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ORIGINAL PAPER

Becoming an open democratic capitalist society: a two-century historical perspective on Germany's evolving political economy

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Abstract How do countries become open capitalist democracies? Why do they often fail? What can be the violent consequences of such failures? Douglass North, John Wallis, Barry Weingast, and Webb have proposed a framework for addressing these questions, as described in the first part of this article. It recognizes that the politics and economics of this process are jointly determined—the control of violence capacity in society and the distribution of economic benefits depend on each other. The second part of the article sketches out what this framework implies for interpreting the evolution of Germany's politics and economics from the early nineteenth century through the mid twentieth century. This overview introduces five subsequent articles that discuss the framework in relation to specific historic subperiods: 1814–1870 when the separate states of Germany competed economically and politically; 1871–1914 when a unified Germany made impressive progress on many dimensions but without making a transition to full democracy and civilian control of the military; the Weimar period when it consciously attempted such a transition and perhaps succeeded for a few years; the Nazi period of severe regression; and the post World War time when Germany did make the transition to full democratic capitalism.

Keywords Economic history · German history · Limited and open access orders · Institutional political economy

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Many people around the world aspire to live in an open democratic capitalist or market-socialist society, but only a few countries in the world have achieved that aim. Germany is one.

How did Germany do it? Many historians, political analysts, and economic historians have looked at this question in an exclusively German context—often asking whether something in the past set the path—*Sonderweg*—that led to Hitler, Nazism, the holocaust and World War II. And then asking how was the economic miracle possible after WWII. This essay suggests a framework for re-examining such questions of German political and economic history using an international comparative lens.

1 The framework of limited and open access orders

The framework posits the ideal characteristics of an open democratic capitalist society and of societies that are far from this ideal. In *Violence and Social Orders: A Framework for Interpreting Recorded Human History* (2009) Douglass North, John Wallis, and Barry Weingast compared societies in history, particularly England, France and the United States, which after centuries of evolution achieved relatively open democratic capitalist institutions by the late nineteenth century. With *In the Shadow of Violence: Politics, Economics and the Problems of Development* (2013) North, Wallis, Webb, Weingast and a team of country specialists extended the framework to examine the experience of nine developing countries since the mid twentieth century. To summarize the framework, this section starts with the ideal of open access orders (OAOs) and then considers the contrasting reality of limited access orders (LAOs) that prevails in most historical and contemporary societies.

1.1 Democratic capitalist societies: open access orders

In our framework, the OAO represents the ideal characteristics of an open democratic capitalist (or market-socialist) society. The adjective ***open*** is critical here. Many countries today have capitalism and elections—for instance, Mexico, India, Pakistan, Russia, the Philippines—but do not meet the standard of being OAOs. There are four key characteristics:

1. Entry into economic, political, religious, and educational activities is open to all organizations that meet standard, impersonal requirements. These groups may organize and reorganize themselves to defend their interests *vis a vis* each other and the government and to pressure for changes of policies.
2. Rule of law applies to all citizens and organizations and is enforced impartially by the government and the agencies it empowers. Rule of law, not threat of force from contending parties, determines the allocation of rents and profits and all the other decisions governing legally recognized organizations, private and public. Rents are important in OAOs, but they are not allocated according to whether an organization can threaten to use violence.

3. Organized violence is consolidated in military and police forces, controlled by civilian government; other organizations are not allowed to use violence. The political organizations that control the military and police are themselves subject to political competition, which is sustained by economic competition.
4. The fourth characteristic is the dynamic interaction that sustains openness. Economic openness and political openness in an OAO interact and mutually reinforce each other to preserve open access. As we will see, this open access characteristic is important for understanding the German case. This characteristic does not imply that the dynamic will always work forever.

Countries of Western Europe and North America, plus Australia, New Zealand, Japan and perhaps South Korea, are the main examples of OAOs today—societies that have these aims in their constitutions and achieve them most of the time.[1] When deviations have occurred, endogenous correction mechanisms become active. There have been frequent deviations and attempts to create monopolies and limit access, but endogenous forces within these OAOs have almost always pulled them back toward the open access ideal. This happens in at least two ways:

- Political forces rally to check economic monopolies, such as with anti-trust laws.
- Newly emerging business leaders press for reform to keep the political process open. We see this in the US with the leaders from silicon valley and with other progressive business leaders—like George Soros and Warren Buffett.

The effectiveness of this dynamic interaction depends on people developing trust in it, which happens over time and as it survives some challenges.

Do open access societies always stay open forever? Surviving some challenges does not mean that an OAO can survive any challenge. Forces against openness could potentially gain the upper hand, overwhelming countervailing forces for restoring openness. So reversions seem possible, and the question of whether they will happen is empirically open. North et al. (2009, 2013) claimed to have witnessed no reversions to date, but further investigations question this. Ober and Weingast (2013) discuss how Athens during the fourth century BCE may have been an OAO, which after about a century was ended by conquest. France was open access from the late nineteenth century until World War II, when conquest pushed it back to limited access in the Vichy period. Below and in the article by Alfred Reckendrees, we consider whether Weimar Germany achieved open access in the mid 1920s, only to lose it in the 1930s.

For most countries of the world today, open access has clearly not been realized and remains at best an ideal—Latin America, Africa, the Middle East, India, China, Southeast Asia, Russia, and other post-Soviet countries. Similarly, none of the societies before 1800 had open access. What is the alternative framework for understanding these societies?

[1] Political theorists see various ways that societies might strive for, but fall short of, ideal democratic representation of citizens' wishes (Blankart and Mueller 2014). Our approach emphasizes the practicalities of how political organizations interact with economic interests and violence potential.

1.2 Limited access orders

The concept of LAOs is a framework to understand how societies work in most of the world. LAOs have been the default option for millennia in societies larger than hunter-gatherer groups.[2] They are not just flawed versions of OAOs and cannot become open access simply by adopting some institutions modeled on OAOs, like elections, general incorporation laws, and anti-corruption laws.

