan, 1989). These arguments and observations in the literature suggest that economic development is a function of institutional development. In contrast however, other authors claim that institutional development, characterised by openness in stable political and economic institutions, requires economic development (Khan, 2013). This counterargument holds that institutions that reduce transaction costs, such as property rights, themselves, in turn, entail transaction costs, which given their low levels of development and limited resources, cannot emerge in developing countries. This is because, for open, rule-based, economic and political systems to be formulated and operated thoroughly, they require an embedded, legitimate, and a well-resourced enforcement mechanism. For example, low levels of development often make it difficult to fight corruption and enforce formal rules, because of resource and incentive constraints (Khan, 2005).

The framework adopted in this dissertation asserts that this conundrum of endogeneity between institutional and economic development can be overcome once it is admitted that institutions are underpinned by a system of governance which formulates, operates, and enforces institutions over a given territory (North, Wallis, and Weingast, 2009). This is because political and economic institutions do not exist exogenously of an enforcement mechanism, which in modern societies is the nation state. The nation state, in turn, also does not exist exogenously of its socio-political and socioeconomic idiosyncrasies. These, in turn, are driven by social orders and how each social order regulates competition over political, hence economic resources. Therefore in order to understand the emergence, evolution and persistence of institutions, as well as how these in turn affect economic development, it is important to consider the way societies establish an ordered political and economic structure, that is, a social order. This implies that how societies within a social order manage competition among competing interests determines the kind of institutions that can or cannot emerge, as well as the nature of their enforcement mechanism. And, these in turn determine the level of economic development in a society. The theoretical framework of social orders goes beyond the conventional insights of NIE, where transition societies need to adopt economic institutions that keep rent-seeking groups at bay and promote open competition as this argument assumes away many of the stability conditions of the political order, thereby giving a misleading hint of feasible paths of institutional development (Wegner, Mecherghi, and Mercheghi, 2013). In the case of Kenya, using a dataset containing property rights, political and civil liberties, as well as political instability, spanning 130 years from 1880-2010, this dissertation seeks to analyse how the logic of managing competition among powerful groups through limited access shapes the emergence, evolution and persistence of political and economic institutions. The rest of the paper is organized as follows; Section 1 presents the literature on social orders, section 2 presents the micro-economic foundations of social orders, section 3 presents an analysis on violence and state formation with a focus on the nature of the African state proposed in the literature. Section 4 presents an analysis on the role of violence in state formation. Section 5 presents an historical exposition governance and institutions in Kenya during the measurement period. Section 6 presents an empirical section on the transmission analysis of the LAO and institutions in Kenya. Finally, section 7 concludes.

2. THE CONCEPTUAL FRAMEWORK: SOCIAL ORDERS AND THE EMERGENCE OF INSTITUTIONS

According to North *et al.* (2007), throughout all of human history, humans have devised only three ways of organizing societies, that is, social orders, which are self-sustaining and internally consistent. These are the primitive access order, the limited access order (LAO), and the open access order (OAO). In this theoretical framework, social orders are comprised of political, economic, cultural, religious, military systems or institutions. In defining institutions, North (2001; in North *et al.*, 2007) argues that institutions are the written (*de jure*) and unwritten (*de facto*) ‘rules of the game’, which encompass formal and informal norms of behaviour. Additionally, institutions also include mechanisms by which the rules are enforced as well as beliefs about how organizations and other individuals will behave (North *et al.*, 2007). Social orders specify how individual competition over economic rents within and between institutions is managed. And, institutions of a certain social order, in turn, determine how other constituent institutions are organized within a society. More precisely, social orders are characterised by the way societies construct institutions that support the emergence of specific forms of organizations and the way societies

limit or permit access to organizations (North, Wallis and Weingast; 2009). This suggests that the likelihood that other kinds of institutions and their organizations will emerge within a certain society is determined by the incumbent institutions and organizations *supported* in that society (Mueller, 1989; and North *et al.*, 2007). For example, North *et al.*, (2007) argue that in LAOs, bureaucracies and judiciaries find it difficult, if not impossible, to deliver services impersonally. It is not necessarily the cause that bureaucrats are personally corrupt, but it is because they are embedded in a system of incentives, created by the social order, that offers them little opportunity to change (North *et al.*, 2007).

This in turn implies that, unless incentive-compatibility constraints have been eliminated, it is unlikely that open institutions and organizations, such as universal franchise and opposition parties, will emerge or operate as intended in societies based on a social order that *supports* institutions which limit access to organizations for its immediate stability (North, Wallis, and Weingast; 2006 [emphasis added]). In this framework, organizations are defined as tools that individuals and groups, pursuing a mix of common and individual goals, use to increase their productivity. Moreover, organizations are created to coordinate the actions of many individuals and groups, and to dominate and coerce other individuals and groups (North, Wallis and Weingast, 2009). Furthermore, North, Wallis and Weingast (2006) assert that what is mainly common across social orders, and in turn what distinguishes them, is not their culture or institutions per se, but the way they limit and control violence. North, Wallis and Weingast (2009) argue that, all societies face the problem of violence, where the possibility that some individuals will be violent poses a central problem for any group of individuals. And, since all societies possess institutions, organizations and beliefs which enable them to deal with violence with varying degrees of success, the systemic consideration of violence and the role it plays in shaping societies is fundamental to the problem of economic, political and social development (North *et al.*, 2007). This thereby gives impetus to understanding the rationale behind the use of violence in social orders.

Oppenheimer (1926, 26) argues that “There are two fundamentally opposed means where man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires... (these are) work and robbery”. Moreover, Oppenheimer (1922, in Rothbard; 2009) defined production and exchange of one’s own assets, is an economic means to wealth. While robbery, characterised by the seizure of another individual’s goods and services by use of force and violence, is a political means to wealth. However, the use of force to transfer resources from one individual or group to another is fraught with paradoxes because warfare and other forms of violent coercion can destroy the very resources they seek to expropriate, thus rendering the process a negative sum game at worse or a zero sum game at best. That is, expropriation through violent coercion entails collateral damage, which is guaranteed to make at least one of the parties a loser and this might serve to inhibit long-run productive capacity (Anderson and Gifford, 2004). This implies that, unless a society establishes a peaceful order, there will be little or no production taking place because the victims of violence will have little incentive to produce goods and services as expropriation risk will be too high to do so (Olson, 1993). Establishing a society that fosters peace, specialisation and exchange; that is, fostering economic in contrast to political means of creating wealth, requires the creation of incentives for groups to compete peacefully rather than through violence (North *et al.*, (2007).

However, elsewhere (North, Wallis and Weingast, 2009) assert that no society solves the problem of violence by eliminating violence, implying that, at best, societies can only contain and manage violence. The analysis so far has given economic reasons as to why societies need to reduce the level of violence. What is left then is to determine when and how societies can attain reduced levels of violence. Elwert (2001) argues that it is the lack of monopoly of violence under competitive conditions that produces and maintains spaces open to violence-fields, whereby people invest in social and physical conditions of security in much higher proportions. In such societies individuals tend not to be preoccupied with development, growth, or productive innovation. This is because, at least in the short run, the return to political means of acquiring wealth is higher than the return to economic means of acquiring wealth. This suggests that, economic development cannot ensue in social orders where the monopolization of force

hasn't been attained. This conceptual framework then seeks to integrate a theory of economic behaviour with a theory of political behaviour by demonstrating how political systems manipulate the economy in order to attain and sustain political stability, limit violence through instilling social orders (Wegner, Mecherghi, and Mecherghi, 2013; and North, Wallis and Weingast, 2006). These social orders provide powerful members of society incentives to foster an environment that allows methods of rent appropriation that prevent the negative sum game characterised by coercive means of accumulating wealth. The rest of the section discusses the three social orders and how they limit violence, as well as how one order transits to another.

2.1 The Primitive Access Order

In this framework, the primitive access order consists of hunter-gatherer type societies which are made up of many small social units with very little specialization and division of labour. The most important characteristic of this social order is that of high levels of violence levels, as there is no one person or group that has monopoly on systemic violence, and therefore systemic use of violence is likely to be between-group rather than within-group (North, Wallis and Weingast, 2006). Small groups, relative to larger groups can easily solve the problem of collective action when it comes to peace and security as it is easier to impose sanctions on anti-social behaviour in small numbers. This is because it is easier to learn and predict the behaviour of other members in a small group, especially when it comes to responding to cooperative strategies of non-violent behaviour. Hence, the emergence of cooperative Pareto-optimal equilibria with regards to the provision of security is much more likely in such small groups relative to larger groups (Mueller, 1989). However, despite small groups being able to easily solve within-group collective action problems over the use of violence, given that there is no one group with a monopoly on violence, it is unlikely that the output of violence will be reduced between groups, as each group will find it optimal to dedicate some of its resources towards violence potential for conquest or for defence. Moreover, because the continuation of violence is embedded in the market for violence, this implies that, given that the lack of monopoly control over the use of violence, at best, groups under primitive access societies will have an oligopolistic market structure of violence, and at worst, a monopolistic competitive market system (Elwert, 2001). This suggests that, it is highly unlikely that primitive access societies can sustainably reduce the use of predatory violence, and hence achieve the levels of peace that are necessary for complex organizations which in turn are necessary for economic development characterising modern societies (North, Wallis, and Weingast, 2006). This analysis suggests that even though groups in primitive access orders are able to solve within-group collective action problems, they are nonetheless unable to solve between-group collective action around the use of violent force. Furthermore this implies that primitive access social orders cannot achieve the level of economic development required to improve quality of life characterising contemporary societies because unregulated violence cannot result in the formulation of rules, more especially those which are necessary for economic growth (Mueller, 1989; Elwert, 2001; and Khan, 2017).

2.1 The Limited Access Order

The social relations are based on the reduction of violence as well as rules that govern those social relations. Under violence-free realms, in contrast to violence-fields, long-term investments in intellectual formation and means of production also make sense for persons far from the centres of power (Elwert, 2001). The analysis so far suggests that unless societies reduce their levels of violence, they cannot form complex organizations which are necessary for voluntary exchange, investment, market formation and economic development. To achieve reduced violence and economic progress, an elemental organization with centralized power, comprised of a web of relationships that make up credible commitments within a dominant coalition is necessary. In order to solve the problem of violence, the LAO uses the political system in order to create and control the distribution of rents in a manner that enhances incentives for violence specialists to engage in rule-based behaviour in contrast exerting violence to fulfilling their own

personal ambitions (North *et al.*, 2011). In order to reduce the level of violence, LAOs have to generate sustainable economic rents for their powerful members as the dissemination of rents is the basis for political stability. This is achieved through throttling competition by limiting access to valuable political and economic institutions (North *et al.*, 2007). Furthermore, the LAO appears to be the means by which all but a handful of societies have secured order and limited violence for the last ten thousand years, where powerful individuals, possess privileges and rents, and where the risk of losing the rents makes it in the interests of these powerful individuals and groups to cooperate rather than to fight. The creation and granting of privileged access to economic rents through privileged access to political institutions provides an incentive to violence specialists to halt the violence for a given level of potential economic gains. Thereafter, powerful individuals gain access to social tools which enable them, and only them to form powerful organizations which manipulate the economy to create rents as a means of solving the problem of violence (North *et al.*, 2007). This argument concurs with Olson (1993), who argued that the monopolization of theft and the protection of tax generating subjects, that is, the monopolization of violence and provision of security serves to eliminate anarchy and the regular outbursts of violence.

North *et al.* (2007) and North *et al.* (2011) argue that historically, LAOs were a great innovation over the hunter-gatherer societies' primitive order as they allowed the formation of large and complex civilizations with substantial specialization, exchange and wealth. While LAOs vary enormously, both in composition as well as in outcomes for development, all share the basic principle of using the political system to manipulate the economy to produce rents, while generating stability and preventing violence (North, 2011 and Mkandawire, 2015). In the analogy of Olson (1993), the stationary bandit in contrast to the roving bandit has an incentive to provide security of a wide variety for his subjects. This implies that any organization with significant degree of control over a country will provide public goods as it has an encompassing interest in it. In LAOs, that public good is security from the predatory use of violence (Olson, 1993). Rothbard (2009) asserts that in order for the ruling class to preserve its monopoly of predation, it needs to see to it that private, systemic crime, especially one that involves the use of violence, was kept to a minimum. This is especially true when it comes to preventing brain drain under weak barriers to international labour mobility. This suggests that far from merely being a service to interest groups, limited access to the political and economic systems and rent seeking behaviour of government officials may be a solution to the problem of violence (North *et al.*, 2007).

In this framework, LAOs are to be distinguished by their degree of openness concerning economic organizations, political organization and the distribution of the capacity for violence. While LAOs may appear incompatible with conventional ideals of openness and competitively driven efficiency, more openness to either the economic or the political spheres would weaken the rent-creation system that hold the LAO together. Openness therefore risks increasing violence and a reversion back to political instability and the stagnation or deterioration of development (North *et al.*, 2011). In this framework, conceptualising societies as access orders corroborated by the logic of violence has provided a way of integrating economic behaviour with a theory of political behaviour, demonstrating how political systems manipulate the economy in order to sustain political stability, limit violence and provide social order. Moreover this framework allows us to link social and state formation, with institutional development, hence potentially allowing us to better understand why certain institutions tend to persist even as they erode developmental aspirations, and why seemingly obvious solutions may actually prove to be perverse. The persistence of growth-inhibiting institutions may be explained by the notion that reform towards open economic and political institutions may serve to render bleakly any prospects of economic development through their destabilizing effects on the incumbent social order (North, Wallis, and Weingast, 2006). Since rent creation and distribution in the LAO may be underpinned by growth-inhibiting, but politically stabilizing institutions, a more fundamental opening of markets and political rights may be perilous to the privileges of the elite coalition (Wegner, Mecherghi, and Mecherghi, 2013). In LAOs, the pressure for institutional openness has to be weighed against the pursuit of elite privileges and the promotion of economic development and political stability (Wegner, Mecherghi, and Mecherghi,

2013). This argument for open economic and political institutions, assumes that the mere absence of democratic and market enhancing institutions is the reason for economic stagnation, and some commentators refute this assumption (Khan, 2012). Nonetheless, since open institutions may be incongruous with the logic of a limited access order, whether or not they are sufficient for economic development, they will tend to be opposed by the dominant coalition, and even in the case where they are sufficient for economic growth, “bad” institutions are likely to persist.

Limited Access Orders come in three different variations, fragile, basic and mature. The differentiation is mainly in terms of the degree of access to violence as well as the sophistication and variety of organizations within the State, i.e. dominant coalition, and externally to it (North *et al.* 2007). The level of sophistication is determined by the ability of firms to remain viable under Schumpeterian competition. In a fragile LAO, the state has lost legitimacy over the monopoly of violence and is barely functional in the face of internal and external violence. Under such an order, violence is a principal determinant of the distribution of rents and resources. This social order is also referred to in the literature, as primitive accumulation society, where each faction within the dominant coalition has direct access to violence (Khan, 2013). Given their instability, fragile LAOs have simple institutional structures for the state, and cannot support private elite organizations (North *et al.*, 2007). In basic limited access, the state is stable and well established in comparison to the fragile LAO and is generally able to reduce violence outbreak. Under fragile LAOs, the only durable organization is the state itself, and elite rights and privileges are closely identified with it. And, even though there may be complex organizations, they are usually within the direct ambit of the state. This ensures that the potential for violence and renegotiation power remains within the dominant coalition. In the basic LAO, emergent institutions serve to organize the internal relations of the state and its relations with members of the dominant coalition. Here again, barriers to entry to the political and economic spheres serve as a socio-political and socioeconomic stabilizing factor. Lastly, in basic limited access societies, with the help of the state, private individuals can enjoy monopoly or oligopolistic rents in economic sectors. Therefore, since private organizations tend to be closely tied to the state, this may potentially inhibit their level of sophistication (North *et al.*, 20011). In the mature LOA, the government supports a large variety of private organizations, which can also enjoy imperfect competition rents. The mature LAO has durable institutional structures for the State, a well-articulated body of public law that specifies the offices and functions of the State, and can support a wide range of elite organizations that exist apart from the State. However, the proximity of these private organizations to the State is such that, they cannot be sophisticated enough to be independent and bargain for better institutions (North *et al.* 2007).

2.3 Limited Access and Patronage

North, Wallis and Weingast (2009) argue that throughout recorded history, the cessation of violence is not achieved when powerful members cease to fight, but rather peace occurs when the powerful members devise arrangements that reduce the level of violence. To achieve peace, the LAO is built on personal relationships through repeated interaction among powerful individuals. This leads to the formation of a social hierarchy with the powerful individuals at the top of the social order. Here, status and hierarchy tend to be defined in terms of social persona that is unique to individuals. Since LAOs exist in order to reduce violence and extend security, some protection regarding property and physical security is extended to non-elites, and such protection is often extended through patronage or client networks (North, Wallis and Weingast, 2006 and 2009). Since the monopolization of force is not enough to achieve stability and development, and even though LAO regimes may not provide fundamental rights such as freedom of speech or equality before the rule of law, they cannot solely rely on repression. To some extent they depend upon legitimacy within the population. Legitimacy may be achieved through economic development and a share in national income for the wider part of the population (Wegner, Mecherqui, and Mecherqui, 2009). This might explain why it is hard to attribute economic development to polity. To ensure the stability of the non-democratic regime, rulers may be interested in promoting trade and

industry in order to raise productivity (Wegner, Mecherghi, and Mecherghi, 2013). However, in order to create a LAO with the ability to provide security to non-elites, powerful members must be incentivised to do so and this might mean that fully fledged economic competition might be circumscribed (Wegner, Mecherghi, and Mecherghi, 2009). Scott (1969; in Arriola, 2009) argues that, earlier scholars suggested that the distribution of patronage has been a tool used to pull together a heterogeneous elite and to build institutions over the long term. This pooling of powerful members through patronage, in turn, has directly contributed to the building of some of the most effective political parties and most stable political systems (Huntington, 1968; in Arriola, 2009). This is because the patronage system creates incentive-compatible arrangements between powerful groups that bind their interests to the continued existence of political stability and the state (North, Wallis, and Weingast, 2006). This suggests that if limited access is to be understood as a solution to the problem of violence, patronage is a series of steps undertaken to arrive at that solution (Arriola, 2009).

However, the literature also highlights the deleterious effects of patronage and clientelist regimes on the economy and at times even on the state itself. The main objection to patronage is that it crowds-out capitalist forms of accumulation. When clientelism is pervasive, the state actively undermines capitalist accumulation where property rights are imperfectly respected (Bratton and Van de Walle, 1994). This in turn acts as a disincentive towards private entrepreneurship and long-run productive investments and increases the level of uncertainty in a market economy (Olson, 1993). Citizens outside the elite factions have an incentive to avoid complex economic plans that requires administrative permissions, and invariably the donation of bribes (Wegner, Mecherghi, and Mecherghi, 2013). Engelbert (2000) asserts that rulers dispense patronage as a cheap way to consolidate power, and this requires perpetual access to rents, and entails a preference for distribution (or re-distribution) over long-term investment. North, Wallis, and Weingast (2006), assert that despite the LAO's ability to promote trade, the necessity of creating rents among violence specialists to promote stability produces an inherent tendency for the natural state to create market power and restrict competition, and this may serve to stifle the economic rights of non-elites. As argued above, this suggests that highly inefficient organizations and firms are likely to persist under systems of patronage, with deleterious effects with regards to long term economic development. Accordingly, a prosperous market economy cannot grant economic privileges to groups because innovative competition results in a permanent revaluation of economic assets including the "creative destruction" of economic sectors (Wegner, Mecherghi, and Mecherghi, 2013). The logic of the LAO is to prevent this process of creative destruction so that the destruction of political stability may be averted. Lastly, the literature highlights that the Achilles Heel of patronage regimes is finance because they tend to have a structural tendency for fiscal crises (Mkandawire, 2015). This is because, to service their clientelistic networks or to ensure their legitimacy, power rulers must spend money excessively, and at times inefficiently in order to create jobs and this tends to lead to bloated bureaucracies (Mkandawire, 2015).

2.4 Open Access Order

The last social order in this framework is the open access order. Unlike the LAO, the Open Access Order (OAO) relies on competition, open access to organizations and the rule of law to hold society together; making use of competition and institutions, including consolidated political control over all organizations with the potential for major violence (North *et al.*, 2007). Unlike Limited or Primitive Access orders, OAOs have sophisticated public and private organizations as there are no barriers to entry in either in the political or economic milieu, where open access to politics sustains open access to the economic system and vice versa (North *et al.*, 2007). North, Wallis and Weingast (2006) argue that OAOs reduce or eliminate the use of violence as a means of political and economic competition, and in doing so, open up the ability for society to compete on other margins, such as price, quality or votes. Moreover, in contrast to the circumscribed political and economic access in LAOs, open access and competition are the means through which OAOs solve the problem of violence (North *et al.*, 2011). Perhaps even more

importantly, in OAOs, the state as a distinct organization has monopoly over systemic violence (North *et al.*, 2011). Lastly, a distinguishing feature of OAOs to other social organizations is the fact that under OAOs, access to political and economic institutions are impersonal and the rule of law tends to be enforced impartially on all citizens (North *et al.*, 2007). According to this conceptual framework of social orders, it is only when states have transitioned to an open access order are they said to have developed, both economically and politically. Accordingly, North, *et al.* (2007 and 2011) define development is a movement along the spectrum of LOAs and the transition from an LOA to an OAO as this movement has generally increased productivity and incomes.

3. MICROECONOMIC FOUNDATIONS OF LIMITED ACCESS

The foundation of limited access is its solution to the problem of violence (North *et al.*, 2007). Since the continuation of violence is dependent on the market of violence, an analysis of how markets for violence reduce or fail to reduce the level of violence is exigent in understanding the emergence, evolution and stability of LOAs. So far the analysis has been elaborate on the social structures that are conducive to peaceful forms of rent creation and distribution, but has been silent on the mechanism from which such a peaceful of an outcome is derived. This section aims to extend the theoretical framework of North, Wallis and Weingast (2009) by elaborating on the economic and political logic driving the emergence of LAOs. North *et al.* (2007) assert that the systemic use of violence underpins social, economic and political formation. The systemic use of violence, as mentioned above, in turns depends on the market structure of violence (Elwert, 2001). These arguments suggest that in order to understand socioeconomic and socio-political formation, or political economy, it is imperative to understand the systemic use of violence, which in turn requires an understanding of the markets of violence. Specifically, this requires the understanding of which market structures for violence are endogenously likely or less likely to lead to a reduction in the level of violence. In his study of anarchy, Bush (1972) characterises violence as an economic bad for those consumers who consume it to acquire wealth from others. The marginal utility of violence is negative, because the effort involved in violent coercion is assumed to be an unpleasant commodity. However, since violence is used as a means to acquire or secure wealth, the marginal utility from the income received or secured through holding out violence with violence (i.e defence), is assumed to be positive (Bush 1972). This analysis, likewise, considers violence as an economic bad for its consumers. Moreover, violence can be given the same treatment as a negative externality like pollution. This is because, the consumption of violence usually leads to violence-fields, thereby creating instability and an increase in the level of collateral damage which imposes spill-over costs for those not directly engaged in the conflict.

As mentioned above, use of violence to protect against violence entails paradoxes, because any agency employed to successfully protect wealth and life from attack also necessarily would have the capacity to take either (Davidson and Mogg-Rees, 1997). On this point, Olson (1993) argued that individuals need their property and contract rights protected from violation not only by other individuals in the private sector, but also by the entity that has the greatest powers in society. Normally competition is advocated as a driver in product quality and reliability, as it usually leads to an increase in consumer surplus. However, in the case of violence, direct competition often has perverse results. This is because open rivalry between actors of violence is translated into more violence, as individuals tend to respond to violence with violence (Mehler, 2004). Consequently, this could lead to the plundering of the customers who pay for the service in the first place where the increasing use of violence leads to an increase in the level of collateral damage; herein lays the contradiction (Davidson and Mogg-Rees, 1997). Mehler (2004) argues that the open security market offers few advantages for the customer because there is no real freedom of choice between the different violence specialists providing security. When there is open competition for dominance, the use of violence will be less restricted against the population at large, and more so against the adversary. Consequently, is only arrangements between different security providers

(i.e. violence specialists) that appear to lead to a relatively low level of violence between them. And, in order to reduce the use of violence requires a small number of violence specialists' organizations to provide the total amount of security. That is, a strategy of co-operative maximization of gains among violence specialists that will result in a cartelization of the market for violence (Mehler, 2004).

Since the continuation of violence is embedded in its market structures, it is suggestive that the discontinuation of violence is likely to result in market structures in which there is less competition in the provision of violence, that is, a market structure with a high degree of concentration (Davidson and Mogg-Rees, 1997); Elwert, 2001); and Mehler, 2004). As an example, unless competition is *imperfect* over the use of violence, it is highly unlikely that there will be a prevalence of violence. This is because, in a market structure with the assumptions of perfect competition, there is unrestricted access to the same standardised good, there is no asymmetry in information about each individual's potential for violence and everyone is a price-taker. This implies that no one can influence their uncertainty over loss of property and life upon the consumption violence, as there are so many other producers of violence (powerful members) that each consumer constitutes a negligible portion of the whole (Bush, 1972). This reduces the consumption of violence to individualistic decision making. Under perfect competition then, the analysis suggests there will be no returns to the use of violence, and at best its use will be a negative sum game (Mueller, 1989). More importantly, in such a society where there is perfect competition over the use of force, there can be no state formation as the state is an entity that attempts to attain and maintain a monopoly of the use of force and violence (Rothbard, 2009). In contrast to perfect competition then, is a complete concentration on the use of force, that is, a monopoly over violence. The analysis given above on LAO and OAOs, provides reasons as to why monopolists of violence will find it optimal to reduce the output of violence. These conditions of optimality are contained in Olson's (1993) stationary bandit hypothesis, Rothbard's (2009) theory of predation, as well as North *et al.*'s (2011) stability-driven rent creation and distribution logic of LOA. These authors all provide examples of how and why the monopolization of force will lead to reduced levels of violence.

