Constitutional Bargaining, Eminent Domain, and the Quality of Contemporary African Institutions: A Test of the Incremental Reform Hypothesis

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Abstract

According to the incremental reform hypothesis, constitutions are rarely adopted whole cloth; thus the starting point, scope for bargaining, and number of reforms, jointly determine the trajectory of constitutional history. We test the relevance of this theory for Africa by analyzing the formation and reform of the independence constitutions negotiated and adopted during the 1950s and early 1960s. We find historical evidence that independence occurred incrementally and that the African countries that experienced the fewest constitutional moments and narrowest domain of bargaining after independence have better contemporary institutions than states that began with less restrictive constitutional rules and experienced more constitutional moments.

Keywords: Decolonization, Independence, Constitutional Negotiations, Constitutional Bargaining, Post-Colonial Reform, Eminent Domain, Takings, Institutions, Africa

JEL codes: O43, O55, K11, N47

1 A previous version of this paper was presented at the 2014 meetings of the Public Choice Society, where several helpful comments were received. Those of Keith Dougherty were especially helpful. Other useful comments were received from Takashi Kurosaki and William Shughart. The usual caveat, of course, applies.
1. Introduction

A broad literature suggests that colonial history plays an important role in contemporary Africa through effects on culture, civil law, and political institutions. Why this should be so is not entirely obvious. The period of colonial rule lasted only a few generations, and governments after independence were often dominated by strong African leaders with supportive parties—often the same persons and organizations that had pressed for independence during their last decades as colonies. One might have expected a return to pre-colonial institutions, many of which were little affected by the colonial period.

One plausible hypothesis is that the former colonies were affected by the legal institutions that their colonial powers left behind. Many researchers have argued that the former British colonies had better legal institutions than the former French colonies and thus tended to be more prosperous in the long run (Hayek 1960; Lipset 1993; and La Porta et al. 1998, 1999). However, this perspective is not universally accepted. Colonial legal institutions were rarely the only ones in place and were not necessarily fully utilized in the post independence period.\(^2\)

This paper proposes an alternative but related explanation for the long-term effect of colonization on the quality of contemporary African institutions. In most cases, African countries began independence with formal constitutions that were the products of negotiations between the European colonial powers and politically active groups within the various colonies. In the British and French cases, the negotiations took place over the course of many years, often over several decades, and the results advanced many domestic interests, as well as those of the colonial powers, each of which had veto power over the formal agreements reached. After independence, formal reforms were possible but required meeting a constitutionally determined degree of consensus among those in government empowered to adopt reforms.

\(^2\) For critiques of the civil law hypothesis, see Acemoglu, Johnson, and Robinson 2001; Przeworski et al. 2000; and Lee and Schultz 2009. For a summary and overview of these literatures, see La Porta, Lopez-De-Silanes, and Shleifer 2008. This paper suggests that the effects of British rule may operate through differences in transitional constitutions, rather than civil law per se.
According to the incremental constitutional reform hypothesis, the quality of political and legal institutions both before and after independence are substantially determined by the political and legal institutions at the start of negotiations and the domain of constitutional bargaining allowed by those institutions. In the post-independence phase of negotiations, the scope for formal reform varied somewhat among African states for reasons developed below. The constitutional reforms adopted would thus be affected by the scope for reform and various national shocks, including the departure of the colonial powers, coups, and civil wars.\(^3\) This paper provides historical and statistical evidence that bargaining took place and that the quality of contemporary legal and political institutions were affected by both the domain of bargaining possible and political shocks likely to induce constitutional reforms.

That constitutional bargaining occurred before independence is also of interest. The independence constitutions of most African states were consequence of decades of negotiations between the colonial powers and politically active groups within the colonies. After independence, constitutional bargaining continued without the veto power of colonial powers. In most cases, the legal and political institutions associated with African independence were the first that fully encompassed the territories to be ruled in the post-independence period.\(^4\) Their populations were often quite culturally diverse. Thus, ruling parties and coalitions would rarely agree about reforms either before or after independence. Such disagreements reflected the ordinary ones that any group of individuals tend to have, and in the case of Africa also unique regional, religious, and ethnic ones.

The next section of the paper provides an historical overview of constitutional bargaining within the British and French colonies. Constitutional bargaining was nearly continuous in the colonies and a long series of reforms were adopted both before and after WWII. These reforms gradually increased the participation of native Africans and ex patriots in colonial governance.

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3 See, for example, Congleton (2011). Voigt (1999) provides an overview of constitutional bargaining theories. The present paper provides a far shorter review of the literature than many papers in order to provide a more complete overview of the relevant constitutional history than previous work has provided to the best of our knowledge. No previous study, however, has focused on the independence constitutions.

4 The new island countries were the exceptions to this rule. The lack of national institutions also applied to colonial military forces, which tended to be organized by region, rather than by colony. There were no national army institutions or traditions. The recruits were often from particular tribes and regions, often minorities in their home colonies (Howe 2004, ch. 2). In many cases, local governments retained their long standing forms and continued to operate both before and after independence.
The pace of reform accelerated after WWII. The liberal trend in constitutional reform ended, perhaps surprisingly, with independence. The transitions of the Portuguese and Belgium colonies were exceptions to this rule. Fewer reforms of governance were adopted, and more violence was associated with their paths to independence.

Section 3 provides a short overview of the manner in which the independence constitutions of the British and French colonies were reformed during the first decades of the post-independence period. Much of this reform occurred through formal constitutional amendments. However, in contrast to the pre-independence reforms, the post-independence reforms tended to reduce civil and political liberties. Section 4 undertakes a statistical analysis of the post-independence trajectory of reform, focusing on the number of constitutional moments and institutions that affect the magnitude of reforms. Consistent with the theory of incremental reform, the results suggest that the greater the number of constitutional moments and larger the scope for reform, the greater the change in institutional quality. Section 5 summarizes the analysis and its implications.

Many empirical studies suggest that Great Britain’s culture and institutions contributed to the somewhat more stable politics and higher economic growth rates of its former colonies (La Porta, Lopez-De-Silanes, and Shleifer 2008; Lee and Schultz 2009). The theory and evidence developed in this paper suggests that differences in the independence constitutions negotiated in their former colonies account for many of the systematic differences among the former French, British, Portuguese, and Belgium colonies.

2. A Short Overview of Colonial Governance in Africa and the Transition to Independence

It is useful to recall that for most of the past four centuries, Europe’s relationships with Africa were mainly economic, rather than political or cultural. Trading relationships with

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5 We use the terms high quality and liberal more or less interchangeably. Numerous indices of institutional quality exist, including ones developed by the World Bank (the World Governance Indicators), Freedom House (Political Rights and Civil Liberty indices), and the center for Systematic Peace (Polity Index). These indicators and supporting empirical research suggest that countries with open fair elections, equal protection of the law, equal opportunity, and well-functioning judicial systems have high quality institutions. These were, of course, the institutional objectives of what might be called the “constitutional liberals” of nineteenth century Europe. The independence constitutions attempted to assure, or at least promote, all of these characteristics.
northern Africa had long been undertaken via the Mediterranean Sea. Other European trading posts were gradually established along the Atlantic and Indian Ocean coasts of Africa beginning in the sixteenth century. Trade for the most part took place at port cities and it was not until the mid-nineteenth that a significant number of Europeans ventured inland from their coastal entrepôts. This change in European interests was partly caused by the industrialization of Europe, partly by legislation ending slavery in Europe and European participation in the slave trade, and partly by extended suffrage in Europe.

Efforts to fully suppress the slave trade in the mid-nineteenth century led to a variety of protective and trade treaties between European states and African tribes. At roughly the same time, the industrialization of Europe and new shipping capacity induced European and African entrepreneurs to look for new export markets and new sources of raw materials. Both anti-slave and trade treaties often promised protection for an African tribe or territory (often inland) in exchange for trade privileges and various degrees of sovereign authority. Competition for trading privileges and political spheres of influence led to many other treaties with local rulers.

The scramble for trade privileges and the promised protection increased European interventions in African affairs, often in opposition to other European interests. Empire, itself, was popular among middle class voters, and so electoral pressures often favored African interventions.

