

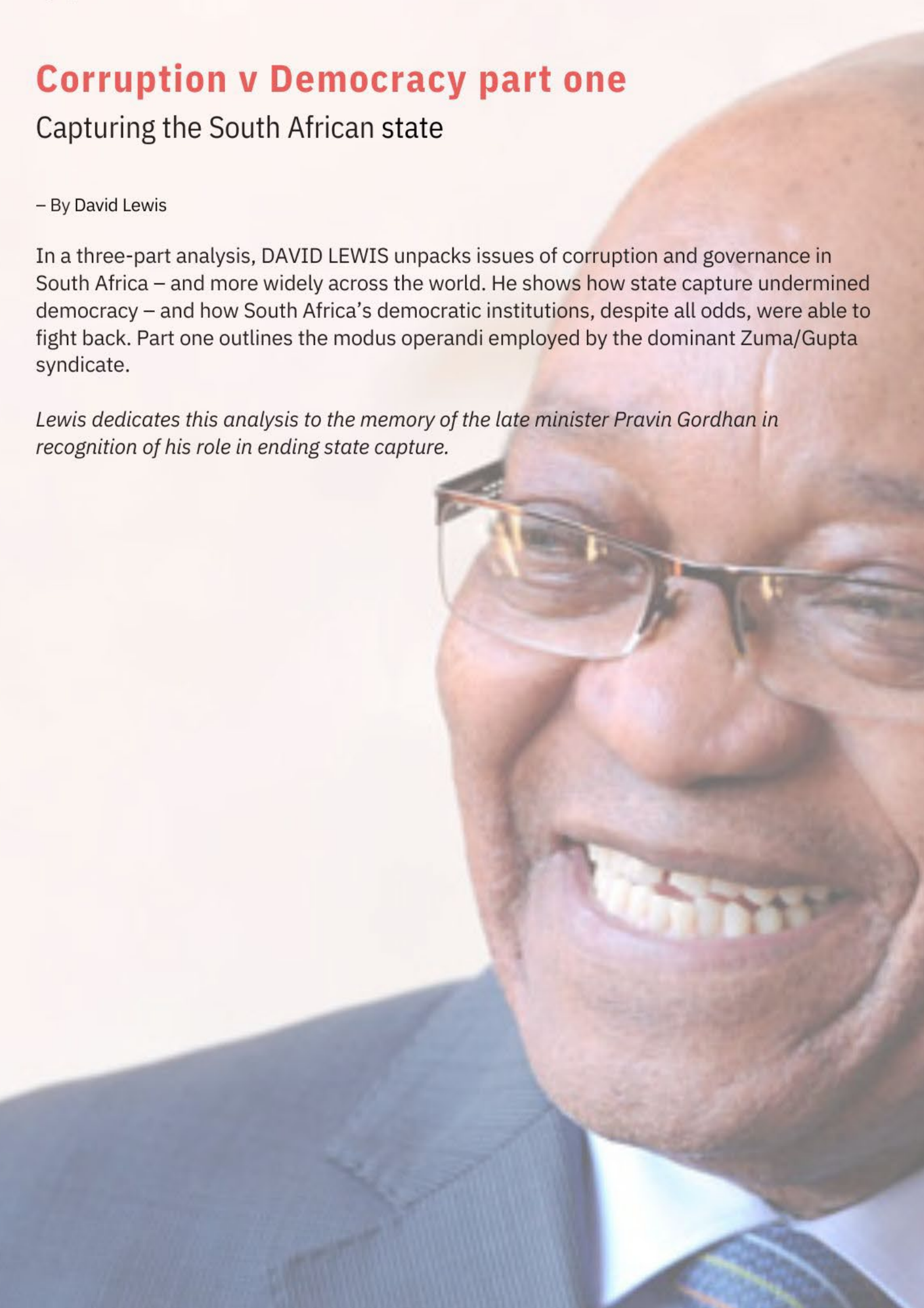
Corruption v Democracy part one

Capturing the South African state

– By David Lewis

In a three-part analysis, DAVID LEWIS unpacks issues of corruption and governance in South Africa – and more widely across the world. He shows how state capture undermined democracy – and how South Africa’s democratic institutions, despite all odds, were able to fight back. Part one outlines the modus operandi employed by the dominant Zuma/Gupta syndicate.

Lewis dedicates this analysis to the memory of the late minister Pravin Gordhan in recognition of his role in ending state capture.





Does corruption undermine democracy? Does democracy constrain corruption? Is democracy a necessary condition for successfully combatting corruption?

