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State Capacity beyond Executive Power: Towards an Institutional View

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2019

Document Version:
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Citation for published version (APA):

Goenaga, A. (2019). *State Capacity beyond Executive Power: Towards an Institutional View*. (pp. 1-33). (STANCE Working Paper Series; Vol. 2019, No. 9). Department of Political Science, Lund University.

Total number of authors:

1

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State-Making and the Origins of Global Order
in the Long Nineteenth Century and Beyond

State Capacity beyond Executive Power: Towards an Institutionalist View

Agustín Goenaga

Working Paper Series, 2019:9
STANCE, Lund University



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State Capacity beyond Executive Power: Towards an Institutionalist View

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Abstract

Scholars tend to define state capacity as the ability of the state to enforce collectively-binding decisions. Hence, common measures of state capacity tend to focus on the executive resources and functions of the state (e.g., the police, military, bureaucracy). This conceptual paper proposes an alternative way of thinking about state capacity as the ability of the state to shape the behavior of its subjects. I argue that states shape social behavior by monopolizing the production, enforcement, and interpretation of collectively-binding rules and decisions. Hence, our empirical assessments of state capacity must look not only at the executive powers of the state, but also at the reach and effectiveness of its legislative and judicial powers. This revised concept of state capacity offers three important contributions to research on political development: (1) it draws a clear analytical distinction between state capacity and other properties of states (e.g., regime type, state autonomy, economic system, etc.); (2) it distinguishes the power of states *as institutions* from the power of specific actors (including the private power of state agents); and (3) it facilitates comparisons of relative levels of state capacity across states with very different regime types, institutional designs, or ideological orientations.

Introduction

Before democratization in 2000, the Mexican national government under the rule of the Partido Revolucionario Institucional (PRI) had become quite effective in controlling criminal violence. Homicide rates declined consistently during the second half of the twentieth century, reaching similar levels as in the United States by the mid-1990s (Gonzalbo 2009). However, criminal violence began to increase again in the late 1990s and it exploded after 2006 when the government declared war on organized crime (Espinosa and Rubin 2015). The Mexican state seemed suddenly unable to maintain order in the country, even though it had access to more resources than before: higher tax revenues, better trained bureaucrats and security forces, and more sophisticated technology. The problem, however, was not that state capacity declined, but rather that it had never been there in the first place. For most of the twentieth century, it was not the state, but the PRI who had the power to shape social behavior, including that of organized crime, not through state institutions but through its corporatist structure, its ties to powerful societal actors, and its informal networks of protection (Trejo and Ley 2017). As the party became weaker, social order dissolved.

The Mexican example brings to light two interrelated problems in the ways scholars and practitioners conceptualize state capacity today. First, we tend to think about state capacity as a property that states have as actors not as institutions. Second, we tend to reduce state capacity to the ability of the state to enforce political decisions and thus to the executive functions and branches of the state (i.e., the bureaucracy, the police forces, the military). Together, these two conceptual choices create analytical problems that limit our understanding of the causes and consequences of state capacity: they make it difficult to distinguish state capacity from the private power of state agents, and they introduce biases when we try to compare relative levels of state capacity across different regime types, economic systems, or institutional designs.

This conceptual paper proposes an alternative way of thinking about state capacity. I begin by conceptualizing state capacity as the ability of the state to shape the behavior of its subjects. I then argue that states, as *institutions*, influence their subjects' behavior through the enforcement of collectively-binding decisions, but also by

controlling the production and interpretation of those decisions. This means that our empirical assessments of state capacity must look not only at the executive powers of the state, but also at the reach and effectiveness of its legislative and judicial powers.

State formation can then be seen as a process of institutionalization of political authority through the monopolization of the production, enforcement, and interpretation of collectively-binding rules (Huntington 1968). As states approximate these three institutional monopolies, their political authority becomes differentiated from the private power of the individuals that staff them, as well as from other societal organizations and political units. As a result, states also become better able to coordinate collective action, raise resources, and even project power onto other actors beyond the reach of their institutional jurisdictions. Furthermore, through these processes of institutional monopolization, integration, and differentiation, modern states “caged” their societies (Mann 1993) and fostered strong national identities (Anderson 2006).

