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## State Capture and Collective Action

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**Abstract:** A promising approach to analyse the phenomena usually described as ‘state capture’ may be drawn from the literature on ‘institutions,’ ‘social orders,’ and the ‘collective action problem.’ These studies seem broader and more theoretically persuasive than the literature that confines itself to the notion of ‘state capture,’ and this is especially true in respect of the Balkans, in whose societies it is often hard to draw a fine line between the ‘captured’ state and its ‘captors.’ Seen through the lens of those strands of literature, the phenomena usually described as state capture appear to be more widespread than is currently assumed, as they also surface in advanced democracies, and behind them typically lie collective action problems, which prevent the public interest from imposing itself over special interests.

**Keywords:** state capture, collective action, social orders, institutions

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## Introduction

‘State capture’ is a powerful metaphor. But it might have attracted the attention of security scholars also because it evokes images of war. Enemies, or a city can be captured. The problem of this metaphor is that it evokes an event, and one which has either happened or not happened: the city has either been taken or has repulsed the siege, and the enemy general has either been taken prisoner or has fled.

I shall try to argue that this notion is less useful in understanding the problems of ill-governed societies than is often assumed unless it is approached through the lens of other strands of literature: those on ‘institutions’, ‘social orders’, and the ‘collective action problem’. I refer, more precisely, to the lines of research whose most well-known and oft-quoted contributions are, respectively, North (1991), Acemoglu et al. (2001), and Acemoglu and Robinson (2012 and 2019); North et al. (2009); Olson (1965 and 1982) and Ostrom (1990 and 2000).

In a word, the literature on institutions allows us to picture the intermediate causes of economic performance and their relationships with political development. The literature on social orders offers a theory on the logically subsequent question, namely, why do institutions that constrain growth – and often political and civil liberties too – persist? And the literature on the collective action problem assists us in addressing this question by formulating a theory on the reasons why special interests, advanced by minorities, may often prevail over the general interest or the common good. My main argument, in essence, is that it seems hard to understand the persistence of inefficient institutions, which are typically associated with an instance of state capture, without reference to those strands of literature; and that in this, a crucial role is played by the collective action problem, which limits non-elites’ ability to organize and thereby impose the general interest over special ones. In this perspective, in the conclusions, I shall also advance a separate hypothesis, which cannot be discussed here, that widespread poverty might be a desired – and not merely accidental or inevitable – consequence of state capture, in that it contributes to raising the obstacles to collective action.

To advance this argument, I shall first recall the main traits of the notion of state capture, as it was originally formulated, and the evolution of the subsequent literature (Section titled “State Capture”). Having briefly outlined the roots of my perplexities about that concept (“The Roots of My Criticism”), I shall then turn to the explicatory power of the literature on institutions, as it concerns both growth (“Institutions”) and political organization (“Bad Institutions, and the Link to Politics”). This leads to a discussion of the social orders into which institutions are rooted (“Social Orders”), and of the gap that often opens between formal institutions and actual ones (“The Subversion of the Formal Institutions”), which typically weakens the rule of law (“An Illustration: The Rule of Law”). On this basis, I turn to the conditions for the transition from a social order that entrenches inefficient institutions to a social order capable of sustaining efficient ones (“The Perils of

Transition”), and to the role that the collective action problem plays in this context (“The Collective Action Problem” and “Organised Minorities and Disorganised Majorities”).

## State Capture

The notion of state capture was introduced in 2000 by two studies published by Hellman and co-authors.<sup>1</sup> Both are more nuanced than that metaphor, of course, but they do employ fairly sharp distinctions.

They define ‘state capture’ as the efforts of firms to shape and influence the rules of the game of a society “through private payments to public officials”: in a word, the “purchase of laws and decrees by enterprises”.<sup>2</sup> Consequently, they focus on “the ways in which firms exert influence on the state”, and on how “powerful oligarchs who manipulate politicians, shape institutions, and control the media to advance and protect their own empires at the expense of the social interest.”<sup>3</sup>

They define the ‘capture economy’ as one in which “a relatively small share of firms has managed to capture public officials at various levels of the state to extract concentrated rents and to purchase individualized provision by the state of under-provided public goods.”<sup>4</sup> And they employ a neat taxonomy:

We distinguish between three types of relationships marked by different distributions of rents between the firm and the state – state capture, influence and administrative corruption. State capture is defined as *shaping the formation of the basic rules of the game* (i.e., laws, rules, decrees and regulations) through *illicit* and non-transparent private payments to public officials. Influence refers to the firm’s capacity to have an impact on the formation of the basic rules of the game *without* necessary recourse to *private* payments to public officials (as a result of such factors as firm size, ownership ties to the state and repeated interactions with state officials). Administrative corruption is defined as *private* payments to public officials to distort the prescribed *implementation* of official rules and policies.<sup>5</sup>

Hellman and co-authors do distinguish between “high capture economies” and “countries with more limited levels of state capture”.<sup>6</sup> But their (brief) discussion of the origins of state capture is binary: there either is state capture, or there is not.<sup>7</sup> They are also careful

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1 Hellman *et al.* 2000a and 2000b.

2 Hellman *et al.* 2000a, 3, 4.

3 Hellman *et al.* 2000b, 2.

4 *Ibid.*, 35.

5 *Ibid.*, 3.

6 *Ibid.*, 4.

7 *Ibid.*, 32–34.

to warn that their papers “does not formalize a conceptual model of the complex interaction between firms and the state.”<sup>8</sup> In the subsequent literature, however, this warning has arguably received less attention than it ought to have had.

This seminal contribution has spawned considerable literature, which has pursued several distinct lines of analysis. I shall limit myself to a brief account, selecting the contributions that seem most relevant from the perspective of the question I have formulated.