Of particular interest, especially in the case of developing countries, are oligopoly and monopolistic competitive markets of violence. Under monopolistic competition, there a numerous participants in the market for violence, there are no entry barriers, there is perfect information and the product is non-standardised. Under these crucial assumptions, this suggests that consumers of violence will perceive the high returns from the consumption or use of violence, be it in predation or in protection against coercive expropriation of assets, whereupon, the outcomes will likely be zero-sum gains, as well as somewhat negative sum gains. What distinguishes the monopolistic competitive market relative to the perfectly competitive market is that in the monopolistic competitive market it's possible that least one of the parties who consumes violence stands to gain (*ex ante*), whereas in the perfectly competitive market for violence, the use of violence will result in negative sum gains (Mueller, 1989: 9). Lastly, there is the oligopolistic market for violence.

In oligopolistic market structures there are few producers and many buyers, and several of these producers are large enough that they can influence the market price (Dodge, 2008). Oligopolies of violence come in different variations and forms and under different variations. An oligopolistic market of violence may either be an arrangement based oligopoly, a dominant leader oligopoly or a continuous adverse-competition oligopoly. The arrangement based oligopoly is characterised by the prevalence of cartels whereby, because of the conversational solutions to the strong competition among the members, they tend to produce less violent situations. Dominant leader oligopoly may encompass a weak but not yet collapsed state whereby its representatives control the capital and a certain perimeter outside of it, while other violence specialists provide "security" in zones not permanently under effective rule of the state (Mehler, 2004). The continuous adverse competition oligopoly, may be thought of as a fragile limited access order, characterised by a complete lack of monopoly over violence, such as a civil war. The key defining attribute of an oligopoly is that producers' decisions are mutually inclusive, that is, each producer's decisions affect the decisions of others (Dodge, 2008). This situation implies that firms are

often unable to carry out credible threats or in engaging in “irrational rationality”, where violence is merely expended as a signalling tool of violence potential, hence serving to reduce future potential violent outbursts (Bates, Greif, and Singh, 2002; in Douglas *et al.*, 2013). This is because, in among oligopolists, a threat is likely to harm the threatening firm if carried out because other firms have the capacity to retaliate, a situation commonly known as mutually assured destruction (Dodge, 2008). The existence of mutually assured destruction guarantees that the level of violence will be reduced because preventing violence requires that the commitment not to fight be credible on all sides. This situation is more likely in oligopolistic market structures for violence because oligopolistic producers cannot carry out credible threats with regards to the use of force, therefore their commitments not to fight will become credible (North, Wallis, and Weingast, 2006; and Dodge, 2008). This situation reduces the problem of violence from myopic individual utility-maximization decision-making to strategic interaction involving carefully calculated strategies among a wide variety of violence specialists on the viable use of force in rent-seeking (North, Wallis, and Weingast, 2006).

3.1 Violence and Collective Action: Utility Under Anarchy

According to Elwert (2001) markets for violence are economic areas dominated by wars and warlords such as generals, princes, militia chiefs and party leaders where a self-perpetuating system emerges and links non-violent commodity markets with the violent acquisition of goods. Since violence specialists utilize violence to fulfil economic aims, they are to be understood as entrepreneurs who use deliberate violence as an efficient tool for achieving economic aims. The paradox of the use of violence mentioned above suggests that there are conditions under which the use of violence is sub-optimal as a means to acquire economic rents (Anderson and Gifford, 2004). As such, optimal rent acquisition requires a collective initiative from violence specialist to contain violence in order to reduce its destructive effects on economic productivity and human life. However, Olson (1993) argues that we cannot conclude that because everyone could gain from peaceful exchange, it will necessarily emerge by voluntary agreement, especially in large groups.

When individuals in large groups are acting selfishly, it is highly unlikely that the incentive compatibility problems of collective choice will be solved. Hence, under such conditions, highly inefficient outcomes are more likely than Pareto optimal equilibria. Furthermore Mueller (1989) argues that, in anarchy, where there is no common power, such as a state with a monopoly on violence, we would expect that the Nash equilibria will be Pareto inefficient as the dominant strategy of each individual is to acquire violence potential both to protect and expropriate. This will result in a negative-sum game, as investment capacity towards productive goods and services towards gets crowded-out in favour of the production of an economic bad. However, under repeated interaction, it is likely that a cooperative solution will be reached, in which the violence specialists reduce the level of violence. Although, this is more likely in small groups than in large groups which characterise modern age nations (Mueller, 1989). From these arguments, as will be elaborated on below, we can deduce that markets for violence, in addition to determining the likelihood of the discontinuation of violence, they also determine and shape the outcome of social formation and its institutions. More importantly, violence-free social formation is unlikely to occur because of purely individualistic rational decision making. The provision of a peaceful and secure environment, as mentioned previously, is likely as a solution to collective action problems, and this requires cooperative behaviour (Olson, 1993). This implies that in order to understand the formation of social order and institutional development, it is important to first understand how individuals solve collective action problems in markets of violence.

The analysis given above suggests that since spill-over costs of violence on society tend to result in more destructive violence-fields with grave consequences for third parties who constitute the rest of society, the provision of a peaceful and secure environment is a public good (Davidson and Ross-Meeg 1987; Mueller, 1989; and Mehler, 2004). This is because like a public good the provision of a peaceful and secure order has two features which characterise public goods. These are the jointness of supply and

the impossibility of excluding others once it has been supplied (Musgrave, 1959; in Mueller, 1989). That is, public goods have benefits that cannot easily be confined to a single buyer, which means that once they have been provided, many can enjoy them for free (Mehler, 2004). An individual can simply choose to free ride, and thereby avoid the private costs that come from contributing in the provision of the good. Mueller (1989), Olson (1993) and Mehler (2004) suggest that, given their joint-supply property and the prospect for free riding, without a mechanism for collective action, these goods will often be under-produced. This can be depicted by representing an oligopolistic market of violence as a prisoners' dilemma game of simultaneous strategic interaction.

COLLECTIVE ACTION AS A PRISONERS' DILEMMA

A \ B	Economic Means	Political Means
Economic Means	1. [10, 9] ^{##}	2. [7, 11]
Political means	3. [12, 6]	4. [8, 8] ^{**}

Figure 1. Adapted from (Mueller, 1989)

Using the analogy of Oppenheimer (1922), where two individuals or organizations, A and B, have a choice between two means to acquire wealth, work and robbery, representing economic and political means respectively, it can be shown that the non-cooperative equilibrium outcome of this game will be Pareto sub-optimal. Given that the joint supply property entails costs for all those who cooperate in the provision of public goods, and because no one can be excluded from their consumption, each individual is better off if all but her contribute towards the provision. In figure 1 above, individuals, or organizations in the case of a large collection of individuals, are better-off if they use economic rather than political means to acquire wealth as this outcome has a higher pay-off for both individuals, and is Pareto optimal. However, the dominant strategy for both players is to use political means to wealth acquisition and this strategy constitutes the Nash equilibrium of the game with payoffs [8, 8]^{**}. As the outcome of the prisoner's dilemma game in Figure 1 depicts, the Nash equilibrium does not require the equilibrium choices to be strictly better than other available choices, and therefore may not be in the best interests of the players. Indeed the Nash equilibrium of the game is not a social optimum equilibrium (Dixit, Skeath, and Reiley; 2009).

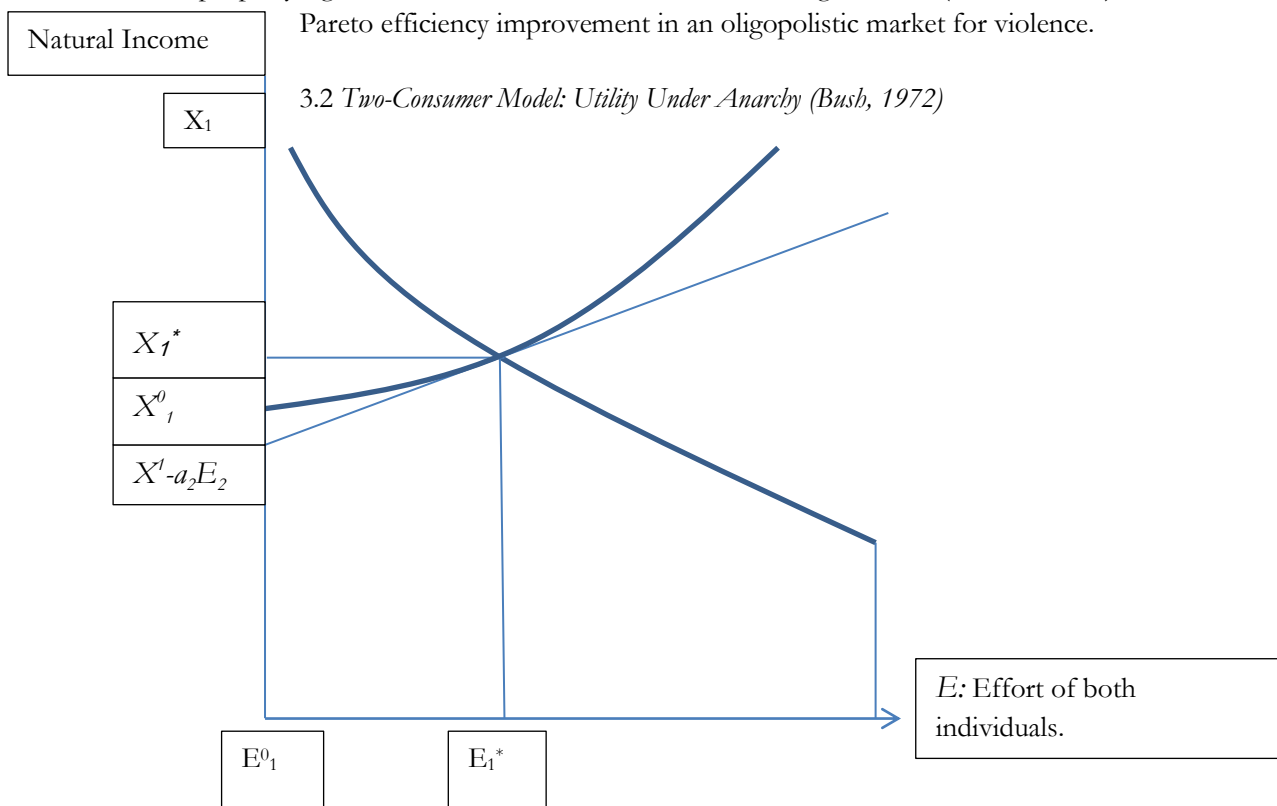
In this game, the Nash equilibrium outcome results in payoffs of [8, 8]^{**} for both players, and this is Pareto inefficient. This is because, there is another equilibrium with payoffs [10, 9]^{##} that makes both players better off without making any of them worse off, and thereby constitutes a Pareto optimal equilibrium and social optimum. Mueller (1989: 10) argues that, "Given [the] jointness of supply [condition], a cooperative consumption decision is necessary to provide the [public] good efficiently." The jointness of supply property however, only creates the need for collective action to achieve Pareto optimality, it does not guarantee, given the need, that a cooperative outcome will result. This is because it is often impossible or impractical of excluding some individuals or groups from consuming a public good like a peaceful and secure, socioeconomic and sociopolitical order. The non-excludability property of a public good in turn, raises the probability that purely voluntary schemes for its provision will collapse (Mueller, 1989). Once a secure and peaceful environment has been attained, individuals may begin to invest in the production of welfare-enhancing economic goods, in contrast to attaining violence potential. This will result in high returns from the use of violence, which may prompt other individuals to use political means to expropriate their property. Individuals under violent socio-political conditions, have an

incentive to “shoot first and talk later”, as they fear that others will fail to follow the rules and refrain from using political means of wealth acquisition (Wallis and Weingast, 2009; 19) . Consequently, this may serve to exacerbate the tendency towards the non-cooperative, Pareto-inefficient and social sub-optimum equilibrium, because those who use economic means to acquire wealth will deem it necessary to allocate some of their investment towards violence potential to defend their property.

In order for the strategic interaction to result in a cooperative equilibrium, Mueller (1989) argues that there needs to be punishment, or threat thereof, of non-cooperative behaviour. This is especially needed in large, heterogeneous communities or groups, where a formal statement of what behaviour is mutually beneficial and consistent with public interest may be needed. These insights provide a need to understand the process through which such a statement, or social contract, comes into existence. This is because its existence is a necessary precondition for the creation of other contracts which make up a system of economic and political institutions underpinning voluntary exchange (Mueller, 1989). In order to solve the free-rider problem induced by the non-excludability property of public goods, either the costs of free-riding have to be increased or the benefits of free-riding have to be decreased (Dixit, Skeath, and Reily, 2009). Consequently, the best response strategy of an individual, given that others are using economic means to acquire wealth, is to also use economic means to acquire wealth, in contrast to political means.

This thereby transforms the collective-action problem as Prisoners’ Dilemma game into a collective-action problem as an Assurance game, where at least one of the Nash equilibria of the game is a Pareto social-optimum, but this game may also need cooperation among the players (Dixit, Skeath, and Reiley, 2009). Lastly, Bush (1972) provides a simplistic two consumer or two-group model which can be used to derive cooperative decision making congruous with halting and reducing the output of violence, hence the emergence of voluntary exchange, with negotiated terms of trade, allowed by the emergent institutions of property rights derived from the solution of containing violence (Mueller, 1989). That is, a

Pareto efficiency improvement in an oligopolistic market for violence.



Initial Income: $X^I = \text{Given}$

Natural Income: $X_i^* = X^I - a_2 E_2 + a_1 E_1$

E_i = Level of Effort (Violence) for individual: $i = 1, 2$

a_i = Ability (efficacy of effort) of individual: $i = 1, 2$

X_i^0 : Pareto optimal income:

Figure 2: Income-Effort Curve

The model predicts that, given any initial distribution of income and no institutional or ethical barriers that prevent one individual or group from forcibly taking income from another group, a redistribution of income may arise, producing a new and modified distribution of income, which is referred to as the natural income; furthermore this model predicts that a Pareto superior distribution can be accomplished if both individuals agree to discontinue their level of effort (violence) to take income away from each other (Bush, 1972)

In this model the social order is characterised by anarchy, something akin to a primitive access society, whereby individuals have no common power. This means there are no institutional or ethical barriers that prevent one individual or group from forcibly expropriating property from another group as there is no state with a monopoly on force which can enforce these barriers. Hence this is a primitive access order with dominated by primitive accumulation, that is, the use of violence as a primary means to acquire or retain wealth is prevalent (Khan, 2013). Such a society primarily uses political over economic means of wealth acquisition. Here, there is an initial distribution, X^1 , for individual 1, whereupon interacting with the individual 2, a natural and modified distribution, X^*_1 will result, defined as:

$$X^*_1 = X^1 - a_2 E_2 + a_1 E_1$$

E is the level of effort (i.e. violence) expended towards predation or protection, and a_i is the efficacy of effort. In this model the marginal utility of effort is negative while that of income is positive. Effort is expended only to the extent that it can be used to acquire or retain wealth. The necessary conditions for utility maximisation suggest that the marginal substitution of income for violence must equal the rate at which effort is used to acquire income. The equilibrium condition in the income-effort diagram above is determined by the intersection of the reaction curves of the two consumers, which is how much effort one consumer expends given the effort of the other. These reaction curves are positively related to each other (i.e. they are strategic complements), indicating that the use of violence necessarily prompts violent reaction as violence is a means to acquire wealth and to protect against coercive expropriation.

Bush (1972) predicts that in societies characterised by a primitive access order, even though the natural distribution may not be the final distribution of income, since effort or violence is an unpleasant commodity for either individuals or groups, they would be willing to give up some of their natural income if they could simultaneously decrease their levels of violence. This is the situation in which a reduction of violence is achieved and economic forms of generating and distributing wealth ensue. More importantly, this model predicts that a Pareto improvement adjustment can be accomplished if both individuals agree to discontinue their level of effort to take income coercively from each other. Here a superior Pareto condition is characterised by zero levels of violence, and hence characterises a social-optimum solution. This Pareto superior adjustment is underpinned by the fact that effort expended by any individual is a bad for them and for other members of society, hence both individuals would be willing to give up some of their natural income if this ensures the provision of a secure and peaceful environment to acquire additional wealth (Bush, 1972). In hindsight of the destructive effects of violence, and in foresight of their

own preservation and higher social welfare, violence specialists are predicted to introduce institutional restraints on the use of violence.

This introduction of institutional restraints, among violence specialists is akin to acknowledging the costs of free-riding to the social optimum outcomes. In the model, this Pareto superior move is shown by the decrease in natural income for individual 1, from X_1^* to X_1^0 , which is accompanied by a decrease in the level of effort from E_1^* to E_1^0 . Upon this decrease in natural income however, the consumer's consumption bundle is still on the same indifference curve, but with zero levels of effort. North, Wallis, and Weingast (2006) assert that given the initial conditions of a world of endemic violence, the benefits of even moderate limits on violence are large enough to gain support from most non-elites as well as elites. Since the demand curve of effort for one individual is positively related to the demand curve of other individuals (The paradox of violence), this Pareto optimal outcome suggests that the level of violence generally decreases. Such a state of limited violence and institutionalised rent distribution may provide long-term stability and economic growth, but there is always a caveat about the possibility of violence (Bush 1972, and North, Wallis and Weingast, 2009). This provides a rationale for the dominant coalition to enact institutions which preserve the cooperative, incentive-compatible conditions which have given rise to the reduction in violence. In this framework of North, Wallis and Weingast (2009), this is an enactment of limited access type of institutions, where access to the political system is circumscribed and personalized (North *et al.*, 2013).

As such the model doesn't predict a final distribution of income, but merely derives Pareto optimal conditions in which the level of violence is reduced, which makes sense given the different dynamics and variations that limited access order societies come in. Moreover, when there are large numbers of people the model predicts that it will be hard to reach the optimal outcome, as the increase in participants will be accompanied by numerous Pareto inefficient Nash equilibria, a phenomenon widely acknowledged in the collective-choice literature (Mueller, 1989 and Bush, 1972). This model's predictions are congruent with the analysis of North *et al.*, (2013) of social orders. Specifically, institutional development is closely aligned with the logic of violence and accumulation. More especially, violence may be a viable means to get results in the short-run, but in the long-run the use of violence is perverse, because it entails collateral damage and everyone is more productive in the absence of warfare (North, Wallis, Weingast, 2006). This prompts the inevitable need of social order and economic means to wealth acquisition.

Since achieving this requires incentive-compatible restraints among violence specialists, barriers to entry in the economic and political spheres of influence are instilled as a result, and these maintain the incentive-compatibility conditions among the dominant elite (North, Wallis, and Weingast, 2006). In addition, limited access ensures that the commitment not to fight among the dominant coalition is credible since it maintains incentive-compatibility conditions. Like the depiction of the transition from primitive society to limited access society in North *et al* (2013), this two-consumer model predicts that for a world of anarchy or a primitive access society, characterised by the lack of a monopoly over the systemic of violence, a set of rules defining property rights can be developed and applied (Bush, 1972). These rights serve to increase the total utility of all individuals in that society because the rules are better than anarchy. But, for reasons of stability, driven by the logic of incentive compatibility, access to these rules will be the privilege of a few individuals within the dominant coalition, at least initially. This is because controlling violence depends on the structure and maintenance of relationships among powerful individuals (North, Wallis, and Weingast; 2009). This logic of the transition from limited access to open access invariably makes the prediction that in the aftermath of wide-spread violent and anarchic conditions, characterised by the collapse of the legitimacy on the monopoly of force (i.e. regime change), economic and political institutions will tend to be personalised and restrictive to all but a few members of society.

4. VIOLENCE AND STATE FORMATION

North *et al.*, (2007), assert that almost all theories concerning the role of the state tend to make simplifying assumptions, mainly that the state can be modelled as a single actor that has monopoly on violence. On this point, Engelbert (1997) argues that as an analytical category, the state is generally unchallenged, even though states, particularly poor and developing country states differ enormously from states elsewhere, in their configuration and operation. The difficulty with this single actor approach to the state is that it assumes away the fundamental problem of how the state achieves a monopoly on violence (North, Wallis, and Weingast, 2009). The collective-action problems alluded to above of how individuals and groups within a society behave and how a coalition emerges to structure social order, are taken as given. Instead of taking the social order as an exogenous entity to institutional development, using the theoretical framework of North, Wallis, and Weingast (2009) as well as some insight from studies of anarchy and collective-action game theory, a theory of the state formation is analysed. This will allow us to understand the rationale driving the evolution of institutions, and more importantly, their tendency for persistence even as they wreak havoc on social welfare and on the state itself. The analysis so far has depicted that the problem of violence is fundamental to understanding social and institutional formation. This section aims to link how solutions to the problem of violence lead to state formation, specifically it aims to show how individuals solve collective action problems with regards to the use of violence and how this leads to the social structures and institutions that ensue thereafter. The goal is to establish the extent to which theoretical framework can be used as a lens through which African states can be analysed.

Khan (2012) argues that nation states, as entities that are imperative in the emergence and sustainability of growth enhancing institutions, aren't homogenous and exogenously given entities, but they are underpinned by socio-political and socio-economic idiosyncrasies. The literature argues that, because of the dominance of Pareto inefficient outcomes presumptive in collective-action among individuals, especially in large groups, an enforcer of collective-action is often necessary (Mueller, 1989 and Khan, 2012). Olson (1993) and North, Wallis and Weingast (2006) assert that every society with contractual organizations must have an organization that provides third party enforcement, whether it uses coercion or not. And such an organization has to be formed from purely incentive compatible agreements among its members. In this framework, that organization is the state. Achieving legitimacy of authority is not easy however, and the use of force in order to 'enforce social contract' may be perverse towards the goals of law and order. This conception of the state is congruous with the definition of Lonsdale and Berman (1979), who define the state as a historically conditioned set of institutions in societies which secure conditions for the reproduction of the dominant mode of production, which in the case of African colonialism, is Capitalism. To these commentators, the state is the ultimate unit of economic production and political reproduction (i.e. social control) (Lonsdale, and Berman, 1979). The state then is to be thought of as closely linked to solutions of collective-action problems, its role being to serve as an enforcer of social contracts, including the social contract of reduced levels of violence and internal instability. Some commentators however, suggest that the roles of the state are mutually contradictory and these contradictions tend to be embedded within its institutions. According to Lonsdale and Berman (1979), the states' regulation of competition between invites dispute within the dominant classes, whose cohesion is a condition of their domination. And when violence breaks out, it is typically among elite faction networks (North, Wallis and Weingast, 2009). Furthermore, since state legitimacy is obtained by the protection of labour, the provision of welfare services, and the enfranchisement of the working classes, all these contribute to the erosion of elite rents which maintain incentive compatibility not to resort to violence (Lonsdale, and Berman, 2009).

The social contract, although exigent, it need not be voluntary from all members of society, as mentioned and depicted above, it is usually based on the calculus of economic rent creation and distribution by violence specialists rather than based on preferences, thus consent, of the ordinary individuals (North *et al.*, 2011; and Khan, 2005). According to Khan (2005), this may explain why the electoral competition in some democracies, in general does not result in government preferences being set by the poor even though they constitute a huge majority. A somewhat radical description of the state is provided by Oppenheimer (1926; in Rothbard, 2009) who asserts that the state is a social institution which is forced on a defeated group by a victorious group. Its sole purpose is the regulation of the dominion of the victorious group on a defeated group, where the dominion has no purpose other than the economic exploitation of the vanquished by the victors, a tone which probably resonates more with African states, more so at advent of colonialism. However even in postcolonial Africa, competitive politics along ethnic lines can often enable the political elite to favour their own ethnic group with the goal of dominating the others. On this note, de Jouvenel (1949, in Rothbard, 2009), in line with Olson (1993), argues that the state, in essence, is the result of successes achieved by a band of brigands who superimpose themselves on societies. These arguments seem to suggest that contrary to contemporary ideals of democracy, state legitimacy is often a top-down, phenomenon, determined by the logic of force rather than that of preference, especially at the early stages of state formation. Before elaborating further on this point, it is imperative to explain what this dissertation refers to by “legitimacy”.

Concisely, to define legitimacy in this dissertation, three words are used, and these are, consent, allegiance, and restraint. According to Hume (1748), because human beings are not extremely unequal, nothing but their own consent to can make them subjects to an authority, and when government power is traced to its foundations, it is found that because people mainly abandon their native liberty for the sake of peace and order, and this makes them the source of government power. To Hume (1748), given each individual’s natural strength, nothing but their own consent, and the sense of advantages resulting from peace and order could subject multitudes to the command of one government. Therefore by “legitimacy” this dissertation refers to the ability of an authority, such as the government, to obtain the consent and allegiance of the people such that the authority is able in turn to impose restraints (i.e. rule of law) on its subjects in order to ensure peace, order and security. More importantly, in order to attain legitimacy, an authority is judged by its ability to provide the public goods of security and immediate protection (Mehler, 2004). In addition to violence, other figures of authority often resort to charisma, ideology, symbols and agreements on basic normative convictions between the protectors and those protected in order to attain legitimacy (Mehler, 2004). The dichotomization between bottom-up legitimacy and top-down legitimacy serves to highlight the conditions under which the consent, allegiance, and restraint of the people is obtained by an authority.