This concept of state capacity offers three important contributions to research on political development. First, it draws a clear analytical distinction between state capacity and other properties of states (e.g., regime type, state autonomy, economic system, etc.). Second, it distinguishes the power of states as institutions from the power of specific actors (including the private power of state agents). Third, it captures a property of states that can be reliably measured independently of historical context, making it possible to draw comparisons of relative levels of state capacity over longer periods of time and across states with very different regime types, institutional designs, or ideological orientations.

Existing concepts of state capacity

In the introduction to the seminal *Bringing the State Back In*, Theda Skocpol referred to the “capacities” of states in terms of their ability “to implement official goals, especially over the actual or potential opposition of powerful social groups or in the face of recalcitrant socioeconomic circumstances” (Skocpol 1985, 9). In what arguably is the most influential conceptualization of state capacity as “state infrastructural power,” Michael Mann defined it as “the capacity of

the state to actually penetrate civil society and implement logistically political decisions throughout the realm” (Mann 1984, 189). More recently, Tim Besley and Torsten Persson defined state capacity as “the institutional capability of the state to carry out various policies” (Besley and Persson 2011, 6), while Daron Acemoglu and James Robinson define the concept as “the capacity of the state to enforce laws, provide public services, and regulate and tax economic activity” (Acemoglu and Robinson 2017, 1).

In these definitions, state capacity tends to be equated with the *enforcement* of state decisions (Soifer and vom Hau 2008, 220), and thus it centers around the resources and functions of the executive branches of government. Therefore, one common strategy to measure state capacity is to look at the resources that national executives have at their disposal to enforce decisions, such as public revenues (Tilly 1975; 1990; Evans, Rueschemeyer, and Skocpol 1985; Lindvall and Teorell 2016), human capital (Evans and Rauch 1999; Kurtz and Schrank 2012; Teorell and Rothstein 2015; Rothstein and Teorell 2015), information (Scott 1998; D’Arcy and Nistotskaya 2017; Brambor et al. 2019), or coercive forces (Singer and Small 1966; Wayman, Singer, and Goertz 1983; Singer 1987; de Rouen and Sobek 2004).¹

These studies have offered important insights about when and why states acquire new and more effective instruments for enforcement, which, of course, is a key component of how states achieve their goals. However, states also pursue their goals and exert power over their subjects through courts and legislatures. Reducing state capacity to the enforcement of political decisions is likely to overlook other important ways in which states shape social behavior and pursue their goals, thus biasing downwards our estimates of state capacity. In some cases, very strong executives – not only in the sense that they face few checks and balances but also in the sense that they have access to extensive resources to enforce decisions – may in fact reflect situations in which legislatures and courts are not effective governing branches (O’Donnell 1993; Fortin-Rittberger 2017).

Moreover, if we focus exclusively on the executive branch of government, we are more likely to conflate state capacity with other properties of the state, since the prominence of the executive relative

¹ For critiques of resource-based approaches see Mann (1984); Soifer (2012); Goenaga (2015).

to other branches of government differs across historical contexts, regime types, and economic systems. This has generated extensive confusion in the literature, as some scholars see institutional constraints on the executive as a way to limit state power (Hanson 2014; Fukuyama 2014), while others see the separation of powers as an institutional innovation that enabled the development of more effective states (Levi 1989; North and Weingast 1989; Cameron 2013; Dincecco 2015).

Another strategy to measure state capacity has focused on the presence of certain outcomes that are associated with effective state enforcement, such as presence of rebel groups in the territory (Fearon and Laitin 2003), tax collection (Lieberman 2002; Soifer 2012; Queralt 2018), the accuracy of state censuses (Lee and Nan Zhang 2017; Lee 2018), the protection of property rights (Besley and Persson 2011), or the coverage and quality of public services (Ziblatt 2008; Fortin 2010; Kurtz 2013; Berwick and Christia 2018).

These works have advanced important insights about why some outcomes are more likely to occur in certain kinds of states rather than others. Outcome-based approaches, however, tend to produce biased measures if we use them to compare relative levels of state capacity over long periods of time or across very different kinds of state.² Most of the outcomes mentioned in the previous paragraph are the result of complex interactions between states and other actors (Migdal 1988; 2001; Migdal, Kohli, and Shue 1994; King and Lieberman 2009; King and Le Galès 2011; Goenaga 2017; He 2015; Morgan and Orloff 2017). Therefore, the same outcomes that are indicative of a strong state in some cases may be a reflection of the preferences and endowments of other actors in other contexts. Hence, outcome-based indicators are prone to overestimate state capacity. For example, charismatic leaders, strong party machines, or well-organized elites may be able to galvanize large-scale mobilization, maintain political stability, preside over periods of economic growth, or carry out major social transformations. However, once those leaders fall out of power, those parties collapse, or those elite pacts dissolve, the same state institutions with the same resources may be unable to achieve those feats.