In part, a predecessor of the notion of state capture is that of *regulatory* capture, which describes a situation in which the public authority, in its capacity as regulator of economic activity, in particular, allows the interests of groups capable of influencing it to prevail over the public interest.<sup>9</sup> Research on this phenomenon has been enriched by the paradigm proposed by Hellman and co-authors, and led, in particular, to analyses of the correlations between the complexity of business regulation, the diffusion of corruption, and the quality of public goods. The results suggest that more elaborate regulation tends to be associated with higher barriers to entry in domestic markets, higher corruption, worse public goods.<sup>10</sup> Naturally, low administrative capacity may contribute to these outcomes, especially in developing countries.<sup>11</sup> The heart of the state capture thesis, however, is that the misuse of regulation is intended, and is primarily the result of the influence of special interests. In this perspective, the correlation between listed firms’ connections to politics and politicians and their market value has been studied, suggesting that political connections can explain a considerable fraction of a firm’s market value, especially in jurisdictions where the rule of law is comparatively weak.<sup>12</sup>

The writing of biased legislation, intended to advance special interests, is however distinct from the subversion of otherwise adequate laws: a phenomenon which is of greater interest in the perspective of my analysis, as I shall say below, and is of arguably greater importance in the countries of the Western Balkans, which have generally modelled wide segments of their legislation on the *acquis communautaire*. There, the effect of state capture must naturally take the form of the distortion of the written laws and regulations.

Moreover, empirical research suggests that a firm’s political connections may be valuable also in consolidated, rich, industrialized democracies: in Italy, for example, they have been shown to influence the lending decisions of banks controlled or influenced by the government or local authorities.<sup>13</sup> I shall return to this striking parallel in the next Section.

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8 Hellman *et al.* 2000b, 5.

9 Stigler 1971.

10 E.g., Djankov *et al.* 2002.

11 Harrison and Rodriguez-Clare 2010.

12 Fisman 2001; Faccio *et al.* 2006.

13 Cingano and Pinotti 2009.

Turning finally to the literature that has added to the concept of state capture, often drawing on the example of transition countries, that notion has been broadened beyond the role of firms and oligarchs, following an explicit suggestion of Hellman and co-authors.<sup>14</sup> The focus has thus shifted to the capture of public resources for private gain not by firms or economic elites but by politicians and public officials, who often, after the hiatus of the early 1990s, rebuilt the power of the state and its political institutions in such a way as to draw profit from them.<sup>15</sup> Research on both Moldova and Russia has highlighted the multifaceted roots of the power of the captors, among which several competing groups may often be identified.<sup>16</sup> Indeed, as transition countries generally are electoral democracies, also the compatibility between state capture and a degree of political competition has been examined, leading to the notion of a ‘competitive particularism’ that ultimately aims at the privileged access to public resources.<sup>17</sup>

### **The Roots of My Criticism: From the Periphery to the Centre**

The extension of the notion to the capture of public resources not by firms or economic elites but by politicians or public officials appears very useful. In the Balkans, for instance, where something describable as state capture has taken place, there seems to be no clear separation between the ‘captors’ – the economic elite, in the original framework – and the ‘captured’ politicians and public officials. In Kosovo, for example, both the economy and the political system fell under the tight control of a fairly homogenous elite, made up of groups comprising politicians, military and criminal leaders, and businessmen.<sup>18</sup>

Still, despite this extension, the notion of state capture remained a fairly binary one, focused more on the event – predation – than on the allocation of power that makes it possible. This is less true of the academic literature, admittedly, than of the approach of development organizations.<sup>19</sup> As the concept of state capture originates there, however, and is explicitly intended to assist development policy, the problem is worth highlighting: a binary approach might lead the observer to miss critical details if, conversely, the social phenomena distribute themselves in a continuum, that from the well-governed state gradually descends to the ‘captured state’.

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14 ‘Of course, firms are not the only organizations that can capture the state’: Hellman *et al.* 2000b, 3, footnote 3.

15 Grzymała-Busse 2007, 2008.

16 Respectively, Tudoroiu 2015, and Frye 2017.

17 Mungiu-Pippidi 2006.

18 This, at least, is the conclusion I draw in a book on this country, published in 2015.

19 Recent, and otherwise very interesting, research published by the World Bank (Fiebelkorn 2019) corroborates this impression.

My second remark is closely related and is best highlighted by this passage, taken from a text on contemporary capitalism published last October by Martin Wolf, the chief economics commentator at the *Financial Times*:

corporations are powerful entities able to exercise immense influence within society. [...] [W]ho makes these “rules of the game”? Well, we know quite well that a dominant influence is the power of money. In particular, the activities of companies, as lobbyists, funders of research and donors, play a decisive role in creating the rules of the political game. [...] Corporations are not players of the game, playing according to rules set by others. They play the game according to rules they largely set themselves.<sup>20</sup>

If, as the seminal paper on state capture states, this notion “is defined as *shaping the formation of the basic rules of the game* (i.e. laws, rules, decrees and regulations) through *illicit* and non-transparent private payments to public officials”, then there is fairly little difference between phenomena usually associated with weak states and what now happens in some of the most advanced and sophisticated democracies. One might retort that Wolf is not arguing that corporations systematically make “*illicit* and non-transparent private payments to public officials” to shape the rules of the game in the direction they desire: this does signal a difference, but surely the degree of influence matters more for the performance of the economy and the health of democracy than the means by which it is acquired, especially when the latter hinges on often legalistic distinctions between campaign contributions, lobbying, and revolving doors, on the one hand, and outright bribery, on the other (which may often differ less on their substance than on the timing and specificity of the *quid pro quo*).

My third remark is that the literature on state capture has relatively little to say on the power of the captors, be they political or economic elites, which allows them to capture resources. The empirical analyses are deep and interesting but fail to erect a convincing theory as to the roots of the captors’ power. The question, in essence, is how can elites systematically get away with predation? What arms do they have to protect themselves from law enforcement or public anger, and how far can they go? In many of these studies, conversely, elites are actors that come on stage already fully armed.

