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DEMOCRATIZATION, SEQUENCING, AND STATE FAILURE IN AFRICA: LESSONS FROM KENYA

DANIEL BRANCH AND NIC CHEESEMAN

ABSTRACT

In order to complement ongoing current empirical research, this article draws wider lessons from the crisis that grew out of the disputed Kenyan presidential election of December 2007. Looking beyond the immediate trigger for the subsequent violence – namely, the election itself – the paper instead locates the roots of the crisis within three historical trends: elite fragmentation, political liberalization, and state informalization.The origins of each can be traced to the style of rule employed by Daniel arap Moi. Even though his first government of 2002–5 perpetuated these trends, President Mwai Kibaki failed to recognize their implications for national unity and the exercise of power in 2007. The article then addresses the sequencing debate within the literature on democratization, identifying the lessons that can be taken from the Kenyan case for other states. Kenya has shown again that political liberalization is a high-risk activity that can produce unintended side-effects. Drawing on examples from other African states, we argue that the processes of democratization and reform can be undertaken simultaneously, but that this twin-tracked approach requires institutional reforms not yet undertaken by a large number of African polities.

LESS THAN A WEEK BEFORE KENYANS WENT TO THE POLLS IN DECEMBER 2007, the chairman of the Electoral Commission of Kenya (ECK), Samuel Kivuitu, addressed domestic and international election observers. Kivuitu, an experienced politician and electoral official, was confident that the general elections would proceed calmly and that any resulting transition would occur smoothly. He unequivocally said of the electorate that 'This time they are the ones giving the warnings.'[1] Like many in the audience, Kivuitu drew his confidence in Kenyan democratization from two events. The first of these was the defeat by Mwai Kibaki and his National Rainbow Coalition (NARC) of the then ruling party, the Kenya African

Daniel Branch (d.p.branch@warwick.ac.uk) is Assistant Professor of African History, University of Warwick. Nic Cheeseman (nicholas.cheeseman@africa.ox.ac.uk) is a Lecturer in African Politics at the African Studies Centre, University of Oxford.

1. Samuel Kivuitu, ECK chairman, briefing to domestic and international observers, Kenyatta International Conference Centre, Nairobi, 21 December 2007, from authors' own notes.

National Union (KANU), and its presidential candidate, Uhuru Kenyatta, in the 2002 general election. The second was the rejection of the Kibaki government's controversial draft constitution in a referendum held three years later. Kenyan politicians, so Kivuitu then believed, had at last learnt to listen to the electorate. However, subsequent events revealed that the democratic commitment of many political leaders was shallow at best.

The 2007 election was a two-horse race between the incumbent, Mwai Kibaki, of the Party of National Unity (PNU), and his main rival, Raila Odinga, of the Orange Democratic Movement (ODM).[2] While the parliamentary vote was comfortably won by ODM, the presidential vote was, as predicted, extremely close. Kibaki was controversially declared to have won the latter poll by a slender margin, despite accusations of electoral malpractice.[3] The announcement triggered widespread civil conflict and political order subsequently broke down. There were two principal strands of violence in operation. One strand involved the targeting of members of ethnic communities broadly supportive of Kibaki and PNU by members of other ethnic groups that had backed ODM and Odinga. This most commonly occurred in the Rift Valley Province as Kalenjin youths attacked their Kikuyu neighbours. A second strand of violence witnessed across the country but mostly within urban centres took the form of a series of violent backlashes from state police and rival militias against those protesting the result of the election. In total the violence claimed over 1,000 lives and caused the displacement of over a hundred thousand more, many of whom are still too frightened to return. The bloodshed was halted by the creation of a 'government of national unity' in March 2008.[4] Kenyan 'democracy' was clearly neither as stable, nor as consolidated, as many had dared hope just days before.

The 2007 polls and the subsequent violence have already generated significant academic debate.[5] Doubtless, many articles and books are set to follow in the coming months and years. Both the studies already published and the precedent of the literature produced in the wake of past elections suggest that forthcoming studies will follow a particular line of inquiry: what the outcome of the election actually was (although this will never be known for certain); how the rigging occurred; the role of donors; what inspired the civil conflict; how different communities interpreted and responded to the election; and who perpetrated the violence and why. While acknowledging such empirical studies to be important, this article represents an

2. For the first analyses, see Daniel Branch and Nicholas Cheeseman (eds), *Election Fever: Kenya's crisis*, special edition of *Journal of Eastern African Studies* **2**, 2 (2008).
3. Nic Cheeseman, 'The Kenyan election of 2007: an introduction', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 166–84.
4. International Crisis Group, 'Kenya in crisis' (International Crisis Group Africa Report No. 137, Brussels, 2008).
5. Branch and Cheeseman, *Election Fever*.

attempt to consider the wider lessons and implications of the Kenya crisis for other states undergoing political liberalization. The election of 2007 and subsequent events have much to say to a more widespread malaise within democratization, described by Diamond as a global crisis of democracy.[6]

In exploring such questions, we explicitly reject any misguided and inflammatory attempts to reduce the Kenya crisis to a story of 'tribal warfare'.[7] It is undeniable that competition between different ethnic groups for land and resources came to be a defining feature of the Kenya crisis. Moreover, it is clear that the violence that followed the elections owed much to the evolution of pro- and anti-Kikuyu voting blocs, particularly as a result of the divisive *majimbo* (regionalist) debate undertaken during the campaign. However, more often than not, ethnic identities become salient because they have come to embody other societal divisions, such as regional inequalities, control over land, and access to political opportunities. The increased salience of ethnicity is better understood as the outcome of changes in institutional context and the decision-making matrix facing political leaders, rather than their cause.[8] Mueller argues persuasively that the origins of these changes in the Kenyan context were in large part a creation of the early 1980s. The one-party state was transformed during the first decade of Daniel arap Moi's presidency and then broke down entirely. As Mueller argues, the subsequent return to multi-partyism in 1991 was accompanied by two developments that boded ill for Kenya's future stability: the dissolution of the state's monopoly over the means of violence, and the rise of 'winner takes all' elections contested by parties dependent upon ethnic and clientelist bases.[9]

In addition to the historical roots identified by Mueller, and the short-term trigger provided by the contested election, we believe three other prior interwoven processes contributed significantly to the Kenya crisis: elite fragmentation, political liberalization, and state informalization. The 'bureaucratic-executive' state that dominated Kenyan political life after independence established an all-powerful presidency, whose control was grounded in the ability to direct political activity at the grassroots via the prefectural structure of the provincial administration.[10] The stability of this bureaucratic-executive state rested on the collusion of a range of elites, all determined to protect the highly inegalitarian post-colonial settlement on which their wealth depended. Significantly, this elite alliance preceded

6. Larry Diamond, 'The democratic rollback', *Foreign Affairs* **87**, 2 (2008), pp. 36–48.
7. For example, Adrian Blomfield, 'Inside Kenya: the tribal slaughter', *The Daily Telegraph*, 4 January 2008.
8. Robert Bates, *When Things Fell Apart: State failure in late century Africa* (Cambridge University Press, Cambridge, 2008).
9. Susanne Mueller, 'The political economy of Kenya's crisis', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 185–210.
10. Branch and Cheeseman, *Election Fever*.

the formation of the one-party state and underpinned the stability of the post-colonial polity. Following the accession of Daniel arap Moi to the presidency in 1978, the elite alliance began to fragment. Against a worsening economic backdrop and enjoying far fewer political resources than his predecessor, Moi adopted an increasingly exclusionary system of government, especially after the failed coup attempt of 1982. Kenya thus fits the framework recently set out by Robert Bates, in which the long road to disorder begins with a decision by the executive to adopt an increasingly predatory stance, itself triggered by some combination of falling public revenues and increased political uncertainty.[11] During the course of the 1980s, Moi's approach ruptured the fragile elite consensus. The subsequent process of elite fragmentation undermined the ability of the regime to demobilize opposition, leading to the end of the one-party state and a process of political liberalization.