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6 Relationships between the polities along the northern and southern coasts of the Mediterranean Sea are evident from the dawn of human history. However, the great religious and political revolutions that occurred after the disintegration of the Roman Empire greatly reduced intercourse between what subsequently became Europe and the Arab world, respectively, although it did not eliminate it. It is, however, accurate to say that the relationships from roughly 800 A.D. to 1800 were not ones in which the Europeans were colonial powers. The relationships that remained were for the most part commercial ones and limited to port cities. Military conflict also occurred, as for example Spanish armies conquered in the fifteenth century the Iberian peninsula and Ottoman incursions into Austria were repelled in the seventeenth century. These, however, would not be regarded as colonial efforts. South Africa is an exception to the entrepôt description of European settlements in Africa prior to 1800, although Dutch settlements were also mainly coastal ones. A map of the very modest 1870 European holdings in Africa is provided in Harris (1914, p. 17).

7 These treaties were partly sought to provide a legal basis for a European power’s “sphere of interest” in Africa. Many were negotiated by various crown companies organized to promote and profit from the development of agricultural and mineral resources. Lugard (1922, ch. 1) suggests that there was not always a meeting of the minds over exactly what rights and protections the various local authorities (often illiterate chiefs) were obtaining in exchange for European goods and services.

8 Harris (1914, p. 14) notes that 19th century treaties regarding African countries nearly always mention the slavery and the slave trade. Reid (2012, ch. 2) provides an overview of African dependence on the trade and resistance to its elimination among exporters, as well as links to African warfare. Numerous treaties were signed between African
Colonial rule emerged gradually through treaties, conflict and bargaining among European powers, and conquest. Most of Africa was formally under European rule (or protection) by around 1900. Although colonial rule did not exhibit or promote civic equality, it was not a period of “master-slave” relationships. Natives provided most of the manpower for colonial armies (although not the officers), administered local (village) governments, and staffed out various economic enterprises. Indeed, slavery within Africa was formally banned by the European powers during the first decades of colonial rule.9

Colonial Governance before WWII

The British and French colonies were initially run from the “top down” to the extent at his was possible. The French colonies were ruled by a governor in Dakar and lieutenant governors in the various colonies, subject to vetoes from Paris. The British colonies were run by appointed regional governors who were subject to instructions and vetoes from London. It hould be noted, however, that the colonial powers lacked sufficient information and European manpower to govern their colonies from top to bottom. As a consequence, colonial governance normally included elements of self-rule, with native representatives and advisors at high levels of colonial government and in local administration. Policy advice was provided by official councils of ex patriots and helpful African leaders.

Along many dimensions of authority, the colonial governing institutions reflected explicit and implicit gains from constitutional bargaining between the colonizers and those colonized. Village chiefs normally retained significant authority, and colonial law was a mélange of European, Muslim, and customary rules and enforcement. English or French legal systems were not simply imposed by fiat on the helpless residents of their colonies as the colonial powers might have wished.

The bargaining efforts of educated Africans during the 1910s gradually induced the French and British colonial authorities to adopt to increase representation on the advisory potentates and European countries with respect to the elimination of the slave trade. Lugard (1922:Ch. 1) suggests that electoral interests accounted for much of the English activity in African territory. Indeed an 1865 royal commission had previously recommended abandoning their West African enclaves after the slave trade was ended.

9 Other forms of forced labor, however, were permitted, although “forced labor” was supposed to be paid a fair wage and/or receive useful job training. See Conklin (1997: ch. 7) for an overview of the use of forced labor in the French West African colonies. Forced labor to advance private economic interests was phased out in the British colonies after 1930 and in the French colonies after 1946.
councils and the authority of local governments. Educated Africans were appointed (or elected to) councils at the local, intermediate, and colonial levels. Voting rights were occasionally extended as part of those negotiations, although these were normally limited to educated French- or English-speaking Africans living in urban areas.

The French began systematically assembling advisory councils at the village, circle, colony, and empire level during the early 1920s. In the late 1920s, after further bargaining by educated Africans, elections for seats on the advisory councils were held in which educated French-speaking native Africans were entitled to participate. A similar administrative structure was in place in the British colonies, often referred to as indirect rule, although with fewer elected positions (Pearce, 2005, Lugard 1922).

The advisory councils initially lacked formal veto authority but had significant influence over policy through recommendations and proposals. The councils gradually obtained formal veto power over a subset of policy areas in a manner not entirely dissimilar to the royal councils of Europe in previous centuries.\(^{10}\) Their influence and composition were for the most part the consequences of persuasion and peaceful protests rather than revolts, although revolts did occur.\(^{11}\)

The colonial governments, consequently, were not entirely extractive regimes. Economic development was encouraged through education, infrastructure projects and other public services, often funded with head taxes.\(^{12}\) Native entrepreneurs and laborers were encouraged to participate

\(^{10}\) See Conklin (1997) for an overview of French administration, their theories of governance, and institutional evolution. Elections were held earlier in Senegal itself, where voters could also elect a representative to the French national parliament, but prior to WWI suffrage was also limited to persons of European descent and educated French speaking natives. See Lugard (1922) for an overview of British governance and early examples of elections in Nigeria and Kenya. The French and British colonial systems arguably converged during this period with the French coming to rely more heavily on preexisting African institutions such as village chiefs, and the British gradually making greater use of a hierarchy of councils with native representatives selected from chiefs and other educated Africans. In both cases, the chiefs and council members were generally educated at colonial schools.

\(^{11}\) With respect to the British colonies Pearce (2005, p.44) notes that “There seemed to be no danger in 1940 that African elites would challenge British supremacy. Though there had in the previous twenty years been a number of disturbances, especially over land rights and economics grievances, yet in relations to the areas involved these were few … and little which points to widespread discontent…”

\(^{12}\) See Dugan and Gann (1975) for an overview of development strategies employed by the European powers, and some of their early failures.
in the cash economy through regulations and tax incentives, especially in the agricultural and mineral export markets.\textsuperscript{13}

\textit{Autonomy and Independence in the French Colonies after WWII}

World War II (WWII) upset the prewar bargaining equilibrium between the French and British governments and their respective African colonies. Both the French and British desperately needed African supplies and manpower for their war efforts, which created new potential gains from constitutional exchange that favored African leaders and interests. As a consequence, De Gaulle agreed to provide home rule after the war was over.\textsuperscript{14} Churchill did not formally agree to do so, but accepted language in the Atlantic Charter of 1941 that suggested that Britain would also promote home rule and independence after the war.\textsuperscript{15}

After WWII was over, the British and French governments further increased the role of native Africans in their colonial governments. This was undertaken partly because of commitments made during the war, partly because ex-patriot and African groups continued to press for increased representation and authority, and partly because European voters were more interested in rebuilding their home countries than their colonial empires in Africa at that time. Electoral support for empire had dwindled. Together these changes in relevant interests

\textsuperscript{13} Some of these policies may also be attributed to European altruism. Harris (1914) and Lugard (1922) provide contemporaneous perspectives on the relatively benevolent motivation of the colonial powers during the period of colonization. They argue that European voters and their governments generally attempted to promote economic development and Christianization in their African colonies, with some success. Economic development was encouraged by eliminating slavery within their colonies, imposing Western forms of civil law, and investments in infrastructure. Conklin (1997) provides a recent analysis of French efforts to “civilize” black Africa in the period between 1890 and 1930. She stresses the benevolent, liberal, motivations of voters and French governments in the late nineteenth century and early twentieth century. She and Harris both note, however, that the French and British often rationalized coercive policies with benevolent paternalistic arguments.

\textsuperscript{14} Such constitutional bargains were not without precedent in the French colonies. In 1915, Diagne had persuaded the French Parliament to broaden the political and legal rights of persons in Senegal (within the four communes) in exchange for helping to recruit African forces for French defense (Conklin 1997: Ch. 5).

\textsuperscript{15} Article 3 of the Atlantic Charter called for signatories to “respect the right of all peoples to choose the form of government under which they will live and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.” The charter was drafted and signed by President Roosevelt and Prime Minister Churchill in 1941. Other provisions called for trade barriers to be lowered and freedom of the seas.
generated new potential gains from constitutional exchange and a relatively liberal direction for the reforms most likely to be agreed to.\textsuperscript{16}

The postwar shifts in authority from the British and French central governments to their colonial governments were incremental, although much larger reforms were adopted than before. Again, the reforms were largely consequences of peaceful negotiation, “push back,” and formal reforms of colonial governance, rather than revolution or obvious revolutionary threats.

