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State antiquity and economic progress: cause or consequence?

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Abstract
Legacy of statehood is seen as a positive influence on economic growth and development. The state antiquity literature argues that the more experience a country has with state institutions, the more beneficial the current state's impact on development can be. While not discounting the advantages that a well-functioning state can provide for economic progress, we draw attention to an alternate mechanism: the presence of private institutions and practices that may contribute to both state formation and economic development. Rather than state antiquity being the lone cause of economic progress, states may benefit from already existing configurations of rules and conventions that were developed privately. Thus, we argue that order can precede and coincide with the state. We support our claim with qualitative evidence using historical case studies.

Keywords Private institutions · Economic progress · State antiquity · Political economy

JEL Classification F63 · H11 · 012 · 017

1 Introduction

The influence of the state on economic outcomes is impossible to deny. Whether that influence is predatory, protective, or productive is important to assess. States in developed countries like the United States, Japan, and Germany are effective at providing public goods, enforcing contracts, and protecting property rights. However, states in places like Russia, Zimbabwe, or North Korea do little to promote the rule of law and protect property. In the

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limit, these predatory states function as vehicles for coercive transfers, extracting wealth from disfavored sections of the population and redistributing it to privileged ones.

Given this variation in state performance, a robust literature on the state and economic development has arisen. One subliterature focuses on the historical experience that countries have with a state (Bockstette and Putterman 2002; Chanda & Putterman, 2005, 2007; Borcan et al., 2018). This perspective argues that countries with longer histories of statehood tend to be more effective at activities like raising revenue, enforcing contracts, and providing public goods. This in turn translates to higher levels of economic growth and development (Borcan et al., 2018, p. 6). Recent scholarship builds on this work and examines the influence of state history on corruption, financial development, income inequality, and ethnic diversity (Owen and Vu 2022; Dombi & Grigoriadis, 2020; Ang & Fredriksson, 2018; Bleaney & Dimico, 2016). Collectively, this literature concludes that countries with a certain level of state history achieve higher levels of economic progress. We refer to this narrative as the state antiquity view.

Without rejecting the idea that effective states can contribute to the development process, we propose an alternate narrative. Drawing on literature that sees economic progress as rooted in private institutions and informal norms (Boettke et al., 2008; North, 1990; Murtazashvili & Murtazashvili, 2015; Williamson, 2009; Williamson & Kerekes, 2008, 2011), we hypothesize that the ability to sustain an early state can stem from a preexisting structure of non-state practices and informal institutions, such as customary law, merchant law, and private norms to resolve disputes (Benson, 1989; Boettke & Candela, 2020; Dixit, 2004; Ellickson, 1989, 1991; Friedman, 1973; Milgrom et al., 1990; Leeson, 2014). Rather than attributing positive economic outcomes to a state's history, the ability of a country to sustain a protective and productive state *and* to foster economic progress could possibly be predicated on previously established and privately devised governance institutions. Informal cultural norms and self-governing mechanisms are therefore underexplored factors that can explain both early state formation and long-run economic success. We call this view the private ordering perspective.

To make this argument, we rely on three historical case studies. Using the state antiquity index created by Borcan et al. (2018), we select examples which demonstrate the ability of long-lived states to draw on already existing non-state institutions. We examine the histories of the United Kingdom (a high/intermediate state antiquity score and strong economic performance), Iceland (a lower state antiquity score and strong economic performance), and Somalia (the same state antiquity score as the UK but abysmal economic performance). Taken together, the analysis suggests that (1) the source of economic order in some cases precedes the state, (2) order can emerge and persist without a state, and (3) the state can be the obstacle to economic progress.

The case study method is appropriate for our analysis because we are interested in the institutional *mechanisms* which lead to order and economic progress. When it comes to understanding these mechanisms, qualitative methods are indispensable (Skarbek, 2020b). While quantitative approaches are commonly used in economics, qualitative methods are particularly useful for institutional analysis and understanding how certain institutional forms influence economic activity (Leeson, 2020). Qualitative studies can also complement quantitative work. When formal and informal institutions are closely intertwined, determining where private ordering ends and state provided functions begin is a difficult task. Qualitative research allows us to distinguish between formal and informal institutions, whereas

quantitative measures may be less suited to disentangling them. For example, there is no "private institutions" index that can be included in empirical specifications to distinguish private from state order. Qualitative work can also illuminate the association between institutions like private property rights and economic growth.

Without careful qualitative work, scholars run the risk of underrating the effects of private institutions relative to government institutions. This can be the case with research measuring historical experience with a state. While we cannot address the histories of every nation, this paper provides a "proof of concept" for our alternate theory. We do not argue that the state antiquity view has no merit, and in several instances our explanation complements it. Rather, we draw attention to a separate channel through which economic progress and state longevity may travel. Thus, our ultimate argument is a circumscribed but important one. Sources of private matter can be necessary for economic progress and well-functioning states, and broad empirical measures like the state antiquity index may obscure how these relate to each other.

Our paper's contribution is to offer another interpretation of the state antiquity literature's findings. To do so, we rely on a theoretical lens that emphasizes order beyond the state. We show that important sources of order, and thus the conditions for economic progress, have existed prior to or outside the purview of the state. It may not only be a long history with a state that promotes progress, but a long history of non-state institutions and private orderings that allow for the formation of productive states. Many key functions that support economic activity – such as the protection of property rights and the resolution of contractual disputes – are handled by sources other than the state and even in conditions where no state exists. These instances of private ordering provide evidence in favor of the proposition that non-state institutions are indispensable to understanding economic progress. Furthermore, what may appear to be effective state activity, e.g., the protection of private property, may instead be the codification of private institutions which underpin high functioning states. In this way, effective states may be able to build upon economic orders that are created by private individuals.

Our study of private orders is closely related to another concept: anarchy. Several of the orderings we discuss were present in eras where governments either did not exist or were incredibly limited. Our "anarchic optimism" may be surprising, but economists have expressed considerable sanguinity for how governance can be provided when states do not exist. Succinctly, the economic concept of anarchy is not synonymous with disorder. Rather, anarchic conditions can allow alternative governance institutions to flourish.

Other disciplines – like comparative or international politics – may not see things the same way. Murtazashvili and Murtazashvili (2024) provide a fruitful review article showing how insights from the economics of anarchy may be of interest to these two disciplines. In contrast with internationalists who see anarchism as the jumping off point for the Hobbesian jungle, or comparativists who may see anarchic institutions as playing second fiddle to powerful states (Murtazashvili & Murtazashvili, 2024, p. 3), the economic study of anarchy adds a richness to our understanding of historical state building and the importance of informal institutions. We claim that the economics of anarchy and private governance have much to offer these other disciplines, and in this light our contribution can be seen as an invitation to inquiry for fellow academic travelers.

2 State antiquity and the pro-progress state

The idea that states can be drivers of progress is not new. What the state *is*, though, remains a difficult question. For the purposes of our paper, we follow the state antiquity literature in using the classical Weberian understanding of the state, which classifies a state as an entity which has the monopoly on the legitimate use of violence within its geographic boundaries (Borcan et. al 2018, p. 5). Within development economics, the potential for states to kick-start economic growth is well-studied and theorized. In these literatures, a significant increase in aid from already rich countries is viewed as an escape route for nations trapped in poverty (Sachs, 2005; Tollefson, 2015). Here, foreign and domestic states have crucial roles to play in economic outcomes.

Other theories see the state as a required component for economic development. The state capacity paradigm views certain state functions, such as raising revenue and funding public investments, as necessary for economic success (Acemoglu 2005; Besley, 2020; Besley & Persson, 2008, 2009, 2010, 2014; Rodrik, 2004).[1] Powerful states and thriving economies go together. States that have the inclination and wherewithal to improve their ability to raise tax revenue, support market institutions, and provide productivity-enhancing public goods can be the bedrock upon which material progress is built.[2]

Parallel but conceptually different to the state capacity view is the idea of state antiquity. State antiquity theories are like state capacity ones in that they highlight the role of the state in development. However, state antiquity focuses on the *experience* that is gained by working with state institutions over time. More exposure to and practice with state institutions yields several advantages which promote prosperity. Current nations that have longer histories of statehood may have more experience with bureaucracies, access to larger pools of human capital and skills that are necessary for governing, and a greater ability to engage in effective public administration (Bockstette et al., 2002, p. 348). The key channel emphasized is the in-depth knowledge of statehood that is accumulated through historical experience.

