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"What was the purpose of your visit to Russia?" The year was 1995, and I was on a Moscow-Kyiv train carrying mostly Ukrainian chelnoki or "shuttletraders," a common phenomenon in the destitute 1990s. The man asking this question had just burst into our compartment with three bulky pals, all dressed in black leather jackets. The train had barely left Moscow, and the man's official-sounding inquiry was strange. The customs inspection at the Ukrainian border was still hours ahead, and the men resembled bandits more than state officials. They were bandits. The enterprising gentlemen made us an offer: either to show them all the cash we had, in which case they would take half of it, or to let them search us forcibly, in which case they would take all the money they could find. Being a teenager with no luggage at the time proved a blessing for me. My not-so-lucky neighbor saw himself rough-handled, his suitcases emptied, and his money confiscated; the men then proceeded to "clean" the next compartment. Half an hour later, the train made an unscheduled stop in the middle of a wheat field. Still in shock, I looked outside and saw the band get off, after which the train promptly resumed its journey. That the train conductors were in cahoots with the gang had been obvious; that the locomotive engineer was, too, surprised me. This incident may not have sowed the germs of my interest in property rights, but I stopped finding train robbery scenes in the Westerns amusing.

Fifteen years later, as an assistant professor, I received a phone call from a British law firm seeking an expert in Russia's recent business history for the upcoming 6-billion-dollar battle between two Russian oligarchs at London's High Court. (Full disclosure: I did not testify.) Once the lawsuit became public in 2011, unforgettable tragicomedy ensued. Putin's exiled nemesis, late Boris Berezovsky, accused the Putin-friendly oligarch (and Chelsea Football Club owner), Roman Abramovich, of forcing him to sell certain assets below their fair value in the beginning of the 2000s. Not to be outdone, Abramovich denied

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that Berezovsky had ever owned these assets, asserting that his payments to Berezovsky were intended as a reward for political protection rather than asset purchase – protection which Berezovsky could no longer provide after Putin came to power. Billed by the media as the biggest personal lawsuit in history, the proceedings proved an embarrassment to Russia and a windfall for the British legal profession. Of course, the lawsuit was "personal" in *de jure* terms only. *De facto*, Putin's Kremlin was implicated as the main threat to Berezovsky's property rights, having allegedly presented Berezovsky with the dilemma of a cheap sale today (to Abramovich) versus an inevitable expropriation tomorrow (by the state).

These two stories capture a common – but only partly correct – view of what jeopardizes the security of property. On the one hand, *state absence* allows private thugs to rob citizens and business owners. On the other hand, *state dominance* raises the specter of sovereign threats to tycoons' property rights. The conventional story of Russia's post-communist (d)evolution, accordingly, views the 1990s as the reign of private mafias and the post-2000 period as one defined by the Kremlin's threats of expropriation. As the two anecdotes here suggest, there is much truth to the "absence-dominance" view of the state's role in undermining property rights. However, this book argues that in the new millennium, it is state *weakness*, conceived as the inadequate control of the sovereign over his bureaucratic apparatus, that constitutes the main threat to property rights (PR) in countries such as Russia and Ukraine. The conceptual shift from state absence or dominance to state weakness in PR theorizing generates profound implications for available paths to secure property.

The book advances three logically connected arguments. First, the *conventional diagnosis* of what makes property rights insecure in modern developing states is incomplete. I argue that the most pervasive threats to PR arise less from the unchecked strength of the state ruler and more from state weakness: less from the executive center and more from the bureaucratic periphery. Importantly, my argument is that the low-level bureaucrats jeopardize not only the income rights of entrepreneurs, as per the literature on corruption, but the *ownership* itself; I conceptualize this process as "agent predation" and juxtapose it with the expropriation by the ruler as well as petty corruption. It is not the bully in the penthouse but the termites in the basement that often undermine the edifice of secure property.

Second, the *conventional solution* to insecure ownership fails in the context of such disorganized, low-level threats to property rights. Specifically, institutional constraints on the state principal do *not* improve the security of property rights because the ruler cannot "commit" on behalf of his staff. This argument strikes at the core of the PR literature preoccupied with modeling the ruler's commitment to PR. Principal-agent dilemmas in the state apparatus decouple the much-praised sovereign commitment from ownership security.

