

African Yin and Yang

A comparative study explaining the contrasting political and economic developmental paths of Botswana and Zimbabwe



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Bachelor Thesis

Number of words: 20246



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14 March 2014

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Introduction and Methodology

The Context

On the 6th of August 2013 president Robert Mugabe was re-elected in, what the West called, another controversial election held in Zimbabwe. Eighty-nine years old and ruling the country now for almost twenty-six years, Mugabe has hold power in his tight grip. This is reflected in the democratic ratings of the country, ranking it the 148th most democratic country in the world with 2,67 point out of 10 and placing it under the category of authoritarian regimes. (The Economist Intelligence Unit 2012: 7) This is in stark contrast with neighbouring country Botswana, which can be named one of the few successful stories of development in African countries. Ranking 30th on the democracy index, it is more democratic than some European powers like Italy and Greece. Although there has been a constant one-party rule by the Botswana Democratic Party (BDP) since independence from Great Britain, elections always have been free and fair. The enormous difference between the two neighbouring countries is also reflected in economic development. While Botswana's Gross National Product (GDP) per capita amounts to \$7,430 in 2012, Zimbabwe's GDP per capita sticks at a low \$680. (Worldbank: 2012).

Botswana seems to be one of the few success stories on the African continent regarding the implementation of democracy. But having democracy as the official form of government does not mean that the political institutional system is actually democratic. One wrong assumption that political scholars have made in the past is the Liberal Peace Thesis; or the notion that democratic forms of government are more peaceful, both in their politics and in their international relations, than other forms of government. (Paris 2009: 41) Because they have stable societies and do not experience war, democracies can thrive economically. In most Sub-Saharan countries this seems to be not the case, many African countries that call themselves democracies are unstable and have been frequently at war. What makes democracies truly democratic and prosperous then? What adherents of the Liberal Peace Thesis did not recognized, is that the society of Sub-Saharan countries is organized in a very different way than those of modern, Western societies. Because of this, democracy does not behave the same in African societies. They overlook the role of agency and how they shape a structure of relations in unstable African societies. The role of agency and structure in societies is a well-discussed subject within the social sciences. Agencies are affected and constrained by structure in their actions but they also are free to change that structure. Giddens (1984 and 1993) and some other theorists, refer to 'two sides of the same coin'; structures (or social contexts, which Giddens refers to as systems) influence people's actions,

but in turn, social contexts (or 'structures') continue to exist only if they are sustained by people's repeated actions. (Giddens 1993) But how are agencies influenced and constrained by the structure of society? And how and when do they change the structure of society? One important aspect of the structure of society is the legitimacy that those structures of society provide. Agencies are restricted in their actions by that legitimacy. Even if entrepreneurs reflect upon the constraining qualities of institutionalized practices, any management of legitimacy has to take in account the negative consequences resulting from violations of institutionalized demands. (Beckert 1999: 791) So there are certain institutionalized rules within societies that provide legitimacy to certain actors. The difference between Western democracies and most Sub-Saharan countries is that the rules and structure of that system is very different. One claim is that the developmental capacity of African states is partly a function of their degree of legitimacy and congruence with pre-colonial institutions, and those theories which link development to social capital or ethnic homogeneity have limited explanatory power in Africa. (Englebert 2000: 29) Many African countries are characterized by patronage networks that give actors legitimacy and power through a system of personal rent-seeking. (de Waal 2009: 102-104) Why then do these networks of patronage yield undemocratic and underdeveloped countries? Lange (2004) makes already a suggestion in the conclusion of his paper; 'dispersed forms of domination hinder state governance when they create extremely powerful local intermediaries and limit state infrastructural power.' (2004, 917) A comparative conceptual framework to explain these differences and why democracy behaves different within these patronage networks is needed. Also the link to economic development has to be explained. Apparently, Western societies have evolved some characteristics within society that supports a legitimate democracy and thriving markets. The same is applicable to Botswana but not to Zimbabwe. There are some universal variables that ensure that democracy is stable and yields thriving economies.

Theoretical Framework and Research Question

To give an explanation that includes these variables, a comparative method that can track and compare the structure of society and the interaction of agency with the structure through time is needed. One relatively new conceptual framework that can be used is provided by North et al. (2009) and is called 'Violence and Social Orders'. This conceptual framework gives a new perspective on the development of societies in recorded human history. It tries to give an explanation to the fact that the modern Western forms of the organisation of societies had become the dominant ones in the world. The organisation of Western societies has changed over time, from mostly autocratic ones in the 16th century to fully democratic

societies nowadays. According to North et al (2009); 'Western human society developed during the 18th century from a natural state or limited-access society to an open-access society'. This social revolution came with an economic development in the form of open markets and that makes why democratic Western societies have been so successful (North et al. 2009: 2) What makes open-access societies so successful then? This success came from the fact that these societies could cope with changes that come with these big societies better. In natural states with limited access relations are personal and characterized by patrimonialism and rent-creation. In these systems change is resisted by the dominant coalition and there are no rules that prohibit them from destroying any opposition. Also these elites easily can use their 'available power resources ... to destroy existing institutions and substitute new arrangements for them.' (Becker 1999: 792) A dominant coalition exists and power is gained by elites through a system of rent-seeking and personal deals. (De Waal 2009: 102-103) Certain elites have certain privileges and access to these privileges is limited. In open-access societies however, these privileges are turned in to rights for all. The political and economic markets are open to competition. Rent-creation is not eliminated but benefits large and encompassing groups and does not create negative effects for society as a whole.

Thus one important feature of political institutions in an open-access society is that they are characterized by impersonal relationships within these institutions and the rest of society. But why does democracy behave differently in limited-access societies? The state in an open-access society derives its legitimacy from the equal treatment of all citizens and therefore relations within the political system have to be impersonal and access unlimited. In a natural state or limited-access society, democracy is not really democratic; relationships within the political system are still based on personal bargains. The dominant in limited-access societies coalition prevents change within the structure of society by limiting access. On the contrary, in open-access the structure of society is continuously changed through the process of creative destruction, to meet the demands of the majority of the population. But the changing of institutionalized structures, rules and strategies through creative destruction will only be successful if the parties interested in the status quo do not have the available (or do not use available means) to prevent the violation of these practices. (Beckert 1999: 792) This is the problem with democracy in limited-access societies. If "democracy" is defined as a social system that creates responsiveness to citizen interests and policies corruption, then experience shows that it requires more than elections; the formal political institutions of democracy do not produce modern societies by themselves. Dealing with violence requires institutions and organizations, institutions are the "rules of the game, the patterns of interaction that govern and constrain the relationships among individuals". (North, Wallis

and Weingast 2009:58) Without those rules, elites can misuse the freedom that democracy provides for self-enrichment. Open-access limits those parties interested in the status quo in their powers by institutions that prohibit resisting change demanded by the majority. So what makes democratic open-access societies more prosperous? The openness in competition within the political market is what it connects it with the economic market. Both limited-and open-access social orders have public and private organizations, but natural states limit access to those organizations. When access to political institutions is limited, access to economic organizations is almost certainly also limited. Economic growth, measured as increases in per capita income, occurs when countries sustain positive growth rates in per capita over the long term. (North et al. 2009: 3). Modern societies that made the transition to open access did prosper because they greatly reduced the episodes of negative growth. Competition in politics means competition in economics and therefore access to wealth for more people and better distribution of that wealth. So a democracy can only be prosperous when they have made the transition to an open-access society and have become truly democratic.

In sum, the framework mentions five different characteristics that make the structure of society one of open access. These are fivefold:

1. A widely held set of beliefs about the inclusion of and equality for all citizens
2. Entry into economic, political, religious, and educational activities without restraint, of which I will focus on the economic and political access
3. Support for organizational forms in each activity that is open to all
4. Rule of law enforced impartially for all citizens
5. Impersonal exchange

So now the relevant characteristics of the structure of society are known, where does agency come into the picture? And how and when does it transform the structure of society into open access? Before a society can transit to an open-access, certain conditions within the relations of the political elite have to occur. The transition to an open-access society happens in two phases. First the relations within the dominant coalition transform from personal to impersonal, and then those arrangements are extended to the larger population. Why do elites transform their unique and personal privileges into impersonal rights shared equally among non-elites? And how do elites secure their rights against each other? This is done within a natural state by developing institutional arrangements that secure these rights. These institutional arrangements are the *doorstep conditions* that enable open-access within the elites in the form of impersonal relationships. When a natural state develops institutions,

organizations, and beliefs that allow elites to treat each other impersonally, then that society is on the *doorstep*. Doorstep conditions are the institutional structures that give agency the incentives to change society as a whole. They create the rights conditions to change a political system of clientism and patronage into equal treatment of all. These doorstep conditions are:

1. Rule of law for elites
2. Perpetually lived organisations in the public and private spheres, including the state itself
3. Consolidated control of the military

If these doorstep conditions are met, transition to open-access can begin and institutionalizing open-access throughout society. After this, the transition of society to an open-access one is complete. Critical note on this transition is that it can occur in very different ways. The order of occurrence of any characteristic of open-access or doorstep condition is not predetermined. Also the form of the institutional arrangements that support the transition to open-access and open-access society itself can be different per case. Composition does not matter, as long as it can sustain open-access.

A hypothesis has arisen out of this conceptual framework. Because access in Zimbabwean society is still limited, it could not significantly grow its economy. On the other hand, Botswana prospered because it transformed as one of the few African countries into a society where open-access is present. This thesis' hypothesis is that Botswana during independence became a more open-access society while Zimbabwe did not and even became a more limited-access society. This is why Botswana prospered and Zimbabwe did not. The research question that evolved out of this claim is; *Why did Botswana evolve into an open-access society in post-colonial times while Zimbabwe became even more limited in its access after independence?*

Research Methodology

As this Thesis tries to compare the different political and economic structures of Zimbabwe and Botswana some qualitative and empirical data on these subjects have to be found. To support the theoretical framework of North et al. (2009), theory about the relation between agency and structure has been extracted from Giddens (1993) and Beckert (1999). General information on the effects of pre-colonial and colonial institutions on post-colonial development in Sub-Saharan countries has been selected. Englebert 2000; Herbst 2000; Lange 2004; Olsson 2009; de Waal 2009). Edge and Lekorwe (1998); Sachikonye et al. (2007); Raftopoulos and Mlambo (2008); Magure (2009) give some general information on the

development of Botswana and Zimbabwe. More specific research on the development of Botswana and Zimbabwe has been found to give qualitative evidence on the effects of pre-colonial structures and colonialism. For Botswana Acemoglu et al. (2001); Leith (2005); Beaulier and Subrick (2006); Hjort (2010); Naude (2010); give specific information about economic development and Picard (1979); Molomo and Mokopakgosi 1991; Pilane (2002); Taylor (2002); Robinson and Parsons (2006); Robinson (2009); Maundeni (2012) give specific information about political development. Seidler (2010) zooms in on the development of institutions in the history of Botswana. For Zimbabwe Richardson (2005); Kriger (2007); Moyo (2011); Dawson and Kelsall (2012) give specific information about economic development while Lemon (1978); Weitzer (1984); Herbst (1990); Vijfhuizen (1997); Edge and Ranger (2001); Ncube (2001); Muzondidya and Ndlovu-Gatsheni (2008) give specific information about political development. Besides elaborating about structure, this Thesis also tries to research the influence of agency. Because chieftaincy is a mayor subject in this Thesis, additional literature about this subject is found in Gillet (1973); Jones (1983); Sachikonye (1989) Tlou et al. (1995); Manungo (1999); Henderson 2000; Nyamnjoh (2003); Vaughan (2003); Dzivenu (2008); Nyati-Ramahobo (2008); Makahamadze et al. (2009); Morapedi (2010) and Dodo (2013). One subject where the explored literature did not elaborate enough about is the military in Botswana, so additional information is found in Molomo (2001); Kenosi (2003) and Henk (2004). Also additional information about Christianity in pre-colonial Tswana States has been found. (Gulbrandson 1993) One problem did arise during the exploration of the literature; namely the fact that direct empirical information about the economic and political development in the pre-colonial area is not available as nothing was recorded by the Tswana and Shona themselves. Because of this, this Thesis will regard the works of Schapera (1955); Ranger (1968); Beach (1974) and Beach (1984) as primary resources. Websites that contained economic data like Wordbank.org, books of law like Botswana e-laws.bw and government.zw, and data on political developments like The Economist Intelligence Unit and Bertelsmann Stiftung's Transformation Index has been used as sources for empirical data from colonial and post-colonial periods. At last there were three major comparative works (Du Toit 1995; Maundeni 2002; Malbrough 2004) on Botswana and Zimbabwe found, which this Thesis will use for information and also to oppose itself to.

