

# A Transaction-Cost Politics Analysis of the Delayed Implementation of AARTO

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## 2 Introduction

Avinash Dixit (1996:31) describes economic policymaking as a slow moving process that is imperfect, incomplete and ongoing. Through this process policymakers fulfil an important role in a country as the policies they write allow citizens to engage in the economic, political and social environments of that country. The Administrative Adjudication of Road Traffic Offences (AARTO) Bill is one such policy with far-reaching consequences, stretching across demographic, economic, political and social lines that bring together all these environments. The AARTO Act (No 46 of 1998) was formally introduced in 1998 and this brings about the question central to this essay "*Why such a policy with far-reaching consequences took over 20 years to be implemented in South Africa?*". To answer this question this essay will rely on Transaction-Cost Politics (TCP), a variant of Transaction-Cost Economics (TCE), to prove or disprove two hypotheses. (1) AARTO's delayed implementation was due to certain legalities that prevented the bill from being passed. (2) AARTO's delayed implementation was due to clashes between the various role players in road traffic policy making in South Africa (i.e. red-tape, differences in organisational cultures etc).

The primary objective of the study will be to employ Transaction-Cost theory to analyse the AARTO process using the New Institutional literature and to offer a proper contextualization of the bill and its intended use. In this contextualization we will contrast the pros and cons of the system. Following from this, the overarching aim of this research assignment is to contribute to the institutional economics literature by crafting a framework using Transaction-Cost Politics through which we can analyse the AARTO process, but also one that can be readily used when other public policies are being drawn up.

## 3 The Nature of Policymaking

Policymaking primarily consists of two streams, (1) evidence-based policymaking (EBPM) and (2) opinion-based policymaking (OBPM). By relying upon the best evidence from research and evaluation, Sanderson (2002:3) believes that EBPM assists policy makers in making better decisions, based on a certain degree of certainty on what works, for which groups of people, under what conditions, over what time span and at what costs that will hopefully lead to better outcomes (Sanderson, 2002:3). EBPM on the other hand is decision-making based on political conviction and ideology alone; which is referred to as opinion-based policymaking (UCT, 2014:3). Most policies originate from the meetings of political parties. The legitimacy of these policies (which may or may not be evidence-based) get tested through democratic processes, such as elections and parliamentary debates (UCT, 2014:3).

The advantage that EBPM has over OBPM is that it incorporates all role players' opinions, beliefs and to provide evidence on how to modify and implement a political mandate.

Despite severe criticism, Sanderson (2002:3) argues that the attempt to base policies on reliable evidence of "what works" maintains its relevance and importance. Once certain policies have been implemented and have been shown to work, the strategies used in their implementation can be used to inform new policies of a similar nature. If old evidence is refuted or shown to be obsolete, then steps can be taken to acquire new evidence that will inform new policies, but the overriding idea is that there should always be a deliberate attempt to base policies on relevant and sound evidence. Sanderson's (2002) view is that EBPM is cardinal to the effective governance of complex social systems and makes a great

case for "interactive governance" and public participation (Benington & Moore, 2010:75). Unfortunately, Sanderson (2002:2) believes that not even the use of pilot projects to test policies (of which two were conducted for AARTO in Gauteng) is adequate to yield reliable evidence of whether policies work or not due to the limited scope for evaluation of pilots. This could possibly be linked to the problem of unintended consequences, which Merton (1936:904) long ago identified as a perennial problem of social action. Therefore, according to Sanderson (2002:4) the best option is for policies to be theory-based, with special focus being placed on the transmission mechanisms through which the policies achieve their effects.

### **3.1 Economic Policymaking as a Political Process**

Dixit (1996:2) argues that governments and markets are both imperfect systems. He argues that both are unavoidable features of reality and that the one cannot fully operate without influencing the other. Dixit (1996:2) goes further to say that markets and governments can be seen as ever evolving processes, dependent on history but not immune to surprises that can veer them off course. Instead of perpetuating the "markets versus governments" debate, Dixit (1996) prefers to view the political process in a game-theoretic sense where multiple participants (principals) try to affect the actions of the policymaker (agent). What is important in Dixit's (1996:3) view is that no desirable equilibrium can be found from such games and any attempts to design a system with an optimal equilibrium is doomed to fail. Instead, understanding the intricate system of markets and governments and how it copes with all the problems (i.e. incentives, actions and conflicting information) that prevent us from realisation of the most desired of outcomes.

Dixit's contribution therefore comes in the form of a framework that seeks to highlight specific issues in economic policymaking, which may help in identifying specific areas that could benefit from intervention. However, before we can think about these issues, we ought to consider two opposing approaches to policymaking.

#### **3.1.1 The Normative Approach to Policy Analysis**

For the most part, in theory and in practice, economic policy analysis is viewed as a technical problem, especially the parts pertaining to the formulation and implementation (Dixit, 1996:4). According to Dixit (1996:4), the process goes as follows: a model of the inner workings of the economy is constructed, add to it some scope for error and policy instruments. Once the model is completed, one requires some criterion on which the model can be evaluated. Finally, acquire the values of the instruments that will shed light on the success of the model. And once these have been ascertained, one can proceed to make recommendations to the government about possible reforms. The normative approach rests largely on the principles of linear "trickle-down economics" in that, policies that seem to improve social welfare will be recommended and implemented, which will lead to the desired outcomes.

However, this way of thinking about economic policymaking and analysis is fundamentally flawed as Dixit (1996:4) argues that this process completely ignores the reality that is informational limitations on the part of policymakers, the inner workings of the economy. The importance of highlighting informational limitations was pioneered by Joseph Stiglitz (1989). He assumed that a government that suffered from the same informational limitations could still achieve better outcomes. However, Dixit (1996:8) argues that Stiglitz and the entire normative approach assumes that policymaking is driven by a social-welfare-maximising

principal who is omnipotent, omniscient and benevolent. But, this view ignores a fundamental part of economic policymaking according to Dixit (1996:8) and that is, the political process.

Dixit (1996:9) argues that the normative approach is reminiscent of the neoclassical theory of the firm, which viewed the firm as a profit-maximising black box. In this case, the policymaking process is seen to be a social-welfare-maximizing black box. The details hidden in the black box of policymaking leave very important gaps in our understanding of policymaking and often mislead policymakers about the possibilities of beneficial policy intervention (Dixit, 1996:9). It is to this end that Dixit (1996) recognises the contributions of economists such as Ronald Coase and Oliver Williamson who long recognized the shortcomings of the neoclassical theory of the firm and advanced the field with models that incorporated various kinds of transactions costs. Therefore Dixit's (1996) entire contributions was an attempt to show that policy analysis could benefit greatly from transaction-cost economics. What he terms Transaction-Cost Politics (TCP) could open up the black box and allow policymakers to closely examining the inner workings of the policymaking process.