To measure the history that today's countries have with a state, Bockstette and Putterman (2002) constructed the first state antiquity index. This index examines political histories of modern nations from 1 CE to 1950 CE. For each half-century, the authors ask three questions and assign scores accordingly:

1. Is there a government above the tribal level? (1 point assigned if yes, 0 points assigned if no).
2. Is this government foreign or locally based? (1 point if based locally, 0.5 if foreign, 0.75 if in between).
3. How much of the territory of the modern country was ruled by this government? (1 point if over 50%, 0.75 points if between 25% and 50%).

[1] For a thorough summary of these arguments, see Johnson and Koyama (2017). More critical evaluations of the state capacity viewpoint are found in Piano (2019) as well as Geloso and Salter (2020).

[2] James Buchanan anticipated many of these arguments in his 1975 book, *The Limits of Liberty*. Buchanan distinguishes between the "protective state" and the "productive state." The protective state is that part of government which deals with enforcing contracts. The productive state is the part of government which provides public goods after the constitutional bargain has been struck.

The scores from each period are then combined, with scores earlier in history discounted compared to recent ones. The authors find that modern-day countries with higher state antiquity scores have greater political stability, better institutional quality, and higher income per capita and economic growth rates.

Building on these foundations, Putterman and Weil (2010) refine the state antiquity index to account for migration. While geographic regions and boundaries may be relatively stable, the same cannot be said for populations who live in those regions (Putterman & Weil, 2010, p. 1628). By estimating the proportion of year 2000 populations that hail from different countries, Putterman and Weil build a state antiquity index that accounts for the differing ancestries in each country, and the experiences that those ancestral groups have with state institutions. If a country does not have a long history with the state, but the people who move to that country from other nations *do* have greater experience, the adjusted state antiquity score will be higher.

This new ancestry adjusted index outperforms the original state antiquity index to the effect that the coefficient on the original index becomes negative and significant when it is included in regressions alongside the ancestry-adjusted measure (Putterman & Weil, 2010, p. 1644). One intuitive mechanism seems apparent: immigrants who move from countries with higher levels of state antiquity to countries with lower levels of state antiquity bring something intangible with them that may have nothing to do with the history of the state. What that exact something is may be hard to specify. A range of different qualities – knowledge of beneficial non-state institutions, productive cultural practices, or high levels of human capital – are some likely possibilities (Putterman & Weil, 2010, p. 1651). This finding invites alternate interpretations of the causes of economic progress and the role of the state for such progress. Rather than experience with a state, the key mechanisms for development could be informal or private in nature. The ancestry adjusted statehood results support this interpretation.

The state antiquity index was most recently updated by Borcan et al. (2018) and expands the period of study back to 3500 BCE. Using this updated index, the authors find that both very young and very old states are associated with lower levels of income per capita. Countries that have intermediate experience with state institutions, such as Denmark or Japan, are relatively more successful (Borcan et al., 2018, pp. 2–3). The authors hypothesize that the reason for this hump-shaped distribution could be because younger states have little experience with governing, whereas older states are more likely to develop institutions that are overly centralized, stagnant, and hostile to economic development (Borcan et al., 2018, p. 7).

The authors propose that countries with an intermediate state antiquity score may be able to learn from the errors of the older states (Borcan et al., 2018, p. 13). By studying the experiences of past states, these countries can select the forms of organization that are more likely to result in increased prosperity. Thus, we should not be surprised to see countries with intermediate state histories experience more rapid growth and reach higher levels of development than those that came before them. Though they may eventually succumb to the same forces of over-centralization as their states age, these countries can refine the modes of governance that promote development.

Given this association, one might conclude that overly long experiences with the state should be cause for concern. If the very oldest states follow a path of institutional ossification and hostility to development, a higher state antiquity score is a curse. However, the

authors caution against such a reading. There is much room, they argue, for those who operate the levers of the state to contribute to economic growth in modern times (Borcan et al., 2018, p. 37).

Though greater experience with the state can augment growth, it is not obvious that this is the only channel for progress. As Putterman and Weil (2010) entertain, the factors that may be driving strong economic performance could be more informal in nature and have little to do with the effectiveness or experience of state institutions.

We contend that two results in the state antiquity literature lend support for exploring alternate mechanisms. The first is that, as previously noted, accounting for the ancestry of modern-day populations strips explanatory power from the geographic measure of state antiquity (Putterman & Weil, 2010, p. 1644). The *statehist* coefficients are negative and significant, suggesting that instead of being a boon for growth, economic progress declines the longer a country has a state. In the absence of individuals bringing other qualities that are conducive to growth into a country, longer-lasting states have negative growth effects. Second, the observation in Borcan et al. (2018) that particularly old states are harmful for growth reinforces the idea that it may not necessarily be the state that is doing the work when it comes to development. Understanding why this is the case requires more investigation.

3 Order can precede the state

While states *can* create conditions that are conducive for economic progress, not all states *do* create such conditions. We provide an alternative explanation that argues that order can precede and aid state formation, which means experienced states may not be the sole catalysts for economic development. A large body of work shows that cultural norms, private rules, and self-governing mechanisms significantly contribute to economic progress (Greif, 1994; Zak & Knack, 2001; Dincer & Uslaner, 2009; Gorodnichenko & Roland, 2017; Angelucci et. all 2022).[3] In this line of thinking, the state no longer takes a paramount role in the development process. It is with this theoretical viewpoint that we build our argument that state antiquity may not be the only explanatory factor for development.

Numerous examples of advanced economic activity and order *without* the state have been observed.[4] As is discussed below, Benson (1989, 1990) studies the emergence of *lex mercatoria* – the "law merchant" – a spontaneous and widely recognized body of commercial law that facilitated trade in Medieval Europe. Medieval merchants devised and maintained their own system of courts to adjudicate conflict and enforce contracts without state backing. When commercial interactions are repeated, reputation and the threat of boycott can be effective at maintaining cooperation. These cooperative arrangements can break down if trades are infrequent and if the trading parties do not interact again because of time or geographic constraints, both of which are common in long distance trade. The institutions of the law merchant were able to overcome these difficulties by communicating information about merchant reputations at low cost and incentivizing the merchant community to engage in collective punishment against those who were non-cooperative (Milgrom et al.,1990).

[3] Ostrom (1990) provides a comprehensive study of different governing mechanisms developed to solve collective action problems without relying on the state.

[4] An immensely thorough survey of the literature within public choice and anarchic development is provided by Powell and Stringham (2009).

By reducing the transactions costs of information transmission and providing incentive-compatible rules which ensured merchants would punish cheaters, extended trade was made possible, and enforcement was executed outside of states.

Robust networks of exchange, specialization, and production existed outside the *lex mercatoria*. Greif (1989, 1993) documents trading coalitions among Maghribi merchant communities. Using reputation mechanisms, the Maghribis were able to overcome the problems of asymmetric information and opportunism to engage in commerce without a centralized government. Trade can also be conducted under more adverse conditions. Leeson (2007c), 2008) demonstrates that exchange can be sustained among groups that are socially heterogeneous or have different violence potentials. By investing in costly ways to reduce social distance between groups, parties signal that they are willing to cooperate in the long run rather than defect and seize short-term gains. Thus, even agents who are members of dramatically different cultural groups, or who hold varying threat levels, can enforce contracts absent states. These cases indicate that the engines of growth – trade and the division of labor – are still viable in lieu of states.