Contribution of the Thesis to the Literature

The conceptual framework of Violence and Social Orders gives us a valid insight about how agency is responsible for changing society. This where other frameworks like most-similar-

systems design falls short. This is apparent in the work of Malbrough (2004). She uses most-similar-systems design to examine the impact of three factors, type of colonialism, racial/ethnic conflict and economic status during colonialism on Botswana and Zimbabwe's divergent post-colonial political systems. (Malbrough 2004: 3) She does elaborate about the role of agency in preserving traditional structures, but her approach falls a bit short about how and why agency did so in that particular time. In this way, agency is set aside as a object which incentives are predetermined by structure. The link between the political and economic market is also not explained well. As Malbrough argues 'there can certainly be a case made that Zimbabwe's post-colonial political system is related to its economic decline... It is difficult to establish causality in this case... and doing this would be a separate study in itself.' (Malbrough 2004: 60) Du Toit does elaborate on this causality and explains why a certain political discourse, influenced by anti-colonial struggles, within the Zimbabwean government party led to bad economic management. (Du Toit 1995: 140-148) But his explanation tells little about how the internal dynamics of the political market had effect on the economic market. By using the framework of North et al. a more comprehensive understanding of the interaction between such political institutions and agency and their effect on economy can be accomplished.

The link between stable democracies and thriving markets is one that is frequently explained badly within the political science. In North et al. (2009) words; 'Political science explanations focus on democracy, taking open access and political competition as a given and failing to explain why democracy in open access sustains a market economy or why natural states fail to do so'. (2009: 111) While some scholars thus have placed the emphasis on influence of type of colonialism and heritage of colonial institutions on post-colonial democratic development, this factor alone cannot explain the political and economic development in Botswana and Zimbabwe. Maundeni (2002) already makes another suggestion. He compares in his work the pre-colonial state culture that existed in Botswana and Zimbabwe, the Tswana and Shona culture, and their influence on post-colonial democratic development. He comes to the conclusion that the Tswana and Shona cultures were preserved by the colonial states and inherited by the national politicians. (Maundeni 2002: 129-130)

This Thesis tries to combine these findings with those that emphasize colonial influences by laying the emphasis on agency and their interaction with pre-colonial and colonial structures. In this way, it tries to come to a more comprehensive understanding of the post-colonial development of Botswana and Zimbabwe. Other factors as ethnic diversity (Malbrough 2004) and North-South relations (Brown 2002) are suggested for explaining the

underdevelopment in Sub-Saharan countries. Also greed and grievance (Collier 2007) is a recurrent theme that obstructed the development of Sub-Saharan countries. These explanations will not be considered because this involves a separate study that is too big to include this Thesis.

Thesis Outline

This thesis tries to explain these developments within the Botswana and Zimbabwean societies by comparing the societies in their progress in the transition from a limited-access to an open-access society in pre-colonial, colonial and post-colonial times. The influences of pre-colonial culture and colonial times are combined while trying to give an explanation for post-colonial success. The development of the structure of society will be tracked throughout the three time periods to reveal the decisions taken by agency that were crucial. The thesis is divided into three chapters. Within these chapters, the characteristics of an open-access society present in Botswana and Zimbabwe will be examined throughout pre-colonial, colonial and post-colonial history. The characteristics of open-access society that are evaluated are subdivided into three chapters. The first chapter will elaborate about the development of belief in the equality and inclusion, the second chapter will describe the development of economic and political access and the support for organizational forms and finally, the last chapter will examine the development of the rule of law and impersonal exchange

Trough following the development of the above mentioned characterises of opens-access throughout pre-colonial, colonial and post-colonial times, the moment that Botswana and Zimbabwe as a society stood on de doorstep of transition to opens-access will be pinpointed. When a certain characteristic is not present in society, it can mean that this is because one or more doorstep conditions are not fulfilled. This can also be not the case, because the elites could just have chosen not to extend their privileges to the masses while relations between elites are impersonal. This is the freedom of agency; it can decide not to change the structure. Examining the occurrence of doorstep conditions will be interwoven into the chapters of this thesis. In each chapter, there will be one small concluding section that will explain why the characteristic has or has not occurred throughout history in Botswana or in Zimbabwe and how agency is responsible for this.

Chapter 1

Development of beliefs in the equality and inclusion of all citizens

Botswana

Botswana in pre-colonial time

In 19th century Botswana, the country consisted of several kingdoms that were dominated by the biggest tribe in the territory, the Tswana. The Tswana ethnicity is actually a collective term for the dominant ethnic groups in pre-colonial Botswana, of which the most important ones were the Bangwato and the Bakwena. (Maudeni 2012: 20) Because these ethnic groups were quite similar in their cultural traits and organisation of the political structure, they are called Tswana. Tswana language was spoken by most of the indigenous tribes, so it was used as a universal language within Botswana. In each Tswana kingdom, there were many different communities of non-Tswana descent. These spoke their own language that was different from their own tribal chief. However, they always used the Tswana language to communicate with their tribal leaders. (Schapera 1955: 5) The availability of this communication was not different than for members of Tswana descent. Minorities did have the same access to political participation as the Tswana majority. Where did this social and political cohesion originate? It can be found in the highly centralized and inclusive nature of Tswana society.

At this point we have arrived at the first characteristic of an open-access society; a widely held set of beliefs about the inclusion of and equality for all citizens. Open access orders are all characterized by a set of beliefs widely held among the population. These beliefs include various forms of inclusion, equality, and shared growth. (North et al. 2009: 112) When one examines the composition of the ethnic-tribal descent of the indigenous population of the Tswana states, a very heterogeneous composition can be found. The majority of the population is considered Tswana, a cluster of the Sotho group of Bantu-speaking peoples. This group is already very diverse in tribal composition, which composes of peoples of about fifteen different tribal descents. (Schapera 1955: 1) Besides this variety within the Tswana tribes, there were a dozen minorities present within the Tswana kingdoms that lived along the Tswana majority. So, at first sight, one would conclude that it should be hard to maintain social cohesion within the Tswana kingdoms because of the heterogeneous composition of their population. But the Tswana had a traditional political organisation that could provide and maintain the inclusion and equality for all their citizens.

Historians highlight remarkable similarities between the pre-colonial Tswana chiefdoms and western nation states, such as a centralized hierarchical power structure built up around large town. (Hjort 2010: 693) This large town was the capital, the administrative and political centre of a chiefdom with some outlying towns, which are centred around the capital. The most important feature of each town, no matter how small, was the *kgotla*. (Schapera 1995: 23) The *kgotla* was a meeting-place for the inhabitants of the town where they discussed their affairs. Every man, no matter of which ethnic or tribal descent, could participate with the discussions within the *kgotla*. This demonstrated the rate of inclusion for all minorities. The *kgotla* provided an excellent forum for maintaining social cohesion within the heterogenic society of the Tswana states. Tswana elites even encouraged people from other ethnic tribes that were geographically dispersed to move to their cities. (Maudeni 2012: 22) So Tswana elites actively participated to the social cohesion within society to encourage minorities to be part of their political and economic system. Because of the accessibility of the *kgotlas*, many minorities did move to the political and administrative centres of the Tswana kingdoms and felt included within the Tswana society. The Tswana elite believed that all minorities should be included in the Tswana state, in order to make that state more powerful and coherent.

Colonial time

How was the social cohesion already present within Tswana society affected during colonial times? Most scholars see lack of interest in the region by the British, and thus type of colonialism, (Du Toit 1995, Hjort 2010, Malbrough 2004, Robinson and Parsons 2006, Acemoglu et al. 2001) as the main contributor to the survival of the Tswana institutions and their coherent nature. But why colonization of Botswana did occur is a subject of discussion. Some scholars suggest that colonial rule was imposed on the Tswana. No chief asked for it and only three of them were consulted afterwards. (Ramsay 1998: 62) Because the alternative was occupation by a white settler state, they accepted it. The traditional chiefs were given much freedom by the British colonial government in governing their own people. The lack of British intervention was mainly because the administration still considered the area bereft of exploitable resources – the aim was simply to minimize British expenditures by making Botswana self-sufficient. (Hjort 2010: 694) But there is evidence for a significant role of Tswana chieftaincy in attracting the indirect colonial rule that made survival of the Tswana culture possible. By the time a formal Protectorate was established in 1885, Tswana states and Christian missionaries had lobbied extensively in London for the British to declare a Protectorate over the territory (Tlou et al. 1995: 101) Contacts between Tswana chiefs and

British Christian missionaries were established as early as the 1820's and gradually Tswana chiefs were converted to Christianity. For the chiefs, Christianity was a way to get more power over the spiritual lives of their people. (Gulbrandsen 1993: 73-75) It can be suggested that 'if religious norms were the base of the legitimisation of their powers, it is plausible that pragmatic Tswana chiefs wanted to add Christianity to their legitimisation. (Seidler 2010: 10) Because the missionaries' work was doing well in the Tswana states, they began to lobby for the protection of the new Christians in the region against the settler states of Rhodesia and Transvaal and keep them under British influence. (Dachs 1998: 37-40) Also, as early as 1853, long before the 'scramble for Africa' started, Sechele chief of the Bakwena, had travelled to Capetown to persuade the British to offer the Batswana protection from the Boers. (Acemoglu et al 2001: 12)

Eventually the British decided to establish a Protectorate because they wanted to protect their own interests, but the strong and adaptive nature of the Tswana chieftaincy contributed to averting more interventionist forms of colonialism. During colonization, strong chieftaincy continued to contribute to resistance against more colonial intervention in the Protectorate. For example the handover of Tswana tribal land to the British South Africa Company (BSA) was obstructed when a delegation of three Tswana chiefs travelled to London in 1895. (Robinson and Parsons 2006: 114-115) Continued minimal involvement of the British was sustained by their belief that the Protectorate was a temporary experiment; after 1910 the goal was to hand it over to the new Union of South Africa. Again, the reaction of the chiefs on this threat was unilateral and effective; officially the procedure to incorporate Bechuanaland into the Union was started, but in practice the effects were minimal because the chiefs resisted any change (Ramsay 1998: 82-92)

While the chief as a central figure in Tswana society remained the symbol of social coherence in a multi-ethnic community, the political role of the chief started to change during the 1950's. Educated non-royal men, who saw a more modern future for Bechuanaland, were contesting the political power of the chiefs. Decolonising nationalism, as expressed through mass-based political parties, emerged in Bechuanaland from the 1950's. (Ramsay 1998: 101) At the same time the British government abandoned the idea that the Protectorate would be incorporated into the South African Union. (Bechuanaland Protectorate 1963: 45) Until then, many chiefs and nationalists believed that British imperialism was a good thing, because it shielded the Tswana from exploitation by settler-colonies. But when this threat disappeared, support for independence from the British increased. Another effect of the change of British policy for Bechuanaland was that the regional political power of the chief declined exponentially as the British started to depose

uncooperative chiefs more frequently. (Ramsay 1998: 109-110) This trend was started a couple of decades earlier and this decline of the chieftaincy gave way for nationalist movements.

Until the 1950's the chieftainship operating within the consensual ideal of the kgotla continued to be the primary context for political participation. The kgotla remained the most important way of political access with minimal restraints. But after 1950, the authority of the chiefs began to be challenged by new political movements. They appealed to more openness in politics and were against the despotic powers of the chiefs. In the place of both hereditary or appointee chiefs a racially separated communal representation, the parties suggested an open election based a common voter's roll. (Maundeni 1998: 118) The chiefs mistrusted these new political parties, as they saw themselves as the true leaders of an independent Botswana and entitled to its lands. Eventually the mistrust between the nationalists and the traditional chiefs was solved by incorporating the chiefs into the independent state, this process will be addressed in more detail in the following chapter. In sum, strong chieftaincy that represented a coherent multi-ethnic native population has proven to be of significant contribution to the deterrence of suppressive and more exploitative forms of colonialism. Eventually nationalists took over this protective role and became the representatives of the people. In this process they did not forget the old leaders and used elections to transform monarchical politics into republican politics through elected tribal councils. (Maundeni 1998: 131) In this way, they prevented separatism by any chief and their tribe.