In sum, the state capture literature is extremely valuable in understanding the signs and effects of the phenomena it considers, but to understand their causes and variations, one might wish to look also at literature that focuses more on social structures. And it is only by considering the deeper causes of state capture that one can relax that binary taxonomy – capture/no capture – into a more realistic continuum. The first step in this direction, I would suggest, is the literature on institutions.

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20 Wolf 2020.

## Institutions

Modern growth theory asserts that over the long run, per-capita growth depends on investment and innovation, which drive productivity growth. Investment and innovation are the proximate causes of growth, however, not its deeper determinants. As North and Thomas put it, they “are not causes of growth; they *are* growth.”<sup>21</sup> So, what causes growth? What leads some countries to invest and innovate more than others?

Four main answers have been given to these questions. Geography, and therefore climate, exposure to diseases, the endowment of natural resources, and proximity to transport routes; trade and integration in international markets; culture, religion, and beliefs; and ‘institutions’.

The latter hypothesis, advanced in 1973 by North and Thomas, was developed by a growing literature, which holds that the quality of an economy’s institutions is a first-order cause of its long-term growth and has a greater impact on cross-country differences in economic performance than either geography, trade integration, or cultural traditions.<sup>22</sup>

This literature moves from the observation that neoclassical economic theory rests on extreme implicit assumptions about the role of the state, which is deemed to control violence, enforce rights, protect competition, and more generally ensure that economic exchange is effectively frictionless. Questioning these assumptions has stimulated research on the institutions that govern exchange and production, and has led lately to broader theories on social orders and the state.

North defines institutions the framework within which political, social, and economic exchange occurs:

[i]nstitutions are the humanly devised constraints that structure human interaction. They are made up of formal constraints (e.g., rules, laws, constitutions), informal constraints (e.g., norms of behavior, conventions, self-imposed codes of conduct), and their enforcement characteristics. Together they define the incentive structure of societies and specifically economies.<sup>23</sup>

In essence, therefore, institutions are rules. Indeed, North calls them also the ‘rules of the game’ of society: the same metaphor later used by the seminal papers on state capture.<sup>24</sup>

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21 North and Thomas 1973, 2.

22 See, e.g., North 1991 and 1994; Acemoglu *et al.* 2001; North *et al.* 2009; Acemoglu and Robinson 2012 and 2019. Geography, trade integration, and cultural traditions do, of course, matter for development: the debate rather concerns their relative importance. Moreover, it is often difficult to draw a fine line between the notion of ‘culture’, as used in this literature, and that of social norms, or informal institutions.

23 North 1994, 360.

24 North 1991, 94; North 1994, 361.

But the notion is a composite one and focuses on the *actual* outcomes produced by rules. The first component of that notion is a polity's written laws, its 'formal institutions'. The second is a polity's unwritten rules, or social norms, usually defined its 'informal institutions'. The third is the manner in which formal and informal institutions interact and are *actually* enforced. For, as North writes, "[i]t is the admixture of formal rules, informal norms, and enforcement characteristics that shapes economic performance"<sup>25</sup>

In its simplest form, this theory conclusion is intuitive and can be traced back to Adam Smith's *Wealth of Nations*: if the right to property is not well-designed and effectively protected, if the contracts by which such rights are exchanged cannot predictably be enforced, and if the markets where such exchanges occur are not open to competition, there will be little incentive or opportunity to invest and innovate, resources will not be allocated to their most efficient use, markets will be smaller than they would otherwise be, and productivity and growth will remain below their potential. Inversely, societies whose economy is girded by institutions that effectively and predictably protect property rights, contracts, and competition are more likely to invest, innovate, and prosper.

### **Bad Institutions, and the Link to Politics**

If institutions are so vital for prosperity, however, why do inefficient ones – namely, ones that depress growth – emerge and persist? Culture, beliefs, and legal traditions certainly influence the shape of a society's institutions. But a more persuasive line of reasoning moves from the observation that institutions are the product of the collective choices of a polity, and that they determine not just the allocation of resources but also the distribution of wealth and power (which might here be defined, very simply, as the ability to do or obtain what one wants in opposition to the intentions of others).<sup>26</sup>

So, social groups holding political power will want to adopt or retain institutions that allow them to capture a disproportionate share of the resources and profits of an economy. Yet institutions of this kind are typically inefficient ones, such as regulations that allow firms to extract rents by limiting entry in the markets in which they are present. Consequently, in order to appropriate a larger share of wealth, those groups must organize the economy – namely, design its institutions – in such a way that the overall wealth produced is smaller than it could otherwise be. Other social groups will oppose this, whether because they wish to receive a larger share themselves or because they care about aggregate growth, and the conflict between these two sets of interests will be solved depending on their relative political strength, and not only on the merits of their respective ideas as to the design of the institutions.

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25 North 1994, 366.

26 Acemoglu and Robinson 2012.

The political power of each group is determined not just by their strength within the authorities, agencies, and organizations where *de jure* political power resides, and by the prerogatives of the latter, but also by the availability of material resources – such as money to advertise their views or to finance research supporting them – on which their *de facto* political power is based. The distribution of resources, in turn, depends on the institutions that organize the economy, namely the framework within which households and firms make economic decisions, and the government makes economic policy. Distinguishing between political and economic institutions, on the one hand, and between *de jure* and *de facto* political power, on the other, clarifies the picture. If the future design of a polity's economic institutions is being discussed, the extant political institutions and the extant distribution of resources will influence the outcome of the debate: in the absence of constraints to its (*de jure* and *de facto*) political power, the views of the dominant group or coalition will typically prevail, and the new economic institutions will reflect its preferences. Such institutions will determine the future performance of the economy and the future distribution of profits and resources: *ex hypothesi*, they will distribute to the elites a greater share than the previous economic institutions and will therefore increase also their *de facto* political power. The elites will then be able to use it to reshape the political institutions too, in such a way as to increase also their *de jure* political power and further limit the constraints to their economic dominance and *de facto* political power. So that at each round of the game, elites can extract ever-larger shares of profits and resources and further consolidate their political power. As North put it, “formal rules are created to serve the interests of those with the bargaining power to create new rules.”<sup>27</sup>