² For critiques of outcome-based approaches see Migdal 1988, 2001; Migdal, Kohli, and Shue 1994; Lindvall and Teorell 2016.

At the same time, as Max Weber famously noted, there is no task that has always been exclusive to states independently of their context (Weber 1991, 77). Therefore, it is very difficult to discern when the presence or absence of any of these outcomes is indicative of the capacity of the state to bring them about, and when it is merely a reflection of the willingness of state officials to pursue those goals (Soifer 2012; Lindvall and Teorell 2016). For various reasons, states may simply choose not to maximize revenues, run censuses, protect property rights, or provide public goods, even if they have the capacity to do so. In this case, outcome-based measures tend to underestimate the capacity of the state.

In sum, commonly used measures of state capacity either narrowly focus on the executive functions and institutions of the state and thus overlook important aspects of state power, or interpret certain outcomes as evidence of state capacity when they may be in fact driven by the preferences and endowments of other actors. Therefore, an alternative conceptualization of state capacity must be able to (1) distinguish state capacity from other properties of the state, (2) distinguish state capacity from the power of other actors, and (3) refer to the same property of states across different historical contexts.

Towards an alternative concept of state capacity

The alternative conceptualization of state power that I develop in this section is grounded on two first principles that, I argue, are constitutive of states as a specific form of political organization:

- (1) All states seek to govern, which means shaping the behavior of their subjects; and
- (2) States shape social behavior as *institutions* by claiming a monopoly over binding decision-making within their territory.³

In the previous section, I argued that some analytical problems in the literature are the result of reducing state capacity to the ability of

³ These two principles are based on Mann's (1984) definition of states, which in turn draws on Weber (Weber 1978; 1991). However, as I discuss in this section, references to these two defining features of states can be found in theories of the state coming from very different intellectual traditions.

states to enforce their decisions and thus overemphasizing the resources and functions of the executive branches of government. However, the enforcement of state decisions is only a means to an end: governing. Indeed, as Michael Mann has noted in his later writings, state capacity refers to the ability of the state to exert “control over people (and by people) insofar as they are located within the state’s territories, its space of sovereignty, and only in their political power relations” (Mann 2008, 358). Mann’s concept of state infrastructural power thus echoes Robert Dahl’s classical definition of power as a relationship between two actors: we say that “*A* has power over *B* to the extent that *A* can get *B* to do something that *B* would not otherwise do” (Dahl 1957, 203). It is, first and foremost, a kind of “compulsory power” in which one actor (the state) “shape[s] directly the circumstances or actions of another” (its subjects) (Barnett and Duvall 2005, 49). From this perspective, state capacity is a teleological or goal-oriented concept, in which the *telos* of state actions is to *shape the behavior of the people* located in its territory, that is, to govern (Migdal 1988, 22). It is only on the basis of this capacity to shape social behavior that states are able to achieve the goals they set for themselves, whatever these are under different historical circumstances.

Second, laws represent the main instrument that states, *as institutions*, have at their disposal to shape the behavior of their subjects (Mann 1984, 188; Jessop 2008, 9; Brinks 2012, 562–63; Fukuyama 2013, 350). Laws are collectively-binding rules — that is, rules that apply to everyone in the territory whether they explicitly approve of them or not — that demand certain conducts from those subject to the authority of the state. This aspect of *rule by law* is crucial to distinguish state capacity from the particularistic power of the agents of the state.⁴ States are capable of exercising power *as institutions* only because the actions of public officials are guided by what O’Donnell calls a “cascade of legally-dispensed authorizations” that dictate which actions and in which circumstances can be attributed to the authority and power of the state (O’Donnell 2010,