Private orderings which protect property rights and lower transactions costs can be seen in modern times as well. In his 1991 study of ranchers in Shasta County, Robert Ellickson argues that norms and decentralized enforcement do most of the work in buttressing property rights. Ellickson finds that rancher communities have strong norms related to cooperative behavior, and the desire to be seen as "neighborly" increases the costs of violating the property rights of others. When there are consistent rule-breakers, ranchers loathe to turn to the formal legal apparatus. Instead, providing social sanction through reputation-damaging gossip or decentralized disciplinary acts such as shepherding offending animals into hard-to-reach locations are successful punishment devices. Ellickson's examples are supported by empirical work which finds that informal institutions and constraints outperform formal ones for promoting progress and securing property rights (Williamson, 2009; Williamson & Kerekes, 2011).

For formal institutions to be effective, they must be congruent with the existing set of informal institutions and expectations. (Boettke et al., 2008)[5] provide a framework in which the ability of state-created formal institutions to "stick", or take hold, depends on how they fit with pre-existing spontaneously evolved indigenous institutions and what they term a society's *metis*[6]. *Metis* includes things like cultural norms, general conventions, and other tacit ways of understanding the world. The private orderings we draw attention to map well to the indigenous institutions and *metis* that Boettke, et al. discuss. Both our research and the institutional stickiness literature argue that in several instances, successful private sources of order may support the institutions and orders created exogenously by states. These discussions also have relevance for literatures studying the "transplant effect" (Berkowitz, et al. 2003a., 2003b), which argues that the effectiveness of foreign legal institutions is in most part due to the way in which they were transplanted and received to different countries.

Successfully evaluating private orderings means that we must compare them to their real-world counterparts. For many countries it may be preferable to have no state at all

[5] Closely related to economic institutions is the phenomena of culture. Untangling culture from institutions can be a difficult task. Williamson and Mathers (2011) find that, when compared to conventional measures of economic freedom, culture has less explanatory power when it comes to growth.

[6] *Metis*, an ancient Greek concept, refers to "local knowledge resulting from practical experience" (Boettke et al., 2008, p. 338).

rather than the flawed and imperfect states that currently exist (Leeson & Williamson, 2009). Somalia demonstrates this point (Leeson, 2005, 2007a, b; Powell et al., 2008). States that engage in extraction instead of market supporting activities are net negatives for wealth generation. In environments where property rights are weak, individuals lack the incentives to produce, and markets are not able to function. Often, the reasons for these failures can be attributed to dysfunctional governments[7]. States can destroy economic progress rather than encourage it.

Leeson and Powell's work shows how unconstrained and extractive states hamper economic progress and raises the possibility that these states can be outperformed by private, informal, orderings. However, the lens of this analytical anarchism is more focused on the potential for non-state sources of order to outdo extractive states. Complementary to this is work by political scientist James C. Scott, who focuses on the history of state-building. Scott argues that the rise of modern statecraft can be seen as the process of making societies more "legible" for the purposes of that state (Scott, 1998). Essentially, the goal of the state has been to mold society in such a way as to make it easier for governments to engage in practices like taxation, conscription, and the keeping of the peace (Scott, 1998, p. 2). Scott argues that, by itself, this "ordering" of societies by the state does not imply negative outcomes and may be "vital to the maintenance of our welfare and freedom" (Scott, 1998, p. 4). However, when combined with three other elements – high modernist ideologies, authoritarian governments, and weak civil societies – states that have the capacity to impose "legibility" on their societies can yield tremendous disaster.[8] For Scott, these failures are because the planned order of the state infringes upon, or even suppresses, already extant non-state processes which create thriving social orders (Scott, 1998, p. 6).

Thus, Scott's work provides encouragement for our study of how private and state-created orders relate to each other. States with higher levels of antiquity could be said to have greater aptitude for the "legibility" imposing functions of governments, but this by itself does not have to translate to economic progress. The consideration of other institutional forms – like private orderings – is necessary for unlocking the relationship between states and growth. Further, Scott draws attention to the tragedies that can result when non-state orderings are ignored or crushed. Our work reinforces this point by showing the importance of non-state orderings for successful governments.

Our observation that states can be immiserating is not novel. But it is worth drawing attention to the fact that this observation, and by extension our work, is in conversation with a much larger public choice discourse. In *the Calculus of Consent* (1962) and the *Limits of Liberty* (1975), James Buchanan argued that even the most extreme individualist would acknowledge the need for an agent which serves as a third-party enforcer in disputes (Buchanan 1975, p. 9). For most social scientists, this role is filled by the state. Buchanan writes that one can interpret the state as serving two separate functions: a protective function, and a productive function. In its "protective" stance, the state is simply required to

[7] A greater experience with state institutions can even amplify modern outbreaks of violence. Heldring (2020, 2021) finds that regions in Rwanda with more exposure to the pre-colonial state saw more violence during the 1994 genocide, and the Prussian areas of Germany with greater bureaucratic capacity proved more effective at deporting Jewish citizens under the Nazi regime.

[8] Scott gives three examples here: China's Great Leap Forward, forced collectivization in Soviet Russia, and forced villagization in Africa (Scott, 1998, p. 3).

enforce the agreed upon rights, claims, and agreements which were determined in the constitutional stage of the contractarian process (Buchanan 1975, p. 88).

However, the protective state may run afoul of its mission for several reasons. At times, those who administer the state may begin to use it to either increase their power or to advance moral/ethical causes they deem important (Buchanan 1975, p. 123). Once individuals observe this kind of behavior, their relationship with the state becomes warped. They will only follow existing rules because they fear punishment, and any hopes for "self-government" are dashed (ibid.). Societal disorder quickly follows.

In *Limits*, Buchanan is dismayed by the protective state's departure from its role. In an ideal sense, the protective state only acts as a referee enforcing agreed upon rules (Buchanan 1975, p. 206). However, when Buchanan considers the executive and judicial branches of the US government – both of which have important "protective" functions – he finds it difficult to say that either branch has remained within its appropriate role as referee (Buchanan 1975, p. 207). These parts of the US government have instead taken it upon themselves to change the existing constellation of rights without the input of citizens, and to abrogate the decisions made within representative assemblies. This can lead to a ballooning in the scope of the state. When this point has been reached, the only thing which can reign in a rampaging leviathan is a renewed focus on rules. (Buchanan 1975, p. 208).

The progress-inhibiting states we study can help us see what unconstrained states are capable of. Extractive and powerful states may be conceived of as states that were never able to stay within their protective roles, or states that were not able to be reeled back in once they became uncontrollable. Regardless, Buchanan's discussion in *Limits* raises an important point for our project and for any discussion on state antiquity or state capacity. Powerful states without constraints, and which overstep their protective functions, can be deleterious for societal well-being. The states in this category can serve as warnings of when the protective state strays beyond its mission. To prevent such states from forming, our focus must once again be on constitutional rules.

Through the theoretical lens of private ordering, we add to our understanding of the state's role in economic development. While there may be government functions that augment development, one salutary precondition for an effective state may be the existence of private arrangements that facilitate economic coordination and exchange while simultaneously constraining bad actors. Thus, the state itself is not the lone impetus for growth. Rather, both successful states and thriving markets can be built upon already existing non-state institutions.

The greater the strength of the underlying order that the state is built upon, the more there is for the formal state to benefit from. The more robust the private orderings that have developed to solve new dilemmas are, the more privately devised solutions the state can draw upon. Thus, the necessary conditions of development that are attributed to state institutions, e.g., secure property rights, can be the result of governments codifying pre-existing private institutions. The history of statehood, while important, is not just the accumulation of valuable knowledge about institutional administration. It also consists of the experience states have with learning from and adopting non-state institutions.

Quantitatively, it is near impossible to distinguish between private orderings and state institutions that are simply codified private institutions. The state antiquity index does not seek to explain what the state is doing or how it functions; it simply measures the length of statehood. We work alongside the quantitative state antiquity literature by examining his-

torical cases to gain a better understanding of how experienced and non-experienced states affect development.