The parallels between this reconstruction and the notion of state capture are clear, incidentally. Better than that literature, the theories I just summarized explain how firms, or other elites, can – I quote Hellman and co-authors – “shape and influence the underlying rules of the game (i.e. legislation, laws, rules, and decrees) through private payments to public officials”, or how “powerful oligarchs who manipulate politicians, shape institutions, and control the media to advance and protect their own empires at the expense of the social interest.”<sup>28</sup>

The logic I just sketched, in fact, explains how the dominant coalition can perpetuate, at once, its own power and the ‘extractive’ economic and political institutions on which that power rests.<sup>29</sup> And as these institutions are typically inefficient – for elites cannot credibly commit to promoting open economic competition and a vibrant system of political accountability, for instance, if their economic and political power ultimately depends on weakening them – the misallocation of the resources will also be perpetuated, to the detriment of the public interest (which might give rise to tensions that are equally of interest from the viewpoint of security studies).

27 North 1994, 361.

28 Respectively: Hellman *et al.* 2000a, 3, and Hellman *et al.* 2000b, 2.

29 Acemoglu and Robinson 2012, 335 *passim*.

While it is economic institutions that directly influence economic outcomes, therefore, the long-term performance of an economy may depend to a greater extent on the quality of its political institutions, whose openness is crucial. If they effectively constrain the elite's ability to reshape the economic institutions to its own advantage and ensure that that power is contestable and the political system is competitive and pluralistic, the emergence of inefficient institutions, both economic and political, will be less likely.

## Social Orders

We saw how inefficient institutions could emerge and persist. But what shapes them? In 2009 North and his co-authors sought to answer this question. They set the main findings of institutional economics as the foundation for an ambitious attempt to explain the various social orders that history has produced and the links between a polity's social order and its institutions. And they move from the observation that the primary function of social orders is the control of violence (an idea, naturally, that shall resonate in security scholars).<sup>30</sup>

They distinguish between three categories of social orders: primitive societies of hunter-gatherers, limited-access social orders, and open-access ones. The limited-access order arose between ten and five thousand years ago, on the emergence of agriculture, and it gave a hierarchical organization to the larger and more specialized groups that cultivation and irrigation required. At that juncture, the violence which prevailed in primitive societies was ended by granting to their more powerful members special privileges, which secured rents drawn from the increased output of the economy: as such rents would have declined or disappeared had endemic violence returned, because the output would have fallen, the 'specialists in violence' to whom the rents were reserved could credibly commit to each other to restrain the use of force.<sup>31</sup> This social order has dominated recorded human history and remains prevalent today, and is therefore also called the 'natural state.'<sup>32</sup> This social order organizes society through patronage networks, which guarantee to their adherents the protection of persons who hold military, political, economic, or religious power: the leaders of such networks make up the dominant coalition of society, tied together by a pact. What makes the pact possible and self-enforcing are such rents and the incentives they generate, without which violence would revert to being a rational choice. Rents, in turn, are created and protected by limiting access to valuable assets, resources, or activities (e.g., land, trade, education, voting), which are reserved for the elites, and by limiting ordinary citizens' ability to form organizations that could magnify their power and opportunities (e.g., militias, political parties, trade unions, joint-stock companies).

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30 North *et al.* 2009, 13–18.

31 *Ibid.*, 18–21, and 30 *passim*.

32 *Ibid.*, 31.

Constraining political and economic competition is a necessary trait of the natural state because rents must be permanent if the order is to be maintained and access must be limited in both spheres.<sup>33</sup> Equally, the stability of this social order requires that the distribution of economic assets conform to, and support, the distribution of political and military power. This permits a ‘double balance’ to establish itself: a balance of privileges and rents among the military, political, economic, and other components of each of the factions that compose the dominant coalition, and a mirroring balance among such factions.<sup>34</sup>

By virtue of these features, the natural state is a stable social order. But it is not static, for violence can erupt in the form of revolutions of the excluded, insurgencies of new elites, or conflicts within the dominant coalition about the distribution of rents: “[t]he dominant coalition holds together only if the balance of economic and political interests can be maintained.”<sup>35</sup> Natural states can thus be divided into fragile, basic, or mature ones, each displaying different degrees of economic efficiency and political stability. The spectrum is very broad and encompasses Athens as well as Sparta and the European *ancien régimes* as well as the vast majority of contemporary states. Outwardly, the differences among these examples outweigh their similarities: but in each case, the social order rests on limits to competition, stable rents, patronage networks, and a pact among the members of the dominant coalition to restrain violence and share rents. Such coalitions may differ equally but must include at least the military, political, and economic elites. And the pacts that tie them together can be either informal or covert, as in tribal societies or contemporary imperfect democracies, or explicit and formalized, as in Renaissance principalities.

The relative fragility of the natural state is another feature that might be of interest to security studies, incidentally, as domestic instability can have dangerous external repercussions.

Unlike the natural state, the open-access social order grants its citizens equal rights, protected by the rule of law, and allows them to enter political and economic competition as well as to form organizations, through which they can coordinate the pursuit of their aims and thereby amplify their power and influence: privileges are not protected by the state, and over time competition erodes those rents that arise out of political or economic success, in a Schumpeterian process of creative destruction. Just as constraints to economic and political competition mutually reinforce each other in the natural state, so too in these societies, open access to politics sustains open access to the economy, and vice versa. Hence the importance of the institutions that ensure that both systems remain open, such as the constitutional checks and balances, the judiciary, and more generally, the rule of law.<sup>36</sup>

33 Just as ‘extractive’ political and economic institutions mutually reinforce each other, in the account offered by Acemoglu and Robinson 2012, 335–67.