LAOs have their own internal logic. They can improve over the course of decades, often dramatically, with better economic performance and political security. But the improvements come within the logic of the LAO. Thus the ***first development problem*** is improving institutions as an LAO. Historical and contemporary evidence shows that this needs to happen before a society can solve the ***second development problem***—making the transition from limited to open access. Becoming a mature LAO improves economic and political conditions, but it does not guarantee that the society will make the transition to open access.

A shortcoming of the standard governance reform model—the new Washington consensus—is that it typically aims to go directly to open access without addressing **first** the need to improve institutions **within** the **limited** access context. With the possible exception of the recent accession countries to the European Union, whose cases need closer study,[3] there have been no successful short cuts to the transition.

The logic of the LAO starts with the need to address the pervasive problem of violence between armed organizations, which take many forms—warlords, police, military, militant labor unions, armed wings of political parties, corporate security forces, guerilla movements, and criminal gangs. They want power and economic resources, and they try to use violence or threats of it to get their way. Typically in an LAO the government does not have consolidated control over all the armed organizations within the state sphere, nor in wider society. This situation arises and persists for many reasons, not the least of which is that people do not trust the government or anyone else to have a monopoly on violence. So open violence between armed organizations remains a threatening possibility. Governments in limited access societies usually do not meet Max Weber's standard of having a monopoly on violence (Weber 1919).

Nonetheless, most LAOs—all the successful ones—do find ways to restrain violence most of the time, even though the government does not in general have a monopoly on violence. Getting all groups outside the government to lay down their arms has not been an effective way to start (Handler 2010). Although it is a valid goal, it is not going to happen (at least not without an exceptionally repressive regime, like under Hitler and Stalin) until most organizations with violence capacity trust that the government will not annihilate them if they disarm. Historically, in LAOs making improvement on this dimension, such trust has developed as organizations gain sufficient economic and electoral importance that they can defend their existence and interests without resort to violence (North et al. 2009).

[2] North et al. (2009) uses the term *natural state* to mean the same as LAO.

[3] Studying the German case is a step toward applying the LAO/OAO framework to the rest of Europe.

In the meantime, as there is no government monopoly on organized violence and many organizations have violence capacity, LAOs address the problem of violence by allocating of control of rents in the economy to organizations with violence capacity. **This is the central pillar of the LAO logic.** Each important organization in one way or another gets some part of the rents generated by the economy—surplus value, profits, mineral royalties, privileged wage rates, or government revenue. This motivates the organizations to restrain violence, because the leaders of each group and most of their followers know that resorting to violence will disrupt the economy and not only reduce their rents but also threaten the whole arrangement of privileges. In order to sustain rents in the system and to enable adequate coordination among organizations, not just anyone is allowed form an organization that gets a share of the rents. The ruling coalition limits access to the ability to form an organization that gets recognition and rents in the system—hence the name "**limited** access order".

In larger societies, there are many groups at multiple levels—patronage networks and hegemonic relationships—with organizations at higher levels (including the government and ruling party) distributing rents to client organizations under their wings and often under their physical protection. The rents distributed might take the form of material resources—land, food, cash, or government jobs paying better than alternatives in the market—but often the rents are the rights to form organizations or engage in a profitable activity.

The rents that economic, political, and religious leaders receive from controlling their client organizations enable them to credibly commit to respect each other's turf and to refrain from fighting, because those rents are reduced if cooperation fails and there is fighting. The economic benefits from peace, which are lost if violence occurs, create incentives to curtail violence, even without enforcement from a central authority. The LAO framework calls attention the function of patronage networks not only as the distributors of spoils but also as institutions to bring about cooperation rather than violence between the organizations with violence capacity. The result is not usually a *fair* distribution of wealth, but usually most people in society are materially better than suffering from active conflict. Hence, even when there are elections, the majority usually votes to keep the dominant coalition in power. These elite bargains are not temporary deviations from the norm, which international aid agencies can wish away. They are the fabric of politics and economics in limited access societies.

When one of the major organizations with violence capacity faces a risk of total exclusion from rents, then elections or their aftermaths can become violent, as in Chile in the 1970s, Jamaica in the 1980s, Kenya, Iraq, Afghanistan, Egypt recently, and inter-war Germany, as discussed below. LAOs do not always succeed in restraining violence—civil war, revolutions and other violent conflicts happen. Then, when peace is restored, the new order is almost always a revised LAO, as in Mexico in the 1930s, Korea in 1960s, Mozambique in the 1990s, Russia in the 1920s and 2000s, and now in the countries of the Arab Spring. A violent upheaval almost never leads directly to an open democratic order (Congleton 2011, pp. 69–76, 182–183). There is new division of the economy and rents among a revised dominant coalition of organizations with violence capacity. Progress then

may come by making the division of rents more in line with the economic and political capacity of the organizations and by making the implementation and evolution of the rent allocation more according to impersonal rules.

1.3 Improving limited access institutions and transition to open access

Limited access orders are ***not closed*** or immune to change. The organizations in the patronage networks have incentives to innovate and increase economic efficiency, although these incentives may be attenuated in order to discourage violence, to restrain competition, and generally not to disrupt the fragile bargains. LAOs can mature as the agreements become more durable and the threats of violence become less immediate. The German experience up to 1913 illustrates this; so do the experiences of Britain, France, Netherlands and Sweden in the nineteenth century as well as the recent cases of Chile and South Korea (Congleton 2011; North et al. 2009, 2013).

