



# Productive specialization, peaceful cooperation and the problem of the predatory state: lessons from comparative historical political economy

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## Abstract

This paper reconceptualizes and unbundles the relationship between public predation, state capacity and economic development. By reframing our understanding of state capacity theory from a constitutional perspective, we argue that to the extent that a causal relationship exists between state capacity and economic development, the relationship is *proximate* rather than fundamental. State capacity emerges from an institutional context in which the state is constrained from preying on its citizenry in violation of predefined rules limiting its discretion. When political constraints are not established to limit political discretion, then state capacity will degenerate from a means of delivering economic development to a means of predation. In addition, we investigate two case studies of economic and political transition: the privatization of Russia following the collapse of the Soviet Union; and the political unification of Sicily with the Italian peninsula following the Napoleonic Wars. In each case, political and economic transition intended to secure well-defined and well-enforced property rights empowered the predatory capacity of the state. In each case, the attempt to redistribute property rights through political discretion only facilitated predation by the political elite.

**Keywords** Constitutional political economy · Predation · State capacity · Economic development

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There is no constant-sum endowment of potential capacity to be somehow parcelled out among persons in the initial constitutional contract or enforced by the existing legal order. To adopt this as the paradigmatic basis for the analysis of the emergence and maintenance of a structure of property rights generates confusion from the outset.

James M. Buchanan (1975 [2000], p. 111).

Thus, from the delimitation of a private sphere by rules, a right like that of property will emerge.

F.A. Hayek (1960, p. 151).

## 1 Introduction

The purpose of this paper is to explore the relationship between the problem of public predation and state capacity theory in the context of economic development. According to state capacity theory, economic development requires that states are able to implement a set of policies, not only to secure and enforce property rights and contracts, but also the power to raise revenues for the implementation of such policies. With the power to tax, the state is then able to provide public goods required for the security and enforcement of property rights and contracts, safeguarding them from private predation, thereby creating the institutional conditions required for economic development. Although it may be argued, according to Douglass North, that the state has been a great enabler of economic development, he also argues that the state also has had the capacity to be the greatest inhibitor of economic development (North 1981, p. 20). The “paradox of being governed”, as James Buchanan puts it, requires that we endow the state with the capacity to secure the institutional conditions for economic development, but then constrain it from preying on its own citizenry.

Stated in this way, the resolution of the paradox requires that we approach the theory of state capacity from a *constitutional<sup>1</sup> perspective*. According to constitutional political economy, an important distinction exists between choice over the rules governing political decision-making, which then structure the incentives of policy-makers within those rules. Stated differently, one begins with a pre-constitutional level of analysis, which structures the rules constraining political actors, and then proceeds to a post-constitutional level of analysis that examines the policies implemented according to those constraints. Fundamentally, the capacity of a state to secure property rights, enforce contracts, and provide public

<sup>1</sup> One potential objection that we should raise is one made by Anthony de Jasay (1985 [1998]), who argued that formal constitutions are either unnecessary because, when effective, they merely reflect the political values already accepted by a society. If constitutional constraints are ineffective, that is because the underlying values and norms of society legitimize the expansion of state power (see Pejovich 2003; Holcombe, forthcoming). However, our use of the word constitution does not necessarily imply a written document, but is broadly “conceived here as the set of institutions governing political decision-making—that is, the institutions or rules governing how policy choices are made, especially among alternative specifications of the economic system. *All societies possess a constitution in this sense*, whether or not they possess an explicit document called ‘the constitution’” (Weingast 1995, p. 2; emphasis added). Whether they are informal or formal, in order to understand the political decision-making process operating in a society, “the theorist has to assume that *some rules already exist* and are exogenous for purposes of a particular analysis” (Ostrom 1990, p. 52; emphasis added).

goods turns on whether or not it has committed to rules that constrains it from engaging in public predation. In the words of James Madison from *The Federalist No. 51*: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself” (1788 [2001], p. 269).

Consistent with Vahabi (2011, 2016a, b), our purpose here is not a normative analysis regarding the proper scale and scope of the state. Rather, it is positive analysis of the conditions that turn a revenue-maximizing state into a wealth-maximizing state.<sup>2</sup> “While all states are predatory”, in the sense that they are trying to maximize their rents from political jurisdiction, “some enhance economic development while others hinder it” (Vahabi 2016b, p. 170). Therefore, the difference between states is one of degree, not of kind. “Predatory regimes can adopt different historical trajectories according to their strategy of accumulation. Generally speaking, they might choose either a *redistributive* or a *productive* regime” (Vahabi 2016b, p. 171; emphasis in original). Beginning in a world in which predation is a perpetual problem, the question then becomes the following: under what conditions does the state become a means of constraining predation or a means of enabling it? In recent years, a literature has developed that explains the evolution of institutional constraints that inhibit public predation (North and Weingast 1989; Levi 1989; Kiser and Barzel 1991; Weingast 1997; Benson 1999; Barzel 2000, 2002; North et al. 2009; Congleton 2011; Hough and Grier 2015; Salter 2015a, b; Leeson and Suarez 2016). Our contribution, however, is to explain the consequences for state capacity when such institutional constraints on public predation do not emerge.

This paper proceeds as follows. Section 2 provides an overview of the literature on the relationship between state capacity and economic development, on the one hand, and public predation and economic development, on the other. Our contribution is to reframe those two literatures through the lens of Buchanan’s constitutional project, particularly regarding his theory of the state. In Sect. 3, we unbundle the relationship between public predation, state capacity and economic development by distinguishing between what Buchanan refers to as the “protective state” and the “productive state” to understand what we refer to as the manifestation of the “predatory state”. From a constitutional perspective, we argue that policies consistent, or inconsistent, with state capacity, such as the provision of public goods and effective public administration, are a *byproduct* of a credible commitment to a set of rules that restrict the state from being predatory. State capacity, then, is better understood as a *proximate* explanation for why, or why not, states are predatory.

Central to our historical understanding of these case studies is Buchanan’s (1975 [2000]) conceptualization of law as “public capital”. In order for individuals to agree to constrain themselves from privately preying on one another, they may choose to submit themselves to a set of rules with the expectation that they will “compensate” themselves with an overall level of economic well-being in the future (Buchanan 1975 [2000], p. 124). It is in this respect that Buchanan regarded the possibility of government being a productive exchange process. That possibility, however, presumes a referee that enforces the rules of the game and, by implication, remains indifferent to the outcome of the game itself. Historically, however, the political status quo from which the problem of public predation began was one in which the law was not a stock of “public capital” from which all

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<sup>2</sup> One must not overlook, however, as a matter of positive analysis, the role that ideology plays in legitimizing state predation and, therefore, what the subjects of the state will regard as predation or not (see Holcombe, forthcoming).

individuals benefited. Rather, law had been regarded as a privilege<sup>3</sup> utilized for the private benefit of the political elite, from which they could prey on their subjects.