\textit{Autonomy and Independence in France’s African Colonies}

The French process of transferring authority to its colonies in the post-war period was somewhat more centralized and uniform than that of the British. Much of it took place within the framework of French constitutional reforms and implementing rules adopted by the colonial central government in Dakar. Shortly after WWII, there were elections for a new constituent assembly that included six African representatives elected (via restricted suffrage). Colonial interests were thus directly represented in the drafting of the new constitution.\textsuperscript{17} A new French constitution was adopted in 1946 (for the Fourth Republic), which included a section that addressed colonial issues. It created a new French Union that included political representation for all of its colonies.\textsuperscript{18} Local colonial assemblies were mandated (article 77) and provisions for electing colonial representatives to the new French Union Assembly were established (article 66). Suffrage was expanded and the local assemblies gained additional control over local policies, although civil law, military, and many other policies remained those of the French national government.

The colonial assemblies were, for the most part, simply more formal versions of assemblies previously in place, with somewhat expanded authority and African representation. Universal suffrage was adopted in 1956. In 1958 France adopted another new constitution and replaced the French Union with the French Community under Title VI of the Constitution of the

\textsuperscript{16} See Reid (2009, Ch. 14) for an extended overview of changes in economic and political interests that made French and British governments more willing to negotiate with African leaders in their colonies for expanded legal and political rights.

\textsuperscript{17} See, for example, \url{http://en.wikipedia.org/wiki/French_West_Africa}.

\textsuperscript{18} The French Union is described in title VIII of the Constitution of the Fourth Republic. It also created a new umbrella organization for the French territories and procedures for the union created. The new political institutions superseded and strengthened earlier local and national councils established during the 1920s. See Conklin (1997, Ch. 6) for an overview of earlier efforts to include Africans in colonial governance.
Fifth Republic. The new rules provided the territorial assemblies with greater authority over spending and legislation (article 72), while again reserving military and foreign policy for the French government.

French assurances (and subsidies) persuaded its African colonial leaders that membership in the French Community would be more beneficial than independence. Seven of eight territories in French West Africa accepted the Constitution of the Fifth Republic of France (table 1) with its French Community, although small groups in several of those French African colonies had been fighting for independence. Clearly, bargaining rather than revolution had determined the result.

<table>
<thead>
<tr>
<th>Territory</th>
<th>YES (%)</th>
<th>NO (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin (Dahomey)</td>
<td>97.84</td>
<td>2.16</td>
</tr>
<tr>
<td>Burkina Faso (Haute-Volta)</td>
<td>99.18</td>
<td>0.82</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>99.98</td>
<td>0.02</td>
</tr>
<tr>
<td>French Sudan</td>
<td>97.53</td>
<td>2.47</td>
</tr>
<tr>
<td>Guinea</td>
<td>4.78</td>
<td>95.22</td>
</tr>
<tr>
<td>Mauritania</td>
<td>94.04</td>
<td>5.96</td>
</tr>
<tr>
<td>Niger</td>
<td>78.43</td>
<td>21.57</td>
</tr>
<tr>
<td>Senegal</td>
<td>97.54</td>
<td>2.46</td>
</tr>
</tbody>
</table>

Source: Chafer 2002, p.179.

Note: “NO” meant outright independence from France. “YES” meant accepting the Constitution of the Fifth Republic which assured the French government continued authority in French Africa.

A long series of incremental reforms had produced increasingly autonomous political units that advanced both French and colonial interests (Chafer 2002, ch. 6; Levine 1964). Complete independence within the French Community subsequently became possible through reforms adopted in 1960, and essentially all of the French colonies took advantage of that possibility during the next few years.¹⁹ As a consequence, all the former French colonies in sub-

¹⁹ Algeria is an important exception; it fought a war of succession and did not belong to or join the French Community after independence.

The demand for independence in the north of Africa differed substantially from that of sub-Saharan Africa. Algerian leaders demanded independence immediately after WWII ended. The French government initially refused to grant independence, in part because of the opposition of French settlers in Algeria. As a consequence, Algeria’s National
Saharan Africa except Guinea had, and still have, political institutions that are remarkably similar (in name and organizational structure) to those of France.  

**Autonomy and Independence in Great Britain’s African Colonies**

The transitions to independence in the British colonies were fundamentally similar, although more decentralized. The British government also took substantial steps toward greater colonial autonomy in its African colonies after WWII. Additional educated natives were recruited for senior administrative positions. Its colonial assemblies were given electoral foundations and African representation on policymaking and advisory councils was increased. In contrast to France, however, the institutions for home-rule were negotiated country by country with greater differences in institutional details, timing of elections, and policy authority delegated to the colonial assemblies.

Postwar elections for the colonial assemblies of the British colonies were the first national elections ever held in those territories. Electoral competition naturally induced the formation of national political organizations, which to be successful, had to address the concerns of a broad cross-section of the various national electorates. As a consequence, the gradual shift to democratic forms of home rule in the late 1940s and early 1950s inadvertently facilitated the formation of the national independence movements that advocated further reforms in the 1950s and early 1960s (Reid 2012, ch. 15).

These increasingly well-organized partisan groups lobbied for broader representation and suffrage, self-rule, and subsequently for independence, as well as for particular public policies of interest to their constituencies. British sentiment with respect to these steps had long been expressed by colonial officials, so the main difference between the British and Africans were

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Liberation Front launched a war of independence with the support of the independent Arab countries. France granted independence to Morocco and Tunisia in 1956, hoping these movements would reduce Arab support for Algerian independence (Arnold 2005, p. 27–29). Algeria finally won its independence in 1962.

20 When Guinea voted for outright independence, rather than association, the French government withdrew all French personnel and equipment (Khapoya 1988, p. 182.). It also informed Guinea that it would receive no further public investment or budgetary aid from France. In 1959 Guinea turned to the Communist countries for support (Charles 1980, p. 91).

21 As in the French territories, there had been elections in some places for a subset of the posts on the local councils and legislative councils. Lugard (1922) mentions elected posts in Kenya, Nigeria, and the Gold Coast. These were for the most part elections for urban representation by educated Africans. Here as elsewhere, the history developed is an “in the main” account of institutional changes.
with respect to timing. Lawful public pronouncements and peaceful demonstrations were often combined with acts of civil disobedience, including larger than allowed demonstrations, refusal to pay taxes, boycotts, strikes, and occasionally acts of violence (although not warfare). Contentious politics is not necessarily violent or revolutionary. New organizations in support of independence created new potential gains for reform insofar as larger disruptions could be organized. These were costly to the colonial powers and electoral support for maintaining control had diminished in the aftermath of W.W. II.  

**Similarities and Differences among French and British Negotiations and Results**

The French and British governments expected independence to reduce their expenditures on colonial security and infrastructure subsidies. The economic advantages of African enterprises could, in principle, be preserved through property protection and formal trading relationships. Native leaders and their supporters expected to benefit from greater authority over public policy and taxes. The leadership of the new political organizations also evidently believed that continued relationships with their former rulers had benefits, as with potential subsidies, preferential tariffs, and expertise. The constitutional and legislative bargains struck both before and after independence suggest that economic interests were non-trivial considerations for many leaders.

The British negotiated formal transitional (independence) constitutions along with formal schedules for independence during the 1950s. Constitutional details varied among countries in a manner that attempted to take account of ethnicity, religiosity, and historical relationships. The constitutions, for example, varied in the extent to which federal structures and provisions for ethnic-based representation were included. The French negotiations were more centralized, and shifts of authority to colonial governments were framed by general rules specified by the French constitution. Both sets of independence constitutions were “liberal” or of “high quality” in the sense that they were written documents; called for elected, representative national governments;  

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22 The term “gain from trade” is used to distinguish the bargaining from that of “revolutionary threat” models, where a threat of violence is used to generate constitutional reform. Bargaining in a setting where more intense or better organized interests are evident is more analogous to an increase in the demand for fish than an extortionary threat. The of an increase in demand for fish does not benefit sellers of meat, but the new bargains struck are accomplished through lawful means. A stronger demand for autonomy similarly reduces the welfare of those favoring empire, but the new terms of trade are negotiated peacefully and for the most part lawfully, rather than through constitutional revolution.
and protected a variety of civil liberties, including private property, a (mostly) free press, and equal protection of the law. 23

Table 2 lists the various dates of formal independence in the former British and French colonies. 24 Note that the very uniform timing is consistent with the shift in European and African interests after WWII and a decade of fine-grained bargaining over the details of independence in which both European and African interests were accounted for.