Although Stiglitz (1989:45; 1994:32) spoke about "political failures" which are very similar to market failures, in that they arise from the same informational problems. Dixit (1996:10) argues that the political process of economic policymaking is complex and goes further to explain the root of all the complexities. He argues that the political process is a network of continual influences from one party to the next. For example, policymakers are influenced by the executive and its agencies, the legislature, special interest groups and the courts. Dixit's (1996:10) examples goes further to show that in such a network of role players, the economist's desired policies may not be enacted by the legislature and the administrators may fail to implement policies in the prescribed manner. All of this could lead to the exacerbation of market failures and introduce a variety of transaction costs (Dixit, 1996:10). On the backdrop of these inefficiencies, Wilson (1989) and Grossman and Helpman (1994) started to focus on the problem of multiple principals (common agency) a central concern and Dixit (1996) argues that many of the problems that arise in the political process (i.e. weak of incentives and economically inefficient outcomes) can be attributed to the idea of multi-principal, multi-agent problems, the starting point and recurring theme of this essay from hereon throughout; under the lense of Transaction-Cost Politics.

## 4 Transaction Cost Theory of Politics

To examine why the political process fails to produce desirable outcomes for all the role players, this essay will introduce the concept of Transaction Cost Politics (TCP) as a way to examine the reasons for this departure from the Coasean equilibrium. Dixit (1996:37) refers to the Coasean theorem as a situation in which all role players in the economy could be brought together and assigned with rights and could also make fully binding agreements with one another (which are costless and fully specified) then the outcome should be an economically efficient one; as would be the case with a harmonious interaction of formal and informal institutions

Initial work on transaction costs centred mostly around industrial organisation and hierarchy e.g. Coase (1984), Williamson (1979; 1981 and 1998) and Klein (1980). In this regard, scholars spent much of their time studying firm behaviour and how individual firm institutions as well as relations, particularly contractual relations, between firms led to higher or lower

transaction costs. The scope of transaction costs was then extended beyond the traditional firm when Weingast and Marshall (1988) applied transaction cost theory to understanding political transactions as a consequence of the US Congress' establishment of the "committee system". Furthermore, North (1990) and Dixit (1996) were the two main theoretical contributions to the study of transaction costs in political exchanges following Weingast and Marshall (1988). Caballero and Soto-Onate (2016:331) note that institutional and transaction costs literature has been particularly important in understanding how the volume of political transaction costs and the governance of political organization are affected by the prevailing political institutions.

North (1990b:355) explains that a transaction cost theory of politics is built on three main assumptions. These assumptions are: (1) costly information, (2) subjective models used by actors to explain their environment and (3) imperfect enforcement of agreements. These three assumptions allude to the fact that actors in political transactions act first and foremost in their own self interest, from which information asymmetries and imperfect enforcement of agreements are borne. Hence, transaction costs in political markets tend to exceed transaction costs arising from economic markets (North, 1990b). To counter these non-ideal, transaction cost increasing interactions between political actors, Williamson (1998:71) and Boyle (2009) advise political actors to devise methods (market, non-market, official or private) that will mitigate the high transactions costs that arise from political interactions with imperfect information and time-inconsistencies. The success of these methods according to Williamson (1989:135) depends on the institutions, the historical and future duration of the interaction as well as the frequency with which the interaction takes place. Dixit (1996:46) believes that Williamson's stance on transaction costs introduces a game-theoretic element to transaction-cost analysis and widens its scope to more than was examined by North (1990b).

The interaction between the various role players in South Africa's road traffic policy sphere gives rise to many of the transaction-costs emphasised by Oliver Williamson in industrial economics such as agency problems involving opportunism and moral hazard added to that are the cost of mitigating information asymmetries. Dixit (1996:47) provides a useful framework with which we can investigate the extent to which these transaction costs arise in political markets, particularly in South Africa's road traffic policy sphere.

#### 4.1 Contract as Unit of Analysis

The "contract", which specifies the terms of agreement between two parties in an economic relationship (for simplicity we assume there are always two parties), serves as the basic unit of analysis in TCE (Williamson, 1998:76). However, simply because the contract exists does not guarantee that the parties to the contract will fulfill their ends to the bargain. Therefore, in TCE, an external contract enforcement agency is assumed to exist (i.e. the legal system). And therefore a key assumption of TCE is that contracts are enforceable within the limits of the existing legal framework (Dixit, 1996:48).

In contrast, the parties involved in a political contract almost always exceed two parties (Dixit, 1996:48). Similarly to the role players identified in road traffic policymaking, these parties include citizens (e.g. Voters/road users and special interest-groups), politicians (e.g. the Legislature, Minister of Transport/Finance) and regulatory agencies (e.g. RTMC and RTIA). According to Dixit (1996:48) the main difference between economic and political contracts is the method of payment at the completion of a transaction. In economic markets, payment is usually of a pecuniary nature but in political markets the payment usually comes

in the form of votes (or donations) to the politicians after fulfilling their promises. To overcome any possibility of renegeing on their commitment, Dixit (1996:49) argues that contracts must include a coercive mechanism to prevent this. Coercive mechanisms are important indicators of how well or not a government will perform (Olson, 1993), such as an impartial court system that can force individual parties to honour the contracts they made.

## 4.2 Governance Structures

In TCE, firms are viewed as governance structures instead of production functions as per the neoclassical view (Williamson, 1981:1539). Therefore, the incentive schemes adopted by individual organisations to prevent transaction-cost problems, will influence the behaviour and organisational culture of those organisations; thus having an enormous impact on what they do and how they do it (Dixit, 1996:53). Given the various role players in our context, Dixit's argument suggests that clashes between different organisational cultures and systems could be a likely obstacle in the coordination of road traffic policy. The plausibility of this hypothesis rests on the notion that agency relationships in the political realm tend to be more complex than those in economic settings (Dixit, 1996:53).

In models of political signaling, authors such as Banks (1991) and Persson and Tabellini (1990) attempt to draw a clear line between the principals and agents in political transactions. In these models, the citizens or voters act as principals and political parties as agents. Of course this distinction can change given different economic systems (i.e. democracy, communism and socialism etc.). Dixit (1996:53) argues that lines of authority are sometimes not clear-cut and depend on whether one is modelling a micro or macroeconomic problem. Wilson (1989) shows that a government agency can be simultaneously accountable to many stakeholders who are all trying to exert different levels of influence on it. In our example we can see why the lines of authority might sometimes be blurry, we have the legislature, the national treasury, the minister of transport/justice as well as the two organisations (RTMC and RTIA) with separate board of directors. All these organisations are constantly pressured and pressure one another to act in a particular way, be it drafting a new bill or accepting a budget that would benefit one or several role players in order to fulfill the wishes of their own organisations.