In Sect. 3, we use the historical cases of privatization in post-Soviet Russia and the political absorption of Sicily into the Italian peninsula<sup>4</sup> to illustrate why the political conditions required for state capacity did not emerge. In the case of post-Soviet Russia, economic and political transitions failed to constrain the predatory state that had existed under communism, whereas in Sicily, the Italian unification process failed to empower the protective and productive state, thereby enabling private predation. In both cases, the lack of state capacity was not a *cause* of economic stagnation, but a byproduct of failing to establish credible political constraints on the use of violence. Attempts to redistribute property rights through political discretion only enabled predation to emerge. From a *constitutional* perspective, both cases illustrate that the failure to inhibit public predation was (1) a failure to acknowledge the existing status quo as a starting point for constitutional deliberation and, therefore, (2) a failure to *discover* a set of rules that “compensates” political elites with the present discounted value of their lost political rents in exchange for the *expectation* that they themselves will benefit from greater overall economic well-being in the future.

In Sect. 4, we discuss the implications of constraining the predatory state. The byproduct of a state empowered to secure exchanges of private property, yet constrained from intervening in (preying on) the exchange process, will be what Buchanan referred to as “generalized increasing returns” to productive specialization under the division of labor. Section 5 concludes.

## 2 Power and prosperity: Between anarchy and leviathan

In recent years, a literature has been developing that illustrates a relationship between state capacity and economic development (Besley and Persson 2010; Johnson and Koyama 2014, 2017, 2019; Acemoglu et al. 2015; Geloso and Salter 2018), on the one hand, and a relationship between public predation and economic development, on the other (Lane 1958; Tilly 1985; Olson 1993; Grossman and Kim 1996; McGuire and Olson 1996; Weingast 1997; Bates et al. 2002; Grossman 2002; Leeson 2007a, b, 2014; Azam et al. 2009; North et al. 2009, 2013; Cox et al. 2015; Vahabi 2011, 2016a, b). Those two literatures, though conceptually distinct, are interrelated, when filtered through the lens of public choice theory.

State capacity refers not just to the power of the state to raise revenue (see Tilly 1975; Levi 1989), but more broadly refers to “the wider range of competencies that the state acquires in the development process, which includes the power to enforce contracts and support markets” (Besley and Persson 2010, p. 1). “Just as private physical and human

<sup>3</sup> As Hayek (1960, p. 154; original emphasis) points out, the “true contrast to a reign of status is the reign of general and equal laws, of the rules which are the same for all, or, we might say, of the rule of *leges* in the original meaning of the Latin word for laws—*leges* that is, as opposed to the *privi-leges*.” Therefore, the meaning of “privilege” can be understood as “private law”, of the use of the law for one’s exclusive benefit, as opposed to a common means utilized for the coordination of the separate ends of individuals. It is in this sense that Buchanan refers to the law being “public capital” (see also Boettke and Candela 2014).

<sup>4</sup> The political unification of Italy, and Sicily’s absorption into what became the Kingdom of Italy, underwent several phases, the first of which was Sicily’s absorption into the Kingdom of the Two Sicilies in 1816, south of the Papal States on the Italian peninsula. After 1861, the Kingdom of the Two Sicilies was absorbed into the Kingdom of Italy.

capital accumulation is a key engine of private sector growth”, Besley and Persson state further on the same page, “the buildup of public capital is also an engine of state expansion”, specifically an expansion in its effectiveness to raise revenue, not only for the provision of public goods, but also for enforcing of property rights and contractual exchange. Governments that lack state capacity are unable to constrain violence and therefore lack the institutional conditions necessary to realize the generalized increasing returns<sup>5</sup> to productive specialization. That is because such governments never become prevented from preying on their citizenry and therefore become an instrument of violence for the purpose of granting privileges to one party at the expense of another.

Several reasons can be found for why the relationship between state capacity, public predation, and the process of economic development are grounded naturally in public choice theory (see Piano 2019). First, the foundations of the theory—methodological individualism, *homo economicus*, and politics-as-exchange (Buchanan 1979 [1999], 1987)—lend themselves to emphasizing the political incentives that frame the choices of political actors and whether such incentives generate outcomes that are positive-sum or negative-sum in nature. For the same reason, public choice has been referred to as “the economic theory of politics”. Public predation is, therefore, a function of the political incentives that political actors face. In order for a society to realize the generalized increasing returns from productive specialization under the division of labor, state capacity theory postulates that a state must be powerful enough to tax its subjects for the provision of public goods, which facilitate the enforcement of property rights and contracts from private predation. However, that power also requires that the state be incapacitated, or shackled if you will, from using its coercive apparatus from engaging in public predation. Such public predation may either take the form of arbitrary confiscation of goods and services, or the use of state power to grant legal privileges to one special interest group at the expense of another. If we understand public choice theory to be the economic theory of politics, then the reach of the public choice tradition, with respect to questions regarding state capacity, public predation and economic development, has suffused not only scholars who fall within the public choice tradition, such as Buchanan, Brennan, Tullock, or Olson, but also modern political economists who have built upon insights from the public choice tradition, such as Daron Acemolgu, Timothy Besley and Douglass North.

Attention to the political rules of the game seems to be, then, uncontroversial. As Hough and Grier (2015, p. 28) highlight, “the very essence of economic development is the gradual introduction of the rules of the game of a market—often vague and ambiguous rules—over many generations. Moreover, the ‘players’ themselves have a major role in writing the rules”. A path of institutional transition exists in which we move, as P.T. Bauer (2000) puts it, from subsistence to exchange. Bauer stressed that everyone once lived in conditions of extreme poverty, and the escape was achieved in the transition from small-scale trading and small-scale capital accumulation to medium-scale trading and medium-scale capital accumulation and, finally, large-scale trading and large-scale capital accumulation. The trigger for the transition at each stage is the establishment of an institutional framework that increasingly secured protection for people and their property from predation. It doesn’t happen in one step, but is a slow process of adoption and adaptation to changing historical conditions. “Historically”, Hayek (1960, p. 19) writes, the “path to liberty has led through the achievement of particular liberties”, whereby the existence of political constraints and

<sup>5</sup> See Buchanan (1994), Buchanan and Yoon (1994, 1995, 1999, 2000) and Boettke and Candela (2017a) for a more developed discussion of generalized increasing returns.

state capacity are not a difference in kind across societies, but a difference in degree that is accumulated gradually through the long process of economic development within societies.