These questions were initially posed from the intensely practical perspective of a non-governmental organisation (NGO) dedicated to combatting corruption. And so, reformulated from that perspective I ask: is it necessary to actively promote democracy in order to combat corruption? Or conversely, does the current global decline in the quality of national democracies compromise the fight against corruption?

Although difficult to measure, much less compare across time and countries, industrial scale corruption appears to be an increasingly ubiquitous global phenomenon. To name but a few instances, Brazil and South Africa were recently engulfed by the wholesale capture of state power by moneyed interests from which South Africa, certainly, has not yet recovered. The president of Russia and the recently re-elected president of the USA, Donald Trump, all appear to have abused their high offices for vast personal enrichment and in order to maintain their political dominance. Corruption on a grand and petty scale is an everyday phenomenon in the countries of central and south Asia. The Covid pandemic occasioned veritable orgies of corruption in public procurement, including in Britain, long a global leader in money laundering.

Regular leaks of email troves have underlined the role of secrecy jurisdictions in laundering the proceeds of corruption. The critical role of global banks, law firms, auditing firms and advisory firms in facilitating corruption has been highlighted. In South Africa alone, global household names like McKinsey, Bain, and KPMG have all featured heavily in tales of grand corruption and state capture.

It is also widely accepted that the past decade has seen a precipitous decline in the quality of national liberal democracies. Nor has this been confined to the relatively fragile democracies of Africa, Latin America and Asia. The decline in the quality of the well-established democracies is evident in the USA and in certain of the developed countries of Europe as well – think Italy, Hungary and Slovakia, but also think of the emergence into mainstream politics of powerful anti-democratic political parties in France, Belgium, the Netherlands, Germany and even in the traditionally benign social democracies of Scandinavia.

Remarkably, the hollowing out of democracies across the board of high-, middle-, and, with some exceptions, low-income countries has been driven by democratically elected leaders and the leaders of democratically elected political parties. While there are certainly legitimate questions around the quality of the elections themselves – and the decline in the quality of elections is in many countries a key marker, both cause and effect, of the decline in the quality of the democracies – there is no gainsaying that the Trumps, Modis, Erdoğan, Duterte, Orbán and, indeed, the Zumas and numerous others, all ascended to the highest offices in their lands by way of elections that met at least the minimum requirements for being deemed ‘fair and free’. With the exception of a number of least developed countries, the military juntas of yore are no longer in the vanguard of those threatening democracy. What then is the link, if any, between rising corruption and declining democracy?

A Transparency International (2019:1) analysis of the link between corruption and democracy concludes:

The relationship between corruption and democracy is a complex one. However, it is clear from the literature review that the two are closely intertwined. When democracy deteriorates, there is almost always an increase in corruption due to the erosion of institutional checks and balances, fewer independent courts and frequent restrictions on the space for civil society actions and citizens’ political rights. Likewise, when corruption is widespread, newly democratic states can hardly consolidate. Unresolved corruption also undermines the trust of citizens in established democracies and provokes all sorts of citizens’ reactions, like abstention and votes for populists and anti-establishment parties that further deteriorate the democratic system. Given the large negative impact of corruption on democracy, sustained efforts to limit corruption can strengthen democracy.

While a minimalist understanding of democracy emphasises regular elections above all else, the functioning of democracy requires a much broader institutional framework than elections and a national representative assembly composed of the elected representatives of the political parties that populate that assembly:

The competitive electoral process is at the heart of modern democracies, but other factors complement it. The democratic election component refers to the electoral game, and it is equivalent to the ‘electoralist’ democracy definition. Freedom of speech, association and protest form the ‘political participation rights component’. Civil



rights provide protection from illegitimate state interference into the life of an individual and are therefore linked to the protection of minorities, individual liberty and property. Horizontal accountability ensures the mutual interdependence and autonomy of the legislative, executive and judicial power as well as the functioning of oversight institutions such as audit institutions and ombudsmen (checks and balances). Finally, the effective power to govern ensures that only 'those elected are entitled to make binding political decisions without the interference of other actors or interest groups like the military'. (Transparency International, 2019:3)

I want to examine the relationship between democracy and corruption by reference to the South African experience of democracy, and in particular the era of 'state capture' that has come to characterise the 2009-2018 period of the administration of former President Jacob Zuma.