The governance structures also allude to the reality that organisational red-tape could be a major inhibiting factor in creating a streamlined chain of interaction between the various role players.

## 5 The Road Traffic Policy Problem in SA

According to Chuwe (2009:3), in 2008 there were approximately 8.5 million licensed drivers and 9.3 million registered vehicles in South Africa. According to Statistics South Africa Chuwe (2009:3) in the years leading up to and including 2008, the country averaged 700 000 reported road traffic accidents, 15 000 deaths and 50 000 serious injuries per year. In 2015 alone, as per the Road Traffic Management Corporation (2016b:32), there were 832 431 road traffic accidents of which 11 144 were fatal whereas 40 117 were classified as major crashes. Furthermore, these crashes resulted in 13 591 deaths, 62 520 serious injuries and 202 509 minor injuries. During 2007 and 2008 South Africa's economy was growing at an average of 5.4% according to Statistics South Africa (2018). This growth is argued to have led to an increase in the number of motor vehicles on South Africa's roads as Chuwe (2009:3) argues



that motorization is both a consequence of and a prerequisite of economic growth. However, in South Africa, the growth in motorization is not accompanied by an improvement of the institutions around driving behaviours (e.g. adherence to road traffic laws laws)

The AARTO bill was thus drafted with the aim of encouraging better compliance with the rules of the road. According to the AARTO Act (1998:3), this includes promoting road traffic quality by providing a scheme that seeks to (1) discourage road traffic offences, (2) facilitate the adjudication of road traffic offences, (3) support the prosecution of offences in terms of the national and provincial laws relating to road traffic, and (4) implement a points demerit system (which provides for the suspension and cessation of driving licences of repeat offenders) (Du Plessis *et al.*, 2017:13))

## 6 An Introduction to AARTO

In 2019, the Parliament of South Africa gave its approval for the Administrative Adjudication of Road Traffic Offences (AARTO) bill. It was passed on the 5th of March 2019 in the National Assembly. The bill has subsequently been signed into power by State President Cyril Ramaphosa. Despite the government's claims that the introduction of the amended AARTO Act will make South African roads safer, local civil right groups maintain that the new road laws will do little to curb traffic violations. Some of the proposals in the bill involve the removal of legal challenges relating to traffic fines.

In the past, all traffic contraventions in terms of the provisions of the National Road Traffic Act (NRTA), 1996 (Act No 93 of 1996) and its Regulations were administered in terms of the Criminal Procedure Act (No. 51 of 1977). The Administrative Adjudication of Road Traffic Offences (AARTO) Act (No. 46 of 1998), which was approved by Parliament in 1998, was, amongst others, created with the view to forge a closer, more effective and efficient link between enforcement and the adjudication process, which is still objective, transparent and fair. Then Senior Manager and now chairperson of the RTMC Japh Chuwe (2009:6) stated that AARTO was said to bring about parity in the system of fines which will encourage the road using public to take traffic offences and resulting fines much more seriously. It was also designed to bring about an improvement in fine collection procedures and a revenue stream that would be used for improving road safety; as well as more convenient ways of paying fines. Another aspect of importance was the introduction of more penalties for not paying within the prescribed time; which would eventually lead to the confiscation of private property and ultimately to being declared unfit to operate a motor vehicle.

Du Plessis *et al.*, (2017:13) note that the AARTO Act makes a clear distinction between three categories of traffic law violations. Some violations are categorised as "offences" that would still be dealt with under the Criminal Procedure Act by the courts, while the majority are classified as "minor infringements" or "major infringements". According to the AARTO Act (1998:12) the "minor" and "major" infringements would be dealt with under an administrative process dealing with the adjudication and enforcement of such infringements. Ultimately, the process will be characterised by a streamlined fine system and a demerit points system.

The push for a new system came after several flaws with the old system came to the fore. For example, fewer than 20 percent of fines related to traffic regulations were ever paid under the old system (Chuwe, 2009:3). Du Plessis *et al.*(2017:11) argue that apart from weak informal institutions such as a strong culture of non-payment of fines, several shortcomings

in the formal institutions of the state were exposed: due to heavy caseloads, courts often pushed cases related to traffic infringements to the side and heard only a limited number of cases, Chuwe (2009:5) notes that AARTO aims to take out routine traffic offences out of the over-stretched court system, furthermore, magistrates reducing traffic fines was seen to be common practice as well as the bribing of traffic officials (AARTO Background, undated).

The first two pilots of AARTO were launched in the Gauteng province. This came after the country saw several years of unpleasant road traffic accident statistics as mentioned above. In the Tshwane Municipality a total of 339 529 infringement notices were issued in a period stretching from July 2008 till April 2009, followed by 1 011 084 notices issued in the Johannesburg pilot which started on the 12th of February 2009 up until the 8th of May 2009. Table 1 below provides some statistics on the pilots.

Table 1: Summary of AARTO Pilots

<b>Category of Offence</b>	<b>Tshwane</b>	<b>Johannesburg</b>
Speeding	52.11%	98.94%
Fitness of Vehicles	12.67%	0.08%
Registration and Licensing of Vehicles	7.33%	0.24%
Disobeying Rules of the Road	7.93%	0.57%
Learners and Driving Licences	5.04%	0.07%
Ignoring Traffic Signs	8.95%	0.57%
Professional Driving Permits	2%	0.03%
Passenger Carrying Vehicles	0.72%	0.01%

Source: Chuwe (2009:10)

From Table 1 it is evident that speeding was one of the biggest problems faced by traffic law enforcers in Gauteng during the AARTO pilots. It is one of the leading causes of road accidents and is often linked to alcohol and drug abuse. A study by Horwood and Ferguson (2000:805) found that traffic accidents caused by those who engaged in drinking and driving behaviour were 2.6 times higher than those who did not engage in drunk driving.

Apart from the two pilots that were launched in Tshwane and Johannesburg, the implementation of AARTO was rather delayed in other parts of the country. As such, for twenty years after the formal adoption of the AARTO Act, the Criminal Procedure Act still served as the de facto legal framework for traffic law enforcement in the country (Du Plessis *et al.*(2017:11)).

