



I, Bhagavathi Bhavani Naidoo, Student Number: 21650135, hereby declare that the PhD thesis to be awarded is my own work and that it has not previously been submitted for assessment or completion of any postgraduate qualification to another University or for another qualification.

APPROVED FOR FINAL SUBMISSION

**MS Bayat** *B Admin, B Admin(Hons), M Admin (UDW),  
PhD (Stell), B Com(Hons), DTDPM (Gallilee College)*  
**Supervisor**

21/08/2019  
**Date**

## **ABSTRACT**

To date, no globally acceptable definition of corruption exists. Over the last two centuries the term has been variously redefined to point to very different behaviours. Yet a plethora of reports and publications by agencies such as Transparency International, The International Monetary Fund, The World Bank and other similar organisations have emerged, identifying and calling out activities that they term corrupt practices in emerging and developing countries. Utilising a conceptual research methodology, this study considers whether allegations of the existence of widespread corruption to justify directive behaviour are true, and examines to what extent the consequent impact of this behaviour is equitable across states. The study traces how different views of what constituted corrupt behaviour evolved across cultures/nations/ states/economies from antiquity until the present. It explores the provisions of the United Nations Convention Against Corruption (UNCAC), OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and other pertinent international and national policies and legal instruments. And tries to establish whether such provisions have contributed to even-handed application of policy across countries. The study finds that the tools and scales that claim to measure levels of corruption are unreliable. They either: 1) depend disproportionately on subjective measures of popular perception; 2) are too reliant on proxy measures; 3) are unclear on what is being measured in the absence of a clear definition of what constitutes corrupt behaviour; or 4) are reliant on the self-assessments of the organizations under scrutiny. Consequently, institutions with vested interests and specific political ideologies or economic theories misuse the rules and guidelines they construct around corruption to pursue their own interests. With the result that current definitions of corruption and how they are applied have disproportionate adverse impact on some economies.

## Table of Contents

1. CHAPTER ONE: OVERVIEW OF THE RESEARCH PROJECT	1
1.1 Introduction	1
1.2 Research Theme	3
1.3 Problem Statement	5
1.4 Objectives of Study	6
1.5 Methodology	8
1.6 Structure of the Study	9
Chapter breakdown	10
1.7 Significance, Outcomes, and Contributions of the Research	15
Unexpected finding	16
1.8 Additional Notes	16
Recent events	16
a. 2018 Global Corruption Index	17
b. State capture	18
1.9 Summary	18
2. CHAPTER TWO: LITERATURE REVIEW	20
2.1 Introduction	20
2.2 Defining Corruption: pease porridge hot, pease porridge cold	21
2.3 Corrupt Behaviour: when molehills become mountains	26
2.3.1 Bribery	27
2.3.2 Nepotism	28
2.3.3 Patronage and clientelism	29
2.3.4 Lobbying	30
2.3.5 Embezzlement	31
2.3.6 Money laundering	32
2.3.7 Illegal insider trading, graft on public contracts and regulatory corruption	33

2.4	Regulating Institutions: to have and to hold	33
2.4.1	Breton Woods Institutions	33
a.	The World Bank Group	34
b.	The International Monetary Fund	34
2.4.2	United Nations	35
2.4.3	Organisation for Economic Co-operation and Development	35
2.5	Taking the Gap	36
2.6	Summary	37
3.	CHAPTER THREE: METHODS AND METHODOLOGY	38
3.1	Introduction	38
3.2	Methodology	39
3.2.1	Ontology, epistemology and the search for truth and knowledge	39
3.2.2	Selecting a methodology	44
3.2.3	Argumentation	46
3.2.4	Argument as Methodology	45
3.3	Methods	49
3.4	Limitations	52
3.5	Summary	54
4.	CHAPTER FOUR: HISTORICAL REFERENCES TO THE CONCEPT OF CORRUPTION FROM ANCIENT TIMES TO THE MID-19TH CENTURY CE	56
4.1	Introduction	56
4.2	Antiquity: ca. 2000 BCE - 500 CE	57
4.3	Medieval Period: ca. 500-1500 CE	65
4.4	Early Modern Period ca. 1500-1860	74
4.5	Summary	79
5.	CHAPTER FIVE: THE CORRUPTION CONTEXT FROM THE MID-19 <sup>TH</sup>	

CENTURY TO THE 21ST CENTURY	81
5.1 Introduction	81
5.2 Mid to End of 19th Century	82
5.3 First Half of the 20th Century	87
5.4 Latter Half of the 20th Century	93
5.5 Early 21st Century	100
5.6 Summary	104
6. CHAPTER SIX: CORRUPTION A POLYSEMOUS TERM	106
6.1 Introduction	106
6.2 Corruption Definitions in the Politics of Power	107
6.3 Comparative Examples	111
6.3.1 Sauce for the goose versus sauce for the gander	112
6.3.2 If it looks like a duck, swims like a duck and quacks like a duck...	116
6.4 Legitimacy of Corruption Assessments	121
6.4.1 Legitimacy of measurement	122
6.4.2 Legitimacy of action	125
a. IMF	126
b. The World Bank	129
6.5 Access to Funding	132
6.5.1 Aid funding	133
6.5.2 Foreign direct investment	134
6.6 Summary	135
7. CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS	137
7.1 Introduction	137
7.2 Findings	137
7.3 Conclusion	141
7.4 Recommendations	142
7.5 Research Constraints	149
7.5.1 Assumptions	149

7.5.2	Delimitations and scope of study	150
7.5.3	Limitations	151
7.5.4	Research methodology limitations	152
7.5.5	Researcher limitations	152
7.6	Questions that Remain	153
ADDENDUM A		154
A.1	Defining State Capture	154
A.2	State Capture in South Africa	155
A.2.1	Timeline of events	155
A.2.2	Significance of events	159
A.3	State Capture in the US	160
A.3.1	State capture by wealthy US interests	161
A.3.2	State capture by foreign interests	164
A.4	Conclusion	166
A.5	Betrayal of the Promise: How South Africa is Being Stolen	166
REFERENCE LIST		233
Notes		293

# CHAPTER ONE

## 1. OVERVIEW OF THE RESEARCH PROJECT

*It is not for nothing that the modern scholar invented the Ph.D. thesis as his principal contribution to literary form. The Ph.D. thesis is the perfect image of his world. It is work done for the sake of doing work – perfectly conscientious, perfectly laborious, perfectly irresponsible. (MacLeish 1940: 118)*

### 1.1 Introduction

Currently there is no universally accepted definition of corruption. During the last couple of centuries various definitions have pointed to very different behaviours in identifying corruption. Even currently the conceptualization and definition of corruption continues to evolve. Whilst previously the topic of corruption has been secondarily addressed by disciplines as varied as Public Administration/Management, Political Science, Economics, Law and even Anthropology, Corruption Studies (or Anti-Corruption Studies) has now become a primary focus. And many commentators, theorists and practitioners have begun raising questions about the definition, classification and categorization of corruption and corrupt behaviours. They have also started to investigate and question the agendas that drive those who frame the corruption discourse in specific ways, and the consequences and impacts that result from this. This study fits within this discourse. It seeks to find out if there is a sound theoretical basis to question whether current definitions of corruption have disproportionate adverse impact on some economies.

Agencies such as Transparency International (TI), The International Monetary Fund (IMF), The World Bank (WB) and other similar organisations have generated a surfeit of reports and publications that identify and call out

activities that they term corrupt practices in emerging and developing countries. Other studies reveal that these agencies advocate that loans, grants and other aid funding to developing countries be contingent on assurances that 'anti-corruption' efforts be undertaken by the grantee. These 'conditionalities', some scholars assert, allow the WB, the IMF and other similar organizations to rationalize their departure from their mandated non-interference in the political and economic spheres. Thus, the agencies are able to exert pressure on client countries forcing them to accept 'advice' and 'assistance' from donor or loan agencies. Which in turn, enables the imposition of certain economic and infrastructure reforms that undermine the sovereignty of these nations. Furthermore, numerous opinion pieces and political commentaries by journalists and practitioner experts in the field allege that these and similar agencies choose definitions of corruption that allow them to cherry-pick certain behaviours as corrupt. And even further, that they use dubious measurement instruments to quantify the extent of such behaviour.

Adopting a conceptual research methodology, this study investigates allegations of the existence of widespread corruption that are used to justify directive behaviour. It questions whether these are true and examines the extent to which the impact of this directive behaviour is equitable across states. It engages different definitions of corruption and analyses how these definitions influence the categorization of behaviours as corrupt. It assesses the accuracy and robustness of the measuring tools that agencies utilize to justify their decisions. It investigates the effects of changes to the classification and handling of practices deemed corrupt, including the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention Against Corruption (UNCAC), and other relevant international and national policies and legal instruments. And eventually it ascertains the extent to which the operations of such provisions have led to even-handed application of policy across countries.

## 1.2 Research Theme

Robert Reich, the Chancellor's Professor of Public Policy at the Goldman School of Public Policy at the University of California, Berkeley, posted the following on Facebook:

I spoke yesterday with a visitor to the U.S. from a developing nation who said “in my country, we call it corruption. In America, you call it lobbying. But it’s the same thing.” He’s right. (Reich 2015).

Corrupt practices, it is claimed, manifest differently in different cultures (Melgar, Rossi and Smith 2010: 120; Gardiner 2011: 27). Likewise, it is often argued that there is no definition of corruption that is globally accepted (Friedrich 1972: 127-141; Pillay 2014: 11-50). A further critical focus of the corruption debate is how corrupt practices have evolved from earliest times until now.

Examples of different attitudes towards the same behaviour across space or time abound. Thus, in the 1980s the practice of bribing foreigners was acceptable, and even tax deductible in certain countries (Bukovansky 2002: 2) yet are now universally decried. Similarly, ‘facilitating payments’ have been recently deemed illegal in most countries (Nichols 2013: 155) yet such payments are still legal in the United States and Australia (United States Department of Justice 1997: 3; Australian Government: Attorney-General's Department 2017: 4). Another recent study by Harvard scholars suggests that tips and bribes have striking similarities and a positive association (Torfason, Flynn and Kupor 2012: 351). This type of definitional ambivalence often results in negative outcomes, chief of which, in terms of its relevance to this study, is the inconsistent and at times contradictory approaches to certain practices related to the exercise of political, economic or judicial power.

Agencies such as TI, the IMF, and the WB have been known to inveigh against activities that they term corrupt practices in emerging and developing economies (The World Bank 2013; Kaufmann 2015: 21). One study tracks the negative impact of perceptions of corruption on foreign direct investment

(Castro and Nunes 2013: 76). Another mentions development aid that is contingent on assurances that 'anti-corruption' efforts be undertaken by the grantee (Transparency International Secretariat 2007: 11; Søreide 2014: 19), and the IMF includes certain 'conditionalities' tied to corruption efforts in the issuing of loans (Bukovansky 2002: 19).

A perception of corruption therefore seems to have a direct impact on access to benefits such as foreign direct investment, loans and development aid. For example, the administrations of countries with a low Corruption Perception Index (CPI) score are placed under considerable pressure to comply with governance recommendations of institutions such as the IMF in the hope of continuing to access these benefits, even when such prescriptions are not supported by any evidence (Bukovansky 2002: 21). Although these studies all tangentially raise the question of whether value-laden definitions have led to inequitable outcomes across countries, none confronts the issue squarely. This study does. It considers whether this question can be answered by current available data, sound argument and by an examination of the theoretical foundations upon which these perceptions are based.