4 State antiquity versus private ordering: historical case studies

Our two narratives have different implications for how economists think about the state and development. For the state antiquity view, longer tenured states indicate a greater potential for development. For the private ordering view, a long-lasting state may be one that has codified private institutions that underpin wealth creation or one that uses the wealth generated by non-state institutions.

The following case studies provide evidence in support of the latter of the two narratives. Using the state antiquity index, we examine the history of three countries: the United Kingdom (an intermediate antiquity score which is predicted to maximize GDP and economic performance), Iceland (a lower state antiquity score and strong economic performance), and Somalia (the same state antiquity score as the UK and abysmal economic performance). We purposefully avoid picking a country with a high state antiquity score since Borcan et al. (2018) show that significantly older states are harmful for economic development.

Before beginning, some care must be taken with these case studies. England, Iceland, and Somalia have unique histories and geographies. The emergence of private orderings, especially in England and Iceland, may be a result of these factors. Because of this, these case studies may feel cherry-picked, or at the very least lacking in sufficient generality to be useful[9]. We defend our selection of these cases briefly.

The United Kingdom is selected because of its special place in the state antiquity literature. According to Borcan et al. (2018), the United Kingdom has the level of state antiquity that is predicted to maximize national income. Thus, studying how the UK's success relates to the state seems important for our discussion. In addition, the legal history of the United Kingdom has extra relevance because many former British colonies have common law systems. If there are private orderings which have influenced this legal system, those same orderings will also have had an influence on the economic prospects of other countries which use common law legal systems. Understanding England's institutional history is an incredibly important topic for economic historians, so we posit our focus on it is vindicated. England's history may be unique, but its prominence is as well.

Second, the goal of our cases is to illustrate mechanisms – how private orderings can contribute positively to both economic activity and the development of states, and how states can contribute to poor economic performance. Thus, we have selected the cases that we feel best highlight how these associations could potentially work. Again, we are not saying that this is the process by which economies or states developed in every instance. We are also not saying that these case studies show that state antiquity has no bearing on economic fortunes – it certainly does. Our aim is narrower: to demonstrate an alternate reason for the emergence of effective states and thriving market societies – a reason which we contend has been underemphasized in discussions of the state and development.

Our case studies should be thought of as existence proofs to show that in certain instances, private orderings are potential explainers of "good states" or wealthy countries, and while the exact causality may be impossible to disentangle, these histories must be considered by

[9] We thank the editor and an anonymous referee for pushing us on these points.

researchers. We are also open to the fact that the factors we highlight may be influenced by factors like geography and land suitability for different kinds of agriculture[10]. In the limit, though, we maintain that the scholarship on private orders we bring to the table highlights an important factor in understanding the links between private orders, markets, and states. The exact ways these associations play out in contexts outside of our case studies is left to future research.

4.1 Anarchy in the UK

Of the countries that have intermediate state antiquity scores, the United Kingdom has special status.[11] As Borcan et al. find, the level of state history that could be said to maximize national income is incredibly close to that of the United Kingdom and other European nations (Borcan et al., 2018). An examination of UK history, though, gives reason to believe that private orderings have also played a significant role in British economic growth. These orderings preceded the state, and in several cases, they were adopted by the state to maximize monarchal revenues.

One of the most important growth-enhancing functions of a state is the provision of a legal system that secures private property rights. In political economy, the legal origins literature studies the influence different legal systems have on economic progress (La Porta et al., 1998, 1999, 2008). The English common law is one of two major protagonists in this literature, largely due to how many former British colonies have common law systems, and how relatively effective the common law seems to be when it comes to supporting market activity (La Porta et al., 2008, p. 286). Because of its global influence, examining the origins of the common law is pertinent.

The common law as we know it is the legal system inherited from England. It originated and developed in the period after William the Conqueror's subjugation of England (Langbein et al., 2009, p. 4). The history of the common law is complicated, though. Initially, the royal courts which administered the common law were weak and limited in scope. In a real sense, the history of the common law can be thought of as the expansion of the King's courts, and thus the common law, at the expense of other competitors (Langbein et al., 2009, p. 4). While strongly shaped by the Normans, the common law was not solely of their creation. The Normans had "no written law of their own making, nor could they readily borrow one from their French neighbors." (Potter, 2015, p. 35). The Normans, then, gladly adopted the already existing infrastructure of Anglo-Saxon legal institutions (Langbein et al.,2009, p. 8) including English law (Potter, 2015, p. 39). The medieval Norman state was in a real sense built upon these institutions.[12]

English law in the Anglo-Saxon period before the Norman Conquest was notable for its customary character. Customary law, due to its unplanned and spontaneous nature, is one of

[10] We thank the editor for a comment related to this.

[11] We follow Borcan et al. in classifying the United Kingdom as having an intermediate level of state antiquity (Borcan et al., 2018, p. 7).

[12] We are not the first scholars to argue that medieval institutions may have led to political and economic development. Young (2017, 2021) and Salter and Young (2023) have explored why Europe was an especially fruitful area for the emergence of liberalism.

our examples of "private" ordering.[13] Anglo-Saxon England had kings who were supposed to uphold the law and defend their people. However, the kings were decidedly not the source of law. Law was instead customary and of non-state origin, and the king was subordinate to it, just as any other individual was (Langbein et al., 2009 p. 6). The written laws that did exist were often incomplete and assumed a knowledge of customary law that resided in the minds of the folk and did not need to be codified (Potter, 2015).

This law played an important role in protecting personal rights and property rights. Anglo-Saxon customary law indicated what offenses demanded justice, and what the associated penalties were, but these offenses were not considered crimes against the state. The way in which these offenses were prosecuted, and criminal justice was provided, had a very private bent. This was because the Anglo-Saxons themselves were descended from Germanic tribes who migrated to Britain in the early fifth century. These migrants brought their own legal institutions with them – most notably the *wergeld*, or "man-price", system. The use of this system amounted to the private provision of criminal justice and policing.

Under the *wergeld* system, individuals had incentives to pursue those who committed crimes against them. Anglo-Saxon society was organized into voluntary groups, known as "hundreds", and these organizations effectively provided policing services for the country (Benson, 1994, p. 253). Within these hundreds was another subgroup, known as the "tithing". Tithings were most likely kinship bodies and were called into action whenever justice needed to be served (Jeffrey, 1957, p. 657). The idea behind the tithing was that it gave individuals a group that would help them seek or pay restitution if they were involved in an offense. But this last part was crucial: under the Anglo-Saxon system, the penalty for a crime was compensation paid to the aggrieved party, not fines or prison time served on behalf of the state (Esders, 2021). This compensation was not collected or distributed by the state: rather, the onus was on individuals themselves to bring criminals to justice to receive their payments.

The presence of compensation is what made the entire legal system tick (Esders, 2021, p. 8). Benson (1994) argues that *wergeld* gave the members of tithings and hundreds incentives to cooperate when it came to enforcing the law. Not only could mutual aid return property like stolen livestock, but it also provided the opportunity for pecuniary gain in terms of *wergeld*. Individuals who were required to ***pay*** compensation also had significant incentives to do so. Anyone who refused to pay restitution was liable to placed outside the bounds of the law, meaning they were now open to physical violence without consequences. This gave all parties a reason to cooperate – the costs of being branded an outlaw would far exceed any restitution payments that were avoided (Benson, 1994, p. 253).

Thus, the maintenance of order and the protection of property rights were for the most part dealt with via customary means. As time went on, the king began to take on a greater role (Pollock and Maitland 1898 [2010]). Eventually, royal authority over the punishment of criminal offenses began to "gradually supersede all others" (Pollock and Maitland 1898 [2010], p. 50). In England, common parlance was to say that crimes were committed "against the king's peace." Historically, this phrase was reserved for offenses that disturbed the peace at specific places, such as the king's highway or within the king's household. After 1066, this concept was rapidly expanded. In line with the vision of English legal history

[13] Leoni (1961) argues that Roman law can also be conceived of as having spontaneous origins. In many ways, the dynamics Leoni highlights can also be seen in the case of Anglo-Saxon law. We thank the editor pointing us toward Leoni.

which sees it as the continued expansion of Royal power at the expense of other sources of order, the King's peace came to encompass all offenses in a variety of locations. The King's peace morphed into the idea of a "general peace" which absorbed the peace granted by other customary jurisdictions, including that of the church (Lefroy, 1917, p. 389).