## 6.1 Challenging AARTO's Constitutionality

Challenges to AARTO came as no surprise to those who championed the policy. As Chuwe (2009:9) states: "*in any process that brings about fundamental change, there is bound to be discomfort, frustration and some resistance due to deeply entrenched practices acquired over time*". In the institutional literature, these deeply entrenched practices are known as the informal institutions (Groenewegen *et al.* ,2010:29) held by various role players in road traffic policy. Understanding the informal institutions held by various role players in road traffic policy is a vital component in uncovering the possible reasons for AARTO's delayed implementation. In addition to informal institutions are vested interests which may seek to protect the formal institutions and therefore also offer some resistance to change. Radebe (2008:1) states that the bill had not been received with open arms by road users and

prominent organisations responsible for road traffic policy enforcement. This is because all role players, although cognisant of the dire need for improved measures to curb the crisis on South Africa's roads, are reluctant to accept the necessary changes that may need to take place in their own driving habits and organisational operating systems as a result of the new legislation.

The most prominent court case challenging AARTO's constitutionality is that of Dembovsky vs The Republic of South Africa. In 2018, Howard Dembovsky, chair of Justice Project South Africa took the AARTO Act to court, challenging the constitutionality of some of the provisions of the act. Dembovsky cites that the act (1) assumes guilt on the part of the accused person and (2) circumvents important aspects within criminal law to facilitate what he calls: "grossly unjust measures to extract revenues, aided by the coercive practice of withholding licence disks and other documentation from accused persons, regardless of whether they have been found guilty of an offence or not." Dembovsky argues that the current provisions of the AARTO Act could be dealt with within the prescripts of the National Road Traffic Act. Dembovsky further claims that AARTO was implemented as a scheme to extract money from road users and considers "road safety" to be a secondary consideration of the act. Various Amendment Bills have been drafted by legislators and Dembovsky has stated his discontent with the National Council of Provinces' (NCOP) in the South African Parliament push to take away the right to a fair trial for a traffic offense; which Dembovsky believes further diminishes road users' constitutional rights.

Two additional arguments made by Dembovsky are that the Bill (1) seeks to remove the option of an alleged infringer to be tried in court (in the case of "minor" and "major" infringements) which Dembovsky argues violates an alleged infringer's constitutional right to a fair trial. (2) Removes the first option and replaces it with the option of a Tribunal which may only be consulted after a failed written representation; which must take place 30 days after the failed representation. A further stumbling block in the process is the payment of a required fee determined by the Minister of Transport which alleged infringers would have to pay to the representations officer in order for their case to be reviewed.

With respect to the Criminal Procedure Act, Dembovsky believes that its application to road traffic offences can be improved and believes that it is still the right Act to work with as it upholds three key elements of the Constitution; equality before the law; the right to a fair trial and the presumption of innocence until proven guilty.

## **6.2 Challenging the Seizing of Assets**

According to the AARTO Act, if a driver commits a traffic offence then a certain number of points (which are linked to that particular offence) will be awarded against the driver's licence. A maximum of 12 points can be awarded to a driver before any serious can be taken. In the case that a driver accumulates 12 and more points, an automatic driving ban in months will be instated. The length of the ban will be determined in months, by the number of points exceeding 12 points. For example, if a driver has accumulated 16 points, then the ban will be instituted for 4 months, as 16 exceeds 12 by 4. The reduction of points is also possible and can take place at a rate of 1 point per 3 month period, provided that no further points were accumulated in that period. In the event that a driver is awarded a ban for a third time, then the driver must start the process of acquiring the legal documentation of becoming a licensed driver from scratch after the ban period has elapsed (i.e. re-apply for a learner's licence etc)

According to Dembovsky, the seizing of drivers licences because of the point-demerit system is a violation of drivers' constitutional right; the right to ownership of assets. However, it raises another concern in the South African context. Unlike in other countries with well-developed public transport systems such as China, Singapore, the UAE, Netherlands and Switzerland (Charles, 2018), South Africa does not have an equally functioning public transport system. Switzerland for example boasts with over 9000 trains, which are known to be punctual and affordable (Charles, 2018). In South Africa, this is not readily achievable given the current public transport infrastructure. The trains, a responsibility of Metrorail, are known to run off-schedule and plagued with delays which are often unexplained to passengers. From an economic perspective, relying on the train network to take workers from their homes to their jobs will result in a loss of working hours on the part of workers who would therefore be running the risk of retrenchment.

The minibus passenger taxis are not much of an improvement from the trains as they have problems of their own. The minibus taxi industry is renowned for unsafe driving behaviour (Binge, 2003:33). Taxis operating on South African roads are often cited as being poorly maintained and unroadworthy with their drivers exhibiting what Wilkinson (2008:1) refers to as inappropriate, unsafe and fierce behaviour. However, the greatest concern over South Africa's taxi industry is the violent nature of the wars that have sparked up between competing rival operators. Shittu (2014:77) has noted that the apparent over-competition among operators has been known to jeopardise the safety of passengers, pedestrians and road infrastructure (Shittu 2014). Dumba (2017:2) argues that fierce and intense competition among operators, sometimes, leads to loss of lives, property and in some cases public disturbances. Competition induces drivers to engage in aggressive and dangerous driving behaviour, causing additional congestion and safety problems. Cervero and Golub (2007:446) subtly made an attempt to relate driver behaviour to the prevailing regulatory environment when they said '... many times informal services operate in a laissez-faire environment, prompting operators who survive on low profit margins to actively, and sometimes dangerously, compete for customers ...' This gets expressed as stopping almost anywhere to board passengers, overloaded vehicles and unsafe driving habits – what economists call 'collectively damaging behaviour' and termed in Latin America, *la Guerra del Centavo* 'the war for the cent'.

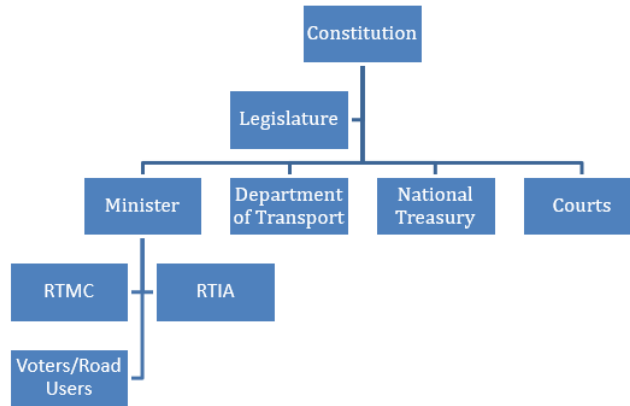
Although two pilots of AARTO have been undertaken, the uncertainties over the public transport system's ability to act as an alternative to road users whose driving licenses have been revoked has not thoroughly been explored. Other considerations to bear in mind revolve around how the state plans to compensate people who experience a loss of income, work *et cetera* due to a license being revoked.