Examination of many cases indicates three key dimensions for improving institutions within LAOs:

1. Strengthening rule of law for elites and eventually for all citizens. This includes the government's enforcement of agreements between organizations in the public sphere (like the military chain of command), between the government and non-state organizations, and between the non-state entities, like corporations and individuals. Although having rule of law for all is a worthy goal, it cannot happen before there is rule of law within the elite, which usually happens first.
2. Making organizations permanently lived, i.e., not dependent on leadership of the original founders. Institutions—the rules of the game—become stronger as more organizations get involved and as public support for them becomes more reliable.[4] Interaction between organizations helps to strengthen their rules and identities, because if there is only one dominant organization, it can change rules at will, and there is no other organization to challenge it and demand compliance to agreements.
3. Reducing actual violence and consolidating civilian political control of the military and other organizations with violence capacity. Control over organizations with violence capacity has been the most difficult dimension for LAOs to sustain progress.

While there is considerable interdependence among these dimensions, studies have shown that LAOs can progress on one dimension even while they stagnate in other areas or become more fragile (North et al. 2013). Nonetheless, becoming mature on all three dimensions seems to be necessary for transition to open access. Hence, we refer to them as Doorstep Conditions for the transition (North et al. 2009, 2013).

[4] I follow the convention that "organizations" are the players in the game and that "institutions" are the rules by which they play. See (North 1991).

Even with the doorstep conditions, the transition to open access has taken place only when the dominant coalition is ready and willing for it to happen. Many organizations have incentives to preserve limited access, which gives their members an extra share of personal security as well as rents—hence transition to open access is rare and is not an automatic progression. Political and economic competition among the elites has needed to become sufficiently intense and subject to reliable rules, without violence, so that the limited-access elites want to recruit wider circles of economic participants and voters by widening access (North et al. 2009, 2013).

Revolutions and other popular uprisings have never led directly to transitions to open access, because the increased violence generally leads to more limited access in the near term. Nonetheless, a revolution can lead to a new dominant coalition that may be able to mature in a more sustainable way and eventually to make a transition to open access.

2 Germany since the early nineteenth century

As we survey German history from the early nineteenth to the late twentieth century, we see a unique path, *Sonderweg*, as every individual history is unique.[5] This section, however, tells the story with the lens and vocabulary of the limited and OAO framework. It is an experiment to see if this international comparative framework can improve our understanding of Germany's *Sonderweg* and see how it compares with the path of other LAOs, some of which have also transitioned to open access.

The limited access framework posits that systems of organizations and the distribution of rents in a society evolve in mutually dependent ways—we cannot understand one without considering the other. Therefore, the rest of this section looks at the main periods of German history and for each period summarizes the organization of violence capacity and distribution of rents—politics and economics.

2.1 Building the Kaiserreich under Prussian domination: 1818–1870

Germany after the Treaty of Vienna in 1814 was still fragmented. Although the German states had not fought against each other during the Napoleonic Wars, they were allied by royal marriages and other means with various European countries that had fought one another at times. These had some violence capacity, as did certainly the large countries around the periphery of the former Holy Roman Empire that had claims in the territory that would become Germany—Prussia, Austria-Hungary, France in Alsace-Lorraine and Saarland, and Denmark in Schleswig–Holstein. None of the German states were eager for war, and emerging German national sentiment encouraged harmony, but there was no central control of violence capacity. Conflicts over borders or trade could have escalated into war. The rents from economic growth were meager in the fragmented economies, providing little fiscal incentive to minimize conflict.

[5] Wehler discusses the origin and significance of the term *Sonderweg* (2000, pp. 84–89).

Prussia was clever and prescient in using rents from the newly emerging Zollverein—customs revenue distributed on a per capita basis—to reward other state governments for joining an organization under Prussian economic hegemony (Henderson 1975, pp. 34–39). The wider benefits of an expanding free-trade zone and transport network made it difficult for them to go against Prussia in the conflicts with its rivals for German hegemony, especially Austria, which was kept out of the Zollverein. The Zollverein not only brought Prussia to the lead of the only pan-German organization, it also fostered economic growth by greatly improving internal transport and communications and eliminating most internal economic barriers. This growth increased the rents, profits and wage earnings of most participants in the economy—incentives to restrain violence and stay in the Zollverein.

Managing violence capacity was contentious in the pre-unification period, although open violence was rare. Germany had open violence internally in the Revolution of 1848–1849 and at the borders of the future German state—in 1864 versus Denmark, 1866 versus Austria, and 1870 versus France (to bring in Alsace-Lorraine). Although the scale and duration of open violence in these conflicts was small compared to the Napoleonic Wars or World Wars I and II, in their context there played out a back and forth struggle between the various factions for parliamentary constitutionalism and the Prussian army establishment. The army wanted to have autonomy in military affairs, subject only to orders from the King, to whom alone they would have an oath of loyalty. The parliamentary constitutionalists remembered well the intervention of the army against democratic elements in 1848 and before, and therefore they wanted, inter alia, that the army officers would take a loyalty oath to the constitution and there would be a popular citizen wing of the military—*Landwehr*—as a safeguard against absolutism. The *Landwehr* came in and out of existence over the years, but the regular Prussian Army always kept its dominant position (Craig 1955 discusses this in detail).

2.2 A mature LAO fosters Schumpeterian innovation: 1871–1913

In international and historical perspective, Imperial Germany ranks as one of the most successful LAOs ever. The article by Grimmer-Solem in this collection compares it to China since the 1980s. Germany in the decades leading up to WWI had a combination of limited and open access features that supported dynamic economic growth and technical progress. In these years Germany became the dominant industrial power in Europe—surpassing England and France in heavy industry, chemicals, electrical equipment, and many branches of machinery. Schumpeterian innovation was clearly possible, even without having a full OAO.