The objective of this project is to contribute to a greater understanding of the ideological and philosophical underpinnings of the current definitions of corruption and their consequent political, economic and legal impact across countries. It thus researches and investigates the effects of changes to the classification and handling of such practices, including the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, UNCAC, and other relevant international and national policies and legal instruments.

Utilising a conceptual research methodology to argue for the significance and relevance of the study, and to answer the research question with rigour and appropriateness (Ravitch and Mittenfelner Carl 2015: 34), the investigation examines the extent to which the operations of such provisions have been equitable between and amongst countries. Important key concepts, within multiple disciplines that deal with the topic of corruption, are examined to

provide a sound foundation for this research project. Corruption studies and the theory and definition of corruption fall within the area of governance, a focal area in the fields of Public Administration and Business Management. It is hoped that the gap identified in the literature review and this attempt to address it will make a useful contribution to the body of knowledge in these disciplines.

### **1.3 Problem Statement**

The definition of what constitutes corruption or corrupt practices is fiercely debated. These definitions do not fall within single academic disciplines but are multidisciplinary and generally deal with issues such as the 'performance of the duties of public office', 'exchange derived from the theory of market' and 'public interest' (Mbaku 2007: 14-15). However, as Kurer (2005) states

Any research effort dealing with corruption is heavily influenced by how it defines its subject. The conception of the nature of corruption circumscribes the analyses and defines the field of action, so to speak. (Kurer 2005: 222).

Kurer goes on to explain that differing views of the phenomenon of corruption can have vital consequences for the way in which a situation is analysed. Different ideas on whether corruption "is what breaches public interest or public office rules" result in descriptions of fundamentally different behaviours that "have different causes and consequences" (Kurer 2005: 222).

Adopting Kurer's point of view, this study seeks to examine the current state of theory with respect to concept definition. It traces the evolution of the concepts of corruption in terms of these theoretical models. It examines how the concepts of corruption have evolved. It canvasses how different organizations have deployed different definitions to impose certain constraints on client countries. It analyses the impact that this has had on countries in the developed and developing world. In short, it addresses the question:

Do current definitions of corruption have disproportionate adverse impact on some economies?

## 1.4 Objectives of Study

The primary objective of this thesis is: To understand whether existing corruption definitions result in prejudicial consequences to some countries.

To achieve this, a subset of five study objectives has been defined as follows:

- I. To understand how theories and definitions of corruption have evolved;
- II. To investigate the recurring themes and patterns within the corruption discourse;
- III. To analyse how different organizations, scholars, practitioners and theorists have effected or advocated for conceptual changes to these definitions and theories;
- IV. To examine the understandings that support these conceptual changes; and
- V. To compare the impact of these conceptual changes on the developed and developing world.

Addressing these study objectives requires this study to investigate and answer a series of questions. The following primary and secondary questions provide the focus and framework for the research:

- I. How have theories and definitions of corruption evolved?
  - a. Is there an historical difference in how concepts of corruption were first viewed across nations?
  - b. Did these change over time?
  - c. Are there behavioural practices previously considered corrupt no longer defined as such, and, if so, why?
  - d. Have cultural expectations influenced these concepts?
  - e. What are the general definitions of corruption in prevailing literature?
  - f. How are these definitions given practical effect by governments, public organizations and aid agencies, and how has that helped to define or redefine the concept?



- b. What has been the effect of prevailing perceptions of a country's corruption levels on attracting investment, and accessing loans, grants and other aid funding?
- c. Has the application of these concepts of corruption had a disproportionately punitive effect on some countries?

To enable a structured and logical approach to answering these questions, a suitable methodology has been adopted.

## **1.5 Methodology**

This study is undertaken as conceptual research using historical discourse analysis to examine existing materials focusing on the propositional content to gain an understanding of the assumptions and presuppositions incorporated in them (Perakyla 2011: 531-532). This methodology is “a method of investigating social change” dealing with issues of power (Perakyla 2011: 538). The research embraces a postmodernist ‘value-full’ approach recognizing that the study is both ‘value-laden’ and ‘inherently political’ (Bailey 1994: 31). The identification of source material started with the recognized authorities mentioned in the literature review.

As the researcher developed an understanding of the different layers of meaning to be explicated, the search moved to focused probes into various sub-themes giving it direction and purpose. The material includes academic texts, commentaries, reports, publications, and statements and speeches from digital and non-digital knowledge bases. The researcher exercised “a critical reflexivity”, examining each knowledge artefact for reliability and validity (May 2001: 197).

However, recognizing that the examples of corruption are too numerous and varied for a single study to embrace them even in broad sweep, this study therefore delimits or narrows its scope. This is a recognized strategy (Pathak 2011: 24; Jha 2014: 13). Chapter Six therefore limits the domain of interpretive analysis to representative examples drawn from the US and the developing

world. To address the concern that the conclusions are the result of cherry-picking, the rationale for selecting these examples is provided.

Ethical issues are dealt with as prescribed by DUT; the researcher complies with the “four additional practical ethical principles that shape morality in public administration research”, namely, “truthfulness, thoroughness, objectivity and relevance” (McNabb 2013: 34).

The research methodology adopted for this study is discussed in detail in Chapter Three.

## 1.6 Structure of the Study

This study follows a standard thesis structure consisting of four parts: “an introduction, the background, the core (for want of a better word), and a synthesis” as identified by Evans, Gruba and Zobel (2014: 11). The macro process followed is illustrated in the figure below.

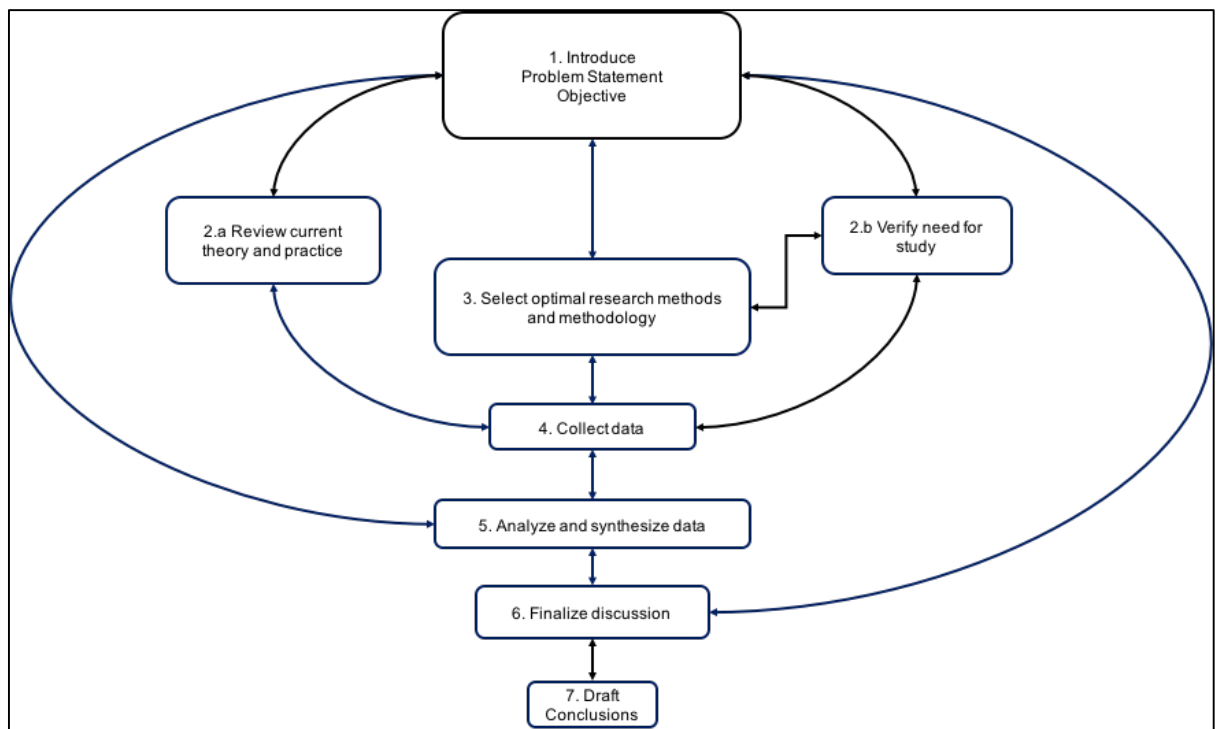


Figure 1: Thesis macro process flow

At a macro level the process charts the following steps:

- I. **Step 1** establishes the problem statement and objective of the study.
- II. **Steps 2.a and 2.b** are conducted in parallel. First, they undertake a comprehensive review of current theory and practice. Second, they verify the need for a study raising an issue that existing theory does not adequately address.
- III. **Step 3** analyses relevant research methodologies to select the research methodology and methods most suitable for this study.
- IV. **Step 4** casts as broad a net as possible to collect all relevant data, including supporting and dissenting arguments.
- V. **Step 5** conducts an analysis and synthesis of the data.
- VI. **Step 6** summarizes the findings.
- VII. **Step 7** considers the findings and establishes whether the question under consideration can be answered based on the available material and a rigorous application of the methodology adopted.

It is important to note that every step of this process is iterative on a continuous loop. The results of the various steps of this process, as noted above, are documented in seven chapters.

### **Chapter breakdown**

The seven chapters follow a similar pattern as the process flow but do not exactly map as this would make it unnecessarily difficult to read. Instead:

- I. **Chapter One** introduces the research study in the form of a synopsis. It outlines the research theme, objectives, problem

statement, research methodology, the structure of the study, and presents a summary of the findings.

The research question, Chapter One establishes, is whether current definitions of corruption, as they are variously applied, have inequitable outcomes for the countries/economies in question. It then outlines, some of the steps that this research follows, namely, a statement of the primary objective (a subset of five secondary objectives is included for elaboration and optimal achievement of the main objective), and a summary of the research methodology adopted. A thesis-macro-process-flow chart is included to illustrate how this study is developed and the iterative nature of undertaking this study. An outline of the findings and contributions of the research follows, and the chapter concludes with notes on recent events. Such recent events include the 2018 Global Corruption Index which indicates the significant escalation of corruption perception in the US (it drops in rank from 16 to 22), and the question of state capture in both the US and South Africa – the latter issue being discussed in more detail in an addendum to this study.

- II. **Chapter Two** reviews relevant literature to establish the current themes in the corruption debate and discourse. The depth and breadth of information obtained from such a review equips the researcher with a more informed understanding of current trends, and provides the foundation and theoretical framework on which the research is premised. It also identifies the current gap in the literature, and hence the niche into which this study fits. And it defines key concepts and critical and significant terms used in the study.

The review of the literature reveals that although there are some questions being asked amongst practitioners, attempts to investigate whether or not definitional ambivalence of corrupt practices has had a disproportionately adverse impact on certain

economies have been tentative at best. The literature review also reveals that over a span of twenty centuries, there have been many attempts in fields such as law, political science, public administration and development studies to settle on a single definition of what constitutes a corrupt act. Yet, to date, no such definition exists.

Chapter Two also recognizes that although there is little agreement on a single definition of corruption, there is greater convergence of definition with regards to specific acts of corruption. It provides a brief discussion on the definition of the corrupt acts that are referred to in this study. Acts such as nepotism, bribery, clientelism, lobbying, money laundering and embezzlement are explained in this chapter. The chapter further includes informative background on the organizations and institutions that are frequently referenced in this study.