## 7 Role Players in Road Traffic Policy

The "Role Players" in road traffic policy refers to all the organisations, groups and individual government departments and agencies that are responsible for the formulation and implementation of road traffic policy in South Africa. As previously mentioned, before one can draw conclusions on the possible reasons that led to the delayed implementation of AARTO, one needs to ascertain (1) who are the role players?; (2) what are their motivations? and (3) how are their functions interconnected with one another? There are various role players in South Africa's road traffic policy making cluster. Each player is tasked with a different mandate, however, for there to be harmony and efficiency in the goals of this cluster, a certain level of

unity and understanding among the role players has to be maintained. The most prominent of these role players will be discussed below.

Figure 1: Main Role Players in Road Traffic Policy



## 7.1 The Constitution of South Africa

According to Du Plessis *et al.* (2017:10) The Constitution of South Africa (Act 108 of 1996, as amended) assigns responsibility to the national, provincial and local spheres of government with regards to the drafting and implementation of road traffic-related legislation. Schedule 4 of the Constitution, delineates public transport, road traffic regulation, vehicle licensing, and municipal public transport as functional areas of concurrent national and provincial legislative competence (Du Plessis *et al.*, 2017:10). Schedule 5 assigns exclusive provincial legislative competence for provincial roads and traffic, municipal roads and traffic and parking as functional areas. However in Parts B of Schedules 4 and 5 of the Constitutions, municipalities are also granted executive authority and administrative rights over some of these matters (municipal public transport, municipal roads and traffic and parking) as per Section 156 of the Constitution (Du Plessis *et al.*, 2017:11). The separation of powers between the three spheres of government alludes to the idea of multi-principal, multi-agent problems; and these relationships will be explored through the discussions in this essay.

## 7.2 Legislature

The legislature is the body responsible for the formulation of policy in the country. This is also where members of parliament representing various constituencies have the opportunity to voice the needs of their constituents; thus making the legislature an important role player in the policy making framework. Since the dawn of democracy in South Africa, Parliament has approved several laws of pieces of legislation pertaining to road traffic policy in South Africa. In 1996, then Minister of Transport, Mac Maharaj oversaw the formulation of the first White Paper on National Transport Policy, which served as the formal white paper document until its revision in 2017 which is still on draft format.

### **7.3 The Minister of Transport**

Focusing specifically on road transport, the pursuit of integrated transport systems means that the Minister of Transport ought to be a stakeholder in various other entities dealing with road transport to ensure that the goals of the department are achieved with maximum efficiency.

The AARTO Act (as amended) gives the Minister of Transport the powers to appoint (after considering all relevant criterion) the members of the Road Traffic Infringement Agency, a deputy registrar and a representations officer. Therefore, the powers vested in the minister make this position a key role player in the formulation and implementation of road traffic policy.

### **7.4 Department of Transport**

The Department of Transport (DoT), spearheaded by the Minister and Deputy Minister of Transport, is responsible for the regulation and coordination of all Transportation in South Africa (i.e. road transport, rail transportation, public transport, maritime transport and civil aviation). The DoT aims to champion the development of efficiently integrated transport systems; it wishes to achieve this by creating a framework of sustainable policies and regulations as well as implementable models that will support government strategies in its pursuit of economic, social and international development.

### **7.5 The National Treasury**

The National Treasury is responsible for managing South Africa's national government finances. Accountability, transparency and sound financial controls are the three main mandates of the National Treasury as per Chapter 13 of the Constitution. The legislative mandate is described in Chapter 2 of the Public Finance Management Act. The National Treasury is tasked with promoting sound government's fiscal policy; coordinating intergovernmental fiscal relations; oversee the budget preparation process; facilitating the Division of Revenue Act, which provides for an equitable distribution of nationally raised revenue between national, provincial and local government; and monitoring the implementation of provincial budgets.

Since the Constitution makes provision for all three spheres of government to participate in road traffic policy making, money needs to be apportioned accordingly to these levels of government in line with the size of their responsibility. This is the task of the National Treasury to make these financial allocations and are thus a key role player in the success of the implementation of road traffic policy.

### **7.6 The Courts**

The courts are another important role player as far as traffic law enforcement is concerned in South Africa. The Magistrates' Courts are the lower courts which have the most relevance to traffic law enforcement as they are tasked with dealing with the less serious criminal cases; as was the case with road traffic offences under the old system which will be discussed in greater detail in sections to follow. Under AARTO, the courts will still be relied upon to try offenders, but only for really serious offences (Du Plessis *et al*, 2017:12). In Criminal Courts the state prosecutes people for breaking the law.

## 7.7 Road Traffic Management Corporation

The Road Traffic Management Corporation Act was approved by Parliament in 1999. The ACT is founded on principles of 'public interest' and aims to provide, for co-operative and co-ordinated strategic planning, regulation, the facilitation of law enforcement of road traffic matters by the national, provincial and local spheres of government; to regulate the contracting out of road traffic services; to provide for the establishment of the Road Traffic Management Corporation (RTMC); and all other connected matters.

The Act gives power for the formation of the RTMC. The primary aim of the RTMC is to overcome the fragmented nature of relationships between provincial and local jurisdictions in the management of traffic related functions (Road Traffic Management Corporation, 2016a: 16). A secondary aim of the RTMC is to bring about a new sense of professionalism, with enhanced synergy and morale into the entire road traffic management system of the country. Ultimately, the corporation is a separate entity that functions at arms-length from the Department of Transport (Du Plessis *et al.*, 2017:11). According to Du Plessis *et al.* (2017:11), it has a Shareholders Committee which consists of the Minister of Transport, Members of the Provincial Executive Councils responsible for transport, and two representatives nominated by organised local government.

## 7.8 Road Traffic Infringement Agency (RTIA)

The Road Traffic Infringement Agency is responsible to the Minister of Transport and its objectives are, aside from the Criminal Procedure Act, 1977 (Act No. 51 of 1977):

(a) to administer a procedure to discourage the contravention of road traffic laws and to support the adjudication of infringements; (b) to enforce penalties imposed against persons contravening road traffic laws; (c) to provide specialised prosecution support services; and (d) to undertake community education and community awareness programmes in order to ensure that individuals understand their rights and options.

The Road Traffic Infringement Agency Board is there to represent and control the affairs of the agency. By law, it should comprise of (1) three persons who are all appointed by the Minister of Transport, after careful consideration of their commercial and technical expertise, (2) a Director of Public Prosecutions, nominated by the National Director of Public Prosecutions and (3) the registrar of the agency. The members of the board may hold office for a period no longer than five years, but can still be eligible for reappointment if the minister deems their service worthy of another 5-year period.