<table>
<thead>
<tr>
<th>British Colonies</th>
<th>French Colonies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>Date</td>
</tr>
<tr>
<td>South Africa</td>
<td>5/31/1910 (fully recognized in 1931)</td>
</tr>
<tr>
<td>Egypt</td>
<td>2/28/1922 (fully recognized in 1956)</td>
</tr>
<tr>
<td>Sudan</td>
<td>1/1/1956 (from Egypt and Britain)</td>
</tr>
<tr>
<td>Ghana</td>
<td>3/6/1957</td>
</tr>
<tr>
<td>Somalia</td>
<td>7/1/1960 (from Italy and Britain)</td>
</tr>
<tr>
<td>Nigeria</td>
<td>10/1/1960</td>
</tr>
<tr>
<td>Cameroon*</td>
<td>1/1/1961 (from Britain and France)</td>
</tr>
<tr>
<td>Uganda</td>
<td>10/9/1962</td>
</tr>
<tr>
<td>Malawi</td>
<td>7/6/1964</td>
</tr>
<tr>
<td>Zambia</td>
<td>10/24/1964</td>
</tr>
<tr>
<td>Tanzania</td>
<td>12/9/1964</td>
</tr>
<tr>
<td>Gambia</td>
<td>2/18/1965</td>
</tr>
<tr>
<td>Botswana</td>
<td>9/30/1966</td>
</tr>
<tr>
<td>Swaziland</td>
<td>9/6/1968</td>
</tr>
</tbody>
</table>

* Cameroon does not have an independence day; only a reunification day.

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23 Here, we accept historical accounts of the negotiation process and results. To confirm these accounts, we have read a subset of the transition constitutions and their immediate successors. The ones read were similar to contemporary Western constitutions in that period.

In this manner, several decades of negotiations produced political constitutions in the former French and British colonies that initially resembled those of their former rulers. They met European norms and procedures for elected government, contracts, property, and eminent domain, in part because France and Great Britain had veto power over the final result. Consistent with this bargaining explanation, most of the former British colonies in Africa remained members of the British Commonwealth (since renamed the Commonwealth of Nations), and most of the former French colonies remained members of the French Community.

The relationship between secure property rights and economic development was clearly recognized by those drafting the transitional constitutions. For example, the *Report of the Kenya Constitutional Conference* (1962) explicitly mentions the importance of property institutions: “Only by this means will it be possible to maintain confidence and to encourage development and investment, including the attraction of overseas capital, not only in the immediate future but also in the long term” (Allen 2000, p. 59). As a consequence, most of the transitional constitutions of the British colonies included strong eminent domain clauses. For example, the property clause of the Kenya Constitution of 1963 (article 19-1) stipulates, “No property of any description shall be compulsorily taken possession of…except…so as to promote the public benefit…[and] that provision is made…for the prompt payment of full compensation.” Recipients of compensation were to be free to take their compensation out of the country without taxes or other fees and in the currency of their choice (article 19-4). French civil law, in contrast, includes somewhat more elastic provisions for eminent domain. French law allows state “takings” under its *mise en valeur* principle. Under that principle, “abandoned” and “undeveloped” land automatically reverts to national ownership. In France, that provision would rarely apply, but in the colonies, *mise en valeur* allowed communal pasture lands, wastelands, and fallow fields to be taken by colonial and national governments,

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25 Many persons remarked on the extent of tribal warfare during the period of colonization, and contribution that could be made by establishing law and order (Lugard 1922, ch. 1). Contemporary research is consistent with those claims. See for example Besley and Reynal-Querol (2014).

26 The text of the 1963 Kenyan constitution is available at: [http://www.mlgi.org.za/resources/local-government-database/by-country/kenya/constitution/1963%20Independence%20constitution.pdf](http://www.mlgi.org.za/resources/local-government-database/by-country/kenya/constitution/1963%20Independence%20constitution.pdf). (The numbering of articles varies among Web sources; the above property assurance is labeled article 72 on some other websites.) Much of the property to be protected in the French and British colonies was owned by crown companies and expatriates, who were clearly minorities that benefited from civil law protection.
and sold or given away to other parties, without formal eminent domain proceedings or compensation. In effect, they were abandoned property.

In general, the former French colonies had constitutions that were less fine tuned to account for regional differences and provided somewhat greater opportunities for bargaining because of the *mise en valeur* principle. Other things being equal, these differences imply that there were likely to be more and greater reforms in the former French colonies than in the British ones after independence.

*A Digression: the More Turbulent Transitions of the Portuguese and Belgian Colonies*

Our study focuses for the most part on the former French and English colonies, because their independence constitutions were products of negotiations and reform. This was less true of the former colonies of Portuguese and Belgian, where negotiations were less fruitful, and so native interests were less represented during colonial governance and independence constitutions less developed or nonexistent. Portugal itself was essentially a one-party state between 1932 and 1974, and had little interest in promoting civil liberties or democratic governance in its colonies or in negotiations with respect to independence. The Portuguese government was the last to transfer policy-making authority to its colonies, although it also undertook a formal reorganization of its colonies after WWII, possibly because of yardstick competition with the French and British colonies.

During the 1950s, the colonies became an overseas province of Portugal. By the early 1970s, the colonies had become Portuguese nonsovereign states. They remained Portuguese territory but with somewhat wider administrative autonomy (Chabal 2002, pp. 29–32). Administrative authority in the colonies, however, was mostly held by Portuguese ex patriots. This, together with Portuguese policies of expropriation and forced labor, provoked peaceful demonstrations by Africans, and also some armed conflict. For example, in 1961 black militias

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27 See Leonard and Longbottom (2000) for an overview of French property law as applied to its colonies. Population densities were much lower in 1900 than they were in 2000, which implies that substantial tracts of land were “unclaimed” during the period of colonialization.

28 During the Estado Novo period, the number of Portuguese settlers in Angola and Mozambique increased rapidly: increasing in Angola from 30,000 in 1930 to 44,083 in 1940, 78,826 in 1950, 172,529 in 1960, and 335,000 in 1973 and increasing in Mozambique from 18,000 in 1930 to 27,400 in 1940, 48,200 in 1950, 97,200 in 1960, and 200,000 in 1973 (Newitt 1981, p. 164).
attacked both white and black civilians in northeastern Angola. Portugal responded by sending troops to quell the revolt.29

The colonial wars induced Portugal to revise its policies. In 1961, Portugal abolished forced labor and land expropriation. It also attempted to improve social and economic opportunities for Africans (Newitt 1981, p. 219).30

In 1974, a military-led coup ended the Portuguese government that had long opposed colonial independence (the Carnation Revolution). The new government was less interested in financing the suppression of African rebels and pledged to end the colonial wars. It began negotiations with the African independence movements and rapidly ceded independence: to Portuguese Guinea in 1974, and to Cape Verde, Mozambique, São Tomé and Príncipe, and Angola in 1975.31

Belgium was also relatively slow to include native Africans in government positions and to negotiate over rights and authority. As a consequence, it was subject both peaceful protests such as strikes and widespread refusal to pay taxes, and violence during the 1950s. To reduce tensions, the Belgian government agreed to a gradual transition to self-governance. Local elections in the Belgian Congo were held in 1957–58. In subsequent negotiations, Congolese leaders—especially Lumumba—demanded quick independence.32 The Belgian government agreed to grant full independence by May 1960 as revolts spread and the cost of maintaining law and order increased (Martelli 1962, p. 226).

29 In combination with other armed conflicts in Guinea-Bissau in 1963 and Mozambique in 1964, these came to be known in Portugal as the Colonial War (1961–75).

(Forced labor for private purposes had been phased out in the British and French colonies much earlier, in 1930 and 1946 respectively. Labor–based taxes continued, however, as had been used in Europe in the nineteenth century and earlier.)

30 The reforms reduced uncertainty for investors and increased the free labor supply. As a consequence, the regions in which the Portuguese controlled security experienced robust development during the Colonial War periods (Ferreira 2006; El-Khawas 1974).

31 After independence, Angola and Mozambique officially became communist countries, although civil war broke out between groups supported by the Soviet Union and Cuba and other groups supported by the United States and South Africa (Newitt 1981). East-West geopolitics also played a role in foreign aid and to some extent in promoting coups between 1970 and 1992.