The Normans dealt the Anglo-Saxon system one final deathblow: soon after the conquest, the paying of restitution was replaced by a set of fines and other fees which would be made to the King (Benson, 1994, p. 256). What is interesting is that the categorization of offenses which required payment was still defined by Anglo-Saxon customary law. All that had changed was that the money which initially went to private individuals now filled the king's coffers (ibid.). The reason for this was easy enough to understand: it was a new way for the monarchy to raise revenue. Eventually even more offenses were added to what was considered breaching the king's peace. However, for our purposes it is important to note that the bones of the legal system the Normans altered had already been developed and defined under Anglo-Saxon customary law. The Normans are perhaps the clearest example of a government absorbing and applying a complex set of rules and institutions which had developed via private, customary, means.

A second, and more controversial example of private orderings that precede the state is found in the "law merchant" or *lex mercatoria*. For political economists, the law merchant is best explicated through the work of Benson (1989, 1992) argues that an upswing of economic activity in the eleventh and twelfth centuries lead to the demand for a standardized and efficient set of rules for settling disputes. This culminated in the emergence of the law merchant – a body of law which was created by merchants themselves, and which oversaw all manner of trades and contracts across Europe (Berman & Kaufman, 1978; Trakman, 1983; Benson, 1992, p. 15).

The classical telling of the law merchant argues that merchants formed their own informal courts to settle contractual disputes. These courts would hear disputes that Royal courts would not entertain and would outperform state courts in terms of the expertise of the "judges", the speed in which they resolved things, and in their ability to incorporate new commercial developments (Benson, 1989, pp. 649–650). The law merchant also showed a striking ability to adapt to new circumstances. In 1100, European states began to adopt the customary and spontaneous dictums of the *lex mercatoria.* The English state followed suit with the codification of the *Carta Mercatoria* in the 1300s (Benson, 1992, p. 19) and royal courts began to apply the rules of the law merchant themselves. For example, the law merchant had previously set the rules for what counted as binding agreements, but the *Carta Mercatoria* began adding new ways for sellers to avoid keeping their end of the bargain (Trakman, 1983, p. 20). Finally, in 1606 royal courts gained the ability to reverse decisions made by merchant courts, making it impossible for the law merchant to compete on a level playing field. But, as the story goes, royal courts profited by copying successful, already existing, private institutions and applying those rules themselves. The law merchant was not their creation, but it eventually became theirs and theirs alone to apply.

Caution must be exercised with this telling of the law merchant. Significant legal scholarship has emerged casting doubt on *lex mercatoria*, even going so far as to call it a myth (Kadens, 2004, 2011, 2015). Defenders of the law merchant have argued that these claims still leave room for the importance of specialized merchant courts which relied on customary law (Stringham & Zywicki, 2011, p. 509). Further, customary rules may rarely be written or formally invoked – instead, customary rules like the law merchant rely on a shared

understanding of principles which aligns expectations (Leeson, 2007d). Regardless, scholars should note the history of *lex mercatoria* stands on shakier ground than it did in the past, though this does not mean insights from the study of it are baseless.

The timing of the development of both the law merchant and the private administration of criminal justice is notable from the state antiquity perspective. According to the state antiquity index, the first instance of a state in the territories that now comprise the United Kingdom is in the 51–100 CE period, due to the Roman conquest of the island (Borcan et al., Data Coding Appendix, p. 138). From then on, a government above the tribal level existed continuously in the area. The development of the law merchant began around the eleventh or twelfth centuries and the Anglo-Saxon *wergeld* system achieved prominence in 410 CE. To the extent that the provision of property rights protection, contract enforcement, and dispute resolution contribute to economic growth, none of these functions could be attributed to the state. During the early state history years, the protective functions of the state were mainly handled by private, non-state institutions. When the state did begin to perform these functions, it adopted what was developed informally through customary means. In a real sense, state provision of these services was built upon private orderings.

A potential objection to this reading may be that during these periods the "British" state was very young. Young states may still be developing the capacity necessary to provide such services, leading to slower rates of growth (Borcan et al., 2018, p. 3). While this can potentially explain why more duties were subsumed by the state as it gained experience, we believe that this argument is complicated by several observations.

The first of these concerns law enforcement. While the legal system was eventually state provided, large parts of it continued to rely on private efforts. Public officials were charged with detaining criminals, but individuals were responsible for organizing and paying for a prosecution. This system, supported by a host of informal sanctions, worked well in handling crime (Koyama, 2014, p. 280–281). Things changed with the industrial revolution. Larger populations and greater incentives for criminal behavior placed increasing strain on this private system (Koyama, 2014, p. 283). Calls were made to implement a truly public policing apparatus, but they were ultimately rejected due to public choice concerns: the gentry and rural elites were concerned with potential abuses that could arise from handing over such powers to the state (Koyama, 2014, p. 285–286). Even when the full state provision of these services was a possibility, the risks of handing them over to the state were deemed too high.

The private justice system was able to adapt to new circumstances. Private associations composed of neighbors and citizens arose in the mid-eighteenth century to handle prosecutions with the understanding that the group would support any of its constituent members in mounting a prosecution if they were victimized. Not only where these organizations relatively effective, they also demonstrated the possibility of overcoming one of the main difficulties faced by such private initiatives: the problem of scalability (Koyama, 2014, p. 293).

Second, the law merchant experienced a renaissance within English common law. Commercial arbitration became increasingly popular in the 1800s. Commodity traders, agricultural sellers, and professional associations began to lean heavily on arbitration rather than settling issues in state courts. Arbitration clauses were included in trade contracts to ensure that state courts would not be involved. Such arbitration also became common in the United States, where judges were even more amenable to the law merchant. Today, arbitration is used to address most commercial disputes in the United States (Benson, 1989, p. 654–656)

and provides governance for international trade, where states are less effective (Leeson, 2007d, 2008).

Third, while state institutions may have preceded some of these private orderings according to the state antiquity index, the state was *not* fulfilling these functions during this period of overlap. In the case of England specifically, monarchs before Henry II did *not* see the passage and creation of laws as one of their key responsibilities, and as such did not take an active role in this arena (Berman, 1983, p. 441). In this light, state institutions were clearly not providing these important functions – and even when monarchs saw the creation of law as in their domain, they still made use of private orderings and custom when possible. Given this, it is doubtful that the existence of early states enabled these private orders to take shape or function. To say these orders developed in the shadow of the state may ascribe far too much functionality to states as they existed in that time.

Besides the law merchant, other important types of law across Western Europe had "private" origins. Feudal, manorial, urban, and mercantile law were rooted in customary practices and were not created *ex nihilo* by European states (Berman, 1983, p. 274). Even if one may question whether manorial courts can be considered non-state courts, they were directly descended from the folk, non-state courts which were fundamental to Anglo-Saxon England (Langbein et al., 2009, p. 9). Compared to canon law, the secular law that emerged in Europe had its origins in custom and grew in a bottom-up process. While feudal and royal law were eventually codified, they had come to exist prior to and independent of states (ibid.). So, even outside the specific case of the law merchant, significant legal scholarship attests to the non-state origins of feudal and manorial law.