In terms of the Criminal Law (Sentencing) Amendment Act (No 38 of 2007), a Regional Magistrate's Court can sentence a person who has been found guilty of offences that include murder to imprisonment for life. A Regional Magistrate's Court can impose a maximum fine of R300 000 (Department of Justice and Constitutional Development, 2019)

## 7.9 Voters/Road Users

Voters or road users are the perhaps the most important role players in road traffic policy making as it is their actions on the road that ultimately lead policymakers to formulate new policy or not. How the behaviour of road users leads to changes in formal policy will be discussed in more detail when this essay deals with Pejovich's (1990) "Interaction Thesis" and Williamson's (2005) "Four Levels of Institutional Analysis". Ultimately, road users in

turn become voters when the time comes and have the power to support policies that they deem will be more conducive to their driving behaviours. The predicament faced by all role players is that the outcomes and consequences of the policies supported by voters are never clear from the onset; and therefore have to wait for the "game" to be played out before the flaws of the policies come to bare. The waiting aspect thus brings about the problem of information asymmetries between the players therefore jeopardize any mutual gains from the various interactions.

## 8 Institutions and Transaction Costs in NIE

Ménard and Shirley (2005) argue that the New Institutional Economics (NIE) has been well received in the mainstream of economics and has contributed to institutional and organizational theory since the dawn of the 21st Century. The NIE offers many useful frameworks to assist this essay in pursuing its objectives. Du Plessis *et al.*(2017:1) argue that the field is well-suited to allow us to understand the various effects of economic incentives; mostly because it gives recognition to the interrelatedness between enforcement of formal and informal institutions.

North (1990a) formally defined institutions as the humanly devised constraints that shape human interaction that govern societies. Informally, institutions are referred to as the "rules of the game". Douglas North's work has been instrumental in highlighting the level of influence institutions have on transaction costs which Williamson (1989:142) aptly describes as the comparative cost of planning under different governance structures. Ultimately, the focus of Williamson's work focuses on the evolution of those governance structures to keep transaction costs low. North (1990:27) extends this definition by adding the cost of protecting rights, policing and enforcing agreements. Both Coase (1984) and Williamson (1975, 1985 and 2000) argued in favour of the new institutional approach as it brought to light the importance of transaction costs in economic exchange. The essence of Coase and Williamson's transaction cost theory was to bring about an understanding of how the magnitude of transaction costs and economic efficiency were largely affected by institutions (Caballero & Soto-Onate, 2016:331).

## 9 Political and Economic Role Players

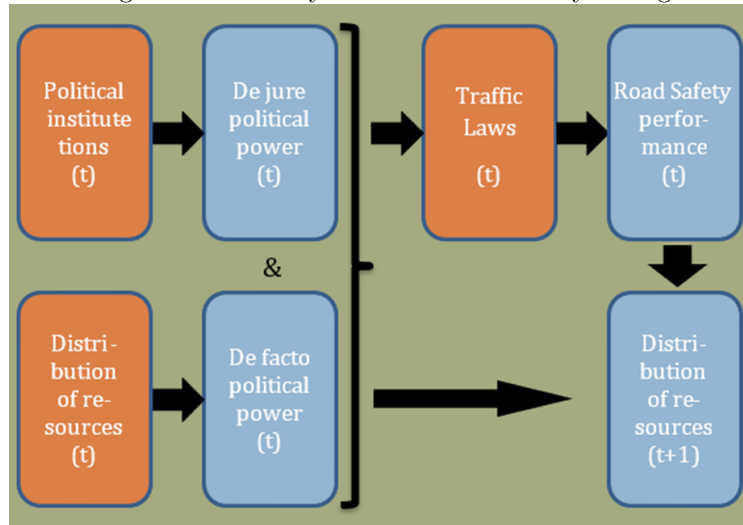
All the role players mentioned above can be grouped into one of two groups: political or economic role players. In this essay we will consider the constitution, the legislature, the minister, the department of transport, voters/road users and the courts as political role players. The National Treasury, the RTMC and RTIA will all be considered to be hybrids of political and economic role players. This is because these role players are organisations that have political interference (i.e. the Minister of Transport is responsible appointing high-ranking officials in these organisations), however these organisations are tasked with fulfilling key economic objectives such as achieving economic efficiency in road traffic policy despite their political mandates. The courts in this case are seen as the middle-ground between the political and economic role players as the independence of the judiciary allows for neither economic or political power to be more powerful than the other. Therefore, to understand political governance, it is important to understand political institutions and how they influence political and economic transaction costs. To introduce political institutions,



we consider the framework below which is adopted from Acemoglu, Johnson and Robinson (2005:391) to suit the purposes of this essay.

## 9.1 A Theory of Road Traffic Policymaking

Figure 2: A Theory of Road Traffic Policymaking



The framework has two important starting points:

$$political\ institutions_t \implies de\ jure\ political\ power_t$$

$$distribution\ of\ resources_t \implies de\ facto\ political\ power_t$$

The two starting points allude to an important aspect of any political economy: the spread of political power. In the framework above, there are two sources of political power, *de jure* and *de facto* political power; and we show using the framework that political power (whether *de jure* or *de facto*), in the current period has the power to influence the distribution of resources in the following period. Acemoglu *et al.* (2005:387) argue that the existence of two sources of political power is embedded in the idea that there is an inherent conflict of interests over the distribution of resources. Furthermore, the authors note that this then indirectly causes a conflict of interest over the set of prevailing economic institutions. Political power often causes inefficiencies and Acemoglu *et al.* (2005:387) ascribe this to commitment problems innate in the use of political power, what Boyle (2009) refers to as "bilateral dependency". As such, Acemoglu *et al.* (2005:387) argue that parties who enjoy a lot of political power are unable to commit to not use that power to benefit themselves. Williamson (1998:76) notes that such opportunistic behaviour jeopardizes any chance of realising collective gains from exchange in the long run. To contextualise the framework above, we assume that the two sources of power can be substitutes and complements to one another. As substitutes,

an increase in *de jure* political power ought to result in a decrease in the *de facto* political power. This is consistent with reality because we know through the power of collective action (Merton, 1936), special interest groups continually face off with governments over certain policy issues. As complements, the two sources of power play an important role in constraining each other from misusing their power and this is in line with the views of Acemoglu and Robinson (2006:326) who argue that optimal economic institutions and a distribution of resources result from a fine balance between the two forms of power. In this sense, the authors highlight the fact that political power is the final arbiter and therefore, whichever group has more political power is likely to secure the distribution of resources in the period  $t+1$  that it prefers. To show how the framework ends up in the bottom-right corner, let us consider the transmission mechanism from the first starting point.

$$politicalinstitutions_t \implies de\ jurepoliticalpower_t$$

According to Acemoglu *et al.* (2005:387), *de jure* political power refers to power that stems from the political institutions in society, for example, electoral systems and consitititons. Political institutions are found in the political sphere and much like economic institutions exist to constrain the behaviour of political actors and determine the incentives on which they can act (Acemoglu *et al.*, 2005:388). In South Africa, the various political institutions (e.g. the constitution and democracy) distribute all *de jure* political power to various role players in the political sphere (i.e. the president, the cabinet and parliament) and place many constraints on these role players from abusing their power. Therefore, the *de jure* political power is not concentrated in the hands of one person or body, but in various bodies that can keep each other accountable. As previously mentioned, the RTMC and other organisations tasked with the enforcement of road traffic policy are provided for in the constitution and therefore enjoy protection from the bodies holding the *de jure* political power in the country in the acting out of their duties.