In the early 1870s the economy moved toward open access. The new general incorporation law allowed openly competitive capitalism to flourish, briefly, as thousands of new firms got joint-stock charters. The same decade saw the formation of many producer associations. Initially their function was information sharing and lobbying. The economic crisis of 1873–1874 and subsequent depression halted progress toward open access on the economic side. Many new firms went out of business or under the control of an increasingly concentrated banking sector,

dominated by the four 'big-D' banks. In the next decades, large industrial enterprises regained economic parity with the banks, making the relationship more symbiotic and more profitable for both sides. In 1879 the heavy industry cartels asserted their strength, and Bismarck negotiated a deal between them and the Junker grain growers, both of which came to see new benefits in protective trade tariffs (Gerschenkron 1943; Webb 1980, 1982a). As technological change—such as the continuous processing of hot pig iron into finished steel goods—increased the minimum efficient scale and capital requirements in iron and steel, the cartels limited the entry and expansion of new firms. This enabled the cartels to keep production at profitable levels over the business cycle and particularly to keep domestic sales at prices that covered average costs, while exports could be dumped at lower prices, which only needed to cover marginal cost (Webb 1980, 1982b). In the chemical dye, electrical equipment, and heavy combustion engine sectors, new patent laws were tailored to the needs of large firms and restrained competitive entry.

Thus on the industrial side, limited—not closed—access was not a static defensive posture but rather reinforced the collusive domestic industrial organization and enabled strong output growth and aggressive external marketing. The big banks not only financed the aggressive industrial expansion but also helped discourage any firms that might challenge the cartels (Milward and Saul 1977, pp. 47–48). The law and courts supported this limited access by enforcing cartel agreements. Not until the 1950s would Germany have something like the U.S.'s Sherman Anti-trust Act to curtail monopolies or restraint of trade. Schumpeter writes: "'Restraints of trade' of the cartel type as well as those which merely consist in tacit understandings about price competition may be effective remedies under conditions of depression. As far as they are, they may in the end produce not only steadier but also greater expansion of total output…" (1942, p. 91). Although he does not make explicit reference to the German experience, the logic of creative destruction fits there, with cartels directing much of the destructive effects toward foreign competition while the German economy benefited more from the creative side.

Politically, access became more open these decades as the new German Reichstag was elected with universal male suffrage and relatively equal voter representation. The upper house, the Bundesrat, however, was chosen by the state legislatures, which in Prussia and many other states were still chosen with property-weighted representation or property requirements to vote.[6] In this way the propertied classes held a veto power over legislation and especially constitutional changes at the level of the Reich as well as most of the states.[7] The constitution also made the executive branch—Chancellor and cabinet—and the military accountable to the Kaiser, not to the Reichstag, although the Kaiser's chosen ministers had to

[6] The representation in Prussian lower house was according to how much property tax a man paid. Most democracies, including the US, Britain and other German states, had unequal representation per capita, typically based on historical geography and biased in favor of rural over urban areas. Property requirements for suffrage and class-based eligibility for the upper house, as in Britain and Sweden, were also common (Congleton 2011).

[7] The Bundesrat held the power to initiate and veto all legislation, including constitutional changes Congleton (2011, p. 471).

negotiate with the Reichstag to get laws passed and especially to get budget appropriations for the military and other uses.[8] The Kaiser, and King of Prussia, was made head of the military forces of all the states except Bavaria (Craig 1955). These autonomies of the executive served to maintain the separation of executive power from the legislature, and also to render impotent much of the expanded access in the electoral system.[9]

In the 1870s the dominant coalition acted against rival political organizations. Bismarck pursued the *Kulturkampf* against the Roman Catholic Church and its political representation in the Centre Party in 1871–1879. The government banned meetings and publications of the German Social Democratic Party in 1878, after it won a dozen Reichstag seats in the 1877 election. These actions turned out to be unnecessary for the Catholic organizations, which were inherently conservative, and counterproductive for the SDP, in that it led to well-organized underground movements (Koch 1978, p. 273, 279). In 1880 the *Kulturkampf* ended, and in 1890 the government ended the ban on the socialist party. Other aspects of the LAO sufficed to prevent the socialists from gaining enough economic or political power to cause problems, and the Catholic Centre Party became an ally on many conservative issues. Indeed, as these groups became secure in secondary places in the booming economy, they were getting enough economic benefits—rents—from the system to discourage revolutionary tendencies, even though the socialists and conservative Catholics did not approve of many of the trends in the economy and society. Germany's social insurance system, introduced by Bismarck in the 1880s and unprecedented in the capitalist world, created channels for state-controlled distribution of rents to a broad spectrum of society.

The spectacular success of the military campaigns against Denmark, Austria, and France in the 1860s and 1870s solidified the ideal of consolidated military force in Germany under Prussian leadership (Wehler, p. 88). There was a special relationship between the Junker aristocracy, who made up most of the officer corps in the nineteenth century, and the Prussian/German monarchy. Even as more upper-middle class entered the Army officer ranks, becoming a majority in the early 1900s, a deliberate policy excluded Jews and liberal thinkers, so that the military was itself a LAO, able to unite much of the new wealth from industry and commerce with the old wealth of the agrarian Junker nobility. This reinforced the idea that the dominant coalition controlled the organizations with violence capacity, regardless of what happened in the limited democracy of the electoral process. It bothered the Kaiser and traditionalist generals that the Reichstag had constitutional power to approve the military budget and hold the War Minister accountable, while the generals had sworn loyalty only to the Kaiser. Nonetheless, because of the military rivalries with Russia, France and England, especially after 1900, the army and the navy won in substance most of the time. "The army was privileged to remain a state within the state…" (Craig 1955, pp. 217–54).

[8] Congleton (2011, chapter 6), analyses the possibilities and limits for legislatures to use the power of the purse to increase their authority.

[9] The U.S. also has separation of executive and legislative powers, but there the president is elected and his cabinet and other high-level appointments require legislative approval.

2.3 1914: Taking stock

On the eve of WWI, was Germany an OAO? This question bears on the interpretations of both the pre-war and interwar periods.

By the early twentieth century and even the late nineteenth, Germany was a mature LAO and had the Doorstep Conditions in place: rule of law for elites and essentially for all citizens, perpetually-lived economic and political organizations, and consolidated control of the military under the Kaiser, although there were tensions with the Reichstag and Chancellor on this issue. Furthermore, people were substantially free to form economic and political organizations, and the letter of the law prevailed for them. Although some might argue that this signaled arrival of an OAO, institutions carefully limited access at the top on both the political and the economic side. While every OAO has some limits on access, those of Imperial Germany had the intent and effect of preventing a dynamic where openness on the political side would expand and preserve openness on the economic side, and vice versa (Turner 1985, p. 3).