34 North *et al.* 2009, 20, 42, and 259.

35 *Ibid.*, 50.

36 North *et al.* 2009, 113, 138.

As competition and impersonally enforced rights organize social cooperation, open-access social orders are more inclusive and efficient than the natural state and favour both economic and political development. They are also stable, if the exercise of violence is centralized and placed under political control, because the political authorities that hold the monopoly over the legitimate use of force are bound by the rule of law; the political and economic power of the elites that influence such authorities is exposed to competition and therefore contestable; and the possibility of coercing citizens beyond the established rules is constrained by the existence of freely formed political, economic, or other organizations, which can coordinate their reaction against the curtailment of their rights.

This social order emerged during the XIX century and did not expand much beyond Europe and a few of its older colonies. North and his co-authors estimate that today only perhaps twenty-five nations can be regarded as open-access societies, hosting about 15 per cent of the world's population.<sup>37</sup>

An attempt to explain the logic of 'recorded human history' and organize it into a two-order taxonomy can seem perplexing and might appear to have the same pitfalls of the binary approach induced by the state-capture metaphor. This theory can easily be nuanced, nonetheless, and not just by distinguishing among fragile, basic, and mature natural states but also because it allows one to focus on the logic underlying each social order. And at its core lies a powerful and coherent synthesis of well-established results reached by economics and political science, which offers an especially persuasive framework for understanding the functioning of institutions in transition countries or young democracies. Indeed, what is perhaps most interesting is the transition from the natural state, in its various forms, to the open-access social order, which is a very common condition: most former communist countries remain in that transition phase, and other ones too.<sup>38</sup> I shall return to the question of transition after having discussed another decisive aspect of the relationships between a polity's social order and its institutions.

## The Subversion of the Formal Institutions

Both social orders are stable and self-sustaining. But the two equilibria are radically different. The open-access one is based on the centralization of the use of force, limited government, open competition, and equal rights, access to which is protected by the rule of law. The limited-access one guarantees stability through rents and patronage, conversely, buttressed by limits to competition. Two consequences particularly relevant for our discussion follow.

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37 North *et al.* 2009, 13, 112.

38 In a 2018 book on Italy's political economy I argued that the country has not yet completed its transition, for instance.

The first is that the same institutions function differently in the two social orders.<sup>39</sup> This phenomenon can be observed most starkly in those transition countries, such as those of the Balkans, that have adopted formal institutions mirroring those of well-governed democracies. The reason is that such institutions have typically been subverted: through uneven enforcement and the influence of the pre-existing informal norms, they have been altered and adapted to the logic of the limited-access social order. A sizeable gap may thus exist between a polity's formal, written institutions and its *actual*, really existing ones. In natural states, the judiciary can hardly be impartial, in particular, for its logic implies both a structural bias in favour of the dominant coalition and its clients and the use of law enforcement as an instrument to protect rents and strengthen patronage. Likewise, cartels are often formally proscribed, but *de facto* tolerated: because competition would dissolve the rents on which the natural state is based. Equally, in natural states, government services and public goods are typically distributed according to who the recipients are, or to whom they are connected, for allocating them according to objective criteria would run counter to the ordering logic of this social order: indeed, empirical research suggests that natural states "cannot issue something as seemingly simple as a driver's license on an impersonal basis."<sup>40</sup> Besides creating fertile ground for extracting rents through patronage and corruption, this increases the incentive for ordinary citizens to join those hierarchical patron-client networks, through which elites extend their control over society, limit electoral competition, and thereby also reduce their own political accountability.

Such mutual influences also suggest that a polity's set of institutions should be viewed as a *system* in which the malfunctioning of one part affects the others. In natural states, in particular, elections typically do not guarantee "citizen control of governments and officials" because political competition is generally restricted, and the legislature is often unable to serve as a "check on the executive."<sup>41</sup> This confirms the inherent limitations of analyses that concentrate on formal institutions alone, or, as already noted, of reform programmes that rely predominantly on constitutional engineering or on the precise design of 'micro' institutions: it implies that the focus of attention, for both descriptive and normative purposes, should rather be on the concrete performance of those horizontal 'macro' institutions that influence the functioning of the governance system taken as a whole, such as the rule of law, the constitutional checks and balances, and the other sources of constraints on the executive power and of political accountability, such as the freedom of the media and citizens' capacity to act collectively.

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39 North *et al.* 2009, 137–40.

40 *Ibid.*, 11.

41 *Ibid.*, 265, 267.

## An Illustration: The Rule of Law

Before I turn to the second consequence, which concerns the transition from one social order to another, a brief illustration might be useful. In natural states, as we saw, elites can directly determine both the design of their polity's laws (its formal institutions) and the manner in which they are enforced, through their control of the public administration, and over time this will tend to influence also the evolution of the prevailing social norms (the informal institutions).

To picture this, imagine an elite that wishes to engage in corruption but wants to prevent non-elites from doing so (in order to avoid a destructive breakdown in the efficiency of the public administration). This elite will enact laws prohibiting and sanctioning corruption, but will make sure that the law enforcement system prosecutes only non-elite corruption and systematically close their eyes before elite corruption instead. In such a polity, a wide gap will soon open between its formal institutions, which proscribe corruption, and its actual, real ones, which allow elites to engage in it: and the cause of that gap will be the 'enforcement characteristics' of the written laws, which distort them. Over time, however, the mounting effects of this form of corruption – usually known as 'state capture', precisely, or as 'grand corruption' – will show and will raise social tolerance for corruption in general, weakening any pre-existing social norms that stigmatized it.