South Africa's constitutional framework

Examining the democracy/corruption interface in South Africa must begin with the observation that the South African Constitution provides for a democracy that extends significantly beyond the liberal democratic framework, even in the expanded definition of that framework elaborated in the passage cited above. The sweep of the Constitution is captured with characteristic eloquence and compassion by former Deputy Chief Justice Dikgang Moseneke in a judgment of the Constitutional Court in which he locates the achievement of equality as "a core and foundational value", a value which is, moreover, "guaranteed and justiciable". Moseneke attributes the Constitution's unusual preoccupation with equality to the "deeply divided, vastly unequal and uncaring" society in which it was rooted. He emphasises that the Constitution explicitly commits our society to "improve the quality of life of all citizens and free the potential of each person".¹

Nor does the South African Constitution confine itself solely with the lofty ideals of equality, nation-building and social justice. It also, clearly with a prescient eye on systemic vulnerabilities to corruption, engages with the more parochial business of prescribing standards for public procurement. Section 217(1) provides that: "When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."

Democratic South Africa: pre-state capture

Confining this narrative to the Zuma administration is not to suggest that there were not major corruption episodes during the Mandela and Mbeki administrations. The large armaments procurement contract – the 'arms deal' – which commenced shortly after the installation of a democratic regime in 1994 is the standout corruption episode in the pre-Zuma administrations (although, as I will explain below, Zuma himself is presently on trial on charges stemming from his conduct in the arms deal, conduct which long predated his accession to the presidency).

Except for the trial of Zuma's financial advisor and now Zuma himself, the arms deal allegations have never been tested in a South African court of law. Much later, the report of a judicial commission of enquiry headed by a senior member of the Supreme Court of Appeal and which extraordinarily found no corruption, was, in a judicial review, excoriated for its palpable bias (Feinstein *et al.*, 2019).

However the arms deal is a vanilla procurement corruption case, comprising a series of large, discrete contracts. Multinational armaments companies bribed, either directly or through politically connected intermediaries, relevant public officials and politically powerful individuals to decide the outcomes of the bids in their favour. Although some individual names surfaced in several of the corrupted contracts, the composition of the corrupt syndicates – the payers and recipients of the bribes and the various intermediaries and agents – were constituted with respect to each of the separate bids. In contrast with the later era of state capture, the evidence does not point to a well-planned, comprehensive capture of the decision-making centres of the state.

This is not to understate the significance of the arms deal. The sums of public money involved were huge. Undertakings by the global arms companies to invest in South Africa – the 'offsets' which were key selling points of the arms deal – were not honoured. It is said that the arms deal represented the 'loss of innocence' on the part of the newly democratic state, hitherto celebrated as the manifestation of the triumph of good over evil, of democracy over racial oppression and exclusion and institutionalised corruption.

Nor did key institutions of the democracy escape the fall-out from the arms deal. While the evidence doesn't implicate senior political leaders of the time in personal enrichment, there are suggestions that kickbacks



from those who did personally benefit were used to fund the governing ANC. This would square with another major corruption scandal of the pre-state capture era, namely the Chancellor House scandal in which an ANC-owned investment company received equity in selected multinational companies in exchange for facilitating massive contracts with the South African state.

The independence of the Standing Committee on Public Accounts (Scopa), the parliamentary committee tasked with oversight of public expenditure, came under severe attack from the executive and the governing party leading to the removal of two members, including the chair of the committee, who were most intent upon probing arms deal-related expenditure. The Office of the Speaker of the National Assembly, where, like Scopa, a high premium is set on independence, was also severely compromised. Even the Auditor General, an office which managed to escape untainted through the later period of state capture, was compromised. And the arms deal has had a long tail.

In a grim portent there were, in the Mbeki administration, signs of political interference in the criminal justice system. Indeed the perception that Mbeki supporters in the leadership of the Scorpions, the independent elite anti-corruption investigative and prosecutorial directorate, had weaponised their vast powers in support of Mbeki by implicating Zuma in arms deal corruption, was a significant factor in ensuring Zuma's subsequent victory. This allegation was then invoked as the *raison d'être* for disbanding the Scorpions immediately after Mbeki's removal from office and its replacement by the Hawks, a significantly less resourced and less independent institution initially placed within the command structure of the South African Police Services (SAPS).

The Zuma administration: state capture

State capture is effectively the takeover – the 'capture' – of key decision-making structures of the state by syndicates composed of moneyed interests, political leaders and senior law enforcement officials. The institutions and operations of the state are then re-cast to serve the interests of its captors rather than those of the public. The private moneyed interests who are members of the predatory syndicate gain privileged access to state resources, particularly access to state procurement contracts, and influence over regulatory decisions, and a much reduced risk of detection and prosecution.

As for the political leaders who are members of the syndicate, they and their families are personally enriched, while a significant portion of the state resources that flow to the moneyed interests is devoted to ensuring that the political members of the syndicate retain political power. Indeed the corruption literature uses the term 'political corruption' to describe what South Africans have come to refer to as 'state capture'.