The notion of bottom-up legitimacy suggests that people do not owe an authority their allegiance and only forego their natural freedom, only on the conditions of a promise of receiving justice and protection in return. Therefore if the government repudiates this promise, the people are free to refuse to be subjects of that authority (Hume, 1748). Therefore under the notion of bottom-up legitimacy, the conditions of consent, allegiance, and restraint are given and obtained *voluntarily*, given the benefits of justice and protection. However, the conceptual frameworks of North *et al.*, (2009), Olson (1993), and Rothbard (2009), clearly suggests that this is hardly the case, more especially in the case of a typical African country, which this dissertation seeks to analyse. Instead, these frameworks corroborate Hume’s (1748) argument that, almost all governments, of which there is any record, have been founded originally, either on usurpation or conquest, without any presence of a fair consent of voluntary subjection of the people. This is what the notion of top-down legitimacy seeks to represent, the lack of fair consent in subjection, or in other words, government by subjugation instead of government by choice. Here, critics might argue that even in subjugation, given the choice between anarchy and order, people eventually prefer order, thereby *voluntarily choosing* to accept being subjects of the foreign conqueror. However, this critique precisely highlights the role of violence in state formation, thereby corroborating what this

dissertation labels “top-down legitimacy”. The role of violence in state formation is supported in the conceptual framework of North, Wallis, and Weingast (2006, 2007, and 2009). They argue that natural states (i.e. LAOs) are a way of matching violent individuals with economic rights in order to create incentives to reduce the use of violence and to increase specialisation and exchange. Consequently, this dissertation suggests that the notion of top-down legitimacy, can go a long way in explaining the persistence of development-perverse institutions in developing countries, even in institutionalised democracies, especially if the countries exhibit limited rather than open access social orders. According to Lonsdale and Berman (1979)

On face value it may be hard to comprehend how social-welfare destroying institutions may persist. However the notion of top-down legitimacy and the logic of violence may provide some clarity. Mehler (2004) argues that conflicts can be an exercise in rational irrationality, where under conditions of asymmetric information, it can be a signalling tool which can help in reducing the level of conflict in the future, whereupon acquiring a reputation for ruthlessness may benefit a government by deterring future opponents from challenging the regime. An individual, to whom this insight is not lost, more especially a survivor of civil conflict, may take it into account when deciding to challenge the legitimacy of the incumbent regime’s deleterious policies. Secondly, change is fraught with uncertainty, especially political transitions. Bratton and Van De Walle (1994) argue that political instability, ethnic tensions, government failure and levels of warlords increase sharply in limited access regimes when the transition doesn’t proceed smoothly. Upon consideration, many who are exploited by state policies will hesitate to push for reform because they see disorder and violence as worse outcomes than being exploited economically. In Africa these arguments are more likely to hold than elsewhere, where Goldsmith (2001; in Mkandawire, 2015) asserts that since 1960 and 1999, out of a 180 leadership changes on the continent, 101 took place through a coup or some other extra-constitutional means. And, according to Elbadawi and Sambanis (2000), 20 countries out of 48 have experienced at least one episode of civil war since independence. Some commentators point out that the argument that destructive institutions persist because individuals are conflict averse has some limitations. The argument assumes that the costs of free-riding are so low that the individual is not incentivised to engage in rebellion or insurgency. This is unlikely to hold in very repressive regimes when the economy is too weak and conflict breaks out. Kalyvas and Kocher (2006) argue that the ill-indiscriminate violence, death, economic collapse, and forced relocation have immediate effects on rebels as well as non-rebels. Furthermore, the death ratio of innocents to insurgents tends to be significantly higher in violent conflicts involving counterinsurgencies. Therefore an individual to whom this insight is not lost, may seek to improve their odds of death by joining a rebel movement and be part of the insurgency (Kalyvas and Kocher, 2006). However, when free-riding costs remain below a certain threshold, growth inhibiting institutions may still persist in the long-run and this may present and sustain lost opportunities as far as economic development is concerned.

In Africa, top-down legitimacy is more likely to be serious than other in regions and could account for persistence of welfare destroying institutions or policies. The notion of top-down legitimacy suggests that the calculus of violence that underpins the preference of the dominant coalition for limited access over anarchy is not lost on society at large. Moreover, the logic of violence that encourages incentive compatibility conditions among the dominant coalition, hence prompting institutional emergence, from the point of view of society, serves to render persistent those emergent institutions. This means violence not only plays a role in the emergence of institutions, but it also plays a role in the continuance or evolution of these institutions, because given the choice between violent-revolution over corrupt institutions may be more costly than exploitation by these institutions. While top-down legitimacy may be external to some members of society, in so far as it is dictated by the uncertainty which characterises outbursts of violence, Rothbard (2009) argues that a successful device the state uses to prop up its legitimacy is to instil fear for any alternative systems of rule or none rule as it supplies a service which citizens are grateful for, the protection against sporadic criminals and marauders. Lastly, in the framework of social orders, it is presumptive that states cannot emerge under primitive access societies, as

this requires a group of individuals with sufficient levels of coercion to be able to impose sanctions on groups of individuals whose behaviour deviates from the social contract enforced by the State. Primitive access societies, by definition, are severely lacking of such levels of coercion over each other.

4.1 *The Postcolonial African State: Governance*

Crowder (1987) argues that in less than 25 years after African independence, the African dream of development and progress had been shattered and replaced by a profound disillusion whereby Africa had become the world's basket case, for which there was little if any hope. Consequently the universal wisdom was that African independence was abysmal failure. This assertion begs the question, what is it about African independence to which Africa's developmental woes can be attributed? According to Engelbert (2000), out of all the regions in the world, Africa has the largest proportion of countries where the process of state creation was exogenous to their societies, and where its Westernised leadership or ruling class inherited the state rather than shaping it as an instrument of its existing or developing hegemony. This suggests that African states are superimposed institutions over pre-existing political structures and economic structures (Lonsdale and Berman, 1979; and Engelbert, 2000). From the chanceries of Europe, state creation in Africa had no reference to African realities, and colonial powers did little to foster a sense of national unity within them (Crowder, 1987). Moreover, the lack of historical continuity, and the inherited colonial modes of governance embodying the postcolonial African state, renders it somewhat arbitrary, if not complicated (Okoth-Ogendo, 1972). This is because the postcolonial state is not embedded in pre-colonial institutions and pre-existing forms of political authority and when it diverted from the imposed institutional structure during independence, it reverted to the colonial modes of governing (Lonsdale and Berman, 1979). Engelbert (2000) argues that that it is this lack of embeddedness that accounts for the observable weak economic performance of most African countries. This implies that the relative power payoffs of developmental policies for political elites are lower, hence, some commentators argue that the residual root of African stagnation lies in the nature of the African state, that is, its lack of *legitimacy* (Engelbert, 2000 [My emphasis])¹. As a result, instead of playing a role in development, the postcolonial African state is a venue where political actors bargain over the allocation of resources and secure their consumption in weak economies (Hyden, 2006; in Arriola, 2009). However, some authors argue that the roots of poverty lie in the colonial period as the colonial state was not run for the benefits of its inhabitants, but for that of settlers (Arriola 2009). In white-settler colonies, the main agent of exploitation was the African farmer, who was forced to produce crops as the colonial powers dictated rather than according to their needs. Even at the risk of land impoverishment and famine, through taxation, forced labour and requisition, the farmers produced crops as the big multinational corporations dictated and not according to their needs (Arriola, 2009).

Okoth-Ogendo (1972) argues that most explanations of Africa's widespread breakdown of institutions tend to be general, leaving unexplored some basic factors in the operations of constitutional systems in the continent. Crowder(1987) suggests that to judge postcolonial Africa, ought to be a judgment passed on a dream not manufactured in Africa, but in Europe, a dream taking no cognisance of either contemporary African realities, nor, more importantly, and less forgivable, a legacy of colonial rule. Crowder (1987) asserts that in all the British colonies, and Francophone Africa, except for Guinea, the transfer of power was negotiated and made conditional on the acceptance of liberal democratic constitutions inspired by the metropolitan model regardless of whether the African parties were ideologically committed to them. Okoth-Ogendo (1972) argues that these Westminster institutions and provisions in the constitutions such as the Bill of Rights contained not normative definitions prescribing the purposes of government, such as minimum prescriptions of justice and good governance, but almost exclusively focused on the distribution and limitation of power. This was done despite the fact that if the

¹ Notice Engelbert's idea of legitimacy suggests bottom-up legitimacy in contrast to the analysis of collective action and top-down legitimacy given above.

institutions were to be altered, they might eventually come to perform normative functions of the government, particularly when it comes to establishing and maintaining state legitimacy (Okoth-Ogendo, 1972). And, since power could only be transferred through the ballot box, the African nationalists necessarily had to appear committed to liberal reforms (Crowder, 1987).

Since new governments needed more powers than their predecessors so they may legitimize their rule, the constitutional limitations on the postcolonial state therefore were an invitation to unconstitutional action (Okoth-Ogendo, 1972). Furthermore, given that most of African countries had been cobbled only 50 years earlier to independence, Arriola (2009) suggests that in reality, this “dream” in which Africans would faithfully adhere to the liberal institutions and uphold a mixed economy in which the interests of the interests of ordinary people would be served, was fantastic, but vain hope. This is corroborated by Okoth-Ogendo (1972) who argues that in the reasoning of constitutional transplantation, the colonial powers imposed upon the postcolonial African regimes, constitutions which depended for their stability largely upon the maintenance of good (i.e. based on consent) state-society relations in politics, and most elites were simply not prepared to guarantee that. These arguments suggest then that the system of democracy in Africa was in fact neither adopted as a result of fair voluntary consent by its subsequent custodians nor was it instilled and adopted as such by its subjects. Paradoxically, even though the system of democracy seeks to instil a political structure whereby authority is a result of fair voluntary consent (i.e. by free and fair elections), its origin in Africa was dictated not by the consent of ordinary Africans, but by the logic of violence between the African nationalists, other native militant groups, the settlers, and the colonial government (Meredith, 2005). The extension of franchise in colonial Africa, and as a result, the emergence of the postcolonial African state, more often than not, occurred at the background of civil unrest, rebellions, guerrilla warfare, and civil war against the injustices of the colonial system and the need for “self-governance” (Meredith, 2005; and Onyango, 2014). This suggests then that the post-colonial African state was founded on top-down legitimacy and the use of violence in order to legitimate one’s rule has merely continued, rather than emerged, in postcolonial Africa.

According to Arriola (2009) the colonial state was not only conceived by violence, but it was maintained by the use free use of it, and therefore if anything, the colonial state provided a model for its inheritors that government rested not on consent but on force. Moreover, Mehler (2004) argues that from a historical perspective, there is nothing particular with state weakness in Africa because power was rarely absolute in the colonial past. Ellis (1999; in Mehler 2004) asserts that in colonial Africa, different power-holders used to share responsibility and thus authority, in most communities and states. Some commentators argue that a legitimate monopoly on violence did not exist at all even in pre-colonial Africa, where oligopolies of violence and therefore a high level of violence was the historical norm (Trotha, 2000 and Bangoura, 1996; in Mehler, 2004). Given the lack of continuity in authority in the political transition of African state from a colony to a sovereign nation, it is suggestive that this new democratic system of governance may have enacted institutions that its intended subjects and custodians failed to find credible and viable. And, since credibility is pertinent for political institutions to avoid instability, this suggests that it is reasonable to assert that at inception, postcolonial African states were embarking on a path of inevitable instability (Fedderke and de Kadt, 2000). This argument is corroborated by Okoth-Ogendo (1972) who argues that as the result the pressures they imposed on the powers of the elite, the constitutions of the early postcolonial state were inherently fragile. Lastly, Crowder (1987) argues that when judgment is passed on postcolonial regimes in Africa, we must remind ourselves that some of the most extreme forms of violence perpetrated in post-colonial Africa have been by the whites of Rhodesia and South Africa. Consequently, Arriola (2009) suggests that if anything, the colonial state provided a model for its subjects that government authority rested not on consent but on force. Therefore the blame for postcolonial Africa’s situation should be divided between its leaders and their colonial predecessors.

4.2 The Postcolonial African State: Legitimacy and Patronage

According to Bratton and Van de Walle (1997; in Arriola, 2009) the patron-client relationship is the principal mechanism regulating political and economic life in postcolonial African countries. On the determinants of this mode of organizing political economy relations, the literature argues that from independence, African regimes lacked legitimacy, were exogenous to their societies, and they were not historically embedded into domestic relations of power and domination. As such the literature suggests they suffered from a dichotomization between power and statehood. The African 'inheritance elites', were handed the colonial state but not the colonial power that forged it and kept it together (Engelbert, 2000). Furthermore, for ruling elites, power was fragile, and therefore the consolidation of power became the prime motive of action, sometimes at the cost of institutions, as leaders resorted to the use of corruption, clientelism, nepotism, regionalism and other forms of factionalism (Engelber, 2000; and Arriola, 2009). Factionalism became an instrument of achieving legitimacy, replacing the state with an informal web of ad hoc political alliances. Accordingly, it is suggestive that a lack of state legitimacy favours neopatrimonialism policy choices (Engelbert, 2000, and 1997). Consequently, Bratton and Van de Walle (1994) assert that the distinct institutional hallmark of African regimes is neopatrimonialism, where decision making is typically restricted within a narrow social base.

Bratton and Van De Walle (1994) define a system of patronage as a hierarchic structure encompassing an executive at the top. This executive maintains authority through personal patronage rather than through rule of law. Below the executive are the patrons whose are loyal to the executive and solidify its rule, in return for benefits in kind (Bratton, and Van De Walle, 1994). The key characteristic of neopatrimonial regimes is the personalization of power, where the state is treated as an extension of the property of the leader (Khan, 2005; and Wegner, Mecherghi, and Mecherghi, 2013). According to Wegner, Mecherghi, and Mecherghi (2013), the concept of neopatrimonialism was introduced as an attempt to analyse a new type of institutionalization and governance in postcolonial Africa. Neopatrimonialism differs from traditional patron-client relationships in the notion of predictability. Whereas policy tends to be predictable under traditional patronage systems, under neopatrimonialism, political and economic policy is highly and uncertain and precarious (Eisenstadt, 1973; in Wegner, Mecherghi, and Mecherghi, 2013). Consequently Engelbert (2000) asserts that neopatrimonial policies lead to widespread distortions in market mechanisms because of its tendency to allocate resources along political rather than economic criteria. When resources are allocated along these lines, economic policy favours current consumption at the expense of investments in physical and human capital which have few immediate returns to the dominant coalition (Engelbert, 2000). However, other commentators do not support this view.

Firstly, Mkandawire (2015) refutes the view that neopatrimonialism has become the convenient, all-purpose and ubiquitous sobriquet for African governance, and therefore a logical outcome of its poor economic performance. Instead the author argues that empirically the view of decline and stagnation as the norm in African economic history is not supported, despite what the logic of neopatrimonialism suggests. The actual trajectory of Africa's postcolonial development is captured not by a downward sloping or inverted-U curve, but is captured by an N-shaped curve of economic growth, and by ignoring this cross-sectional and longitudinal variance of the African experience, the neopatrimonial view provides a poor understanding of the complexities of the continent (Mkandawire, 2015). Furthermore, contrary to some of the assertions of the "neopatrimonialism school" that attribute Africa's economic woes to corrupt and bloated African regimes, Sachs *et al.*, (2004) assert that many parts of Africa are well governed even though they are stuck in poverty. These authors assert that African regimes are stuck in a poverty trap, meaning they are too poor to achieve and maintain strong and high levels of economic growth (Sachs *et al.*, 2004). And according to Khan (2012), no developing country has actually succeeded in implementing good governance at levels of per capita income seen in Africa. Therefore, contrary to the argument that Africa's developmental woes lay in bad governance, even the well governed African countries failed to achieve and sustained levels of economic growth and development (Khan, 2012).

Additionally, contrary to the neopatrimonial view of a bloated state, African governments tend to be smaller than is commonly suggested (Mkandawire, 2015).

In contrast to arguments that assert that neopatrimonialism crowds-out investment in social services such as health and education, the evidence suggests that, controlling for the standard determinants of social expenditure, African countries spend more on education and health than would be expected given their levels of income and structural characteristics (Mkandawire, 2015). This corroborates Crowder's (1987) argument that African countries have made significant strides in increasing primary school enrolment, access to water, housing and healthcare, life expectancy and literacy. (Mkandawire, 2015), argues, economic policy is a complex process that involves ideas, interests, economic forces and structures, path dependence and institutions, therefore it cannot be merely reductively derived from the logic patronage systems. Lastly, Mkandawire (2015) argues that the view that the state might be illegitimate undermines the success of nationalist movements in creating new social contracts that evolved from the main social movements and social compromises. Therefore, the neopatrimonialism lens of diagnosing Africa's problems is too blunt and too formulaic an instrument for understanding the variety of African experiences which encompass contradictory interests and ideologies (Mkandawire, 2015). Far from having a deleterious effect on social cohesion and development, other authors regard African neopatrimonialism as a politically, hence economic, stabilizing factor, where it's been strategically deployed by African leaders to consolidate their regimes since independence (Engelbert, 2000 and Arriola, 2009).

According to Khan (2005), patronage not peculiar to African countries, moreover, unlike in advanced countries, political stability in developing countries is primarily maintained not through fiscal policy, but through the largely off-budget and *selective* accommodation of factions organized along patron-client lines [my emphasis]. Furthermore, historically all developing countries undergoing developmental transformation entail features of patronage systems (Khan, 2012). Therefore, in contrast to being deteriorative to the outcomes of development policy, patronage is seen as an instrument for regulating intra-elite competition, permitting the leader to ration state resources in placating aggrieved groups, or punishing would-be challengers, a point which resonates with the argument made above that patronage is a system of steps undertaken to arrive at the solution of violence or instability (Arriola, 2009 and North *et al.*, 2011). Bratton and Van de Walle (1994) corroborate this argument, arguing that after independence in Africa, dominant parties usually used patronage to consolidate power. During independence power was consolidated by *limiting access* to the political system to both civil society and political opposition. In the absence of a dominant party, ensuing regimes tended to be characterised by instability and a greater reliance on the use of violence, especially through military solutions to political problems (Bratton and Van de Walle, 1994).

In its stabilizing role in Africa, patronage facilitated the integration of ethnic representatives, bureaucrats and business leaders into a cohesive elite, a dominant coalition, united by their common interest in accessing the state resources on which their positions depend (Arriola, 2009). That is, patronage became an instrument to achieving incentive compatibility among the political elite with direct access to violence to form a dominant coalition which used limited access in the political system to manipulate the economic system. These arguments are congruent with the theoretical framework of North, Wallis and Weingast (2009), where the system of patronage is used to create rents for the elite, such as struggle heroes, military generals, militant groups, and even leaders of the opposition, in order to consolidate and concentrate power at the centre of the executive. These means however come at a cost of open economic and political institutions (North *et al.*, 2012). This however does not necessarily imply that the detriment of open political and economic institutions inhibits economic development because rents do have a positive role in economic development (Khan, 2007; in North *et al.*, 2012). Khan (2013) argues that the good governance agenda, characterised by the emphasis on the rule of law, democratic institutions, and strong property rights as drivers of economic development, ignores the problem of how to maintain political stability in developing countries. By ignoring the problem of political stability, the

good governance agenda does not give elites a workable reform agenda in developing countries. All LAOs face the problem that they cannot have open access to the political structure or market without endangering regime stability (Wegner, Mecherghi, and Mecherghi, 2013). This dissertation suggests that this ignorance stems from failing to acknowledge that the states are not exogenous entities but are dependent on their socio-political and socioeconomic peculiarities, and these too have a role to play in the outcomes of economic policies with regards to economic development.

Furthermore, there are significant structural constraints in developing countries which hinder stability of property rights. This is because property rights are an expensive public good, and therefore require significant levels of development and resources to ensure their stability (Khan, 2012). In advanced countries almost all private assets are productive and their owners pay significant taxes for the provision of this public good. In contrast, in developing countries the capitalist economy is under-developed and most of the economic activity takes place informally, hence the tax base to generative revenue for the general protection of all assets as a public good does not exist in most cases (Khan, 2012). In contrast to developed countries, conditions that enable transparent and impersonal redistributive political activity, such as a well-developed capitalist economy, have not been attained in developing countries. Khan (2012) argues that democracy is an end in itself and ought to be supported only on these grounds. When instead, democratization is supported in developing countries because it is believed it is a mechanism that reduces rent-seeking and corruption, there is much room for disappointment (Khan, 2012). Democratization does not undermine patrimonial politics because the organization of patron-client factions driven not by the absence of democracy, but by the structural features of the economies of developing countries that make impersonal, open, and welfare redistributive policies unviable (Khan, 2005). Conflicts over resources in developing countries tend to be intense, particularly between powerful factions of elite coalitions, and this contributes to the fragility of democracy (Khan, 2012). The presence of different elite coalitions organized along factional lines in developing countries is such that, democratic systems in these countries works differently in the modern Weberian states. In developing countries the most powerful organizations tend to be the patron-client factions. When they get elected to public office they invariably renege on their campaign promises of open, responsible and transparent governance. Instead they tend to abuse public power for private gain and impede the efficient allocation of public resources as much, if not more than their predecessors (Khan, 2012).

5. GOVERNANCE AND INSTITUTIONS IN KENYA

5.1 Governance in Pre-Independence Kenya

Although numerous postcolonial states turned into autocratic regimes after having been established on democratic political philosophy, characterised by open political and economic institutions, the general framework of social orders is scarcely used to analyse the evolution of their institutions (Wegner, Mecherghi, Mercherghi, 2013). This section analyses emergence and evolution of institutions in Kenya during the colonial and postcolonial periods. The development trajectory of Kenya continues to be determined by the intersection of pre-colonial, colonial and postcolonial socio-political and economic processes (Ndenge, 2009). Moreover, when it comes to the political features of colonial states, in addition to economic roles, questions of the basis of its legitimacy, citizenship and authority can throw light on modern political dimensions of underdevelopment (Murphy, 1984). Therefore this time period should provide observations that enable a thorough investigation of political and economic issues facing modern age Kenya. Although much of this analysis is concerned with colonial and postcolonial Kenyan institutions, a brief description of pre-colonial Kenya may provide some context in understanding colonial and postcolonial Kenyan society. Lonsdale and Berman (1979) characterise pre-colonial Kenya as a web of subsistence economies that exploited local ecologies suited to predominantly pastoral or agricultural production systems. As a result agriculture was the main source of income. Furthermore,

ethnic boundaries were *insignificant*², and cattlemen and cultivators had a symbiotic system of exchange of commodities. Although pre-colonial Kenya was inhabited by a variety of ethnic groups, the Cushites, the Nolitics, and the Bantu, none established themselves as a kingdom (Phagudom, 2014; and Letete 2015). In the 16-17th centuries Arab and Persian traders overran the Portuguese and colonized the east coast, where major port city-states were developed to stimulate trade. This led to the introduction of Islam among the native population and this influence the emergence of the Swahili culture and language (Bell, 2012).

From 1888 the imperial British East Africa Company penetrated the region, after which profound transformation was to take place as the indigenous Kenyans were subsequently linked to the capitalist mode of production and world economy (Lonsdale and Berman, 1972). When the British East Africa Company collapsed in 1895, the British Foreign Office assumed responsibility for governance and in the mid-1890s the British established the East Africa Protectorate, subsequently to become the Kenya Colony four decades later (Bell, 2012). Upon declaring Kenya a protectorate, the British had to have their authority accepted by the Kenyans, and the British were convinced that this required establishing a strong and efficient administrative system (Onyango, 2014). In order to establish and maintain their authority however, the British first had to convert superior coercive power (i.e. monopoly of violence) into a legitimate authority accepted by the Kenyans, and often, mediation occurred through pre-existing and emergent relations of power (Lonsdale and Berman, 1979; and Murphy, 1984). In order to achieve legitimacy along traditional lines, in its early years the colonial state sought out tribal chiefs, and where there were none, it created them (Murphy, 1984). Although the institution of the chieftainship was derived from traditional modes of governance, in colonial Kenya, chiefs became a creation by the colonial powers to serve as agents of the local administration, thereby serving to extend the arm of the colonial state at the periphery of power (Mumdani, 1996; in Onyango, 2014). Consequently, the system of indirect rule was enacted, and the colonial state created local native councils and native tribunals with the intention of suppressing political aspirations among the Africans (Murphy, 1984). In order to govern Kenya then, the colonial state relied on top-down legitimacy and patronage because the logic of conquest was such that little or no consent from the Africans was considered in the establishing a social order, apart from considerations of potential conflict (Lonsdale, and Berman, 1979). Murphy (1984) argues that the authority of the colonial state cannot be said to be 'legal authority' in the sense that its legitimacy is based on the acceptance of rationalised rules regulating the rise to, and the use of authority (i.e. bottom-up legitimacy). Furthermore, interest representation was not based on plurality, and a system of public rights concerning speech and association, and an impartial rule of law, to a great measure, was denied to Africans (Murphy, 1984)

Ochieng (1985; in Onyango, 2014) asserts that initially, the British did not go to Kenya to settle, but in order to reach the wealthy Kingdom of Buganda, and to do this they planned to build a railway from Mombasa to Kampala, thus unavoidably passing through Kenya. The railway was completed in 1901 at a cost of £ 5.5 million (convert to today's value) and afterwards settlers and traders began to move to the interior of the Kenya, and colonial administration expanded to provide other administrative services for the settlers, including the provision of security. The imperial insistence that colonies be financially self-sufficient, in turn gave an impetus for sovereign self-interest in the colony (Lonsdale, Berman, 1979). In addition to the costs of the railway, there were also costs of conquest. Nearly a third of the Protectorate's budget in its first nine years was spent on military costs, and its overall costs exceeded local revenue (Lonsdale and Berman, 1979). Given the mandate of financial self-sufficiency, the colonial state had to find new sources of revenue to finance the operating costs of the railway, and this resulted in the introduction of the Hut Tax and the colonization of the rich highlands by the Europeans by driving the Africans off their land (Onyango, 2014). When it came to generating fiscal revenue, the chiefs came in

² Phagudom (2014) asserts boundaries along ethnic groups were porous, suggesting that they weren't as rigidly defined as they became to be under colonial administration.

handy for the colonial administration. The chiefs became the means through which the colonial power imposed itself on the Kenyans. They assisted colonial governance in collecting Hut and Poll taxes, helping to provide cheap labour for the colonial administration and the settlers, and in maintaining order in their spheres of influence (Onyango, 2014).