Third, the *novel solution* to insecure property rights involves firm-level strategies rather than macro-institutional design. In particular, alliances with



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stakeholders such as labor, adjacent communities, and foreign actors can be employed by firms facing weak states to secure property rights. Furthermore, I argue that these bottom-up, non-state solutions may facilitate the development of rule of law; this argument complements the existing narratives of "political will" and "legal reform" as the main paths toward rule of law.

Overall, this volume urges a reconceptualization of the emergence of secure property rights as such. The literature tends to view conflicts over property as epic elite battles whose institutionalized outcome determines national PR security for generations. Yet the significance of agent predation as well as firms' bottom-up "voice" strategies imply that PR conflicts resemble guerilla warfare in which local alliances matter and victory is incremental.

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Property rights' security fundamentally determines economic growth by influencing investment, worker productivity, credit availability to the private sector, stock market development, as well as the extent of risk-sharing and division of labor in economic life. The consensus on PR security as the key determinant of economic development is not limited to the academic community; the well-respected mammoth World Bank study "Where is the Wealth of Nations?" highlights the security of PR as far more important than the availability of man-made capital or natural resources.²

At the political level, PR security constitutes a key ingredient in the elusive ideal of "rule of law." Liberal³ and conservative⁴ thinkers alike have argued that protected private property provides a primary check on governmental discretion by granting dissidents independent bases for existence (and resistance). Using the example of seventeenth-century England, North and Weingast treat political liberties as historically contingent on PR security.⁵ As in the case of economic growth, the link between PR security, democracy, and rule of law has found support among policymakers.⁶ Overall, empirical evidence suggests that secure property rights promote both economic growth and democratization.⁷

Even *more* fundamentally, PR security influences the processes of state formation and state failure. Machiavelli, no friend of nonsense, argued that secure hereditary property rights are the basis of a strong republic, incentivizing citizens to produce more future soldiers (babies) who in turn will have a stake in

- E.g., Acemoglu et al. 2001; Johnson et al. 2002; Baumol 1990; Keefer and Knack 2002; Hall and Jones 1999; Malesky and Taussig 2008; Asoni 2008; Claessens and Laeven 2003.
- ² World Bank 2006.
- ³ Schlesinger Jr 1997, 7.
- 4 Friedman 1962.
- ⁵ North and Weingast 1989.
- ⁶ Hutchison 2005.
- ⁷ E.g., Acemoglu and Johnson 2005; Leblang 1996; North and Thomas 1973; Rosenthal 1992; Stulz 2005.

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defending the state.⁸ State formation, Margaret Levi argues, is firmly associated with the imperative of defining and defending property rights lest the society remain in the grip of Hobbesian predatory nightmare.⁹ Empirically, predation writ large has been shown to trigger wholesale state failure in Africa¹⁰ and state obliteration in the case of the USSR.¹¹

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The scope of secure property rights' impact and the robustness of pertinent findings in numerous studies grant an almost magical quality to these institutions. It may seem that PR-related literature has settled into a consensus, if not complacency, now limiting itself to robustness checks.¹²

However, two fundamental debates still rage. One debate concerns PR *allocation*. Although the superiority of private over state or community ownership for economic outcomes was long taken for granted,¹³ the post-communist transition has shaken this axiom. "Hybrid" public-private property rights seemed to achieve superior results in the Chinese countryside as well as in the East European industrial settings, while rapid privatization in the absence of supporting market institutions brought questionable benefits to polities such as Russia.¹⁴

The second debate – which this book focuses on – addresses the *determinants* of PR *security*. For while there is accord that PR security rivals the proverbial apple pie, less agreement exists on how to bake it. That, in turn, cannot be answered without addressing the logically prior question of *what threatens* PR. Ownership claims remain unsettled in much of the developing world. The