The introduction of multi-party politics created new opportunities for political leaders to abandon the ruling party, and so contributed to the ongoing process of elite fragmentation. The breakdown of the KANU alliance, in turn, rendered Moi ever more vulnerable.[12] He responded to the new challenges posed by political liberalization by pursuing a policy of state informalization characterized by the looting of the Kenyan state, and by transforming some of Kenya's gangs into ethnic militias as a means to hold onto power through force. Urban gangs had emerged initially as a result of an autonomous set of processes relating to urbanization, unemployment, and the vacuum of control in urban locales. However, the infusion of elite patronage and funding emboldened gangs to become more ambitious and more violent than ever before. The continued political relevance of gangs was subsequently encouraged by the process of elite fragmentation; the desire of a range of political actors to employ gangs for 'protection' during election campaigns meant that for the first time protest movements 'from below' were connected to a divided elite leadership that could provide them with funding and direction. At the same time, the increasingly central role played by militias both eroded trust among the elite and contributed to the sense that Kenyan elections were 'high stakes' events, reinforcing elite fragmentation. The erosion of trust between individuals and between opposition political actors in state institutions was demonstrated on numerous occasions in the aftermath of the elections; ODM's strategy of mass disobedience was predicated on a lack of faith in key political institutions to deliver impartial verdicts.

11. Bates, *When Things Fell Apart.*
12. By 1992, commentators believed that transfer of power was inevitable. See David Throup and Charles Hornsby, *Multi-Party Politics in Kenya: The Kenyatta and Moi states and the triumph of the system in the 1992 election* (James Currey, Oxford, 1998).

Taken together, the mutually reinforcing processes of elite fragmentation, political liberalization, and state informalization radically altered the balance of power between the centre and the periphery. It was in this context that Kibaki – faced with an uncertain election outcome – sought to wield the power of the bureaucratic-executive state as his predecessors had done. In doing so, he took confidence from Kenya's 'top-heavy' one-party constitution. That constitution has remained largely unmodified despite the transition to multi-party politics and continues to confer great power on the executive. Kibaki was also well aware that the coercive power of many of the key security institutions of today's state is as strong as – or stronger than – in earlier periods of post-colonial history. What Kibaki failed to realize was that without the elite alliance that had given the Kenyan state its initial strength, and against an opposition remarkable for its unity, the physical appearance of the bureaucratic-executive state was no longer a true reflection of its ability to demobilize opposition. The centre tried to hold as it had done in the past. But this time Kibaki and his supporters found that the centrifugal forces within the Kenyan political system could no longer be contained. In other words, political disorder in Kenya was not the result of a straightforward weakening of the state, as has been hitherto commonly assumed. Instead, that disorder was the consequence of the Kibaki government's decision to employ the state in a manner that both Kenyatta and Moi would have recognized, but in a far less favourable context.

The interconnected processes of fragmentation, informalization, and liberalization described here are shared by many other states in a similar stage of democratization: it is this that renders the events of early 2008 in Kenya all the more alarming.[13] The case of Kenya tells us much, therefore, about the importance of the sequencing of democratic reforms as debated by Carothers and his critics.[14] Most significantly, it reveals the challenges facing a good many ongoing democratic experiments, from Uganda to Zambia, Malawi to Burundi, and Côte d'Ivoire to Nigeria, and the possible unintended outcomes of such experiments when exposed to the stresses of an election such as that witnessed last December.[15]

Elite fragmentation

As we have described elsewhere, the bureaucratic-executive state that dominated Kenyan political life after independence established an

13. William Reno, 'The politics of insurgency in collapsing states', *Development and Change* **33**, 5 (2002), pp. 837–58.

14. Thomas Carothers, 'How democracies emerge: the sequencing fallacy', *Journal of Democracy* **18**, 1 (2007), pp. 12–27.

15. Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime transitions in comparative perspective* (Cambridge University Press, Cambridge, 1998).

all-powerful presidency. Executive control was grounded in the ability to direct political activity at the grassroots via the prefectural structure of the provincial administration.[16] Except for the reintroduction of multi-party politics, the institutional format of that bureaucratic-executive state has remained largely unaltered since the late 1970s. The initial stability of this state rested on the collusion of a range of elites, the emergence of which needs to be understood in the distinctive cultural, ideological, and institutional context of the late-colonial period. Of particular importance was the creation of a cleavage between supporters of the Mau Mau rebellion and those loyal to the colonial regime. Membership or support of the latter group was what bound together the interests of the executive, foreign capital, the bureaucratic elite (top civil servants, government advisers, and the heads of parastatals), and the administration (provincial commissioners, district commissioners, and so on).

The shared interests of this alliance were deliberately engineered by the British government in the dying days of the empire, as the colonial government sought to transfer power to a reliable and sympathetic elite. A broad range of policies were employed to this end, most notably the use of loyalty tests to determine voting rights, the manipulation of land resettlement schemes to create a land-owning middle-class, and the granting of preferential treatment to 'loyalists' in the course of the Africanization of the administration.[17] In so doing, the British effectively cultivated a bourgeoisie in waiting, which shared the common interest implied by its dominant socio-economic position. Through its control of the administration and the government, members of the elite also enjoyed the capacity to reproduce the system on which their privileged positions depended. It was the common interest and outlook of this group that allowed KANU smoothly to assimilate the opposition Kenya African Democratic Union (KADU) shortly after independence, transforming Kenya into a *de facto* one-party state. Of course, individual political leaders could exist outside of this elite alliance, the most prominent example being Oginga Odinga, the father of Raila Odinga. However, individuals such as Odinga remained on the fringes of power and were unable to build up significant groundswells of support outside their home provinces.

Members of these elites proved determined to protect the highly inegalitarian post-colonial settlement on which their wealth depended. Elite collusion served to contain dissent from below, most notably enabling Kenyatta to demobilize the more radical elements of Kenya's diverse 'nationalist' movement. As a result, many of the key fault-lines in Kenyan politics and

16. Daniel Branch and Nic Cheeseman. 'The politics of control in Kenya: understanding the bureaucratic-executive state', *Review of African Political Economy* **33**, 107 (2006), pp. 11–31.
17. *Ibid.*

society remained unactivated during this period, despite the fact that the historical grievances that underpinned the Kenya crisis can be traced to three dynamics established in the period 1940–70. First, land in the Rift Valley was made available to Kikuyu settlers, to the great chagrin of the Kalenjin who saw the Kikuyu as 'outsiders'.[18] Second, Luo leaders were systematically excluded from power: Tom Mboya through assassination, Oginga Odinga by the refusal of first Kenyatta and then Moi to allow him to contest one-party elections.[19] Third, most of the positions that comprise what one might think of as the core executive – head of the army, president, finance minister, foreign minister – went to members of Kenyatta's Kiambu Kikuyu inner circle.[20] Many groups, including the Kamba and the Luhya, were not represented in proportion to their share of the voting population. Finally, within the Kikuyu community ex-Mau Mau felt betrayed at the lack of land redistribution, while non-Kiambu Kikuyu could also complain of marginalization.[21]

The elite alliance that initially mitigated against the mobilization of these grievances proved to be unsustainable in the long term. Elite fragmentation was already visible by the time of Jomo Kenyatta's death in 1978. Kenyatta's unquestioned status as *Baba Taifa*, the Father of the Nation, initially provided sufficient cement to hold the elite alliance together. However, his consolidation of power amongst a small Kiambu elite, and the failure of his government to address land grievances, weakened the elite alliance, which threatened to collapse altogether under the strain of the succession politics of the first President's final years. Once installed as President, Kenyatta's successor, Daniel arap Moi, briefly restored that alliance, and initially appealed for support on the basis of a policy of continuity. His slogan of '*Nyayo*' (literally 'footsteps') suggested that he intended to rule in the image of his predecessor whilst undertaking a series of populist reforms. However, Moi faced numerous challenges to any simple continuation of Kenyatta's style of rule. The new President lacked his predecessor's sizeable ethnic base and vast personal wealth, and could not point to any great record of anti-colonial resistance with which to boost his appeal across the country. Nor could Moi benefit politically from the distribution of the fruits of independence in the way Kenyatta had. The most notable of these sources of patronage with which Kenyatta consolidated his support had been the millions of acres of land vacated by European settlers which were distributed, albeit controversially, to the land-hungry population through the 1960s. The absence