32 Patrice Lumumba had founded the Mouvement National Congolais (MNC) and drafted a demand for full independence for the Belgian Congo in 1958 (O’balance 2000: 2–10).
The Belgian government withdrew its troops, and Belgian expatriates fled the country, leaving the Congo with relatively few experienced administrators, as had happened elsewhere when there was little confidence that post-colonial governments would protect existing property claims or civil liberties (Roth 1979, p. 46). Lumumba became prime minister of Congo and obtained substantial Soviet aid (Okumu 1963, p. 186). He was assassinated in 1961. A few years later, General Mobutu seized power in a bloodless coup, and used emergency powers to hold on to office for more than three decades, renaming the country Zaire, nationalizing foreign firms, and using them as a source of patronage.33

3. The Great Unraveling: Constitutional Reforms during the First Decades of Independence

The results of negotiations in French and British Africa were constitutional documents that met European norms of that time. This was in part because a subset of Africans had been pressing for broader representation and authority for decades, in part because of shifts in European interests in Empire, and in part because of the constitutional norms of French and British negotiators. After independence, the rules for amendment changed, because French and British interests were no long directly represented in the bargaining and no longer had veto power over the results. The British and French former colonies demonstrate that shifts of sovereignty between countries and within countries can take place through peaceful negotiations. Threats of violence are not a prerequisite to constitutional reform, although shifts in interests and bargaining position are.

Independence, itself, provides a natural experiment with respect to constitutional bargaining theory. Insofar as bargaining in the French and British colonies was more liberal than Africans would have chosen themselves, subsequent constitutional reforms are likely to go in an anti-liberal direction. To the extent that some constitutions allow easier amendment or larger steps to be taken (possibly because of differences in eminent domain laws), there would be more and greater anti-liberal reforms in the less constrained countries.

33 Declassified Belgian archives reveal that the Belgium government had assassinated Lumumba with the aid of the United States to prevent Communist control of mineral fields (de Witte 2000). In 2002 the Belgian government officially admitted participating in the 1961 assassination of Lumumba and apologized to the Democratic Republic of the Congo. General Mobutu generally aligned himself with the West, and his government renamed the country Zaire. The official name became the Democratic Republic of the Congo after a coup removed Mobuto from office in 1997.
The reforms adopted after independence were largely consistent with this hypothesis. To establish this point, we provide a short overview of post-independence reform. Statistical tests of this theory are conducted in the next section.

The first African national elections were normally held under the auspices of the departing colonial power. In most cases, the party organizations of the various colonial independence movements won supermajorities in the new national assemblies and so controlled the first independent parliaments. The first presidents or prime ministers were similarly elected and were usually the most visible leaders of their independence movements. Most independence movements and their leaders had long advocated democratic governance, greater civil equality, and rule of law. Given that and the institutions in place, one might have expected the new African nation states to flourish in the next few decades under their European-derived institutions and African leadership.

The new elected independence parties often had supermajorities sufficient to engage in formal constitutional amendments, and European governments were no longer veto players in constitutional negotiations. As a consequence, most of the transitional constitutions were reformed during the years immediately following independence (Reid 2012, Ng'ong'ola 1992, Wasserman 1973). The general architecture of government was normally preserved, but rules for competitive elections and free press weakened, eminent domain rules revised, and new emergency powers were often created. The reforms led to one-party states with strong executive offices, and allowed many of the first generation of Africa’s national leaders to remain in office for decades.

Nonetheless, the reforms did not always produce the political security that their proponents evidently desired. The reforms made the executive office more enticing and often placed minorities at significant risk. As a consequence, most second and third generations of African rulers rose to office via coup d’État, rather than election. This was essentially the only route to high office after the first wave of constitutional reforms. In a few countries, coups were commonplace from the first days of independence, as in Benin and Nigeria, where a series of coups took place in the first decade of independence. In others, coups were few and far between. In general, many more coups were attempted than succeeded (Marshall 2006, Annex 2B).

Successful coups imply that the core procedures through which senior officials are supposed to be chosen are replaced *de facto* with other procedures, but without a formal
amendment. After a coup, the new office holders, nonetheless, often formally reform or suspend their constitutions. This evidently reflects the belief that a legal basis for governance is either itself important or sufficiently important to others to undertake these formal steps—especially in cases in which constitutional constraints conflict with the interests and routines of the new government leaders.

The early coups were normally organized by subsets of the former colonial military. Thus, the procedures adopted by the new leaderships tended to further undermine liberal constitutional procedures and norms, rather than strengthen them. Military organizations tend to be rule bound, but formal and informal military rules are quite different from the norms and procedures of democratic governance.34

Reforms of the Eminent Domain Provisions of Transitional Constitutions

Consistent with a constitutional exchange–based, incremental, theory of reform, constitutions were rarely rewritten whole cloth during the period after independence. Changes in a few sentences, however, are often sufficient to significantly change the *de jure* operation of a constitutional government. For example, takings clauses were often revised to make eminent domain easier to apply, without totally eliminating their protection or changing other civil liberties, the procedures for election, or term limits. Most of the former British colonies eliminated clauses guaranteeing that compensation for government expropriation could be requested in international currencies paid to foreign accounts. Many also eliminated some of the restrictions for the use of eminent domain. Several countries added new emergency power clauses that further reduced the necessity for compensation for expropriation, and in a few cases, eliminated the concept of private property as applied to land and mineral rights. Only Botswana and Mauritius kept all of their transitional constitution’s safeguards against property expropriation, including the repatriation clause for compensation (Read 1975; Ng’ong’ola 1992; Allen 2000).35

34 The risk of military coup was doubtless increased by the pre-independence organization and training of African forces. Only a handful of the native military officers of the colonial armies were trained at international military schools, where deference to civilian authority is the norm (Howe 2004, ch. 2).

35 Repatriation provisions were deleted from the constitutions of most countries partly because of exchange-rate issues after independence, including Kenya’s, which was also otherwise less inclined to reduce constitutional safeguards for eminent domain.
As a consequence, African mining and other mineral extraction businesses were often nationalized with little or no real compensation for their former owners, who were often large firms based in Europe.\textsuperscript{36} The appropriated land and mineral rights could then be sold or leased to provide government revenues, or run by the government to provide sources of revenue and patronage. In several cases, whole industries were nationalized under the revised eminent domain rules. In other cases, the taking was done extralegally through what is sometimes called “right of conquest” rules.\textsuperscript{37}

Such reforms by increasing the risk of expropriation tend to reduce inflows of foreign capital by increasing risks associated with long term investments, and so would have both political and economic consequences. Eminent domain procedures could also be directed against one’s political opponents, which would induce many to be silent on issues they might otherwise have spoken out against.

Marginal adjustments to the domains of customary, Muslim-, and European-derived civil law codes can have similar effects on the certainty of property claims and risks from opposing those in authority. In this manner, a series of subtle changes in language can gradually unravel the legal warp and weave of an initially liberal constitution that remains entirely in force, but is less and less constraining and liberal.

4. Recapitulation of the History and Theory for Purposes of Statistical Analysis

In the decade or two before independence, relatively liberal constitutions were negotiated between the British and French governments and leaders of their colonial independence movements, many of whom had been elected to high offices in the new representative assemblies of their colonial governments. The independence parties had supermajorities sufficient to adopt

\textsuperscript{36} Post-war governments in France and Britain also engaged in considerable nationalization, including many banks and utility companies.

It also bears noting that France and Britain did not always use formal eminent domain procedures during their periods of colonial rule, because Western legal codes were initially applied to only a subset of the residents of their colonies. Various combinations of tax and takings laws were sometimes used to encourage native owners and occupants to relocate to lower tax “reserves” analogous to the Indian reservations of the American West during this period. In places where European emigration was encouraged, as in Algeria, Kenya, and Rhodesia, large blocks of land (mostly unoccupied) were sometimes simply taken and transferred to European emigrants (Reid 2012, ch. 11).

\textsuperscript{37} Of course, it was not necessary to appropriate all these resources or businesses in order to extract revenues from them. The mere threat of expropriation would induce deference, jobs, bribes, and tax payments to flow to governments and their supporters.
constitutional reforms and did so. Unfortunately, the constitutional reform environment was generally illiberal, both domestically and internationally. The government officials themselves had political and economic interests that could be advanced by reducing political competition and increasing their discretion. Geopolitics during this period tended to reinforce these illiberal interests. Cold War subsidies helped to sustain “loyal” authoritarian regimes and often discouraged competitive elections in the period before the dissolution of the Soviet Union in late 1991. In such an environment, the constitutional bargaining model predicts a steady decline in the quality of institutions: a reduction in civil and political liberties and a general reduction in the rule of law.  