- III. **Chapter Three** presents the research methods and methodology adopted for this study. It argues for the appropriateness of methodological choice by highlighting its benefits, and also discusses some of the limitations inherent in the selected approach.

After briefly explaining the concepts of ontology and epistemology, the chapter examines the three most cited paradigms in business and management research, namely, positivism, interpretivism, and critical theory, and the widespread lack of consensus as to their suitability for the discipline. Further, the historical method is assessed and, the argument made that while it will be applied to certain chapters of this research, its use as a complete and self-sufficient methodology for the study as a whole has serious limitations and therefore will not be the primary methodology adopted.

Thus, after meticulously exploring the three research methodologies that are currently used in management sciences, Chapter Three

opts for Argumentation as Methodology as the most appropriate research methodology for this study. As explained in Chapter Three, methodology based on argumentation is dialectical, and allows for both a point of view and for arguments to support that view. The methodological process follows prescribed schemas, thus allowing for recognition of its premises, its conclusions, and the type of logical inferences that connect them. In argumentation the pattern is prescriptive, and reasonable conclusions can be drawn from a set of initial premises. Finally, Metcalfe's *Business Research Through Argument* is critically analysed and its benefits and drawbacks are discussed in detail.

Chapter Three also discusses methodological limitations such as researcher reflexivity, data quality and the problems with deductive and inductive approaches to argument. It clarifies these and explains how this study, where possible, will limit the impact of such issues.

- IV. **Chapters Four and Five** provide the historical background to this study. The approach here by the very nature of the investigation is historical and relies heavily on textual analyses. These chapters provide the first tranche of data.

They describe how definitions and concepts of corruption have evolved over the course of twenty centuries. They trace references to corruption (how corruption was perceived, and how the state reacted to corruption) in select historical texts across Africa, Asia, Europe and America. Recurring themes and patterns are also identified.

Chapter Four deals specifically with the period from Antiquity to the mid-nineteenth Century. It traces how the term corruption was interpreted and used in different texts across the known world, and identifies the various sanctions that different nations, countries or

societies applied to the perpetrator. What emerges from the texts and commentaries consulted is that, notwithstanding cultural differences, certain acts such as bribery were generally decried and heavily sanctioned across the known world.

Chapter Five covers the mid-nineteenth to the twenty-first-Century. It traces the concept of corruption through the period of colonization and shows how the spread of political and legal control by primarily western economies influenced the continued evolution of the concept of corruption. It traces how corruption debates began to focus more on public office acts than on private sector acts.

- V. **Chapter Six** examines the current ongoing conceptual debates. It analyses the robustness of current measuring tools. And provides comparative examples to elaborate some of the theoretical conclusions.

Chapter Six also takes an in-depth look at the politicization of the corruption debate. It analyses how the term is used in the debate by different actors (countries, organizations and institutions). And concludes that the term is frequently deployed to entrench self-serving economic systems. The chapter offers examples that both illustrate and provide further evidence for how the debate is prosecuted. It also discusses the measures and tools on which these actors rely to justify their courses of action.

- VI. **Chapter Seven** assesses the assumptions on which this study was based, briefly recapitulates important aspects of the research, presents the findings, identifies limitations within the study, makes certain recommendations, and identifies questions that remain unanswered. Subsection 1.7 below summarises the more significant of these.

## **1.7 Significance, Outcomes, and Contributions of the Research**

What emerges from the research is the following:

- I. There is no single agreed-upon definition of corruption.
- II. The tools and scales that purport to measure levels of corruption are unreliable since they depend disproportionately on subjective measures of popular perception.
- III. Institutions with specific political ideologies or those that espouse particular economic theories are able to misuse the rules and guidelines they construct around corruption to pursue their own interests.
- IV. Current definitions of corruption have disproportionate adverse impact on some countries.

Consequently:

- I. Partisan corruption measures must be abandoned.
- II. Funders and donors should not be permitted to link funding to perceived levels of corruption
- III. All actors who participate in the corruption debate need to be honest and forthright about what they are hoping to achieve and the political and ideological beliefs that they subscribe to.

Going forward:

- I. Clear criteria, goals, and expected outcomes need to be negotiated before any agreement is entered between funders and investors, and client countries.

- II. Funders, investors and other similar parties need to make explicit their motives, and the process and methodology that they deploy when assessing countries for aid or loans.
- III. Mandates having due regard for the sovereign rights of countries need to be respected, and penalties and sanctions should attach to any breach.

### **Unexpected finding**

An unexpected finding in the course of the literature review was the following. The literature was awash with implied warnings that it would be impossible to conclude definitively whether organizations pursuing corruption arguments act punitively against certain countries. The reason given for these admonitions are that studies focusing on the issue would be handicapped by the ambiguity of definition, the unreliability of measuring tools, and the numerous contradictory findings across the field. Yet, even though this research, in common with most research, had some embedded assumptions and a number of limitations, these did not amount to a sufficiently serious flaw to invalidate the findings. Because of the strict scope and focus of the question it was possible to arrive at a definitive and affirmative answer to the question originally posed. Namely, that current definitions of corruption do have disproportionate adverse impact on some economies. And it was possible to conclude that provided the question is focused, the methodology is robust, and strict attention is paid to clarify the assumptions and limitations – even in a field rife with ambiguity, extreme polarisation of views, and very little settled orthodoxy – valid conclusions can be drawn.

## **1.8 Additional Notes**

### **Recent events**

This thesis was concluded and submitted to the supervisor in December 2018 and a submission form was requested from the university. However recent unfortunate events on university campuses throughout South Africa have led

to closures of several campuses including that of the Durban University of Technology resulting in a delay in the final submission of this thesis. Since this is a dynamic field in a constant state of flux it was to be anticipated that new information would be published during this period. What follows is a brief mention of recent developments that further informs this thesis. It must be emphasized that none of this information changes the tenor of the argument presented. If anything, it strengthens the contention of this study. The information is included as updates to a study that has already been completed.

**a. 2018 Global Corruption Index**

In January 29<sup>th</sup> 2019 TI issued the 2018 Global Corruption Index. The most significant feature is the drop in the ranking of the US from 16 to 22 and a drop in the overall score from 75 to 71 (Transparency International 2018, 2019). As noted in Chapter Six, TI's CPI is a gauge based on the perceptions of those polled. So, there should be no surprise that this latest result accords with the fact that public perception in the US is that the extent of corruption has increased. This is evidenced by Fox News (2018) reporting on its own polling which identified that "three in ten voters (30 percent) – including about one-third of independent voters and Democratic voters, and one-fourth of Republican voters – say corruption in Washington, D.C. is the most important topic for 2018". Similarly Nilsen (2019) of Vox reported on polling from End Citizens United which claimed that "75 percent of 2018 voters in battleground House districts said cracking down on Washington corruption was their top priority".

However, to reiterate the point made in Chapter Six of the fickleness of public perception and therefore the unjustifiability of considering the CPI a valid measure of corruption is to note the case of Saudi Arabia. Notwithstanding, the problematic securing of Mohammed Bin Salman as heir apparent to King Salman of Saudi Arabia which Blumi (2018: 204) defines as a "coup" nor the killing of journalist Jamal Kashoggi which earned a US senate rebuke (115th Congress USA, 2018), Saudi Arabia has dropped only a single place in the

rankings from 57 to 58 with its overall score remaining at 49 (Transparency International 2018, 2019).

**b. State capture**

It is impossible to tackle the topic of corruption as a PhD project at a South African University and ignore the most current topical issue: state capture. The concerns raised in the State of Capture report produced by the Office of the Public Protector of South Africa is still making its way through the courts in South Africa. The report and related information available in the public domain currently is on the face of it damning (Public Protector South Africa 2016: 12-23). Although some of the information has resulted in charges, much of that information is either still being challenged in courts or remains *sub judice*. To distinguish fact from allegation in these circumstances is challenging. This problem is exacerbated when the case of state capture in the US is considered as government actions are in an even earlier stage of examination there. Consequently, the question of state capture as a form of meta-corruption has not been included in Chapter Six. Instead, an addendum examines state capture as it pertains to President Zuma and compares this to state capture with reference to President Trump.

## **1.9 Summary**

Chapter One offers an overview of the research project. It presents the research theme and the problem statement. It also introduces the research methodology and provides an outline of the structure of the study. Thereafter it presents a summary of the study's conclusions and ends with some additional notes on recent events.

The research question as presented in Chapter One is whether the manner in which agencies, institutions and countries deploy current definitions of corruption results in inequitable outcomes for the countries/economies they profess to assist. The statement of the primary objective is broken down into a subset of five secondary objectives and then further sub-divided into tertiary questions. The elaboration of the questions enables the researcher to select

the optimal research methodology that will deliver robust and credible answers to these questions. A brief explanation of the research methodology selected and discussed in detail in Chapter Three follows.

Finally, although, Chapter One goes through each of the stages that this research follows sequentially, a thesis-macro-process-flow chart is included to illustrate the iterative nature of the research process.

The chapter that follows, Chapter Two, is the literature review that establishes the foundation and theoretical framework for this research.

## CHAPTER TWO

### 2. LITERATURE REVIEW

*When plunder has become the means of existence of a large group of men mutually linked by social ties, they soon contrive to pass a law that sanctions it and a moral code that glorifies it (Bastiat 2017: 114).*

#### 2.1 Introduction

There has been significant public commentary on the negative and inequitable consequences that follow when certain countries are classified as having high levels of corruption. Much of this commentary has been in the form of allegations, social reviews and critiques made by journalists or political commentators in the media, and the remarks and observations of practitioners within the developmental sector. Others have disputed these claims. What does not seem to exist, however, is a body of research that investigates whether these perspectives on corruption have a sound theoretical basis. This study primarily examines existing theory and praxis in public administration/management, but will draw when necessary on the fields of politics, economics, history, and law to test the validity of these claims. This should spur further debate and establish a sound theoretical foundation specific to this question on which future theory and practice can develop.

A great deal of work has been done in defining 'corruption', and substantial research exists on how changing mores have resulted in the redefinition and reclassification of what constitutes corrupt practices. To create a path forward for this thesis, a sound, even if basic, understanding of where in the continuum specific debates are situated will have to be developed. This will ensure that the problem is clearly identified, the need for this study is substantiated, and a suitable methodology can be selected to execute this study. This chapter therefore reviews current literature (theories, debates, and definitions) that

provide the basis for this understanding. It is to be noted, however, that what follows is an overview and critical analysis of the biggest trends and debates in the discourse on corruption, and not an exhaustive dive into detail. The reason for this will soon become apparent; beyond the general framework that such an examination will provide, the endless elucidation of minutiae will not advance this topic.

The reason for starting this chapter by examining the various attempts to define corruption is that central to this thesis is an understanding of how different approaches to definitions of corruption are subtended by diverging ideological and political persuasions. Kurer (2005), makes it clear that research on corruption is greatly influenced by how researchers choose to define corruption. How the concept is dealt with delimits the scope and becomes prescriptive of the kind of analysis that can be undertaken. The study becomes radically altered both in sweep and essence if disparate definitions are adopted. Conflicting definitions point to different “causes and consequences” (Kurer 2005: 222). Given that there are so many competing interests among major players, each with their own political agendas and ideological stances, it is not surprising then that, as Sparling (2017: 377) states, no single definition “has yet to achieve hegemonic status”. Theoretical debates on definitions of corruption still rage, and multiple overlapping and even incompatible theories still coexist and continue to lead crossover or parallel existences in the current field of discourse. It must not be assumed, therefore, that the following exploration of extant theories will result in a sufficient convergence of meaning that a single definition or set of definitions on which to base this study will be the clear outcome.