18. Gabrielle Lynch, 'Courting the Kalenjin: the failure of dynasticism and the strength of the ODM wave in Kenya's Rift Valley province', *African Affairs* **107**, 429 (2008), pp. 541–68.
19. Oginga Odinga, *Not Yet Uhuru* (East African Educational Publishers, Nairobi, 1967).
20. David Throup, 'The construction and destruction of the Kenyatta state' in Michael Schatzberg (ed.), *The Political Economy of Kenya* (Praeger, London, 1987), pp. 33–74.
21. Branch and Cheeseman, 'The politics of control'.

of such comparative advantages was compounded by circumstances over which Moi had no control. Most significantly, Kenya's second President took office just as the prevailing global economic climate took a turn for the worse following the oil price shocks of the 1970s.[22] As the framework set out by Bates suggests, the combination of falling public funds and rising political uncertainty set in motion a vicious cycle of predation, economic decline, and uncertainty.[23]

With his reformist agenda stalled and fearful of hostile vested interests that had been entrenched during the Kenyatta regime, Moi quickly moved to exert control. Lacking the resources to co-opt likely opponents, the President set out to marginalize and weaken them instead. First, ethnic welfare organizations, such as the Gikuyu, Embu and Meru Association (GEMA), were prohibited in 1982. Then, a *de jure* one-party state was introduced in that same year.[24] Moi's exclusionary bent angered key interest groups, including Luo intellectuals, Kamba military officers, and Kikuyu businessmen, politicians, and civil servants. A confused coup attempt later in 1982 narrowly failed, but had dramatic consequence nonetheless.[25] By confirming Moi's fears for his own position, the coup exacerbated his paranoia and triggered a fresh round of predation. Most obviously, Moi introduced Kenya's most dramatic phase of elite rotation. Many Kikuyu ministers, administrative officers, and senior figures within the upper ranks of the military and police were replaced with loyal Kalenjin. In the 1983 general elections, the executive intervened to prevent the success of 'subversive elements' to an unprecedented degree.[26] Political exclusion went hand in hand with a process of economic transformation, as government intervention was used to confer greater advantages on Moi's traditional support base, in the process harming the interests of Kikuyu farmers.[27]

Despite this, a semblance of an elite alliance remained intact. In part, this was because Moi followed the old adage of keeping his friends close but his enemies even closer. While prominent Kikuyu figures such as Attorney General Charles Njonjo were forced to depart, others, such as Mwai Kibaki,

22. David Throup, 'The construction and destruction'.
23. Bates, *When Things Fell Apart*.
24. For more on the nature of the transition see Jennifer Widner, *The Rise of a Party-State in Kenya: From 'harambee' to 'nyayo'* (University of California Press, Berkeley, CA, 2002).
25. There appear to have been a number of coup attempts, which partly failed because different sections of the army were unaware that other sections were also planning coup attempts. In the confusion, the GSU was able to reassert control in the name of the President. See Throup, 'The construction and destruction'.
26. Elections were held for constituency MPs. The President was indirectly elected via an electoral college of MPs, and, as the executive controlled the vetting process for legislatures, was always elected unopposed. See Nic Cheeseman, *The Rise and Fall of Civil Authoritarianism in Africa: Patronage, participation in political parties in Kenya and Zambia* (University of Oxford, unpublished DPhil manuscript, 2006).
27. Robert Bates, *Beyond the Miracle of the Market: The political economy of agrarian development in Kenya* (Cambridge University Press, Cambridge, 1989).

were retained. The balance between inclusion and exclusion was shifting, but it would not become untenable until 1988. Even in the final days of the one-party state, KANU still boasted a remarkable collection of ethno-regional patrons. It is an oft-forgotten fact that all three main presidential candidates in the 2007 presidential elections had previously served as ministers under Moi. However, the success of this strategy now depended on the high costs of exclusion. Moi used the state's strong coercive capacity to increase the regime's control over political and economic life. Oppression and intimidation were not unknown under Kenyatta.[28] Yet the brutality of Moi's rule hardened opposition to the regime, forcing opposition deeper underground.[29] Coercion and fear had replaced elite consensus as the mechanism holding the system together. Elite figures no longer invested in the regime because they believed in it; they tolerated it because they had no alternative.

As economic conditions undermined Moi's ability to provide the patronage necessary to maintain key 'clients' from public revenue, he responded with ever more grandiose schemes designed to transform state resources into private slush funds. Although the process of state informalization began in earnest in the late 1980s, its roots can be traced back to the attempt of the Moi clique to establish a firm economic base in the late 1970s. Simultaneously, the executive's control over political space was enhanced by the introduction of queue voting for party and general elections, which allowed the regime to identify and punish those brave enough to line up behind opposition candidates. Initially, this empowered Moi to eliminate opposition during the KANU elections of 1986 and to reinvent the party as a body wholly beholden to the President.[30] However, in the 1988 general elections the public nature of queue voting meant that the magnitude of the vote inflation undertaken by government-appointed returning officers was clear for all to see. The elections marked a turning point. On the one hand, the 'defeat' of many of the most senior non-Kalenjin figures within the Parliament tilted the balance in favour of outright exclusion, and represented the final nail in the coffin in KANU's elite alliance. Shortly after the polls political heavyweights including Martin Shikuku, Charles Rubia, and Kenneth Matiba publicly announced their opposition to Moi and the one-party state. On the other hand, the open rigging of the general elections served to undermine public faith in one of the only institutions left that conferred any legitimacy on the regime. In short, executive predation led to a process of elite fragmentation. In turn, fragmentation provided the

28. Nic Cheeseman, 'Political linkage in the Kenya post-colony: assessing the structure of colonial legacy', *Africa Today* **51**, 1 (2006), pp. 3–24.
29. Angelique Haugerud, *The Culture of Politics in Modern Kenya* (Cambridge University Press, Cambridge, 1995).
30. Widner, *The Rise of a Party-State*.

alternative elite leadership required to transform Kenya's 'diffuse' opposition into a mass movement for change, paving the way for political liberalization.[31]

Moi mistakenly believed that the coercive capacity of the state would enable him to contain the inevitable groundswell of opposition following the rigged polls. But these institutions had proved so effective in the past partly because half of the job of containing dissent had already been done courtesy of the elite alliance and the demobilization of popular forces it implied. Until the late 1980s, the Kenyan state had never faced a sustained and widespread challenge.[32] Following Rubia's and Matiba's public call for the reintroduction of multi-partyism, and the formation of the Forum for the Restoration of Democracy (FORD), the threat that elite fragmentation posed to the one-party state became clear.[33]

The excluded elite sought to reinstate multi-party politics as a way to unlock Moi's monopoly over political and economic opportunities. Their new-found willingness to mobilize grassroots protest against the regime undermined KANU's ability to demobilize opposition to the one-party state. KANU initially responded to mass protest with brutal repression. But the outpouring of popular frustration following a long period of economic and political stagnation meant that the protests could not be contained easily. Elite fragmentation had shifted the balance of power away from the centre, undermining KANU's ability to maintain political order. KANU's brutal repression of pro-democracy activists, including the detention and torture of opposition leader Kenneth Matiba, shocked the international community into belated condemnation of the Moi regime. More significantly, the distribution of foreign aid and financial support was halted pending political and economic reforms.[34] Facing intense pressure from above and from below, Moi was finally persuaded to announce a return to multi-party politics in 1991.