⁴ Scholars from very different theoretical traditions see the law as the characteristic instrument of state power (Jellinek 1905; Huntington 1968; Rawls 1971; Poggi 1990; Habermas 1996; Bourdieu 1997; Jessop 2008; O’Donnell 2010), but it tends to recede from view in empirical research on state capacity because it is often seen as a feature of particular constitutional regimes (Fukuyama 2014, 11–12). However, *rule by law* is not the same as the *rule of law* —i.e., the presence of constitutional limits to the power of the state based on subjective rights.

ing 20). If the actions of state officials are not derived from this cascade of legally-dispensed authorizations – for example, if rulers make discretionary decisions or if state officials use state resources in ways that are not legally prescribed –, we cannot attribute them to the state but to the particularistic power of these individual actors. Hence, even if these actions effectively shape social behavior, they are not indicative of state capacity. In other words, when we talk about state capacity, we want to know to what extent the legal systems formed by these cascades of legally-dispensed authorizations effectively structure social behavior in the territory. We are interested in capturing the power of the state as an “artificial person” in Hobbes famous formulation – or as an institution – in more contemporary parlance –, not the power of its agents.

Of course, states are not the only institutions that seek to govern behavior through rule-making (e.g., corporations, churches, unions, or sports clubs do as well). However, states require everyone in their territory to be subject to their rules regardless of whether they voluntarily accept them or not. In other words, what distinguishes states from other organizations is that they claim a “monopoly over binding rule-making” within their territory and back up that claim with the threat of physical violence (Mann 1984, 188). The monopoly of legitimate violence that highlights the executive powers of states is indeed a defining feature of states as organizations, but it is ancillary to the analytically prior claim to the monopoly over binding rule-making.

When other social actors sustain competing formal or informal institutions, state subjects are less responsive to the state, as they must assess the costs and benefits of complying with state rules against the costs and benefits of complying with competing formal or informal rules (Kelly 2004). Therefore, state capacity is not about the specific rules or policies that states establish, but about whether the state will be able to displace or absorb other organizations that also claim the authority to make collectively-binding rules for at least some part of the population: families, clans, multinational corporations, domestic enterprises, tribes, patron-client dyads (Migdal 1988, 31).

Governing through collectively-binding rules involves three kinds of actions: the production and legitimation of those rules, the enforcement of those rules (often but not exclusively through the threat of physical coercion), and the interpretation and application

of those rules to judge specific cases (Habermas 1996, 186; Cameron 2013, 33). These three governmental attributions provide states with different incentive structures that they can manipulate to shape behavior. They may be exercised by a single agent of the state, or they may be divided among different branches of government. For our purposes, the key point is whether these three aspects of rule-based governance are de jure and de facto exercised only by state agents and only in their capacity as public officials, not as private citizens or members of other organizations. Let us now turn to explain in more detail how each of these monopolies over the production, enforcement, and interpretation of collectively-binding rules empower the state to shape social behavior.

Execution of collectively-binding rules (enforcement of the law).

Executive power is the most visible aspect of state capacity, since it is linked to the claim of the state to the monopoly over the legitimate use of violence. It refers to what Gianfranco Poggi calls the “ultimacy” of state power: the ability to use “violence – or the threat of it [...] as the facility of last resort in shaping and managing interpersonal relations” (Poggi 1990, 9 ff). It is for this reason that state formation has often been associated with the monopoly over the enforcement of political decisions through the centralization of coercive resources, first through the development of professional standing armies (Hintze 1975; Tilly 1975; 1990) and later through professionalization of police forces under the control of the state (Gillis 1989; Mann 1993, 408).

Control over coercive resources is not enough for the effective enforcement of collective decisions. States also need agents that can gather and process information about whether their subjects are indeed abiding by those collectively-binding rules and experts that can deploy state resources most efficiently to ensure that this is the case. Therefore, state formation also entailed the development of professional bureaucracies that centralized key tasks related to the enforcement of political decisions away from other actors, such as tax collection (Johnson and Koyama 2014; D’arcy and Nistotskaya 2018), gathering and processing information (Scott 1998; Brambor et al. 2019), and the regulation of economic activities (Ogus 1992; Glaeser and Shleifer 2003; Moran 2002).