## **2.2 Defining Corruption: pease porridge hot, pease porridge cold**

In the sixties, the two main camps that debated definitions of corruption were the ‘moralists’ and the ‘revisionists’ (Johnston 1986: 459). Moralists held to the belief that corruption was always corrosive, and destroyed societies, governments and institutions and that complicity in corruption was a gauge of

one's morality (Banfield 1958: 85). However this was challenged by some scholars who questioned whether the effects of corruption was always detrimental, disadvantageous or unfavourable (Ben-Dor 1974: 64). The revisionists consequently chose to define corruption as a subversion of formal rules, laws or statutes (Leff 1964: 8; Nye 1967: 419). Some revisionists, argued that corruption could have potential benefit. They "attempted to specify the potential contributions of corruption to development, both political and economic, mostly on a very high level of generalization" (Ben-Dor 1974: 64). And argued that it could ease burdensome procedures, provide access for the excluded, and give rise to more effective policies (Johnston 1986: 459). The idea that corruption was a undermining of formal rules, laws or statutes, however, was also challenged on the grounds that corruption did not depend 'on the legality of the act in question' (Thomas and Meagher 2004: 2). Consequently, the moralist/revisionist typology eventually gave way to another posited by Heidenheimer and Johnston (2011a). It is a typology that categorizes corruption theories as: public-office-centred; market-centred; or public-interest-centred (Heidenheimer and Johnston 2011a: 8-9).

Examples of public-office-centred definitions include the work of McMullan (1961), Bayley (1966), Myrdal (1972). Their definitions are based on the idea of misuse of public office or authority for private gain. The best known of these is that of Nye (1967), who identifies corruption as:

behavior which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence (Nye 1967: 416).

Although the most widely used and best acclaimed, this definition is both "too narrow and too broad in scope"; corrupt acts are not always illegal and illegal actions not always corrupt (Peters and Welch 2011: 156). The most quoted example to illustrate this is: "One does not condemn a Jew for bribing his way out of a concentration camp" (Rose-Ackerman 2013: 9). So, this category of

definition proves unsatisfactory because it is neither all-encompassing nor always true.

Examples of market-centred definitions are provided by van Klaveren (1957), Tilman (1968), and Leff (1964). These, however, are more of an explanation and an attempt to clarify than actual definitions, and are based on analysing “the causes and consequences of corruption with the help of economic analysis” (Kurer 2015: 35). The idea is that corruption of this type gives rise to a distortion of market incentives and of the fair distribution of public services or benefits. A typical market-centred definition of corruption, as articulated by van Klaveren, and cited by Philp M (2011) defines corruption in terms of:

a civil servant who regards his office as an business the income of which he will ... seek to maximize. The size of his income depends ... upon the market situation and his talents for finding the point of maximal gain on the public's demand curve (Philp M 2011: 49).

These definitions are equally contentious; although they assert “a moral or legal neutrality”(Nuijten and Anders 2007: 7), they assume a “given and defined set of corrupt actions” (Kurer 2015: 35). And they overlook not only abuses of power for intangible benefits such as prestige and the promise of political support, but also abuses of power that cover acts like embezzlement as well (Johnston 2002: 19). This category of definitions, then, also proves unsatisfactory, as it has very limited application.

Examples of public-interest-centred definitions provided by Friedrich (2011) and Rogow and Lasswell (1963) emphasize that corruption privileges private interest above public interest. Friedrich's definition recognizes, as a pattern of corruption, the behaviour of a power-holder/responsible functionary or officeholder who is induced:

by monetary or other rewards such as expectation of a job in the future...to take actions which favor whoever provides the rewards and thereby damage the group or

organization to which the functionary belongs, more specifically the government (Friedrich 2011: 15).

The difficulty with these attempts at definitions is that they risk “confusing the phenomenon with its consequences” (Philp 2011: 45). Moreover, they rely on being able to define what constitutes a community’s public needs or interests, and depend on the idea that public interest is always valued above private interest (Philp 2011: 45-46). Even though these definitions seem to hark back to the earlier moralist definitions in highlighting the damage to public interest, they do not make any overt claim to morality.

Conversely, Dion (2010), in his paper “Corruption and ethical relativism: What is at stake?”, reintroduces questions of morality, when he examines what he terms the ‘phenomenon of corruption’ from three different perspectives; the structural, the social-normative, and the organizational-normative. Since it is the question of ethics that is the focus of his study, he specifically investigates the phenomenon from the perspectives of “the structure of the corruption, the social norms of honesty/integrity which exert a more or less influential power on people, and the organizational norms of honesty/integrity themselves” (Dion 2010: 241). He and those theorists who hold that definitions of corruption have a value base and are normative are forced to confront the question of ‘which values’ and ‘whose norms’ (Heidenheimer and Johnston 2011a: 9).

An Australian National University working paper explores this theme. The author, in asserting the normative values underpinning condemnation of corruption, deplores the lack of scholarly examination at that time into the moral questions implicit in this (Bukovansky 2002: 4). Yet, Leys (2011), quoting Wraith and Simpkins, at a later period argues that it is the moralist view that has prevailed in the literature. He points out that, whilst the moralists’ system of reference for calling out corruption is based on British norms, they are aware that their standpoint may not find agreement with persons from other cultural backgrounds (Leys 2011: 60). Others also highlight the difficulty that occurs when non-western countries, with moral codes different from western

norms, i.e., different cultures, are subject to an analysis of corruption (Heidenheimer and Johnston 2011a: 12). The debate has been growing as more and more academics examine this cultural relativity and the impact of exporting western values and norms to developing countries (Cox 2008: 7; Pellegrini 2011: 17).

One well-regarded attempt to create a definition that avoids the trap of cultural relativity is the work of Kurer (2005). He identifies an underlying principle to traditional concepts that he terms the 'impartiality principle'. It is based on the idea that "a state ought to treat equally those who deserve equally" (Kurer 2005: 223). Taking his cue from the public-office-centred definitions of corruption, he uses ideas of distributive justice to conceptualize a rule-bound administration that would adjust the grounds of discrimination "differently at different periods in time" and "from society to society" to achieve fairness (Kurer 2005: 223). The definition he formulates is: "Corrupt acts...are characterised by a holder of public office violating non-discrimination norms in order to gain a private advantage" (Kurer 2005: 227). Rothstein and Teorell (2008) support and further develop this position. They acknowledge that it is by formulating the theory thus that Kurer deals successfully with the issue of cultural relativity through a recognition that violation of the impartiality principle would be universally understood. They reiterate that this violation would be against the "impartiality principle governing the *exercise* of public power", at the centre of which lies the idea of non-discrimination (Rothstein and Teorell 2008: 171; Rothstein 2011: 15). Although otherwise widely subscribed to, this definition has been criticized because it fails to take into account corruption in the private sector. Kurer (2015) countered this argument by asserting that the restricted scope of the definition to just a consideration of the public sector was for pragmatic reasons. Any extension of the definition to the private sector would lessen the "chance of an agreement on the boundaries of corruption even more as the difficulties of determining its attributes mount". Furthermore, he considered that this focus was defensible on the grounds that the "public has a greater interest in public than private corruption" (Kurer 2015: 39). Sparling, without rejecting the theory entirely, claims that it tries to suggest 'extrapolitical definitions' of what are 'political concepts'. He suggests that if

the definition of corruption does not account for “the content of particular policies”, it will fail to identify as corrupt acts a large number of systemic abuses of political office (Sparling 2017: 378, 384). Rothstein (2011: 25) acknowledges this drawback, by using the example of apartheid. With apartheid “normatively despicable policies” could theoretically be implemented impartially; therefore, he argues, impartiality cannot be the “sole normative yardstick”.

The preceding discussion makes clear the futility of attempting to arrive at a single definition of corruption on which this thesis can be premised. Fortunately, it is possible to approach this problem obliquely. An argumentation methodology will be followed to enable this oblique approach. An exploration of this methodology and the reasons for it being the appropriate vehicle for this study are provided in Chapter Three.

### **2.3 Corrupt Behaviour: when molehills become mountains**

Rothstein (2014), in discussing the *impartiality principle*, shows how this definition of corruption, unlike standard definitions, makes it easier to clarify what “basic norm is being abused” when behaviours such as clientelism, patronage, nepotism, discrimination, or favouritism are practised in public policy implementation (Rothstein 2014: 745-746).

Unlike the difficulty experienced in trying to find a universally acceptable definition for corruption, there tends to be greater definition convergence amongst theorists when specific terms that are associated with acts of corruption are discussed. This is not to imply that there is no ambiguity and that theorists agree on almost every detail that falls within the parameters of the definition of any specific corrupt act, but rather that most definitions of a corrupt act at their core seem to conflate into a single set of identifiable elements. What follow are discussions to clarify the types of corrupt behaviours most referenced in this study.

### 2.3.1 Bribery

Green (2006) offers the following definition of bribery:

X (a bribee) is bribed by Y (a briber) if and only if: (1) X accepts, or agrees to accept, something of value from Y; (2) in exchange for X's acting, or agreeing to act, in furtherance of some interest of Y's; (3) by violating some duty of loyalty owed by X arising out of X's office, position, or involvement in some practice (Green 2006: 194).

Miller (2017) identifies the following issues with this definition. It does not include acts of omission, only those of commission. By using the word "interest" and not "desire", it does not consider acts that may not be in the briber's interest but which the briber intends to, and does, procure. It does not consider a pervasive, even if not essential, element of bribery: secrecy. Nor does it account for instances where a bribe is paid but the act procured is not performed (Miller 2017: 108-110). Thomas (2014: 44) defines bribery as "giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so". This definition answers all of Miller's concerns, except that of concealment which even he acknowledges is not a strict requirement.

Almost all countries have domestic anti-bribery laws, but the laws that are considered to set the standard for ethical business dealing with foreign public officials are the US Foreign Corrupt Practices Act of 1977 (FCPA, amended in 1988 and 1998), and the UK Bribery Act 2010 ("Bribery Act"). Both these laws have extra-territorial reach for companies that operate within their domestic jurisdiction but, whereas the "Bribery Act" covers "bribery between private persons in a commercial context", the FCPA does not. In addition, the "Bribery Act" does not allow for facilitating payments (Bown 2017: 52). Facilitating payments are "grease payments" of minor value that are paid in the expectation of expediting everyday government actions. The OECD and Asia Pacific Economic Cooperation have requested that member countries refrain

from these practices; most have done so, the exceptions being Australia, US, New Zealand and South Korea (Chui 2014: 1).

### **2.3.2 Nepotism**

Nepotism is generally regarded as an “abuse of office” by public officials (Gardiner 2011: 27) and constitutes “favoritism based on kinship” (Bellow 2004: 11). Paradigms of nepotism include the hiring or promoting one’s own children over others and can also be described as favouritism towards kin that are once removed (Miller 2017: 110). Khatri, Tsang and Begley (2006: 63) identify it as being akin to “cronyism specific to family members” since it includes all four elements of cronyism, namely: “reciprocal exchange, favoritism, shared network, and cost to a deserving party”. Although there have been debates on whether nepotism is a betrayal of the principle of meritocracy or a necessary leavening of it (Bellow 2004: 18-19), the definition in terms of what constitutes nepotism is generally not in dispute.