One way of calling the gap between a polity's formal institutions and its real ones is 'the rule of law'. For if the rule of law is strict, the gap will be narrow, as laws tend to be properly enforced; if it is weak, it will be wide. And as in contemporary Europe – and especially within the EU – states tend to have fairly adequate written laws, what chiefly distinguishes their *actual* institutions is the manner in which laws are *actually* enforced: to put it differently, in those societies, elites will be able to engage in predation only if they can break the formal rules with impunity.

This is why the rule of law has been defined as what "stops the few from stealing from the many,"<sup>42</sup> and this is also why I argued that the obvious question, where predation is endemic, is why the many tolerate the stealing of the few.

## The Perils of Transition, and the Conditions for It

The second consequence, of particular interest from the viewpoint of security studies, is that efforts to improve the institutions of limited-access societies tend to contradict the logic upon which the social order is based.<sup>43</sup> The dominant coalition will resist reforms that promote economic competition or strengthen the independence of the judiciary, for instance, because they threaten their power and rents. But if such reforms succeed, the

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42 Hoff and Stiglitz 2008, 1474.

43 North *et al.* 2009, 148 *passim*, 264–5.

incentives that had originally allowed society to contain violence would dissolve together with those rents.

Rents, as already noted, are the primary condition of stability in the natural state, for they make the pact among elites self-enforcing and stable: so even though reform would expand their economic and political opportunities, ordinary citizens too might withhold their support – as Machiavelli already noted<sup>44</sup> – because institutional change could threaten the peace and their own security. It follows that in the natural state, accepting clientelism and corruption is often a rational strategy for ordinary citizens, which need not be explained by – often sweeping – claims about culture or traditions. If reform is unviable, and if without reform, citizenship rights are largely empty, citizens will exchange them for the favours that clientelism can guarantee: if a public good such as health or education services tends to be arbitrarily distributed, for example, it can be individually rational for ordinary citizens to pledge their loyalty to a faction of the elite in return for the particularistic provision of that service (which becomes, in effect, a private good), rather than to engage in a costly fight to enforce one's right to one's fair share of the public good.

Institutional change is an endogenous process, therefore, and deep, epochal reforms will hardly be feasible or effective without a parallel transition from a limited-access social order to an open-access one. For if a polity remains on the same equilibrium the dominant coalition will either prevent the adoption of new formal institutions, or subvert and bend them to the logic of the extant equilibrium.

According to this literature, transition is an endogenous process, slow and non-linear: progress is neither necessary nor inevitable, and advances can always be reversed. Acemoglu and Robinson observe that transitions occurred when pluralistic coalitions of non-elites were able to exploit 'critical junctures', that is, historical accidents which opened the opportunity to both constrain the power of the existing elite, or overturn it, and establish more inclusive political institutions, under whose aegis more inclusive economic institutions also emerged, which in turn strengthened political pluralism in a self-reinforcing virtuous circle.<sup>45</sup> To set off this process, according to this reading, the 'empowerment' of a sufficiently broad segment of non-elite social forces is crucial.

Taking a different perspective, North and his co-authors posit that transition must be compatible with the solution given by the natural state to the problem of violence, which is to pacify elites through rents. Hence transition is possible only if it proceeds through steps that are consistent with the immediate interests of the elite – which would otherwise

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44 In the *Prince* (VI) he argues that changing 'orders' – *ordini* or *costituzioni* in the original – is "the most difficult thing of all" by reason both of the opposition of those who profit from the old ones, and of the timidity of those who would benefit from change but are uncertain about the outcome (see also *Discourses* I.2). Likewise, the pre-eminence given by North to the question of violence is strikingly reminiscent of Machiavelli's conclusion that only well-armed innovators succeed in changing 'orders'.

45 Acemoglu and Robinson 2012, 455–62.

prevent them or react violently – but are at the same time capable of opening up access to political and economic competition. And it will be sustainable only if violence can be constrained by other means than rents.

Natural states become ripe for the transition when they can sustain ‘impersonal exchange’.<sup>46</sup> The natural state is based on ‘personal exchange’, in which the parties – two members of the elite, or a patron and a client – have a long-term relationship: in such societies what facilitates the enforcement of contracts, deters cheating, and fosters trust and cooperation is the fact that dealings are repeated, which allows the cheated party to retaliate. Impersonal exchange instead occurs outside of the restricted circle of the persons with whom the actor deals repeatedly, and by consequence, it greatly increases opportunities, market size, specialization, and social welfare. But the impersonal exchange is possible only if a credible form of third-party enforcement exists that can punish and deter cheating: what makes it viable is primarily the presence of courts, therefore, backed by the Weberian monopoly on violence and capable of protecting property rights and enforcing contracts. Such courts would typically first be available to elites only. But once the impersonal exchange is possible among them, new entrants can be co-opted within their ranks, and transition can begin.

Transition does not necessarily follow from reaching such a threshold, however, for elites comprise a small segment of the population and face a dilemma. Co-opting new members or classes of citizens makes the social order more resilient and improves economic outcomes through economies of scale and specialization, but it can dilute the rents and especially the *de jure* and *de facto* political power of the original members. So transition begins when the dominant coalition judges that the benefits of enlargement outweigh the effects of dilution or underestimates the latter: then a greater proportion of the population become citizens with equal rights, and the opening of the social order gathers strength.<sup>47</sup>

The benefit of enlargement might be the prevention of a revolution. Acemoglu and Robinson note that democracy is typically granted by elites when ordinary citizens can credibly threaten an uprising and would therefore not be appeased by concessions – such as the larger provision of public goods – which, absent radical institutional change, can be revoked once the threat of revolution has abated. The establishment of democracy, the rule of law, and effective constraints on the executive power conversely allows the extant elites – and future ones – to credibly commit to respect the newly granted political and civic rights, and thus avert the revolution.

So, the capacity of non-elites to organize themselves – in political parties, for instance, including for the purpose of credibly threatening to revolt – plays a central role in the

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46 North *et al.* 2009, 25–7, 148 *passim*.