The political system had considerable openness at the bottom; suffrage in Germany was wider than in many notable democracies, and the German labor movement achieved strong organization and substantial parliamentary representation. This perhaps laid the foundation for a more robust OAO later in the twentieth century. Nonetheless, the Kaiserreich put substantial limits on which organizations could gain enough influence to effect real change.

On the economic side there was a similar pattern of openness at the bottom but closed access to the commanding heights of the economy. Although general incorporation laws allowed nearly any qualified group to start a corporation, the cartels (defended by law) and the power of major banks (in collaboration with the central bank) meant that the dominant coalition could block any challenge to its economic domination. In the agrarian political economy, the large landholders had hegemony over the peasants and agrarian labor, although the peasants got at least some economic benefit out of the protective tariff regime that helped hold together the larger alliance of agriculture and heavy industry (Webb 1980, 1982a, b). As is typical in stable LAOs, even groups near the bottom of the economic order had benefits—rents—that could be lost if they did not cooperate.

Most segments of German society, except for the classical liberals, did not view the lack of transition to open assess as a failure. Although some of the upper classes and particularly the officer corps of the army wished for the restoration of more limited access, they remained at the top of the dominant coalition. The middle classes were mostly glad that the German order of 1913 protected their property rights, kept the socialist menace at bay, and allowed them economic progress and prosperity (Craig 1955; Winkler 2001). Perhaps, without the First World War and its aftermath, the German Reich would have made the transition to open access, but such transitions are not inevitable. Some might argue that a transition to open access only became possible after the total defeat in World War II.[10] Our framework

[10] Craig (1955) documents the ability of the army repeatedly to survive as a state within a state and to resist tendencies toward open access.

cannot answer that question, but it does show Germany in 1913 as a mature LAO on the doorstep to transition and with a very successful economy, but not yet being a true OAO.

2.4 World War I

The Great War brought major changes to the economies and polities of all participants, but the OAOs in France, Britain and the US came through with their basic constitutions intact. In Germany, however, which suffered less physical destruction and loss of life than France, the mature LAO was too rigid to adjust to the changes without cracking and losing key doorstep conditions. When the military failed to achieve the decisive victory by 1915 that in their view would justify the nation's sacrifices, they would not accept the idea of limiting their losses via a negotiated peace.

> …it became their fixed belief [in the military] that nothing would do more to promote social revolution than a peace which brought no tangible gains to Germany. … Of all the vested interests in Germany the armed series stood to lose most from political and social reform. Any extension of the principles of parliamentary government was bound to lead to the very kind of civilian control over the army that the military chiefs had been fighting since 1848. The reform of the Prussian electoral system, now being demanded by the left, … the destruction of the feudal relationship between king-emperor and his officers …,—these and other dangerous changes could be expected if democracy or socialism resulted from the war. For the sake of its very existence, the army had to bring the German people territorial advantages… Because a negotiated peace made the attainment of their territorial ambitions impracticable, the military leaders in the second half of the war did everything in their power to make it [negotiated peace] impossible. (Craig 1955, pp. 312–313)

This illustrates the inherent inflexibility of an LAO, even a mature one. By mid 1917, the military leaders had advanced their influence to the point that they could demand the resignation of a Chancellor who opposed them and nominate his successor. Further retreat from maturity as a LAO followed in the wake of revolution and military defeat in 1918.

2.5 Weimar

What happened in Germany from 1919 to 1945 followed a common pattern when a major shock hits a mature LAO—the old system is too inflexible to deal with a radical redistribution of violence capacity and rents. The events of the immediate post-war years moved Germany's LAO far back from maturity and the Doorstep Conditions, despite the idealistic political openness that was on the paper of the Weimar Constitution. Three regressions stand out:

First, the government lost control of organizations with violence capacity. The enlisted men in the Navy revolted, the first shot of a wider revolution that stopped

the war. Later, demobilized military personnel formed the *Freikorps* and other paramilitary groups. The army, downsized by the Allied demands, tried secretly to keep control of these unauthorized forces, but they often acted independently on their own agendas and received much of their financing from big businessmen (Craig 1955). The French army occupied key parts of Germany until 1925. Although the large-scale violence subsided in the late 1920s, with the suppression of the Kapp Putsch and the left-wing uprising in Saxon, extreme left and right wing political parties set up armed auxiliary units that perpetrated numerous smaller crimes and violent actions, beyond effective control of the government. The military itself took secret re-armament actions without telling the government during the early 1920s. Even in the late 1920s when the government secretly allowed the weapons programs, one must ask whether the government was really in control, or was it acquiescing to the military in exchange for its protection against the threats of extremist groups.

> The attitude of big businessmen during the republican period had much in common with that of the officer corps of the army. Both focused their political allegiance not on the Republic but on such 'higher' notions as *Vaterland* or *Reich*. Both drew a distinction between what they viewed as the permanence of 'the state' and the transitoriness of a particular constitution, including that adopted by the Weimar National Assembly. (Turner 1985, p. 14)

In LAOs, organizations with more money than muscle typically form alliances with organizations that have violence capacity, and the big businessmen helped finance the *Freikorps:* "…ranks of violence-prone young men who would bedevil the democratic processes of the Republic throughout its brief existence" (Turner, p. 10). Thus, for at least most of the Weimar period, Germany no longer met Weber's criteria of the government having a monopoly on violence capacity.