A captured state is distinguishable from a state in which serial acts of grand corruption are a regular feature. In the latter the composition of private and public interests that aim to secure the targeted contract with the state, or the regulatory decision that will favour a particular private interest, must be formed and re-formed in order to secure the particular public decision required to serve the private interest.

This is not to say that there is always a bright line to be drawn between, on the one hand, a single act or series of acts of grand corruption, and, on the other, state capture. It is by no means uncommon for the private beneficiary of an act of grand corruption to compensate a political counterpart by supporting the latter's election campaign or her political party. As already intimated, it's widely believed that part of the largesse that accrued to the private beneficiaries of the arms deal found its way to the coffers of the governing party. We have also seen how in order to cover-up a series of corrupt contracts as numerous and as large as those that characterised the arms deal, it is necessary to undermine key institutions of the state, particularly those responsible for oversight of public expenditure.

There are also instances of state capture that are focused on particular institutions of the state and, as such, are of limited breadth. For example, in 2010 key decision-making structures of Gauteng province's



Department of Public Health were allegedly captured by a private sector firm in cahoots with the then MEC of health. In this instance the firm went beyond corrupting individual contracts by securing a contract to second its own employees to key posts in the department's finance and supply chain management directorates thus ensuring the captor easy access to all tenders issued by the health department. The trial of the alleged perpetrators has recently commenced.

In another, considerably larger series of acts of corruption, a local firm, Bosasa, set its sights principally on the procurement budget of the national prison service. Its principal modus operandi appears to have been the payment of regular bribes to key prisons officials. However, the sheer volume and monetary value of corrupted contracts that they secured with the state, and the vulnerability to detection made it necessary for them to extend their payment of bribes to leading officials in the criminal justice authorities and highly placed politicians, allegedly including President Zuma and his close associates. They were also very large contributors to the ANC.

However the Zuma/Gupta conspiracy was the iconic state capture syndicate of the Zuma administration. Composed of the Zuma family, with Jacob, the family patriarch and head of state, and the Gupta family, a carpetbagging Indian business family, it took state capture to new dimensions.

The three Gupta brothers, the scions of a moderately wealthy Indian trading family, arrived in South Africa from the family seat in Saharanpur, a fly-blown city in Uttar Pradesh, soon after the installation of the first democratic administration. Urban legend has it that the family patriarch, in an effort to expand his modest empire, had dispatched his sons to a number of countries in transition including China and South Africa. This prescient decision paid off in South Africa.

No sooner had Atul Gupta, the second oldest of the brothers and the family's vanguard, arrived in South Africa than he began cultivating individual members of the political establishment, then dominated by Thabo Mbeki, Nelson Mandela's deputy and, in 1999, his successor. It appears that the Gupta's first significant business breakthrough was a large contract to supply computer equipment to the Department of Basic Education.

Zuma was amongst the many politicians cultivated by the Gupta family. In 1990, Zuma was one of the first leading members of the ANC to return from exile. He was immediately deployed to KwaZulu-Natal, his home province and the site for many years of bitter, murderous conflict between the Inkatha Freedom Party (IFP) and the ANC. Throughout the 1990s Zuma played a leading role in ending the violent conflict between the two political parties, in the process delivering the turbulent and politically contested province to the ANC.

In 1997, Nelson Mandela stepped down from the leadership of the ANC. Thabo Mbeki was elected ANC president, with Jacob Zuma as his deputy. In 1999, following the ANC's victory in the national elections of that year, Mbeki became the second democratically elected president of South Africa. Mbeki appointed Zuma as deputy president of the republic.

In 2005, following the trial in which Schabir Shaik, Zuma's erstwhile financial adviser, was found guilty of corruption for soliciting a bribe on behalf of Zuma from one of the bidders for an arms deal contract, Mbeki removed Zuma from the deputy presidency of the country. However, Zuma and his supporters – with, as outlined below, a number of provincial party barons and the ANC Youth and Women's Leagues in their corner – staged an aggressive fightback. At the ANC congress in 2007 Zuma roundly defeated Mbeki in the race for the ANC presidency. Some nine months later Mbeki was recalled from the presidency of the country by the Zuma-dominated National Executive Committee (NEC) of the ANC. The ANC installed a caretaker national president. Following the ANC's victory in the 2009 general election Zuma ascended to the presidency of South Africa.