However, different legal jurisdictions apply rules on nepotism differently and these rules may differ even from sector to sector within jurisdictions. White (2000) lists a typology of nepotistic practices that different states in the US legislate against. *Appointment nepotism* he describes as the appointment or hiring of a spouse or relative to a governmental position by a governmental officer. *Supervisory nepotism* exists when a spouse or relative serves under a governmental official within the same agency. *Situational nepotism* is when a spouse or relative serves with a governmental official within the same agency even where no supervision takes place. As the broadest definition, this nepotism ban “casts the widest net and is the most stringent limitation of kinship”. *Contractual nepotism*, although generally listed as a financial conflict-of-interest statute rather than as nepotism regulation, is the most widely prohibited behaviour across states. This happens when a governmental official has a relative with a sizable financial interest transacting with their agency (White 2000: 109-110).

Other countries, by contrast, may have one set of laws and regulations that are passed at national level. In Indonesia, for example, Stipulation (No. XI/MPR/1998) was made by the People's Consultative Assembly specifying that state organizers should perform their functions and tasks free from nepotistic practices. This was followed by Law No. 28/1999 which prescribes penalties for nepotism offences by state organizers and includes provision for an independent Investigating Commission to investigate offences (Makarim & Taira 2012: 5).

### **2.3.3 Patronage and clientelism**

Fukuyama (2016) discusses the strong interrelationship between patronage and clientelism. He identifies them as similar concepts that are distinguished from each other in terms of scale. Patronage relationships are generally conducted face-to-face between patrons and clients. Clientelism, on the other hand, involves larger-scale exchanges often reliant on a “hierarchy of intermediaries” (Fukuyama 2016: 3-4). He goes on to define patronage relationships as

a reciprocal exchange of favours between two individuals of different status and power, usually involving favours given by the patron to the client in exchange for the client's loyalty and political support. The favour given to the client must be a good that can be individually appropriated (Fukuyama 2016: 4).

Hopkin (2006) distinguishes between new and old clientelism, and points out that the morphing of the concept has made it less precise. Previously clientelism was recognised as a “form of personal, dyadic exchange usually characterized by a sense of obligation, and often also by an unequal balance of power between those involved”. More recently the relationship has become less hierarchical and more democratic. Even though it retains the element of imbalance of power, there has been a lessening of the deference to and dependency from the client whose vote has become a commodity able to be negotiated for maximum benefit. Also, electoral behaviour has become more

adaptable and changeable resulting in “greater competition and elite turnover”. He defines political clientelism as the “distribution of selective benefits to individuals or clearly defined groups in exchange for political support” (Hopkin 2006: 2-4). Muno (2010) adds to the definition the idea of clientelism as being “a social relationship” built on rules that are informal in nature. He identifies the key elements of such behaviour as: dyadic – between two individuals; asymmetrical; personal and enduring; reciprocal; and voluntary (Muno 2010: 3-4).

Gopal (2017: 63) conflates clientelism with patronage when he equates patronage with clientelism in the “sale” of offices through actions such as campaign donations. However, Kopecký (2011), like Fukuyama, sees patronage, although related, as “conceptually and empirically distinct” from clientelism. Whereas clientelism can be used to “buy votes or reward organisational loyalty”, patronage appointments, Kopecký argues, are not innately clientelistic. Even though they can be used in a clientelistic way, jobs can also be awarded “to control policy formulation and implementation”. Furthermore, patronage appointments can be even legally sanctioned. It starts to approach corruption, though, in cases where it is used as a path to enable the “illegal personal enrichment of party politicians or their supporters”, or to control state positions to thwart criminal inquiry into dubious funding (Kopecký 2011: 717).

#### **2.3.4 Lobbying**

Harstad and Svensson (2011) distinguish between bribery and lobbying in the following manner. Lobbying they define as types of “campaign contributions or influence-buying through other means, as an activity that is aimed at changing existing rules or policies”, whereas bribery they define as “an attempt to bend or get around existing rules or policy”. The distinctions between the two activities are presented as: lobbying is legal and regulated as opposed to bribery; changes effectuated by lobbying affect the whole industry where bribery is more ‘firm-specific’; and finally, a government official contemplating

a change to rules may have 'different concerns' than an official faced with a bribe (Harstad and Svensson 2011: 46).

There is an argument that "[o]ne of the central tenets of representative democracy is the right of individuals, by themselves or in groups, to petition elected officials and the government". These appeals arise out of desire to influence "the opinions, policies, and votes of legislators and other government officials". This in turn has given rise to the formal organization of interest groups consisting of individuals, corporate entities and other organizations. They utilise an assortment of methods such as: media and grassroots campaigns; endorsements of, and campaign contributions to, government officials; and lobbying - to increase their influence and achieve the policy aims that would be most beneficial to them (de Figueiredo and Kelleher Richter 2013: 2). Lobbying at its core, then, is characterized as an activity undertaken for remunerations by intermediaries who 'petition government' (Johnson 2006: 8-9). The idea that the 'influencing' of public officials to change public policy in one's favour is an acceptable practice is a controversial one.

In the US, the legitimacy of the position of lobbying within political spheres is thought to be protected by the First Amendment right enshrined in the Constitution (Johnson 2006: 6; Mayer 2008: 486). Yet even In the US there isn't a uniform definition of lobbying nor is there a uniform acceptance of lobbying as a legitimate democratic pursuit. It can be contended that "where a difference is created an incentive to exploit that difference is created" (Mayer 2008: 545-549). And as Hasen (2012: 550) observes, there are convincing arguments on how lobbying "skews public policy" and "can thwart public interest".

### **2.3.5 Embezzlement**

In its simplest form, embezzlement is the misappropriation by the embezzler of resources legally in his possession (Bartram 1999: 269-276). Gardiner (2011) defines embezzlement by distinguishing it from fraud. Where embezzlement is the act of a government official who by deception secures for

himself unauthorised funds, a private individual or corporation indulging in the same behaviour would be guilty of fraud (Gardiner 2011: 28). However, other experts make no such distinction identifying embezzlement as 'a form of white-collar crime', involving the misappropriation of assets entrusted to an individual or group of individuals by those self-same persons. It is represented as an 'abuse of power' resulting from the abuser's position in an 'occupational structure' and primarily motivated by greed and self-interest (*The Social History of Crime and Punishment in America: An Encyclopedia* 2012: 533). It is thought to be a fairly widespread phenomenon, with Phairas (2016: 209) estimating that even in medical practices "one in six physicians will be the victim of embezzlement at least once".

### **2.3.6 Money laundering**

In general money laundering refers to the process by which criminal proceeds are passed through various financial transactions to hide their origins so that they can masquerade as legitimate funds (Ebikake 2016: 347). Yantis, Attia and Lathouris (2018) identify 3 steps in the process. Step 1 is the placement of money. This is the process whereby the person undertaking to launder the illegitimate funds transfers the money into a legitimate business. Step 2 is the layering process. Under various pretexts the funds are moved in financial transactions that are deliberately designed to disguise their origins. Step 3 is the integration process. During this step, the funds are converted into financial instruments such as loans, bank notes, letters of credit or similar (Yantis, Attia and Lathouris 2018: 1469). Aluko and Bagheri (2012) suggest that there is significant impact on countries because of money laundering. They list issues such as the undermining of the integrity of financial systems, a loss of control of the national economic policy, economic distortion and investment instability, an undermining of the legitimate private sector, and a loss of tax revenue as some of these impacts (Aluko and Bagheri 2012: 444-446).

### **2.3.7 Illegal insider trading, graft on public contracts and regulatory corruption**

Illegal insider trading is the buying and selling of stock, bonds or options, i.e., a security, by a person who, because of their position of trust, has non-public information about the security. Prohibiting such trading prevents persons with inside information from unfairly profiting, thus keeping the markets fair (Clark 2014: 3). Graft on public contracts includes bribes in the form of kickbacks, rigging tender processes, inflating prices of government goods, and escalating charges for services contracts to benefit the officials involved (Menes 2006: 74-75). Regulatory corruption is the bribing of officials to overlook: (a) transgressions of laws and regulations; and (b) extortion by officials who threaten either not to grant approvals or to impose unfairly severe rulings unless bought off (Menes 2006: 78).

## **2.4 Regulating Institutions: To have and to hold**

Frequent reference is also made in this study to certain organizations and institutions. A brief description of each of the more frequently referenced ones is provided below.

### **2.4.1 Breton Woods Institutions**

The Bretton Woods institutions are the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), which today is part of the World Bank Group. Formed in 1944 at the United Nations Monetary and Financial Conference that was held at Bretton Woods, New Hampshire, its aim was “to create a family of institutions to address critical issues in the international financial system”(The Bretton Woods Committee 2017a). Its current stated aims are to “promote economic growth”, “alleviate poverty” and “improve global financial stability” (The Bretton Woods Committee 2017b).

**a. *The World Bank Group***

The WB funds development projects, through loans, interest-free credits, and grants (The World Bank 2017b). It is now an associated group of five development institutions: the International Finance Corporation for the mobilization of private sector investment and the provision of advice; the International Development Association for the provision of aid through trust funds and grants; the International Centre for Settlement of Investment Disputes for the resolution of disputes between states and between investors and states; and the Multilateral Investment Guarantee Agency for the promotion of foreign direct investment (The World Bank 2017a). Some critics have alleged that far from benefitting developing countries the World Bank has provided “painful and destructive financial and technical support leading to retarded growth, expanded inequality, and occasionally global instability” (Mohamed Muhumed and Gas 2016: 39).

**b. *The International Monetary Fund***

The IMF was established to guarantee the stable working of the international monetary system. The international monetary system is the “system of exchange rates and international payments” that facilitates transactions between countries, and between countries and their citizens (International Monetary Fund 2017). In 2012, the IMF took on the responsibility to include within its purview all financial sector and macroeconomic matters that impact worldwide economic stability. It identifies itself as “an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world” (International Monetary Fund 2017). One of the most pervasive criticisms of the IMF is that its ‘conditional’ award of funds is based on promoting the foreign policy objectives of the IMF’s largest shareholder, the United States (Breen 2012: 212).

### **2.4.2 United Nations**

Founded in 1945 with a current membership of 193 states, the UN adheres to a broad Charter that allows it to take action “on the issues confronting humanity in the 21st century”, and aims to provide a forum for the solving of inter-governmental problems and the search for common agreements (United Nations 2018). Generally acknowledged to hold a uniquely important and authoritative role with respect to international ‘peace and security’, it has been seen as having a very checkered track record and in urgent need of reform (Butler 2012: 23). Critics have attacked the UN for not moving fast enough to accommodate “for the shifting distribution of global power and to strengthen its legitimacy” (Hosli and Dörfler 2017: 1-2).