Second, access in the economy became more limited. The inflation annihilated the assets of much of the middle-class (Holtfrerich 1980; Webb 1989); so, even though the law provided opportunities for new businesses, the majority of potential entrepreneurs lacked the capital to take the opportunities. Mainly the large firms that had access to Reichsbank credit or capital from America had profited during the hyperinflation. Smaller enterprises usually saw the real value of their working capital evaporate. Although the peasants and workers had benefited at times in relative terms from the inflation, they did not become investors who could support a dynamic of open access (Feldman 1997, pp. 580–581, 839–840, 843). If the depression had not cut short the recovery of the late 1920s, the effective access might have broadened again, but it did not.

Monopolies in key sectors became more powerful than before the war. Former cartel members merged into single firms. The six main chemical firms—BASF, Bayer, Hoechst and three others—merged to form IG Farben, which then had almost all the chemical industry in Germany. In 1926 seven of the large iron and steel firms merged to form Vereinigte Stahlwerke, which then produced 40 % of the steel and 20 % of the coal in Germany. Before the war, industrial interests were divided between the cartelized iron and steel firms, which charged higher prices for domestic sales than for export, and the German companies that lacked their own

steel production and thus had to buy their inputs at the cartel prices (Webb 1980). In the mid 1920s, secret agreements, known as the AVI accords, partially closed this breach, as the steel cartel agreed to pay rebates to the steel users, like in machine building, when they exported products that used steel (Turner, p. 36). This put them on a similar cost basis for exporting as the machine-building operations of the steel firms, like Krupp. The cartels and new monopolies also forged other strategic links across sectors, with banks and with the main electrical firms.

In explaining the downfall of the Weimar Republic, Borchardt emphasizes the role of wage conflict and the exclusion of labor from the increasingly politicized bargaining process after 1924 (Borchardt 1982, pp. 183–184). This was part of the broader LAO degeneration that not only squeezed labor out of the elite bargain, which it had won on paper in 1919–1920, but also led its radical wings to increase their violent tendencies.

Third, the hyperinflation, emergency measures (like during the Ruhr occupation), and the inability to revalue most nominal assets after the hyperinflation undermined belief in the Rule of Law. "…the war had imposed the great mortgage on German democracy, but it was a mortgage with a viable interest rate that increased with each successive blow to the body politic. One of the greatest of these was the inflation, which caused the Republic to be identified with the trauma of all those who had lost out and with the shameful practices and violations of law, equity, and good faith that had characterized the period." (Feldman 1997, p. 585) If the relative stability of the later 1920s had continued longer, with growth providing material benefits to wider circles, then supporters of Weimar might have developed more faith in its law, and its opponents would have resigned to accepting it. But this chance did not come.

Compounding the domestic troubles, the international environment turned strongly against Weimar Germany. The reparation demands combined with demands for political democracy and for economic capitalism. The German political economy then did not have enough room to reach a feasible solution. Even though few of the reparation demands were actually paid, they put a heavy claim on whatever economic recovery—growth of aggregate rents—Germany might achieve (Feldman, pp. 453–454; Webb 1989, pp. 103–119).

Thus, it is not surprising that after 1930 the Weimar constitution could not withstand the contradiction between unlimited political competition, open violence, and narrowing economic opportunities, especially as the Great Depression and reparation demands curtailed distributable rents.

Even if it did not succeed in getting control of violence capacity and making effective economic open access, Weimar was an attempt by its founders to create what we would call an OAO. One could say that it succeeded briefly, from the end of the French occupation and the dismissal of the commanding general of the army in 1926 until the entrance of General Hindenburg as Reichspresident in 1930. It did not, however, have the chance to establish the dynamic of open economic and political access reinforcing each other. Or one could say that Weimar had only the paper façade of open access, and that the underlying allocation of rents and control of violence capacity did not realign sufficiently in those years to make open access effective. Its institutions were less mature and stable than those of Germany's LAO before 1914. In any case, in the early 1930s Germany reverted to being a fragile

LAO, with multiple organizations openly using violence capacity to compete for a shrinking pie of rents.

2.6 Nazi period

When the Nazis came to power in 1933, they swept aside the OAO institutions that the Weimar government had briefly erected. They suppressed independent organizations or forced them to accept Nazi domination. This made the LAO less mature. The Nazi Party was not a permanently-lived organization, because it all depended on one man—Hitler. The quality of rule of law correspondingly deteriorated as well, because when the dominant organization allows no rivals, there is nothing to hold it accountable to honor its commitments, including the law. Business leaders—the non-Jewish ones—could generally keep their property and profits, and sometimes increase them by taking Jewish property or using unpaid labor from concentration camps. They could not organize independently, however, or hold the government accountable for any commitment.

The control of violence capacity, while not a chaotic as in the early Weimar period, fractured in new ways. The Wehrmacht—comprising army, navy and air force—was legally under Chancellor Hitler, but the General Staff had its own military tradition of command and never gave full personal allegiance to Hitler, especially as his regime became more personal and farther from a legal foundation and as his war strategy ran into problems. The Gestapo was another major organization with violence capacity, operating above and beyond the regular police organizations, and with its own chain of personal ties to Hitler. Within the Nazi party realm, the original armed wing of *Sturm Abteilung* (brown shirts) were pushed aside and some killed off, as inconveniently tied with the populist anti-big-business ideas of early Nazism. The *Sturm Staffel* (SS) became the dominant armed force within the Nazi Party realm and spawned the *Waffen SS*, which was a second ground military force, not part of the Wehrmacht and obedient to personally to Hitler via the Nazi party. It took a lead role in the Holocaust.

The evil of the Nazi regime stands out because it had such an efficient machine to carry out its commands on a large scale and because it occurred in a country with such a refined cultural past. But it is a common story that limited access societies, even previously mature ones, often do atrocious things when hit by a shock and revolution. Notable examples include the Terror in France after the revolution and then Napoleon's dictatorship and attempt to conquer Europe; the killing fields of the Pol Pot regime in Cambodia after the US invasion and the fall of Prince Sihanouk; the killing and starving of peasants and others in Stalin's Soviet Union; Mao's cultural Revolution in China; the partition conflicts in the Indian subcontinent; and so on. This is not to deny the horror of the Holocaust and WWII. But the LAO lens can put Germany in an international comparative context. Unfortunately, really awful things happen when an LAO breaks up or regresses, and a mature LAO is not easy to put back together after a revolution. That is why common people are often afraid to overthrow even a *bad* LAO.