Post-colonial time

How did the beliefs in equality and inclusion that had survived since the pre-colonial times develop during post-independence? When Botswana gained independence in 1966, beliefs in inclusion and equality for all citizens were still present in with the indigenous population. Because of the social cohesion, it was not difficult for the new Botswana government, led by the Botswana Democratic Party (BDP) carry out and legitimates its rule. When the BDP was formed in 1962, 'it was clearly identified as the party of chiefs and therefore the inheritor of their legitimacy and institutions'. (Maundeni 2002 :125) The pre-independence elections of 1965 had produced an overwhelming victory for the BDP, led by a tribal chief named Seretse Khama, with 80% of the popular vote and the capturing of twenty-eight of the thirty-one seats in the legislature. (Leith 2005: 31) This enormous victory was enabled by the big rural support that the BDP enjoyed. Because cattle were still the most important source of income for the Batswana, most people still lived in rural areas and supported the BDP. Seretse Khama and his BDP government followed a sound party programme that appealed both to

the economic elite and the majority of Batswana; interests were relatively homogenous and centred on the cattle economy (Hjort 2010: 691) The inclusion of traditional authority is also resembled in the House of Chiefs, which is an advisory organ to the Botswana government within the legislative body. The eight mayor tribes in Botswana (Bakgalta, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana, and Batlokwa) are represented in this organ, which consists of fifteen members: eight chiefs, four sub-chiefs, and three additional chosen members. (Malbrough 2004: 39)

Despite that the chiefs have a part in the modern democratic state of Botswana, they have been stripped of most of their original powers. Virtually every one of their former powers has been transferred to an elective or government-appointed body, to which they usually belong and on which they may play a major role, but which operates in accordance with regulations and by a system of majority decision that almost entirely eliminates the personal autocratic character of their rule in the colonial period. (Gillet 1973: 181) But keeping them part of the governmental system has been crucial, as they still are very influential in their own community. Research shows that, despite some loss of interest by the younger generations, traditional culture still plays an important role in everyday life of Batswana. (Pilane 2002) While they have no legislative powers, chiefs are viewed as the custodians of the culture of the people.

Reports show this important role of the chief; 'part of their role includes upholding the moral and ethical standards of the community, and performing traditional rites and ceremonies. Formal recognition of a tribe, therefore, is recognition of the culture of the people.' (Nyati-Ramahobo 2008: 2) Besides this important symbolic role, the chief has still some traditional jobs outside his official function; 'they also resolve interpersonal conflicts, attend to complaints, preside over ceremonial occasions, advise the tribal community at the kgotla, and promote traditional practices.' (Jones 1983: 139) The importance of the chiefs is also resembled in the struggle of some minority groups to gain more influence and recognition within Batswana politics. Since the late 1980s, minority groups have been seeking equal recognition as "ethnic" or "tribal" entities with paramount chiefs of their own, and with a right to representation in the House of Chiefs on equal terms with the Tswana *dikgosi*. (Nyamnjoh 2003: 107) Here the chieftaincy is used for the struggle of minority rights and this underscores its importance. Because the people of the mayor tribes feel that their chief is part of the government, the legitimacy of the BDP-government has always been very high in their eyes. This can partly explain why throughout post-independence the BDP has remained in power, while having every six years free-and-fair elections.

Also rival factions have always had the equal opportunity to compete with the

dominant party. The legitimate dominance of the BDP until today indicates the strong social cohesion within Botswana. Among the elites in Botswana there has been a strong cohesion and equality. Botswana's status as a developmental state is located in a professional Weberian-style bureaucracy that has conducted and implemented policy-making efficiently, made possible by an essential alliance amongst elites. (Taylor 2002: 6) Crucial part of this alliance are the traditional chiefs. The independent Botswana state has successfully transformed their traditional absolute power into a civil servitude that is indispensable in local communities. Through the chiefs, the Botswana government has a fairly good penetration throughout even the most remote areas of rural Botswana. Representation of certain minority groups can be improved, but overall the population of Botswana feels included in the Botswana nation. The result is that a strong belief in the equality and inclusion of all citizens persists until this day.

Zimbabwe

Zimbabwe in pre-colonial times

Pre-colonial Zimbabwe composed of a blanket of loose kingdoms of which its inhabitants were considered to be part of the Shona culture. These states had each their own political system. An important integrative factor in state politics was traditional religion. Priests within the chief's court had enormous influential powers. They represented the spirits of the ancestors and the king had to obey the wills of the spirits. The religious institutions in pre-colonial Zimbabwe had wrested economic power and had marginalised the state. (Maundeni 2002: 117) Economic power was understood as magical economic power rather than material possession. The priests possessed much of that economic magical power. At the dawn of colonialism, Zimbabwe composed of loose Shona chiefdoms of which the people shared the same culture but were not unified. The term Shona came not even in use by the people themselves before the 19th century. Indeed it was from this time that the term 'Shona' first was coined, at first as a term used by the Ndebele about the Rozvi and gradually adopted by the Shona-speakers themselves. (Beach 1984: 52) A man could pass through the whole sweep of country from the coast to what is now western Matabeleland without leaving one language and culture area. (Ranger 1968: 112) Any political coherence was frequently obstructed because of religious interference. In all Shona kingdoms the people worshipped a high-god called Mwari. His messages could only be understood by his servants. (Ranger 1968: 115) Because the people thought that this god was the true leader of their society, they aligned themselves with their religion and chose it above any centralized state. Because of this, a centralized state could not form in 19th century Zimbabwe.

Clearly, there was no real belief in equality or inclusion of all citizens. Life was in service of the afterlife and social power was in theory vested with the tribal chiefs but in practice the priests were the real sources of power. This was very different than the unifying power the Tswana chiefs enjoyed. The dominance of the spirit mediums in Shona life is also reflected in the way the Shona rebelled against their colonial superiors in 1896-1897. Although the Ndebele who were in rebellion in Matabeleland had played a part, the prime mover of the rising was Mkwati, 'the high priest of the M'Limo' who sought to offset his defeats in the southwest by bringing the evil influence of the "Mondoros" or local witchdoctors. (Beach 1979: 395) Thus only the religious institutions could exert enough social power to unite the Shona people. But, despite of the enormous influence of the priests, in daily life, the Shona chief was the legitimate leader of the tribe. Another factor that did not contribute to social cohesion within pre-colonial Zimbabwe was the invasion and settlement

of other ethnic groups. A series of invading groups from the south burst in to the Shona are with greatly destructive effect. (Ranger 1968: 118) The most important group, the Ndebele, conquered and ruled a big portion of the Shona people before creation of the Rhodesian settler-state. However, the Shona political structures remained intact, and the proliferating of chieftaincies continued into the colonial period while the Ndebele traditional political structure was completely destroyed through military conquest in 1893 and 1896. (Du Toit 1995: 85-86) Ndebele political culture had no influence on the post-colonial Zimbabwean state and will therefore not be addressed anymore. So in sum, there was no belief in the equality and inclusion for all citizens present in pre-colonial Zimbabwe.

Colonial times

British imperial interest in the region accelerated in the mid-1880's, fuelled by persistent rumours of profitable gold deposits. (Du Toit 1995: 78) How did this affect the beliefs in equality and inclusion among the Shona and Ndebele? African responses to colonial rule were complicated by the fact that there was no clear-cut ideological unity that could have enabled both the Ndebele and the Shona to develop a combined African front against colonial rule. (Raftopoulos and Mlambo 2009: 73) This is also stressed by Maundeni (2002); When European colonization threatened to engulf the whole southern African region, the Shona priests and the Shona state left the country unprotected. (2002: 121) The Shona chiefs, in contrast to the Tswana chiefs, neglected their people and made it easier for the British South African Company (BSAC) to directly rule the country. After conquering the Ndebele and Shona states, the British successfully accomplished rule over the native tribes in 1890. The Southern Rhodesian State became official in 1898, and the British administered a policy of direct rule, which lies in contrast to the British policy of indirect rule in Bechuanaland. (Malbrough 2004: 41) After the failure of the Shona leaders to avert colonization, British colonial rule destroyed any cohesion that already existed within the Shona and Ndebele population. As Dodo (2013) argues; 'Colonialism destroyed traditional common property management institutions by examining the traditional customs and practices of indigenous communities.' (2013: 39)

The colonial electoral process watered down the religious significance previously attached to the institution of chieftainship in pre-colonial Zimbabwe. (Makahamadze et al. 2009: 38) The Shona chiefs no longer answered to the ancestral spirits but to the colonial government and became puppets of the British. Some colonizers wanted to give power to strong subordinate chiefs, but the BSAC government insisted instead on the division and dissipation of chiefly power. (Ranger 2001: 32) General opinion among the BSAC was that

order had to be restored and that in their view this was accomplished by eroding the powers of the chieftaincy and placing the African population under strict control of the colonial administration. In November 1898 the South Rhodesian government introduced the Native Regulations. These regulations introduced the structures of a Native Department to administer Africans; chiefs were placed under a Chief Native Commissioner (CNC) and below him was a Native Commissioner (NC) who was stationed in each district. (Southern Rhodesia Government 1898: 17-19) While the NC officially was under the chief, he took upon himself all the administrative duties for the district, and in this way they robbed the traditional leaders of their pre-colonial powers. (Makahamadze et al. 2009: 37) The NC had tight control over the chiefs and even decided who would fulfil the position of chieftaincy.

What effect had this on the beliefs in equality and inclusion of equality? Indisputably, the effect of direct British rule has had a profound effect on the beliefs in equality and inclusion among the native population. As often argued (Moyo 1993; Du Toit 1995; Malbrough 2004; Ncube 2001; Ndlovu-Gatsheni 2001; Muzondidya and Ndlovu-Gatsheni 2008; Magure 2009) the segregationist policies of the Rhodesian state excluded and divided the native population and frustrated the development of a civil society. It made a clear distinction between the black and white populations and only the white population had clear defined human rights. The Imperial/Cape tradition offered 'rights' to 'civilised men' and these civilised men were not the native black people. (Ranger 2001: 32) This is in stark contrast with the British colonization in Bechuanaland; there the intact traditional structures civilized the native population. 'There was also the prevalence of divide and rule, whereby British colonialism deliberately maintained opposing traditional structures of control in order to keep the different ethnic populations within a colony from forming a coalition to challenge British hegemony.' (Magure 2009: 71-72) A settler colony is by its own definition illegitimate to the original inhabitants.

As for the traditional leaders, the Rhodesian settler state had a profound impact on their status as well. As we have seen their powers were eroded to almost non-existent. The institution of chieftaincy became a symbol of the colonial government. They were seen as the willingly slaves of the colonizers as their duties included, among other things, the inking of tax and the recruiting of cheap labor. 'Accepting the office of chieftainship also meant that Africans were willing to serve the new government.' (Makahamadze et al 2009: 39) This view of the chieftaincy had profound effect on the development of the institution in post-colonial times. When black nationalist movements arose in the 1950's, the chiefs were seen as collaborators with the white settlers. This is not very strange, as the colonial government tried to re-instate chiefs in order to control this upsurge of nationalism. The Rhodesian

government began to stimulate the return of traditional community life, 'as a bulwark against nationalism.' (Ranger 2001: 38) Rather than introducing an imported developmental state culture, the Rhodesian settler colonial state tried to implement indigenous state practices. (Maundeni 2002: 122) In this way it kept the fragmentizing Shona culture alive, as the traditional idea that legitimacy was vested in the ancestral spirits and in whom was chosen by those spirits to rule. This ancestral legitimacy would become the battleground over which the post-independence nationalist parties would struggle. This is an important distinction with how legitimacy was formed in traditional communities in Bechuanaland. In Tswana culture the chief remained the right person for legitimate rule as long as he served the demands of his tribe. The Shona chief maintained its legitimacy as long he served the demands of the ancestors. This seems as a negligible detail, but in practice it proved to be make a difference.