Consistent with the bargaining model, most of the new nations formally modified their constitutions after independence, rather than abandoning them—often weakening both electoral competition and the requirements for compensating owners for property taken for government purposes. Exceptions to the latter include Botswana and Mauritius, which retained the stringent protections embodied in their transitional constitutions (Read 1975; Ng’ong’ola 1992; Allen 2000). Tanzania, Ethiopia, and Mozambique represent the other extreme, where private ownership of farmland was formally eliminated (Ensminger 1998; Reid 2012, ch. 17).  

In an environment in which gains to trade among those with the authority to amend the constitution tend to favor weakening of constitutional protections with respect to civil and political liberties, the more constitutional moments there are, the more illiberal the resulting constitution tends to be. Similarly, the greater the scope for reform, the larger the individual reforms tend to be.  

Figure 1 illustrates the effects of initial position and scope for reform on a downward constitutional trajectory. Given two countries with initially high quality constitutional and legal

38 Formal procedures for amending constitutions have a long history in Europe that precedes the emergence of liberal constitutions by many centuries. For example, the written constitutions and grounding charters of medieval Europe normally required acceptance of proposed reforms by the noble and clergy chambers of parliament or by the government’s council of state. Medieval kings could not adopt such reforms by themselves (Congleton 2001, 2011). Similar requirements are also common for contemporary authoritarian regimes, which often have quite similar formal architectures. See Rasch and Congleton (2006) and Lutz (1994) for analysis of the effects of amendment rules in contemporary democracies.  

39 Customary law in much of Africa had included concepts similar to private property, although as in medieval Europe, those rights normally could not be easily transferred or sold to others outside families.
systems (at time $T_0$), unraveling tends to be greater and faster in the more shocked, less-constrained polity, with a resultant lower quality institutional environment (at $T_2$).

Figure 1: Bargaining within Broad or Restricted Domains of Constitutional Bargains during an Anti-Liberal Period

Toward the end of the twentieth century, a more liberal domestic bargaining environment emerged with both domestic and international support for liberalization of legal and political systems, and one would anticipate that the direction of reforms would shift in a liberal direction.\footnote{For example, the 2013 report of USAID’s Strategy on Democracy, Human Rights, and Governance (p. 41) states that “the 1990s became the turning point in USAID’s involvement in democracy promotion.” Kimenyi and Shughart (2010) provide evidence of popular support for liberal reform in Kenya in the post 2000 period with competitive national elections and support for liberal constitutional reform, with, for example, reduced executive authority.} There is no democratic or liberal “lock in” or “lock out” in a bargaining-based theory of constitutional reform, only circumstances that favor one or another direction for reform.

Data

Our statistical analysis of the theory focuses on the more or less common point of departure at independence ($T_0$) and the final result of bargaining after a series of unobserved bargains are reached ($T_2$). We assume that illiberal reforms are most likely to be adopted at times of crisis, because these often produce new tradeoffs (economic and political benefits and costs) that favor centralization of authority over civil liberties. With this in mind, data on civil wars (from Arnold 2005), and number of coups (from Marshall 2006) between 1960 and 1998 were
collected as indicators of the number of constitutional moments.\textsuperscript{41} Our results suggest that threats tended to undermine independence constitutions in Africa.

In addition, data were collected for communist aid (from Arnold 1979), because insofar as that aid was at all conditional, it tended to directly favor centralization and reductions in civil liberties. Soviet bloc countries were of course known for both in the period of interest. Illiberal reforms are more likely to take place when aide is negotiated and accepted from anti-liberal governments or agencies, because such conditional grants create new gains from constitutional exchange.

Additional constitutional moments may also emerge during normal time, so these measures somewhat undercount constitutional moments. These, however, are less likely to be unidirectional and more likely to be reflect idiosyncratic (random) effects. An index for illiberal constitutional moments or “unraveling tendency” is created by adding binary values for civil war, communist aid, and coup attempts. Colonial origin is used as a proxy for the initial quality of political and legal institutions for reasons indicated in the historical overview. The independence institutions of the former French and British colonies served as initial conditions for subsequent constitutional developments.

Reverse causality issues are addressed in several ways. First, the point of departure is the independence constitutions, which were of similar quality throughout French and British Africa and can be regarded as substantially exogenous, because of the British and French veto power over the provisions of the independence constitutions and control over the status quo ante. Second, we estimate contemporary institutional quality as a function of past constitutional quality and number of constitutional moments. This is an estimation strategy often used in studies of the effects of institutions on government growth to minimize the possibility of reverse causality.\textsuperscript{42} The independent variables are from a substantially earlier period than the dependent variables, which reduces both simultaneity and intertemporal problems associated with variable

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\textsuperscript{41} Besley and Reynal-Querol (2014) suggest that civil wars in the post independence period were of ten continuation of conflicts from the pre-colonial period. What is important for the purposes of this paper is not their historical origin, but that civil wars tend to create potential gains to constitutional exchange. Besley and Perrson (2010) note that civil wars do not generally increase state capacity for taxation. We find that they tend to undermine national institutions.

\textsuperscript{42}This methodology has been broadly used in the development literature as an alternative to panel studies for similar reasons. See for example, Acemoglu and Johnson 2007 or Nunn 2012.
lag structures. Contemporary institutional quality of could not affect the number of coups or civil wars decades before (unless the present institutions were already in place, which they were not). However, the reverse—our maintained hypothesis—is clearly possible.

Third, with respect to the risk of coups, a single coup attempt could be correlated with institutional quality at the time of the coup, because poor institutional quality may encourage or allow coups to occur. However, it is clear that individual coups all benefit from surprise, other things being equal. This makes them exogenous shocks as far as the government being replaced is concerned. It is that government that could attempt to head off quality of institution based coup attempts through constitutional reforms. A series of coup attempts greater than 2 or 3 can thus be regarded as random events from the point of view of both the initial government and the subsequent one (the leadership of the first successful coup). Our use of coups greater than 2 and the surprise element of every coup, together with the high quality of the independence constitutions, thus breaks the possible linkage between initial institutional quality and subsequent reforms. That so many coups occurred in the first decades of independence suggests that individual coups were generally not efforts to liberalize formal institutions nor caused by poor institutions.43

We first focus for the most part on the present quality of the political and legal institutions of the former French and English colonies. These colonies essentially all began independence with constitutions of high quality. Contemporary institutional quality can be measured in a number of ways, and we somewhat arbitrarily use a rule of law measure from a recent World Bank Study (Kaufmann, Kraay, and Mastruzzi 2007) and the Civil Liberty Index of the Freedom House. The Kaufmann et. al. (2007) Rule of Law Index measures the strength of property law: quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. We use the 10-year average for 1998–2012 as our dependent variable for the quality of legal institutions.44 We also use a similar average of

43 In addition, as Shvetsova (2013) argues, constitutional reformers and other policy makers in the first decades after independence were not likely to have sufficient information or well-developed theories to fully anticipate the effects of their reforms on subsequent generations of leaders who may need to adjust to quite different internal and external circumstances. This also reduces our concern with reverse causality.

44 We use the most recent values for the Rule of Law Index. The index values for the Kaufmann, Kraay, and Mastruzzi (2007) indicators have recently been updated. They are available at: http://info.worldbank.org/governance/wgi/index.aspx#home.
Freedom House’s Civil Liberty Index (1998–2014), which is a more encompassing measure of institutional quality. The Freedom House index includes rule of law indicators and various civil liberty indicators, including political speech and assembly rights. Both indicators provide useful tests of the bargaining theory of constitutional reform. Forward-looking authoritarian regimes may favor property law yet oppose political civil liberties, although both sorts of rights were initially guaranteed by the independence constitutions.

In addition, we collected data on two other factors thought to influence institutional quality: ethnic fractionalization (from Alesina et al. 2003) and pre-colonial population density (from Parker 1997), which can be regarded as indicators of the quality of pre-colonial institutions. Table 3 provides descriptive statistics for the data used in the estimates developed below.