2.7 Bundesrepublik

What is perhaps most noteworthy for Germany after WWII is the transition to open access. We take it for granted now that Germany is an OAO and has been for some time—since the 1970s or earlier. But it was clearly still limited in the late 1940s and early 1950s. (Dahrendorf 1967; Winkler 2001) Then it transitioned to open access.

Although 1945–1947 was a bleak time for Germans in many ways, the areas of Germany occupied by the Western Allies largely avoided the extreme violence of personal vendettas and political competition that convulsed the other countries of central, eastern and southern Europe in the immediate post-war years.[11] Such violence is typical when one LAO is overthrown and then leads to recreation of another LAO that is less mature. West Germany avoided that and was able to proceed with the reconstruction of a mature LAO and start the transition to open access.[12] Although the Western Allies at first kept the German population on near-famine rations (given general food shortages in Europe), put many Nazi government and business leaders in prison camps, and dynamited industrial plants that had survived the wartime bombing, they worked with local authorities and police to prevent violence among the German population (Kindleberger 1989). One could say that the Western Allies imposed a new LAO as a means to enable the transition to open access.

The terms of the peace and Allied occupation rules eliminated key organizations and institutions that before 1914 and in the interwar period had resisted a transition to open access: the industrial cartels, the Prussian state, and the old military leadership. The Western Allies, particularly the US, also vetoed the implementation of radical socialist clauses that several German states put in their new post-war constitutions. While one could debate whether this prevented the restoration of the West German economy on a more equitable basis, market capitalism brought growth and rents to share.

The German political system rebooted with parties that descended directly from the three parties that had supported democracy in the Weimar Republic—the Liberals, the Centre Party, and the moderate Socialists. In one sense there was still limited access, because at first the parties of the extreme right and left were excluded. But this was justified because those parties would not accept the constitution and the rule of law, an essential dimension of LAO maturity and an OAO (Winkler, p. 162). The Bundesrepublik constitution required parties to obtain at least 5 % of the vote in order to get proportional representation in the legislature. This was to avoid excessive party fragmentation, which was seen as a key weakness of the Weimar, and is not really a limited access feature, as most democracies have some requirements in order for a party to get representation or be on the ballot.

[11] Lowe (2012) provides lurid details.

[12] This is not arguing that U.S. military presence is automatically or even typically a factor that promotes maturation of LAOs and eventual transition to open access. This might have been the case in post-war Japan and South Korea (pending further investigation), but in places like the Philippines, Haiti, the Dominican Republic, and Central America the US military intervention probably disrupted the maturation of those LAOs.

Economic policy ideas in the early Bundesrepublik came from many directions. The most influential intellectually was the Ordoliberal order proposed by Walter Eucken and his associates. Key factors were (1) monetary stability, (2) free market entry, (3) protection of private property, (4) freedom of contract, (5) liability for external effects of economic decisions, and (6) consistency and predictability of government policy. In practice this broadened to the idea of a social market economy, which included the participation of labor representatives in decisions of private corporations—*Mitbestimmung* (co-determination). This assured that the labor groups would be part of the elite bargain and would receive some share of the economy's power and rents. The Ordoliberals believed that the state needed to take an active role in assuring free-markets and preventing the restraint of competition that could and would arise in unregulated markets (Giersch et al. 1992, pp. 30–31). The belief in an active state to create what we would call an open access economic order grew out of the Ordoliberals' diagnosis of the problems of the Germany dating back to the early nineteenth century, when it was an LAO (Giersch et al., pp. 27–28). These ideas took concrete legal form as the co-determination laws passed in 1951 and 1952 and as the law against restraint of competition passed in 1957. The latter also established a federal cartel office to supervise the behavior of firms with market-dominant positions (Giersch et al., pp. 84–85). This led to an open access economic order.

On the military side, following World War II the Allies dissolved the Wehrmacht with all its branches. Yet soon after the founding of the Bundesrepublik in May 1949, the Consultative Assembly of Europe began to consider in 1950 the formation of a European Defense Community with German participation. As Germany was allowed to rearm and build back its military, starting in the 1950s, this was carefully contained within the framework of the European Defense Force and NATO. Not incidentally, along side the German military physically and organizationally were a million or more troops of the US and other allies, which had arrived as conquerors and occupation forces and stayed on as part of the defense against the perceived Soviet threat. It went without saying that the German military would not be allowed to pursue external expansion or exert coercive pressure on the civilian government, as they had done frequently in the past (Craig 1955). A treaty in 1952 with the US, Britain and France ended the occupation officially and allowed German self determination, but this was subject to other treaty provisions for the continued stationing of Allied troops in Germany and requiring that Germany have "ein freiheitliche demokratische Verfassung" (a free democratic constitution) and be integrated in the European Community (Winkler, p. 151). Germany joined NATO in 1955.

Imbedding the foundations for open access in international organizations and agreements was an institutional innovation, to be replicated later in the expansions of the EU into Southern and Eastern Europe.[13] Today the criteria for access to the EU essentially include those of being an OAO. The criteria were laid down at the

[13] The Commonwealth agreements providing for home rule in Canada, Australia and New Zealand may have been analogous precursors. Other parts of the Commonwealth, in the Caribbean, Africa and Asia, have not made a transition to open access, however; some have become fragile LAOs (North et al. 2013).