Even the royal law that emerged in the 13th century owed a large debt to practices and customs that were created and applied privately. While states may have "recast" these practices, royal codes used sources like customary and natural law as their basis. This was clear in the case of Roger II of Sicily with his implementation of the Assizes of Ariano, which is considered the first "modern" royal legal code (Berman, 1983, p. 419). In England, Henry II's legal reforms, which set the stage for modern English law, incorporated as many pre-existing Norman and Anglo-Saxon customs as possible (Berman, 1983, p. 442) and French royal courts made most of their judgements based on local customs (Berman, 1983, p. 471). An in-depth examination of legal institutions including and beyond commercial ones indicates that in the case of Western Europe more broadly informal and privately designed practices formed the foundation of and were incorporated into state made bodies of law. These "private" orderings appeared before states and were enforced through non-state means before they were eventually adopted by states.

Two lessons from English history can be drawn. First, in significant instances, the state as it existed in England was able to take advantage of private rules it did not create. This is demonstrated by the Norman adoption of Anglo-Saxon customary law into what became the common law. Second, even when a state existed, private orderings still played an important role alongside the state in creating the conditions for economic progress. Many current laws still have their foundation in customary law developed prior to the Normans, and to the extent that common law systems have spread throughout the world, they too benefit from private orderings that existed thousands of years ago. Even outside of England, parallel orders can be seen. Similar dynamics of private orderings forming a foundation for formal ones have been found in the 19th century US concerning property rights (Allen, 1991; Anderson & Hill, 2004; Murtazashvili, 2016; Leonard & Libecap, 2019). Such self-

governance can be found in unlikely places, like prisons (Skarbek, 2014, 2020a), Palestinian refugee camps (Hajj, 2016), and private markets in Nigeria (Grossman, 2021). And finally, financial markets in London and Amsterdam developed private rules to facilitate exchange (Stringham, 2003, 2015).

Readers who are concerned that English history is too idiosyncratic can see analogous mechanisms in Afghanistan. Afghanistan's economic performance is lamentable, in no small part because of the near constant conflict in the region, but its state antiquity score is quite close to that of the United Kingdom (Afghanistan's is 0.3857, whereas the UK's is 0.3572). Despite having an experienced state, customary governance has not vanished in Afghanistan. Instead, it has remained important, especially in the wake of the Soviet and American invasions (Murtazashvili, 2016 p. 65; Murtazashvili, 2021).[14] These forms of governance ensured the continuation of order outside the scope of the state, particularly when the state was unable or unwilling to take on these functions. Afghanistan differs from the UK, though, in that the Afghan state has failed to absorb these informal modes of governance. This is not for want of trying: key customary leaders such as religious *mullahs* and *maliks* (elected village executives) have long been targeted for state co-optation (Murtazashvili, 2016 pp. 79–82). Though Afghan governments have not succeeded in bringing these sources of order underneath their auspices, this does help illustrate one of our contentions: state actors recognize that taking advantage of and adopting private orderings can be to their benefit.

4.2 Anarchy in Iceland

Sets of rules that are necessary for growth – both in protecting property rights and enforcing contracts – can be provided parallel to the state. Further, even when these private institutions develop alongside the state, it is not uncommon for the state to take on these functions, benefitting from the accumulated experience of customary law and informal norms. But private orderings can exist and thrive entirely *absent* the state, as in the case of medieval Iceland circa 900–1200 CE.

In the 9th century, Iceland was almost entirely devoid of human settlement[15]. However, around 870 C.E., settlers from Norway and the surrounding region began to establish permanent homes on the island. This inaugurated what has been termed "the Age of Settlement", lasting until approximately 930 CE., when Iceland was considered fully settled (Thorgilsson, 1898). Estimates of the population in 930 are subject to significant variance and uncertainty, but reputable sources give a range of 20,000–70,000 souls. By 1100 CE, this number increased to approximately 50,000–100,00 (Miller, 1990, p. 16).[16]

As settlement began, conflicts over land and livestock became inevitable. Some form of law was needed. Ari the Learned, one of the earliest Icelandic historians, tells of a Norwegian by the name of Ulfljotr who was tasked with bringing a code of laws from Norway to

[14] For more on informal governance in Afghanistan, interested readers may consult Barfield (2010), Roy (1990), and Mukhopadhyay (2014). While we cannot give these important works their due because of space constraints, they further investigate the ways traditional means of government have worked in Afghanistan.

[15] Very small groups of Irish settlers, driven westward by Viking raids, may have been present as early as 795 (Thorgilsson, 1898, p. 1).

[16] By convention, historians have used the median values of these estimates. Thus, with as much confidence as one can muster, the population of Iceland was perhaps 75,000 souls at the end of the 11th century (Miller, 1990, p. 16).

Iceland (Johannesson, 1974, p. 38). However, these laws were not simply imported from Norway and established by the Icelanders. Rather, the Icelanders made significant changes to these laws to suit their local circumstances as needed (Long 2017, p. 123). The governing law of Iceland thus became a unique customary law, which the Icelanders referred to as "our law" (Johannesson, 1974, p. 40).

Other institutions of governance were also necessary. 930 CE is considered the founding year of the Icelandic Commonwealth because it corresponds with the establishment of the *Althing*, a "national assembly of freemen" (Byock, 2001, p. 4). which handled the maintenance and administration of law. While this was the most prominent institution in Icelandic governance, within it lay an intricate web of judicial institutions and consensual relationships which maintained law and order.

The foundational figure in Icelandic society was the *bóndi*, or landholding famer (Byock, 2001). *Bóndi* were able to enter relations with any number of *Goðorð* (s. *goðor*), or chieftains. Any farmer who agreed to follow a specific chieftain would be referred to as one of that chieftain's *thingmen*, and all members of that farmer's household would also be bound to the chieftain as *things*. The relationship between *thingmen* and their *goðor* was a curious one. Despite the connotations of the word "chieftain", *goðor* were not able to compel *bóndi* to follow them via force. Rather, the bond between *goðor* and *bóndi* can best be characterized as a contractual one (Byock, 1988, 2001, p. 119). Chieftains had little power over their *thingmen*, and largely obtained what authority they had from the consent of their followers (Byock, 2001, p. 120). *Goðor* were also not tied to a geographic location, which meant that *bóndi* had significant latitude to "shop" for a new chieftain if they were dissatisfied (Friedman, 1979, p. 404). The number of chieftainships, however, was fixed at thirty-six, placing some limits on competition (Johannesson, 1974, p. 59).

Though they did not function in the way European nobles did, Icelandic chieftains were important for both judicial and legislative functions. All thirty-six *goðor* were required to attend the annual meetings of the *Althing*, along with a select number of their *thingmen* (Byock, 2001, p. 61). One of the most important features of the *Althing* meeting was the convening of the *lögrétta*, or legislative council. The *lögrétta* was composed of all 36 chieftains, who were the only attendees who had voting rights. Each chieftain was allowed to bring two advisors for consultation on legal matters. The "presiding" official over this *lögrétta* was known as the lawspeaker. The lawspeaker, though, had no role in the enforcement of the law. Rather, his job was to recite the customary law as it was known and provide clarity when necessary to aid in the usage of that law. To accept the lawspeaker's recitation of "our law", a simple majority vote of the *lögrétta* was needed. However, any alterations to the law required unanimity on the part of the *lögrétta*, and if any amendments to the body of customary were made, all free men in Iceland – whether they were chieftains or not – had the ability to protest these changes within a period of three years (Solvason, 1992, p. 345, Solvason, 1993).

While the *lögrétta* dealt with the maintenance of the customary law of Iceland, it played no role in enforcing it. The application of law and the settling of disputes was handled by a series of courts. At the lowest level were private courts, essentially systems of arbitration managed by *goðor* (Friedman, 1979, p. 404). Above this was the *varthing* – a district assembly that tried local cases and which was composed of three local chieftains and their followers (Kerekes & Williamson, 2012; Byock, 2001; Miller, 1990). The *varthing* was perhaps the most important legal institution from the perspective of the modal Icelander.