However, a subtle, though important distinction must be made, between economic explanations that (1) *explain* the emergence of political rules that shackle Leviathan, deliver state capacity and unleash economic development, and (2) those that *describe* the *initial conditions* of analysis required to shackle Leviathan and therefore deliver state capacity. By initial conditions, we refer not only to the geographical, cultural and historical circumstances of a particular society; it also may include the technological possibilities within that society's opportunity set, such as fiscal and law enforcement technologies, which in turn affect the state's capacity to facilitate the enforcement of property rights and contracts. For example, Acemoglu et al. (2015, p. 2369) attribute the lack of state capacity in Colombia today to several conditions established in its recent past. The conditions include not only the topography of the country that limits the state's reach, but also colonial migration restrictions imposed by Spain. Owing to such restrictions, the colonial Spanish population remained relatively small, incentivizing the creation of institutions that extracted rents from the indigenous population, rather than implementing more inclusive institutions consistent with constraints on public predation (Acemoglu et al. 2015, p. 2369). The point here is not to refute Acemoglu et al.'s claim, but to emphasize that their explanation is one based on a description of initial conditions.<sup>6</sup>

Though not framed in terms of state capacity, North (1991) echoes the point made by Acemoglu et al. North (1991, p. 10) describes how the legacies of parliamentary struggles in England and Spain, in particular the ability to constrain the Crown in the former, but not the latter, created a situation in which public administration in the English colonies was consistent with constraints on public predation, whereas in the Spanish colonies, revenue-maximizing behavior "entailed getting control, or influence over, the bureaucratic machinery". One might say that such political constraints emerged in England, as explained by North and Weingast (1989), because of credible commitments to rules as a result of the Glorious Revolution. However, such an outcome was contingent, as Barzel (2002, p. 35) would argue, on the existence of a collective action mechanism with sufficient power to oppose the ruler *in the first place* (see also Barzel 2002, p. 115). The puzzle, then, becomes, how does such a check on public predation *emerge* through time? It is the *prerequisite* of state capacity, the establishment of political constraints on public predation, that is essential to explaining its relationship to economic development. North et al. (2009, p. 242; emphasis added) do argue that the "problem with this approach is that it begins by assuming elements *that were actually end products of the process*". Yet, their description of the transition to an "open access order" is ironically one in which the "doorstep conditions" already are in place, such as was the case in Britain, France and the United States in the early 19th century. Therefore, understanding this transitional process cannot be collapsed into a description of the conditions required to constrain public predation and deliver state capacity without losing an understanding of how this cumulative process unfolds through time.

Our claim here is not to deny the importance of initial conditions in shaping political rules. Accidents of time and circumstance require that we take them as a given. "Any proposal for change", as Buchanan (1975 [2000], p. 101) argued, "involves the status quo as the necessary starting point. 'We start from here,' and not from someplace else".

<sup>6</sup> See also the argument made by Batchelder and Sanchez (2013), which reinforces our point regarding analytic emphasis on initial conditions.

Buchanan's point is even more pressing with regard to failed and weak states today, where we must "assume anarchy" (Rajan 2004) as the relevant analytical starting point of analysis, and not take for granted that the fiscal and property-rights enforcement technologies required for state capacity exist. Though patterns of political outcomes, such as the relative absence or prevalence of public predation, are acknowledged to be rule-dependent, the question then becomes *to what degree* are the rules that structure such political outcomes defined by the initial conditions, or subject to variation through a process of constitutional bargaining and deliberation. If the emphasis in explaining the emergence of the constraints on public predation, the buildup of state capacity and the unleashing of economic development is exhausted by a description of the initial conditions, then we no longer have a theory of institutional change, but *a theory comparative institutional statics*.

Olson's famous distinction between a "stationary bandit" and a "roving bandit" provides an illustration of our point regarding the emphasis placed on initial conditions. Olson provides a powerful argument for understanding how the self-interest of a revenue-maximizing ruler will align with the political conditions necessary for wealth maximization, not only for himself, but also for his subjects. In a world of roving banditry, a political ruler will have little incentive to invest in fiscal technologies required for regular taxation and judicial technologies that secure property rights and enforce contracts. Only when a bandit has settled down will he or she be incentivized to invest in the provision of public goods that encourage individuals to accumulate wealth, rather than concealing it from predators. However, by Olson's own admission, his stationary bandit argument is a necessary, though not a sufficient condition for taming public predation. "Historical evidence from at least the first pharaohs through Saddam Hussein indicates that resolute autocrats can survive even when they impose heinous amounts of suffering upon their peoples. When they are replaced, it is for other reasons (e.g., succession crises) and often by another stationary bandit" (Olson 1993, p. 573). What, then, prevents a stationary bandit from being autocratic and constrains their capacity to publicly prey on their subjects? "We can deduce from the theory offered here that autocracy is prevented and democracy *permitted by the accidents of history* that leave a balance of power or stalemate—a dispersion of force and resources that makes it impossible for any one leader or group to overpower all of the others" (Olson 1993, p. 573; emphasis added).

Putting aside his misgivings of social contract theory, Olson provides us with the broad idea of encompassing interest, which we suggest complements Buchanan's emphasis on the constitutional level of analysis. The movement from a revenue-maximizing Leviathan to a wealth-maximizing Leviathan emerges from a set of political bargains that achieve that shift, not to be taken as given. In both cases, rulers have narrow interests in their betterment and their survival, but in the latter case they are constrained to realize that the best case for advancing their narrow interests would be to have a flourishing society. Rather than individuals being at the mercy of the narrow interests of a ruler, such encompassing interests can emerge as byproducts of a process of constitutional deliberation over rules that restrain a ruler from predation.<sup>7</sup> It is that constitutional perspective that has been overlooked regarding the conditions required for state capacity, namely rules that exhibit

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<sup>7</sup> In *The Power to Tax*, Brennan and Buchanan (1980 [2000]) model the state as a revenue-maximizing Leviathan, but combining Buchanan and Olson, the development puzzle becomes one of finding the institutional configuration wherein the revenue-maximizing strategy for Leviathan is the wealth-maximizing one. That can occur only when the protective and productive state are empowered, and the predatory state is restrained in effective shackles.

neither discrimination nor dominion over citizens (see North 1978). Rather than treating state capacity as a description of conditions clustered at a particular point in time, by understanding the process by which the conditions for state capacity accumulate over time, we are able to “unbundle” the conditions required for state capacity to be achieved, thereby supplying the conditions necessary for generalized increasing returns to productive specialization under the division of labor.