Few states if any have ever fully monopolized the enforcement of collectively-binding rules, and contemporary states

frequently outsource many enforcement tasks to private organizations, from private security firms to consulting agencies (Fukuyama 2014, 520). Even less common has been the institutionalization of executive power. By this I do not mean the institutionalization of rules to designate the chief executive (which would refer to regime type), but rather the institutionalization of “the cascades of authorization” that take the capacity to enforce political decisions away from public officials as private individuals or members of other organizations and place it exclusively in the offices of the state. As Marcus Kurtz and Andrew Schrank put it, “if, for example, effective implementation occurs because the bureaucracy is staffed by a committed political cadre associated with a party or individual, it is unlikely to be durable, and might well manifest as inefficacy should executive office come to be controlled by a non-copartisan at a later point in time” (Kurtz and Schrank 2012, 616). My point goes further: in that example, the capacity of enforcement never belonged to the state, it was always a property of a party or a particular leader.

Legitimation of collectively-binding decisions (production of law).

The monopoly over the production of law gives the state control over sets of incentives that can shape behavior separately from the threat of physical coercion. Establishing rules over key areas of social life is what gives states the power to govern in the first place. For example, states were able to reach large segments of the population once they monopolized the authority to legislate on economic matters (Kaplan 2001, 511; O’Donnell 2010, 64; Goenaga 2015, 194). By dictating the rules that govern property relations (e.g., private, communal, or public property rights), that draw market boundaries and regulate access to new participants, that standardize weights and measures, and that define which currencies can be used as legal tender, states control powerful incentive structures that they can manipulate to shape behavior, from selectively offering access to protected markets to setting the relative value of private assets through monetary policy.

The point is not about whether the state directly controls economic assets (Elias 2000), but about whether the state controls the institutions i.e., the rules of the game that govern economic transactions in its territory (North 1990). In some cases, as in communist states, the state established economic institutions that gave it direct control over the factors of production. In other cases,

as in capitalist economies, states establish market-supporting institutions. In principle, capitalist and communist states can be equally effective in controlling economic institutions, even if those institutions support very different economic systems.

In order to monopolize the production of law, states need to establish institutions that can legitimize collectively-binding decisions (such as legislatures) and to weaken the power of other actors to produce competing institutions that may also be seen as legitimate by their subjects, such as religious authorities, communal or local elites, or transnational movements. In the West, this process was associated with the rise of modern constitutionalism, through which the state claimed to be the only actor with the right to establish institutions (i.e., parliamentary procedures) that could legitimately produce law (Cameron 2013; Thornhill 2013).

By monopolizing the production of law, states can also offer their subjects the opportunity to participate in the law-making process as an incentive to comply with those decisions. States can grant political rights as a selective incentive to reward particular constituencies (e.g., the landed elites or the members of corporatist organizations) or as a purposive and solidary incentive for the population at large to abide by state institutions (e.g., the expansion of universal suffrage).

Note that the argument here does not imply democracy or popular sovereignty. The argument is merely that states claim to be the only actors that can establish institutions that can legitimately produce law in their territory, irrespective of whether it is through democratic or non-democratic means. Indeed, states do not recognize the authority of other organizations to make collectively-binding decisions, even if these are made through the very same procedures that legitimize state law. Take, for example, a situation in which a private corporation organized a vote on whether every member of society should be forced to purchase its products. Even if the vast majority of the population voted in favor of such a proposal, the state would not recognize that decision as collectively-binding and therefore would not treat it as law. Examples of such disputes are not uncommon, from the Catalan Independence Referendum of 2017 deemed illegal by the Spanish state because it was organized by a sub-national government to the referenda that civil society organizations in France have repeatedly organized to grant the vote to foreign residents and that the French state has always refused to recognize.

Again, few states, if any, have ever acquired a full monopoly over the production of collectively-binding decisions. The persistence of non-market forms of economic production often create opportunities for other actors to competing sets of rules that govern at least some parts of the population at the margins of state power, as was the case in feudal economies in which the regulation of economic activity was fragmented among kings, guilds, corporations, the Church, and landed elites (Kaplan 2001; Greif 2006; Irigoien and Grafe 2008; Gelderblom and Grafe 2010). At the same time, universalistic ideologies, such as Communism, Catholicism or Islam, have historically challenged the claim of the state to a monopoly over legislation and have questioned the legitimacy of state law.