The assignment of *de jure* political power by political insitutions to various role players leads to the formulation of traffic laws. The laws are usually drawn up by the legislature in Parliament through a lengthy process of deliberation and consultation with various stakeholders as prescribed by Benington and Moore (2010:75). The traffic laws are therefore used to prescribe and enforce the most desired behaviour on the roads of the country, but the laws are also there to punish any deviations in the prescribed behaviour of drivers. How well or not these laws are enforced by the relevant authorities tasked with the enforcement of road traffic policy will determine the overall performance of the road traffic ecosystem. Two polar extremes are possible in this case. The first is a good enforcement of traffic laws that properly constrains the behaviours of road users from engaging in illicit driving behaviours. Therefore, leaving us with a situation in which there are few transgressions and road accidents. The second polar extreme is a situation where the enforcement of traffic laws is poor and fails at properly constraining road users from engaging in bad driving behaviours. At this point we assume any failure by the *de jure* political powers to properly enforce the laws constitutes them relinquishing their political power to those holding *de facto* political power. Therefore, the perfomance of the road traffic ecosystem will determine the distribution of resources in period  $t+1$ . Distribution of resources in this case being defined as all the things that make the experience of being a driver either pleasant or unpleasant (i.e. driver rights and other resources at the disposal of those with political power).

To see how else we can end up at the bottom-right corner of the framework, we consider the second starting point below.

$$\text{distribution of resources}_t \implies \text{de facto political power}_t$$

Different from *de jure* political power is *de facto* political power which Acemoglu and Robinson (2006:326) describe as emerging from the ability of groups (usually voters or road users) to engage in collective action and other channels (e.g. bribery or lobbying). These groups, even though not being granted any political power by political institutions such as the constitution, may still possess political power. These groups can exercise their power by revolting or using economically costly but largely peaceful protests in order to impose their wishes on society (Acemoglu and Robinson, 2006:326). This type of political power is referred to as *de facto* political power. An important source of *de facto* political power lies on a groups economic resources, because this determines their ability to use (or misuse) existing political institutions. We can show how *de facto* political power has been used by groups in South Africa using two, but very different examples.

The court case challenging the constitutionality of the AARTO bill referred to earlier in this essay (Dembovsky vs. The Republic of South Africa), highlights the first type of *de facto* power that exists. The court case shows the ability of a private individual (in some cases, civil society groups) to use their economic resources to stall the "possible" implementation of AARTO through a lengthy court process. The second example of *de facto* political power exhibited in South Africa came in 2014 when road users, especially the South African National Taxi Council (SANTACO) used the power of collective action to boycott the electronic toll collection system (e-tolls) in Gauteng. The boycott resulted in the Gauteng Freeway Improvement Project (GFIP) racking up debt to the value of R40.5 billion (Cokayne, 2018). Subsequent to the boycott of the e-tolls saw calls by road users in Gauteng intensify for the abolishment of the system altogether; advocated for also by the Premier of Gauteng David Makhura.

The two examples above therefore show that there are more dimensions to political power than merely political institutions. Therefore, the greater the number of those with *de facto* political power in the system will result in a distribution of resources in period  $t+1$  that is preferred by those with *de facto* political power.

## 9.2 Discussion

The essence of the framework tries to explain the evolution of institutions and distribution of resources in road traffic policymaking; essentially showing that the distribution of resources we seen in the future are borne out of the current centres of political power. Acemoglu *et al.* (2005:388) define political institutions and the distribution of resources as state variables in the framework for two key reasons: (1) due to their slow rate of change and (2) they directly and indirectly determine economic institutions and economic performance. As previously mentioned, the concentration of political power in the hands of an individual or group has dire consequences for the kind of political institutions that a country adopts (Dixit, 1996:42). This is because, according to Acemoglu *et al.* (2005:388) the institutions that promote property rights and equal opportunity for all become obsolete, especially when all the political power is concentrated in the *de facto* political power. In South Africa, this is particularly true in the case of the taxi industry as was highlighted above.

Since political institutions are collective choices, the distribution of political power remains a key determinant of their evolution, which subsequently determines the distribution of resources (Acemoglu *et al.*, 2005:388). According to Acemoglu *et al.*, (2005:388), the concentration of political power in the hands of a few creates a tendency for persistence. This means that those who hold political power will opt to uphold the political institutions that benefit them the most to eventually dictate how resources are distributed.

The framework above only focuses on explaining the transmission mechanism that gets us from one starting point to the endpoint, which is how resources will be distributed in future periods. However, in-between the arrows of the framework are numerous interactions that exist which eventually lead us to the different nodes in the framework and to understand what those interactions are we consider two theoretical ideas by renowned authors in Pejovich (1999) and Williamson (2000).

### 9.3 Pejovich's Interaction Thesis

In 1999, Svetozar Pejovich postulated the 'Interaction Thesis' with the goal of highlighting the interconnectedness of the relationship between formal and informal institutions. The aim of the 'interaction thesis' is to show that formal and informal institutions can and do interact with one another to create an optimal or sub-optimal equilibrium. In his theory Pejovich (1999:171) argues that transaction costs are expected to be lower when harmony exists between formal and informal institutions. In the case of road traffic law enforcement, formal institutions may refer to the official rules of the road which are prescribed by the K53 rule book used for undertaking learners and drivers license tests in South Africa. Other formal institutions may include the various laws that speak on the management of road traffic affairs such as the White Paper on National Transport Policy, the AARTO Act of 1998 and the RTMC Act of 1999 to name a few.