Zuma's accession to the presidency was intimately bound up with his allegedly corrupt conduct during the arms deal. As noted above, Mbeki first fired Zuma following the imprisonment of his financial adviser for soliciting a bribe for Zuma from a French arms manufacturer. In December 2007, shortly after Zuma's victory in the race for ANC president, the Scorpions, the anti-corruption unit of the SAPS, indicted Zuma for a range of corruption, fraud and racketeering charges related to his conduct in the arms deal. Zuma challenged this indictment, which was set aside by the High Court on the grounds that the Scorpions and the National Prosecuting Authority (NPA) had allowed political considerations to dictate the decision to indict Zuma. This became the *cause celebre* for the recall of Mbeki from the Union Buildings. A short while thereafter the Supreme Court of Appeal overturned the High Court judgment but by then Mbeki had been removed from office and Zuma was firmly enroute to the president's office. After a lengthy battle, fought in the courts, the streets and the structures of the ANC and extending over the duration of the Zuma presidency, Zuma is, as I write, finally on trial for his conduct in the arms deal, although his adroit utilisation of delaying tactics – the 'Stalingrad strategy' – has ensured that the court has yet to hear the merits of the matter.

Zuma thus assumed the presidency of the country with law enforcement attention firmly focused on his previous conduct. And he lost no time in using his strong support within the ANC and his newfound powers as head of state to subjugate the key law enforcement agencies, particularly the NPA, the crime intelligence division of the SAPS and the Hawks, the successors to the Scorpions.

The Guptas lost no time in consolidating their relationship with Zuma. He was ripe for the picking. As was graphically revealed in the Schabir Shaik trial, Zuma, the breadwinner of a huge family comprising four or five wives and over 20 children and debts that needed to be paid to those who assisted him in his accession to the Presidency, clearly needed money and managed it badly.

The Guptas were there to provide the wherewithal. In the first instance the mechanism employed by the Guptas for relieving Zuma's financial pressures was to employ his twin children, Duduzane and Duduzile, said to be his favourite children, in the Gupta family businesses. Still in his 'twenties, Zuma's son, Duduzane, acquired significant wealth through the patronage of the Guptas. The quid pro quo was to facilitate the Gupta's influence over key state institutions.

It appears that two rent accumulation platforms loomed large in the Gupta's ambitions. Firstly, the mining sector and secondly, the procurement budgets of the large state-owned enterprises (SOEs), with the giant electricity utility, Eskom, the transport company, Transnet, the arm manufacturer, Denel and South African Airways (SAA) as their focal points. There were important synergies between their interest in mining and state procurement budgets – Eskom purchased over 50% of the country's coal production. Moreover, as elaborated below, had Zuma succeeded in his ambition to add a fleet of Russian-built nuclear power plants to Eskom's coal-powered fleet, a loss-making mothballed Uranium mine purchased by the Guptas would have been amongst the key beneficiaries.

Zuma's principal contribution to the syndicate resided in his power to appoint the leadership of key public institutions. The South African Constitution gives the president unfettered power over the appointment of the Commissioner of the SAPS, the Commissioner of the South African Revenue Services (SARS) and the National Director of Public Prosecutions (NDPP), the head of the NPA. In certain instances, most notably the SAPS and the NPA, the president is also responsible for appointing the principal deputies of the leaders of these vital institutions. The president, of course, enjoys sole discretion over the appointment of cabinet ministers and, as important, he is also responsible for the appointment of the directors general of government departments. Other key public appointments were notionally the responsibility of cabinet where submissions by the responsible minister are rarely challenged and the president naturally enjoys massive influence. These cabinet appointments also included the chairpersons and members of the boards of SOEs and, in many instances, the appointment of key executives of those enterprises.

The only institution capable of limiting the president's powers of appointment was the ANC. Invoking a tradition, real or imagined, of collective leadership, the ANC played a central role in 'cadre deployment', the appointment of ANC leaders to key positions in the state. This introduced a degree of vulnerability and uncertainty with respect to Zuma's ability to play his mission-critical role in the work of the state capture syndicate. Indeed, the ANC held sway over Zuma's very position as head of state. Just as Mbeki was defeated by Zuma in an ANC leadership contest and soon thereafter recalled by the NEC from his position as head of state, so too could Zuma suffer the same fate.



As already noted, a feature of the contemporary attack on democracy is that it is, with few exceptions, led by elected leaders. Appreciative of the power of elections, the elected demagogues move rapidly to shore up their power by taking steps to ensure their victory in future electoral contests. Gerrymandering and techniques of voter repression ensure the rigging of future elections.