<table>
<thead>
<tr>
<th>Table 3: Descriptive Statistics for All African Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mean</strong></td>
</tr>
<tr>
<td>Rule of law (average 1998–2012; a high number denotes good institutional quality)</td>
</tr>
<tr>
<td>Civil liberty (average 1998–2013; a low number denotes good institutional quality)</td>
</tr>
<tr>
<td>Unravel index</td>
</tr>
<tr>
<td>Civil war</td>
</tr>
<tr>
<td>War of succession</td>
</tr>
<tr>
<td>Communist aid</td>
</tr>
<tr>
<td>British</td>
</tr>
<tr>
<td>British-keep all</td>
</tr>
<tr>
<td>British-keep few</td>
</tr>
<tr>
<td>French</td>
</tr>
<tr>
<td>Portuguese</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
<tr>
<td>Ethnic fragmentation</td>
</tr>
<tr>
<td>Population density in 1400 (log)</td>
</tr>
<tr>
<td>Coup attempts (greater than 2) before 1998</td>
</tr>
</tbody>
</table>

**Estimation Strategy and Estimates**

The estimation strategy takes advantage of the uniformly high institutional quality of the transitional constitutions in most of the former British and French colonies at independence.
Bargaining theory suggests that the initial institutions of the former British colonies should be somewhat more resistant to unraveling than those of the former French colonies, other things being equal, because of differences in eminent domain laws and constitutional negotiations. Thus we anticipate a negative sign on the French fixed effect variable in the civil law estimates and positive sign in the civil liberty estimates, where higher numbers indicate lower institutional quality. In the Portuguese and Belgian cases, institutional quality was of lower quality, because constitutional negotiation took place in a shorter period and those at the table were less interested in, or perhaps less able to obtain, legal and political safeguards in their quickly negotiated transitional constitutions and independence treaties.

We first estimate a series of model specifications that focus on the initial quality of institutions and number of constitutional crises within the former British and French colonies. These are followed by estimates that include variables that other studies have found to be important determinants of institutional quality and by similar estimates for all of Africa. In general, we find that unraveling pressures account for much of the institutional diversity among contemporary African nations. The third series of estimates includes the effects of weakening eminent domain laws on the unraveling process within the British and French colonies. These would directly affect the domain of constitutional bargaining for reasons developed above.

The models estimated all have the general form:

\[ I_i^T = \alpha I_0^i + \beta U_i^t + \chi C_0^i + \nu_i^T \]  

Where \( I_i^T \) is an index of average institutional quality for country \( i \) from the post 1998 period. \( I_0^i \) is a binary measure of institutional quality for country \( i \) at independence, which is proxied by its colonial ruler for reasons developed above. \( U_i^t \) is a measure of illiberal pressures and opportunities for reform in country \( i \) in the period after independence, but before 1998. \( C_0^i \) is a matrix of other initial cultural and institutional conditions that may have affected subsequent institutional quality through effects from norms, conflict, and sub-national governance. \( \nu_i^T \) is a random variable reflecting the irregular effects of other factors beyond the scope of the analysis.

Table 4 reports estimates for the former British and French colonies. Coefficients for the unraveling variable have the expected signs (positive in the civil law estimates and negative in the civil liberty estimates). They are statistically different from zero at the .01 significance level in each estimate. The French origin variable is also significantly different in the civil law estimates and has the predicted sign, but not in the civil liberty estimates (although the sign is the
predicted one). Model fits are relatively good; all F-statistics are significant at 5 percent levels or better. No other independent variable has a statistically significant coefficient, nor is the R-square increased by their inclusion. Overall, these results suggest that starting point and anti-liberal constitutional moments (crises) are important determinants of contemporary institutional quality among former French and British colonies. Ethnic fractionalization and precolonial institutions are evidently less so.45

Table 4: Estimates of Institutional Quality: Former British and French Colonies

<table>
<thead>
<tr>
<th></th>
<th>Quality of Civil Law Institutions</th>
<th>Quality of Civil Liberty Protections</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Unravel</td>
<td>–0.48**</td>
<td>–0.53**</td>
</tr>
<tr>
<td>(t-value)</td>
<td>(–4.72)</td>
<td>(–5.53)</td>
</tr>
<tr>
<td>French</td>
<td>–0.42*</td>
<td>–0.39*</td>
</tr>
<tr>
<td>(–2.69)</td>
<td>(–2.43)</td>
<td>(1.59)</td>
</tr>
<tr>
<td>Ethnic Fragmentation</td>
<td>–0.23</td>
<td>–0.93</td>
</tr>
<tr>
<td>(–0.69)</td>
<td>(–1.15)</td>
<td></td>
</tr>
<tr>
<td>Log Population</td>
<td>–0.02</td>
<td>0.18</td>
</tr>
<tr>
<td>density in 1400</td>
<td>(–1.13)</td>
<td>(1.10)</td>
</tr>
<tr>
<td>Constant</td>
<td>–0.11</td>
<td>0.16</td>
</tr>
<tr>
<td>(–0.79)</td>
<td>(0.98)</td>
<td>(1.13)</td>
</tr>
<tr>
<td>F statistics</td>
<td>22.32**</td>
<td>16.65**</td>
</tr>
<tr>
<td>Adjusted R-squared</td>
<td>0.35</td>
<td>0.45</td>
</tr>
<tr>
<td>Breutsch-PaganTest</td>
<td>0.00</td>
<td>0.19</td>
</tr>
<tr>
<td>Statistic for</td>
<td>Accept</td>
<td>Accept</td>
</tr>
<tr>
<td>homoskedasticity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(chi square) H0:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant Variance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>39</td>
<td>39</td>
</tr>
</tbody>
</table>

* Significant at 5% level, ** Significant at 1% level.

Note: T-values in parentheses.

45 Similar results were found using specification that included fixed-effect variables for Mediterranean Coast and percent Islam, the coefficients for which were indistinguishable from zero. The results were also unaffected using bootstrapped calculations of standard errors for the T-statistics. LAD estimates were generally similar but with higher standard errors.
Table 5 reports similar estimates for all African countries, including countries in which the transitional constitutions and treaties were less carefully negotiated, although still present to some extent. These estimates require additional adjustments for differences in initial institutional quality; thus, binary variables for both Britain and French origin are included. Coefficients for the unraveling variable are of the expected sign and statistically different from zero at the .01 significance level in every estimate but one. The model fits are again very good, with F-statistics significant at the .01 level.

The British binary variable is significant and positive in the legal institutional quality estimates and negative in the civil liberty estimates, although not always statistically distinguishable from zero. The French binary variables have a similar pattern, but the coefficients are smaller in magnitude than those of the British binary variables. This is consistent with the hypothesis that the British transitional institutions were of somewhat higher quality than the French ones, possibly because of differences in eminent domain laws or possibly because British colony-by-colony negotiations produced somewhat more robust constitutions.

Ethnic fractionalization and population density are again not statistically from zero. These results again suggest that the starting point and unraveling tendencies are the main determinants of contemporary institutional quality in Africa, rather than ethnic diversity or precolonial institutions. Together the two sets of estimates suggest that the evolution of constitutional law in the former colonies of Portugal and Belgium are more affected by pre-colonial institutions and ethnic fractionalization than the French and British former colonies, which is consistent with their non-negotiated paths to independence.

**Table 5: Estimates of Institutional Quality, All African Countries**

<table>
<thead>
<tr>
<th></th>
<th>Quality of Civil Law Institutions</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
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</tr>
<tr>
<td>Unravel (t-value)</td>
<td>–0.42**</td>
<td>–0.45**</td>
</tr>
<tr>
<td>British</td>
<td>0.44*</td>
<td>0.40*</td>
</tr>
<tr>
<td></td>
<td>(2.42)</td>
<td>(2.14)</td>
</tr>
<tr>
<td>French</td>
<td>0.05</td>
<td>0.05</td>
</tr>
<tr>
<td></td>
<td>(0.29)</td>
<td>(0.30)</td>
</tr>
<tr>
<td>Ethic fragmentation</td>
<td>–0.43</td>
<td>–0.41</td>
</tr>
<tr>
<td></td>
<td>(–1.42)</td>
<td>(–0.55)</td>
</tr>
<tr>
<td>Log Population density in 1400</td>
<td>–0.06</td>
<td>0.23</td>
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</table>
## Additional Evidence: Eminent Domain and the Unraveling Process

Among the clearest constraints on policy and constitutional bargaining are those that determine the domain of the public and private sectors. If item $X$ is not under the direct control of the government, authority over $X$ cannot be traded for support of new public policies or used as part of a bargain that produces a constitutional reform. Under strong eminent domain laws, a private office building cannot simply be taken from its owners and used to provide office services for the national bureaucracy. The owners must be compensated and a clear public purpose must be advanced. When eminent domain laws are weaker, taking a private office building or mine and reassigning it to the public sector or transferring ownership to a critical supporter becomes easier and less expensive.46

Strong versions of eminent domain clauses were included in the transition constitutions negotiated between the British and leaders of colonial independence movements as noted above. A direct test of the effect of constitutional constraints on the trajectory of constitutional reform is possible using Ng'ong'ola’s (1992) classification of eminent domain laws. He divides former British colonies into three categories according to the degree to which those countries formally

46 Epstein’s (1985) classic book on takings provides a variety of normative defenses of the eminent domain principle, many of which are based on social contract theory. He suggests that “takings law” is one of many ways to constrain a government and protect minority rights. Eminent domain rules also make private property claims more certain, which tends to increase their value and encourage improvement and investments in capital goods receiving similar protection. Partly as a consequence of these ideas, essentially all Western constitutions had such clauses by 1900.