European Council meeting in Copenhagen in 1993 and expanded at the European Council meeting in Madrid in 1995. The first two are as follows:

- political criteria: stability of the institutions safeguarding democracy, the rule of law, human rights and respect for and protection of minorities;
- economic criteria: existence of a viable market economy, the ability to respond to the pressure of competition and market forces within the EU;

> … Civil society dialogue is intended to involve civil society in the EU and the applicant countries in the accession process and has assumed a higher profile with the need for civil society engagement in the EU. … (Europa.eu)

These criteria were not there at the beginning, however, with the Coal and Steel Community and the European Economic Community. Germany and Italy were still limited access at the beginning. The criteria indicate what the EU views as the achievements of its original members and as the standard for other countries wanting to join.

2.8 The German question and Sonderweg re-considered

Without doubt the malevolent LAO of Nazi Germany caused extraordinary damage to its neighbors and own people. Did this result from extraordinarily bad institutions before 1914? Or was it bad luck and judgment in the war and after?

During the century up to 1914 a LAO Germany succeeded in building a highly productive economy, allowing enough openness to foster innovation and to defuse political dissent. This was a remarkable achievement. Like many LAOs, however, it did not make the transitions to open access. The limited and open access framework makes no presumption that such transitions will take place.

Germany's industry and military were stronger than any of its immediate neighbors, making extensive conquests easy at first. Its high logistical capacity facilitated hate crimes by the Nazis on an unmatched industrial scale. That Germany in the 1930s and 1940s went on a violent rampage at home and abroad does not make it unique. Such horrors often happen when shocks hit LAOs and their previously mature institutions fail.

Considering Germany's transition to open access after WWII, three favorable factors came together: the desire of many Germans to have such a society, the Allies' insistence on dismantling certain institutions that had sustained limited access since the nineteenth century and prevented a transition—the Prussian state and military organization and the cartels—,[14] and the inclusion of Germany into the international organizations, particularly NATO and the European Common Market cum European Union. These organizations, made strong with German backing, have helped other countries to make the transition to open access—Spain, Poland, the Baltic states, probably Italy, and so on. It would be ironic if the troubles in the EU

[14] Of course the Nazi Party was also dismantled and banned, as the immediate instigator of the holocaust and other horrors of the 1930s and 1940s. It was, as argued above, the result not the cause of the breakdown of the mature LAO from pre-1914,

and Euro group in the twenty-first century were to push some countries on the brink of transition to open access, like Greece, back into more chaotic limited access.

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References

Blankart, C. B., & Mueller, D. C. (2014). Wer soll die Bürger im Staat repräsentieren? *ifo Schnelldienst*, *67*, 31–34.

Borchardt, K. (1982/1991). *Perspectives on modern German economic history and policy*. (trans: Lambert, P.). Cambridge: Cambridge University Press.

Congleton, R. D. (2011). *Perfecting parliament: Constitutional reform, liberalism, and the rise of western democracy*. New York: Cambridge University Press.

Craig, G. (1955). *The politics of the prussian army, 1640–1945*. London: Oxford University Press.

Dahrendorf, R. (1967). *Society and democracy in Germany*. New York: Norton.

Feldman, G. D. (1997). *The great disorder: Politics, economics, and society in the German inflation, 1914–1924*. New York: Oxford University Press.

Gerschenkron, A. (1943). *Bread and democracy in Germany*. Berkeley: University of California Press.

Giersch, H., Paqué, K.-H., & Schmieding, H. (1992). *The fading miracle: Four decades of market economy in Germany*. Cambridge: Cambridge University Press.

Handler, S. P. (2010). *Wolves in sheep's clothing: Understanding modern state-building (and counterinsurgency)*. PhD. Dissertation. Stanford University.

Henderson, W. O. (1975). *The rise of German industrial power, 1834–1914*. Berkeley: University of California Press.

Holtfrerich, C.-L. (1980). *Die deutsche inflation, 1914–1923*. Berlin: de Gruyter.

Kindleberger, C. (1989). *The German economy, 1945–47*. Letters from the field. NY: Information Today.

Koch, H. W. (1978). *A history of Prussia*. New York: Dorset Press.

Lowe, K. (2012). *Savage Continent: Europe in the aftermath of World War II*. New York: St. Martin's Press.

Milward, A. S., & Saul, S. B. (1977). *The development of the economies of continental Europe 1850–1914*. Cambridge: Harvard University Press.

North, D. (1991). Institutions. *Journal of Economic Perspectives, 5*, 97–112.

North, D., Wallis, J., Webb, S., & Weingast, B. (Eds.). (2013). *In the shadow of violence: Politics, economics and the problems of development*. New York: Cambridge University Press.

North, D., Wallis, J., & Weingast, B. (2009). *Violence and social orders: A framework for interpreting recorded human history*. New York: Cambridge University Press.

Ober, J., & Weingast, B. (2013). *Is development uniquely modern? Athens on the Doorstep*. California: Stanford University.

Schumpeter, J. A. (1942). *Capitalism, socialism and democracy*. New York: Harper and Row.

Turner, H. A, Jr. (1985). *German big business and the rise of Hitler*. New York: Oxford University Press.

Webb, S. B. (1980). Tariffs, cartels, technology and growth in the German steel industry, 1879 to 1914. *Journal of Economic History, 40*, 309–329.

Webb, S. B. (1982a). Agricultural protection in Wilhelminian Germany: Forging an empire with pork and rye. *Journal of Economic History, 42*, 309–326.

Webb, S. B. (1982b). Cartels and business cycles in Germany, 1880–1914. *Journal of Institutional and Theoretical Economics*, *138*, 205–224.

Webb, S. B. (1989). *Hyperinflation and stabilization in Weimar Germany*. New York: Oxford University Press.

Weber, M. (1919). *Politics as a vocation*. Munich: Lecture at Bavaria Free Students Union.

Wehler, H. U. (2000). *Umbruch und Kontinuitaet: Essays zum 20. Jahrhundert*. Munich: Verlag C.H. Beck.

Winkler, A. H. (2001). *Der lange Weg nach Westen: Deutsche Geschichte vom "Dritten Reich" bis zur Wiedervereinigung*. München: Verlag C.H. Beck.