47 North *et al.* 2009, 190 *passim*.

transition process delineated by North and his co-authors, and closely recalls the emphasis placed by Acemoglu and Robinson on the ‘empowerment’ of non-elites.<sup>48</sup>

## The Collective Action Problem

The main question that remains to be addressed, therefore, is what prevents citizens from collectively advancing their interest in opening up the social order so as to give themselves better institutions and raise both their public dignity and living standards.

Aristotle’s *Politics* opens thus:

[w]e see that every city-state is a community of some sort, and that every community is established for the sake of some good (for everyone performs every action for the sake of what he takes to be good).

If we read ‘good’ as ‘common good’, however, and assume that everyone pursues their own self-interest and acts rationally, this passage is vitiated by a fallacy of composition because the common interest of the group may not coincide with the private interest of its members. Although the establishment of the city-state would benefit all its prospective citizens, in fact, the rational pursuit of their self-interest will nevertheless prevent each of them from incurring costs to contribute to its establishment: for precisely because the *polis* is a public good, whose benefits would be enjoyed by all irrespective of whether or not they have contributed, each prospective citizen would have an interest to ‘free ride’ on the contributions of others: and it can readily be shown that in such circumstances no rational person would contribute. More precisely, the author who coined that expression predicts that

[u]nless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, *rational, self-interested individuals will not act to achieve their common or group interests.*<sup>49</sup>

Olson’s logic is as compelling as it is unsettling, as it implies that societies may be locked into countless sub-optimal equilibria due to the impossibility of reconciling individual self-interested rationality with the common good.

And yet large *poleis* did emerge in Greece, and collective action leading to the creation or preservation of public goods is often observed beyond the narrow confines of Olson’s ‘zero contribution’ prediction. The main reasons are two, according to the vast empirical and theoretical literature it spawned.<sup>50</sup> First, social norms that favour cooperation – by

48 Respectively, North *et al.* 2009, 158–66 and 194–213; and Acemoglu and Robinson 2012, 455–62.

49 Olson 1965, 2.

50 E.g., Ostrom 1990 and 2000.

leveraging on trust, reciprocity, and reputation – can allow rational, self-interested agents to overcome the free-rider problem. Second, collective action may also respond to motivations and values that trump – or shape the preferences that people maximize through – the strictly instrumental calculus considered by standard rational choice theory. Still, it has been noted that “while empirical evidence generates some optimism that collective action can be achieved in some settings, the *problem* of collective action remains”.<sup>51</sup>

This problem also underlies two issues very relevant to an analysis of Balkan or transition countries, namely political passivity – or the preference of citizens for ‘exit’ or ‘loyalty’ over ‘voice’, in Hirschman’s framework<sup>52</sup> – and the persisting weakness of the rule of law by reason of social tolerance for illegality – or, in the language of the theories discussed earlier, the distortion of formal institutions through lax or deviant enforcement. Both political accountability and the quality of the rule of law critically depend on costly actions – to monitor, assess, and remove or reward rulers, chiefly, but also to report and sanction law-breakers – by society at large, in fact, and both will be low if the collective action problem is pervasive.

More generally, this problem plays a central role in the dynamics that sustain inefficient social orders and institutions. For it can impede the open, reasoned debate about a polity’s choices, which is central to the notion of democracy as ‘public reason’, and which can hardly take place in a representative democracy if political accountability does not align the interests of the citizenry with those of its elected officials, compelling the latter to seek the views and listen to the demands of their constituents. And it can then distort the translation of a polity’s choices into changes of the social reality through the implementation of its laws.

## **Organized Minorities and Disorganized Majorities**

Olson’s thesis rests on two main pillars. The first, already underlined, is that public goods – such as clean air or the rule of law – cannot typically be denied to free-riders. The second concerns the size of the groups that have an interest in creating or preserving public goods and can be summarized thus:

Olson (1965) argued that as the size of a group increased, the probability of a group achieving a public good decreased... for two reasons. First, as group size increases, the noticeability of any single input to the provision of a public good declines. It is then easier for the individual to think that their own free riding will not be noticed and thus it will not affect the likelihood that the good will be provided. Second, coming to an internal agreement about coordinated strategies in larger groups involves higher transaction costs [i.e., monetary and opportunity costs borne to monitor contributions, sanction

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51 Ostrom 2010, 156.

52 Hirschman 1970.

free riders, etc.]. Thus, a core theoretical hypothesis has been that the number of participants will likely reduce the probability of achieving any form of collective action or at least diminish the amount of joint benefits that could be achieved.<sup>53</sup>

Elite theorists such as Gaetano Mosca and Vilfredo Pareto set out the reasons why organized minorities tend to prevail over non-organized majorities. Olson (1965) explains why some groups organize and some do not. He adds that large groups can solve the collective action problem if they offer to their potential<sup>54</sup> members some 'selective' incentives – such as the services and opportunities provided by trade unions and political parties, which are both valuable and can be denied to non-members, or non-contributing ones – that make it individually rational for them to organize. This condition rarely obtains, however, and the large groups that cannot so organize, such as consumers or taxpayers, will remain 'latent,' 'forgotten' ones, consigned to 'suffer in silence.'<sup>55</sup>

This seems to be the most persuasive answer to the question by which I sought to underline the limits of the state capture notion: how can elites systematically get away with predation? They can, where they do, because non-elites fail to organize.

From the observation that relatively small and homogeneous groups tend to have disproportionate power to assert their interests, Olson later drew a broader theory of interest groups, which need not detain us.<sup>56</sup> More interesting are his views of the conditions under which elites' and special interests' hold over a society can be relaxed. He first mentions exogenous shocks, such as defeat in war, which produce dislocations that can disrupt entrenched special interest groups. Writing near the peak of the German and Japanese economic miracles, in the early 1980s, he illustrates the argument by contrasting their impressive post-war performance with the slower growth recorded by the (capitalist) victors, the USA and Britain, whose political and economic systems suffered less severe shocks.