Political liberalization

Moi's decision to move quickly to multi-party elections was premised on two assumptions: first, that multi-partyism represented KANU's best opportunity to retain power; and, second, that such a gesture would resume

31. *Ibid.*
32. A brief challenge was offered by the Kenya People's Union (KPU), but the combination of administrative capacity, executive legitimacy, and broad elite support enabled KANU to contain the KPU threat with little difficulty. See Branch and Cheeseman, 'The politics of control'.
33. Throup and Hornsby, *Multi-Party Politics*, pp. 94–102.
34. *Ibid.*, pp. 72–4.

the critically required flow of international finance.[35] However, the process of political liberalization also brought with it new challenges. The release of political prisoners, the legalization of opposition parties, and the partial opening of political space created new opportunities for elite fragmentation. Although some KANU MPs were unable to defect from the party because of financial debts to senior party leaders and institutions,[36] many did leave to join FORD, while Mwai Kibaki subsequently established his own organization, the Democratic Party (DP). The intensification of elite fragmentation that ultimately split FORD into its two rival parties, FORD-Kenya and FORD-Asili, reduced KANU to a minority government. Yet this new level of fragmentation also created new opportunities for Moi to retain power through the careful deployment of divide and rule policies. By encouraging the further fragmentation of rival parties and exacerbating ethnic tensions, Moi successfully promoted opposition disunity. This disunity was a major contributory factor to the failure of opposition leaders to create a viable alliance until 2002; although the level of vote rigging was significant, Throup and Hornsby estimate that without it Moi would probably still have won the 1992 election.[37]

As well as feeding the ongoing process of elite fragmentation, political liberalization provided incentives for Moi to pursue the informalization of the state. Consequently, the story of Kenya in the 1990s is not one of democratic consolidation and institutional reform. Rather, it is a tale of corruption, increasing elite polarization, the rise of militias, and what Mueller has called the diffusion of violence.[38] State informalization gave Moi the ability to disrupt moves to weaken his hold on power, thus enhancing the power he already derived through control over the remaining coercive capacity of the provincial administration and other organs of internal security. Critically, his government consistently demonstrated its ability to obscure and defer the debate over constitutional review. This left the 'top-heavy' constitution inherited from the one-party era in place. Although a range of non-governmental actors bravely strove to open up political space, ultimate control over the judiciary, provincial administration, and the media remained vested in the executive. Kenya may have routinely held multiparty elections, but saw little in the way of democratic consolidation in the 1990s. If anything the main organs of the state became less, rather than more, institutionalized. The only significant exception was the security apparatus. Moi was careful to maintain the capacity and professionalism of the

35. Stephen Brown, 'Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power', *Third World Quarterly* **22**, 5 (2001), pp. 725–39.
36. Throup and Hornsby, *Multi-Party Politics*, pp. 186–7.
37. *Ibid*., pp. 450–1.
38. Mueller, 'The political economy of Kenya's crisis'.

provincial administration and the paramilitary General Service Unit (GSU), both directly accountable to the Office of the President.

Perhaps the most obvious example of this process of state informalization was the spiralling corruption perpetrated by the Moi regime from the late 1980s onwards. The personalization of public wealth was (of course) nothing new to Kenyan politics. It was the scale of the theft of public funds that changed dramatically following the return to multi-party politics. In part, this was a direct response to the shortened time horizons of the Moi government. The increasing likelihood of electoral defeat resulted in senior figures within the Moi government seeking to accumulate wealth at an accelerated rate in order to secure their 'retirement'. Practices such as land grabbing proliferated.[39] At the same time, democracy proved expensive. The need to fund costly election campaigns provided an additional – and just as significant – motivation for spiralling corruption. Kenyan elections have always seen vast amounts of official and unofficial expenditure. In 1992 it is estimated that, despite the economic difficulties facing the country, the ruling party spent over $100 million on the campaign.[40] By the 2007 contest, this figure had escalated.[41]

In a straightforward sense, the corruption of the Moi regime impoverished the state, as millions of dollars were looted through the infamous Goldenberg scandal.[42] However, an equally significant outcome was that institutions of oversight and accountability had to be weakened in order for the scams to remain undiscovered, or at least unreported. This meant that central budgeting measures from the Finance Ministry to the Central Bank of Kenya (CBK) were undermined. To this day, Kenya is unable to receive international budgetary support because successive presidents have refused to address this flaw. Greater corruption, then, created additional reasons for the executive to encourage a process of state informalization that continues to constrain anti-corruption efforts.

Of course, political liberalization actually increased political uncertainty and shortened Moi's time horizon. In this way, political liberalization provided incentives for the government to pursue state informalization as part of a desperate attempt to ensure its short-term survival. But this does not mean that there is an inevitable relationship between these two processes, or that civil conflict in Kenya could not have been averted. Nevertheless, similar but not identical developments can be observed in other African

39. Jaqueline Klopp, 'Pilfering the public: the problem of land grabbing in contemporary Kenya', *Africa Today* **47**, 1 (2000), pp.7–26.

40. Throup and Hornsby, *Multi-Party Politics*, pp. 357–9.

41. *The Standard*, 'Storm over Sh3.5 billion poll campaign spending', 24 April 2008, < http://allafrica.com/stories/200804231185.html> (16 October 2008).

42. Tom Wolf, 'Immunity or accountability? Daniel Toroitich arap Moi: Kenya's first retired president' in Roger Southall and Henning Melber (eds), *Legacies of Power: Leadership change and former presidents in African politics* (Nordic Africa Institute, Uppsala, 2006), pp. 197–233.

countries that have undergone partial political liberalization. For example, Zambia and Nigeria have experienced an increase in corruption; the respect for basic human rights has declined in Burundi and Rwanda; and liberalization has not produced a change of regime in Cameroon or Tanzania. Indeed, Bratton and van de Walle find that the increase in the political rights enjoyed by Africans in the early 1990s went hand-in-hand with a fall in the quality of civil liberties.[43] Consequently, it is important to consider whether nascent processes of political liberalization undertaken in the absence of an institutionalized and stable state may prove to be ultimately self-defeating. We return to this theme in the final section of the article.

State informalization

As pernicious as the corruption and deliberate deinstitutionalization of some state organs were to the Kenyan political system, perhaps the most damaging dimension of state informalization during this period was the decentralization of control over violence. Bates's paradigm of state collapse provides an interesting starting point for thinking about the privatization of violence during the 1990s. He is surely right that political liberalization and the uncertainty it brings is the key back-story to the heightened use of political violence in many African countries. However, it is also important to recognize that the attraction of co-opting militias stems from their clear comparative advantage over existing institutions of violence. Most obviously, militias deflect culpability from their sponsors. When the state police commit human rights abuses the executive is clearly culpable. When a secretive and poorly understood militia commits human rights abuses, it is far less clear who should be held to account, and frequently impossible to prove culpability. By using militias, political leaders can carry out tasks they could never have ordered the police or the army to undertake during the one-party era. But this short-term gain brings with it dangerous long-term consequences, because the very advantage of militia groups is also their key flaw: transferring the capacity for violence to ambiguous and complex structures necessarily decentralizes control over the use of force and reduces the ability of the centre to control conflict.[44]

Despite this, the KANU elite was prepared to devolve control over violence to local militias in the 1990s. The aim was two-fold. First, this would surround the conduct of the elections with an atmosphere of violence and suspicion likely to deflate the opposition vote. This effect was heightened by the killing of Foreign Minister Robert Ouko, the detention of both Matiba

43. Bratton and van de Walle, *Democratic Experiments in Africa*.
44. Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge University Press, Cambridge, 2006), p. 108.

and Rubia, and the death of the outspoken Bishop Muge in 1990 alone. Second, a 'KANU zone' would be created through a process of 'ethnic cleansing' that saw members of ethnic groups likely to support opposition parties, most notably the Kikuyu, driven from Moi's heartlands in the Rift Valley. More than 1,500 people lost their lives and over 300,000 were displaced in the clashes.[45] Even in the 1990s the violence was not limited to Rift Valley, as 'a private vigilante group known as *Jeshi la Mzee* (The Elder's Army) was unleashed on the public' during key debates over constitutional change.[46] The violence of 2008 may have been tragic, then, but it is important to remember that it was not unprecedented. The large-scale instrumental use of political violence, structured along ethnic lines and fuelled by notions of *majimbo*, was introduced by Moi as a direct response to the processes of elite fragmentation and political liberalization that threatened to remove him from power. This tactic re-energized historical tensions that had previously been effectively suppressed by the elite alliance, empowering the very militia groups that would ultimately play a central role in the recent crisis.