Historically, Iceland was divided up into four quarters, with each quarter consisting of nine individual *goðorð*. This level of governance is where the next level of courts could be found: the quarter courts, or the *fjordungsdomar.* Any cases not decided at the *varthing* would be adjudicated here, during meetings of the *Althing* (Johannesen, 1974). Lastly, one final court was established in 1005 – the "Fifth Court." This court was made up of judges appointed by the chieftains, and it served to hear cases that met with divided judgments in the quarter courts. Its decisions were final, though it only required a simple majority of judgements to be made (Kerekes & Williamson, 2012, p. 441; Miller, 1990).

This extended foray into Icelandic legal and institutional history underlines one of our key points: functional law and complex legal institutions could be developed and sustained absent a centralized state. As the previous history shows, the law of Iceland was customary, and could only be changed by Icelanders themselves, not by any executive or royal figure. Further, this law emerged through a competitive process from the interactions of chieftains and free Icelanders themselves (Kerekes & Williamson, 2012).

Icelandic society provided incentives for individuals to enforce the law themselves. Historians have noted that no "public" enforcement of law existed, and instead, those harmed by law violations were responsible for seeing that wrongs were dealt with and any judgments that were rendered were executed (Byock 1998, p. 70; Miller, 1990, p. 5; Friedman, 1979). Like Anglo-Saxon England, Iceland made use of a *wergeld* system. Icelandic customary law stated that those who had crimes committed against them could claim restitution – but this claim itself was saleable. Individuals could transfer these claims for a price to their fellows who may have more resources to pursue them. Icelanders would frequently form coalitions, organized along *godord* and personal lines, which would enforce restitution claims on behalf of each other. Even in cases where the costs of exacting *wergeld* were greater than the value of the award itself, these groups had strong incentives to pursue justice. Failing to do so would carry a reputational penalty, and if a coalition were seen as unwilling to impose costs when one of its members was harmed, this would invite more violations (Friedman, 1979, p. 408). These features ensured that the private Icelandic system could handle many of the externality issues inherent in deterrence.

Iceland proceeded in this manner until the collapse of the Commonwealth in the middle of the 13th century. The reasons for this collapse are unclear – Solvason (1992) argues that it could have resulted from rent-seeking and the concentration of power among some of the chieftains, and Friedman (1979) also highlights the potential impact of concentrations of wealth and power. What is not disputed is that in 1262, the Icelanders submitted to the rule of the Norwegian King Haakon IV. After his passing, his son, Magnus VI, sought to officially codify the laws of Iceland (Orfield, 1951, pp. 58–59). What is notable is that when the Icelanders submitted to the King, one of their conditions was that the King should uphold "peace and the Icelandic laws" (Orfield, 1951, p. 58). Indeed, the final code of laws written by Magnus VI for Iceland, known as the *Jonsbook*, made heavy use of Icelandic customary law, meaning old Icelandic law was still largely in force when the *Jonsbook* was accepted (Orfield, 1951, p. 62). The story of Icelandic law therefore presents another example of states taking advantage of customary bodies of law and rules which had been developed privately, and the best data we have shows that Icelandic standards of living were in line with those of more established states (Geloso & Leeson, 2020). Economic progress was fostered through means other than experienced states.

Iceland is a fascinating episode of medieval governance. Our contention is that it is a prime example of stateless governance and "private" ordering. At first glance, this may seem puzzling. Iceland had a deliberative body which devised and amended law, just like a legislature, and an official who presided over this legislature. Further, governance in the country was facilitated by several "chieftains" who may look suspiciously like small governments to a reasonable observer. However, under the Weberian definition of the state, it is hard to classify Iceland as a state. No executive arm of government existed, and no state above the "tribal" level would exist until Icelanders submitted to the Norwegian King. Thus, what order there was in Iceland had to come from non-state means.

We do not claim that the legal history of Iceland can generalize to every other country. There may be features of Iceland which render it well-suited to the emergence of successful anarchic institutions[17]. However, we do note that Iceland is not the only society where private orderings existed before the state, and where private orders were maintained by the states that did eventually take power. The legal history of Kenya is another example. Kenya is given a state antiquity score of zero until the 1901–1950 period in the state antiquity dataset, largely because no government above the tribal level existed until British colonization (BOP Extended State History Coding Appendix 2018, p. 78). However, Kenya still had functioning, non-state systems of customary law which pre-dated the Britishers (Were & Wilson, 1968; Wabwile, 2003, p. 51). Even with the importation of English legal institutions, the British colonial administration allowed customary law to remain fluid and in use by African courts (Shadle, 1999, pp. 413–414). While a two-tiered legal system was established, most disputes involving native Kenyans were addressed in African tribunals, which applied customary law (Shadle, 2010, p. 512). Private orderings had existed before the establishment of a formal state apparatus, and even that state built upon these private orderings and incorporated them into governance.

4.3 Growth and the extractive state: Somalia

The modern history of Somalia is not enviable. Colonized by both Britain and Italy in the late 19th century, the region conjures thoughts of poverty and violence. According to the World Bank, GDP per capita in Somalia is $445.80, making it one of the poorest nations in the world. Since 1991, the country has been embroiled in sometimes hot, sometimes cold civil war. Coinciding with the start of the wars, the Somalian government fell apart, leaving the area in a condition of effective anarchy.

Somalia's history is notable for another reason. In the most recent version of the state antiquity index, Somalia is assigned a state history score that is identical to that of the United Kingdom. This implies that Somalia's level of state history is exactly that which is predicted to maximize national income (Borcan et al., 2018, p. 32); however, its economic performance is one of the worst in the world.[18] Thus, Somalia provides an interesting case given its state antiquity and many ills. Instead of maximizing income for Somali citizens, the Somali state extracted wealth to enrich those in power. The ideal level of state experience did not translate into broad economic progress.

[17] We thank an anonymous reviewer for pressing us on this point and encouraging us to spend more time thinking about and discussing the limitations of a case study approach.

[18] To give the exact values, the United Kingdom clocks in with a state antiquity score of 0.357239. Somalia's assigned score is 0.356397.

The Republic of Somalia gained independence in 1960. This Republic was overthrown in a coup by Mohamed Siad Barre who ruled for the next 21 years. Barre's administration engaged in extensive and comprehensive central planning. Barre's opponents, such as the editors of independent newspapers which criticized the regime, were censored and imprisoned. Freedom of thought, political association, and expression were functionally abolished by the government (Ingiriis, 2016, p. 95; Ingiriis, 2016, p. 128). The public provision of education, which Somalians had long prided themselves on, was denied funding and support (Menkhaus 2006/2007, p. 80). In turn, the military budget of the country exploded, taking up an ever-increasing percentage of national revenue (Adam, 1992, p. 20). This military apparatus was then turned upon Somali citizens to quell any dissent and punish those who Barre perceived as threats (Elmi & Barise, 2006, pp. 35–36).

Beyond these human rights violations, the Barre government was notable for its extractive economic character. Land, industries, and the financial sector were nationalized in 1975, paving the way for the appropriation of civilian property for state projects, and giving the state the ability to redistribute wealth to those connected to the government (Leeson, 2007a., p. 693; Kimenyi et al.,2010). Unsurprisingly, the bedrock activities of the productive state – providing key public goods and services like education, healthcare, and infrastructure – fell by the wayside. Entirely new enterprises, controlled by the state, were created, and awarded to allies of the Barre regime at the expense of economic efficiency. Foreign aid was used to prop up the government, peaking at 57% of annualized GNP (Kaplan, 2008, p. 146). A system of productivity-destroying subsidies and protections was imposed to keep government backed companies afloat.

Exploitation of citizens by the extractive state did not stop here. During the 1980s, the government turned to inflationary finance to keep up with levels of state corruption and spending. This resulted in a devastating hyperinflation, further impoverishing Somalis (Leeson, 2007a., p. 694). Barre's policies served to inflame ethnic tensions and divisions within the country as well. The state was used to transfer resources to and create opportunities for members of Barre's clan at the expense of the wider population. The property rights to important productive nodes – like watering points – were commonly appropriated from other groups of herders and awarded to Barre's faction. This constant predation played a leading role in facilitating the violence that finally toppled the Somalian state (Elmi & Barise, 2006).