The pressure of financial self-sufficiency for the colonial governors, as well as the civilizing mission of colonization entailed contradictions when it came to colonial governance. In order to generate and accumulate assets for revenue generation, in addition to the imposed taxes, the colonial state practiced primitive accumulation on the settler's behalf by appropriating African land, forcing out labour, and confiscating livestock. This mode of primitive accumulation however, threatened to erode whatever legitimacy the colonial state had (Lonsdale and Berman, 1979). In its civilizing mission, the colonial administration perceived Kenya a "white man's country" (Onyango, 2014). This, among other things, entailed "civilising the heathens", and establishing a secure white dominion, founded on the principles of the British tradition and Western civilization. Eventually, the presence of Africans in their own country was ignored or forgotten (Onyango, 2014). Ironically, even though the colonialists had come to think of themselves as having some interests in educating and converting the "primitive tribes", in reality they carried out their civilizing mission based on their "superiority" over the "tribes", and had no interest in understanding the Africans' cultures (Onyango, 2014). What resulted then, was a system of racism and a pre-modern notion of authority (i.e top-down legitimacy) where those deemed too "uncivilised" to have rights came to be ruled by those who deemed themselves to have the right to judge them as such (Murphy, 1984). Race over class, became a layer of qualification, and therefore the colonial state treated some of its citizens more equal than others, an act which put it in a state of contingent anarchy (Nolutshungu, 1982; in Murphy, 1984). As a result if Kenya was to be a "white man's country" with a African majority, then it had to be based on a racially segregated economy (Murphy, 1984). As the number of settlers grew, they organized themselves into a number of associations, and these, among other things, were directed to keeping the highlands and most lucrative real estate reserved for whites, organizing African labour for the benefit of the settlers, and developing an acceptable system of land tenure (Onyango, 2014)

According to Onyango (2014) throughout the colonial period, commerce was exclusively promoted for the benefit of the settlers. Some authors point out however that this characterisation is too simplistic to account for the complexities of the colonial state. Murphy (1984) asserts that the colonial state was distrustful of settler greed, and deemed itself to have the responsibility of acting as a mediator between settlers and Africans. Given the diametrically opposed interests of settlers and Africans, where the former accumulated assets at the expense of the latter, the colonial state's role was to try to guard African welfare and development and to organize these two groups into a coherent and harmonious society. It was unclear however whether this meant protecting Africans from settler exploitation and self-interest or protecting them against modernity and development as such, which included the ills of capitalism such as individualism, on the 'organic' African community (Murphy, 1984). These roles that the colonial state played were the source of the contradictions embodying its governance. As an alien institution, in the long-run it needed consent and could not rely on force in order to maintain its authority over the Africans. But given the goals of European expansion and needs of financial independence from the metropolitan, the solution was to appropriate African assets and capital (including labour) and hand them to the settlers to cultivate for export markets. This however subjected the colonial administration's authority to crises of legitimacy, and made sustained social order hard to achieve (Murphy, 1984; and, Onyango, 2014). Moreover, according the extraction of African labour had the risk that it might foster a cohesive consciousness of class over the fragmented consciousness of the 'tribe' (Lonsdale and Berman, 1979). Another contradiction was embodied in the fact that state intervention against the African population coincided with the rising level of conflict between the settlers and officials of the colonial administration who were determined to defend African interests against the settlers (Lonsdale, and Berman, 1979). Therefore, the colonial state was not simply an instrument of settler class rule, and when

at times it prevented African capitalism it did so based on its other contradictory logics than on ensuring settler interests (Murphy, 1984). The colonial state in its particular distrust of settler-greed, constantly refused to grant the settlers their cherished aim of self-governance, which in the context, meant a South African solution (i.e. de jure racial segregation and white minority rule) to the dilemmas of colonial exploitation (Murphy, 1984). However, the prevention of African capitalism by the colonial state in turn created the conditions for the convergence of the working class nationalists and populist demands, which among others, led to the Mau-Mau, later to become a civil war (Murphy, 1984).

By the end of the mid-19th century, the colonial state had still failed to achieve sustained bottom-up legitimacy, as many Africans, especially those who were violence specialists in WW2, were still disgruntled with the exclusive institutions of the administration that took their land and gave it to the settlers. Moreover, the Africans were unhappy with the restrictions that came from the creation of reserves, the imposition of hut and poll taxes, and especially with the labour system where the chiefs forced villagers to provide cheap labour for the settlers (Onyango, 2014). As such, after high levels of violent conflict experienced during the Mau-Mau period and increased African political consciousness, in 1959, with Europe still in post-WW2 recovery and European imperial appetite waning, the Kenyan colonial state removed barriers to the formation of national political organizations. Consequently, the struggle for the postcolonial state began, dominated by the African nationalists comprised of earlier anti-colonial organizations and a political elite emerging in the post Mau-Mau period (AJulu, 2002). After long consultations in London, it was realised that a proper involvement of Africans in the administration was crucial for peace to prevail in Kenya. And, instead of the multi-racial state under British dominion, that the settlers had hoped for, in 1963 the British granted Kenya independence on the basis of a Westminster model constitution which championed open political and economic systems with minimal barriers to entry, and the protection of minority interests (Onyango, 2014).

5.2 Governance in Postcolonial Kenya

The rest of this section deals with a brief discussion on governance in postcolonial Kenya, from the year 1963 to 2010, divided between the presidencies of Jomo Kenyatta (1963-1978), Daniel Arap Moi (1978-2002), and Mwai Kibaki 2002. Kenya's political transition from colonialism to independence was relatively smooth and stable (Ahluwalia, 1984). In order to establish, consolidate their rule, and achieve bottom-up legitimacy, first generation leaders of dominant parties during the initial era of competitive party politics in postcolonial Africa often employed their parties to distribute patronage to a wide range of economic interests, and Kenya was no exception (Bratton and Van de Walle, 1994). In contrast to the expectations of the masses, the new political order brought by the independence struggle, differed little from the old colonial order. Upon independence, the behaviour of African politics was similar to that of office-seekers who do so to promote personal advancement and profit. Relative to their colonial masters, Africans were less idealistic, more practical, and even cynical about the prosperity and stability that open political and economic systems at independence supposedly entailed (Crowder, 1987). Under the first head of state Jomo Kenyatta, the patronage system used by the colonial state was found particularly conducive to the consolidation of political power. The first three years of independence were utilized on political and economic recruitment, mostly of Kenya's largest and relatively educated ethnic group whom Kenyatta hailed from, the Kikuyu. The Kikuyu were recruited to government towards the consolidation of power and the creation of a ruling elite coalition (Amutabi, 2009). Supporters of Kenyatta received government jobs and land, which had opened up by the exit of the settlers (Mueller, 2008). In order to consolidate power, Kenyatta's regime passed constitutional amendments which increased personalised power in the Presidency, such that by 1968, 10 constitutional amendments had been made, thus increasing the power of the executive at the expense of other organs of government (Mueller, 2008). Upon consolidating his power, those whom Kenyatta deemed as threats and enemies, some with legitimate and loyal constituencies, were regularly harassed by state forces, removed from the echelons of

power, or punished with preventative detention laws. All of this was done in order to repress opposition politics (Mueller, 2008; and Amitabi, 2009).

Consequently, the postcolonial, nationalism-driven, competitive multi-party political structure was short-lived, crumbling within 6 years of Independence, with Kenya becoming a de facto, one-party state. Later on, ethnicity, rather than policy emerged as the most important factor in political competition (Ajulu 2002). While the colonial regime limited access to politics for the benefit of settlers, subsequent postcolonial regimes have come to limit access to the political and economic spheres of influence by favouring their close ethnic members (Ajulu, 2002). In contrast to an *independent* structure of governance, the postcolonial Kenyan state effectively used politically and economically exclusive institutions of the colonial state to govern Kenya, though not to the same extreme as the colonial state. In the political era of postcolonial Kenya, strategies of exclusive-politics that favour elite interests along ethnic lines came to dominate institutional development (Amutabi, 2009). While the colonial regime practised politics of exclusion by favouring the settlers, the postcolonial regimes favoured their close ethnic associates (Onyango, 2014). To the extent that consent and internalised knowledge of a political system refers to the political culture of a society and the legitimacy of authority, the political culture and order of the postcolonial Kenyan state cannot be said to have been based on bottom-up legitimacy (Almond, 2004; in Onyango, 2014). Instead legitimacy was attained in a manner that was incongruous with the provisions of the Westminster-style constitution of open and competitive economic and political institutions. The new path of the postcolonial state to political legitimacy by dispensing patronage and the suppression of opposition politics, led to some economic and political institutions to revert towards those of the colonial order. As a result, notions of neo-colonialism are deeply embedded in the political structure and culture in postcolonial Kenya. For the masses, Independence has not been translated into real economic independence and freedoms for much of the postcolonial period (Onyango, 2014). During independence, power transfer was conceptualised in an abstract sense, as a result no attempt was made to examine the institutional basis of power. Hence upon the transition to Independence, not only the institutions but the values of colonial rule were received. What resulted then was a mere substitution of colour, hence economic groups and class interests and the corresponding administrative power that sustain them were left unaltered (Okoth-Ogendo, 1972). In essence, a black neo-colonialist replaced a white colonialist, and this served to perpetuate the crisis of state legitimacy which plagued the colonial state into the postcolonial period. In the postcolonial period the struggle is between the former independence freedom fighters comprised of the educated class with a neo-colonial point of view, and postcolonial intellectuals and Mau-Mau fighters. The latter believe that their fight to regain land previously taken by settlers was stolen by the neo-colonial governing elite who used their power to perpetuate their interests and those of former colonial powers (Onyango, 2014).

Political succession in the postcolonial state is a complex process, involving not only changes of personnel and elite coalitions, but also an opportunity for a new style of politics to emerge following the demise of the 'founding father' (Ahluwalia, 1984). When President Kenyatta died in 1978 after 14 years as head of state, his Vice-President of 12 years, D.A Moi succeeded him (Ajulu, 2002). And although Moi had been loyal to Kenyatta, coming from a smaller ethnic group, the Kalenjin, he was never accepted into Kenyatta's inner circle, even though to most Kenyans he was widely regarded as the right candidate to towards an accommodating political, economic and human rights era with no ethnic dominance (Adar and Munyae, 2011). Upon occupying the role as head of state, Moi declared his philosophy as following the footsteps of Kenyatta. And thus he began building his power around his Kalenjin and other smaller ethnic groups who believed that their turn to exploit the opportunities that came with political power had dawned (Onyango, 2014). Contrary to the expectations of most Kenyans who believed that the new state ushered in a period of accommodating human rights and a state-enabled environment for citizens to exercise their constitutionally guaranteed rights, in the early 1980s, Moi held on to power by making the political system more repressive, concentrated the distribution of patronage, and systematically purged Kenyatta's allies from government (Arriola, 2009). The abortive coup of 1982 further enabled him to

purge the army, as well as political forces that were powerful and outside his control (Ajulu, 2002). Driven by the desire to consolidate his power, legitimize his leadership and broaden his political base and popular support, Moi criminalized competitive politics and criticism of his leadership. And to ensure his grip on power, he systematically seized control of the functions of other institutions of governance. In 1982 with the passing of Section 2A constitutional amendment, Kenya became a de-jure one-party state (Mueller, 2008). Moreover, between 1986 and 1988, parliament passed legislation that imposed limitations on the independence of the judiciary, thus rendering the principle of the separation of powers of the Westminster model constitution ineffectual (Adar and Munyae, 2001). And by revoking Parliamentary privileges which gave representatives the right to information from the office of the president the state undermined the legitimacy of representation of the legislature of Kenya, as this meant that members of parliament, and by extension their constituents, surrendered their constitutional rights to the Presidency and the supremacy of parliament was subjugated to the Presidency and the ruling party KANU (Adar, and Munyae, 2001).

Like Kenyatta, Moi came to rely on a small clique, mostly composed of his ethnic group to consolidate his power, such that by the mid-1980s he had mastered the art of patronage and clientelism to construct and deconstruct his elite coalition (Ajulu, 2002). Under Moi, patronage and loyalty became mandatory for political survival and this remained characteristic of the regimes leadership (Adar and Munyae, 2001). In turn, the medium of achieving regime legitimacy in the postcolonial state ushered in a political framework based on ethnicity, greed and corruption (Ajulu, 2002). Additionally, given the volatility of politics in Kenya and the persistence of ethnic divisions, Moi was confounded with serious difficulties as he came to power at a time of growing economic crisis as a result of declining commodity prices prior to assuming office (Ahluwalia, 1984). Unlike Kenyatta, who had resources in his disposal to disperse as patronage, Moi's regime was severely capital constrained, and it had to engage in primitive accumulation and predation in order to consolidate support and its power. As such his modes of attaining legitimacy were cruder and more repressive than those of Kenyatta, entailing dismantling the economic foundations Kikuyu hegemony in order to build Kalenjin privileges into the structure of the state (Ajulu, 2002; and Mueller, 2008).

In contrast to Kenyatta, Moi politicised the allocation of public goods and private investments such as roads, educational infrastructure, as well as agricultural investments, with allocation directed towards Moi's political constituency (Ajulu, 2002). Perhaps more importantly, the primitive accumulation that ensued under Moi, fostered a kleptocratic bourgeoisie whose political survival, hence wealth, depended on a continuous access and control of an authoritarian state. The type of distribution of rents and the crude use of the state for primitive accumulation that occurred under Moi, could only be possible through authoritarian control. Additionally, despite the mere appearance of wealth, the significant portion of the property of the ruling elite remained mortgaged to the country's financial institutions, and losing state power meant losing their wealth overnight (Ajulu, 2002). Confronted with prospects of open and competitive political processes, as well as public scrutiny and accountability, the ruling elite defended its property and class interests through mobilized ethnicity, and it is against this background that the regime's resort to violence upon the introduction of competitive politics must be understood (Ajulu, 2002). To deter its collapse, the Moi regime instituted even greater authoritarian measures, with Moi arguing that since Kenya was not 'cohesive enough', multipartyism would cause chaos. Indeed, when it came to multi-party politics, Moi detested the idea (Mueller, 2008). Even though it was his government that went as far as instigating ethnic violence in order to repress opposition and portray that the multiparty system as inappropriate for Kenya, Moi often argued that the resulting instability upon enacting multipartyism in the 1990s, following international donor pressure, served to prove him right (Mueller, 2008; and Amutabi, 2009). The ethnic violent clashes that occurred during the multiparty period of 1991-1997 under Moi's regime were not spontaneous outbursts of anger and hatred among Kenya's ethnic groups, but were engineered political acts by political forces that sought to inhibit multi-party politics (Adar and Monyae, 2001; Ajulu, 2002; and Mueller, 2008). The regime responded to its critics by having them and even their

friends, detained, tortured, and killed (Mueller, 2008). Indiscriminate state and extra-state violence against ordinary citizens, particularly the poor and defenceless, was often deployed to shun critics and sympathizers of the opposition (Mueller, 2008).

As mentioned previously however, the use of violence in resource acquisition is fraught with paradoxes, in addition to collateral damage, since violence markets have positive-reaction supply functions among violence specialists, the use of regular force by a state in order to consolidate its power can erode its legitimacy, hence the monopoly over force itself. While Moi's state instituted overly harsh levels of violence against those who opposed him, state violence inadvertently institutionalised violence outside of the control of the state both by design and neglect, and overtime the state could no longer control the level of violence. As a consequence, with time the state's monopoly over violence began to cede (Mueller, 2008). In turn, opposition parties also contributed to the incitement of violence through public statements, and everyone from every class was affected as the level of violence rose accordingly (Adar, and; Munyae, 2001). The consequence of violent clashes, particularly in northern Kenya, was an arms race and a general militarization of ordinary citizens who perceived the need to defend themselves when their government did not, or could not (Mueller, 2008). And thus in addition to consent, the state lost the allegiance and restraint of the ordinary citizen. Under President Moi, extra-state violence took mainly four forms. Firstly, politicians began having their own private bodyguards. Secondly groups of young men were used by the state and its politicians kill and displace opposition supporters. Thirdly, mafia shakedown gangs began to emerge and operate as shadow states in the slums of the capital Nairobi and in other cities, as well as the country sides. Lastly, an increasing generalised level of crime and violence began to confront ordinary citizens from the 1980s, and has continued into the new millennia (Mueller, 2008). Aptly, Moi's rule has been characterised as an imperial presidency that orchestrated and deployed an autocratic patronage system that almost totally abandoned the formal rule of law and independent institutional checks and balances, resorting instead to a highly personalized presidency that paved the way for kleptocratic rule and gross levels of corruption. Put concisely, President Moi simply ignored formal rules that seemed to hinder what he personally wanted, and his regime underpinned a very violent period in Kenya's history in the 24 years of its reign (Mueller, 2008).

Under Mwai Kibaki, who took over from Moi in 2002 as state president, things differed little in how Kenya was governed from the previous eras of Moi and Kenyatta. Kibaki's regime equally and effectively utilized his predecessors' strategies to maintain himself in power to such an extent that in Kenya there has developed a political culture of ethnicity and entrenched corruption (Onyango, 2014). When Kibaki took over the government, extra-state violence had not been reined in. The state's monopoly over legitimate force continued to be eroded and violence continued to be diffused, especially in the after the 2007 election. The informal rules continued to reward loyalists and punished dissenters, and formal institutions outside the executive continued to be deliberately weakened, with grave consequences of depleted legitimacy of independence from the executive when it came to resolving the ensuing violent conflicts. More importantly, Kenya's political parties are not based on clearly defined and distinguished principles, as their ideologies, policies and programmes are not particularly salient (Mueller, 2008). This is not altogether surprising, given the concentration of Kenya's political structure that emerged as a result of the colonial state's determination to stifle African national political parties and the continued concentration of power among Kenya's elite coalitions after Independence (Ajulu, 2002).

Kenya's leaders have a history of shifting parties, such that even those in the opposition have been in government and cabinets with the incumbent regime's elite. As a result of these factors, politics and the control of the Kenyan state is viewed as a winner-takes all and zero-sum game that involves the capture of the nation's resources for the benefit of power consolidation and class interests. This in turn serves to increase the returns to violence, especially ethnic-based violence, as ethnicity is seen as a critical factor that determines the distribution national economic resources, with the head of state seen as a chief ethnic in charge (Mueller, 2008). The 3 regimes since the formation of the postcolonial state in Kenya effectively used the colonial political and economic strategies in governing postcolonial Kenya (Onyango,

2014). Moreover, like the colonial state, postcolonial Kenyan states failed to achieve sustained bottom-up legitimacy as the impetus of power consolidation resulted in the diffusion of violence, which consequently served to erode whatever legitimacy the state had. Even the Kenyatta years were not without violence, even in this period there were political assassinations, and preventative detention laws which served to suppress opposition politics, as well as regular paramilitary forces which were often deployed to disrupt student and political rallies. Albeit this level of violence was controlled by the state (Mueller, 2008). Throughout the postcolonial period, competitive multi-party politics were a rarity in Kenya. The first was the short-lived period at the dawn of Independence in 1963-1969. The second era began in the 1990s, which included the elections of 1993 and 1997 and in both periods, ethnicity was the most important factor determining the process and outcome of political competition (Ajulu, 2002).

Commentators who utilize the framework of social orders to analyse the evolution of institutions argue that scholars and policymakers that mainly focus on the formal aspects of institutions, such as political parties, parliament, administrative structures, and elections rather than the incentive structures that guide the behaviour of their constituent political actors often fall prey to false optimism about institutional development in transition economies (Wegner, Mechergui, and Mechergui, 2013). Concentrating on the formal (*de jure*) nature of institutions often comes at a cost of neglecting how institutions really operate in developing countries, and this leads to exaggerated views about how institutions both in and outside of government actually function, thus giving a false sense enthusiasm regarding the future. As mentioned in the introduction, this false sense of optimism is underpinned by the misleading hints of institutional development that result from assuming away the incentive structures that are foundational to political stability (Mueller, 2008; and Wegner, Mechergui, and Mechergui, 2013). In contrast to pundits who argue that developing countries are underdeveloped because they lack formal market enhancing institutions, regimes in developing countries like Kenya tend to deliberately hollow out of formal institutions as state power is attained and maintained through a systemic use of violence. Under these conditions, intervention such as a broad based removal of barriers to the political and economic institutions in order to enhance market development can be very damaging to political stability (Khan, 2012).

This is because violence in transition economies tends to be embedded in the political competition itself, and as argued above concerning one of the many paradoxes of violence, this tends to threaten the sustainability of any institutional reform that is devised to control violence. Regimes which have a monopoly on violence and that tend to use violence to consolidate their authority, as we have seen in the case of the Moi administration, can often find it difficult to maintain their monopoly on violence, especially under increasing political competition. This in turn threatens to destabilize the entire socio-political order, and along with it, even the states' top-down legitimate authority. That is, the deliberate use of violence in political competition, whether it is aimed at gaining electoral advantage or in maintaining political power indefinitely, has the potential to destroy even the integrity of the state itself (Mueller, 2008). Therefore, attempts at institutional innovation based on formal technical changes to old systems are not only likely to be undermined by the prevailing norms but are likely to lead to political disasters, involving the deaths of thousands and displacing hundreds of thousands. These views are highly consistent with the logic of LAO socioeconomic structures, and suggest that the emergence and evolution of political and economic institutions under LAO is driven by endogenous dynamics between political and economic institutions on the one hand and violence on the other hand. Looked at this way, the reversion of postcolonial state institutional structures to their colonial predecessors is not altogether surprising. The next section presents an empirical assessment of this hypothesis.

6. EMPIRICAL SECTION: POLITICAL AND ECONOMIC INSTITUTIONS IN KENYA

This section analyses the transmission mechanism of the limited access order during the colonial and postcolonial periods with political and economic institutional data spanning from 1880-2010. That is, it aims to empirically assess how the logic of violence and the management of elite competition propagates itself on Kenyan institutions. The data are constructed by Letete (2015) and Letete, Sarr, and Fedderke (2018) who describe the subcomponents included as inputs as well as the methodology applied. Since both colonial and post-colonial political structures, consolidated their rule by using violence, and imposed barriers to the political and economic institutions in order to maintain a cohesive elite coalition, the aim is to see the resulting effect on institutional development. In the colonial state, the elite coalition was dominated by settler organizations and colonial state administrators, where the latter manipulated the economic and political systems in order to create economic rents for the former. Moreover the accumulation of economic assets by settlers occurred at the expense of the Africans, who lost both their land and freedom over their own labour, among other deprivations of their rights during British rule. The colonial state enacted an institutional structure aimed at the extraction of surplus value from the physical and human capital of the Africans by limiting African access to political and economic institutions under the new social order of colonialism. In turn, postcolonial regimes, operating under more intense elite competition also needed to consolidate their power and prevent elite violence as dictated by the logic of the limited access order. The social orders framework predicts that in a limited access order more openness to the political and economic spheres of influence would serve to erode the incentives of elites not to resort to violence. Therefore, the theory predicts that more open and accommodating institutions should result in political instability.

The data are political, economic institutions, and political instability indices of Kenya from 1880-2010. Political rights are captured by the Political Rights and Civil Liberties Index (*pol_civilib_ind*) and economic rights are captured by the two indices of property rights, the Freehold Property Rights Index (*fhpr_ind*), and the Non-Freehold Property Rights Index (*nfhpr_ind*) which measures customary property rights. Political instability is captured by the Political Instability Index (*pol_inst_ind*), and is a proxy for the level of violence. The indices are constructed based on the methodology developed by Fedderke *et al.*, (2001) and the scaling and the rating of the indices is based on the criteria of Zaaruka and Fedderke (2011). Under this scaling, the indices of political rights and economic range from 0 to 100, and 100 represents an ideal state of property rights and political rights. An ideal state of political rights is defined as a state in which the political power of the elites is minimized and that of non-elites maximized (Letete, 2015). And an ideal state of property rights is defined as a state in which citizens enjoy the liberty to enjoy the benefits of wealth while assuming the costs that the benefits entail. The political rights and economic rights indices are a weighted average of subcomponents that are calculated based on *de jure* developments that affect each index. The property rights index is a weighted-sum of components that quantify the right to possess, the right to use, the right to manage, the right to capital, the right to security, the incident of transmissibility and liability to execution. In colonial Kenya, the introduction of the freehold property rights system resulted in two distinct property rights systems, whereby freehold property rights were for the privilege use of Europeans and customary property rights were for Africans (Letete, 2015). Therefore during the colonial period, freehold property rights are referred to as European economic rights, and customary property rights are referred to as African economic rights. The Political Rights and Civil Liberties Index defined as a weighted-sum comprised of freedoms: voting rights or franchise, freedom of association, freedom of assembly, freedom of expression, extent of arbitrary executive power, freedom of movement, independence of the judiciary and legislature, academic freedom, limit of government secrecy or indemnity, due process of law, freedom of religion, and others. The “others” category captures the political rights and civil liberties that cannot be classified under the above factors. Values of the index between 51 and 74 imply that there is a recognition of political rights and civil liberties and some constraints on arbitrary state power, and ranging from 38 and 50 implies that arbitrary state power is

partially constrained but legal provisions of personal freedoms is weak. Values between 13- 37 imply that there significant arbitrary power is granted to the state and most individual rights and freedoms are not recognised. Finally a score ranging from 0 to 12 implies a de-jure totalitarian state.