Despite the efforts of the Rhodesian government to counter the nationalist movements, the struggle ended in a civil war between the Zimbabwe African National Union (ZANU), who were mainly ethnic Shona, the Zimbabwe African People's Union (ZAPU) who were mainly ethnic Ndebele and the Rhodesian government. The ZANU adopted the traditional Shona state culture as their main cultural heritage. It aligned itself with Shona priests who had been an important ritual arm of the old indigenous state. (Maundeni 2002: 126) The ZANU used the traditional Shona culture and institutions in a twoway manner; to identify themselves and to distinct themselves from others. The ZANU guerrillas established themselves as the authentic autochthons, embodying the spirits of the ancestors, and therefore true owners of the land, versus the chiefs, who had been co-opted into the state as civil servants. (Du Toit 1995: 105) It tried to establish itself as the new legitimate source of leadership and competed with the traditional leaders. It discredited especially the chiefs, as the ZANU-leadership saw them as puppets of their enemy.

Post-colonial time

The guerrillas stated that they were the real owners of the Zimbabwean land because their ancestors were the ones that made the rain. So their identities were directly entwined with the pre-colonial religious institutions. This ideology persisted in post-colonial times and it prevented the creation of a legitimate state and more belief in inclusion and equality for all citizens. The Zimbabwean state emphasized its own 'descent' from the ancestors and thus legitimized itself on religious grounds. Because the ZANU was in direct competition with the traditional institutions, it tried to bypass them rather than incorporating them. Unlike the Botswana nationalists, the ZANU leadership tried to impose rule on the population from

above and in that process they were not hesitant to use the repressive state institutions that they inherited from their old colonial adversary. The vast majority of Rhodesia's repressive powers have not been abandoned by the new regime. (Weitzer 1984: 532) Problem was that, unlike the Botswana state under Seretse Khama, the new Zimbabwean state did not consist of a broad alliance of state elites. The ZANU party leadership was quite isolated and in continuous fear of losing their claimed legitimacy. This continuous fear that is felt by the party leadership is why the ZANU always have so fiercely fought against any opposition and has greatly undermined democracy. One big goal of the ZANU has always been to compensate for that fear by turning the Zimbabwean state into a ZANU state. As Du Toit (1995) suggest; 'The merger (or rather incorporation) of (PF)-ZAPU into ZANU-(PF) is part of the project of establishing a one-party state, which is part of the larger project of merging state and party.' (1995: 138)

Scholars who argue that ethnic and racial struggle is to blame for the political and economic underdevelopment of Zimbabwe are missing an important point. Malbrough (2004) argues that 'the ethnic and racial divides, and the armed conflict that stems from them, has had extremely negative consequences on Zimbabwe's political system.' (2004: 66) By stating that the ethnic divisions are what fuelled the conflict between the ZANU and the ZAPU, she is ignoring the fact that ethnicity did not matter for the ZANU leadership but losing the legitimacy of rule did. Revival of the old Shona state culture fuelled the hostile nature of the ZANU and the ZANU was not even an ethnic party. While the party adopted the Shona culture, it did 'retained its ethnic core of supporters but has not been reduced to the status of an exclusively ethnic party.' (Du Toit 1995: 138) But despite the embracement of the Shona culture, the ZANU leadership failed to obtain the legitimacy of the traditional structures.

Traditional institutions like the chieftaincy maintain to hold legitimacy in the traditional communities until this day. Field research shows that most of the rural population still 'classify themselves by their chieftaincy or their dialect group: Zezuru, Manyika, Korekore, Karanga and Ndau.' (Vijfhuizen 1997: 33) Despite the efforts of the ZANU-(PF) to penetrate through the traditional community, the most basic administrative unit in the rural areas, the village, is still based on clan and kinship ties despite the chiefs' loss of formal authority. (Du Toit 1995: 139) In rural Zimbabwe the chief remains to have an important role within the village, as Dodo (2013: 34-36) shows:

First and foremost, a traditional leader is a head of the community under his/her jurisdiction who then is supposed to supervise headmen and village heads. Through the traditional leadership structure, Chiefs oversee the collection of village levies, taxes, rates and charges

payable in terms of the Rural District Councils' Act. (...) Traditional leadership through its wide consultation with community elders and even lawyers or some interested organizations, try to uphold human rights and give the subjects room to consult with other pressure groups or seek other legal assistance.

So the traditional institution of chieftaincy remains an important influence in everyday Zimbabwean life and the nationalist parties did not ignore this. Despite the discrediting of the chieftaincy by the ZANU, the party leadership could not ignore the chief's lasting influence on the population. Chiefs even became a source of power struggle between the ZANU-(PF) and its opponents in the last decades. Because from the late eighties the ZANU-(PF) had to deal with a big new opposition in the form of the Movement for Democratic Change (MDC), it sought new ways to stop this opposition from gaining support. Because the chiefs have strong influence in rural Zimbabwe, the government restored the status of the chieftaincy and gave them new ward and village assemblies that would be led them and their headmen. 'Realizing that MDC had its strong hold in urban areas, the ruling party decided to stop it from making inroads in the rural areas. For this purpose they could not afford to ignore the influence of the traditional leaders.' (Makahamadze et al. 2009: 41) Because of this some chiefs even lost their legitimacy, as the interest of the government in the chiefs has changed the perception on the role of the chiefs and some are now seen as the 'apologists' and 'hangers on' of the ruling party. (Sachikonye 2007: 91-92) Concluding, beliefs in equality and inclusion for all is non-existent in temporary Zimbabwe, this is mainly due to the undemocratic and exclusionary politics that the ZANU-(PF) has followed since independence.

Discussion of the data on the belief in equality and inclusion

As we have seen, the role of traditional chieftaincy has been of major influence on the belief in equality and inclusion of all. The pre-colonial state of the Tswana was highly coherent and inclusive for all minorities within the Tswana states. Because of this, the Tswana chiefs enjoyed legitimacy among different ethnic and tribal groups. Citizens of the Tswana states felt that their Chiefs represented them and because of this, they felt that they were part of Tswana society. One big factor that contributed to this was the kgotla, that provided every man political access. The beliefs in equality and inclusion were sustained and consolidated during colonial times in face of colonization by repressive settler-states. Chiefs have played an important role in protecting the cultural tradition of the Tswana. Also, lack of interest and indirect governance by the British has played an important part; besides leaving the traditional structures untouched, it initiated the balanced decline of the hegemonic powers of

the chiefs. How was this important for post-colonial development? Well, because the chieftaincy is based on traditional patronage networks, it has the characteristics of limited access. Such chieftaincy will not perform well in a democracy, as it would take the form of a dictatorship. National elites that are trying to build a democracy could solve the problem of chieftaincy by just eliminating it. However, a new government who would do this would lose much legitimacy because most of Batswana society was built around the kgotla and the chieftaincy. On the other hand, chieftaincy has to answer to the new government, as democratic open-access societies require rule of law for all elites. The new Batswana state elites solved this by stripping the chief of some of his powers and integrate him into the modern state. So doorstep condition one was present at independence. How this process was done will be further explained in the following chapters.

The data on Zimbabwe shows a very different development. As Shona state culture had a fragmenting nature, its survival and revival had big influence in post-colonial times. While the illegitimate and exclusionary structure of the Zimbabwean state at independence is primarily to blame on the segregational nation building of the Rhodesian settler-state, the hostile politics of the ZANU-(PF) have maintained and consolidated this structure throughout independence. Unlike in Botswana, where the Tswana state culture has contributed to legitimate nation building, the revival and adoption of the Shona state culture by the ZANU-(PF) have made the state more illegitimate. Because the Zimbabwean state tried to rival and not integrate the traditional institutions, it did not obtain traditional legitimacy. The ZANU did make the mistake that the BDP did not make, it neglected the institution of chieftaincy. Legitimacy further eroded as the ZANU-(PF) tried to establish a one-party rule and make the Zimbabwean state a ZANU-(PF) state. In the last decades the ZANU-(PF) changed its course and suddenly acknowledged the status of the chieftaincy but was merely a political tool and it even made some chiefs illegitimate. The failure of the ZANU-(PF) to build a broad alliance among elites during independence has contributed to the bad political and economic development of Zimbabwe. This will be explored in the following chapters in more detail. The lack of the ZANU in giving all elites equal rights indicates that there is no effective rule of law for all elites.

Chapter 2

Development of entry into political and economic activities without restraint and support for organizational forms in these areas

Botswana

Pre-colonial time

The second and third characteristics of an open-access society are necessary to eliminate the limited rent-creating competition that characterizes limited-access society. Open access for organizations in all activities means that open access orders have both political and economic competition markets and democracy. (North et al. 2009: 114) This means that anyone can create a political or economic organization, like for example a political party or a mining company, and can enter and compete with others on the political or economic market without any obstacles. The second and third characteristics will be examined together because they are highly correlated and cannot exist without each other.

What, if any, political and economic access for all existed in pre-colonial Botswana? Despite that there was already a set of beliefs in the equality and inclusion for all citizens present in pre-colonial Botswana, entry into political and economic activities was not entirely without restraint and there was no support for organizational forms. However, there were some areas that were open to all. The best example of some open access in political activities was the kgotla. In the large towns and most important, the capital, the kgotla was the place where all polity decisions were to be taken. (Hjort 2010, 693) These kgotla were highly centralized political institutions that were interwoven throughout the whole of Tswana society. In the bigger towns the hamlets, where the kgotla was centred in, subdivides in different social and administrative units, called wards, of which each had its own headman. These Tswana assemblies were the initiator state at work (Maundeni 2002: 114) Here the local chiefs administer justice, receive reports, interview people, and here are held many of the tribal gatherings and ceremonies. Because all adult males could contribute to the debate within the kgotla, it was a highly accessible political unit. Political access on the local level was quite good in Tswana society, no tribal group was discriminated in their participation in the regional kgotla's.

However, despite of the apparent openness of access to the kgotla, some certain

wards were still more privileged in political access. This was resembled in the makeup of the Tswana towns. The various wards in a tribe were differentiated in rank according to their historical status and seniority of descent. (Schapera 1955: 23) Of course, the royal ward of the chief, with his closest relatives and other friendly aristocrats, was the most influential and headed the tribal hierarchy. Also during assemblies at the kgotla, the more influential wards were more prominent in their speaking and could exert more influence on the chiefs decisions. The most privileged were the group of advisors and hereditary men that the chief could consult separately of the kotgla. These men were mostly relatives of the chief, some elites were still more privileged than other. Besides this, there was no support for organizational form within the political area; citizens were not allowed to form any political organizations. Only the chief was privileged to rule the country and the only access to this position was hereditary. So despite of the openness of the kgotla's, Tswana politics were still characterized by patronage networks which were controlled by the tribal chiefs and their advisors and headmen.

Economic access was regulated in pre-colonial Botswana but not without restraints. Unlike among many African tribes, the institution of private property and wealth has existed in Tswana society since at least the mid-nineteenth century. (Hjort 2010: 698) The pre-colonial Tswana had elaborated rules on institutions of property rights. The concepts of communal property and private ownership co-existed (Seidler 2010: 11) Land was not individually owned, control of the land was vested in the chief, but none of the land was his personal property. All married members of the tribe were entitled to land for personal property. So access to land was equal for all members of the tribe and the Tswana law protected their property of it. Cattle, the most important source of income in Tswana society, were privately owned and no chief or other person with power could claim ownership of cattle that belonged to other members of the tribe. (Hjort 2010: 700) Despite that everyone was entitled to land and there was protection of the property of cattle, economic access was not even distributed throughout society. Cattle were privately owned and the chief and aristocracy were large owners. (Acemoglu et al. 2001: 10) Tswana law stated that ownership of cattle and land could only be inherited, and thus remaining in the same family and ward. The inheritance laws of Tswana states encouraged the concentration of wealth in the same hands. (Maundeni 2002: 117) Also the chief decided how land was to be allocated between hunting, farming, and residence. (Beaulier and Subrick 2006: 8) So the chief still had influence on the use of the land by his citizens. No support for organizational form of economic endeavours in these by citizens was present. The land and its uses were under the sole authority of the chief and the sale of cows was prohibited (Tlou 1998: 25-26) Because of

the hereditary system of cattle and because no one was allowed to sell his cattle, no one could effectively start an economic organization.