### Table: Regression Results

<table>
<thead>
<tr>
<th></th>
<th>Constant</th>
<th>F statistics</th>
<th>Adjusted R-squared</th>
<th>Breutsch-PaganTest</th>
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</thead>
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<tr>
<td></td>
<td>-0.23†</td>
<td>21.98**</td>
<td>0.29</td>
<td>Accept</td>
</tr>
<tr>
<td></td>
<td>-0.38*</td>
<td>10.80**</td>
<td>0.36</td>
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<td>-0.15</td>
<td>7.23**</td>
<td>0.38</td>
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<tr>
<td></td>
<td>3.55**</td>
<td>9.17**</td>
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<td></td>
<td>3.75**</td>
<td>4.04*</td>
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<td></td>
<td>4.26**</td>
<td>2.85*</td>
<td>0.16</td>
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<tr>
<td></td>
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<td>(12.19)</td>
<td>(8.97)</td>
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</tr>
<tr>
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<td>(–1.93)</td>
<td>(–2.27)</td>
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<tr>
<td></td>
<td>(1.59)</td>
<td>(7.24)</td>
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</tr>
</tbody>
</table>

Note: T-values in parentheses.
† Significant at 10% level, * Significant at 5% level, ** Significant at 1% level.
repealed provisions of their transitional constitutions with respect to eminent domain laws. Only a few countries kept all restrictions, including the right to receive compensation in the currency of one’s choice. Several repealed essentially all protections, and the rest repealed intermediate levels of their initial constitutional provisions for protection of private property.

Constitutional bargaining theory implies that the countries that initially weakened their eminent domain laws the most would tend to have the weakest contemporary legal and political institutions, other things being equal, because of their broader domains for constitutional bargaining. To test this hypothesis, we first estimate lean models of contemporary institutional quality using colonial origin for the former French and British colony data set. Only a French binary variable is included. The British colonies are used as the reference group. The French binary variable does not have a statistically significant coefficient in this first estimate, and the F-statistic for that regression is not statistically distinguishable from zero. The second series of estimates includes binary variables for two of the three Ng'ong'oala categories; the “kept all” group is the excluded (reference) group. The coefficients on the other two categories and the French origin variable are all statistically significant and have the predicted signs and relative magnitudes. The weaker eminent domain laws were (in 1992), the lower the quality of contemporary legal institutions and civil law protections.

We augment this bare-bones model by including the unravel index, which has the expected effect on legal and civil liberty institutions, without affecting the order of magnitude or significance of the eminent domain variables. Last, we include ethnic fractionalization and log of population density in 1400. As in the previous runs, these generally are not statistically different from zero at conventional levels of significance.

<table>
<thead>
<tr>
<th>British</th>
<th>Ref</th>
<th>Quality of Civil Law Institutions</th>
<th>Ref</th>
<th>Quality of Civil Liberty Protections</th>
<th>Ref</th>
</tr>
</thead>
<tbody>
<tr>
<td>British-kept all</td>
<td>Ref</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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<tr>
<td>British-kept some</td>
<td>–1.42**</td>
<td>–0.71**</td>
<td>0.83**</td>
<td>2.23*</td>
<td>1.37</td>
</tr>
<tr>
<td>(t-value)</td>
<td>(–3.30)</td>
<td>(–3.39)</td>
<td>(–3.06)</td>
<td>(2.48)</td>
<td>(1.48)</td>
</tr>
<tr>
<td>British-kept few</td>
<td>–1.57**</td>
<td>–1.10**</td>
<td>–1.18*</td>
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<tr>
<td>(t-value)</td>
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<td>(–2.66)</td>
<td>(–2.40)</td>
<td>(2.34)</td>
<td>(1.87)</td>
</tr>
<tr>
<td>French</td>
<td>–0.25</td>
<td>–1.55**</td>
<td>–1.10**</td>
<td>–1.17**</td>
<td>0.38</td>
</tr>
<tr>
<td>(t-value)</td>
<td>(–1.21)</td>
<td>(–3.66)</td>
<td>(–6.08)</td>
<td>(–5.25)</td>
<td>(0.92)</td>
</tr>
</tbody>
</table>
The overall pattern of coefficients and their significance are consistent with the constitutional bargaining model. The weaker eminent domain laws and more frequent constitutional crises were, the more unraveling took place. From this perspective, it is not a coincidence that Botswana and Mauritius are among the most successful African states. They both preserved their initially strong eminent domain clauses and, partly as a consequence, many other liberal provisions of their transitional constitutions.47

Together, the three sets of statistical results and the historical overviews provide support for the bargaining model of constitutional reform and its relevance as an explanation for the variation in contemporary African institutions. The countries that weakened their eminent domain protections most and experienced the greatest unraveling pressures tend to have the

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47 A similar situation is observed in the commonwealth countries in the Caribbean and the Pacific. Among the Caribbean island countries, St. Kitts and Nevis and St. Lucia have clauses in their constitutions about repatriation. In contrast, the Jamaican Constitution states that if the property owner has indirectly benefited from a public project, then the owner has no claim to direct compensation. Among the Pacific islands countries, Fiji has a constitutional clause about repatriation (Allen 2000, ch. 3).
weakest contemporary property and civil liberty protections.\textsuperscript{48} The effects of ethnic fractionalization and precolonial institutions are evidently important only insofar as they contribute to unraveling pressures—that is to say, coups and civil wars.

5. Conclusions

The incremental theory of institutional evolution argues that the institutions we observe today emerged from a long series of historical reforms, many of which were unrecorded, but which continue to have effects on the general structure of constitutional governance through affects on contemporary institutions and the trajectory of reform. In the colonial period, incremental reforms occurred that were generally in a liberal direction. Participation in the policy making process was extended to include more Africans and electoral institutions created and extended. Within urban centers newspapers were uncensored and commonplace. Independence emerged after W. W. II, largely as a consequence of postwar politics in the colonial powers, commitments made during the war, and negotiations with politically active African groups. The liberal trend in institutional reforms reversed after independence.

Nonetheless, most African countries began independences with constitutions of high quality. That a relatively large number of countries began independence at about the same time with high-quality macro political and legal institutions, allows statistical tests of the incremental reform theory to be undertaken. Subsequent bargaining would naturally tend to produce constitutional differences among the former colonies. In a setting that favored illiberal over liberal reforms, the more reforms adopted and greater the domain of bargaining, the greater would tend to be the reductions in institutional quality.

Both the history and statistical evidence are consistent with that account of the post-independence period. The historical overviews suggest that formal reforms were adopted in the post-colonial period. The statistical analysis suggests that the greater the pressures for illiberal reforms, the more illiberal institutions came to be. The latter were partly generated by external

\textsuperscript{48} In addition to the results reported above, we also examined other possible factors that might be argued to affect institutional quality such as those associated with the resource curse. In regressions that included the unravel index, none had coefficients that were statistically different from zero. These included the log of average gold production, the log of average oil production, and the log of average diamond production (from Nunn 2008). In our model, such production levels would reflect interactions between natural endowments, opportunities for constitutional bargaining, and property protections.
pressures (conditional grants) associated with the Cold War in that period. Our indicators, arguably, tend to underrepresent the number of constitutional moments; although they do pinpoint moments at which sitting governments would find it advantageous to reduce property and civil liberty protections. In general, the broader the scope for reform and the more frequent the opportunities to consummate constitutional bargains, the worse the final institutions tended to be as measured by contemporary indices of institutional quality, which for the most part are indices of the liberality of legal and political institutions.

Our historical overview and statistical results also suggest that part of the difference in institutional quality of present day African governments reflects differences in the quality of their independence constitutions. The British independence constitutions were somewhat more stable than their French, Portuguese, and Belgian counterparts. The statistical results suggest that differences in the laws governing eminent domain account for part of the difference in the trajectories of institutional reform.

Our analysis also suggests that external support for liberal reforms is likely to improve the future trajectory of political and legal institutions in Africa; although it has not yet undone the effects of the first three decades of constitutional reform.
References