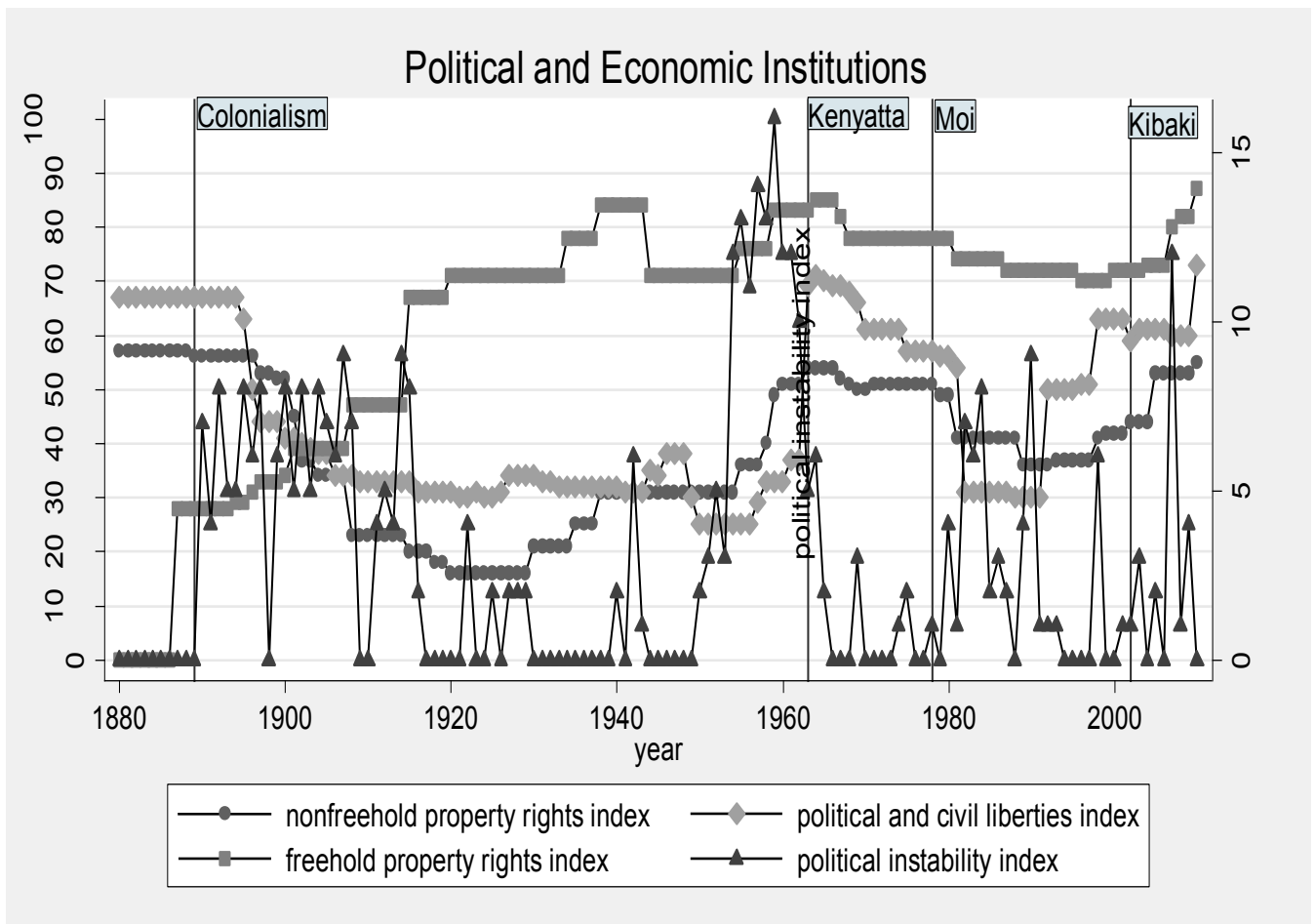


Figure 3. Kenyan Economic Rights and Political Rights Indices, and Political Instability Index (1880-2010)

The index of political instability ranges from 0-20, with values approaching 20 indicating high levels of instability. This values of this index can be seen on the left vertical axis of figure 4. The index is a weighted sum of the subcomponents which measure the number of politically motivated prosecutions under emergency regulations, the number of political fatalities, people placed in detention, banned organizations and publication, actions against ‘riots and protests’, and declarations of official states of emergency, as well as the number of reported cases of damaged property due to political violence (Letete, 2015). Therefore in addition to being the proxy for the level of violence, the political instability index can be regarded as a measure of state legitimacy, with higher values of the index depicting the erosion of bottom-up state legitimacy.

Figure 3 plots the economic and political rights indices on the vertical-axis on the left and the political instability index on the vertical-axis on the right for the entire sampling period. Within the graph there are vertical lines in 1895, 1963, 1978, and 2002 which denote the start of the colonial state, the Kenyatta, Moi, and Kibaki regimes respectively. The data depict that upon the advent of colonialism, the freehold property rights index increased sharply as settlers required a secure and established property rights system in order to settle and produce in the colony. This coincided with a decrease in customary property rights. The deterioration of African land rights under this period is to be expected given that the promotion of African landholding was in conflict with the development of the settler economy. Using Lonsdale and

Berman's (1979) analogy, the colonial state was laying the foundation for securing institutions that produce social conditions congruous to capitalism, the dominant mode of production. In the first 40 years of colonial rule, African economic rights, as measured by the Customary Property Rights Index, decreased from a peak of 57 in 1888 to reach an all-time low of 16 index points in 1928. At the same time the magnitude of this decrease in African economic rights is nearly matched one-for-one by the increase in European economic rights as the Freehold Property Rights index increase from a low of 28 to a high of 71 index points in 1928. In the ensuing years of colonialism, African economic rights remained relatively low and stable, improving marginally after the Mau-Mau period, but remaining below 50 index points until the early 1960. In contrast European economic rights continued to increase throughout the colonial period, reaching 83 index points by the 1960s. Figure 4 below depicts that while access to the economic system for Europeans was expanded during the colonial period, for Africans, access was extremely circumscribed. Moreover, even though African land rights improved in the postcolonial period, they nonetheless never reached the 60 index points mark. Indeed, since from the colonial period, the economic rights of the indigenous population had weak legal provisions and have been constantly under threat from arbitrary state power. This seems to not be the case only during the Kibaki administration. Figure corroborates this argument, depicting that the deterioration in African economic rights coincides with the increase in arbitrary state power, more so during the Moi era (arbitrary state power is read on a less is more basis). What stands out from these figures is that the advent of colonialism was accompanied by an emergence of institutions that were congruous of capitalism-based mode of wealth accumulation, albeit at the expense of indigenous economic institutions. Moreover, this crowding out of indigenous institutions occurred at the background social-class engineering, in which the individuals of native descent were barred from benefiting from access to the the productive incentives that capitalist institutions allow, while at the same time, their mode of production was to a significant systematically sabotaged in order to generate labour supply for the capitalist system from which they were prevented to benefit. The initial effect of colonialism on institutions can be viewed as the formation and differentiation of elites (i.e people of European descent), and non-elites, comprised of the natives. Additionally, the colonial state ensured that, by virtue of the superiority of its level of violence, any rule-based system which ensued would effectively close access to non-elites, while enriching or improving the economic status of elites. What is interesting is that, in addition to the dichotomization of elites and non-elites along the lines of violence potential, the colonial state discriminated along the lines of race.

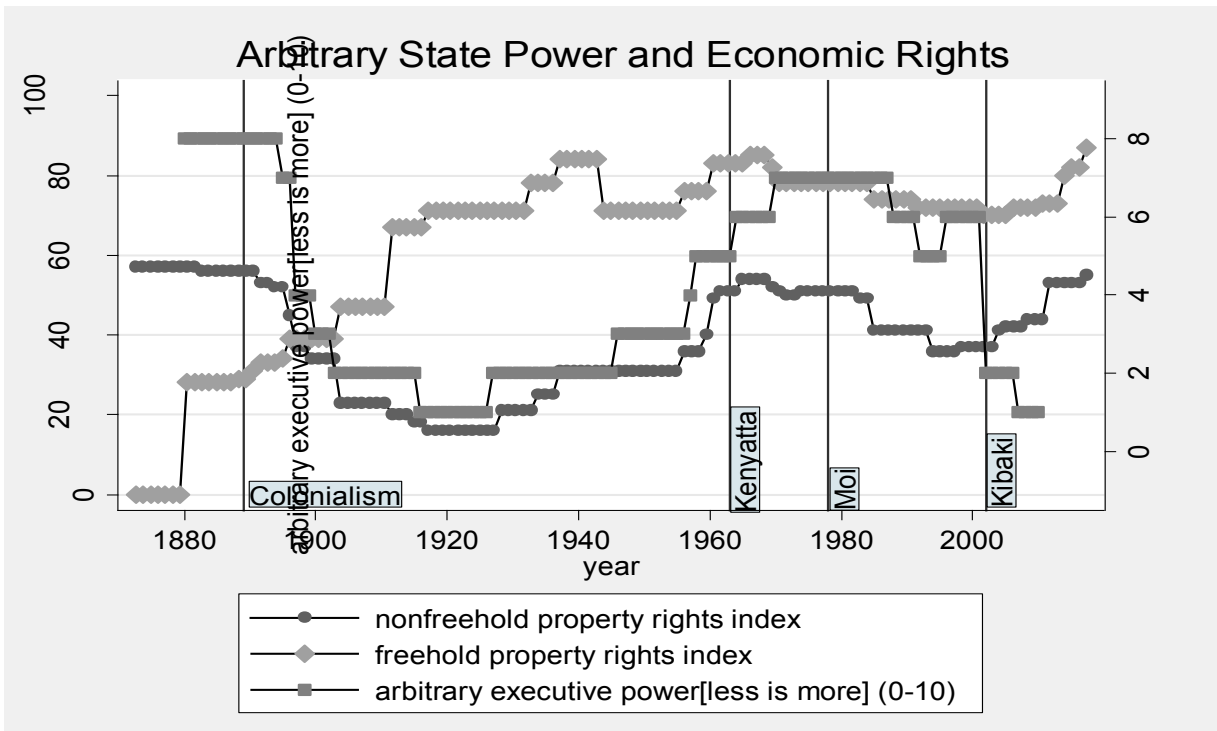


Figure 4. Customary Property Rights Index and Freehold Property Rights Index.

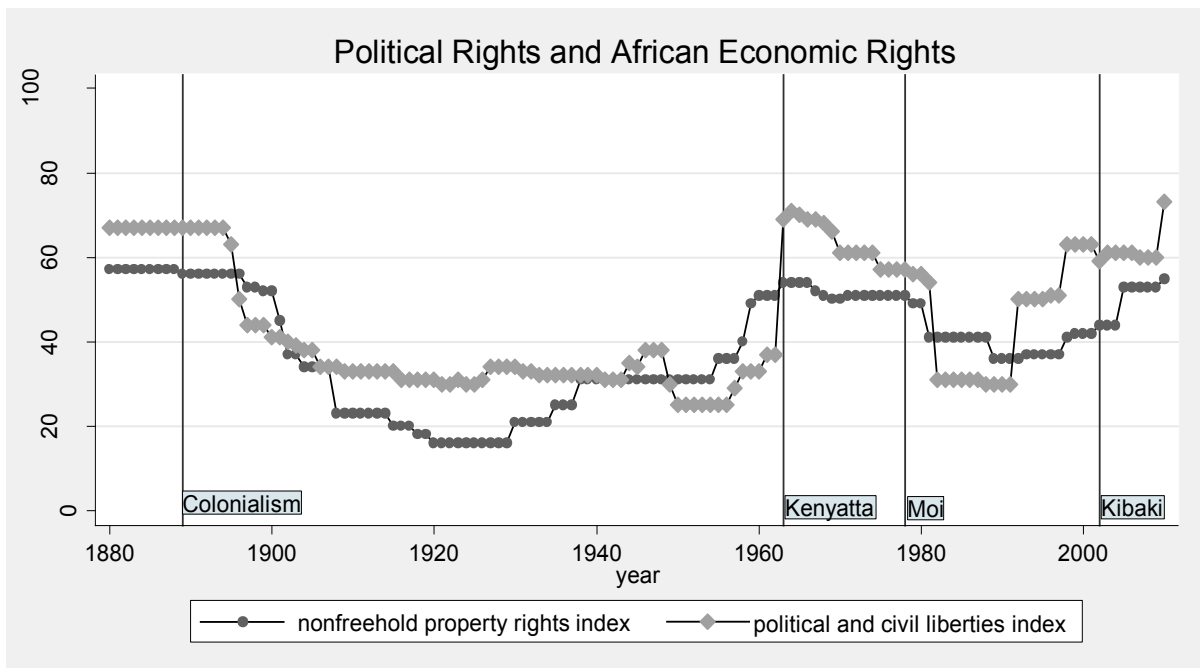


Figure 5. Customary Property Rights Index and Political and Civil Liberties Index (1880-2010)

Figure 5 above depicts that African property rights and political rights are highly coincidental and may be highly correlated as well. Throughout the colonial period, political rights follow the deteriorating trend of African economic rights only to sharply increase at the beginning phase of Kenyatta’s rule. However this co-movement is strong during the colonial era and seems to have weakened after independence. Perhaps what is interesting is the reversion of the political rights index to the levels of colonial Kenya under Moi’s

regime, a trend which started shortly after Independence during the Kenyatta regime. While political rights and customary property rights depict an inverted-U pattern for the period shortly before and after independence, figure 4 depicts that freehold property rights remain resilient, remaining above 70 index points throughout the postcolonial period. This means that while independence has had a limited influence on the access of non-elites to economic and political spheres of influence, elite economic institutions have remained resilient over the transition from colonialism.

In appendix 1, summary statistics and Box-Whisker diagrams are used to analyse the differences of the indices across the sampling period. The summary statistics depict that the mean of the political instability index is 3 for the whole period. During the colonial period, a mean of for political instability 3.6 is recorded, and during independence, a mean of 2 is recorded during the postcolonial period. During the whole sample period, the mean of the political rights index is 45, during the colonial period a mean of 39.7 is recorded, and during independence a mean of 54.1 is recorded, suggesting that on average political rights are better after the transition to independence. The freehold property rights index has a mean of 62.8 for the whole sampling period, a mean of 55.2 during colonialism, and 75.9 during independence. Lastly, the customary property rights index has a mean of 38.9 during the whole sampling period, a mean of 34.9 during colonialism, and a mean of 45.9 during independence. Depicting the resilience of the legacy of European economic rights, the summary statistics show that the standard deviation of the freehold property rights index is lower than the standard deviations of the customary property rights and political rights indices. Tests of statistical significance of the mean differences were conducted in order to analyse if the institutions are a persistent across the two political regimes. In terms of openness and stability, the summary statistics presented appendices 1 and 2 suggest that postcolonial Kenya has better institutions than colonial Kenya. Tests of statistical significance of mean differences of each variable across the colonial and postcolonial political orders suggest that political instability is lower in the postcolonial period, and that economic and political rights are higher in the postcolonial period. Moreover linear and quadratic plots suggest that the negative relationship between European economic rights and African economic rights during colonialism turns positive in the postcolonial era. However, as discussed above, in the postcolonial period, the legacy of European economic rights is more resilient to change than customary economic rights.

Moreover the correlation matrices constructed for the entire sample period depicting pairwise correlation coefficients, suggest that freehold property rights are negatively related with customary property rights. This negative coefficient is statistically significant at the 1% level and is stronger during the colonial period relative to the whole period. The data seem to corroborate the argument of Lonsdale and Berman (1979) and the observation mentioned above that the emergence of the colonial state coincides with the rise of institutions congruous to capitalist modes of production at the cost of traditional economic institutions. However this negative correlation becomes positive in the postcolonial period, and is significant at the 1% level. This suggests that in postcolonial Kenya, access to customary economic institutions coincided with the strengthening of capitalist institutions. Furthermore, the data suggests evidence of the predictions of the LAO theory. That is, more openness into the political and economic system translates into increased instability. The correlation matrices depict that improvements into customary economic rights is positively correlated to political instability, suggesting that more access customary economic institutions, comprised of non-elites, leads to high levels of conflict. However this relationship is only significant during the colonial period, and in the postcolonial period, open customary institutions translate into reduced instability. This could be interpreted using the notion of state legitimacy. It could be that in the postcolonial period, in order for the African nationalist to achieve bottom up legitimacy across from traditional leaders, concessions of more autonomy was required. Additionally, while the correlation between political liberties and violence is insignificant during the colonial period, when the entire period and the postcolonial period is taken into account, improvements in political rights and liberties is negatively correlated with political instability. This implies that more open political spheres of influence serves to eliminate violence. This is in contrast to the predictions of

the LAO, which sees increased access to political institutions as likely to lead to conflict, due to its disruptive effect on elite rent-creation and distribution. Assuming that the direction of causality goes from political rights to violence, this suggests that the dynamics of violence are not only determined by elite competition, but the non-elites also play a role in violence and instability, and this affects the dynamics of institutions. While the LAO implies that the evolution of institutions is merely determined by elite competition, these results suggest that the masses are not just passive, innocent bystanders to the process of institutional building. This is to be expected given the Westminster-type constitution adopted at independence which may have instilled the notion of representative democracy, as well as a politically conscious citizenry that expects state power to be based on consent rather than coercion.

6.1 Econometric Methodology

While the data seem to be congruous with the LAO theory in terms of the interactions between political instability, which is a proxy for violence, and political and economic institutions, the theory makes strong assumptions concerning the order of causality between the variables. While it is possible that more open institutions may lead to more stability (i.e. less violence), it is equally plausible that when conflict breaks out the ruling elite may limit access to institutions, and this may equally explain the negative correlation between institutions and violence. This section seeks to empirically assess the order of causation between these variables by modelling the time series data as reduced-form and recursive vector autoregressive models (VARs). By doing this section seeks to test the hypothesis that increasing access to economic and political institutions leads to instability in a developing country, where elite competition allows for circumscribed access to such institutions. Since the literature is divided on the functional relationships of institutional development, the VAR method only empirically consistent assumptions when it comes to modelling institutional development along the dynamics of conflict. Moreover, the reduced-form VAR imposes few restrictions on the data and provides a useful characterisation of the distribution of \mathbb{Y}_t , the vector of our institutional variables. Additionally since violence is at the centre of the LAO theory, political instability will be made endogenous in order to understand how political and economic institutions interact with violence to influence the future paths of each other. In the algebraic relationships can be presented as:

$$\mathbb{Y}_t = \mathbb{A}_1 \mathbb{Y}_{t-1} + \dots + \mathbb{A}_p \mathbb{Y}_{t-p} + \mathbb{u}_t$$

Where:

- \mathbb{Y}_t : is a vector of random variables and its elements are the economic and political rights indices as well as the political stability index
- \mathbb{A}_j : is a square coefficient matrix ($j=1,2,\dots,p$)
- \mathbb{u}_t : is a vector of error terms

While univariate models have to be examined for stationary before they are fitted, the stationarity of VAR requires a stability condition that is tested only after the VAR is estimated. The appropriate order of the regressors was selected based on the forward prediction error and information criteria, and after several models estimated, an appropriate lag order of 2 was identified after several information criteria were analysed for several lags. This lag length will allow us to see the how well instability explains the evolution of economic and political institutions, and in turn how these affect the level of instability. This will allow us to evaluate the hypothesis of the LAO framework, namely that in states with low levels of development and feeble bottom-up state legitimacy, more access in the economic and political spheres of influence will lead to increasing instability. The results are presented in table 6 in appendix 4.

6.2 Results

In investigating the institutional transmission mechanism of the LAO, that is, whether and how open access to the economic and political spheres of influence lead to violence and political instability, three VAR models were estimated. Here the results are presented, and they exclude the autoregressive

components of the equations as this dissertation seeks to analyse the response of institutions to changes in other institutions rather than to past values of themselves. The first model covers the entire sample period 1880-2010, the second VAR covers the colonial period (1880-1963), and the third VAR covers the postcolonial period (1963-2010). The results from these models are tabulated in appendix 4. Results from the freehold property rights index equation during the entire sample period, only political instability is significant. The index is significant at the 5% level and has a positive sign. That implies that an increase in the level of political violence, serves to improve freehold property rights. This sign corroborates the argument made above concerning the emergence of political consciousness after independence. This result could be reflective of the role of freehold property rights in elite formation, especially in the postcolonial state. During the colonial period this sign is negative and significant at the 10% level. In the postcolonial period the second lag of customary property rights and political instability are both significant at the 5% level and have a positive sign. In the customary rights equation, during the whole sample period none of the explanatory variables are significant. While during colonialism, only political rights are significant at the 5% level and have a positive sign, suggesting that an improvement in political rights is correlated with an increase in African economic rights. In the postcolonial period, at the 5% level, only the second lag of political instability is statistically significant in explaining customary property rights and the sign is positive, suggesting that increased levels of violence translates into better customary property rights institutions.

In the political instability equation, from which we can test the predictions of the LAO theory, the results show that during the entire sampling period only the freehold property rights index variable is statistically significant at the 5% level in explaining political instability and the sign is negative for the first lag and positive for the second lag. These results suggest that, for the entire sampling period, recent opening of economic institutions translates into decreased levels of violence, while more accommodating economic rights in the distant past might be destabilizing to the political order. During colonialism it is found that both economic rights indices are significant at the 5% for the first lag in explaining political instability. While the sign is negative for freehold property rights, it is positive for customary economic rights. This implies that in the colonial period, more open access to customary economic rights was correlated with more instability. In the postcolonial period, only the economic rights indices are statistically significant in explaining political instability. The results show that, at the 5% level of significance, the first lag of freehold property rights is negatively related to current levels of political instability. That is, increases in freehold property rights in the previous year, translates into improved political stability in the current year. Like the freehold property rights index the sign is negative for the first lag of customary property rights index, the coefficient is significant at the 5% level. Additionally, coefficient of the second lag of the customary property rights index is significant at the 1% level and is positive. These results seem to affirm the hypothesis of the LAO, whereby increasing levels of openness to economic institutions lead to more instability. Lastly, in the political rights and civil liberties equation, during the entire sampling period, at the 5% level, only customary property rights are statistically significant. The sign is positive, indicating that improved customary property rights are correlated with improvements in political rights. This result seems to validate the notion that customary property rights mainly affect political economy aspects of non-elites. During colonialism, neither violence nor economic institutions are statistically significant in explaining the conditional expectation of political rights and civil liberties. In the postcolonial period, at the 5% level, only customary property rights are significant in explaining variations in the average value of political rights. However, while the coefficient of the first lag of customary rights is positive and significant, the coefficient of the second lag is negative and also significant. While the sign of the first lag coefficient is the expected positive value, the sign of the second lag coefficient is negative. This result may be explained by the observation that improvements in the distant past, of economic rights seem to correlate with current levels of political instability, and this instability maybe accompanied by a worsening of personal freedoms and liberties.

6.3 Diagnostic Checks, Impulse Response Functions, and Discussion.

The eigenvalues of the companion matrices pertaining to each of the three VARs depicted in Appendix 4 are all within the unit, suggesting that there is no sign of non-stationarity in the VAR, and the VAR can be said to be stable. Moreover, a Lagrange Multiplier test for residual autocorrelation suggests that there is no autocorrelation in the residuals of the VARs. The Wald lag-exclusion statistics suggest all the lag lengths of the VAR are statistically significant at the 5% level of significance. When political structure is taken into account, such that the model differentiates between the colonial and postcolonial period, the residuals show evidence of first order autocorrelation. Hence, the VAR model that covers the entire sample period is retained as this allows an examination of institutional dynamics over a long period of time. In order to ascertain the order of *causation*³, a Granger causality test was performed and appendix 3 presents the cross correlograms of the data. The test suggests that the economic institutions, customary property rights and freehold property rights indices do not Granger cause each other, however past levels of high traditional property rights are correlated to current levels of freehold property rights. This suggests that the, zero-sum game that emerged during the colonial era between African development and European development has remained persistent, though upon independence, the European was replaced by an African elite. While political instability does not Granger cause freehold property rights, the correlogram suggests that past level of political instability are associated with slightly positive levels in freehold property rights. Moreover past improvements in property rights are highly likely to lead to decreased levels of current instability. In turn, the freehold property rights system Granger causes political instability.

The results suggest that political rights and freehold property rights do not Granger cause each other, but when political rights are high in the past, current levels of freehold property rights are likely to be low. This is an interesting finding because it is expected that these two variables be positively correlated with each other. Furthermore, while political rights and African economic rights do not Granger cause each other, past values of political rights are positively related with current values of African economic rights, vice-versa. Political instability and African economic rights also do not Granger cause each other, however distant improvements in African economic rights is negatively correlated with current levels of political instability. Lastly, the causality test, suggests that political rights do Granger cause political instability. However, while recent improvements in political rights are negatively correlated with current levels of political instability, recent levels of violence serve to deteriorate political rights.

The results from these causality tests were then used to order the dynamic response functions of these indices. Two sets of orders were used, and the first assumes that economic institutions precede economic institutions, while the second assumed that political institutions precede economic institutions.

³ In the statistical sense.