Colonial time

We have already seen that within the Bechuanaland Protectorate there was minimal colonial involvement in indigenous Tswana society. But even without the obvious clash of institutions, British rule had an important effect on the development trajectories of various Tswana institutions. (Seidler 2010:17) What effect had colonialism on the political and economic access? With respect to the political and economic access for the ordinary Tswana, not much was changed during colonial rule. During the colonial period 75 % of the expenditure of the administration went on “administrative costs”. Little was spent for investment or development of any kind. (Acemoglu et al. 2001: 13) But as already was mentioned in the preceding chapter, the political role of the chief changed strongly, as he became part of the colonial administration. The British system of indirect rule effectively meant that the British used the chiefs to get what they wanted from their subjects.

(Somolekae and Lekorwe 1998: 188) In 1920 the colonial administration created the Native Advisory Council, where all the chiefs of the major tribes resided in. (Bechuanaland Protectorate 1958: 58) While the council was presented as a opportunity for the chiefs to gain more influence, in fact it diminished their powers in relation to the colonial state. (Morapedi 2010: 216) But despite this, the Council did achieve successes in protecting the native population from more colonization. For example, it did fight off further incorporation of Botswana in to the Southern African Union, fought against racial laws, improved water supply, the cattle industry and education for the native population. (Manungo 1999: 29-32)

However, from the introduction of the Council, the power of the chiefs was slowly curtailed over the years. In the 1934 Native Administration Proclamation Act, Tswana law and custom were changed. It gave the colonial administration power of the appointment of the chiefs, and several other legislative and judicial decisions that were previously made by the chiefs. (Bechuanaland Protectorate 1934: 88-105) While this amendment initiated the decline of the powers of the chiefs, it also marked the beginning of incorporation of the traditional authority into a modern state. This became apparent after the Second World War, when in 1946, the High Commissioner wanted that the creation of a local native government was realized, as the natives had to learn how to govern themselves if they want to be independent. (Manungo 1999: 35) This was the first of a series of decisions that eventually led to an independent native government. One of them was the decision to create a Legislative Council, that consisted of native and European members, and that could make

new laws and decide over policy. The other one was the creation of system of nine District Councils was to be established to replace tribal councils as the basic unit of local government. chiefs would be left with only their judicial and some ceremonial functions, and would be represented in a separate body from the Legislative Assembly. (Picard 1979: 288) These decisions were a crucial part of the subordination of the traditional authority of the chiefs to the new national government. The nationalists that came into power after the first elections of 1965, did a good job in not removing the traditional structures and therefore gained much legitimacy, also it paved the way for perpetually lived organizations. One perpetually lived organization that was imposed from above was of course the colonial administration and later the independent state of Botswana. But the kgotla, as a traditional perpetually lived organization, gained more open access as the chief was stripped of its powers.

Because the British government had no economic interest in the region, they did minimal effort to develop the region economically and the colonial penetration in economic terms was very limited. But in the decade before independence, the British suddenly had more economic interest in their Protectorate and this coincided with the interests of the nationalists. The result was that the nationalists had a big influence on the economic development towards independence. Eventually, 'Botswana's economic status during colonialism had an important impact on its post-colonial system of governance because the British's economic neglect allowed for the independent government to have more control over Botswana's economic development. (Malbrough 2004: 60) Also, the survival of the property rights concerning land and cattle gave the cattle holders a strong position within Batswana society. One of these men with interest in cattle was Seretse Khama, a former chief who was one of the founders of the BDP. This man was a great contributor to the formation of a strong alliance within the elite; this can be credited to the consensual nature of his politics. 'Being amenable to the colonial program for decolonization, he alone could muster support from the commercial cattle ranching interests, the educated Tswana elite, the traditionalists, and the colonial public service.' (Du Toit 1995: 36) The explicitly national, non-tribal and non-racial nature of the BDP can explain the party's success and popularities throughout post-independence. It immediately started building grass-root structures using their leader's, Seretse Khama, popularity as a former chief (Seidler 2010: 22) Also Serete's personal charisma assisted in forming a coherent Botswana state. (Henderson 1990: 30-32) It seems that Khama's personal account was an important factor in enabling one doorstep condition, namely the rule of law for all elites, to be present and moving towards the second, perpetually lived organisations. Type of colonialism has influenced the formation of equal political and economic access but eventually agency was the crucial factor. British

colonialism has been of positive influence because it left traditional structures almost untouched and created the necessary subordination of the chiefs that made assimilation into the independent Botswana state easier. But it was because of the strong leadership of the chiefs and later the compromising political agenda of the BDP that traditional structures survived colonialism.

Post-colonial time

The integration of traditional pre-colonial structures into a modern Botswana state did not end at independence. In fact there was much more to be done to make Botswana an open-access society. Several scholars (Maundeni 2002, Malbrough 2004, du Toit 1995, Taylor 2002, Robinson and Parsons 2006) already have suggested the influence of good governance on the positive political and economic development of the country. As Du Toit (1995) argues; 'An adequate account of the establishment and persistence of democratic politics in Botswana ... is to be found in the way rulers have, through deliberate policy choices, confronted these unfavourable conditions.' (1995: 46) But how was the structure of Botswana society shaped by agency during independence in a way that it enabled this development? At independence there were several perpetually lived organisations, traditional and modern. To make Botswana society more openly accessible the BDP government had to further integrate those organisations and make them more perpetually lived. Traditional patronage networks had to be integrated into open-access.

The modern Botswana state was already perpetually lived as it was based on the British equivalent. In practice this was there always have been a one-party rule by the BDP but, this does not mean that access is limited. Political access from independence has always been quite good as the opposing elite, also could form a political party; the Botswana Peoples Party (BPP). Besides the BPP, there were several other parties that were formed during independence, like the Botswana National front (BNP) and the Botswana Progressive Union (BPU). Until 1991 there were eight different new political parties founded. It seems that the political market is open for competition; anyone can form a democratic party. Independent political parties can form freely (BTI Botswana 2012: 6). The constitution provides for a separation of powers, and this contrast with the traditional system of power where virtually all powers are fused in the chieftainship system. (Somolekae and Lekorwe 1998: 190) The Chieftainship Act of 1965 gave the chiefs less power, it had almost the same impact as the 1934 Act, as it made the chieftaincy more perpetually lived. The BDP state set up modernizing institutions such as parliament, cabinet, land boards town and district councils and village development committees that supplanted the chiefs. (Maundeni 2002: 125) This

process of transferring traditional power to the central government persisted during independence. Chieftainship eroded further as the Chieftainship Amendment Act of 1970 and the Chieftainship Act of 1987 transferred more privileges and tasks to the central and local government. (Somolekae and Lekorwe 1998: 191) The Botswana government began to decentralize their power throughout society and derived the chiefs of many of their local powers. But this does not mean that the role of chiefs in modern-day Botswana society is non-existent. Morapedi (2010) shows that 'against much expectation, however, the institution of chieftainship has not only re-emerged but also often prospered, after independence, especially given the rise of multiparty politics in Africa and the possibilities that this presented for new political forms.' (2010: 217) The chieftainship seems to have adapted to modern circumstances and found new or maintained important tasks. Their local patronage networks have been integrated into open-access and have survived until this day.

During independence, the kgotla maintained its important position in society. The kgotla remains the place where chiefs and governmental officials hold customary court. Politicians (e.g. cabinet ministers) also use the kgotla as a forum to consult with the citizens and inform them about new legislation. (Seidler 2010: 26) Removing the influence of the chief and his headmen has democratized the kgotla and it now serves as an autonomous local political institution. It has competition from land boards and the district councils on the local level but for most ordinary men, the kgotla remains the most important institution to gain political access. Research shows that in particular the less educated rural population had little understanding of the national Botswana government but attended at the kgotla often. (Picard 1985: 66-68) Seemingly an informal institution like the kgotla has more importance in modern Botswana life than actual government institutions. As Seidler (2010) suggests: 'the kgotla example shows that integrating compatible informal institutions within the institutional framework of a modern state increases political legitimacy and raises the overall effectiveness of formal institutions.' (2010: 26-27) It even can be suggested that the existence of the kgotla can explain the lack of opposition for the BDP. As most Botswana feel that political access is provided mainly by the kgotla, their interest in national politics is quite low. In Du Toit's (1995) words; 'the institution of the kgotla both as public assembly and customary court, serves the function of civilizing society.' (1995: 69)

But what has been the effect of the survival of pre-colonial structures and colonialism on economic access during independence? Malbrough (2004) argues that economic status during colonialism has contributed to post-colonial economic development. This cannot be disputed but good governance and integration of pre-colonial economic structures can explain this better. The co-existence of common and private ownership of land as well as

private ownership of cattle was inherited from the colonial period and remains dominant even today. (Beaulier and Subrick 2006: 7) When Botswana became independent, the ranching industry was the only industrial sector that was significant. The cattle ranchers had an important influence in the BDP and because of this, the pre-colonial property rights survived. Cattle owners and non-cattle owners shared a common interest in having a prosperous ranching industry because it meant wealth for all. (Taylor 2002:27) The Chiefs were stripped of any power over the allocation and possession of land and cattle. (Acemoglu et al. 2001: 16) In the years after independence, the government invested well in rural development to develop its what by some its 'beefocracy'. (Robinson and Parsons 2006: 121) These developments included investments in physical capital (infrastructure, roads) and human capital (education, wealth). (Seidler 2010: 27) During the first half of the twentieth century, comprehensive individual property rights were progressively extended to land and other assets such as water resources. (Hjort 2010: 700) Because these property rights survived into independence, economic access for all was present. Property rights were institutionalized in Botswana and economic organisation was made perpetual. The political elite 'inherited a set of institutional prerequisites that ensured that they would keep their political power by pursuing good policies and placed restrictions on infighting among themselves over political rents.' (Acemoglu et al. 2001: 24)

This form of good governance also occurred in the diamond sector. During the 1970's the diamond industry emerged, as diamonds were discovered in rural Botswana, the government took the leading role in this sector and still dominates it to today. (Jefferis 1998: 319) Crucial in this process was the decision of president Seretse Khama to transfer the mining rights to the government and not to any tribe. (Acemoglu et al 2001: 24-25) If these rights were not transferred to the national government, it could become a source of power and conflict for the different tribes in Botswana. Diamonds are exploited and sold exclusively by Debswana. This company is a 50/50 joint venture by the state and the South African mining company De Beers. (BTI Botswana 2012: 13) While having a monopoly in exploiting diamonds, the government has used the revenues for the economic development of the country and this fuelled a big part of the economic growth for decades. (Robinson and Parsons 2006: 134) This indicates that the economic organisation within the diamond sector is perpetually lived and is not used for personal rent seeking.

Zimbabwe

Pre-colonial time

An open access order exists only if a large number of individuals have the right to form organizations that can engage in a wide variety of economic, political, and social activities. (North et al.: 23) Was this the case in pre-colonial Zimbabwe? Social power was primarily concentrated in religious institutions that rivaled and eclipsed the state. (Maundeni 2002: 111) The most important political entities in Shona life were paramountcy units that composed of different wards whose themselves were made up out of different villages. A paramountcy unit was headed by a chief whose powers were fairly limited by the system of collateral succession (Ranger 1968: 114) This meant that advisors and other tribesmen could restrain the chief in his actions by changing their allegiance to another candidate for chieftaincy. The chiefs were also limited in their powers because they had to answer to the will of Mwari and the ancestral spirits. Local chiefs were installed by the most senior headmen in the area in consultation with the spirit-mediums of the chiefdom. (Makahamadze et al. 2009: 34). Nevertheless, the chiefs had tremendous powers within its tribe; he could do anything that he wanted if it was in accordance with the will of the spirits. Because the chief had the sole power to rule, there could be no political organisations that could challenge him. (Ranger 1968: 122)

Land was thought to be sacred commodity, a burial ground and the abode of the living dead. The Shona believed that the land belonged to the ancestors and that the chiefs were its custodians. (Makahamadze et al. 2009: 35) Chiefs were mandated to distribute the land among their people equitably, so they supposed not to use land for personal gain. But the priests were influential in determining how the land was to be exploited. (Maundeni 2002: 118) In this sense there was equal economic access for all to lands, but the religious institutions had the real control over the lands. The basic underlying fact in the political economy was that society was not based upon an equal sharing of resources or wealth, in spite of public ideology that often insisted that it was. (Beach 1984: 21) Agriculture was the most important source of income in pre-colonial Zimbabwe and this income was not equally distributed throughout society. Religious organizations were interwoven into the whole society and had a monopoly on the distribution of wealth. They had great political and economic influential powers, this system obstructed open access in political and economic terms and the creation of organizational activity that is open to all. In contrast to the Tswana, the Shona and Ndebele did not have any private property rights. Shona and Ndebele society were still very limited in respect to political and economic access.