- 8 Machiavelli 1998, II.2-II.3.
- ⁹ "The state is a response to the Hobbesian dilemma, that it is in every individual's interest both to make a contract and then, at the first advantageous opportunity, to break it. The state changes the calculation of advantage by socializing people to uphold contracts and by punishing people who break them. More precisely, the state defines property rights, without which there would be no economic growth of production." Levi 1981, 435.
- 10 Bates 2008.
- 11 Solnick 1999.
- This is *not* to say that such studies are unimportant, particularly when they correct hugely influential prior findings. For a successful example questioning Acemoglu and Robinson's work on colonial-era property rights and development, see Fails and Krieckhaus 2010.
- 13 Boycko et al. 1997.
- Some of the best literature on hybrid PR follows the tradition of economic sociology by stressing the "embeddedness" of economic actors in their sociopolitical context. Unlike the institutionalist approaches in political economy, the embeddedness-based frameworks tend to view the joint state-private ownership of assets, and state-private networks more generally, as a *positive* phenomenon in the developing world. In contrast to the embeddedness literature, the framework in this volume (1) focuses squarely on the *post*-privatization issues of PR security and (2) emphasizes the *non*-consensual "voice"-based strategies of firms vis-à-vis the state actors. Oi and Walder 1999; McDermott 2002; Schoenman 2014; Post 2014.



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specter of forceful interference with property rights ruins legitimate businesses, triggers revolutions, and drains the global economy of immeasurable riches. The problem of how societies end up in – and might escape from – the equilibrium of insecure PR has emerged as the crux of "interpreting recorded human history." ¹⁵

Orthodox answers to the core questions of this study – what threatens property rights, and how can they be secured? – boast a long intellectual pedigree. Hume and Hobbes, in particular, offer critical early insights. (Not to spite Locke, but he was rather concerned with ethical justifications of private PR *allocation* in the context of original appropriation.)

For Hume, people have been at war over property since the dawn of time. This quasi-permanent struggle or the possibility thereof, Hume argued, denies the option of stabilizing any particular distribution of property by referring to the ideal of fairness. Instead, hope is in the *self-interest of private predators* who, being fairly equal in their capacities, see the promise of peace. ¹⁶ PR security for Hume is essentially a social convention "enter'd into by all the members of the society to bestow stability on the possession of ... goods." ¹⁷ Only much later does the state reinforce these informal understandings.

Hobbes likewise ascribes the chaotic violence in the state of nature to people's intrinsic desire to possess (and their readiness to act on it). However, as far as hope goes, *sovereign authority* is the *sine qua non*: embodying the collective will, the Leviathan leads people out of their predicament by allocating and enforcing property rights. The sovereign possesses "the whole power of prescribing the rules whereby every man know what goods he may enjoy.... For before constitution of sovereign power ... all men had a right to all things, which necessarily causes war." ¹⁸

Contemporary literature descends, to a large extent, from these two classical approaches. Studies focusing on stateless tribes and societies tend to follow Hume by examining how private actors achieve predictability in property relations. Inquiries into PR security in states, conversely, echo Hobbes by inquiring how Leviathans secure property in their respective domains.

Neither approach, I argue, is well-suited for the settings in which, on the one hand, state institutions penetrate society and control private violence but where, on the other hand, these institutions do not form a coherent "Leviathan." Severe principal-agent dilemmas may plague the state apparatus even after the government has monopolized the use of violence. In fact, it is the combination of state agents' control of coercion *and* the lack of the state principal's control

¹⁵ North et al. 2009.

¹⁶ "I observe that it will be for my interest to leave another in the possession of his goods, provided he will act in the same manner with regard to me.... When this common sense of interest is mutually express'd, and is known to both, it produces a suitable resolution and behaviour." Hume 1978, 490.

¹⁷ Ibid., 489.

¹⁸ Hobbes 1958, 148.



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of state agents that gives rise to the phenomenon of agent predation, shifting the primary locus of state threats to PR down the administrative chain of command. This shift in our understanding of PR *threats*, in turn, forces a revision of the axiomatic institutionalist *prescriptions*. Before elaborating this revision, let us review the contemporary scholarship on PR security.