### 3 The paradox of being governed: Unbundling state capacity

James Buchanan’s distinction between pre-constitutional analysis and post-constitutional analysis in political economy provides a unique way of reframing and unbundling the relationship between public predation, state capacity and economic development. The pre-constitutional level of analysis focuses on choice over the rules governing political decision-making, while the post-constitutional level of analysis focuses on the social interaction that emerges, given the rules that were agreed upon at the pre-constitutional level.

In *The Limits of Liberty*, Buchanan (1975 [2000], p. 88) distinguishes between “the protective state” and “the productive state”, which corresponds to his dual level of analysis. In its protective role, the state is charged with the responsibility of enforcing property rights “along with contracts that involve voluntarily negotiated exchanges” of such rights. The protective state is analogous to a game’s umpire or referee, and the state’s only role is to enforce the rules of the game. The protective state implies that political decision makers cannot exercise *discretion* over the selection of the beneficiaries of property rights, even if the political decision-maker himself initiates a transfer of rights from a set of agreed rules (Buchanan 1975 [2000], p. 89; see also Buchanan 1983, p. 78). In that capacity, the productive state is constrained from transferring property rights *after* the rules of distribution have been agreed upon: it cannot intervene into the pattern of exchanges that emerges, namely by using force to transfer property rights from one group of individuals to another. Once the rules that establish the limits and operation of the protective state are defined, within such rules (i.e., at the post-constitutional level of analysis), the “productive state” emerges. In its productive role, “government is *internal* to the community” (Buchanan 1975 [2000], p. 123; emphasis in original), in the sense that within the protective state, government becomes a means by which citizens can accomplish jointly desired objectives, including not only the provision of public goods, but also the capacity to finance publicly the creation and administration of such goods.

Reframing our understanding of state capacity theory from a constitutional perspective, we can see that to the extent that a causal relationship exists between state capacity and economic development, the relationship is *proximate* rather than fundamental. If we understand state capacity to be analogous to Buchanan’s productive state, then state capacity itself is a *byproduct* of the protective state itself. State capacity emerges from an institutional context in which the state is constrained from preying on its citizenry in violation of predefined rules limiting its discretion.

North and Weingast’s (1989) account of the economic effects of the Glorious Revolution of 1688 in England illustrates that point. In order to empower and constrain the state, “a constitution must arise from the bargaining context between the state and constituents such that its provisions carefully match the potential enforcement problems among the relevant parties. The constitution must be *self-enforcing* in the sense that the major parties to the bargain must have an incentive to abide by the bargain after it is made” (North and



Weingast 1989, p. 806; emphasis in original). The establishment of effective political constraints on the predatory power of the English Crown unleashed a fiscal revolution in England, in which “the growth of a stable market for public debt provided a large and positive externality for the parallel development of a market for private debt” (North and Weingast 1989, p. 825). The point here is not to argue that incurring public debt is a productive activity. Rather, it is the fact that the predatory nature of the state was constrained *ex-ante* that the state’s capacity to finance and administer public goods became enabled *as a byproduct* of a credible commitment to such constraints. Fundamentally, then, *state capacity is the institutional capacity to constrain the state from public predation*.

Implicit to North’s and Weingast’s narrative, however, is one in which the institutional threshold, or doorstep if you will, of modern economic growth already has been approached. However, as Congleton (2011) has written, the shift in authority from the Crown to Parliament, as was the case in England and elsewhere in Europe, occurred over a period of centuries (see also Salter 2015a, b, 2016). That trajectory implies, from Buchanan’s contractarian perspective, that the shift from subsistence to exchange is embodied in a constitutional process, whereby the establishment of political constraints are self-enforcing, since no third-party can guarantee the enforcement of such political exchanges. It also implies that such an exchange process is analogous to the accumulation of a stock of capital, one that is based on the pre-commitment of political elites to restrain their own behavior now with the expectation of a greater state of well-being in the future. As Buchanan (1975 [2000], pp. 101–102) writes:

In a dynamic-opportunity cost framework, however, contractual or quasi-contractual agreements might be struck which would include reductions in nominally measured values of the rights of some members of the community. If the predicted course of events over time should be such that these nominally measured values are to be reduced, those holding such vulnerable claims may accept present reductions in exchange for greater security. If the individual holder of a right or claim, defined in the status quo, comes to predict that his claim will be eroded or undermined unless the structure is modified, he may willingly acquiesce in some current reduction in this claim’s value as a means of forestalling the possibility of larger damage.

If the state cannot credibly commit to a set of rules, or otherwise be constrained from violating such rules, then the productive state will degenerate into a predatory state, one in which the capacity of the state to enforce property rights becomes inhibited. As we discuss below, in the cases of post-unification Sicily and post-Soviet Russia, economic and political transition failed to achieve the results intended by public policy, manifesting itself in private predation. During the privatization of the post-Soviet Russian economy, economic stagnation was exacerbated by a failure to constrain the predatory state that preexisted among the political elite of the Communist Party of the Soviet Union, or what Annelise Anderson (1995) refers to as the “Red Mafia”. In the case of Sicily, political unification with Italy enabled private predation by the Sicilian Mafia, because of a failure to empower the protective and productive state and, *as a byproduct*, the absence of state capacity.

### 3.1 Politics and privatization in Russia

The political and economic transition of Central and Eastern Europe from communism and central planning to democracy and a market economy has been mixed at best. In post-Soviet Russia, in particular, this institutional transition lacked a credible

commitment to the rules constraining the discretion of the state (Boettke 1995). That conclusion is evidenced not only by the pervasive shortages that continued to exist even after “price liberalization” was instituted under Gorbachev (see Levy 1990; Shliefer and Vishny 1992). It also is illustrated in the attempt to “restructure” the economy under Perestroika, which, in reality, was a restructuring of the political hierarchy within the Communist Party, not a credible restructuring of the institutional incentives within which political interactions took place (Anderson and Boettke 1993; Boettke 1993). As G. Warren Nutter (1968) has stated, markets without property is a grand illusion. However, his message, resonating with the lessons of Mises and Hayek regarding economic calculation, initially was overlooked. With the collapse of communist regimes in Eastern and Central Europe in 1989 and the former Soviet Union in 1991, the mantra of “getting the prices right” that had begun in the mid-1980 s later was transformed into “getting the institutions right” (Boettke et al. 2005; Boettke 2009; Boettke and Nicoara 2015). However, the delineation and creation of private property is necessary, though not sufficient, for privatization. A fundamental difference exists in economic and political outcomes that emerge from privatization mediated by political discretion or privatization under the rule of law, the difference being rent seeking and profit seeking, respectively. Buchanan (1983, p. 78; original emphasis) states this point best:

Rent seeking will tend to be eliminated where the donors’ *discretion* over selection of the beneficiary is absent, even if the donor is allowed to carry out transfers. So long as there exist well-defined and widely known enforceable rules or laws that determine the identity of the potential recipients, independent of the choice of the donor, there is no profit to be gained from engaging in rent seeking.