Although Bates's treatment of the overall process of state failure is helpful – primarily by modelling the militarization of society as a dynamic process in which the executive and the population become engaged in an 'arms race to the bottom' – he fails to allow sufficient space for the connections between the executive, the wider political elite, and the militia groups that emerge through the process of predation.[47] When elite divisions are low and the centre holds, there are good reasons for the executive to demobilize and disarm popular movements in general.[48] When the centre fragments, the 'instrumentalization of disorder' may come into play as militias are directed by members of the government against suspected opposition supporters.[49] In short, once elite fragmentation has occurred, the militarization of society, and the taking up of arms by the wider population, become significantly more likely.

Bates's analysis also underplays the autonomous processes that work to create the gangs that often evolve into militias over time. Urban gangs typically evolve in response to a vacuum left by a disinterested or incompetent state. Their numbers are fuelled by a combination of urbanization and high levels of youth unemployment, while they achieve local legitimacy through

45. Brown, 'Authoritarian leaders'.

46. Shadrack Nasong'o, 'Constitutional reform and the crisis of democratization in Kenya' in Daniel Branch and Nic Cheeseman (eds), *Our Turn to Eat: Politics in Kenya since 1950* (Lit Verlag, Berlin, forthcoming).

47. Bates, *When Things Fell Apart*.

48. As indeed happened in many post-colonial African states immediately after independence.

49. Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as political instrument* (James Currey, Oxford, 1999).

their ability to provide 'protection'; the infamous Mungiki gang emerged and consolidated itself in precisely this way.[50] Although the initial emergence of gangs was in some cases facilitated by a prior decline in the scope of authoritarian control, it is important to recognize that it was also rooted in a set of factors independent of elite fragmentation and political liberalization. The emergence of gangs throughout Kenya in the 1990s, largely in response to economic rather than political stimuli, laid the foundations for the privatization of violence. It was when the two trends of elite fragmentation and the growth of vigilante groups became fused that the Kenyan state finally lost its monopoly over the legitimate use of force.

Given that the majority of militias in Kenya evolved first because of the absence of the state, and later because of the direct sponsorship of state actors, it is misleading to speak, as Bates does, of society militarizing *against* the executive. Rather, we must recognize that following a process of elite fragmentation, as occurred in Kenya, the instrumentalization of violence that occurs is a process in which there are no firm dividing lines. Militia groups that arise through this process are often co-opted by the executive, engaged in conflict with rival communities, and then dropped. Such militia groups may then fade into the background, side with opposition leaders, or become 'enemies of the state' in general. In either of the latter two eventualities it seems to be more accurate to speak of a society militarizing through, rather than in opposition to, the executive.

Mueller captures this ambiguity well when she writes about the gangs involved in KANU's ethnic crusade: 'In most cases these gangs were formed, aided, or abetted by the state's security apparatus and the provincial administration. Gangs of youth were organized by key KANU politicians who were identified by name in both human rights reports and those produced by a government commission.'[51] But despite the violence being state-directed, it was not wholly state-controlled: 'Politics by other means had taken root all over the country while various gangs both appeared and disappeared. All of this was a further indicator that the state's monopoly of legitimate force was being challenged and diminished.'[52] In part, this reflected the 'gang for hire' nature of many of the militias that sprang up. These gangs were not the permanent armed wing of a political party, but semi-autonomous bodies employed by political leaders at election time. However, it also reflected the fact that alliances between different factions of the political elite and Kenya's urban militias quickly led to rival politicians fighting proxy wars through groups such as the Baghdad Boys, the Taliban and Mungiki. The large social base of some of these groups, coupled with their rapid

50. David Anderson, 'Vigilantes, violence, and the politics of public order in Kenya', *African Affairs* **101,** 405 (2002), pp. 531–55.
51. Mueller, 'Political economy', p. 190.
52. *Ibid.*, p. 194.

expansion, meant that during the 1990s an increasing number of Kenyans were being integrated into a world of political violence and mob rule.

It was the new-found willingness of members of the Kenyan elite to challenge the *status quo* that led to the airing of once-submerged historical grievances, and the refusal of the elite to demobilize forces from below which rendered militia groups such a potent political threat. The dual processes of the privatization of violence and elite fragmentation thus created the foundation for widespread civil conflict. The interconnected nature of these processes means that Bates's depiction of the executive as a 'specialist in violence' as distinct from the wider population is misleading. Even though the coercive capacity of the Kenyan state has remained stable, struggles within the elite have facilitated the incorporation of militias into the internal logic of the political system. In other words, militia groups have become embedded in the state itself (in some cases it may be more accurate of say that the state is reduced to a constellation of militias). In this way militias may be used to replace, and in extreme cases may confront, those elements of the state over which the executive's control is less secure.[53] When police officers enter into deadly clashes with gangs sponsored by government ministers, as occurred in Kenya in December 2007 and March 2008, the consequence is not simply a battle between the 'specialist in violence' and pretenders to that crown, but is more accurately described as a state at war with itself. The picture is further complicated when police officers conduct operations alongside militia members or themselves become virtually indistinguishable from militia members due to rampant corruption and reliance upon extra-judicial killings within the force.

We do not believe Kenya is a failed state. However, it is chastening to think that the situation over the first months of 2008 closely resembled the fluid and potentially uncontrollable situation typical of collapsing states.[54] While the Kenya crisis revealed a residual capacity of the part of the state to withstand protest from below, it also demonstrated how thin the dividing line between order and disorder had become.

Things fall apart

Kibaki's NARC government inherited a precarious state. Under Moi, political uncertainty and falling public revenue inspired an increasingly predatory executive, which in turn undermined the elite alliance that had underpinned the bureaucratic-executive state. Elite fragmentation necessitated a period of political liberalization, which in turn reinforced the process of fragmentation. Together, these interconnected processes provided the

53. Chabal and Daloz, *Africa Works.*
54. Reno, 'The politics of insurgency'.

conditions that encouraged the steady informalization of the state. During this latter process, institutions intended to protect the political rights of the population, such as the judiciary, were weakened or simply bypassed. The loosening of the state's monopoly over the use of force was a second, perhaps more significant, consequence of KANU's desperate attempt to retain power. Although allowing Moi to stay in office through the 1990s, these same developments made any attempt by Kibaki to retain power after his election victory in 2002 more difficult.

That is not to claim that Kibaki could only vainly struggle against the legacies of Moi's misrule. Instead, decisions taken following the NARC electoral victory served only to intensify the looming political storm. In particular, the refusal of Kibaki to sanction any genuine process of constitutional reform was of great significance. The deliberate sabotage of the constitutional review process destroyed a renewed bout of elite consensus that had emerged in the second half of 2002. Then, with few exceptions, the key regional powerbrokers coalesced around agreement on the need to remove KANU from office. Shortly after achieving that aim, the failure to create the post of Prime Minister in accordance with pre-election agreements with Odinga led directly to the split of the NARC government and the formation of ODM.[55] In other words, the best opportunity to reverse the trend of elite fragmentation was jettisoned by an executive fearful of decentralizing power.