Threats to Property Rights

What threatens PR in modern developing states? The literature stresses two sources of threats. First, state failure involves the privatization of violence leading to widespread plunder. Africa's "warlord politics" in the resource-rich Liberia, Sierra Leone, and the Democratic Republic of the Congo furnishes a prime example of top-down predation by strongmen and the associated militias. 19 In most failed states, predation is accompanied by "the militarization of civic society below."20 In Russia, the government's withdrawal from law enforcement in the 1990s resulted in violent PR disputes, including midday assassinations of business rivals, leading scholars to conclude that "the hidden hand of the market in post-Soviet Russia has its index finger on the trigger of a Kalashnikov."21 The marauding gangs of New Orleans in the wake of localized state collapse following the 2005 hurricane Katrina remind us that the connection between state failure and looting is not limited to the developing world. Overall, the literature castigating state vacuum has effectively countered what Margaret Levi calls "one of the most nefarious effects of the neoliberal revolution [which] is to disguise how much we depend on government infrastructure, both physical and social."22

Second, excessive power of the state over economic subjects substitutes *expropriation by the ruler* for private PR threats. In Weingast's canonical formulation, "a government strong enough to protect property ... is also strong enough to confiscate the wealth of its citizens." In settings as diverse as those of Sparta after the Peloponnesian War, medieval Europe, Mamluk Egypt, and, more recently, Mexico, Russia, Bolivia, the Philippines, Ecuador, Indonesia, Venezuela, and other developing economies, the state ruler – also referred to as "the sovereign" – emerges as the key PR threat. Hedward I confiscated the wealth of the Jews, and Phillip IV confiscated the wealth of the Templars. The communist and, to a much lesser extent, fascist regimes of the twentieth century expropriated whole layers of their populations. In the developing countries, foreign investors have often been the target of full-scale state nationalization:

¹⁹ Reno 1998; Kaiser and Wolters 2013.

²⁰ Bates 2008, 9.

²¹ Fish 1998, 95.

²² Levi 2006, 8.

²³ Weingast 1993, 287.

²⁴ De Mesquita et al. 2003; Winters 2011; Greif 2006; Haber et al. 2003; Guriev et al. 2011; Rajan and Zingales 2003.



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1960–80, for example, was a particularly nerve-rattling phase for the foreign corporations whose assets were expropriated in seventy-nine countries.²⁵

The ruler-centric concept of the state defines the core of the literature examining such PR threats. Consider the seminal works of Levi and Olson which focus on the ruler as the main source of PR threats. Olson's "stationary bandit" symbolizes none other than the state ruler, "the bandit leader" whose rationality leads him "to seize a given domain, to make himself the ruler of that domain, and to provide a peaceful order ... thereby obtaining more in tax theft than he could have obtained from migratory plunder." ²⁶ While Levi recognizes that state agents present one of the constraints on the ruler's ability to maximize wealth and power, this constraint is radically de-prioritized relative to others.²⁷ In a similar vein, Bueno de Mesquita et al. conceptualize the challenge of kleptocracies as one of "reining in the Prince." 28 (In A Theory of the State, Barzel similarly refers to "tying the Protector's hands." ²⁹) The main conclusion of The Logic of Political Survival - that policies undermining PR are driven by state rulers, whose political support derives from small winning coalitions echoes powerfully through the three influential volumes by North, Weingast, and Wallis as well as Acemoglu and Robinson.30 All of these works proceed from the assumption that abuses by predatory state rulers are the key problem of PR security.

Property rights' abuse by the state rulers, the literature notes, is not necessarily conducted for the narrow purpose of self-enrichment. For North et al., for example, selective predation is a political tool employed to *co-opt elite rivals*, the main concern being the problem of endemic violence. In the "limited access orders," which the authors treat as typical of contemporary developing economies, the engine of predation is the collusion of the ruling elites.³¹ The assumption underlying this model is one of relatively small, centralized governments in which the issue of *hierarchical intra-governmental control is assumed away*: "the leaders ... [have] the ability to ... organize and discipline the members of each leader's group."³²

- ²⁵ Among these countries, ten were "mass expropriator" states where PR attacks had a frequent, cross-sectoral, ideologically driven character: Algeria, Angola, Chile, Ethiopia, Indonesia, Mozambique, Peru, Tanzania, Uganda, and Zambia. Kobrin 1984.
- 26 Olson 1993, 568.
- ²⁷ Among six types of constraints (such as foreign actors, elite power rivals, etc.), the principal-agent problem is listed *last* and in reduced form as the imperfect ability to monitor agents. Levi, 448–57.
- ²⁸ De Mesquita et al., 3.
- ²⁹ Barzel 2002, 138.
- 30 Acemoglu and Robinson 2012; North et al. 2009; North et al. 2013.
- ³¹ More specifically, violence specialists commit to peace in exchange for economic rents from other elites (politicians, priests, etc.). Because of their direct control over parts of the population, these other *non*-violent elites can help the violence specialists collect rents without the costly fighting. North et al.
- 32 North et al., 4.