The implication here is that, for privatization to deliver sustained economic growth, it requires institutional constraints that rein in public predation, namely, to eliminate the ability of the state to intervene in the (re)allocation of property rights for the private benefit of one party at the expense of another. Without such constraints on discretion, political officials will utilize their power to monetize their control over state-owned resources indirectly in the informal market economy.

Though not explicitly addressing the literature on public predation and state capacity, Federico Varese’s (2001) thesis regarding the rise of the Russian Mafia is stated implicitly in terms that are relevant to the foregoing topics. Building on Gambetta (1993, p. 252), Varese argues that in the wake of the privatization in post-Soviet Russia, the demand for the protection of private property increased, a demand that the state could not meet. As a result, the Russian Mafia arose as an extra-legal mechanism to fill the vacuum of power left open by the state. Why, however, could the state not enforce private property rights created through privatization? “When the state is predatory, erratic and non-impartial in its ruling, two consequences obtain: (1) a decrease in the demand [for] state-supplied protection of property rights; (2) an increase in attempts to influence the ruling of the state” (Varese 2001, p. 25). As a *consequence* of a lack of a credible commitment to enforce private property rights, the Russian state lacked the capacity to collect sufficient revenue for the provision of public goods: “Powerful lobbies were able to secure a profitable initial distribution of resources and property rights” in previously stated-owned enterprises and “engaged in successful lobbying to avoid paying taxes. Since the richest contributors managed to avoid paying taxes, state revenues were lower than expected” (Varese 2001, p. 22).

However, what Varese's argument seems to imply is that the Russia Mafia did not precede the privatization process because private property did not yet exist.<sup>8</sup> Though *de jure* private property indeed was abolished under the Soviet regime, it is in the *de facto* nature of private property in the informal Soviet economy that the origins of the Russian Mafia reside.<sup>9</sup> As Anderson (1995, p. 353; original emphasis) argues:

The close association between illegal market enterprises and the authorities marked this system as *mafia*, although it differed in one important respect from the classic mafias of Italy and the United States: violence appears in almost all cases to have been exercised not by the underworld but by those in power.... As far as can be judged from available accounts, it was individuals or groups in the official sector who competed for the monopoly rents, not underground operators.

That is, it was within the Communist Party's *nomenklatura* itself that the origins of the Russian Mafia can be found. The *nomenklatura* refers to the Soviet Union's political elites, which, in effect, controlled a political cartel of interlocked state monopolies that constituted the centrally planned Soviet economy. The stability of that system was predicated on a system of patronage, whereby individuals loyal to the political hierarchy were installed into strategic economic positions. Such privileged positions aligned the self-interests of its beneficiaries with those of the *nomenklatura*, since the ability to extract rents from the Soviet economy was tied to holding monopoly privileges. In effect, the *nomenklatura* enforced collusion among the separate state-owned firms and ministries, so that the Soviet system operated as an effective political and economic monopoly. Illicit entry and competition by one monopolist into the privileged market domain of another state-sanctioned monopolist was controlled so as not to reduce the value of the latter's monopoly privilege, which came in the form of bribes and perquisites received from *de facto* control of state resources. The socialist rhetoric of the Communist Party masked the mercantilistic nature of the way in which central planning actually operated in the Soviet economy, whereby monopoly privileges were created not only for the purpose of raising revenue for the party officials granting such privileges, but also for its recipients to extract rents (Boettke 1993; Anderson and Boettke 1997; Boettke and Candela 2017b).

By understanding the *de facto* nature of the Soviet economy, the origins of the Russia Mafia can be understood as a *byproduct* of public predation, and the failure to constrain the predatory nature of the state that continued throughout the privatization process. That is, the ability of political officials to extract rents was predicated on pervasive shortages created by the imposition of price ceilings.<sup>10</sup> As Alchian (1965, p. 822) argued, the characteristic distinguishing private property from public property is the ability to transfer and accrue the exchange value of a good or service. Unable to derive a profit from the sale of output in the official economy legally, the managers of state-owned firms benefited from creating shortages in order to monetize their *de facto* control of goods and services in the form of bribes from consumers in the informal economy, where valuation of such

<sup>8</sup> As Varese (1994, p. 231) has written, "The monopoly over the means of production during Soviet times meant that autonomous suppliers of private protection did not emerge".

<sup>9</sup> See also Barzel (1989 [1997], pp. 128–138) for discussion of governmental (non-market) allocation of property rights.

<sup>10</sup> Building on Brennan and Buchanan's (1980 [2000]) model of a revenue-maximizing Leviathan, Gifford and Kenney (1984) contend that ownership of the means of production is the direct result of the government's desire for larger current revenues.

goods and services exceeded the official price ceiling. One might object that the “Mafia-like activities in the pre-Gorbachev era were, in fact, instances of ‘organized’ corruption involving mainly top state officials” (Varese 1994, p. 231) and, hence, should not be conflated with the Russian mafia of the post-Soviet era. “But consider” as Charles Tilly (1985, p. 171) has stated, “the definition of a racketeer as someone who creates a threat and then charges for its reduction.”<sup>11</sup> Governments’ provision of protection, by this standard, often qualifies as racketeering. To the extent that the threats against which a given government protects its citizens are imaginary or are consequences of its own activities, the government has organized a protection racket.<sup>12</sup> Therefore, to the extent that state officials use coercion to create shortages, and then accept black market prices to reduce such shortages in the form of informal economy exchanges, which had been created to engage in public predation of its citizenry in the first place, amounts to an incarnation of the Mafia in the apparatus of the state.