Moreover, the collapse of the constitutional review process left Kenya's existing constitution in place, and hence provided Kibaki with executive control over coercive institutions. He made good use of that power. In the months leading up to the polls, Kibaki refused to 'gazette' (and hence activate) legislation covering the behaviour of political parties, demonstrating the impotence of Parliament in the face of the President's veto. Kibaki also took the opportunity to appoint 19 of the 22 electoral commissioners, violating the spirit of an Inter-Party Parliamentary Group agreement and eroding opposition confidence in the electoral process.[56] Just two days before the elections, the President appointed five new High Court judges to an already partisan bench.[57] The appointments, combined with the fact that the government had been able to delay previous electoral petitions for an entire parliamentary term, made it clear that the judiciary could not be relied upon to act as an independent arbiter. Opposition leaders and supporters unsurprisingly lacked faith in key democratic institutions in the run-up to the 2007 polls.

55. Godwin Murunga and Shadrack Nasong'o, 'Bent on self-destruction: the Kibaki regime in Kenya', *Journal of Contemporary African Studies* **24**, 1 (2006), pp. 1–28.
56. International Crisis Group, 'Kenya in crisis'.
57. Jillo Kadida, 'Kibaki appoints six judges', *The Nation*, 25 December 2007, <http://allafrica.com/stories/200712270383.html> (15 October 2008).

Once on the campaign trail, ODM lost no time in announcing its determination to introduce regionalist constitutional arrangement and to investigate cases of grand corruption if elected. ODM thus appeared to threaten the *status quo* for both the Kibaki regime and the latter's predominant support base from the Mount Kenya region, which would lose most in any attempt to redistribute wealth and influence to other areas of the country.[58] The refusal of the opposition to play by the established rules of the game, itself a direct consequence of the process of elite fragmentation discussed above, has not been given sufficient emphasis in discussions of the Kenya crisis. As chequered as the relationship between Moi and Kibaki had been, the transfer of power in 2002 was underpinned by a common historical experience that generated a genuine trust. Moi was able to walk away from power because he understood that Kibaki would never seek to investigate him, or his closest supporters, for the corruption perpetrated under his regime.[59] Indeed, Moi's political rehabilitation began almost as soon as his tenure as President ended. Kibaki was quick to appoint his predecessor as an envoy to Sudan during the peace talks there, before the two brokered a pact that brought much of KANU into the government after the referendum defeat. The rapprochement between Moi and Kibaki culminated in the two sharing a stage during PNU campaign rallies in the Rift Valley. The last vestiges of the elite collusion of the 1960s and 1970s underpinned the smooth transition in 2002, but Kenya was to have no such luck in 2007.

Odinga's candidature, and the broad anti-Kikuyu alliance incorporated within ODM, rendered 2007 a 'high-stakes' election. On the one hand, ODM contained some of Kenya's most controversial political figures. The presence of individuals such as William Ruto in a party campaigning on the issue of *majimbo* (regionalism) naturally inspired fear among those members of the Kikuyu community residing in non-Kikuyu areas. The focus on regionalism played directly on the set of political grievances that had been so carefully managed during the one-party era. Understood variously to mean a form of respectable federalism, a reconsideration of land rights, and a licence to commit ethnic cleansing, regionalism became the key divisive issue of the campaign.[60] In the run-up to the election, Kikuyus were significantly more likely to report a fear of election-related violence than any other ethnic group.[61]

58. Cheeseman, 'The Kenyan election of 2007'.
59. Wolf, 'Immunity or accountability?'
60. For the roots of this see David Anderson '"Yours in the struggle for *majimbo*." Nationalism and the party politics of decolonization in Kenya, 1955–64', *Journal of Contemporary History* **40**, 1 (2005), pp. 547–64; John Lonsdale, 'Soil, work, civilisation and citizenship in Kenya', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 205–314.
61. Stefan Dercon and Tessa Bold, 'Ethnicity and the elections' (paper presented at 'Kenya Elections 2007' workshop, Somerville College, University of Oxford, 17 January 2008).

On the other hand, Odinga was a different generation of political leader, and senior PNU figures doubted that he could be trusted. PNU propaganda ensured that this fear was translated to the grassroots, comparing Odinga to Idi Amin, Stalin, and Hitler.[62] This perception was reinforced by Odinga's willingness to reveal his personal role in the 1982 coup plot and to openly talk about a plan to bring John Githongo back as anti-corruption Tsar.[63] The mention of Githongo, who had resigned as Anti-Corruption Minister under NARC citing political interference in his work, was particularly significant. It suggested that ODM might use Githongo's knowledge of the Anglo-Leasing scandal to prosecute senior PNU figures. By the end of 2007, elite fragmentation and the privatization of violence had eroded trust at all levels of the political system, a context in which Kibaki's decision to retain power at any cost becomes explicable. That decision was underpinned by the assumption that the coercive apparatus of the state was sufficient to cope with protests in the aftermath. The PNU leadership knew exactly what to expect once the ECK announced the final results. In acting on this assumption Kibaki was simply following in the footsteps of Kenyatta and Moi in trusting in the bureaucratic-executive state to protect the holder of power against all-comers. However, Kibaki's decision proved to have even higher costs than the PNU leadership expected. The processes of elite fragmentation and state informalization had undermined the capacity of the centre to hold.

Most significantly, the decentralization of control over violence meant that the wave of attacks triggered by the declaration was broader and harder to manage than the government had envisaged. In the Rift Valley, militia leaders who had learnt their trade in the ethnic clashes of the 1990s came to the fore, chasing Kikuyu from their homes and attacking those suspected of supporting the ruling party, including the Moi family. The extent to which the violence was planned, and how much of it occurred under the direction of political leaders, will never be known. Nonetheless, the speed and coordinated nature of the early attacks strongly suggests that it was not spontaneous. Many senior ODM figures failed to do all they could to rein in the violence. Najib Balala, one of ODM's coterie of regional powerbrokers and now Minister of Tourism, told the authors that the response of ODM supporters was an inevitable reaction to the blatant injustices perpetrated by the Kibaki regime.[64] However, it would be misleading to suggest that

62. Flyers given out at PNU's final rally at Uhuru Park depicted Odinga as Idi Amin. For more on the images used in the campaign see Justin Willis, 'What has Kibaki got up his sleeve? Advertising the Kenyan presidential candidates in 2007', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 264–71.

63. *East African Standard*, 'What else does Githongo know?', 17 December 2007, <http://allafrica.com/stories/200712170561.html> (16 October 2008).

64. Conversation with the authors at Panafric Hotel, Nairobi, 31 December 2007, with Charity Ngilu and Musalia Mudavadi in attendance. Both William Ruto and Raila Odinga denied some of the worst atrocities in interviews with the BBC World Service.

the incriminating links to organized violence were the sole preserve of the opposition: the government responded to the challenge to its authority by unleashing Mungiki – or at least armed gangs of Kikuyu youth prepared to march under this banner – to combat pro-ODM actors in Kibera and, later, in the Rift Valley. The diffusion of violence, along with the willingness of rival politicians to give arms and leadership to the mob, contributed direction to the breakdown of political order.