Today, informal economies that states cannot regulate can become power fiefs for mafias, private firms, or ambitious politicians (Holland 2017). Clan chiefs, local warlords, crime syndicates, and religious leaders, effectively legislate within their turfs in many parts of the world (Krasner and Risse 2014; Börzel, Risse, and Draude 2018). Similarly, elites in many developing countries establish informal power-sharing agreements in which they make collectively-binding rules outside of state institutions (Magaloni 2008a; Grzymala-Busse 2010; Le Van 2011), while fascist and corporatist party-states established para-state institutions that absorbed legislative attributions (Thornhill 2013, 310–12). More evidently, supra-national organizations have adopted increasing law-making attributions through their own legitimating institutions, from the European Parliament to the United Nations General Assembly (Habermas 2001; Leibfried and Zürn 2005; Genschel and Zangl 2014; Thornhill 2017; 2018). This means that the monopoly of the state over the production of law varies across contexts, sometimes due to intentional processes of authority delegation and sometimes due to the incapacity of the state to dislodge competitors from its territory.

Administration of justice (interpretation of law).

One of the main ways in which states influence the behavior of their subjects is through institutions that regulate the interpretation of the law and the adjudication of conflicts (O'Donnell 2010, 65). In modern states, the adjudication of conflicts is intricately tied to the monopoly over enforcement and the threat of physical coercion. However, this need not be the case. States have often enforced sentences dictated by religious or local courts that were not part of the state. At the same

time, various institutional mechanisms for the adjudication of conflicts can shape behavior even if they do not come with the capacity to use physical coercion to enforce judicial decisions, from the private judges that adjudicated disputes under the Merchant Law in the commercial fairs of the twelfth and thirteenth centuries (Milgrom, North, and Weingast 1990) to Elinor Ostrom's famous examples of polycentric governance (Ostrom 1990).

The monopoly over the interpretation of law makes the state the only actor with the authority to remove rights, which represents a major instrument that states can use to shape behavior. Carl Schmitt famously defined state sovereignty as the right to decide on the exception (Schmitt 2010).⁵ At the extreme, states may use judicial institutions to deprive citizens of fundamental rights, including the right to life (Agamben 1998). This is the case even for liberal states who use the threat of depriving citizens of various rights as an instrument to shape their behavior: e.g., removing the right to vote or run for office from those convicted of a felony, denying property rights over assets derived from illegal activities, withdrawing the right to a driver's license from those that have been involved in serious car accidents, or barring corporations accused of fraud from participating in bids for public contracts.

Furthermore, by providing judicial institutions that citizens can also use to denounce abuses by public officials, the state acquires a powerful instrument to monitor its own agents (Magaloni 2008b; Brinks 2012). This allows states to develop more complex hierarchical organizations that exert power across larger temporal and spatial distances in a way that becomes routinized, transparent and abstracted from particular contexts (Thornhill 2008, 177). Hence, a strong judicial system not only creates incentives for state agents to comply with the law, but it also contributes to legitimize state law in the eyes of the citizenry (Brinks 2012, 568).

Similarly, the monopoly over the administration of private law gives the state an additional tool to influence behavior by regulating the private interactions of its subjects. It creates strong incentives for private actors to abide by the legal framework of the state in their private contracts, so that they can later resort to the state as a third-party to enforce those commitments if necessary. This increases

⁵ I thank Amanda Cheney for pointing out the connection to Schmitt's formulation.

confidence among societal actors that others will also resort to the state as third-party enforcer of private contracts and will thus abide by state law, fostering their quasi-voluntary compliance with the state (Levi 1989).

States can effectively use the administration of justice to shape social behavior to the extent that they are the only actors that judge and sanction violations to the law. In order to monopolize the administration of justice, states typically establish systems of courts that claim the unique right to interpret and apply the law. According to Joseph Strayer (2011), kings' claim over the authority to give final judgment in a high court after the Concordat of Worms (1122) was the main driver of European state formation during the late Middle Ages, as it was the way in which kings asserted their authority and gradually took the prerogatives to administer justice (and the revenues that came with them) away from the baronial courts (Strayer 2011, 29–31; Harding 2002, 126).

In contexts where the state fails to monopolize the administration of justice within its territory, either because of the weakness of its judicial system (e.g., very high levels of criminal impunity), or because conflicts are resolved through informal institutions (e.g., duels, blood feuds, honor killings) or competing formal institutions (e.g., baronial courts, ecclesiastical tribunals, imperial courts), the state has more limited power to influence the behavior of its subjects. Indeed, weak states are notoriously unable to use the courts to steer society.