Without underemphasizing the pervasiveness of Mafia-like private predation during the privatization of the Russian economy, an important political lesson can be drawn from the Russian experiment with privatization. The conditions of the protective state require a credible commitment to binding constraints on political discretion. “Thus, increasing constraints on state agents may bolster the capacity of the state to protect property” (Frye 2004, p. 464). If such conditions are not established *before* privatization, then the state’s capacity to finance and deliver the conditions consistent with the establishment of a market economy (i.e., the productive state) will be thwarted by political competition to preserve the status quo, namely to protect the rents derived from political privilege held by special interest groups.

### 3.2 Property rights and Italian unification

Since the political unification of Sicily with the Italian peninsula in the 19th century, political economists and historians have inquired into the conditions that enabled private predation in the former. As early as 1876, two Tuscan aristocrats, Leopoldo Franchetti and Sidney Sonnino (1877 [1974]), conducted an inquiry into the nature and causes of social disorder that had emerged in Sicily, subsequently published in a two-part report, *Inchiesta in Sicilia*.<sup>13</sup> Since then, political economists and historians have continued to analyze the

<sup>11</sup> Gambetta (1993, p. 28) argues similarly that the Mafia’s practice is to offer protection in return for withdrawing threats of extortion.

<sup>12</sup> The same point is made by St. Augustine (1887, p. 66) in *The City of God*, in which he writes the following:

Justice being taken away, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea he answered with bold pride, ‘What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor’.

<sup>13</sup> The report combines the separate accounts of Franchetti, entitled *Condizioni politiche e amministrative della Sicilia* (“Political and administrative conditions of Sicily”) and Sonnino, entitled *I contadini in Sicilia* (“The peasants in Sicily”). All translations for this paper were provided by Rosolino Candela.

impact of Italian unification on social order in Sicily during the 19th century (Mack Smith 1968; Sabetti 1984 [2002]; Davis 1988; Cancila 1992; Riall 1992, 1998, 2003; Canciullo 2002).

According to Franchetti, the abolition of feudalism Sicily in 1812 enabled private predation since the privatization of feudal estates (*latifondi*) occurred without the state achieving a monopoly on force. As Franchetti (1877 [1974], p. 91) puts it, “the organization of violence in this way became more democratic”, whereby the abolition of baronial privileges “made violence an institution accessible to every class” and enabled the emergence of the organized crime. Taking Franchetti’s account as given, a whole literature has arisen to explain the emergence of the Sicilian Mafia as an extra-legal mechanism for property-rights enforcement (Catanzaro 1988; Gambetta 1993; Bandiera 2003; Dickie 2004; Buonanno et al. 2015; Dimico et al. 2017).

To the extent that organized crime emerges to fill a power vacuum left by the want of state enforcement of property rights, tracing the origins of organized crime inherently is linked to questions regarding the fundamental causes of state capacity. Though not directly related to the literature on state capacity, many of the arguments put forth by historians explain the lack of state enforcement of property rights in those terms. For example, both Mack Smith (1968, p. 364) and Riall (1998, p. 35, 2003, p. 29) have argued that the state’s incapacity to enforce legislation during its economic and political transition is explained by a lack of financial resources effectively to train a bureaucracy that could implement public policy.<sup>14</sup> If the demand for private protection arose to enforce property rights and such a demand was met by the Sicilian Mafia, a lack of state capacity is only a *proximate* cause of its emergence. From a constitutional perspective, the lack of state capacity is explained *fundamentally* by a failure to credibly constrain state actors from exercising their own political discretion in the enforcement of rules *prior* to their implementation. If political discretion is enabled, the productive state will degenerate into the predatory state. That is because political discretion, by its very nature, constitutes public predation, since the state’s transfer of property rights, intended to benefit one party, cannot occur without simultaneously confiscating another party’s resources. As a result, if non-state actors perceive that the legal system is becoming less impartial, they will avoid the state as a means of adjudicating disputes over the assignment of property rights and increasingly utilize extra-legal means of adjudicating contractual disputes, thus increasing the demand for organized crime to protect those rights (Barzel 2002, p. 177).

How does all of the foregoing relate to Sicily’s political unification with Italy? As we discussed in Sect. 2, the prevailing paradigm through which arguments about state capacity are filtered is one of describing the initial conditions, or lack thereof, required to shackle Leviathan; that is no less the case for understanding the social order that existed in 19<sup>th</sup> century Sicily. For example, in his important and insightful work, Daniel Ziblatt (2004, 2006) compares the unification of Germany with that of Italy. Both Germany and Italy were unified around a nucleus state, Prussia and Piedmont, respectively, and in both cases political leaders preferred to pursue unification in a federalist fashion<sup>15</sup> (Ziblatt 2004, p. 73). However, Ziblatt (2006, p. 80; original emphasis) argues that the unitary path that

<sup>14</sup> Interestingly enough, in *The Politics of Bureaucracy* Gordon Tullock (1965, p. 68) uses the Kingdom of the Two Sicilies as an example of ineffective bureaucratic administration: “Governments can follow inefficient policies for very long periods of time without being eliminated. The Kingdom of the Two Sicilies, for example, seems to have been governed atrociously for practically the entire period of its existence”.

<sup>15</sup> For more detail on Italy, see Sabetti (1982).

characterized Italy's unification resulted from the fact that “before national unification, the states Piedmont inherited possessed limited institutional capacity to do the work of modern governance”. If the political “subunits of a potential federation are patrimonial states lacking constitutions, parliaments, and rationalized systems of administration, negotiation usually breaks down and the prospects of self-governance after state formation are limited, leading the way to unitary political institutions. When annexed, these states lack basic governance capacity vis-à-vis their own societies” (Ziblatt 2004, p. 78). Therefore, “it was only Piedmont that had the *state capacity* to carry out the unification of Italy” (Ziblatt 2006, p. 72; emphasis in original).

Our point here is not to challenge the logic of Ziblatt's claim, as it is indeed valid. Rather, it is to illustrate our broader point regarding the role of initial conditions in fostering state capacity. If our analysis begins after 1815, when Sicily already was being absorbed into the Kingdom of the Two Sicilies, it is not incorrect to argue that it lacked the prerequisites for state capacity, namely credible commitments to establish parliamentary institutions and constitutional constraints limiting the scope of political discretion.