The extent to which the process of elite fragmentation also constrained the response of the state has escaped comment in many accounts of the crisis. That the armed forces were reluctant to become embroiled in the suppression of opposition protests should not be considered too significant. After all, the army and air force had been entirely absent from the domestic political sphere since the coup of 1982. However, the unwillingness of police to confront protesters in their own home areas was of far greater importance. Such an outcome would have been unthinkable in the heyday of the one-party state, when the strength of the elite alliance ensured that the state's institutions pulled in the same direction. The actual physical capacity of the police had not fallen by 2007. If anything, police officers were more numerous and better armed than at any time in Kenya's post-colonial history. What had changed was the ability of the executive to trust that this capacity would be exercised in its favour, and the balance of power between the state and militia groups. Ultimately, the PNU was forced to rely on Moi's favoured instrument of control, the General Service Unit, to hold Nairobi, while deploying as many police units as possible outside of their home areas. This proved to be an effective holding strategy, as the protesters progressively ran out of funds, energy, and options, but the government was unable to reassert control in the absence of some form of elite compromise. Political disorder thus occurred in a state that hitherto had been governed by what Atieno Odhiambo has labelled 'an ideology of order.'[65]

The inability to find an elite compromise until the arrival of international mediators and the creation of the government of national unity in March 2008 reflected a widespread lack of trust in the ability of key democratic institutions such as courts and electoral commissions to deliver fair political outcomes. That lack of faith suggests that the longevity of the Kenya crisis was rooted in the prior failure to carry out a genuine process of constitutional review. The stalled process of democratization in Kenya neither decentralized power nor created any truly independent democratic institutions. The absence of viable institutions through which conflict could be resolved encouraged activists and leaders to take their protests to the streets. From the very beginnings of the crisis, Odinga publicly stated that the

65. E. S. Atieno Odhiambo, 'Democracy and the ideology of order in Kenya' in Michael Schatzberg (ed.), *The Political Economy of Kenya* (Praeger, New York, 1987), pp. 177–201.

opposition would not submit themselves to the justice of 'Kibaki's courts'.[66] For the government's part, Martha Karua demonstrated a similar lack of faith in the Kofi Annan-led mediation process. Karua, the most vocal supporter of Kibaki during the crisis, accused the former Secretary-General of the United Nations of attempting to lead 'a civilian coup' on behalf of ODM.[67] Although the government of national unity that emerged from those talks may indicate a rebuilding of trust between elite political actors, to date the trust between its main figures has yet to be rigorously tested.

Democracy, disorder and the sequencing debate

Political liberalization has been perhaps the least discussed ingredient of the Kenya crisis. Few of the already numerous studies of the violence have asked the uncomfortable question of whether or not the scenes witnessed earlier this year were a product of the reintroduction of multi-party elections. Of course, multi-party elections do not cause violence in any meaningful sense, but they can create incentives for leaders to adopt increasingly antagonistic strategies. Moreover, when such elections are held within a first-past-the-post electoral system, they may encourage a 'winner-takes-all' struggle for control of the state. Both tendencies pose real challenges for political stability in countries where a sense of the greater good has not yet subsumed ethnic or regional loyalties, and where the coercive strength of social forces is greater than that of the state itself. The dangers these challenges pose to the success of the democratic project, and to the very integrity of the state, have given rise to a heated debate over the significance of democratic sequencing. Sceptics such as Mansfield and Snyder contend that opening up states which lack the effective rule of law, agreement on the identity of 'the people', and a monopoly over the legitimate use of force, to greater levels of political competition invites disaster.[68] Because such political systems lack both inter-communal trust ('social capital') and have limited administrative control ('rational-legal' legitimacy), they are unlikely to be able to manage effectively the additional social tension that multi-party elections necessarily bring.[69]

Attempts to isolate the key factors underpinning the success of democratic transitions in Africa using aggregate indicators support this broad

66. Maseme Machuka, 'Seek court action, PNU leaders tell Raila', *The Standard*, 3 January 2008, <http://allafrica.com/stories/200801021298.html> (15 October 2008).
67. Roger Cohen, 'How Kofi Annan rescued Kenya', *New York Review of Books* **55**, 13 (2008), <http://www.nybooks.com/articles/21719> (2 October 2008).
68. Edward Mansfield and Jack Snyder, 'The sequencing "fallacy"', *Journal of Democracy* **18**, 3 (2007), pp. 5–10.
69. Max Weber, *Politics as a Vocation* (Fortress Press, Philadelphia, PA, 1965); Robert Putnam, *Making Democracy Work* (Princeton University Press, Princeton, NJ, 1993).

conclusion. Although Bratton and Chang do not find that state infrastructure and the delivery of welfare services have a significant impact on process of democratization, and caution against adopting an overly state-centred understanding of the democratization process, their analysis shows that 'what matters most for democratization is whether the state has the capacity to fulfil its prime function: creating a legitimate political order or, differently stated, a *rule of law*'.[70] However, even among those that accept Rose and Shin's argument that third-wave democracies are hampered by attempting 'democratization backwards',[71] it is unclear what the correct advice for policy makers should be. Fukuyama and McFaul have argued in defence of democracy promotion, suggesting that 'Western democracy promoters' should take steps to safeguard fragile democracies, recommending that they 'develop international institutions that enhance mutually beneficial cooperation' and 'draft a code of conduct for democratic interventions' in order to consolidate the 'right to free and fair elections'.[72] At the other end of the continuum, sceptics like Amy Chua go as far as to suggest that elections should be postponed until a suitable socio-institutional context can be developed.[73]

It is easy to depict the Kenya crisis as another piece of supporting evidence for the necessity of democratic sequencing of some form. The need to fund election campaigns has clearly exacerbated the extent of corruption and further entrenched the patron–client relationships that connect Kenyan politicians to local clients. At the same time, the institutionalization of competition among the political elite has been instrumental in connecting militia groups to political leaders, through their use as private armies during election campaigns. In turn, the increasing interplay between formal politics and gang warfare has accelerated the diffusion of violence. Finally, elections themselves have come to be moments of severe national stress, around which social and political relations may be thrown into a state of flux. The widely reported refusal of Luo tenants to pay rents to Kikuyu landlords in the run-up to the 2008 polls because 'soon we, and not you, will be in State House', is a classic illustration of this phenomenon.[74] Clearly, focusing the nation's hopes and fears on 48 hours of balloting has the potential to cause social and political ruptures which the state may be unable to manage.

70. Michael Bratton and Eric Chang, 'State building and democratization in sub-Saharan Africa: forwards, backwards, or together?', *Comparative Political Studies* **39**, 1059 (2006), p. 1080. Emphasis in original.

71. Richard Rose and Doh Chull Shin, 'Democratization backwards: the third-wave democracies', *British Journal of Political Science* **31**, 2 (2001), pp. 331–54.

72. Francis Fukuyama and Michael McFaul, 'Should democracy be promoted or demoted?', *Washington Quarterly* **31**, 1 (2007/8), pp. 43–4.

73. Amy Chua, *World on Fire: How exporting free market democracy breeds ethnic hatred and global instability* (Knopf, New York, NY, 2004).

74. For more on the election in Kibera, see Michelle Osborn, 'Fuelling the flames: rumour and politics in Kibera', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 315–27.

Most significantly, the events of late 2007 and early 2008 closely resembled the nightmare scenario outlined by one of sequencing's best-known supporters, Amy Chua. In her *World on Fire*, Chua identifies the presence of 'market-dominant minorities' as being the critical variable that pulls democratizing states into the maelstrom of ethnic violence. According to Chua, democratization results in violence as a result of two factors, sometimes working in tandem: first, a market-dominant minority resorts to extra-legal action to protect its privileged position; or, second, a marginalized majority resorts to violence in order to dislodge the minority from its entrenched position. Kenya's dominant Kikuyu and the other Mount Kenya peoples fit Chua's taxonomy of a market-dominant minority. In an effort to protect the economic interests of a Kikuyu elite threatened by the prospect of a Kibaki defeat, the state and its non-state partners undertook 'a backlash against democracy by forces favorable to the market-dominant minority'. Furthermore, the actions of ODM and its supporters could be understood as falling into the category of 'majority-supported ethnic violence' aimed at members of the Kikuyu market-dominant minority.[75] We therefore recognize the potential relevance of some of Chua's observations with reference to Kenya, albeit a relevance that she herself mitigates against by her identification of Indians as the main market-dominant minority in East Africa. We do not, however, agree that this evidence builds a case for a roll-back of international advocacy for democratization.[76] Rather, we suggest that the forms of violence and instability that Chua observes are more likely to be mitigated by a significant element of constitutional reform being built into the process of democratization in its infancy. Moreover, Chua's critics argue that constitutional reform is most likely to be stable and effective once a process of democratization is under way.