Colonial Time

During colonial times, the Southern Rhodesian state and the independent settler-state of Rhodesia greatly limited the political and economic access. Because of the distinction between 'citizens' and 'subjects', the native population had not the same rights. (Ncube 2001: 101-102) Because of this native population had not the same political access as the white population. The Rhodesian state tried to penetrate through the traditional African community. In this process it immediately deprived the chieftaincy of all powers and almost destroyed the institution. The chieftaincy became part of the perpetual state of Rhodesia but as this state was highly exclusionary of nature, it did not grant any political access. Just before independence of the British Empire there were some changes in political access for the black population. The ruling United Federal Party (UFP) wanted to increase African representation within the legislation because that was one of the conditions for independence from Britain. So the 1961 Constitution of Rhodesia stated that there would be two separate electoral roles, an A-Roll for whites and a B-roll for blacks. (King 2001: 144) But these roles were characterized by unequal powers; while the whites could elect 50 representatives, the black could only elect 15. (Southern Rhodesia Government 1961: 130) The electorate represented between 1962 and 1977 only 0.3 per cent of the African population of voting age and almost half of the non-African population. (Lemon 1978: 529) So political access in Southern Rhodesia for Africans was non-existent and in independent Rhodesia marginal and discriminate. Support for political organizational forms for the Africans was also non-existent.

One big problem in Zimbabwe since colonial times and maybe even pre-colonial times, has been the ownership of land. In Shona culture, other than with the Tswana, there are no good property rights defined. Ownership is not determined on earthly terms but on religious terms so traditional ownership could easily change, no clear protection was provided. The Rhodesian state tried to get control of the traditional ownership of land by robbing the chiefs of their power to allocate eland to their subjects. (Rhodesian Government 1898: 18) Besides that, the creation of a settler state had obviously enormous impact on the ownership of land in Rhodesia. Land alienation was the first basic tenet of settler colonialism in Rhodesia that made the white settlers to be property owners with freedom to exchange their property rights through contract. (Ndlovu-Gatsheni 2001: 64) A set of laws that ranged from the Land Apportionment Act (1930) to various Industrial Conciliation Acts drew clear boundaries between white citizens and black subject and established whites, and, in particular, white rural capital, clearly in the ascendancy. (Dawson and Kelsall 2012: 51) Land was distributed in a discriminate way; the white settlers got the fertile lands and the Africans

the rest. The Africans did not receive these property rights. The settler-state of Rhodesia redistributed some economic power in favour of the native population; the allocation of approximately half the agricultural land to 6000 white farmers and the rest to the four million black, mostly peasant farmers. (Rhodesian Government 1969) Nevertheless, economic access for blacks was still very limited.

Post-colonial time

Political access did not improve after independence. What was the role of the exclusionary and repressive state system of the old Rhodesian state? The Zimbabwean political market is characterized by racism and exclusion, what sharply contrasts against the post-independence non-racial and inclusionary politics of the BDP. The electoral system of Zimbabwe had a striking resemblance of that of Rhodesia, with a separate roll for the white and black population. (Du Toit 1995: 120) Because the ZANU also did not abolish the repressive state institutions it could use the exclusionary structure to exclude opponents from obtaining rule over Zimbabwe. Section 21(1) of the Zimbabwean constitution recognizes the right to form and to belong to political parties. (Sachikonye et al. 2007: 44) But newly formed political parties do not stand a chance in the corrupt political system of Zimbabwe. In fact, the ZANU-(PF) has long tried to establish a legitimate one-party rule system in the country. The party has tried to intimidate and scare off any opposition that tries to make a leap for power. It has used the old colonial repressive state apparatus to monopolize and control the nationalist historiography for its supremacist political agenda and systemically oppresses and weakens any support for opposition. (Magure 2009: 108-113) When the MDC threatened the position of the ZANU in the 1999 elections, it used intimidation, murder and rape to ensure that many MDC supporters not went to vote. (Sachikonye et al. 2007: 45) Until this day political access is in Zimbabwe is heavily limited by the ruling ZANU-(PF). Support for the political organizational forms is vested in the constitution, but in practice the forming of any opposition is made difficult. And if opponents of the government are successful to begin a political party, they are marginalized and intimidated.

So while the structure for the exclusionary politics was given by the heritage of colonial institutions, the ZANU began to consolidate its rule in fear of losing legitimacy. At first this was in fear of losing it to the ZAPU, but after incorporation of that opposition into the ZANU-(PF), it continued its policy of one-party rule. This idea of one-party rule has been derived from, ironically, the romanticizing of the chieftaincy. The party leadership frequently refer to 'an unspecified African tradition which encourages the settlement of political disputes through the mediation of the chief and extend this function to the

dominant and sole political party.’ (Sachikonye 1989: 117) It has done this by greatly extending the executive powers of the president and the ministers and it has developed a culture of ignoring any judicial rulings by the high courts. ‘Power has become concentrated in the hands of the president, who has executive and legislative authority and can overrule judicial decisions. Although it exists in theory, the concept of separation of power has been manipulated largely by the executive.’ (Sachikonye 2007: 26) The goal of the ZANU to make Zimbabwe a one-party state has made the state less and less perpetually lived. The Zimbabwean state has continuously become more the face of the ZANU-(PF) and has made it even less legitimate in the eyes of its population. It seems that the ZANU’s fear of losing legitimacy has become a self-fulfilling prophecy.

The domination of the ZANU-(PF) is also found in the economy. Economic access is controlled and regulated by the government, who has a big share within most of the enterprises. Unlike Botswana, Zimbabwe inherited at independence in 1980 a relatively well-developed and diverse market economy, albeit highly regulated, and an under-developed peasant-based economy. (Dawson and Kelsall 2012: 51) Just as the ZANU-(PF) tried to control the political market, it also tried to control the economic market and with the presence of a penetrating colonial economic structure at hand, this was not difficult. During independence the ZANU-(PF) used the old colonial system to increase its economic power to support state-owned enterprises and to favor companies owned by the party. Although MDC-driven policies have led to a slow recovery of the overall economic climate, divisions along party lines and the predominance of clientelism have so far prevented the installation of the large-scale structural economic reforms needed to ease the situation. (BTI Zimbabwe 2012: 16-17)

One other big difference with post-independent Botswana is that property rights never have been well-defined in Zimbabwe. As the ZANU-(PF) considered itself as the rightful representation of the ancestors on earth, it declared all the tribal land in Zimbabwe communal lands. It tried to reallocate the land back to the African people in a somewhat communist fashion but these attempts have moved slowly. (Herbst 1990: 37-62) Moreover, the reallocation program has served the political needs of the ZANU-(PF), it used it to expand its patronage networks. This was made possible by the weak constitutional and legal restraints on the ruling party’s exercise of power and economy decision process that was characterized by patronage. (Kriger 2007: 63) Since the implementation of land reform programs in 2000, established property rights are a far away reality. In that year, many white farmers lost their rights to own their lands. Through some amendments in 2003, 2005 and 2008 the ZANU-(PF) established control of most of the ownership of the land, many white and

black farmers lost their land to unskilled population. (Raftopoulos and Mlambo 2009: 217) This had devastating effect on the economy as research (Richardson 2005) shows. It demonstrates the importance of property rights and enormous negative effects on the economy if they are not respected. 'This happens because of the subsequent loss of investor trust, the vanishing of land equity, and the disappearance of entrepreneurial knowledge and incentives – all of which are essential ingredients for economic growth.' (Richardson 2005: 563) So economic access for all has not improved since independence and has even declined. Support for economic organizational form is present but hard to accomplish because of the strongly government-controlled economy and the lack of property rights.

Discussion of the data on political and economic access

As we have seen, traditional legitimacy has played a significant role in Botswana and Zimbabwe. Because traditional structures possessed centuries old legitimacy, nation-building efforts by the new Botswana government were made much more easy. Seretse Khama and the BDP recognized this, and they made the crucial alliance with the chiefs before creating independent Botswana. But how does political and economic access for all fit in this picture? Before non-elites can profit from equal political and economic access, there has to be perpetually lived organizations that provide that access for all elites. As North et al. (2009) put it; 'rule of law for elites creates some space for impersonal relationships among members of the dominant coalition, but until those relationships can be embedded in a matrix of more sophisticated public and private organizations, impersonal relationships do not emerge historically.' (2009: 158) These perpetual lived organisations have a legal personality and are not linked to any specific individuals. It has to be able to live and function without its creators.

To enable this, such organisation has to be given some sovereignty. In fact, this was unwillingly done by the colonial administration through the 1934 Native Proclamation Act. It gave the traditional structures a more perpetual nature by removing the hereditary character of the succession of the chieftaincy and making it part of the administration. This process was taken further by the BDP. When the BDP established rule of law for elites and in the road to independence it was important to make political and economic organizations perpetually lived. The first component of the traditional culture that was incorporated into a perpetually lived organisation was the chieftaincy. By placing the chiefs in the Native Advisory Council part of their authority was transferred to the colonial administration and they were bounded by this perpetually lived organisation. At independence, this process was taken further, as they became officially part of the government in the House of Chiefs.

Besides the chieftaincy, other traditional Tswana intuitions were integrated into European-inspired institutions. While it copied a Westminsterian-style political system from the British, it made the political access that the kgotla provided perpetually lived. While the kgotla has no real power within the political system, for many ordinary Batswana it remains the most important source of political access.

How did this contribute to economic development? In the economic sector the decision of agency to incorporate pre-colonial structures into the modern state has also been fruitful. The political elite integrated the traditional property rights into a perpetually lived organisation. This was done because it was in the interest of the elite, most of them were cattle farmers or had relations with the cattle business. Good governance by the elite further stimulated economic growth during independence, as revenues from the cattle industry and the diamond sector were used to invest in the economy. This was possible because political and economic organisations are perpetually lived in Botswana. These organisations averted the development of any patronage networks that could redistribute much wealth to a few through a system of personal rent seeking. The data shows that doorstep condition number two was present at independence.

Again, the data for Zimbabwe shows a very different development. As the ZANU-(PF) government failed to capture the traditional legitimacy of pre-colonial institutions, it tried to defend its legitimacy by building an exclusionary one-party state. When the Rhodesian state took control over the chieftaincy, it almost destroyed the institution and derived many chiefs of their legitimacy. The ZANU did not change the status of the chiefs as it mistrusted them. However, most chiefs maintained their legitimacy to their own community and continued to have an important role in that community throughout independence. While mistrusting the traditional institutions, the ZANU-(PF) adopted the their traditional culture to solidify its hegemony. Although the Rhodesian state and its institutions were exclusionary of nature, they were perpetual. Trough political and economic reforms the ZANU-(PF) has brought the Zimbabwean state closer to the party and made it less perpetual. So besides a rule of law for all elites, doorstep condition number two was also not met. Few of the political and economic institutions in Zimbabwe have remained fully perpetual, the ZANU-(PF) has tied its name to most of them. The party has used the penetration of the old colonial economic institution to take control of the economy and deployed an almost communist-like policy on land allocation. In sum, the lack of good governance by the ZANU-(PF) has been made possible by the heritage of colonial institutions. But the denial of existing pre-colonial institutions to the modern Zimbabwean

state and the revival of Shona state culture by the ZANU have contributed to limiting political and economic access.

Chapter 3

Developments in the rule of law enforced impartially for all citizens and impersonal exchange

Botswana

Pre-colonial time

Now we have determined that there was belief in open access and there were institutions in place that could support open access at independence, we are only missing two more essential ingredients. These are the institutions that define the actual rules of the game and the occurrence of actual impersonal exchange. The fourth characteristic, a rule of law that recognizes all citizens as equals and treats them that way, is necessary in an open-access society. It requires a set of institutions that makes citizens rights impersonal, enforceable, and impartial across all citizens. (North, Wallis and Weingast 2009: 114) Among the Tswana in the pre-colonial Botswana, these institutions were fairly well developed for a native African culture. The Tswana law system contained a clear section that defined citizenship and rights and protected them from the executive powers of the chiefs. The fifth characteristic, impersonal exchange, implies that people do not need to know one another anymore to exchange political and economic products. As economic historians have long emphasized, impersonal exchange greatly expands the economic opportunities, allowing the economies of scale in modern capitalist economies. (North et al. 2009: 114) So no patronage networks have to exist.