However, by taking 1815 as the initial condition from which to describe the impact of Italy's political unification on Sicily, we overlook the fact that, *prior to 1815*, a parliamentary tradition had long existed in Sicily. An extensive analysis of the historical and institutional detail of feudal Sicily is beyond the scope of this paper. Suffice it to say, however, the origins of Sicily's parliamentary institutions go back to Norman colonization, when Sicily's first parliament had been established in Palermo in 1130 by King Roger II (Montigore 1749, p. 24). Like all medieval parliaments, it was established for the purpose of obtaining consent for taxation (Koenigsberger 1951, p. 149). In exchange, Sicilian barons received “political property rights” not only to vote on taxation (*donativi*), but also the right to administer justice and governance (*mero e misto imperio*) over their respective *latifundi*, the ownership from which they derived income in exchange for protecting the peasantry residing on their feudal lands. That constitutional exchange governing the bundled nature of economic property rights and political jurisdiction would continue into the era of Hohenstaufen, Angevin, Aragonese and, later, Spanish and Neapolitan Bourbon rule until 1806, after which time Sicily underwent British occupation during the Napoleonic Wars (see Roselli 1956 [2008]).

However, the constitutional framework of feudal Sicily was by no means static or without contestation from the Crown. Although the vast majority of landholdings in Sicily were held as *latifondi*, feudalism was not the only property rights arrangement; private property arrangements coincided with feudalism even before 1812. First, with the coronation of King Frederick III of Sicily in 1296, a new set of rules was created that changed the ownership rights of Sicilian property. Prior to his reign, royal law prohibited the alienation of *latifondi* by Sicilian aristocrats. As stated in Title V, Chapter 57, in the Third Book of *Liber Augustalis*, also known as the Constitutions of Melfi (Powell 1231 [1971], p. 108; emphasis in original), “[b]y this edictal law, which will be perpetually valid, we forbid all the *fideles* of our kingdom, counts, barons, knights, or any other person or cleric to dare to transfer property.” However, a major institutional shift in the rules of the game occurred with establishment of the *Lex Volentes* (Epstein 1992, p. 165; emphasis in original; see also Backman 1995, p. 167):

The de facto liberalization of the feudal land market originated with the law *Volentes*, promulgated by Federico III in 1296, which legalized the sale of whole fiefs to individuals of ‘equal or greater dignity’ than the seller. The actual effect of this law, - particularly from the mid-fourteenth century, and increasingly during the fifteenth

– was to accelerate the circulation and fragmentation of ‘feudal’ land, at first only among the aristocracy, but also increasingly among urban nobility, merchants, and high government officials.

The result of the *Lex Volentes* was that baronial titles and the privileges that went with such titles, including voting rights in Parliament, were owned not by virtue of heredity, but by virtue of purchase.

However, both baronial political privileges as well as the *Lex Volentes* increasingly would become contested once the Crown in Sicily had shifted to the Neapolitan Bourbons, in which King Ferdinand IV of Naples also became King Ferdinand III of Sicily in 1759. In effect, though under different governments, the Kingdom of Naples and the Kingdom of Sicily underwent a regal union. Thereafter, a policy of centralization was initiated by the Viceroy of Sicily, Domenico Carraciolo, appointed by Naples in 1781. Carraciolo initiated a policy of attenuating the *Lex Volentes* as well as the baronial prerogative of *mero e misto imperio* to erode baronial power in Sicily. With their political rents in jeopardy, Sicily’s barons seized the opportunity to abolish feudalism once the island had become shielded from Neapolitan rule by the British. Those events culminated in the Constitution of 1812, by which the Sicilian Parliament abolished feudalism and divested itself of Neapolitan rule. In effect, it had exchanged away by constitutional reform the very baronial privileges it had obtained from the Crown for the ability to alienate their *latifundi*, in effect “perfecting” the long process towards the evolution of private property that had begun with the establishment of the *Lex Volentes*. The unintended effect of constitutional bargains in Sicily that had begun in Norman times was that the Sicilian Parliament institutionalized a set of constraints against political privileges, for which it had been designed to protect in the first place. However, with the end of the British occupation of Sicily, the “doorstep conditions” of state capacity, which had evolved in the previous seven centuries, would be eroded in the process of Italian political unification.

In 1815, the Congress of Vienna reconfigured the political borders of the Italian peninsula in the aftermath of the Napoleonic Wars. Sicily was united with Italy south of Rome as the Kingdom of the Two Sicilies, with its capital based in Naples. King Ferdinand I of the Bourbon dynasty was crowned its first monarch.<sup>16</sup> After 1815, severed from a decentralized feudal political tradition, the Sicilian administration and bureaucracy would embrace a French-Napoleonic political tradition of centralization. By abolishing the Sicilian parliament as well as the Constitution of 1812, which had stipulated the elimination of feudalism and the establishment of exchangeable private property rights over feudal lands, the Kingdom of the Two Sicilies had rejected any credible commitment to upholding Sicilian institutions as a constraint against political discretion.

Moreover, Sicily was to undergo a complete fusion into absolutist rule with the Neapolitan Bourbons and later political centralization under the Kingdom of Piedmont. After 1816, Sicily would be divided into 23 districts and seven provinces headed by non-elected intendants sent from Naples (Riall 1998, p. 32; Sabetti 1984 [2002], p. 57; Mack Smith 1968, p. 353). As Lucy Riall (1998, p. 25) states, “Bourbon reformers had two related objectives: to undermine the economic and political power of the Sicilian barons, and to replace them with the rule of a single, centralized administrative authority based in Naples”. The means by which the Bourbons would achieve these objectives was through land reform:

<sup>16</sup> King Ferdinand I previously had been Ferdinand IV of Naples and Ferdinand III of Sicily (Mack Smith 1968, p. 352).

One of the original intentions of the Bourbon programme of land reform had been to improve the economy of the *latifondo* by ending the concentration of land in very few hands. The division of common land was meant to create a new class of smallholders, thereby solving the problem of absenteeism, offering the rural poor a stake in improving land, and, it was hoped, providing a new source of support for the Bourbon government (Riall 1998, p. 49; emphasis in original).

The fundamental problem with land reform was that it opened the door to political discretion over the redistribution of property rights. Yet, by failing to credibly commit to institutional constraints that would limit public predation, specifically by abolishing Sicilian parliamentary institutions, the resulting uncertainty over the assignment and enforcement of property rights by the state enabled private predation and gave rise to the Sicilian Mafia. Italy's lack of state capacity and inability to enforce private property rights is not explained by the abolition of feudalism and the subsequent privatization of feudal estates. Rather, its incapacity to govern was a *byproduct* of the political unification process itself, which had failed to institutionalize a set of credible constraints that would prevent the state from intervening in the exchange of private property rights.