Informal institutions are different from the formal ones as they refer to the norms and beliefs held by the different role players in South African road traffic policy. On the part of the road users, informal institutions can range from speeding, all the way to driving exceptionally slow, both which may have severe consequences on the road. However, the enforcers of the law may also have informal institutions of their own. As previously mentioned, when there is harmony between the formal and informal institutions transaction costs are likely to be low. Therefore, if road users in South Africa obey the formal rules and regulations as stipulated in formal legislation governing road traffic, then traffic officials need not expend a lot of time and effort on monitoring and enforcing the law on road users.

However, if the harmony is broken due to conflicts between the formal and informal institutions it may lead to inefficient enforcement of the law and the likelihood of increasing transaction costs. This may negatively impact both the enforcing authorities and road users. Law enforcers will be negatively affected as they may have to adopt extraordinary tactics to catch those who break the law, which may be costly on their part. Examples of these new tactics include the development of new breathalyzer technology to prevent drunk driving on the roads; which has been cited as one of the leading causes of road accidents across the world (Horwood and Ferguson, 2000:805).

Using the breathalyzer example, when informal institutions around drunk driving are sub-optimal then government has to look towards technologies to curb this behaviour. One way is getting improved breathalyzer technology to better detect when drivers are above the alcohol

limit. This technology will either be produced locally or be imported from abroad. Assuming that it is produced locally, then the state will have to incur all the costs associated with the design, testing and production of the technology. This will lead to a rise in transaction costs for the state, both pecuniary and non-pecuniary. To recover these costs, the state might then adopt more stringent rules of engagement in terms of how they deal with the enforcement of drunk driving (i.e. charging hefty fines) in an attempt to change their behaviour on the road; which will ultimately have a huge impact on overall economic performance for both road users and the enforcers of the law.

## 9.4 Williamson's Levels of Institutional Analysis

Oliver Williamson's (2000:597) 'Four Levels of Institutional Analysis' is a useful framework that helps us to better understand the different institutions and the different purposes that each set seeks to achieve. In the framework we can also see where the various institutions fit into the broader spectrum of institutional analysis and how they interact with one another.

### 9.4.1 Level 1

The first level is referred to as the social embeddedness level and deals primarily with informal institutions such as norms, traditions and customs. In the context of road traffic in South Africa, this would refer to the various beliefs that different motorists hold around driving. Embeddedness in this sense refers to degree to which economic activity is constrained by non-economic institutions, for example, every year in South Africa government apportions funds towards the training and deployment of traffic officials on South African roads to try and reduce the number of deaths on the country's road which are often caused by poor informal institutions of drivers (i.e. speeding, drunk driving *et cetera*). In turn, these monies could have been spent elsewhere. Changes in these informal institutions of drivers unfortunately do not occur frequently.

### 9.4.2 Level 2

The second level of in Williamson's framework is known as the institutional environment and focuses on the formal rules of the game such as constitutions, formal laws and property rights. At this level, the formal rules are enforced by the executive, judiciary and government bureaucrats (e.g. the RTMC). Williamson (2000:598) claims that the primary objective of this level is to get the formal rules of the game right. This entails ensuring that the laws in place can serve as effective mechanisms to influence changes in driver behaviour. When these rules are not successful to that end, then the rules have to undergo an evolutionary process of refinement until the "right" laws (which are easily enforceable) are in place. The frequency of change in the institutions of this level occur approximately every ten and a hundred years.

A case in point of such adjustments is the current revision of the 1996 White Paper on National Transport Policy that is still under consideration by Parliament.

### 9.4.3 Level 3

The third level of institutional analysis introduces the institutions of governance. This level places a lot of emphasis on contract law and ensuring the enforceability of the laws drawn up in the second level. However, Williamson (2000:598) explains that contracting at this level is primarily dealt with by the parties directly involved in the terms of the contract

through private ordering. Therefore, contractual relations become the main unit of analysis at this level and governance serves as the tool that mitigates conflict to realize mutual gains among the parties. In South Africa, it is at this level where many problems arise. This is because, although the formal rules are established at the highest levels of law-making; the enforcement of those laws is largely left to individuals in the form of traffic officers who patrol the country's roads on a day-to-day basis. Certain individuals who are tasked with enforcing the law often do not do their job, due to weak individual institutions, and take bribes in return for not punishing road users who violate the rules of the road. As such, road users tweak their own institutions to align with this position of "law-breaking" and this creates a disequilibrium in the desired standard of enforcement. This is also the reason why it may be found that different people in different towns hold different views on same issue because of how it is enforced where they come from, even though on paper we assume everyone should have received the same level of training in the law of the road. Getting the governance structures right is therefore the dominant theme in this level (Williamson, 2000:598). Once certain governance structures have been adopted, it takes about one year to a decade for transactions to be re-examined.

Thinking back to Pejovich's *Interaction Thesis*, the different levels in Williamson's framework can also be seen as continually interacting with one another. The interaction can either be top-down, such that informal institutions held by individuals filter into the written formal rules (this is not implausible as legislators often go to parliament to represent their constituencies). The formal rules, depending on how stringent or lax they are, will therefore determine how they are enforced on the ground. The second interaction can be from the bottom-up. In this case, the nature of enforcement on the ground (where it is seen to be most effective and efficient) can be adopted in the formal rules and ultimately start to shape the informal rules of the road.

The above discussion on Pejovich and Williamson's ideas is important to this essay for two reasons. On the one hand it shows how an ideal equilibrium could be reached under certain assumptions. The second reason is less positive and shows why the Coasean theorem is hardly ever achievable, especially in a political process, because formal and informal institutions are not always aligned; aided by the difficulty of coordinating between all the various role players at the same point in time. Therefore, the difficulties faced in specifying relationships between role players, monitoring and enforcing of political transactions leads to high transaction costs.

## 10 Conclusion

The new institutional approach has strongly emerged in other social sciences and the transaction cost approach has sparked a research program on political organization studies. Institutions provide the rules of the political game, and they determine the incentive structure of political agents, and therefore determine a high level of public policy outputs (Caballero & Soto-Onate, 2016:345). The application of transaction cost economics to the political field allows us to think of political interactions as a set of (direct or indirect) contractual relations, as such, we can then think of public policies as the outcomes of transactions among policy-makers where principal-agent problems arise. Therefore, political transactions are a key element in political life because they include transactions carried out between citizens and politicians but also those in which all participants are politicians. As pointed by the transaction cost politics, the most important issue is that all these types of transactions imply

high transaction costs, and they may be coped by governance structures. Institutions resolve a first order economizing via the establishment of an institutional environment that consists of political rules, property rights, polity, the State, judiciary, bureaucracy. The institutional framework should then try to reduce transaction costs and propel economic and political exchange.

Reducing political transaction costs is a way to improve welfare in society. Transaction Cost Politics has shown the relevance of transaction costs in political governance, and this essay has incorporated its lessons to the AARTO policy.

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