### **2.4.3 Organisation for Economic Co-operation and Development**

The Organisation for Economic Co-operation and Development (OECD) arose out of the Organisation for European Economic Cooperation (OEEC) 1948. The OEEC was created to run the US-financed Marshall Plan for reconstruction of post-war Europe (OECD 2018b). The OECD states its mission as promoting “policies that will improve the economic and social well-being of people around the world”. And does so by providing a “forum in which governments can work together to share experiences and seek solutions to common problems”(OECD 2018a). Its membership includes the countries of: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States (OECD 2018c). Identified as an important transnational network actor promoting globalization and instrumental in the “diminishing role of the industrial-territorial nation-state” (Schmelzer 2017: 48), the OECD has been variously challenged. One challenge is to the legitimacy of its “consensus-based’ policy reform measures aimed to curb base erosion and profit shifting (BEPS)” which followed on the global financial crisis (Fung 2017: 76). The OECD’s influence in areas such as educational governance has also been contested (Volante, Fazio and

Ritzen 2017: 43). As has its proposals for financial reform in Russia (Rosefielde and Vennikova 2004: 307-318).

## **2.5 Taking the Gap**

The complexity of defining corruption has led to a proliferation of theories and debates in fields such as public administration and management, politics, economics, philosophy, anthropology and development studies, amongst others – only some of which were rehearsed above. Identifying corrupt behaviours, although slightly less fraught an exercise, is still complex and not completely without controversy. But arriving at reasonable definitions is only one part of the problem. Corruption has become a focus of the IMF (IMF 2018a), the WB (World Bank Group 2018), OECD (Gurría 2018), and other global institutions. And corruption “practitioners have tended to opt for good-enough definitions” which allow them to chart and combat behaviours they consider “abuses of entrusted power for private gain” (Sparling 2017: 376). It was clearly established in the discussion above that any definition of corruption reflects a particular political or ideological stance. Even the attempts by Rothstein and Kurer to create a definition that can be applied regardless of political position are challenged by Sparling. The observation by Kurer (2015: 30), then, that “[r]esearchers and campaigners against corruption will continue to choose a definition that suits their purpose” is an important consideration when influential organizations in defence of their policies state that they are actuated by an intention to combat corruption. Such defences can allow for organizations to take advantage of the definitional ambiguity that characterizes this field. Thus, whilst claiming to operate under the cloak of combating corruption, they are then free to pursue very different concerns resulting in uneven and inequitable outcomes across client states. So, it is hardly surprising to find that, because of this definitional ambivalence, negative consequences do occur. One study tracks the negative impact of perceptions of corruption on foreign direct investment (Castro and Nunes 2013: 76). Another mentions development aid that is contingent on assurances that ‘anti-corruption’ efforts be undertaken by the grantee (Søreide 2014: 19), and yet another that the IMF includes a ‘soft conditionality’ in the issuing of loans

(Bukovansky 2002: 19). Even though these studies all tangentially address the question of whether value-laden definitions have led to inequitable outcomes across countries, none confronts the issue squarely.

## **2.6 Summary**

The literature review presented in this chapter mapped out the broad trends and theories that exist in the corruption discourse. This review has clearly shown the degree of complexity and confusion that currently exists in the corruption debates. It became evident why it is insufficient for this study to rely on recent theory alone to develop its theme. And showed why it has become necessary for this study to trace historical patterns and use practical examples to achieve its aims. The methodology selected will have to provide for this.

The review was presented not only to create an understanding of corruption as a concept, but more especially, to reveal how power relations can influence this discourse. This revelation will be further investigated in the chapters that follow as it provides the basis to show how it is possible for vested interests to use definitional ambiguities to rationalize their ideological or political actions. It is this behaviour that forms the crux of this study.

In summary, the literature review identified areas not adequately addressed by researchers. It created: a foundation to support the choice of methodology for the achievement of its objectives; a justification for the various steps adopted to assemble the evidence; and a vindication of the nature of the analysis that follows. It also indicated where the question central to this study is currently situated in the corruption discourse.

## CHAPTER THREE

### 3. METHODS AND METHODOLOGY

*It is important that students bring a certain ragamuffin, barefoot, irreverence to their studies; they are not here to worship what is known, but to question it. (Bronowski 1973: 360)*

#### 3.1 Introduction

Powers and Knapp (2011: 160) identify the conduct of research as “a systematic process of investigation, the purpose of which is to contribute to an identified body of knowledge”. The identification of the optimal *systematic process* for this investigation leads into a discussion of which research methodology provides the most suitable vehicle for this study.

The literature on research methodology differentiates between methodology and method (Loftus 2006: 100; Bogdan and Knopp Biklen 2007: 7; Novikov and Novikov 2013: 3). Loftus (2006) defines methodology as the underlying philosophy that forms the basis for the procedures and principles chosen when undertaking research (Loftus 2006: 100). Novikov and Novikov (2013) identify research methodology as occupying a position within a hierarchy where it sits below the philosophy of the discipline but above its research design and its research technique. Specifically, and in similar vein to Loftus, they define research methodology as concerned with “general laws and principles of organizing the research activity” that enables the researcher to choose “an efficient (adequate, rational) research technique” (Novikov and Novikov 2013: 3). They go on to identify research design as “the process of choosing a research technique,” and research techniques as “a set of certain methods, tools, algorithms, etc. to perform a specific research” (Novikov and Novikov 2013: 3). Kothari (2004) uses the terms research methods and research techniques interchangeably: “Research methods may be understood as all

those methods/techniques that are used for [conduct] of research. Research methods or techniques, thus, refer to the methods the researchers use in performing research operations” (Kothari 2004: 7-8). Simply stated, then, methodology focuses on the philosophical underpinnings of research, while method focuses on the techniques and strategies adopted to conduct research.

Chapter Three will therefore be divided into two major parts. Part one will provide the rationale for the methodology selected. This, in turn, will justify the research design and the consequent choice of methods outlined in part two. A minor section specifically on the inherent methodological and method limitations that were not sufficiently explicated in the general theoretical discussion closes the chapter.

## **3.2 Methodology**

### **3.2.1 Ontology, epistemology and the search for truth and knowledge**

Ontology “is a branch of metaphysics dealing with the essence of phenomena and the nature of their existence” (Johnson and Duberley 2010: 64). In other words, to examine the ontological status of something is to investigate whether it is based on reality. Epistemology, on the other hand, focuses on the relationship between the researcher (knower) and what is to be known. It is “concerned with knowledge about knowledge,” and it “is the study of the criteria by which we can know what does and does not constitute warranted, or scientific, knowledge” (Johnson and Duberley 2010: 8). Every methodology, then, must be based on a set of ontological and epistemological assumptions – assumptions on the nature of reality and assumptions about knowledge respectively. Further, the choice of a research methodology is premised not only on ontological and epistemological assumptions but on axiological assumptions as well, viz., “the role of values” (Powers and Knapp 2011: 5). Axiological assumptions are by definition perspectival since they deal with how the researcher’s own values influence the research process.

Kuhn introduced the idea that there is a paradigm about science and knowledge production which occurs within and across disciplines (Powers and Knapp 2011: 128). Although there was widespread criticism of how Kuhn used the term 'paradigm' (Masterson 1970: 59-90) – Kuhn himself acknowledges this and later tries to clarify its use by coining adjunct terms like 'disciplinary matrix' and 'exemplar' (Kuhn 1977: 297-298) – the term "paradigm" has become the one most commonly adopted (Powers and Knapp 2011: 129). It is used in the sense of "a set of practices that define a discipline during a particular period of time" (Freeman 2010 23). It is this paradigm, Kuhn argues, that dictates a discipline's acceptable ontological, epistemological and methodological stances (Kuhn 1977: 296-319). He goes on to explain that periods of convergent and divergent thinking within disciplines can result in 'scientific breakthroughs' or paradigm shifts (Kuhn 1977: 226). As Johnson and Duberley (2010) explain, Kuhn suggests that "significant and persistent anomalies can result in a crisis in which the failure of the existing paradigm causes it to break up". From this crisis and its ensuing chaos a new paradigm will emerge which will result in new observations and perspectives (Johnson and Duberley 2010: 68). It follows, then, that when considering whether the methodology adopted by this study is appropriate, a reasonable starting point would be to consider the topic of paradigms within the discipline of Management Studies/Business Administration.

Saunders, Lewis and Thornhill (2015), reference the work of Starbuck (2003) to assert that the academic discipline of business and management in the twentieth century initially created its theoretical base relying heavily on already established disciplines in the social, natural, and applied sciences, and on the humanities and the domain of organizational practice. Consequently, they argue, it incorporated within its body of work the concomitant philosophies "dividing and defining them". This resulted in the simultaneous and parallel existence of numerous methodologies, approaches, research philosophies, and paradigms (Saunders, Lewis and Thornhill 2015: 126). However, such a plethora of practices may not be a methodological weakness if we consider the argument of Strati. When Strati (2000) was reflecting on research theory in organizational studies, he maintained that the non-existence of a single,

uniform, intractable theoretical paradigm enriched the “source of methodological reflections”. It enabled an openness to research practices from differing viewpoints and the exploration of many different issues and themes. He was making the case that “paradigmatic fragmentation and controversy” were beneficial rather than detrimental (Strati 2000: 160).

At this point it would be useful to delve a little deeper into the dominant paradigms that have been used in business and management research. The three most cited paradigms are positivist, interpretivist and critical theory (Hallebone and Priest 2009: 48). However, not only is there considerable debate on the suitability of these paradigms to generate meaningful knowledge in business and management theory, but there are also a number of unresolved disputes even within each paradigmatic tradition.

Positivism, which derives from the natural sciences, purports to produce precise and unequivocal knowledge based on observations and empirical evidence – an objective account of the world (Denzin and Lincoln 2011: 15). It primarily uses quantitative methods – data and facts that are allegedly unbiased – to try to arrive at ontological truths. Within the positivist tradition and from an ontological perspective “the world is objective”, independent of the researcher, and rule-bound. Epistemologically, knowledge is generated by the application of a “scientific method” which meets the criteria of “objectivity, reliability and validity” (Higgs and Trede 2009: 19).

However, far from there being a single definition of positivism, Crotty (1998) mentions that more than 12 variations of positivism have been identified by different authors. He traces the history of positivism from Comte and the Vienna Circle to its present incarnation and finally identifies a “more attenuated” or post-positivist form that is less aggressive in its claim to certainty and truth. It is based instead on probability, something approaching truth and a “certain level of objectivity” (Crotty 1998: 18-41).

According to Denzin and Lincoln (2011) positivism and post-positivism are sometimes commensurable. However they are not commensurable with

interpretivism (Denzin and Lincoln 2011: 117). The reason for this – as will be made clearer in the discussion below – is that interpretivism questions the use of “scientific method” to arrive at an objective account of the world.

Interpretivism and constructivism (they are closely linked) are paradigms predicated on the belief that understanding the world needs interpretation (Schwandt 1998: 222). The purpose of interpretivism is to generate novel, deeper and more insightful “understandings and interpretations of social worlds and contexts” (Saunders, Lewis and Thornhill 2015: 140). It emphasizes how people make sense of their lives (Morrison 2012: 16). It uses qualitative methods, recognises many “constructed realities”, and is based on attributed meaning. Within this paradigm and from an ontological perspective researchers are “conscious subjects” who theorize about their practice and act within “tacit rules and processes”. From an epistemological perspective, knowledge is generated by understanding human behaviour within its context, with constructivists viewing knowledge as an “internal construction” where meaning to events, experiences and ideas is individually ascribed (Higgs and Trede 2009: 19).