At the risk of slipping into the very critique we are illustrating, we are *not* arguing that Sicily had been endowed fully with the prerequisites required to constrain public predation, deliver state capacity, and facilitate economic development. As Barzel (2002, p. 136) would argue, even a “dictatorship can evolve into a rule-of-law state, but the process seems exceedingly slow”, requiring time for the constitutional process to unfold. Rather, the lesson we are trying to draw is that conflating a *description of the conditions* of economic development with *explaining the process* of economic development overlooks not only the crucial element of time, but also human agency, necessary for the construction of rules essential to empowering the protective state, enabling the productive state, and constraining the predatory state.

#### 4 Property, progress and prosperity: Lessons and implications

The lessons from transitional political economy, as illustrated by the cases of Russia and Sicily, have illustrated that well-intended attempts to reform the economy seemed to have done more harm than good since such reforms had been initiated through political discretion, rather than a prior credible commitment to establishing political rules that minimize political discretion. Such lessons, however, have three broader implications for the long process of economic development, not only with regard to public predation and state capacity, but also for the scope of public administration (Boettke 2018).

First, by tying the hands of political discretion and, hence, the state's ability to engage in public predation, is the implication here that we are justifying the prevailing status quo and that the role of public administration is to “do nothing” to remove the stumbling blocks of economic development, such as the existence of political privilege? Not at all. First, we must recognize that the process of economic development is fundamentally one of institutional transition. Any transition implies a concentrated cost imposed upon the current beneficiaries of the existing system, the benefits of which are dispersed across the population (Buchanan and Tullock 1968). Attempts to change the rules of the game through political discretion will only incite rent seeking, generating greater dissipation of wealth than if the transfer had not been initiated (Tollison and Wagner 1991). Moreover, even if economic and political reform are in the public interest of society as a whole, the transaction costs of



such reform, both in terms of organizing the masses of the population and “buying out” the rents accessed by well-organized interest groups, may be too high relative to the potential welfare gains dispersed throughout society, the end result being a transitional gains trap (Tullock 1975; see also Holcombe 2018). It is obvious enough, then, that economic development cannot take place if the state is an instrument of public predation, namely transferring resources from one party to another exercising its discretion. The inherent paradox of using political discretion to abolish legal privilege is that it cannot occur without simultaneously creating another legal privilege, since political discretion, by its very nature, intends to benefit one party at the expense of another.

Second, where does that leave us in terms of the state’s role regarding violence and state capacity? If, as Henry Sumner Maine (1861, p. 170; emphasis in original) has famously stated that if “the movement of the progressive societies has hitherto been a movement *from Status to Contract*”, then economic development will materialize through the establishment of institutional conditions that do not abolish legal privileges by force, but erode the rents to existing legal privileges through the market process (Tollison and Wagner 1991, p. 69, fn. 10; Boettke and Leeson 2003, p. 36). That process proceeds by way of the gradual accumulation and institutionalization of the rule of law, which in turn yields generalized increasing returns to the scope of productive entrepreneurial activity. The byproduct of such generalized increasing returns to commercial activity is not only to expand the capacities of states to raise revenue and finance the provision of public goods from a larger base of wealth; it also has the second-order effect of increasing the cost of private predation, which in turn reinforces the state’s capacity to govern. The ironic lesson that we can draw from the long process of economic development is that societies with the greatest state capacity tend to be those that have accumulated the greatest capacity for political restraint.

Third, what is the direction of causality between state capacity and economic performance? We have argued that the political constraints on public predation is a *fundamental* prerequisite for *both* state capacity and economic performance. However, an alternative scenario, suggested by Piano (2019), stipulates that political constraints on public predation are endogenous to increases in the productivity of the economy, such as from a positive technological shock, changes in factor prices, or the opening of a new market.

The last observation is an important alternative hypothesis that must be answered empirically; it raises an important issue that goes back to our initial point regarding the difference between *explaining* and *describing* the conditions of state capacity in Sect. 2. A technological shock or the opening of a new market may generate increases in state capacity, which in turn generate increases in economic productivity. However, that argument presumes that state capacity is a response to exogenous conditions, and that individuals do not play a role in generating those conditions. State capacity is then collapsed into describing a set of initial conditions, rather than explaining how or why political constraints, required for state capacity, emerged at a particular place and time. Technological shocks, or other economic changes, always are endogenous to entrepreneurial discovery in response to *expected* profit and loss. Taking Mises’s lesson regarding economic calculation, an “exogenous” increase in economic productivity implies that entrepreneurs were able to sort from among various production techniques that which was economically efficient (Mises 1949 [1966], pp. 207–208). The ability to calculate economically not only implies the existence of context-specific knowledge that emerges only through market exchange within a given set property rights; it implies in turn that political exchange over a set of rules that exclude political discretion from the market process has taken place.

None of the foregoing implies that property rights ever are perfectly defined or enforced, or that state capacity requires perfect political constraints; both markets and states would be irrelevant in either case. The difference between the productive state and predatory state never is one of kind, but of degree (Vahabi 2016a). Though the problem of taming Leviathan has yet to be solved, if an answer can be found, then it will be identified through the process of constitutional exchange. “A general solution” to the problem of public predation, “if there is one, emerges as a result of a whole network of evolving exchanges, bargains, trades, side payments, agreements, contracts which, finally at some point, ceases to renew itself. At each stage in this evolution towards solution, there are *gains* to be made, there are exchanges possible, and this being true, the direction of movement is modified” (Buchanan 1964, p. 218; emphasis in original).

## 5 Conclusion

In this paper, we have attempted to reconceptualize and unbundle the relationship between public predation, state capacity and economic development from a constitutional perspective. In doing so, we have argued that answers to an inquiry regarding the nature and causes of state capacity do not reside in describing a set of initial conditions accidentally defined by history, geography, or culture. Such an approach is analogous to modelling the process of economic development as a problem of constrained maximization, one in which individual choices over time are excluded. Instead, we have proposed that unbundling the relationship between state capacity and economic development requires paying attention to the process by which political constraints emerged over time, and that such a process should be understood in terms of exchange, whereby individuals bargain over rules governing the distribution of political power.

In unbundling the relationship between state capacity and economic development, we have distinguished between the protective state, the productive state and the predatory state. To the extent that expansions in state capacity are consistent with economic development, this is because a credible commitment to a set of rules that constrain political discretion have been established. Such credible commitment is analogous to what Buchanan refers to as the protective state, whereas state capacity is analogous to the productive state. Therefore, from a constitutional perspective, state capacity is understood as a proximate cause of economic development. Fundamentally, economic development requires a protective state from which state capacity emerges as a byproduct. If, however, political constraints are not established to limit political discretion, then state capacity will degenerate from a means of delivering economic development to a means of predation.

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