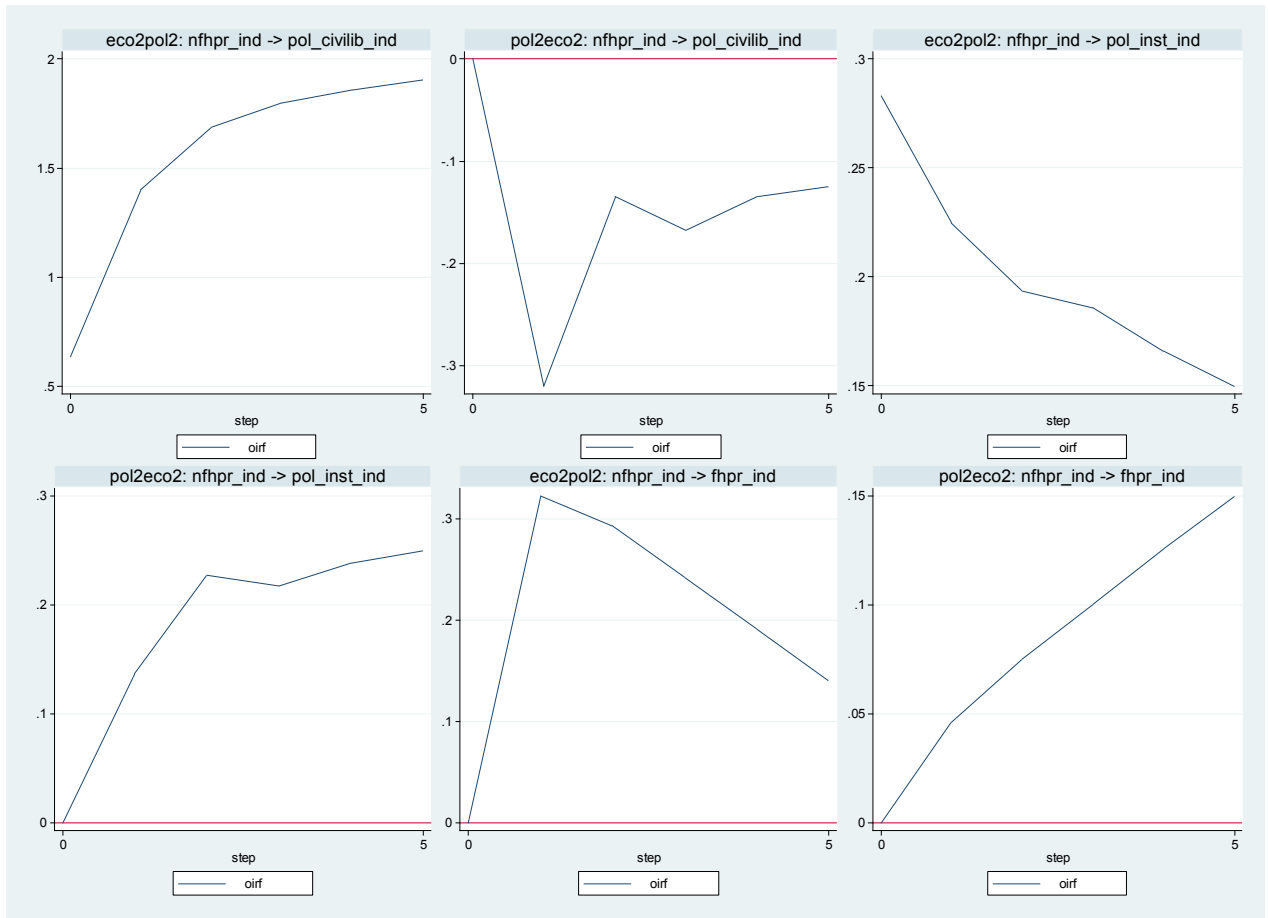


Figure 6. Recursive VAR OIRFs : African Political Rights (Impulse)

All the response functions depicted in figures 15 and 16 in appendix 4. The first set of ordered impulse response functions show that past shocks to economic rights are positively related to current levels of economic rights. Moreover past shocks to political rights have a positive effect on current political and economic rights, and they tend to lead to increasing levels of stability, that is, low violence. The same holds for freehold property rights, past shocks tend to lead to increased levels of current property rights and political rights, as well as decreased instability. The exception pertains to African economic rights, like the other indices past improvements to African property rights are likely to result in improved current political rights and freehold property rights, **b**. This may suggest that in Kenya, granting economic rights to Africans is destabilizing to the incentive compatibility conditions among violence specialist that lead to reduced levels of violence over time. This may suggest that economic rights of the Africans are disruptive to the rent-seeking process of Kenya's ruling elite coalition. This also suggests that because the postcolonial state inherited economic institutions that are hostile towards indigenous economic rights, African economic rights continue to be undermined in the postcolonial period and their improvement is disruptive to the political order. The second set of impulse response functions (IRFs assumes that political rights precede economic rights. The while the response functions are unanimous on the effects of most past shocks, data suggests that the results are sensible to the choice of ordering. For example, figure 6 depicts that while positive shocks to African political rights in the first order lead to positive improvements in freehold property rights, when we assume that political institutions precede economic institutions, the results suggest that positive shocks to

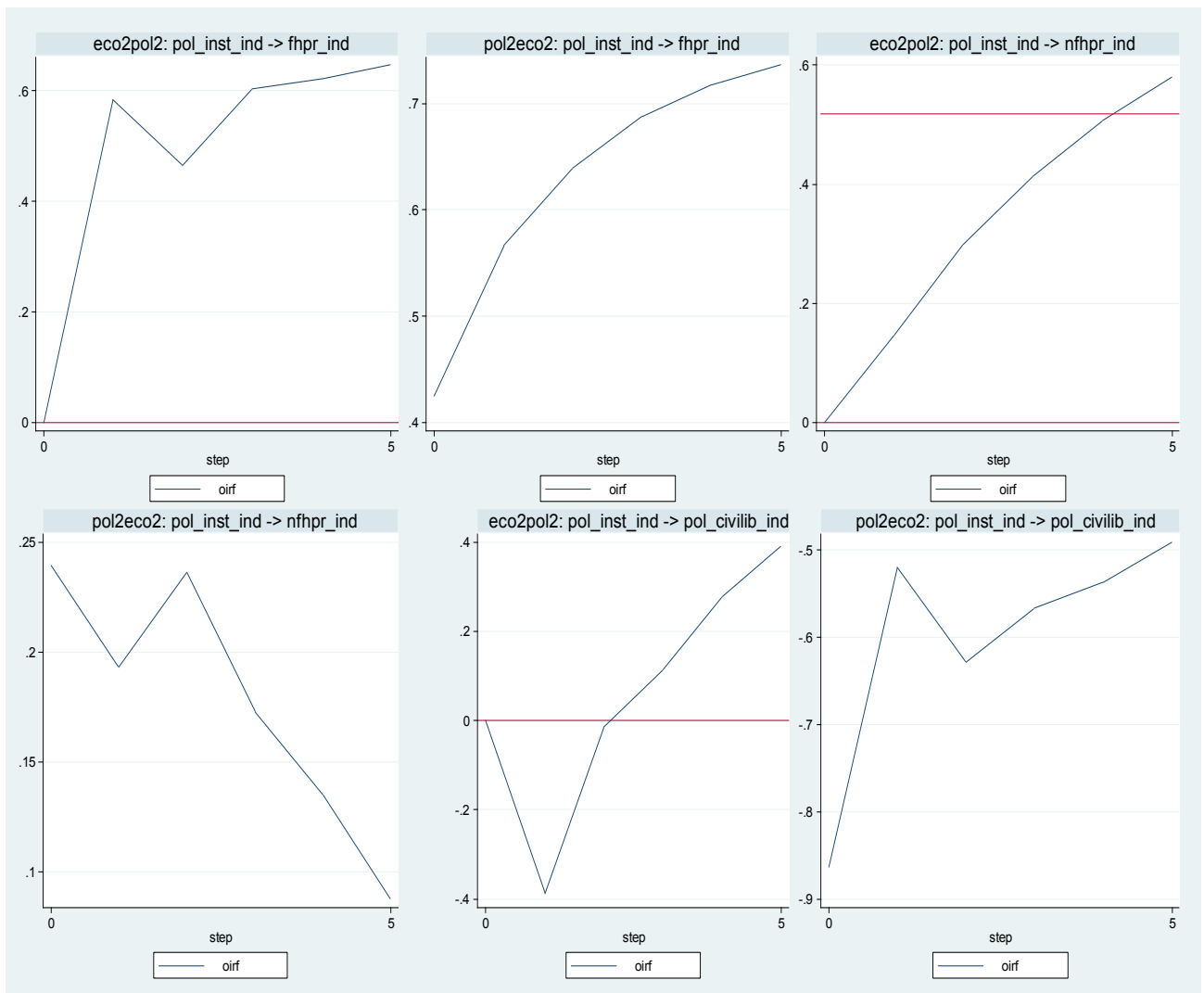


Figure 7. Recursive VAR OIRF: Political Instability (Impulse)

African economic rights lead to a deterioration of political rights. However both orders suggest that improvements in African rights do lead to increased levels of political instability. And while this increase decreases in the first order, in the second order past increases in African political rights lead to increasing levels of political instability. The instability driven IRFs in figure 7, depict that increases in political instability lead to increased levels of economic rights. However, shocks to political instability serve to deteriorate political rights. While both orders of the IRFs depict this deterioration, if we assume that economic institutions precede political institutions the results suggest that the negative response is short-lived violent shocks lead to improvements in political rights

7. CONCLUSION

The research question being addressed in this dissertation was to see how the logic of limited access manifests itself in the institutional dynamics of Kenya. The core hypothesis of the limited access order framework is that open access to political and economic spheres of influence at early stages of development with precarious state legitimacy over the monopolization of force will lead to more instability. A key finding while exploring this hypothesis is that, by inheriting the colonial institutions and retaining them to enhance the legitimacy of their authority, postcolonial states also inherited the contradictions embodying colonial rule. The data suggests that while improved market enhancing economic rights and political rights lead to increasing political stability, improvements in African economic rights lead to increased instability (i.e. high levels of violence). This result is reflective of the structural incompatibilities between capitalist modes of accumulation, which favour elites and insiders at the cost of non-elites. Like in colonial Kenya, in postcolonial Kenya, more openness to customary economic rights is associated with increasing levels of political instability. That is, nature of the LAO in Kenya suggests that improved African economic rights are incompatible with the political order. Further research is needed in order to ascertain whether this a result of the disruption of the patronage system separating elites from non-elites, a disastrous land reform policy, or a combination of both. However, while the postcolonial state has retained colonial institutions, the data suggests that political and economic rights are higher in the postcolonial period than in the colonial period. Lastly, while economic development literature suggests that improvements in property rights lead to decreased uncertainty and higher economic development as the level of investment increases. This dissertation found that in developing countries improving economic rights like freehold property rights may actually make it easier for governments to instil regimes of patronage and in turn subjugate the economic rights of the masses. This is because, freehold property rights systems can make it easier to mould an elite coalition and therefore make it easier to discriminate against non-elites. And in the long-run this may serve to stifle development as the regime suffers from crises of legitimacy.

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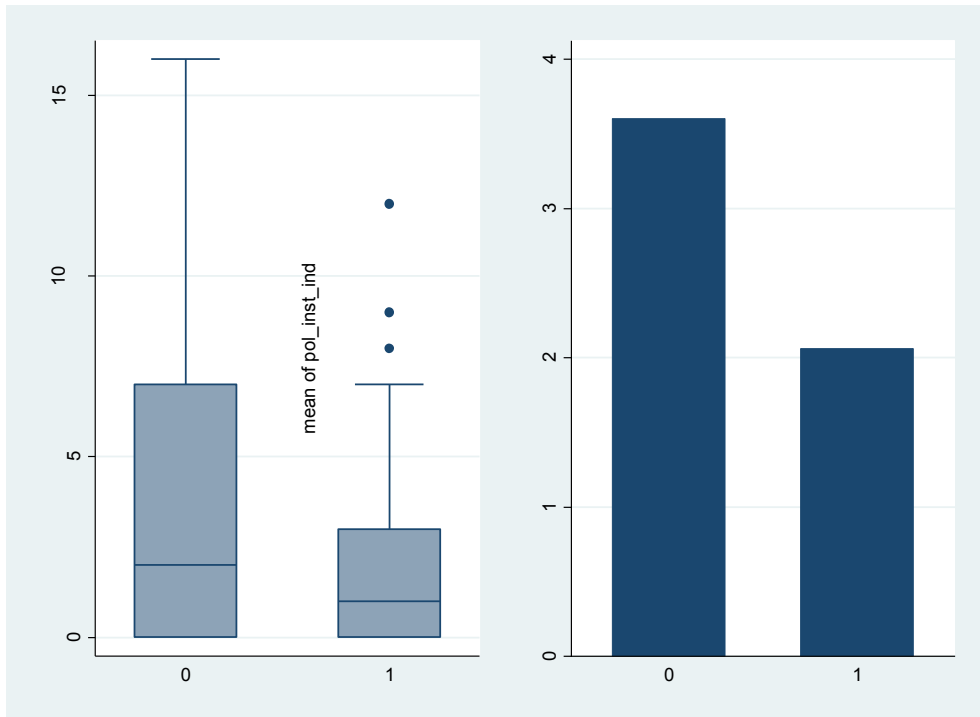
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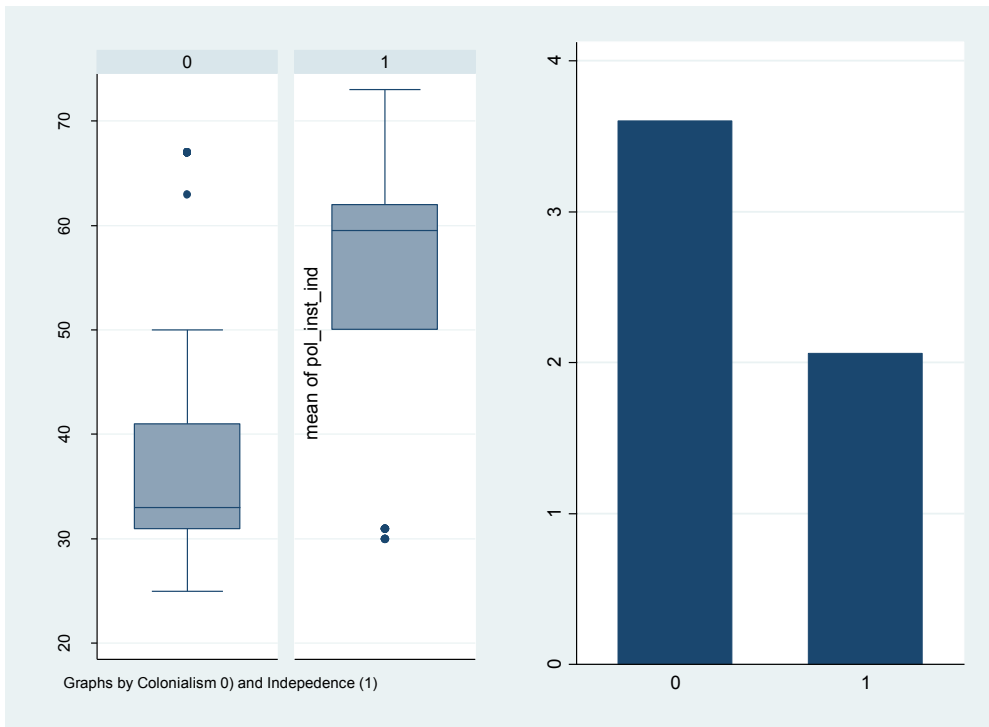
APPENDIX 1: SUMMARY STATS GRAPHS AND TABLES

GRAPHS

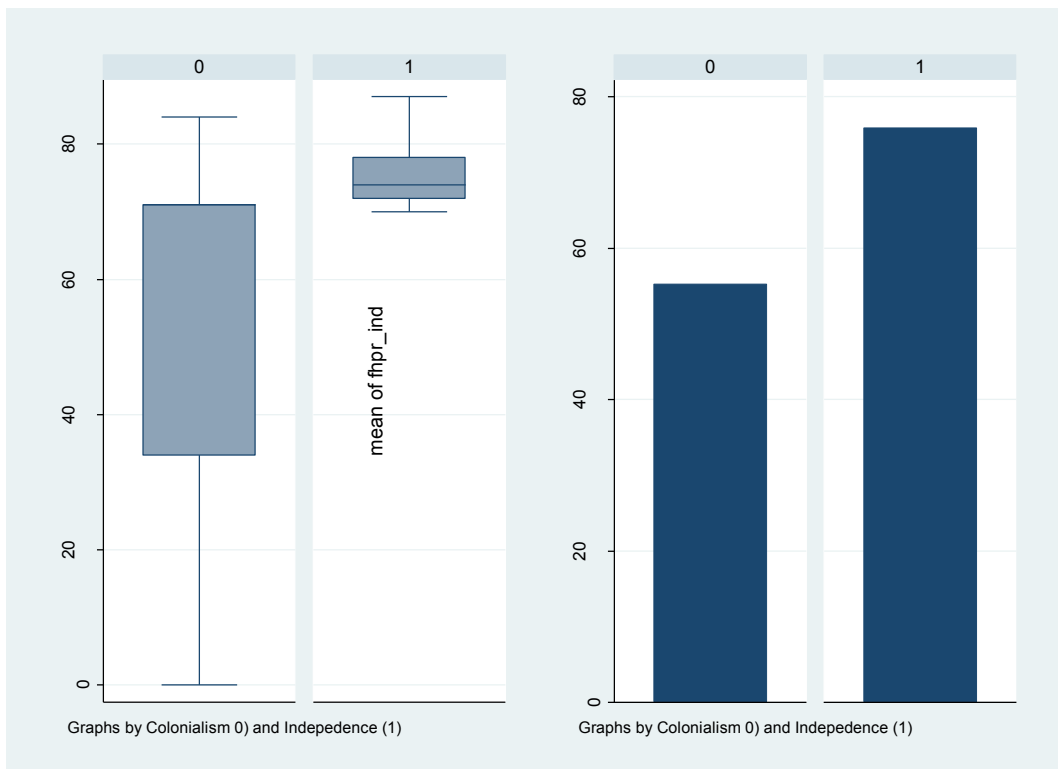
1. BOX PLOTS



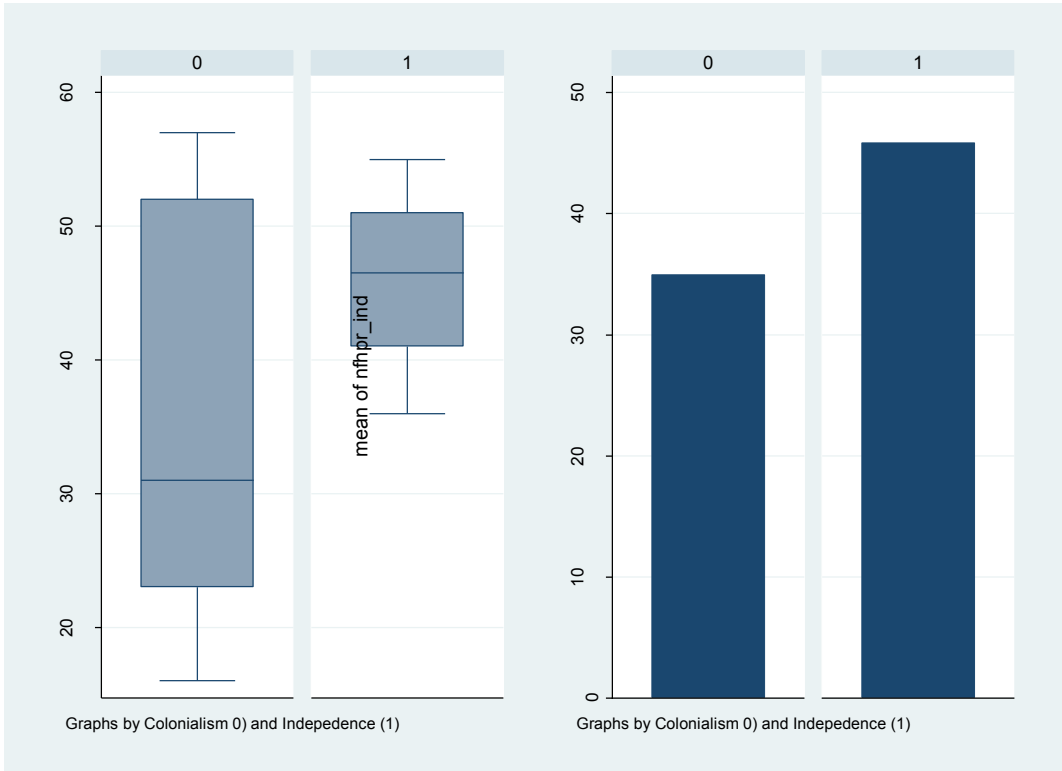
Box 1: Political Instability



Box 2: Political Rights and Civil Liberties Index

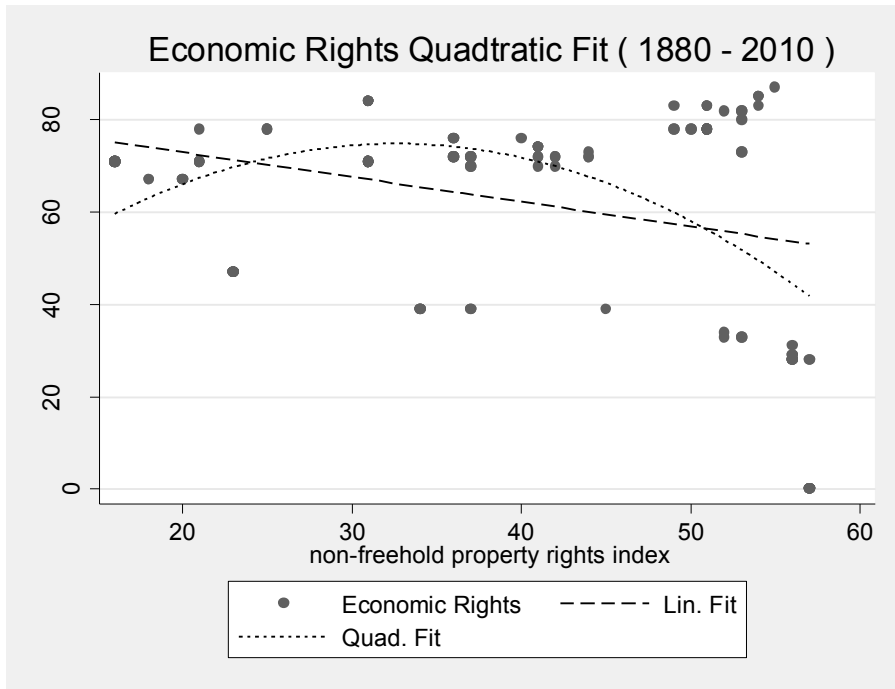


Box 3: Freehold Property Rights Index

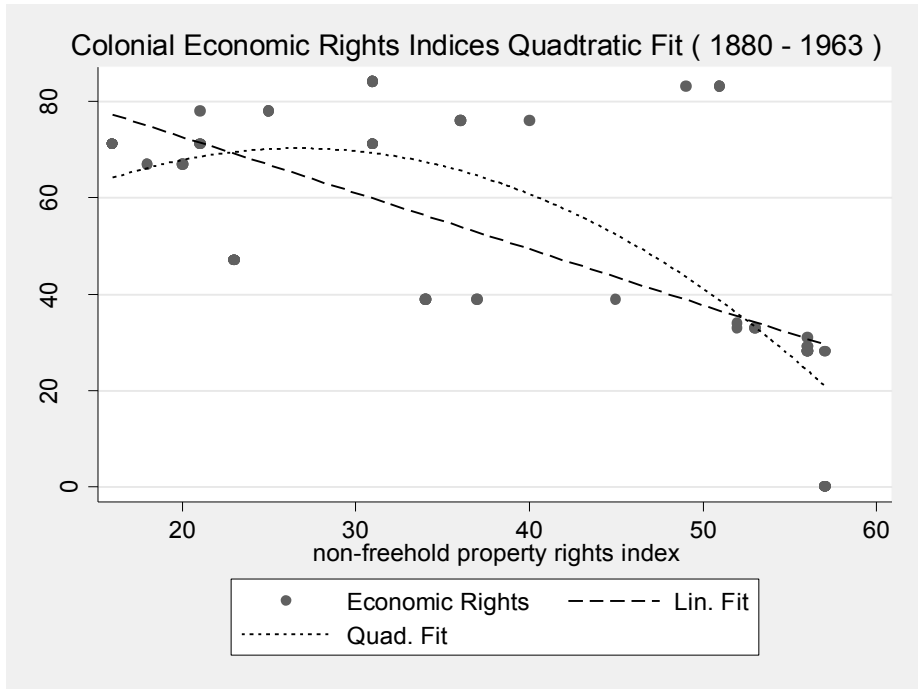


Box 5: Customary Property Rights Index

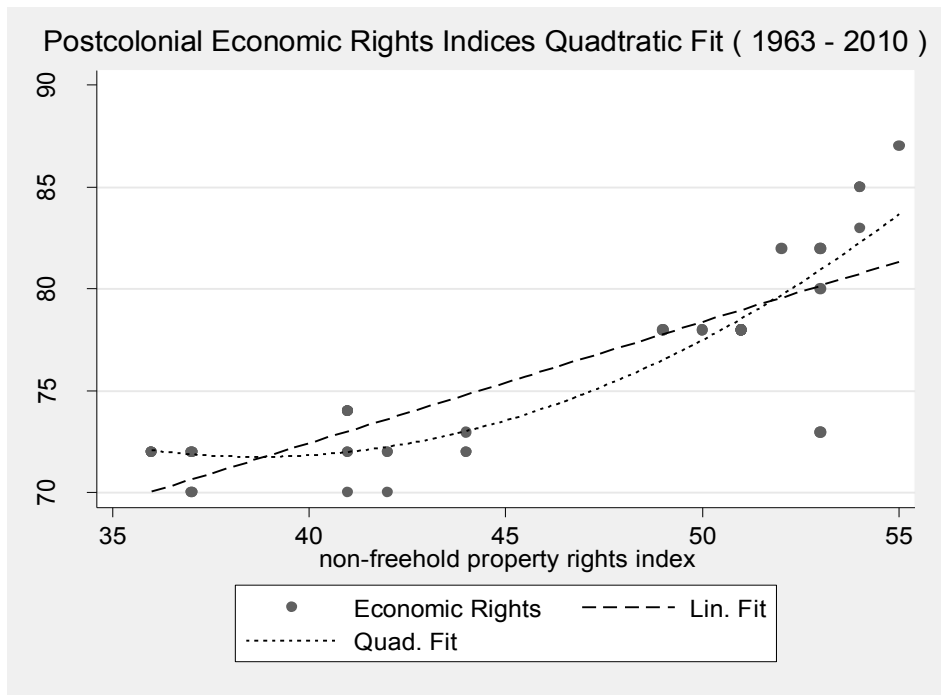
2. SCATTER PLOTS OF ECONOMIC INSTITUTIONS



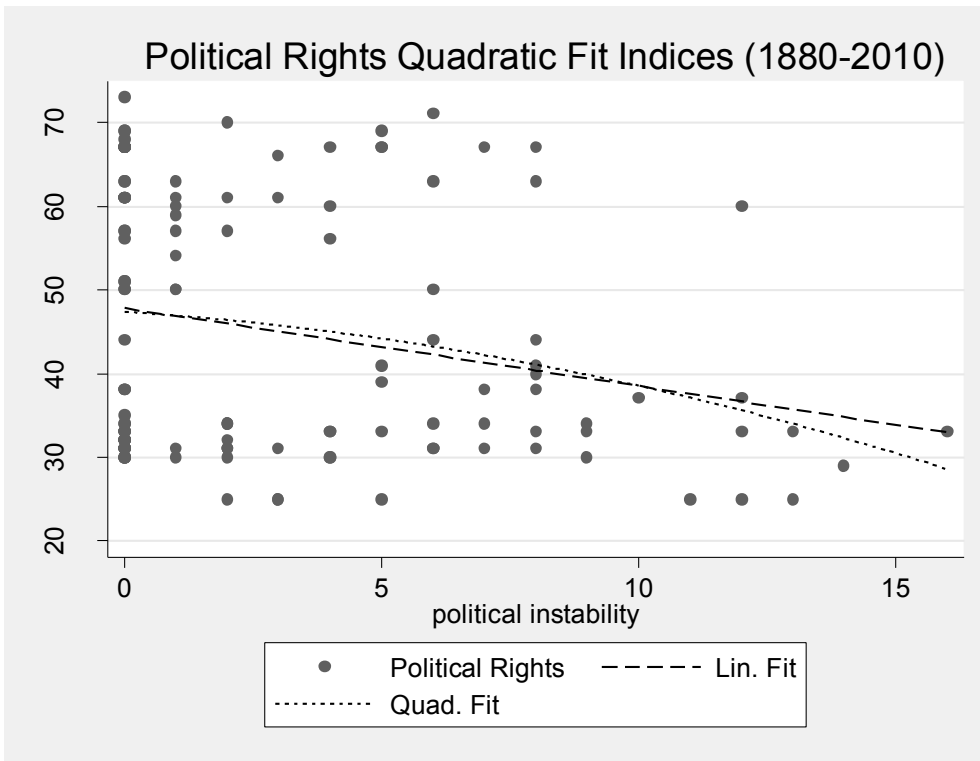
Plot 1. Economic Rights Scatter: All periods



Plot 3: Economic Rights Scatter: Colonialism.