One of the challenges to these paradigms has been the threat posed by solipsism and relativism in the absence of established criteria. Other criticisms have included the lack of critical purchase, the problem of authority of interpreter, and the basis for making epistemological claims. These criticisms have been addressed by two counter challenges. First, by referencing procedural criteria and arguing that the validity of a claim with respect to a theory or interpretation, for example, is defined by “something beyond” the theory or interpretation. Second, by suggesting the abandonment of the mind/world separation debate and emphasising instead “the social construction of knowledge” (Schwandt 1998: 245-249). Overall though, the theory argues that the researcher is never objective but always subjective, and meaning is created by interpreting the world.

According to Denzin and Lincoln (2011), interpretivism is commensurable with critical theory (Denzin and Lincoln 2011: 117). Some theorists even identify

critical theory as being a type of interpretivism. Others identify it as distinct from positivism and interpretivism, as it not only seeks to understand but also attempts to challenge and bring about change (Crotty 1998: 130-131).

Critical theory places values at the centre of all research activities. The researcher as commentator and the researcher as actor become merged, and researcher neutrality therefore does not exist (Morrison 2012: 16). Ontologically, it is based on historical realism with an epistemology that is “transactional” (Denzin and Lincoln 2011: 93). It understands that people exist in a social and political context and that knowledge is built by being cognizant of the political and self-interests of others. The context that researchers focus on is therefore socio-political. They take into account at both macro and micro levels how domains such as politics, history, and economics condition life. Critical theory critiques and transforms “the influences of power, authority and politics on social structures” (Higgs and Trede 2009: 19). A practical and critical approach to texts and its connection to “lived experience”, which is based on the work of Freire, Marx, Weber, Bakhtin and Habermas, defines the path leading to a “resistance” theory (Denzin and Lincoln 2011: 93).

The brief discussion above serves to illustrate that there can never be any definitive answers to epistemological issues. This applies to even positivistic paradigms as Kuhn’s recognition of paradigm shifts imply that, even with the application of scientific methods, epistemological foundations periodically change. This applies even more so to management sciences. Johnson and Duberley (2010) argue very convincingly that definition of a base set of epistemological standards for management sciences can never be achieved. This is because any attempt to derive a theory of knowledge necessitates starting from a position of already knowing the conditions where that knowledge exists. Thus, leading to a “circularity of epistemological issues”. Instead, they identify many different epistemological positions within management sciences that they deem legitimate. This legitimacy, they contend, is achieved when the researcher remains consistent with the epistemological assumptions on which their investigations and inquiries are based. Awareness of, and a critical approach to, the assumptions themselves,

what gave rise to them, and their ramifications are what create this legitimacy (Johnson and Duberley 2010: 159).

### **3.2.2 Selecting a methodology**

As stated in Chapter One, this thesis seeks to answer the question of whether current definitions of corruption have a disproportionate adverse impact on certain countries. Such a question clearly cannot be addressed utilising a positivist paradigm as it deals clearly with a phenomenon that is about the human condition and that exists within a particular social, political and historical context. Furthermore, even framing such a question is value-laden, and therefore places the study more appropriately within a critical theory paradigm. Any investigation into this question will require, as a first step, an attempt to investigate and frame, if not define, the concept of corruption. But corruption is a polysemous concept and is variously defined in the fields of economics, political science, history and business management amongst others, thus necessitating a multi-disciplinary approach to conduct this investigation.

Relevant methodologies were analysed to determine which would be a suitable vehicle to prosecute this study. Of the more popular methodologies, the one that promised the most fruitful outcome, at least for the initial investigation into the concept of corruption, was the historical method. This type of qualitative research draws conclusions from past events. According to Ghosh and Rajivlochan (2014) it is a method that is used to render a more comprehensive understanding of the phenomenon being investigated (Ghosh and Rajivlochan 2014: 7). It utilises two types of sources: primary and secondary. Primary sources are temporally and spatially close to the phenomena being studied whilst secondary sources are more remote (Ghosh and Rajivlochan 2014: 10). The historical method focuses not just on the data but also on the sources of data. However, as Edwards (2000) warns, the observational data that history proffers is insufficient to establish causality. The goal of the historical researcher, therefore, is to document or discover the relationship amongst the variables in the identified instances but to refrain from

attempting to establish causality (Edwards 2000: 7). Since the end-point of this study is to assess the evidence available to support a specific current viewpoint, the historical method as a **complete** and **self-sufficient** methodology is unsuitable for this study.

Further investigation into available methodologies led to a consideration of the methodology propounded by Michael Metcalfe. Metcalfe (2012), in his book *Business Research Through Argument*, presents an approach and strategy that is not just a good fit for the study being undertaken, but appears to be an excellent fit for business studies that fall within the critical theory paradigm. The sections that follow argue for the appropriateness of this methodology.

### 3.2.3 Argumentation

To adopt a methodology based on argument is to take a dialectical approach. As explained by van Eemeren and Grootendorst (1984), the core of a dialectical approach is that an argument is rendered in defence of a point of view on a stated opinion and assessed against the “critical reactions” of a rational arbiter in a disciplined and structured discussion. The definition that is given is:

Argumentation is a speech act consisting of a constellation of statements designed to justify or refute an expressed opinion and calculated in a regimented discussion to convince a rational judge of a particular standpoint in respect of the acceptability or unacceptability of that expressed opinion (van Eemeren and Grootendorst 1984: 18).

In a later work, the argumentation method is further elucidated by van Eemeren *et al.* (2014) as that “in which the standpoint and the argumentation put forward in its defense are viewed as connected but separate entities, which facilitates the analysis and evaluation of their relationship and the way in which this relationship is established in a particular case” (van Eemeren *et al.* 2014: 4). Or, as Walton (2007), drawing on the work of Verheij (2003), explains it:

the structure of argumentation follows a formulaic pattern where from a collection of initial premises a logical conclusion can be drawn. It is a “schematic form of reasoning” that identifies its premises, its conclusion, and the type of logical inference that connects them (Walton 2007: 5).

In this study, the ‘standpoint’ or ‘particular case’ that will be considered is the conduct of the Bretton Woods institutions, Transparency International and other similarly aligned entities. Their conduct will be assessed and their position justified or refuted by an examination of the existing literature of credible sources. These sources, which are by definition ‘speech acts’ (Searle and Searle 1969; Austin *et al.* 1975: 52), will constitute the requisite ‘constellation of statements’ that make up the argument. It is these ‘speech acts’ that provide the empirical evidence on which this study relies.

### **3.2.4 Argument as Methodology**

Several studies on methodological theory identify the hegemony of the positivist paradigm amongst many business management schools and researchers (Nodoushani 2000: 71; Jennings 2015: 4; Prasad 2016: 79). Since Metcalfe (2012: 1) starts his treatise on argument as a research approach by first debunking this bias, and since this study is based extensively on the methodology espoused by Metcalfe, it is important to understand Metcalfe’s line of reasoning.

Metcalfe contends: 1) That the scientific method is only one of many research frameworks. This is certainly true in view of the earlier discussion on research paradigms which focused on as many as three paradigms which are the most commonly, but by no means only paradigms, used in business and management studies. 2) That no single research method can claim to be beyond criticism. Each one has specific drawbacks. This, too, was explored in the discussion earlier, and for each of the paradigms some of the criticisms and shortcomings were enumerated. 3) That a researcher alone does not establish whether their research is without bias, and this is true even if a scientific method of research is adopted. That instead a ‘universal audience’ is

needed to establish whether the method is convincing. The earlier discussion on the inefficacy of any method to arrive at ontological truths dealt with the first part of this assertion. Metcalfe's reference to a 'universal audience' clearly aligns with the 'rational judge' that van Eemeren and Grootendorst (1984) alluded to in their discussion on argumentation and so supports the second assertion. Having been sufficiently discussed above, this needs no further explication. Since it has become evident that no single methodology is superior to any other, an examination of whether a methodological framework based on argument is satisfactory for this study follows.

Metcalfe (2012), drawing on the work of van Eemeren, Grootendorst and Kruiger (1987), explains that argumentation as method has the following characteristics in common with research. It: 1) involves more than just the researcher; 2) is an intellectual activity where reason triumphs over emotion; 3) requires the use of language; 4) refers to a particular subject where differences of opinion may occur; 5) takes account of and anticipates criticism; 6) involves testing an opinion; and 7) involves convincing by rational argument (Metcalfe 2012: 40-41). In addition, he maintains it is peculiarly suited to the "research of human activity", and seeks truth by encouraging the "eclectic collection of evidence" (Metcalfe 2012: 42). Furthermore, researchers, by adopting such an approach and by selecting the argument effectively, make explicit their biases rather than implying a spurious impartiality (Metcalfe and Powell 2000: 4).

In selecting a suitable methodology for this study, the following points had to be considered. The study seeks to enquire whether the effects of changes to the classification and handling of practices that are deemed corrupt have been equitable amongst countries. The goal of the project is to contribute to a greater understanding of the ideological and philosophical underpinnings of the current definitions and/or classifications of corrupt behaviours and its consequent political, economic and legal impact. As stated earlier, the appropriate paradigm for such a study is critical theory. Since one of the aims of the study is to critically examine the stance of the Bretton Woods institutions, Transparency International and other similarly aligned entities both when

classifying corrupt nations and then following this up by prescribing certain actions based on these classifications, the main thrust of the study will be to examine the basis for this classification, i.e., the position advanced by these organizations. The intent is to look for evidence in existing records to see whether this position can be justified or refuted. This process directly and at all points aligns with the argumentation methodology.

Again, the study will be discussed under a qualitative rubric, even though ascribing it to that category ignores the cogent arguments put forward by Hammersley (2013: 95-100) to support the view that it has become increasingly difficult to treat qualitative and quantitative studies as distinct. Instead, the characteristic of qualitative research methodologies as defined by Higgs and Cherry (2009), viz., that “they rely upon qualitative (non-mathematical) judgments”, will be used as a point of distinction (Higgs and Cherry 2009: 5). Since even qualitative studies and research proposals are frequently judged according to quantitative canons by quantitatively-oriented readers (Corbin and Strauss 1990: 4), a definition of qualitative research that allows a theoretical positioning of this study is provided:

*Qualitative research* is a situated activity that locates the observer in the world. Qualitative research consists of a set of interpretive, material practices that make the world visible. These practices transform the world (Denzin and Lincoln 2011: 3).

It is the type of research where the researcher gathers and interprets the data making the researcher a part of the process (Corbin, Strauss and Strauss 2014: 4). Or, as Long (2014) explains, qualitative researchers regard themselves as “insiders” and aspire to interpret individual experience in its sole and distinctive social situation (Long 2014: 428). Eisner and Noddings (2017), who phrase this as “the self as an instrument” and who also speak of the nature of qualitative research as having an interpretive character, add four other characteristics. Namely, that qualitative research is field focused; pays attention to particulars by using sensitivity and penetrating the surface; is generally descriptive, using expressive language and the “presence of voice

in the text”; and judges its success by its believability if it offers coherence, insight and instrumental utility – in other words, if it manages to persuade by reason (Eisner and Noddings 2017: 32-40). For the audience who in examining this study constitute the ‘rational judge’ of van Eemeren and Grootendorst (1984) or the ‘universal audience’ of Metcalfe (2012) to assess the coherence, insight and instrument utility as suggested by Eisner and Noddings (2017), it is necessary to make explicit the **methods** that were used to collect the ‘evidence’ to build the argument.

### 3.3 Methods

Since the study is based on an argumentation methodology, it will be helpful to position this section on the methods and techniques employed to gather the evidence for the study within an understanding of the steps that were followed to undertake this study. At the macro level, the process that was followed was modelled on the seminal work by Baker and Huntington (1905): to initially phrase the proposition, define the terms of the study, identify the special issues, and then construct the case (Baker and Huntington 1905: 60).