Again, few states have ever claimed full monopolies over the administration of justice. Even today, special corporate courts for the clergy or the military and traditional courts for indigenous populations are common in many parts of the world. International criminal and human rights courts have further eroded the monopoly of declarant states over the administration of justice. Even more pervasive are states in which formal judicial institutions have a shallow presence in people's lives and therefore exert very limited influence over their behavior. Violations to the law either go unpunished or are addressed in ways that empower other actors, from local strongmen, to criminal organizations and para-state groups.

In sum, state capacity can be defined as the extent to which states can shape social behavior through binding rule-making. Operationally, state capacity is then a function of the extent to which

states effectively monopolize the production, enforcement, and application of collectively-binding decisions in their territory.

Historically, as states increasingly monopolized the different aspects of rule-based governance, they underwent parallel processes of institutional integration and differentiation that gave them access to derivative forms of power. By institutional integration, I mean that as states approximate full control over these three aspects of rule-based governance, they are more likely to build complex organizational structures with more specialized agencies; to develop cohesive legal systems that reduce contradictions between the rules that govern society; and to routinize, standardize and de-contextualize the application of state power over longer spatial and temporal distances. All of these developments increase the capacity of states to shape social behavior, to coordinate collective action at a large scale, and to project power beyond their institutional jurisdictions.

Moreover, as states effectively monopolize binding rule-making in their territory, they emerge as distinct corporate entities whose power is differentiated from the power of their agents and of societal actors. States become perceived as collective agents that can be distinguished from society (Mitchell 1991), while state subjects become part of a “shared community of fate” insofar their lives are governed by the same sets of rules (de Carvalho 2016). In this way, states acquire a form of “productive power” through which they shape their subjects’ expectations about who they are and what they are socially empowered to do (Barnett and Duvall 2005, 46). As John Dewey noted, it is not the public that creates the state, but the state that creates its public (Dewey 1927), thus contributing to the development of strong collective identities that reinforce its claim over the monopoly of binding decision-making.

Table 1: Summary of the argument

Institutional monopoly	Incentive structures	Effects on long-term state formation	Derivative forms of state power
Legitimation of collectively-binding rules (production of law) Legislatures	Positive incentives by granting influence over collective decision-making	Institutionalization of political authority	Ability to exert power over actors outside institutional jurisdiction (external power) Ability to form identities around the state (productive power)
Execution of collectively-binding rules (enforcement of law) Police Military Bureaucracies	Negative incentives through the threat of physical punishment	Development of hierarchical organizations with greater specialization	
Interpretation of collectively-binding rules and adjudication of conflicts (application of law) Courts	Negative incentives through the threat of withdrawal of rights Positive incentives by offering third-party enforcement of private contracts	Standardization and routinization in application of law across longer temporal and spatial distances	

We can now see how this conceptualization of state capacity overcomes some of the shortcomings of previous accounts. First, we start by establishing two axiomatic principles that are defining features of states: that they all seek to shape social behavior and that they do so by producing, enforcing, and interpreting collectively-binding rules within a territorial jurisdiction. We can then make claims about relative levels of state capacity over time and across contexts based on the extent to which states monopolize the production, enforcement and interpretation of collectively-binding rules in their territory independently from the specific rules and decisions that they seek to implement. This allows us to avoid conflating state capacity with the context-specific preferences of state actors.

Second, this concept of state power is analytically distinct from other properties of the state, such as who gets to influence the rule-making process (i.e., what Mann (1984) calls “despotic power”), how

state agents are selected (i.e., regime type), or institutional design (i.e., the relative power of different branches of government or between different levels of government). By focusing on the monopoly over binding rule-making, we do not need to make any assumptions about specific institutions that states should establish or about particular functions that states should perform beyond shaping the behavior of their populations. Instead, we can treat the relationship between these other properties and state capacity as an empirical question.

Third, it is possible to distinguish between state capacity and the power of other actors, especially the private power of state agents. When public officials shape people's behavior through extra-institutional means, those behavioral changes are not indicative of state power. For example, charismatic leaders may mobilize the citizenry to go to war against a foreign enemy purely on the basis of emotional appeals. Political elites may establish informal agreements with societal actors to regulate conflict. Public officials may discretionarily grant exemptions to legal enforcement as a selective incentive to attract the cooperation of certain groups. In all of these examples, social behavior results from the personal features of rulers to motivate collective action, from the capacity of elites to negotiate stable agreements, or from the private power of public officials to withhold law enforcement, not from the capacity of the state.