Although the potential for democratization to produce unintended negative side-effects is high, it is also clear that sequencing is unfeasible in many cases. For one thing, most African nations are in the process of holding elections, and the international community can hardly advocate a reversal of the liberalization programme. For another, it is a fallacy that benevolent authoritarian regimes are more likely to create the necessary preconditions for a successful transition.[77] In the universe of authoritarian states, the successful 'developmental' states of Asia are the exception, not the norm. By contrast, non-democratic rule in Africa and Latin America has more typically been brutal, exploitative, and arbitrary. As Kohli has argued, the conditions needed for the Taiwanese or Korean model to be successful – bureaucratic autonomy, broad economic equality and a pressing security

75. Chua, *World on Fire*, pp.123–5.
76. *Ibid.*, pp. 259–64, 273–8.
77. *Ibid.*

threat – were not present in Africa in the 1970s.[78] Nor are they now. It is unlikely that African states will be blessed with significantly better leaders or more favourable conditions in the near future. Democratization before reform will therefore remain a risky action, but a necessary one.

Furthermore, Thomas Carothers correctly asserts that for many countries, including Kenya, there is simply no option but to attempt the transition to democracy and the transition to effective rule of law at the same time.[79] On the one hand, authoritarian leaders rarely create the necessary conditions for the successful transition to democracy of their own accord. On the other, the majority of African states have already introduced multiparty elections, and it is seems both unfeasible and heartless to suggest they should abandon them. As a result, the key challenge becomes one of creating institutional mechanisms that can reduce the potential for intergroup conflict as the process of democratization unfolds, a challenge which necessitates far-reaching constitutional review.

Fortunately, Carothers is also right that in many cases simultaneous democratization and reform have proved possible. In Ghana, where political liberalization began with a series of flawed elections as in Kenya, slow reform and repeated plays of the electoral game have supported a remarkable process of democratic consolidation.[80] Ghana is not an isolated case, with Senegal, Botswana and Mauritius all able to point to substantial gains made through simultaneous processes of democratization and institutional reform far in excess of the authoritarian regimes in the region. Indeed, there are good reasons to think that a process of democratization can confer legitimacy on a state, and in doing so may aid the process of building state capacity. As Bratton and Chang conclude, 'the state is unlikely to provide a durable order unless it is legitimated by democracy. Thus, the best way forward, for scholars and reformers alike, is to reconnect the study of Africa's states and regimes, to acknowledge the interaction of state structures and democratic procedures, and to promote state building and democratization together.'[81]

For all its shortcomings, more progress was made in terms of the freedom of the media, the independence of the private sector from political control, and the capacity of the state to collect tax revenue in the five years of the NARC government than in the previous two decades under Moi. However, Kibaki failed to address the most pressing priority for a democratizing multi-ethnic nation: institutional safety-nets to counteract the potentially

78. Atul Kohli, *State Directed Development: Political power and industrialization in the global periphery* (Cambridge University Press, Cambridge, 2005).
79. Carothers, 'How democracies emerge'.
80. Godwin Murunga and Shadrack Nasong'o (eds), *Kenya: The struggle for democracy* (Zed Books, London, 2007).
81. Bratton and Chang, 'State building', p. 1081.

damaging impact of inter-communal tension and elite fragmentation. In the 1970s the elite alliance made such institutions unnecessary. In 2008 these institutions were essential but they did not exist, having been utterly subverted by Kibaki's machinations in the build-up to the elections. Similar institutional backdrops currently hold in countries as diverse as Zambia, Malawi, Uganda, the Democratic Republic of the Congo, Nigeria, Rwanda, Burundi, the Central African Republic, and Mozambique. Given this, the lack of attention given by international actors to constitutional change is remarkable. Donors may have limited purchase in some of these countries, but even when they do push for reform, the judiciary and the legislature have been well down on the list of priorities.[82] Of course, strengthening such institutions would only create the potential for deadlock to be broken; successful conflict resolution also requires political will that is often in short supply. Nevertheless, even a small possibility of avoiding the breakdown of political order is better than none.

In the Kenyan context, divorcing appointments to the electoral commission and the judiciary from executive control would give the opposition greater faith in these institutions. On the one hand, the complete collapse of the ECK would not have occurred if it had not been packed with government stooges. On the other, evidence of independent action by the courts might have persuaded opposition leaders to pursue legal redress rather than street protests. The removal of the President's ability to delay indefinitely legislation passed by Parliament would also render the prospects of taking up parliamentary seats while continuing to challenge the outcome of the presidential contest more attractive; especially in cases such as Kenya where the opposition actually secured a parliamentary majority.

Of course, a more radical and far-reaching set of constitutional revisions to finally dismantle the bureaucratic-executive state is desirable, if significantly less realistic. The impressive stability of Mali demonstrates that genuine and carefully considered decentralization can help to co-opt disgruntled minorities into the system and to reduce the intensity of competition for control of the political centre.[83] Successful democratic consolidation in Mauritius shows that electoral systems designed to encourage all parties to field candidates of all ethnicities – in that case the use of two-member electoral constituencies that encourage parties to run parliamentary candidates from minority and majority ethnic groups simultaneously – can help to prevent the emergence of mono-ethnic parties, even in a diverse and divided

82. Stephen Brown, 'From demiurge to midwife: changing donor roles in Kenya's democratisation process' in Godwin Murunga and Shadrack Nasong'o (eds), *Kenya: The struggle for democracy* (Zed Books, London, 2007), pp. 301–29.

83. Richard Vengroff, 'Governance and the transition to democracy: political parties and the party system in Mali', *Journal of Modern African Studies* **31**, 4 (1993), pp. 541–62; Jennifer Seely, 'A political analysis of decentralization', *Journal of Modern African Studies* **39,** 3 (2001), pp. 499–524.

society.[84] Remarkable economic growth in Botswana also reveals the positive impact that a professional and comparatively meritocratic bureaucracy can have on state building and economic growth by insulating economic decision making from political whims.[85] Institutional reform in all three cases was particularly successful because it was underpinned by a supportive political culture of tolerance and respect for the greater good which has been noticeably absent in Kenya. However, political will notwithstanding, there is nothing to suggest that such institutional designs would not have similar effects if implemented in Kenya.

The most significant lesson of the Kenya crisis is that it reveals how fragile Africa's new multi-party systems may be when political liberalization, elite fragmentation, state informalization, and historical grievances come together in the absence of effective institutional safeguards, forming what Mwangi and Holmquist have called a 'perfect storm'.[86] At present this lesson is not being heeded. As a result, countries such as Nigeria, Uganda, and Kenya are repeatedly walking the tightrope of intensely contested elections in the absence of an effective institutional safety-net. Without certain prerequisites such as basic state capacity, the effective rule of law, and an agreed national identity the reintroduction of multi-partyism may exacerbate underlying tensions which the state is powerless to manage.[87] Given such a context, effective institutional reform is essential to prevent the transition to multi-partyism being self-defeating and forever incomplete.

84. Larry Bowman, 'Mauritius: Democracy and development in the Indian Ocean' (Westview Press, Boulder, CO, 1991); Deborah Bräutigam, 'Institutions, economic reform, and democratic consolidation in Mauritius', *Comparative Politics* **30**, 1 (1997), pp. 45–62.
85. Patrick Molutsi and John Holm, 'Developing democracy when civil society is weak: the case of Botswana', *African Affairs* **89**, 356 (1990), pp. 323–40; James Leith, *Why Botswana Prospered* (McGill, Montreal, 2005).
86. Mwangi wa Githinji and Frank Holmquist, 'Kenya's hopes and impediments: the anatomy of a crisis of exclusion', *Journal of Eastern African Studies* **2**, 2 (2008), pp. 344–58.
87. Mansfield and Snyder, 'The sequencing "fallacy"'.