The relative equal political access that the kgotla provided, proved that there was a believe that all tribal members should be equals in Tswana society. The rule of law also resembled this, for the Tswana customary law all members of the society were equal. Even the chief was subject to the law and was equally treated as the rest of the members of the tribe. If he committed an act that was not in accordance with the Tswana law, he could be held responsible for his crimes at the kotgla by his local chiefs, advisors and headmen of his wards. In Tswana law this is clearly seen. 'A Chief is Chief by grace of his tribe' was an important aspect of Tswana chieftaincy. (Schapera 1955: 84) The chief, despite having many privileges and options to fulfil his personal needs, had many responsibilities to the tribe and could be held responsible if he did not follow his obligations. His personal cravings could not undermine the wealth and safety of the whole tribe.

However, the equalising treatment of the chief was only in theory, in practice the chief was not equally punished for the same crime as a common member of the tribe. Within the Tswana states, the chief was still the most important person and his family was still more privileged than other state elites. Tswana law made, in theory, no distinction between chief and commoner rich man and poor man, law applied to everyone and everyone was accountable. But in practice this equal treatment did not happen. Offences against a person senior to the wrongdoer in position or age are always regarded as more reprehensible than they would be if the positions were reversed; and the sentence of the court is determined accordingly. (Schapera 1968:52) So while the creation of the law is regulated and controlled, in practice the enforcement of the law is not executed equal. This was possible because of the fact that Tswana law was not written down. Law and customs were learnt to Tswana from birth and everyone was expected to know them at an adult age.

Control of the chief was also resembled when he decided to make new laws. The king or chief of a Tswana kingdom could make new laws, but before the laws could be accepted, the law has to be revised by his advisors and his headsmen. If proven right, he also had to discuss the law in a public assembly at the kgotla with the rest of the tribe. Only if it were accepted here, it would become a new law of the tribe. (Schapera 1955: 41) Public opinion had important influence in the politics of the Tswana states. The local chiefs were controlled and constrained in their executive powers, the people had even the power to vote their rules out of power. Despite the fact that control over almost every aspect of life within the tribal life was concentrated in the hands of the chief, and in consequence his power was very considerable, he was very seldom absolute ruler and autocratic despot. (Schapera 1955: 84)

There was also some separation of judicial power. The executive powers of the chief were also constrained by courts, which could make decisions about existing laws without interference of the chief. It had extensive judiciary powers, it could prosecute every citizen of a Tswana state for breaking a law. In theory, this proves that the Tswana states had a rule of law enforced impartially for all citizens. But in practice, Tswana law was not unbiased in its enforcement as is seen above. The courts worked on the decisions of previous courts and common customary law. Because of this, there was much room for interpretation of the law and the enforcement of it.

One final important aspect of the rule of law in Tswana society was the presence of well-defined citizens rights. These citizens gained their rights not by birth but by declaring allegiance to the chief. This fact simplified the incorporation of minorities into citizenship because they only had to acknowledge the chief as their leader. (Schapera 1955: 123) Freedom of movement was also granted with the restriction of the movement of the subject's

residence. Only the chief had the privilege to move a person to another ward. Concluding, in Tswana society there was a rule of law for all citizens, which defined and protected basic rights. But this law was not enforced unbiased and was very subject to interpretation and change as it was not written down.

The last characteristic, impersonal exchange, was present in a primordial form. Although the kgotla presented impersonal exchange in the political market, most of the decisions on national and local matters that were made were based on personal relationships. The chief was still heavily influenced by personal relationships with the most powerful elites; his relatives and closest advisors. Also most kgotlas were dominated by a select group of influential citizens. There were still relations among elites that were based on rents and personal relationships. While all natural states create rents through personal privileges, natural states can support impersonal characteristics as well. (North et al. 2009:150) This indicates that impersonal exchange in pre-colonial Tswana society was almost non-existent.

Colonial time

How did colonization affect the traditional rule of law and impersonal exchange in Bechuanaland? During colonial times there was minimal change in the Tswana law, as the British Protectorate did not intervene in customary indigenous law. From the beginning of its role as a British protectorate, Bechuanaland was ruled by a system of parallel rule, or "dual rule." (Malbrough 2004: 37) This dual rule contained a system where the indigenous population remained under the customary Tswana law and the small white population under Roman-Dutch law that was enforced by the colonial authorities. This Roman-Dutch law did not have effect on the Tswana population; the British did only some mild changes in law for the Tswana. In general, rule by traditional authority was not altered. Sub-chiefs' and headmen's patrimonial hierarchy also remained intact. (Seidler 2010: 18) Also some severe cases like murder were not brought before the customary anymore but before the British administration. Judicial powers of the chief were even more constrained by the 1943 Native Administration Act, which transferred judicial decisions over all most important cases to customary courts. (Vaughan 2003: 42) But this did not change much for ordinary Tswana. As Dzivenu (2008) notes; 'Despite the transformation of society and the significant increase in the powers of the magistrates and high courts, customary courts (the reformed native courts) remained widely accessible and in line with local customs and values.' (2008: 14) Stripping judicial powers from the chiefs has been a good development for the transition to open-access as it constrained the chiefs even more as in pre-colonial times. It gave the customary

courts and the *kgotla*, were native cases of law also were heard, a more perpetual character, as they were less connected to the personal character of the chief.

One more positive effect of indirect rule by the British on the development of democracy in Botswana has not yet been elaborated on. During pre-colonial times, the Tswana states did not have large standing armies; they had age regiments or militia that could be summoned by the chief if the safety of the Tswana state was in danger. Tswana age groups or militia were different from age regiments of standing armies. (Maundeni 2002:115) The colonial administration banished the age regiments, it removed the military power from the chief to the administration. (Maundeni 2002: 121) This had as effect that there were no military threats to the peaceful transition to democratic government after independence. It seems that the third doorstep condition, consolidated control of the military, was of no relevance to the Botswana transition to independence because there was no army at all.

As the power of the chiefs declined and perpetually lived organisations became more important in Tswana society, impersonal exchange improved. The Native Advisory Board and the Legislative Council are examples of institutions of impersonal exchange. Also the *kgotla* began to rise as a forum where the ordinary man could compete in the political process. Impersonal exchange within the political market became more important; the personal relationships between the chief and his headman's and advisors became less significant within traditional politics. The cry for more political institutions that promote impersonal exchange became bigger. An educated, petty bourgeois, which throughout the Protectorate were increasingly dissatisfied with the economic and political constraints of the chieftainship to the advancement of both themselves and their communities, emerged. (Ramsay 1998: 112) Eventually these nationalists would form the Botswana state, which is filled with institutions of impersonal exchange.

Post-colonial time

The dual legal system of Dutch-Roman law and customary Tswana law survived into independence. What was the effect of this on the democratic and economic development of Botswana? Du Toit (1995) makes the suggestion that 'by protecting the customary courts of the *lekgotla* assemblies after independence, the state effectively merged the established rules of social control with those of the modern constitutional system.' (1995: 60) On the national level judicial, executive and legislative powers are separated and function properly. (Botswana Government 2014: 19-51) Only the presidency has extensive executive powers, sometimes it undermines the function of the parliament. But actions of the president, just as his traditional predecessor, are severely checked by the judicial system, were the court have

the power to overrule decisions of the executive and the executive does follow these instructions. (BTI Botswana: 7) On the local level, most of the judicial powers are transferred to public servants. The Customary Court Law of 1966 assimilates the practice of the chiefs' courts to those of the district commissioners and magistrate and barred chiefs from civil cases that require technical knowledge (Gillet 1973; Dzivenu 2008) Also the Customary Courts Law of 1986 created a new set of customary courts of appeal where citizens could appeal the decision of a chief made in the regular courts (Botswana Government 1986: C5-C8)

However, chiefs and headmen continue to exert significant influence over government decisions on a local level via the *kgotla*, where they have a advisory role. ' The *Kgotla* exercises considerable statutory jurisdiction over criminal matters extending to powers of imprisonment for up to four years.' (Dzivenu 2008: 17) It has even become apparent that the last decades the amount of civil and criminal cases that are heard by the customary courts is climbing the last decades (Morapedi 2010: 223) In addition, sub-chiefs and headmen resolved many disputes at ward, sub-ward, or family levels (Vaughan 2003, 146) As research (Gillet 1973; Jones 1983; Nyamnjoh 2003; Dzivenu 2008; Morapedi 2010; Nyati-Ramahobo 2008) shows that the traditional Chief or *kgosi* still has a important role in society without his traditional legislative, executive and judicial powers, he seems to have adapted to modern circumstances and has become a source of local social control and a democratizer at the grass-roots. He is an important intermediary between the modern state and traditional culture. The chief has maintained part of his patronage system; personal relationships with his own community are still important. As he lost his hegemonic power at the *kgotla* and the customary courts, these traditional institutions are characterized by perpetuality and impersonal exchange. Rule of law is, regular and customary, is enforced impartially for all citizens. This is also resembled in the institutionalization of rights. At independence, equal rights for all elites were created and transferred to the greater population. Most of these rights did not have to be created as traditional Tswana law already had some citizen rights. Many of the already existing rights were extended and new ones were supplemented. (Botswana Government 1966: 225-236) Today only one minority group is discriminated by Botswana law in their rights, the San Bushmen, who live in the central Kalahari Desert. (BTI Botswana 2012: 8) Despite of this, there exists an indiscriminately enforced rule of law today in Botswana. Citizenship is clearly defined and it has almost no exclusionary nature.

Also doorstep condition three has seems to have been met. The government has consolidated control of the military; it is controlled by a system of checks and balances. The

military is the second largest formal sector in employment after the civil service. While the president has executive powers that can give him extensive command of the military in times of war, the military in Botswana is firmly under civilian control. (Molomo 2001: 41) Until 1977, Botswana did not have a standing army and the monopoly on violence was held by the Police Mobile Unit (PMU). When national security was in danger by the attacks of Rhodesian militant groups who fought against the settler state in Rhodesia, the government decided to create a Botswana Defence Force (BDF). (Henk 2004: 86) The BDF was created with the idea to defend national security and the liberties of the Batswana people. The BDP Act gives the president executive powers over the military; some of them include the right to an army to a task that he sees fit, deployment of the BDP outside Botswana borders and determine the members of the Defence Council. (Botswana Defence Force Act CAP 1977: 21) While the military is checked by the executive and the legislative, most of the time the army functions with a high degree of autonomy to enable it to carry out its security functions. (Kenosi 2003: 192) But when the military does cross the line and does not respect the rights of its citizens, the responsible units are punished by the judicial system. So while there is an emphasis on the executive control of the president over the military, in general the military seems to be consolidated controlled by the civil government.

Zimbabwe

Pre-colonial time

This part over rule of law in pre-colonial Zimbabwe will be short because almost none of the old traditional legal system survived colonialism. A rule of law enforced unbiased was non-existent in pre-colonial Zimbabwe. Within the Shona-speaking population, the judges over all civil and criminal matters were the ancestral spirits. In practice, this was the leading chief in service of the afterlife. The Chief became active not as a leader of a state but in his death after he joined the spirit world. (Maundeni 2002: 111) In theory the chieftaincy could seem have the judicial powers but in practice the religious institutions were the real source of these powers. With their claims that they represented the will of the spirits they could control the judicial system if they wanted. They kept the state fragmented by holding the loyalty of Shona society with the religious and not the material state.

Relations within the elite were still based on personal relations as the Shona chiefs were the executive, judicial and legislative sources while heavily influenced by the religious institutions. This was the same for the Ndebele chiefs, except that they were not influenced by religious institutions in their decisions. Both in theory and in practice the Ndebele king was the fount of all authority (Ranger 1968: 123) Also military control was vested in him, as he was primarily the leader of concentrated manpower, the commander of the armies. Unlike the Tswana, the Shona and de Ndebele did not have well-established citizens rights, the subjects of the chiefs were left to the grace of them and the ancestral spirits.