One of the principal architects of the attack on liberal democracy, Hungarian prime minister, Viktor Orbán, has clearly outlined the key pillar of what he has himself termed 'illiberal democracy'. *The Atlantic* described Orbán's approach:

Orbán's first stint as prime minister ended after four years, with his defeat in the 2002 elections. The loss caught him by surprise, and it was followed by another, four years later. Orbán vowed that he would never suffer defeat again. In a closed-door speech in 2009, leaked to Hungary's formerly robust media, he said that he wanted to create 'a central political force field' that would allow conservatives to rule for 'the coming 15 to 20 years.' As he put it in another speech, 'We have only to win once, but then properly.' (Foer, 2019)

However, in the South African case the perceived foreseeable threat to Zuma's position in the state capture syndicate, and, given the two-term limit of the head of state, to the ability to determine his successor, emanated not from the general electorate – Zuma himself famously declared that the ANC would be in power until Jesus returned – but rather from the membership of the ANC structures responsible for the election of the political party's leadership. And so, while there was no urgent imperative on the part of the state capture syndicate to compromise the conduct of state elections, it was imperative to see off any possible threat from within the ANC. In short, in order to shore up Zuma's position in the syndicate, the possibility of inconvenient outcomes emanating from the internal democratic processes of the increasingly factionalised ANC had to be limited.

Capturing the ANC

The quasi-federal nature of the ANC lent enormous power to its provincial leadership and, in turn, to local branches. The latter elected the delegates to the provincial conferences, which in turn elected the provincial leadership of the party. They in turn determined the composition of the provinces' delegations at national conferences of the ANC, which elected the leadership of the ANC, including the composition of the NEC which, between conferences, was the ANC structure empowered to recall an ANC employee, including the person 'deployed' to the presidency of the state.

The thoroughgoing corruption of the ANC, corruption pursued in order to reduce the uncertainty that came with the leadership of the ANC, was significantly abetted by the quasi-federal nature of the state. The provincial governments raise no taxes but control very significant budgets, particularly though not exclusively, the public health and education budgets. These and other provincial powers – for example, administration of the mining royalties owed to mining communities – gave the provincial ANC leadership, who doubled as the provincial government leadership, the vast sources of patronage necessary to keep the branches sweet.

The deal between Zuma and the provincial heads, implicit or otherwise, appears to be one that permits the provincial party barons to do as they will with the provincial budgets – health and education are amongst the most corrupted and poorly delivered services – which serve not only to enrich individual members of the provincial leadership but, more important, it funds the patronage necessary to shore up their leadership of the provinces and, in turn the leadership of the national ANC and the state.

The national leadership, including the dominant Zuma/Gupta syndicate, accumulate through national budgets and spend, including the procurement spend of the large SOEs. A significant portion of this rent was also deployed to feed the costly and cash-hungry patronage machine that maintained internal control of the ANC. It is not for nothing that, parodying the fanatical interest of South Africans in English professional football, the premiers of three of South Africa's provinces that were most powerful in determining the outcome of internal ANC elections were collectively referred to as the 'premier league'.

The brazen corruption inside the ANC and its impact on the functioning of the state, including the delivery of key social services, did not go unnoticed by the electorate, whose response is evidenced in a decline in support for the ANC and a concomitant increase in support for opposition parties. This was most marked in the 2016 local government elections in which the ANC lost control to coalitions of opposition parties in major metropolitan areas, including Johannesburg and Tshwane (Pretoria). It won the 2019 national elections with a reduced majority, elections which were also marked by a notable decrease in voter registration and participation,



particularly amongst first-time and young voters. While these reversals at the polls have not resulted in significant attempts to corrupt the formal electoral machinery and process, it has led the ANC to devote significantly increased resources to electioneering. Some of the sources of this funding – to the limited extent that they are known – confirms the compromised state of the ANC.

The decline, indeed the corruption, of established political parties is a widespread phenomenon. Think countries as diverse as the USA, the UK, South Africa, Brazil and India. Or think France where the president owed his electoral success to the fact that he eschewed alignment with any of the established parties. Either the established parties enter a period of terminal, irreversible decline – think the SDP in Germany and the socialists in France – or they too embrace populism, of the right or left, under charismatic, demagogic leadership. It is certainly true that hitherto fringe populist movements and parties are the beneficiaries of the decline in traditional parties. In South Africa the lead actor in that role was the EFF – the Economic Freedom Fighters – a breakaway of the leadership of the ANC Youth League from the mother party.

As its name suggests, the EFF takes its cue from the incontrovertible fact that political emancipation has not been matched by economic freedom. South Africa remains one of the most unequal societies in the world, with the divisions still reflecting its racialised past. The EFF's economic policy positions are intended to address these and to appeal to that vast and diverse swathe of the population who remain excluded from participation in the economy, whether the army of unemployed, the rural poor, black professionals who cannot access the lucrative accounts of large corporates which they perceive to be the preserve of closed racially-defined professional networks, the small black-owned manufacturing or services company that also has difficulty accessing corporate and public sector supply chains, or the township dweller reliant on public services who justifiably perceives the poor quality of those services to be the consequence of rampant, brazen corruption on the part of the political leadership and public officials.