With the Somalian government non-existent after 1991, continued economic distress would not be surprising. But as Leeson argues, the data that could be collected after state collapse paints a different picture. Of the 18 development indicators analyzed, Somalia demonstrated improvement on 14 measures in the *absence* of government. These include higher life expectancies, lower rates of infant mortality, and lower rates of extreme poverty (Leeson, 2007a., p. 696). A key reason for this improved performance was a relatively less encumbered economy, which was no longer held in thrall by the predatory state. While it is important to note that the provision of public goods remained low, Somalia *without* the state could be said to be an improvement when compared to Somalia *with* the state on several margins. Put simply, while Somalia may have lacked a government, it did not lack governance (Menkhaus 2006/2007, p. 82). Even more surprising, the reestablishment of the Somali state in 2004 with the Transitional Federal Government may have resulted in relative economic decline. Using synthetic control methods and nightlight satellite data, Bonneau et

al. (2022) find that the re-emergence of the state was associated with worsening economic performance.

The reason for Somalia's relative success without the state was the re-emergence of private institutions which had developed outside the predatory state (Coyne, 2006). *Xeer* – the body of Somali customary law – provided governance over arrangements like warfare and clan relationships (Menkhaus 2006/2007, p. 87). Xeer also had the advantage of being widely respected by Somalis, with some estimates indicating approximately 80–90% of disputes were handled using it (Abdile, 2012, p. 89). Within clans, individual units referred to as *diya*-paying[19] groups, regulated the relationships between Somalis. The rules of *diya* paying groups are decided through the making of an actual contract by the members of said groups. For issues related to inheritance and marriage, Koranic law was able to fill in, given that nearly all Somalis are Muslim (Friedman, 2012, pp. 4–5). Any disputes that arise between the members of different *diya* paying groups are decided by courts made up of elders from each faction, who hear the case, testimony from witnesses, and then render judgements. Sharia courts – largely supported by coalitions of elders, clergy, and businesspeople also made a reappearance in the 1990s. These courts operated within the context of Somali customs and were largely praised by their communities as reinvigorating the rule of law (Menkhaus 2006/2007, p. 85).

Somali customary law is not only able to handle violent disputes – contractual violations and even issues like defamation are covered (Stremlau, 2012, p. 160). Property law in Somalia is especially complicated, given that many important types of property cannot be privately owned. *Xeer* can handle all manner of issues regarding resource usage, including water rights, pasturing rights, and other natural resources. (Friedman, 2012, pp. 8–9; Le Sage, 2005, p. 33). To the extent it contained provisions for the donation of material resources to the impoverished, *Xeer* was also able to facilitate some manner of public goods like poverty relief in the absence of the state (Le sage, 2005, p. 33). Compared to the Barre regime, conflict was addressed in a speedier manner, and the legal system was less of a purely predatory device (Leeson, 2007a., p. 705). Importantly, traditional Somali law long preceded the imposition of British colonial institutions. Even when they ruled the country, the British were content to let privately enforced Somali law function and did not seek to replace it with "Western" legal institutions (Friedman, 2012, p. 1).

Several caveats are in order. None of the above suggests that Somalia under anarchy functioned well by the standards of developed nations. Nor does this recommend that nations which currently have states that are effective at enforcing contracts should dismantle their formal institutions. However, the improvement in Somalian economic performance without government indicates that the Somali state was an impediment to economic progress rather than an accelerant. As Leeson aptly puts it, "contrary to our typical intuition, in Somalia it seems that social welfare has improved because of, rather than despite, the absence of a central state." (Leeson, 2007a., p. 706).

When evaluating the disappointing performance of both the Somali government and economy, other important factors must be considered. When compared to a nation like Britain, which has an identical measure of state antiquity, several differences are apparent. A major one is the colonial history suffered by Somalia, as well as other nations in Sub-Saharan Africa. England was not subjugated by a foreign power during its formative economic

[19] *Diya* is the Arabic word for blood-money, similar in meaning to the Icelandic *wergeld* (Friedman, 2012, p. 3).

years, which may cash out to real differences in economic outcomes. However, we believe that this can support our argument in two ways.

The first relates to how state institutions were built by colonial powers. As Acemoglu et al. (2001) and Acemoglu and Robinson (2012) argue, many colonial governments were built to be extractive. When these state structures were handed over to newly independent nations, they were geared towards predatory rather than productive activities. Viewing the history of a country like Somalia in this light brings public choice concerns, such as the incentives government actors face and what constraints are present on the state's behavior, to the forefront. In this rendering, the primary hurdle to progress becomes what the state *actually* does, instead of its experience doing things. All else equal, an experienced and skillful state that performs extractive functions is less desirable from an economic perspective than an unskilled and young state that attempts to perform the same extractive functions.

Second, colonial history can be a major impediment to the development of private orderings that are conducive to growth. Leeson (2005) argues that instead of seeing fractionalization as contributing to bad institutions and bad economic performance, bad institutions themselves can generate fractionalization and economic struggles. Essentially, the creation of foreign institutions like the Native Authority crushed pre-colonial practices, property arrangements, and organizations that allowed diverse African groups to signal credibility and obtain the benefits of economic exchange. By imposing centralized commands and creating powerful authority figures, colonization sowed the seeds of conflict, leading to the breakdown of private arrangements that previously allowed socially heterogeneous agents to work together. Taken collectively, colonization could have generated states, regardless of a country's experience with statehood, that were hindrances to growth through the creation of extractive state institutions and through the destruction of private order institutions.

5 Conclusion

Using the cases above, this paper provides evidence for several propositions. First, in many instances, the source of order—rules, laws, and conventions that are necessary for economic success—precede and buttress the state. English history demonstrates that through spontaneous institutional design, private individuals were able to provide important services such as contract and law enforcement. While the state eventually took on these activities, much of the body of commercial and criminal law that the state applied was adopted from informal and spontaneous sources. Thus, to the extent that these rules contributed to economic progress, attributing their origin and provision to the state provides an incomplete picture. Further, even after Britain had more experience with the state, private solutions continued to be widely relied upon. Second, order can emerge and be maintained when there is no state at all. While English commercial and criminal law developed alongside (yet still separate from) the state, medieval Iceland shows that society – and economic activity – can be maintained without a state.

Third, for some developing countries, the state is the obstacle to economic progress rather than the key to it. Somalia presents a story of pervasive state exploitation, even though it has a near identical level of experience with state institutions as the UK. Public choice considerations must be surmounted because policy advisors are not advising benevolent despots (Buchanan, 1986; Easterly, 2014). An experienced state that is used for predatory purposes

is devastating for growth. What state institutions do is just as important as how long they have been in existence. It may seem intuitive to argue that unconstrained states can unilaterally make the necessary changes that are needed for growth, but in practice, the performance of these "benevolent autocrats" leaves much to be desired (Easterly & Pennings, 2017).

There are inherent limitations to our approach. Three case studies out of the hundreds of countries in the world cannot "show" that state antiquity is irrelevant, but this is not our aim. Experienced states that provide both productive and protective services promote economic progress. Ideally, we could discern what portion of growth is attributable to the productive state and what portion is instead the result of private orderings. However, that empirical task is beyond this project, and perhaps any project for that matter. Instead, our approach can be viewed as complementary to the state antiquity narrative, demonstrating the importance of rich institutional analysis to determine what matters for economic growth. An emphasis on generalized trends, though illuminating, may obscure these details.

If we are successful in making our case, a re-thinking of development policy may be warranted. If private orderings are the significant channels for economic growth, this implies that what the state can do to aid the development process may be limited. Rather than focusing on improving or empowering the state, development experts may be better served by allowing private institutions space to develop and flourish.

With the number of countries available to study, there are bound to be instances that run counter to the broader findings in the state antiquity analysis. Our main insight is that states can take advantage of conditions for economic growth that are already present rather than bringing about these conditions themselves. Private orderings can precede and contribute to well-functioning states.

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