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Overall, whether the goal of the ruling elites is self-enrichment or the prevention of violence, it is the *coordinated*, *ruler-sanctioned nature of predation* that conceptually unifies this literature. The scholars typically (but prematurely) treat Russia and other post-communist states with a strongman at the helm as cases of such predation. North et al. add "modern Russia under Putin" to Mesopotamia in the third millennium BC and Britain under the Tudors as examples of limited access orders.³³ De Mesquita similarly suggests that Russia's "egregiously ineffective governance, particularly in the law enforcement" is, in fact, *a part of Putin's strategy* to remain in power.³⁴

In addition to stressing the role of the ruler, this literature emphasizes the difference between threats to *income* rights and – significantly more devastating – threats to *ownership* rights.³⁵ Indeed, this is what distinguishes Olson's "roving bandit," who threatens *ownership* rights through peripatetic plundering, from the "stationary bandit," who merely targets *income* streams through sedentary taxation.

Securing Property Rights

How can property rights be secured? The answer to this question derives naturally from the ruler-centric conception of PR threats discussed earlier. Constraining the upper level of the state executive is the solution to the problem of PR insecurity, according to the literature. However, scholars disagree on *how* to bind the state principal's hands. Two paradigms describe the ways property rights are secured through constraining the ruler's discretion.

First, the "reputational restraint" paradigm puts faith in the self-enforcing effects of strategic interaction: To raise tax revenue tomorrow, governments will abstain from expropriating businesses today, so as to encourage economic activity.³⁶ A felicitous outcome of strategic interaction between the ruler and economic actors depends on the time horizon of the potentially predatory government: If the survival of the regime is at risk, the sovereign may expropriate,

³³ North et al., 31.

^{34 &}quot;He [Putin] is doing this successfully ... an ineffective economic system, from the viewpoint of a cynical dictator, turns out very effective politically ... you constantly underpay the law enforcers which creates corrupt incentives. Although they cannot be jailed for being disloyal, they can be jailed for corruption. Then you tell them: I can forgive you corruption if you remain loyal.... Politically, this is very effective. Besides, he does not need to spend much money on the repressive apparatus: they can collect all necessary resources through bribes." De Mesquita 2012.

³⁵ E.g. Kobrin, 330; Winters, 6-7.

³⁶ For Olson (1993), the ruler may forgo present predation so as to motivate the private owners to increase output and the ruler's revenues in the long run. For Levi (1989, 95–121), war is a catalyst for such strategic interaction because it raises the fiscal needs of the state principal while *also* increasing the willingness of the asset owners (whose welfare depends on military victory) to pay taxes. See also Diermeier et al. 1997; Timmons 2006; Sened 1997; Luong and Weinthal 2004.



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hence wasting her accumulated reputational capital.³⁷ Overall, the literature on PR security is rightly skeptical about the sovereign's concern for the future tax revenue as the *only* mechanism to safeguard against predation. Instead, the logic of reputational restraint is often used to explain the emergence of PR security in the face of *private* expropriation in the tightly knit communities where the state is largely absent; in this post-Humean literature, culture and the logic of repeated games between private agents serve as strong behavioral constraints.³⁸

Second, the "state commitment" paradigm, by far the dominant school of PR research, extols the virtues of mechanisms that drastically increase the costs of predation for the sovereign or make such predation impossible altogether.³⁹ This post-Hobbesian literature proceeds from the premise of a profound power imbalance between state and business, the former possessing coercive resources and the latter exposed to their arbitrary use. To reassure private owners, the literature argues, the state must be constrained. But how? Like the paradigm invoking reputational restraint, this tradition relies on the *rationality of the fiscally dependent sovereign*; to signal its benevolent disposition to prospective investors and tax payers, the state binds its own hands:

During a fiscal crisis, the states desperately sought additional revenue. Often they were willing to make fantastic promises in exchange.... The problem was ... that not all promises are credible.... Each state, therefore, had to find some means of making credible promises.... The state ... sells constraints on its future behavior in exchange for revenue today.⁴⁰ [my emphasis]

The core debates in the literature discuss various ways in which the states can commit.⁴¹ Some accounts point to policies that can act as bridge-burning tactics: For the post-communist countries, shock therapy, voucher privatization, WTO membership, and EU trade agreements have all been treated as "commitment devices."⁴² Other accounts argue that informal state-business ties can also help the rulers to commit.⁴³ In modern China, for example, company CEOs who are children of the top party officials (the so-called Princelings) "have played a role in securing informal property rights ... [by] in effect act[ing] as ...