Colonial time

During colonial times the Southern Rhodesian government established a rule of law that was not unbiased and discriminatory for the native population. The segregation policies continued after independence of the Rhodesian settler-state from the British Empire in 1965. The colonial government created a state apparatus that was designed to counter African political activity and to fortify state power. Where measures had to be taken that did not fall under already draconian powers of the state, the Rhodesian government declared state of emergency and used martial law to ensure its security. During the repressive colonial rule, the introduction of English law as the basis for the legal system did not result in the colonial subjects enjoying their full rights which the common law guaranteed an Englishman. (Ndlovu-Gatsheni 2001: 63) The 1961 Constitution was the first to provide for a justiciable Bill of Rights in Rhodesia. However, the Bill of Rights did not provide some basic fundamental rights and was in practice for Africans a useless Bill of Rights. (South

Rhodesian Government 1961: 45) What the introduction of English law did provide, however, was the sustainment of impersonal relationships among elites. But this only applied to the white elites, the majority of the black elites were held out of the government. Traditional authority of the chiefs was still based on personal relationships with the native people.

The Rhodesian judiciary system consisted of several native and white courts. The African Law and Tribal Courts Act of 1969 provided a triadic court structure under which Africans could commence civil action. (Rhodesian Government 1969: 12) In theory this provided Africans independent judicial proceedings against the government if they wanted. But in practice, the independence of magistrates as judicial officers was affected by the freedom of the government to promote, transfer or dismiss them. (Ncube 2001: 104) The crucial point here is that what comprised the “customary law” was determined mostly by the district commissioners’ courts. (Du Toit 1995: 89-90) The Rhodesian government controlled the native courts and thereby the chiefs and their courts lost their legitimacy to the native population. The government had thus extensive powers to control the customary judiciary system.

Post-colonial time

In post-colonial times, the unbiased enforcement of the rule of law was not changed. The Zimbabwean government of the ZANU-(PF) has used the inherited repressive state apparatus throughout independence to control society. The vast majority of Rhodesia’s repressive powers have not been abandoned by the new regime. (Weitzer 1984: 532) The ZANU benefits from the imbalance of power in the legislature that the inherited Rhodesian political system provides. None of the Rhodesian repressive status have been repealed, the linchpin of the Rhodesian government, the Law and Order Act, has been retained intact and is regularly used against political opponents. (Ncube 2001: 112) The unwillingness of the Zimbabwean government to reintegrate traditional customary law was caused by the distrust of most of the tribal chiefs at independence. But there has been some progress in the incorporation of customary law into the state the last decades. The post-independence period in Zimbabwe has seen profound legislative reform in the field of customary and family law. (Ncube 1991: 73) The tribal courts that existed in colonial times have been abolished, and have been replaced with Primary Courts and Community Courts, to be collectively known as Local Courts. (Zimbabwe Constitution 2013: 70-81) These are preceded over by the chiefs and their headmen. Unlike in Botswana, the Roman-Dutch law remains dominant, yet foreign, to the native Zimbabweans, as does the political system in general. (Malbrough 2004:

44) This was caused by interference of the colonial government in the customary law. Customary law during the colonial period 'had been marginalised, distorted and constructed and reconstructed by white judicial officers who had little understanding of it.' (Ncube 2001: 107)

The repressive nature of the Zimbabwean state reflects that control of the military is not consolidated. In the security establishment, continuity with the Rhodesian state was more marked than in almost any of the other sectors of state institutions. (Du Toit 1995: 126) ZANU-(PF) approached elections as 'battles' and viewed its political opponents as enemies to be annihilated rather than as political competitors. (Raftopoulos and Mlambo 2009: 177) Besides deploying its violent youth and woman wings to commandeer support during elections, the party marshalled state resources and institutions, such as the army, police, intelligence service and public radio and television, to ensure its electoral hegemony. The Executive Presidency gave Mugabe sweeping powers that enabled him to pursue patron client politics and destroy any political alternative including civil society. (Magure 2009: 126) The ZANU-(PF) remains in full control of the military and police until this day. Several amendments of the constitution have made the grip of the ZANU-(PF) over the political system even stronger. For example allowing the government to interfere with electoral laws, the abolition of the Senate and letting the police answer directly to the ruling party (Sachikonye 2007: 29-30)

While relations within the Zimbabwean legislative system officially are impersonal, the dominance of the ZANU-(PF) since independence has turned the political market into one of personal bargains. For example, in the post-colonial period hardly any judges in the Supreme or High Courts can be considered independent. They are closely tied to ZANU-PF and Mugabe, receiving rewards such as farmland, houses and cars. (BTI Zimbabwe 2012: 11) The ZANU tries to control every aspect of society through repressive or patronage manners. This is also reflected in the latest land reforms. The fast-track land reform program has hardly improved the situation of the rural poor, as its main beneficiaries are not the neediest but those who can demand support most aggressively or play an essential part in the government's patronage network. (BTI Zimbabwe 2012: 15) The patronage network of the ZANU also undermines the civil rights of the Zimbabwean citizens. Officially the Zimbabwean constitution provide for many civil rights. (Zimbabwean Constitution 2013: 23-41) But in practice, many rights are violated by the Zimbabwean government. Among other rights, Zimbabwe's constitution guarantees protection from torture and arbitrary search or entry. Subsequent amendments subordinate these rights to "the interests of defense, public safety, public order, and public morality" leaving little room for dissent. (BTI Zimbabwe

2012: 12) Moreover, the Zimbabwean government is able to deprive its citizens from their citizenship, what they have done extensively to eliminate opposition support. In sum, the Zimbabwean government has an extensive patronage network, which it uses to consolidate its hegemony and it enforces a rule of law in a manner that the ZANU sees fit to alienate and discriminate its political opponents.

Discussion of the data on rule of law and impersonal relationships

To sustain rule of law for elites, there must be institutions that can control and enforce this rule of law. To create the first doorstep condition, the legal system has to serve the needs of all state elites and not only those of the dominant coalition. Law has to recognize elites as equals and give them the same privileges and rights and it should be enforced unbiased. When all the elites have the same rights, they all were bound to protect those rights. (North et al. 2009: 112) This was the case at independence of Botswana. Because all of the important state elites were included in the BDP-led coalition, rule of law for all could be established. Crucial in this process was the subjecting of the traditional chiefs to the Botswana state and placing them under the new law. The chieftaincy was stripped of his judicial powers but the dual legal system survived throughout independence. Incorporating the kgotla and the old customary courts into the legal system of the Botswana state, created a way for the new state elites to control the ordinary Botswana in a way that was familiar and legitimate for them. The adaptive nature of the chief is also seen in the judicial system, where he still plays an important role in preceding the cases at the customary courts. He has changed in an important legal public servant. Doorstep condition three was always present in Botswana, in pre-independence times because there was no military present in the Tswana states. Tswana state culture preferred political solutions for clashes with their enemies and during colonial times, security was granted by the British Empire. When Botswana developed an army in post-colonial times, this army was integrated into the political structure on a consolidated manner and it did not endanger open access within Botswana society.

While there is much impersonal exchange at the national level, relations become more personal as one moves down to the more local level. A unique form of institutional fusion seems to have occurred in Botswana; while there is a top-down system of impersonal exchange, at the bottom of society grass-roots institutions of patronage still exist. Morapedi (2010) notes that 'Chiefs are, therefore amongst the best placed individuals for social mobilization ... *Dikgosi* are closer to their people and understand their concerns more intimately.' (2010: 223) But the existence of these patronage networks does not mean that access is limited; the *Dikgosi* are constrained by law in their actions, their actions serve the

community in general. It seems that the old pre-colonial Tswana tradition of checks on the chief has been extended and adapted to modern democracy. In sum, in Botswana there exists a dual rule of law enforced impartially for all citizens. And while patronage networks still exist next to impersonal exchange, due to the consensual nature of Tswana tradition and level of integration with impersonal forms of exchange, it can be argued that this is a form of open access.

In Zimbabwe the legal system is corrupted and controlled by the ZANU-(PF) in order to maintain its hegemony. The government inherited a racially biased system from the Rhodesian state and it did remove the racial preference of the law but it did little to enforce it unbiased. On the national level the executive has quite some control over the judiciary and ignores most of the judicial decisions. On the local level the judicial powers of the chiefs have been partly restored but the uprooting and the adaptation by the colonial government have alienated Zimbabweans from the customary law. Common law is even harder to grasp for the rural Zimbabwean, and this indicates the lack of penetration of the state on the local political level. While the traditional institutions in Botswana have been embraced, the Zimbabwean state has neglected them

Impersonal exchange is quite a scarce phenomenon in Zimbabwe. While Zimbabwe officially has adopted an political system on the British Westminster model, the ZANU-(PF) has turned into a party controlled environment. Through amendments in the constitution and the ratification of exclusionary laws it have transformed the system in one with more personal exchange. On the national and local level patronage networks characterize the political system; the Zimbabwean state is becoming an ZANU-(PF)-state. As we have seen in the preceding chapter, the economic sector is also distinguished by patronage networks of the ZANU-(PF). The party has tight control over almost every aspect of the economy, especially the land distribution. These socialist practices have slowed the distribution of wealth and damaged the economy. At last the military and police are not in consolidated control of the government. Both are under control of the ZANU-(PF) and the party has not hesitated to use them in defence of their rule. So doorstep three is not present in present-day Zimbabwe.

Conclusion

Botswana and Zimbabwe are neighbouring countries, have roughly the same climate and have been colonized by the same empire. So one would expect not many differences between the two. Nothing is less true, for pre-colonial cultures and colonialism had very different effects on post-colonial outcomes in Botswana than in Zimbabwe. Botswana has succeeded in becoming one of the most democratic and prosperous countries on the African continent because it could start the transition to an open-access society in the early years of independence. When the British granted independence in 1966, Botswana was very poor but had many potential for successful development. This potential came from the fact that all the doorstep conditions for the transition to open-access were present; there was a rule of law for all elites, the Botswana state and its political and economic organisations were perpetually lived and there was no military that required consolidated control. These doorstep conditions arose in Botswana because of the forging of a broad alliance among state elites. This task was made easier for state elites because of the survival of Tswana state culture and its traditional institutions.

Crucial was that the nationalists saw the potential in these traditional structures, as the experience in Zimbabwe shows what happens if that is not the case. Because the ZANU-(PF) dissociate itself from the traditional institutions and excluded other elites, it alienated the Zimbabwean state from its people. It created extensive networks of patronage that distributed much wealth and power to the party. In this way it undermined the development of the economy and disrupted democratic practices. While much of the underdevelopment of Zimbabwe is to blame on the ZANU-(PF), colonial heritage did give it much less potential at independence than Botswana. At independence, none of the doorstep conditions were present; the rule of law for elites was segregated, perpetual lived organisations were present but discriminating of nature and the military and police were part of the repressive powers of the government. Besides this, the colonial government had destroyed much of the potential of the traditional institutions. By uprooting them and making them more Western-style institutions it alienated many chiefs from the traditional community. From that time on chiefs became puppets of the struggle between the national politicians. This practice continued into independence and failure to integrate the chieftaincy into the Zimbabwean state in a proper way has separated communities, especially in the rural areas, from the government.

In contrast, this process has been very successful in Botswana. There the chieftaincy acts as glue between modernity and tradition. The chief is an important connection between

the government and the communities in the rural areas. It made the transition to open-access for the Botswana government more easily as it contributed to a strong and coherent society. Good governance of the national elite has led to open access in all areas within Botswana society and made the country democratic and prosperous. In Zimbabwe, bad governance by the ZANU-(PF) has made Zimbabwe an even more limited society than its colonial predecessor. Doorstep conditions have never occurred in Zimbabwe so the country has never been able to make the transition to open access. Luck seems to have been a factor as the Shona state culture lacked the coherent nature of the Tswana state culture that Botswana fortunately inherited. It can even be argued that the coherent nature of the Tswana states averted direct forms of colonialism while absence of coherence among Shona tribes made it easier to colonize them and establish direct rule. Revival of the Shona state culture has contributed to the choice of bad policies by the ZANU-(PF). While this Thesis emphasizes good governance by state elites, it stresses the difference that traditional institutions can make in the stimulation of democratic and economic development in Sub-Saharan countries. Traditional culture continues to play an important role in the lives of many Africans, as it serves as a tool to identify themselves in a ever-changing world of globalisation that is often hard to understand. The recognition of this in other African countries may too contribute to a positive political and economic development in these regions. Nevertheless, open-access society seems a far away thing in most African countries. Further research on how Zimbabwe and other failing African societies can make a successful transition to open access should be done in the future.

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