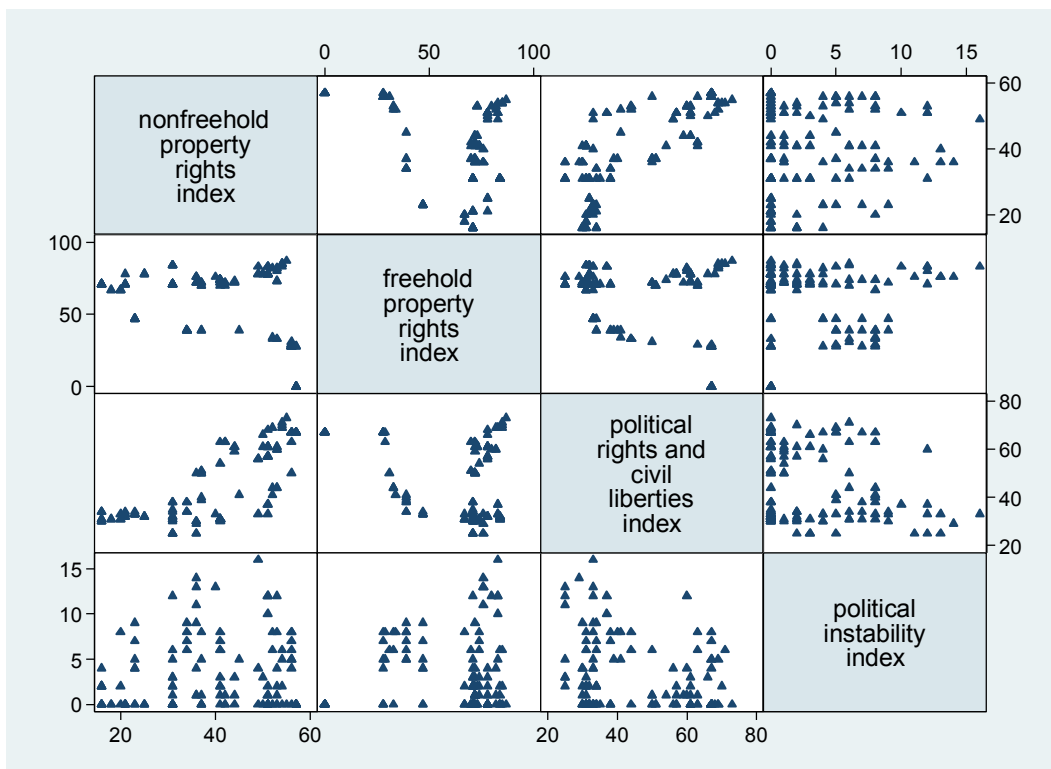


Plot 2: Economic Rights Scatter: Post Colonialism

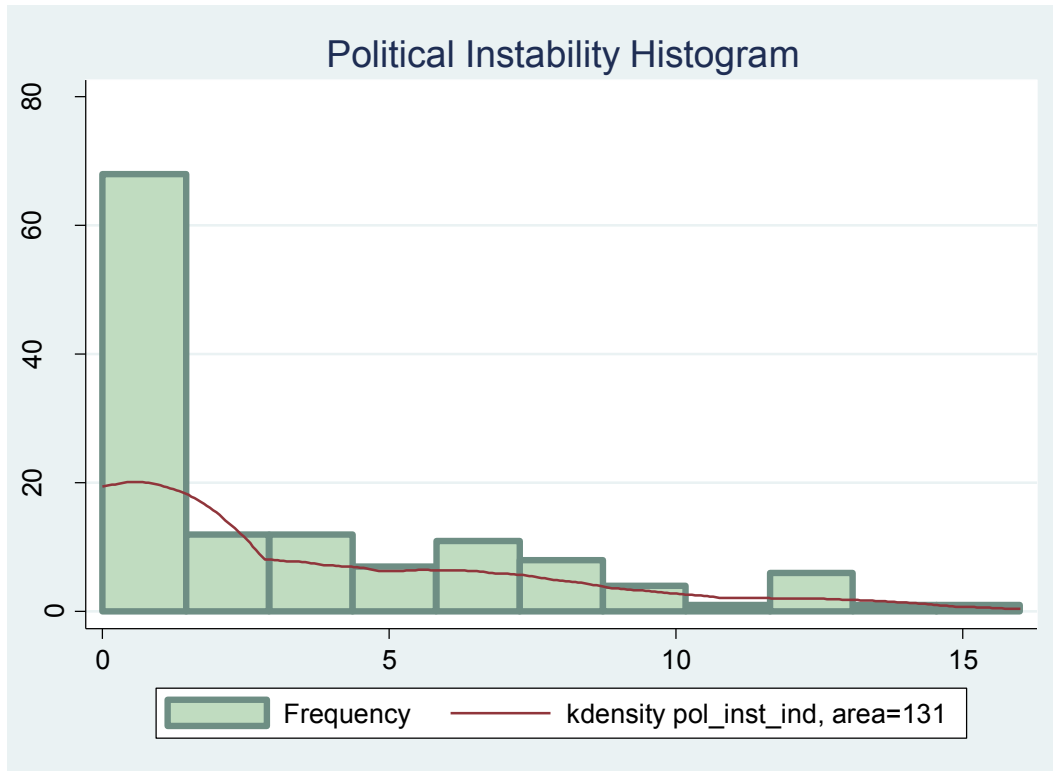


Plot 4: Political Rights and Instability Scatter: All periods

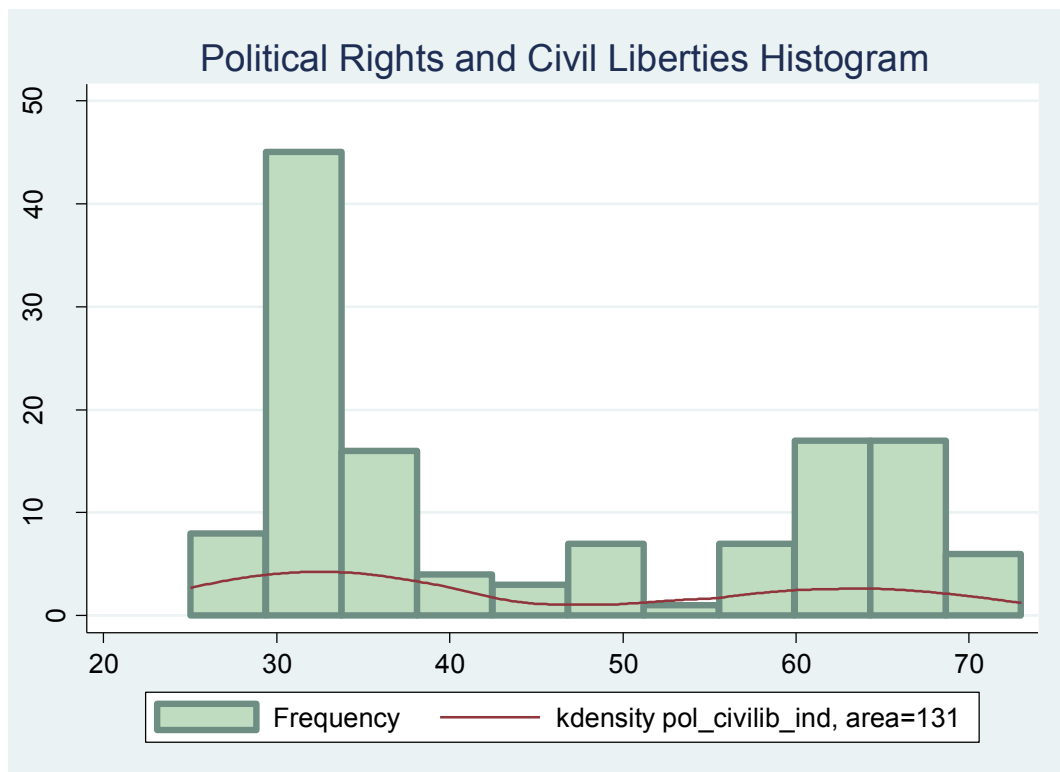
SCATTER MATRIX



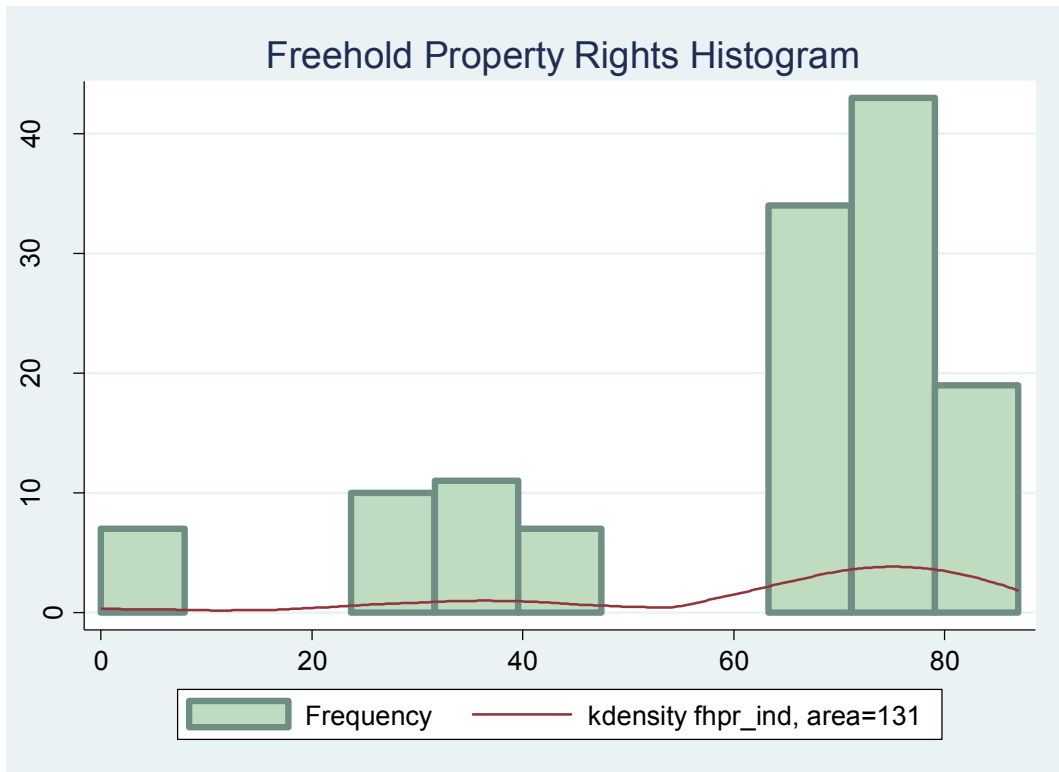
DISTRIBUTION OF SAMPLE



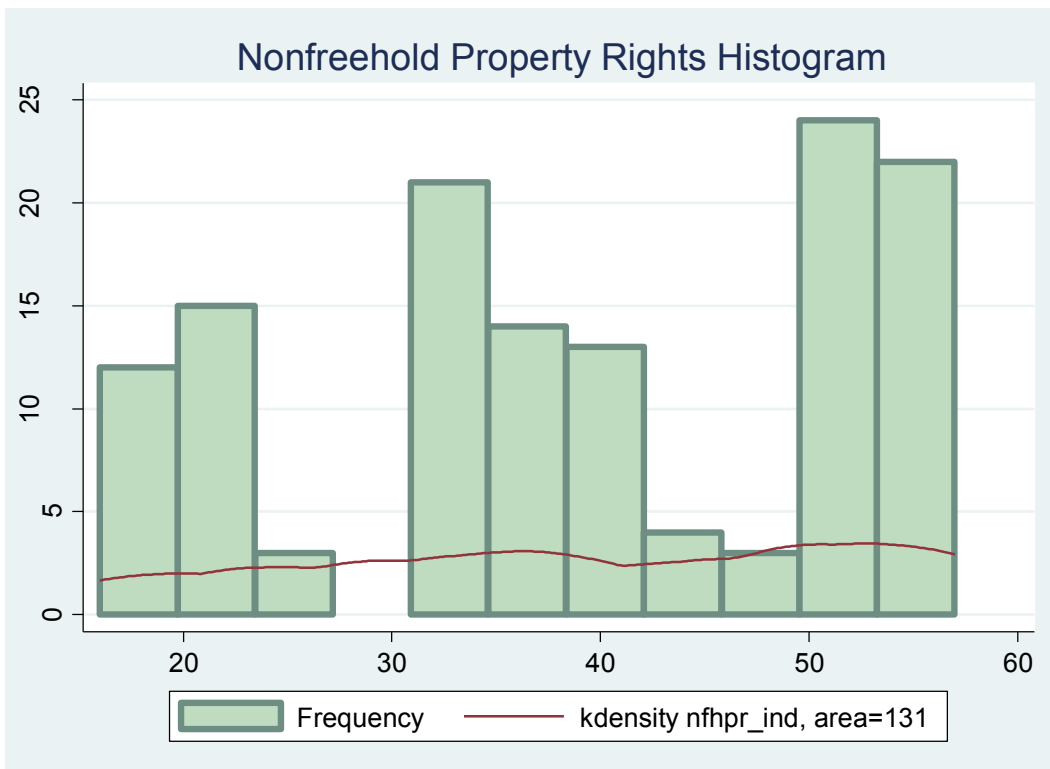
Histogram 1.



Histogram 2:



Histogram 3:



Histogram 4:

SUMMARY STATISTICS

Table 1: Political Instability Index

Political Instability Index (0-20)						
Regime	Mean	Range	Skewness	SD	Kurtosis	95% CI
Colonialism	3.6	16	0.98	4.3	2.9	2.66 - 4.54
Independence	2	12	1.6	2.8	6.3	1.25 - 2.87
Total Period	3	16	1.3	3.9	3.7	2.36 - 3.71

Table 2: Political Rights and Civil Liberties Index

Political Rights and Civil Liberties Index (0-100)						
Regime	Mean	Range	Skewness	SD	Kurtosis	95% CI
Colonialism	39.7	42	1.2	14	2.9	36.68- 42.79
Independence	54.1	43	-0.8	13.4	2.4	50.22- 57.99
Total Period	45	48	0.4	15.4	1.5	42.34- 47.66

Table 3: Freehold Property Rights Index

Freehold Property Rights Index (0-100)						
Regime	Mean	Range	Skewness	SD	Kurtosis	95% CI
Colonialism	55.2	84	-0.8	25	2.6	49.73- 60.67
Independence	75.9	17	0.68	4.6	2.5	74.58- 77.25
Total Period	62.8	87	-1.4	22.5	4.1	58.91- 66.68

Table 4: Nonfreehold Property Rights Index

Customary Property Rights Index (0-100)						
Regime	Mean	Range	Skewness	SD	Kurtosis	95% CI
Colonialism	34.9	41	0.36	14.7	1.7	31.74-38.14
Independence	45.9	19	-0.2	6.5	1.47	43.97- 47.74
Total Period	38.9	41	-0.2	13.4	1.8	36.62 - 41.25

CORRELATION MATRICES

	Fhpr_ind	Nhfpr_ind	Pol_inst_ind	Pol_civilib_ind
Fhpr_ind	1			
Nhfpr_ind	-0.3186***	1		
Pol_inst_ind	-0.0146	0.1177	1	
Pol_civilib_ind	-0.3065***	0.7927***	-0.2355***	1

Matrix 1: All periods (obs: 131) [*** -> Significant at the 1% ; ** -> Significant at the 5%]

	Fhpr_ind	Nhfpr_ind	Pol_inst_ind	Pol_civilib_ind
Fhpr_ind	1			
Nhfpr_ind	-0.6798***	1		
Pol_inst_ind	0.0876	0.2616**	1	
Pol_civilib_ind	-0.8487***	0.8043***	-0.1285	1

Matrix 2: Colonialism (obs: 82) [*** -> Significant at the 1% ; ** -> Significant at the 5%]

	Fhpr_ind	Nhfpr_ind	Pol_inst_ind	Pol_civilib_ind
Fhpr_ind	1			
Nhfpr_ind	0.8406 ***	1		
Pol_inst_ind	0.0449	-0.0590	1	
Pol_civilib_ind	0.5541***	0.7070***	-0.2967**	1

Matrix 3: Postcolonialiam(obs: 48) [*** -> Significant at the 1% ; ** -> Significant at the 5%]

APPENDIX 2: ANOVA TABLES

Table 5: Hypothesis Tests of Mean differences between Independence (1) and Colonization (0)

Assumption 1: Unequal Variances

5.1 Political Instability Index: diff= mean (0)-mean (1)=1.54

Null: diff=0			
t-stat	Ha: diff < 0	Ha: diff != 0	Ha: diff > 0

2.46	$\Pr(T < t) = 0.9926$	$\Pr(T > t) = 0.0149$	$\Pr(T > t) = 0.0074$
------	-----------------------	---------------------------	-----------------------

a. Political Rights and Civil Liberties Index: $\text{diff} = \text{mean}(0) - \text{mean}(1) = -14.37$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
-5.8208	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

b. Freehold Property Rights Index : $\text{diff} = \text{mean}(0) - \text{mean}(1) = -20.71$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
-7.3186	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

c. Customary Property Rights Index: $\text{diff} = \text{mean}(0) - \text{mean}(1) = -10.91$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
-5.85	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

Assumption 2: Equal Variances

Table 5.5 Political Instability Index: $\text{diff} = \text{mean}(0) - \text{mean}(1) = 1.54$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
2.21	$\Pr(T < t) = 0.9857$	$\Pr(T > t) = 0.0286$	$\Pr(T > t) = 0.0143$

Table 5.6: Political Rights and Civil Liberties Index: $\text{diff} = \text{mean}(0) - \text{mean}(1) = -14.37$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
-5.7514	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

Table 5.7: Freehold Property Rights Index : $\text{diff} = \text{mean}(0) - \text{mean}(1) = -20.71$

Null: $\text{diff} = 0$			
t-stat	Ha: $\text{diff} < 0$	Ha: $\text{diff} \neq 0$	Ha: $\text{diff} > 0$
-5.6614	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

Table 5.8: Customary Property Rights Index: diff=: diff= mean (0)-mean (1)= 10.91

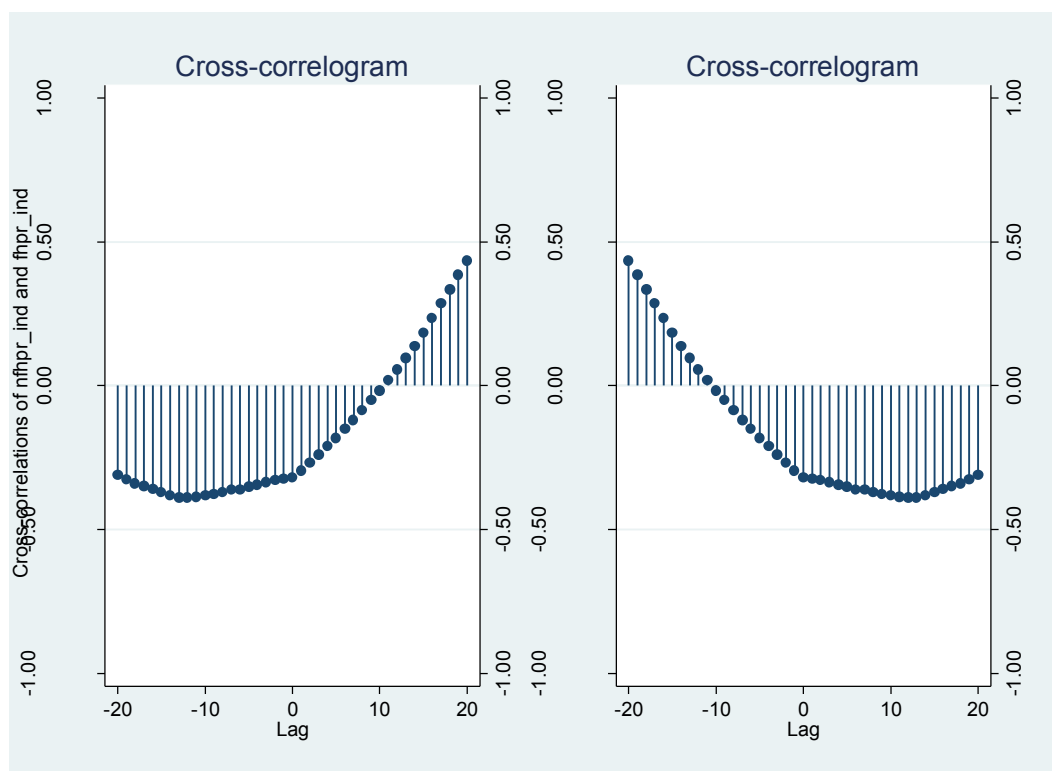
Null: diff=0			
t-stat	Ha: diff < 0	Ha: diff != 0	Ha: diff > 0
-4.8807	$\Pr(T < t) = 0.0000$	$\Pr(T > t) = 0.0000$	$\Pr(T > t) = 1.0000$

SUMMARY OF RESULTS

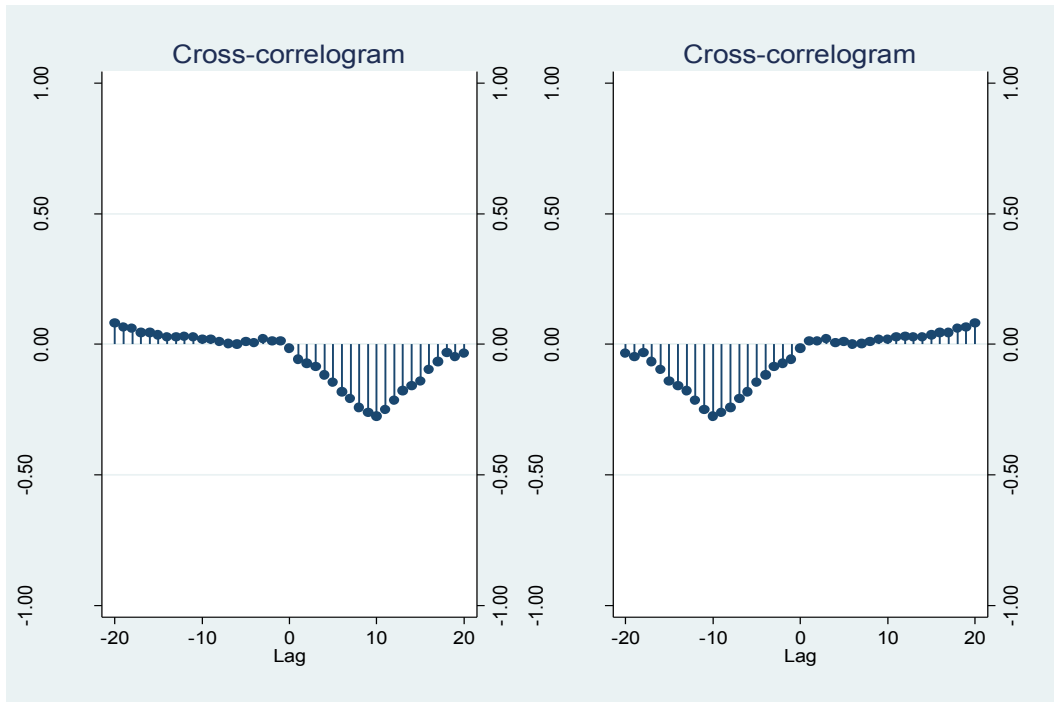
- Political instability is higher during colonial period.
- Political rights and civil liberties are higher in postcolonial period.
- Economic rights are higher in the postcolonial period.