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³⁷ Olson (2000, 28) argues that "if the king anticipates and values dynastic succession, that ... lengthens the planning horizon and ... increases confidence and thus investment, income, and tax receipts even in the present." Yet the history of Britain, one of the most durable dynastic monarchies, casts doubt on Olson's logic. Out of thirty-one British monarchs who ruled between 1066 and 1702, eighteen saw their succession plans sabotaged by the family members, suggesting that even in dynasties, reputational restraint is prone to break down. (Shleifer and Vishny 1998, 51.) See also Dixit 2004.

³⁸ E.g. Ostrom 1990; Ensminger 1997; Ellickson 1989; Bates 2001.

³⁹ E.g. Acemoglu and Johnson; Frye 2004; Firmin-Sellers 1995.

⁴º Weingast 1990, 92-3.

⁴¹ E.g. Weimer 1997.

⁴² Tompson 2002, 952; Frye 1997; Przeworski 1991.

⁴³ Haber et al; North et al.



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hostages – the children of the monarch placed in the hands of those who need to rely upon the monarch."⁴⁴ The state may also choose to selectively enforce property rights for particular industries or elites in exchange for rents or political support.⁴⁵ The examples of commitment strategies listed so far involve policies and informal understandings that – albeit at a great personal cost – could still be potentially undone by the ruler.

The state commitment framework emphasizes two types of the more formalized constraints as being most effective as a safeguard against governmental expropriation. On the one hand, formal business associations uniting the bulk of a country's producers, creditors, or traders can resolve the problem of collective action among property owners, creating a formidable platform for retaliation against the ruler, should he decide to expropriate. In *Institutions* and the Path to the Modern Economy, Greif argues that in medieval Europe, "securing property rights from the grabbing hand of the state" was achieved through "merchant guilds" that shared information about PR abuses, coordinated retaliatory responses, and held the sovereigns in check.⁴⁶ By protecting property rights, the literature asserts, national business associations have proved critical for trade, investment, restructuring, and growth in the twentiethcentury economies of South Korea, Mexico, Chile, Taiwan, Brazil, Thailand, Hungary, the Czech Republic, and elsewhere.⁴⁷ The modern incarnations of the medieval merchant groups "resolve the strategic dilemma of governmentbusiness cooperation. By creating opportunities for repeated interactions, such institutions lengthen time horizons and create trust."48

On the other hand, an array of *institutional constraints on the discretion of the executive* is expected to enhance PR security. Chief among these constraints are electoral institutions, political parties, and macro-level checks and balances, such as the separation of the legislative and executive branches, the independence of judges and market regulators, "market-preserving federalism," and so on.⁴⁹ The goal of this vast literature is to "explain how checks on executive discretion improve the government's commitment to property rights." The positive impact of parliaments is celebrated as a particularly strong determinant of PR security (especially when parliaments "represent the wealth holders in society" 51), so much so that even in authoritarian settings, legislatures are

⁴⁴ Gilson and Milhaupt 2011, 267.

⁴⁵ Razo 2008.

⁴⁶ Greif, 91.

⁴⁷ McDermott 2004; Maxfield and Schneider 1997; Doner and Schneider 2000; Root 1989; Bruszt and Stark 1998.

⁴⁸ Haggard et al. 1997, 41.

⁴⁹ E.g. Acemoglu 2012; Jensen 2008; Li 2009; Acemoglu and Johnson; Gehlbach and Keefer 2011; Bertelli and Whitford 2009; Humphreys and Bates 2005 ibid.; Cox 2011; Feld and Voigt 2003; Qian and Weingast 1997; North and Weingast.

⁵⁰ Weymouth 2011, 212.

⁵¹ Weingast, 93.