In the period of the Zuma administration, opposition parties, with the EFF playing a leading role, have, in their efforts to challenge the governing party, predictably focused their rallying calls on rampant corruption.

A critical public institution that has been severely damaged by the corruption of the governing party and by the concomitant singular focus of the opposition on corruption is that intended pillar of democracy, parliament. Far from being the platform for robust debate of policy alternatives, parliament became the site on which opposition parties exposed and expressed outrage at the corruption of the governing party. This was accompanied by non-adherence to the rules of the game that are necessary for the functioning of a parliamentary democracy. Zuma's brazen abuse of his office, rightly called into question his very legitimacy, and with it the legitimacy of the majority party. This in turn legitimised – even amongst those who do not support the EFF – extremely disruptive conduct that effectively denied the leader of the governing party and the head of state the ability to engage with parliament. On those rare occasions when Zuma was permitted to engage with parliament, his evasiveness and palpable dishonesty served as further confirmation of his illegitimacy.

And while the EFF, with their taste for uniforms and military titles, adopted the approach of the stormtrooper, the Democratic Alliance (DA), the sober, centre-right and largest opposition party, tabled successive motions of no-confidence in Zuma and litigated in court. Thanks then to the sudden presence of robust opposition parties, galvanised by the decline in the ANC's popular support and evident dissatisfaction at Zuma in particular, the hitherto supine parliament emerged as a threat to Zuma's continued leadership of the governing party and, with it, his value to the state capture syndicate. The response of the party leadership was to effectively weaponise key parliamentary offices in defence of Zuma and his executive. In order to defend her party and its leader, the then Speaker of the House of Assembly cast aside any pretence at non-partisanship; the parliamentary committees meant to exercise oversight of the executive took on the primary role of defending the president and the executive from a rampaging opposition.

The executive's ability to impose its will on the ANC's parliamentary caucus is massively abetted by the system of proportional representation that determines the composition of the national assembly and the provincial legislatures. It appears that this system of representation was originally introduced in order to limit racial polarisation in the democratically elected parliament. However it has become a major impediment to democratic governance. Not only does it deprive the voting constituencies of directly elected and accountable representatives, it effectively means that the representatives are accountable to the leadership of the party which determines the electoral list and thus an individual's membership of Parliament. Indeed it was only when a significant group of ANC parliamentarians voted with the opposition in the fourth motion of no-confidence in



Zuma, that the writing on the wall became clear. It is interesting to note that this vote was, for the first time, following a decision of the Constitutional Court, conducted by secret ballot.

The decline in the quality of democracy is frequently attended by political party and parliamentary dramas such as those described above. Look no further than the USA and the UK for evidence of this. However, there are also more prosaic, and arguably more powerful factors underpinning the hollowing out of the representative institutions of democracy. The increasing complexity of the issues and the institutions over which parliamentary bodies are charged with exercising oversight is a major contributory factor. The upshot is that parliamentarians are either hopelessly outgunned by those who are notionally accountable to them or they come to rely increasingly on privately funded think tanks and lobbyists to close this gap with a concomitantly increased influence of moneyed interests over the decision-making of parliamentary representatives. This inevitably extends to increased money influence over the electoral process itself.

The complexity of law-making and parliamentary oversight and the increasing influence of money is reflected in the professionalisation of political representation and the increasing social distance between the electorate and their representatives. Take this confirmatory 2017 data from the UK: Going back to 1979, no less than 10% of MPs from the three main parties have been lawyers (while 0.22% of the UK population are lawyers). Over the same period, the percentage of MPs who were manual workers – such as miners – has decreased steadily from 15.8% 45 years ago to below 4%. Just 7% of children go to private school in the UK, but 48% of Conservative MPs, 17% of Labour MPs and 14% of Lib Dems MPs were privately educated. The basic annual salary for MPs was £91,346 in 2024, while the UK median pre-tax full time salary was £34,963. MPs earned more than the bottom 90% of the country. Less than 2% of UK adults were millionaires, while at one point two-thirds of David Cameron's cabinet were millionaires.²

Liberal democracy's approach to countering both the information and technical asymmetries that disadvantage parliament and the influence of money over legislature elections and processes is to place decision-making in the hands of institutions of professionals – regulators, courts of law, administrative tribunals, central banks – whose foundational statutes explicitly seek to immunise them from external influence. Those who engage with and amplify the voice of the citizenry and who are most effective in holding these unelected elites accountable are increasingly non-governmental organisations (NGOs) and civil society organisations (CSOs), also organisations of unelected elites, funded, for the most part, by private philanthropic foundations, more unelected elites. The upshot is that the responsibility for creating and defending rights in liberal democracies is increasingly the responsibility of unelected elites rather than democratically elected representatives, a phenomenon characterised by the political scientist, Yascha Mounk (2018), as “rights without democracy”.