Finally, this approach allows us to look at the complex ways in which states win or lose the monopoly over different governing tasks, and whether these processes are the result of formal delegation or informal encroachment by other actors. We can then produce, for instance, nuanced assessments of how different aspects of state capacity change as states engage in "sovereignty bargains" (Mattli 2000; Ziblatt 2008). For example, Laszlo Bruszt and Visnja Bukov (2017) have shown how EU structural funds allowed states in Eastern and Southern Europe to expand the reach and effectiveness of those states to enforce laws, even as they were ceding legislative attributions to the EU. Moreover, rather than assuming that higher levels of state capacity are always associated with socially-desirable outcomes e.g., political order, protection of human rights, better economic performance or greater public goods provision this notion of state capacity allows us to treat it as an empirical question, since different sovereignty bargains may be better suited to produce specific outcomes.

Producing cross-national measures of state capacity based on this concept is likely to be resource-intensive, since the concept has three constitutive components (the monopolies over the production, enforcement and interpretation of binding decisions) that can vary independently across at least four separate dimensions: across time, across the national territory, across social groups, and along a continuum running from intentional delegation to de facto control of these attributions by societal actors. Hence, developing reliable measures of state capacity requires detailed knowledge of each case. Public opinion surveys, which are already widely used in empirical research on state capacity, can provide this kind of detailed data for contemporary cases (Kurtz and Schrank 2012; Luna and Soifer 2017).⁶ For historical research, expert surveys⁷ and qualitative coding of cases can provide equivalent measurements

Conclusion

This paper has proposed to redefine state capacity as the ability of the state to shape the behavior of its subjects. I have argued that states shape social behavior by monopolizing the production, enforcement, and interpretation of collectively-binding rules. If a state gives up willingly or unwillingly control over the incentive structures provided by these three institutional monopolies, it loses some of the means at its disposal to influence social behavior and thus its capacity declines.

Few states (if any) have ever fully monopolized these three sets of institutions. Modern states in Western Europe only approached these monopolies in the late-nineteenth century, and, even as they were taking control over these incentive structures away from the hands of domestic competitors, processes of economic globalization, supranational integration, and global governance had already started to chip away at those monopolies.

⁶ Several ongoing projects also rely on surveys to evaluate the reach of the state in terms of public goods provision, service delivery, or interactions between citizens and state officials. See, for example, the project “The Power of Ideas: Understanding State Capacity through Ideational Reach and Relative Power”, led by Frida Boräng, Ruth Carlitz, and Anna Persson, and the “Programme on Governance and Local Development” directed by Ellen Lust.

⁷ See, for example, the use of expert surveys to measure similar abstract constructs in the Varieties of Democracy (V-Dem) Project.

This view of state capacity offers three important contributions for empirical research on political development. First, I have proposed two principles that define states as a specific kind of political institution: (a) states seek to govern, that is to shape the behavior of their subjects, and they do so by (b) claiming a monopoly over binding rule-making. This allows us to clearly distinguish state capacity from other, context-specific, properties of states such as regime type, institutional design, economic system, or ideological orientation.

Second, this conceptualization of state capacity draws clear analytical distinctions between the power of states *as institutions* and the power of state agents as private individuals or as members of other organizations. This has important analytical and practical payoffs. As the spiraling of violence in the Mexican example indicates, the mistake of thinking that it was the state that had the capacity to control criminal violence rather than the informal networks and para-state institutions around the PRI made it difficult for observers and policy-makers to predict how the collapse of the PRI would unravel social order.

Finally, by drawing clear distinctions between state capacity and other state features and between state capacity and power of other actors, this conceptualization of state capacity facilitates comparisons between states across regional, historical, and ideological contexts. The importance of being able to make comparisons across very different contexts is not merely academic. There are vast differences, even among contemporary states, in the goals they pursue, the resources they control, and the institutions they promote. We can only produce consistent assessments of relative levels of state capacity if we have a sufficiently general concept of state capacity that refers to the same property in every state independently of those context-specific features.

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