The parallel between this argument and the emphasis on 'critical junctures' in the theory of institutional change discussed earlier is clear. But this approach seems unwittingly to desire – for the purpose of breaking up damaging organized minorities – events that security scholars tend to view as problematic.

Beyond such events, at any rate, Olson argues that elites and special interests can be eclipsed by the emergence of organized groups, whose membership is large enough relative to the size of the economy that redistribution policies which harm the efficient allocation of resources would not be in their self-interest: as the effect on the size of the

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53 Ostrom 2010, 157.

54 Taking an *ex ante* perspective, consistent with the non-excludable character of public goods, Olson defines the size of groups in terms of their potential, not actual numbers.

55 Olson 1965, ch. VI.H.

56 Olson 1982.

pie dominates that on the width of the group's own slice of it, such interest groups tend to promote policies of redistribution and economic regulation that are compatible with allocative efficiency. Olson calls them 'encompassing organizations,' and points to broad-based political parties as examples, or nation-wide confederations of unions or business associations. Indeed, a plausible ideal type of liberal democracy is a polity in which such organizations prevail over special interests.

North finds the argument inconsistent with Olson's own basic logic, which he shares, for if self-interested individual rationality prevents large groups from organising it ought to follow that they shall not organise.<sup>57</sup> North criticizes Olson also for neglecting the role of the state and its interactions with distributional coalitions, which he views as fundamental questions instead because the latter can use the former as an instrument of their power. The objection, which is persuasive, could therefore be reformulated thus: acting strategically, distributional coalitions will use the state, which they influence, to prevent the emergence of encompassing organizations: and until such influence persists, the latter will arise only if elites allow the social order to open up, out of either deliberate choice or miscalculation, or else if an exogenous shock shakes the roots of the social order. This leads to pessimistic predictions for those polities that do not already have encompassing organizations, such as the typical natural state, but suggests that the political conflict is open in those polities, such as post-war Italy, where the two categories of organizations coexist.

The parallel between Olson's work and the literature surveyed earlier seem clear: the cardinal function of (good) institutions is precisely that of relaxing the collective action problem, and the open-access social order is a polity in which this problem has largely been overcome. Both revolve around the collective action problem, therefore, and the capacity of ordinary citizens to organize.

## Conclusions

The line of reasoning I followed thus far would naturally lead to the question of how, even in a natural state, can citizens organize, even if merely for the purpose of revolting against a predatory elite. That line might therefore be expanded in the direction covered by the literature on social movements, which deals, effectively, with the question of why collective action does, in some instances, happen. My ignorance of these studies prevents me from even attempting to coordinate my suggestions with their findings. But I suppose that such an expansion could be fruitful because I assume that that literature is readier to go beyond the confines of the cost-benefit calculus than either Olson or his followers.

Indeed, commenting on Olson's zero-contribution prediction, Hirschman observed that "people who have experienced a great deal of disappointment in their search for happi-

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<sup>57</sup> North 1983.

ness through private consumption [can be led by this] to participate massively in public actions.”<sup>58</sup> This disappointment may have to grow above some threshold before it conquers people’s expectations or delusions about their earlier choices, Hirschman adds, but when the tipping point is reached there is a:

sort of ‘rebound effect’ [which] can explain many choices. It makes for an exaggeration of the benefits and an underestimate of the costs of the [public] action that provides a counterpoint to the action that has been taken previously and has turned sour [such that] a good portion of the so-called puzzle of collective action and participation in public affairs disappears when the rebound effect is taken into account.

Though undemonstrated, as far as I know, this ‘rebound effect’ does have the ring of truth. And even though it offers only a partial solution for the collective action problem, it can easily be incorporated into that theory: as Hirschman explains, in fact, in the circumstances he describes the act of participating in collective action may be so intrinsically gratifying that people view it a benefit rather than a cost, as rational-choice theory would otherwise assume. In other words, the rebound effect can be seen as an abrupt change of one’s understanding of one’s self-interest or preferences, which, once changed, are then pursued with the same rationality that previously led citizens not to contribute to collective action or to prefer ‘exit’ over ‘voice’. The social-movements literature might shed some light on how and why such sudden switches occur.

Having highlighted this gap in my paper, I shall try to summarise the reasons why the notions I have discussed might be more useful than the notion of state capture.

Seen through the lens of the strands of literature I have evoked, in fact, behind the phenomena usually described as state capture typically lie collective action problems, which prevent the public interest from imposing itself over special interests. The channel, chiefly, is the weakness of the rule of law and of political accountability, which are typical traits of the limited-access social order and, in turn, tend to distort a polity’s formal institutions.

This approach would seem to have two distinct advantages. First, it seems better capable of accounting for the fact that some traits of state capture also appear in societies far more advanced than those for the study of which that notion was originally developed. For in those societies, the written rules tend to be well-designed, so the problem generally lies in the subversion of otherwise adequate formal institutions. An excessive focus on the influence of elites in the *design*, as opposed to the concrete application, of laws and regulation risks obscuring those phenomena, and the role of those horizontal institutions and authorities that determine the ‘enforcement characteristics’ of the formal rules, in North’s expression.

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58 Hirschman 1982, 80–1.

The second reason stems from the same observations and concerns, in particular, the Western Balkans. Countries, namely, that have adopted legislation mimicking European Union directives and regulations, but where those horizontal institutions and authorities remain weak. Biased legislation certainly exists there, but the main obstacle to development appears to be the weakness of the rule of law and of political accountability. There, indeed, the obstacles to collective action appear to be particularly high.

Against this background, the fact that a grassroots movement could recently take power in Kosovo, based on a manifesto of clean government and inclusive growth, is encouraging. Instructively, in fact, the root of their success would seem to have been the capacity to appeal to the common interests of ordinary citizens after two decades of elite predation. This movement, in other words, organized their collective action.

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