What then is the verdict on the interplay between democracy and corruption in the era of state capture in South Africa? It is clear that in order to sustain political corruption on the scale of the South African state capture project, it was necessary to attack key pillars of the democracy. The principal targets were the criminal justice agencies, including the NPA, which were weaponised in order to protect the state capture project and its protagonists and to attack opponents of the project. This was largely effected through the abuse of Zuma's near unrestrained powers of leadership appointment. Having reduced the risk of detection and prosecution it was necessary to reduce the risk of political sanction which emanated from the volatile ANC. The corruption of the ANC was achieved with relative ease.

Following this the accumulation platforms targeted for capture were key ministries and the boards and executive suites of the major SOEs. Once this had been achieved, also by deploying Zuma's powers of appointment, the extraction of rents followed a predictable pattern. Essentially they looted targeted SOEs, with Eskom, Transnet, Denel and SAA receiving special attention. Companies associated with the Guptas were granted favourable access to government tenders, particularly those emanating from the captured SOEs.

Where there were no Gupta-owned companies available to supply goods and services into the SOEs' supply chains, the Guptas established companies with no discernible assets other than the political connections of their beneficial owners. These entities then interceded between the captured SOEs' boards and procurement authorities, on the one hand, and, on the other, the potential supplier. In exchange for a massive 'commission' the Gupta-linked sham company then 'facilitated' the introduction of the would-be supplier to the SOEs' decision makers. There are countless examples of this, amongst the most infamous being an IT contract entered into between SAP, the giant German multinational, and Transnet; another between South China Rail and Transnet; and a third between McKinsey and Eskom.



The Guptas also abused the black economic empowerment programmes and laws in order to loot the SOEs' procurement budgets. In one particularly notorious instance the US blue chip advisory firm, McKinsey, took on a Gupta-linked management advisory firm as a 'supplier development partner' and, although its 'partner' supplied no services at all, cut it into a massive contract with Eskom.

The Gupta's ambitions were boundless. The lion's share of Eskom's procurement budget was in the supply of coal to the SOEs' fleet of power stations. In order to gain a significant slice of Eskom's coal supplies a Gupta crony, until then a little known provincial politician, was installed as Minister of Mineral Resources, who immediately, in collusion with the leadership of Eskom, used his ministerial powers to force Glencore, the multinational minerals giant, to sell its South African coal mines to a Gupta company. The most audacious project taken on by the Gupta/Zuma syndicate – and the rock upon which it ultimately foundered – was the attempt to introduce a significant component of nuclear power into South Africa's energy mix, despite all technical and financial advice to the contrary. The power stations were to be built by the Russians with the rumour mill suggesting that Zuma had already received a considerable down payment on their purchase, and the fuel was to be supplied by a mothballed and hitherto unprofitable uranium mine purchased by the Guptas!

The politicisation of the criminal justice institutions was not the only damage wrought by the exigencies of corruption on the institutions of the democracy. As already elaborated, in order to address Zuma's vulnerability to the vagaries of the factionalised ANC, the internal democracy of the organisation had to be destroyed. And with it went parliament. The verdict must surely be that state capture or political corruption is not sustainable in a well-functioning democracy – in order for the former to flourish, the latter must be rendered powerless. The evidence generated by South Africa's experience of state capture supports that verdict.

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ENDNOTES

¹ Minister of Finance and Other v Van Heerden (CCT 63/03) [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC) ; [2004] 12 BLLR 1181 (CC) (29 July 2004) Paras 22-25

² These data are from varying dates, but they demonstrate the general point. See <https://www.theguardian.com/news/datablog/2011/apr/04/solicitors-number-england-wales-ethnicity>; <https://yougov.co.uk/news/2014/07/24/public-want-more-mps-factory-fewer-courtroom/>; <http://www.suttonttrust.com/newsarchive/one-third-of-mps-in-new-house-of-commons-was-privately-educated/>; <http://www.parliament.uk/about/mps-and-lords/members/pay-mps/>; <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2015provisionalresults>; <https://equalitytrust.org.uk/scale-economic-inequality-uk/>; <https://equalitytrust.org.uk/scale-economic-inequality-uk/>

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