APPENDIX 3. CROSS CORRELATION PLOTS

Plot 5: Freehold Property Rights and Customary Property Rights Correlogram

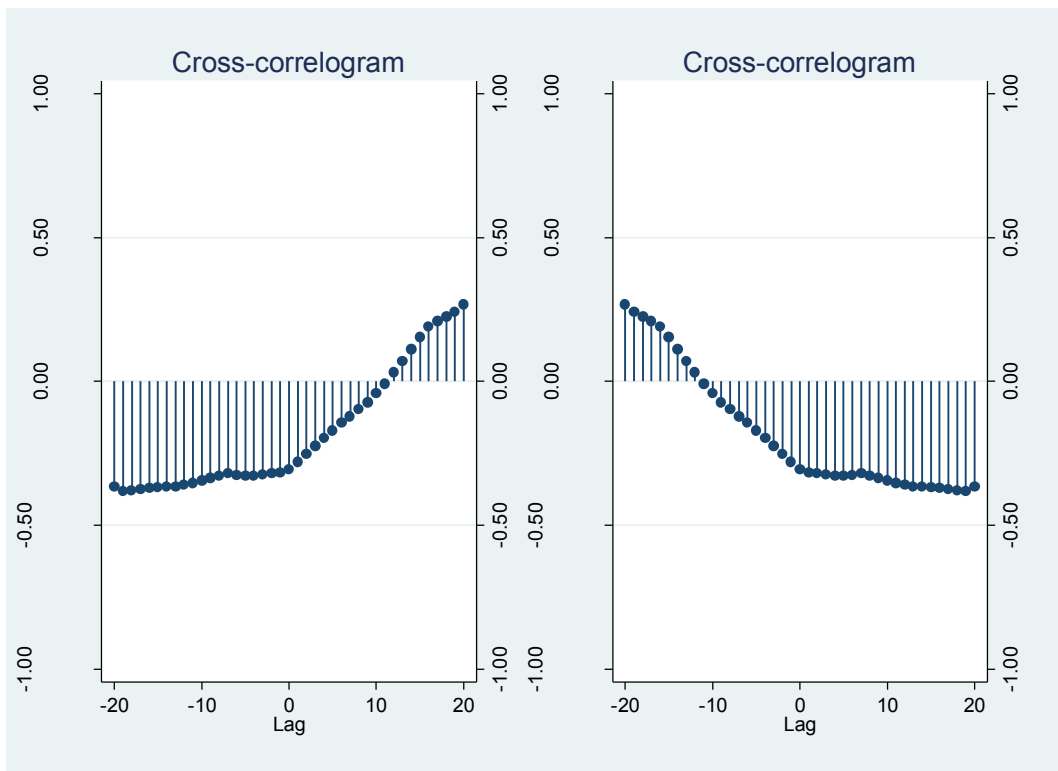


6:



Plot

Political Instability and Freehold Property Rights Correlogram



Plot 7: Freehold Property Rights and Political Rights Correlogram

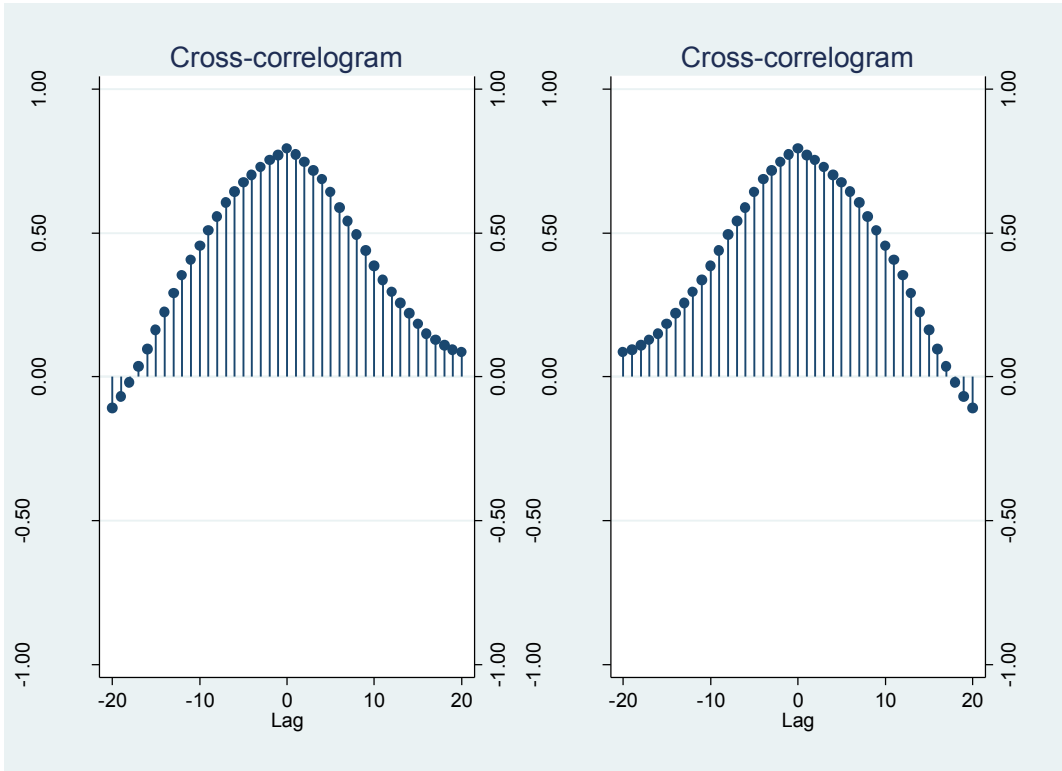


Figure 8: Customary Property Rights Index and Political Rights Correlogram

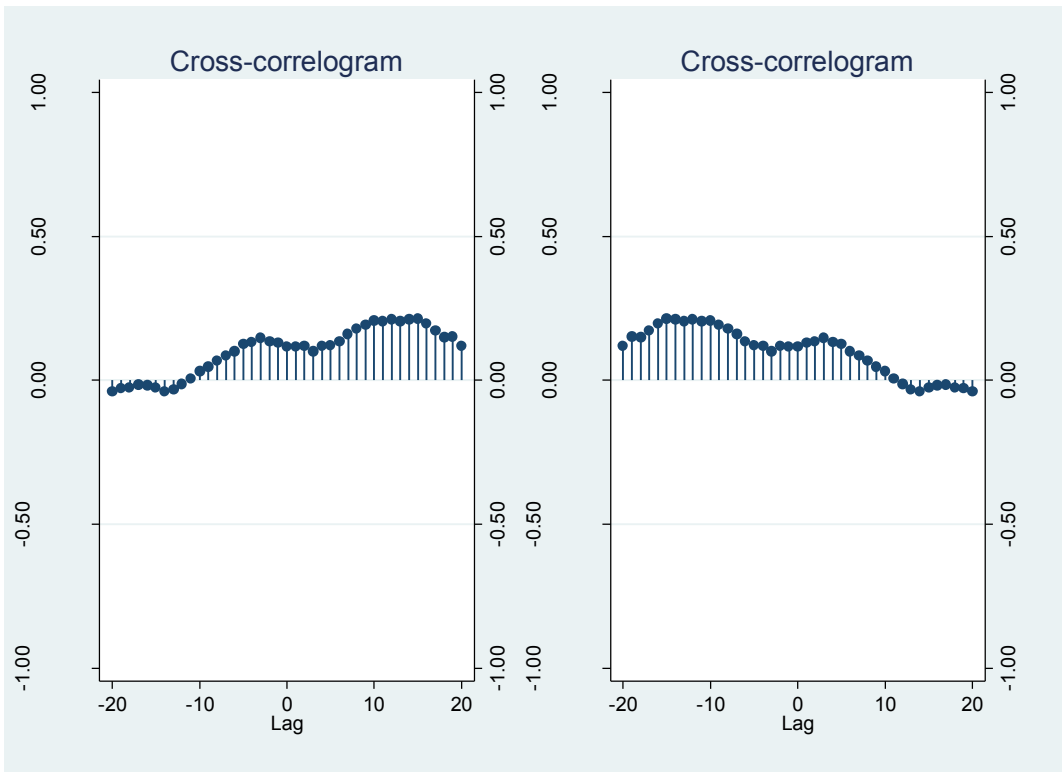


Figure 9: Customary Property Rights Index and Political Instability Index Correlogram

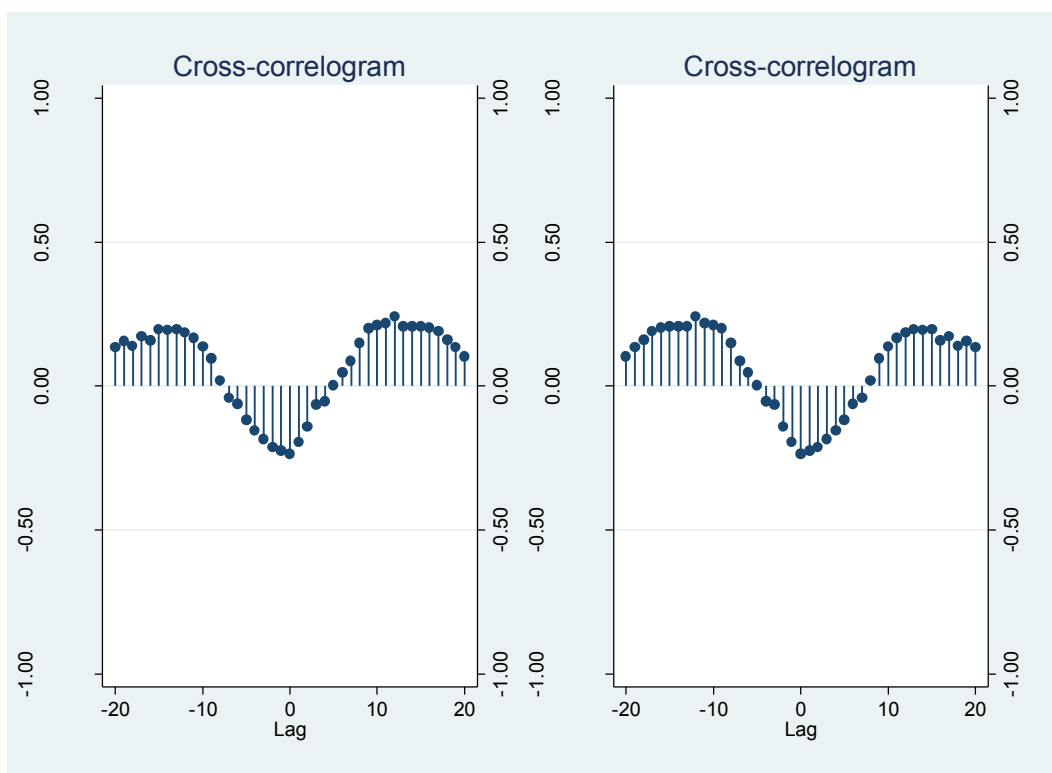


Figure 10: Political Instability Index and Political and Civil Liberties Index Correlogram

APPENDIX 4 VAR: RESULTS, DIAGNOSTIC CHECKS AND IRFs

Selection Criteria								
Lag	LL	LR	Df	P	FPE	AIC	HQIC	SBIC
0	-1778.85		16		4.6e+07	28.9894	29.0265	29.0808
1	-1222.45	1112.8	16	0.000	6981.72*	20.2024*	20.3881*	20.6596*
2	-1208.39	28.122	16	0.031	7211.61	20.2339	20.5682	21.057

Table 6. VAR selection criteria

VECTOR AUTOREGRESSION 1: 1880-2010				
Response Variable	Regressor	Coefficient	Std. Err.	P> z
Fhpr_ind	Fhpr_ind:			
	lag 1	.8915308	.0882627	0.000
	lag 2	.05939	.08581	0.489
Nfhpr_ind	lag 1	.10185	.13850	0.462
	lag 2	-.1447647	.13683	0.290
	Pol_inst_ind			
Lag 1**	Lag 1**	.23068	.11162	0.039
	Lag 2	-.110794	.10976	0.313
Pol_Civilib_ind				

	Lag 1	0 8	.05160	0 2	.07089	0.467
	Lag 2		-	2 1	.07299	0.695
			.0286409			
	Constant	1 1	4.0760	0 7	1.7168	0.018
Nfhpr_ind						
	Fhpr_ind:					
	lag 1	4 8	.02139	7 3	.05674	0.706
	lag 2		-	8 9	.08797	0.962
			.0026471			
	Nfhpr_ind					
	lag 1	1 3	1.0879	1 7	.08905	0.000
	lag 2		-	9 1	.13683	0.106
			.142172			
	Pol_inst_ind					
	Lag 1	6 5	.05782	5 1	.07176	0.420
	Lag 2	2 1	.03624	0 5	.07057	0.608
	Pol_Civilib_ind					
	Lag 1	9 1	.05670	7 9	.04557	0.213
	Lag 2		-	9 3	.04692	0.828
			.0102258			
	Constant		-	9 8	1.1037	0.186
			1.459499			
Pol_inst_ind						
	Fhpr_ind:					
	lag 1**		-	8 2	.06774	0.029
			.1481252			
	lag 2**	4 1	.13074	6 1	.06586	0.047
	Nfhpr_ind					
	lag 1	4 9	.07061	5	.10631	0.507
	lag 2		-	4 2	10503	0.995
			.0006511			
	Pol_inst_ind					
	Lag 1	3 1	.39263	5 1	.07176	0.000
	Lag 2	7 2	.28488	0 8 4 2 5 1 1	.	0.001
	Pol_Civilib_ind					
	Lag 1		-	3 5	.05441	0.219
			.0668124			
	Lag 2		-	6 9	.05602	0.878
			.0085725			
	Constant	7 9	2.8412	7 7	1.3177	0.031
Pol_civilib_ind						
	Fhpr_ind:					
	lag 1	2 5	.06333	9 4 9	0.1128	0.575
	lag 2		-	8 6	.10975	0.674
			.0460975			
	Nfhpr_ind					
	lag 1**	2 1	.36410	2 2	.17716	0.040

	lag 2	-	7 9	.17502	0.130
	Pol_inst_ind	.2647218			
	Lag 1	-	17	.14277	0.284
	Lag 2	.1529602			
	Pol_Civilib_ind	.1210265	5 1	.14039	0.217
	Lag 1	1.0128	4 1	.09067	0.219
	Lag 2	.49			
	Constant	-	2 6	0.9336	0.195
		.1306594	2 9	2.1959	0.953
** Significant at the 5 % level					
<p>Sample : 1882 - 2010 Number of obs</p> <p>= 129 Log likelihood = -1302.397 AIC</p> <p>= 20.75033 FPE = 12085.17 HQIC</p> <p>= 21.07461 Det(Sigma_ml) = 6909.737 SBIC</p> <p>= 21.54842</p>					

Table 7. VAR results: 1880-2010

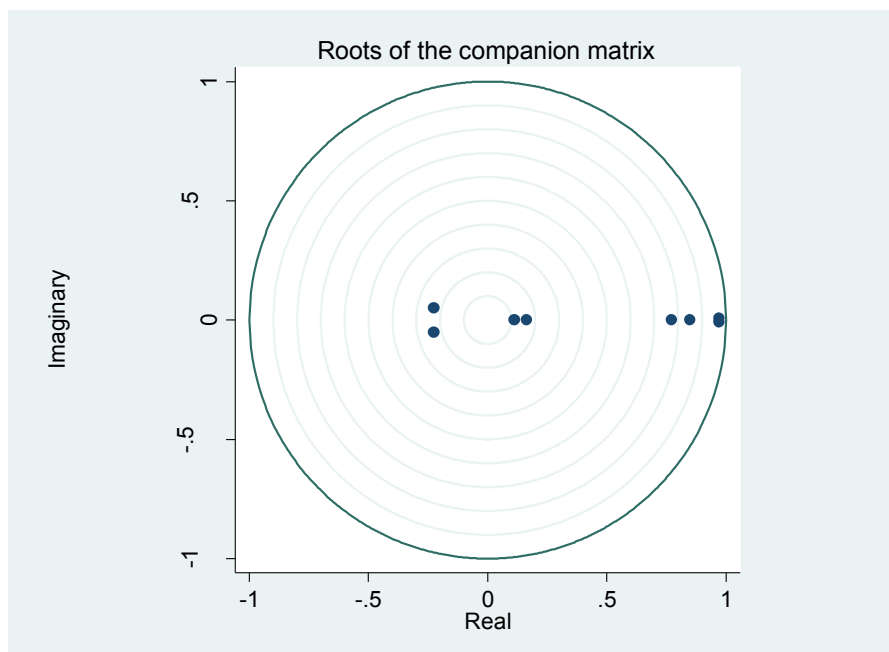


Figure 11: VAR stationarity test: Roots of the Companion Matrix.

VECTOR AUTOREGRESSION 2 1880-1962				
Response	Regressor	Coefficient	Std. Err.	P> z

Variable				
Fhpr_ind				
	Fhpr_ind:			
	lag 1	.8668696	.1072723	0.000
	lag 2	.02814	.10621	0.791
		81	91	
	Pol_inst_ind			
	Lag 1**	.39235	.17715	0.027
		28	78	
	Lag 2*	-	.10976	0.089
		.2982426	28	
Nfhpr_ind				
	Nfhpr_ind			
	lag 1	1.0803	.11015	0.000
		21	61	
	lag 2	-	.13683	0.106
		.142172	91	
Pol_inst_ind				
	Fhpr_ind:			
	lag 1**	-	.06355	0.045
		.1272536	26	
	lag 2	.09886	.06292	0.116
		14	86	
	Nfhpr_ind			
	lag 1**	.27805	.12053	0.021
		41	96	
	lag 2	-	.12105	0.132
		.18246	84	
	Pol_inst_ind			
	Lag 1**	.48973	.10495	0.000
		26	56	
	Lag 2**	.23870	0.022	0.001
		94		
Pol_civilib_ind				
	Pol_Civilib_ind			
	Lag 1	1.345539	.0999053	0.000
	Lag 2	-	.10534	0.000
		.4481617	87	
** Significant at the 5 % level				
*Significant at the 10% level				
Sample: 1882 - 1962		Number of obs = 81		
Log likelihood = -760.2957		AIC = 19.66162		
FPE = 4079.783		HQIC = 20.08859		
Det(Sigma_ml) = 1671.079		SBIC = 20.72582		

Table 8: VAR results (1880-1962)

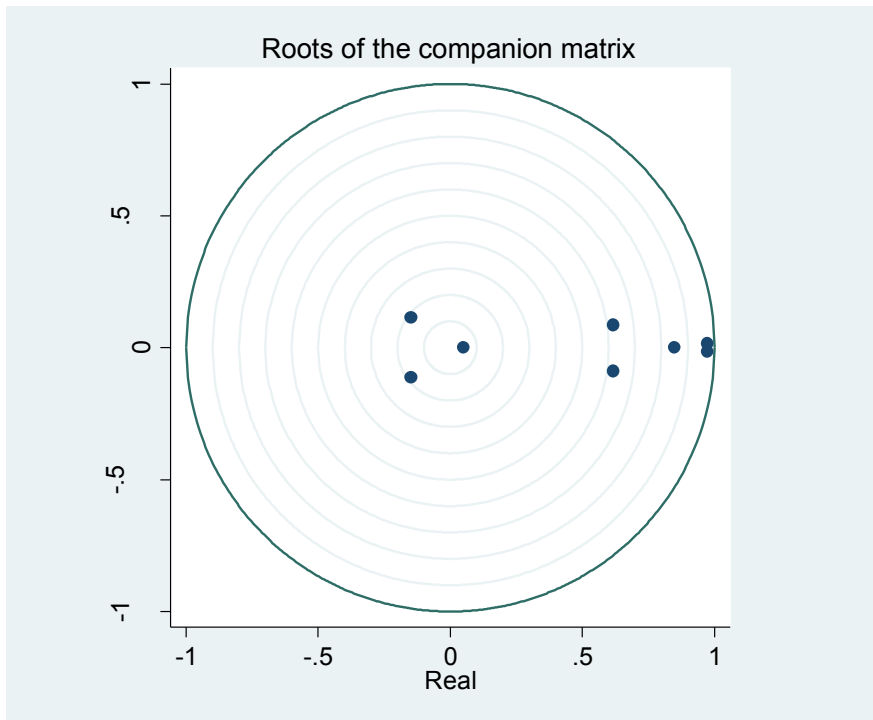


Figure 12: VAR 2 Stability test. All the eigenvalues lie inside the unit circle. VAR 2 satisfies stability condition.

Lagrange Multiplier Test [Null: No autocorrelation at lag order]			
Lag	chi2	df	Prob>chi2
1	9.8000	16	0.87686
2	13.9920	16	0.59931

Table 9: Test for residual autocorrelation

VECTOR AUTOREGRESSION 3: 1963-2010				
Response Variable	Regressor	Coefficient	Std. Err.	P> z
Fhpr_ind				
	Fhpr_ind:			
	lag 1	.7215738	.1789044	0.000
	lag 2	-	.14787	0.141
		.2175012	0.2	
	Nfhpr_ind			
	lag 1	.05990	.10427	0.566
	lag 2**	.26369	.11317	0.020
		99	16	
	Pol_inst_ind			
	Lag 1	.09295	.08382	0.267
		4	94	
	Lag 2**	.15691	.07288	0.031

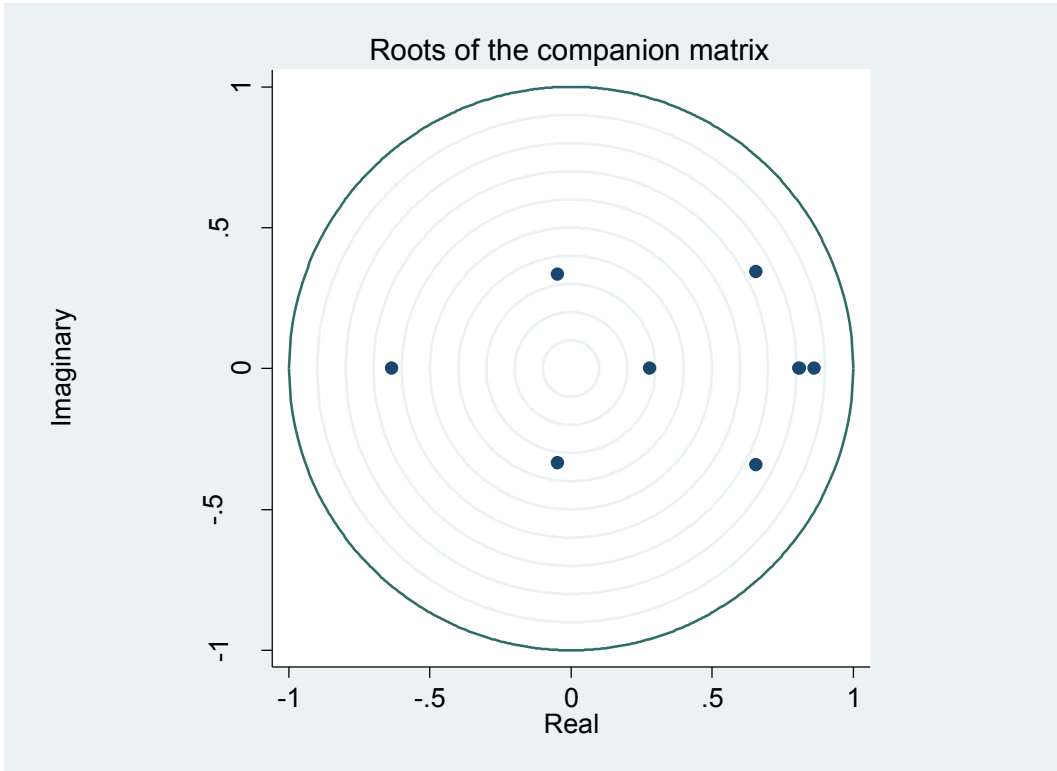


Figure 13. VAR 3 Stability test. All the eigenvalues lie inside the unit circle. VAR satisfies stability condition

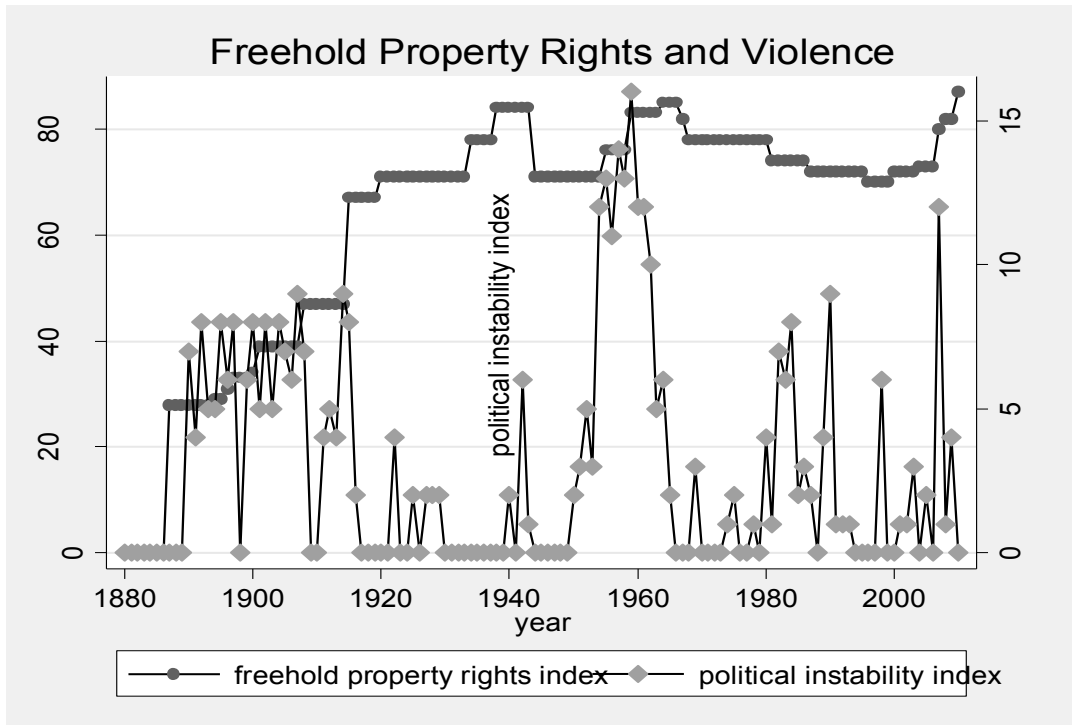


Figure 14. Freehold Property Rights and Violence.

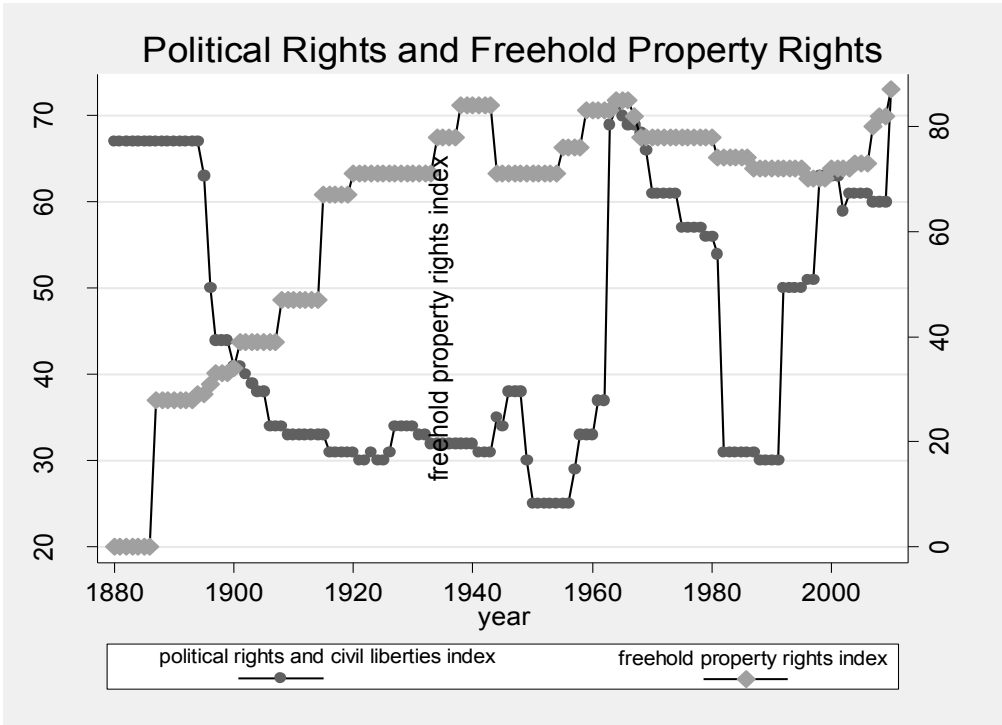


Figure 15. Political Rights and Freehold Property Rights

Figure 16. Recursive VAR OIRFs