Thereafter, taking its cue from *The Craft of Research*, Booth et al. (2016), this study went through the following steps, although the process itself was iterative and therefore the steps were not chronologically ordered. Once the overall research question was structured, attention was given to considering what evidence would be necessary to support or refute the claim. To make this easier, a set of simpler subordinate questions was derived. In drafting these questions, consideration was also given to any possible questions or objections that could arise and the subordinate questions framed accordingly. Consideration was also given through this process to whether the overall research question needed to be caveated in any way. The iterative nature of this process additionally performed an evaluative purpose and clarified the reasons needed to plan the argument. The next step was to consider the type of evidence that would be required to make the argument (Booth *et al.* 2016: vi-vii). What follow are the different methods and techniques that were used to gather the evidence.

However, before the techniques of evidence gathering are expanded further, it should be noted here that the process that has just been outlined meant that the study used the evidence and both inductive and deductive reasoning processes in constructing the thesis. Where inductive reasoning is generally defined as a type of reasoning going from “the particular to the general” and deductive reasoning as going from “the general to the particular” (Nickerson 2010: 594). Moreover, the study uses examples “to substantiate a wider argument”. It does this to provide the argument with verisimilitude and they are not intended on their own to supply verification (Lischinsky 2008: 253).

Powers and Knapp (2011) define data as “all the pieces of information (numerical and/or verbal) collected during a research study, comprising the empirical evidence” (Powers and Knapp 2011: 40). As discussed previously, empirical data for this study was provided by “speech acts”; academic texts, commentaries, reports, publications, statements and speeches from digital and non-digital knowledge bases.

Three major considerations were kept in mind whilst assembling the data. The first was the level of reliability of the data. Factors in assessing the data included whether it was from a reliable source, whether any bias could be detected, and whether it had the necessary level of accuracy. The second was the suitability of the data. Was it suitable for the task at hand – was it fit for purpose? The third was the question of adequacy of the data. Was it appropriate and sufficient for its purpose? (Kothari 2004: 111). The notion of adequacy was also linked to the notion of authenticity when the data was being assessed where Bush (2012) defines authenticity as “a modification of the positivist concepts to enhance their applicability to interpretive, or phenomenological, research”, encompassing concepts such as trustworthiness or truth (Bush 2012: 86). If bias was suspected, then strenuous efforts were made to include either supplementary material that balanced the argument or information from differing viewpoints.

The sources of data fell into three categories: primary; secondary and tertiary (Booth *et al.* 2016: 66). The primary data for this study were artefacts such as statements or points of view published by the organizations and entities that

were the focus of this study. Secondary material consisted of artefacts such as translations of ancient texts, reports, commentaries and critiques published by reputable institutes, academics and theorists. Tertiary sources were used only to a limited extent, and generally referenced for information such as definitions that were not available elsewhere.

The primary interaction with the materials was the process of content-analysis. This process consisted of examining documentary and verbal materials to determine the import or message that they contained. This analysis was a central activity conducted at both simple and subtle levels where Kothari (2004) defines a simple level of analysis as being reliant on the information as presented by the author and a subtle level of analysis as delving deeper into such things as the author's attitude (Kothari 2004: 110). However, even when the analysis was being conducted from the standpoint of simple reportage, where patterns started to emerge that exposed underlying subtleties and attitudes that could inform the main thesis, these themes were teased out and commentary to that effect included in the summary at the end of each chapter.

The actual search strategies that were used followed the steps suggested by Badke (2004): starting by first acquiring a "working knowledge" of the topic area and interrogating any related topics or relevant bibliographies; creating a "preliminary outline" to the research question; using keywords and controlled vocabularies to conduct a library catalogue search; checking these resources' bibliographies and notes; conducting a literature search of periodicals and; checking databases such as ERIC (Badke 2004: 90-92). At a more discrete level, that meant finding a recently published authoritatively researched book or article that addressed the overall subject matter or one of the subordinate questions. Noting the citations that had been used. Sourcing these references. Noting in turn their relevant citations and keeping on with this process until a seminal work was identified or no further relevant material could be unearthed (Badke 2004: 48).

Seminal, pivotal or landmark works were not just identified through this process alone. One extremely productive source of identifying them was the prescribed reading lists for introductory university courses on the various

subjects under consideration. For finding more recent relevant texts, the number of citations listed in Google Scholar also helped to identify material. Library orientation courses on how to use databases such as SAGE Navigator; Web of Knowledge; ProQuest Dissertations & Theses and; e-Book Databases were also undertaken and search strategies that used Boolean phrases and wildcards, for instance, were also deployed.

The Endnote software package was used to create and maintain the bibliography for this study. This was of especial benefit as it generated the reference list in the prescribed DUT format and allowed for easy maintenance when an existing publication needed to be swapped out for a more relevant or current one.

### **3.4 Limitations**

There were various constraints and limitations that this study grappled with, and this will be dealt with at the end of the study. What has been included here are the four most critical inherent limitations that the choice of methodologies and methods gave rise to.

Firstly, the trustworthiness of results depends on the quality of the data consulted. That which Elo *et al.* (2014: 8) call “rich, appropriate, and well-saturated data.” Obtaining good quality data from historical texts and commentaries created by historians who are handicapped by a method that is sometimes “based on a very small body of evidence, often just one piece of evidence” or “heavily dependent on interpretations of words with little possibility of cross checking the actual meanings” (Ghosh and Rajivlochan 2014: 12) was an obvious problem. To mitigate this, attempts were made to also consult as many revisionist histories as were possible within the time available and, where these existed or were relevant, such arguments and views were included in the study. It does need to be noted, though, that the paucity of studies available in English of early Chinese and Islamic texts that explored this topic led at times to a heavy reliance on a single study.

Secondly, based on argumentation methodology, the study also incorporated both inductive and deductive logical processes for building the argument and so suffered from the limitations inherent in these methods. An inductive process uses data to support or refute a generalization and so by its very nature can never provide a definitive proof. Horovitz (1972) explains it thus: an inductive argument is non-conclusive; “it is only capable of establishing its conclusion more or less firmly, according to the strength of the inductive support involved”. Also, for an argument to establish a firm conclusion, all the available relevant data must be included among its premises because adding a further premise to an inductive argument may end up strengthening or weakening the overall support. This limitation he identifies as “the requirement of total evidence” (Horovitz 1972: 3). A deductive process, on the other hand, follows the format of starting with certain premises and syllogistically leading to a conclusion. However, here too “if the premises are faulty, the conclusion will be faulty as well” (Powers and Knapp 2011: 42). And since the premises leading up to the deductive arguments were built in some instances on inductive processes, the same weaknesses are apparent. This was alleviated to some extent by using a mixture of primary and secondary texts and, where depth of analysis was lacking in the texts consulted, a concerted effort was made to source secondary data points to reference.

Thirdly, a qualitative study is limited by the fact that the researcher is not independent from the research process and that a certain reflexivity obtains (O'Dwyer and Bernauer 2014: 31). This may influence the type of data selected and the weight given to certain arguments, preferencing them above others when reference material is selected. No clear mitigation is possible for this except an assurance of commitment to considering and presenting “conflicting evidence and points of view” to “get us closer to truth and not further from it” (O'Dwyer and Bernauer 2014: 32).

Finally, the study was conducted as desk research and not field research, and although extensive use was made of published “speech acts” to build the case, the case would have been strengthened by direct access to the organizations

and persons whose instruments and policies were being examined in this study.

### **3.5 Summary**

Chapter Three has presented the research methods and methodology that this study utilises to achieve its aims. After briefly explaining the concepts of ontology and epistemology, the chapter examines the three most cited paradigms in business and management research. These paradigms are positivism, interpretivism, and critical theory. The chapter then discusses the ongoing debates and widespread lack of consensus as to the suitability of each of these paradigms for the discipline. After meticulously exploring each of these paradigms critical theory is identified as the best fit for this study.

In considering the most suitable methods and methodology for this research, the chapter provides an assessment of historical method. However, the conclusion that is reached is that whilst it is suitable for certain chapters of this research - the gathering, selection and presentation of data - its use as a complete and self-sufficient vehicle for the study as a whole has serious limitations. Finally, Argumentation as Methodology is presented as the most appropriate research methodology for this study. This chapter presents evidence for the appropriateness of methodological choice. It highlights the benefits, of this choice and also discusses some of the limitations inherent in the selected approach.

Metcalf's *Business Research Through Argument* is critically analysed and its benefits and drawbacks are discussed in detail. As explained in this chapter, methodology based on argumentation is dialectical, and allows for a point of view and for arguments to support that view. The reasoning follows certain schemas, thus allowing for recognition of its premises, its conclusions, and the type of logical inferences that connect them. In argumentation the pattern is

prescriptive, and reasonable conclusions can be drawn from a set of initial premises.

This chapter also discusses other generic methodological limitations that apply to qualitative research. It examines issues such as researcher reflexivity, data quality and the problems with deductive and inductive approaches to argument. It clarifies these and explains how this study, where possible, will limit the impact of such issues.

Chapter Four which follows, traces the evolution of the concept of corruption from the earliest written records to the mid-nineteenth century.

## CHAPTER FOUR

### 4. HISTORICAL REFERENCES TO THE CONCEPT OF CORRUPTION FROM ANCIENT TIMES TO THE MID-19TH CENTURY CE

*I have seen corruption boil and bubble  
Till it o'er-run the stew; laws for all faults,  
But faults so contenanc'd that the strong statutes  
Stand like forfeits in a barber's shop,  
As much in mock as mark.* (Shakespeare W. ed. Rolfe  
1910: 130-131).

#### 4.1 Introduction

Although the concept of corruption can be found in some of the earliest known texts such as Confucius's *Book of Documents* (Liu 2016: 6) and Homer's *Iliad* and *Odyssey* (Altschuler *et al.* 2013: 167-189), current theorists, academics and social commentators, as noted previously, agree that there isn't a single definition of corruption. Mény and de Sousa (2001) observe that while earlier luminaries from Aquinas to Rousseau to Montesquieu to Burke and even including Aron, Malraux, Dahl and Sartori wrote copiously on the concept, little effort was made to systematically and analytically define the concept (Mény and de Sousa 2001: 2827). There appeared to be two different schools of thought that led to this.

Some scholars assumed that the contemporaneous definition was clear and sufficient and further explication superfluous (Navot 2016: 544). Others focused only on behaviours that were identified in their contexts as manifestations of corruption. The latter presented the material in such a manner that they implied that a narrow focus on the types of behaviours and practices that were commonly held to be corrupt was sufficient. This catalogue of behaviours would serve to identify and through identification, define

corruption (Heidenheimer and Johnston 2011b: xii). Yet the various efforts to define the concept, once an analytical focus to do so was pursued, still did not result in a single coherent definition. And authors such as Johnston (1996: 321) persistently held to the point of view that analytical definitions may be “irrelevant” and that that which constituted corrupt behaviours was sometimes self-evident even without further refinement of definition, or explication of such behaviours.

The literature review undertaken in Chapter Two made it clear that definitions of corruption morph over time and are dependent on cultural contexts and social mores. Also, that even at present no singular definitive concept of corruption has emerged. Therefore, a better understanding of how the concept has evolved and what has driven that evolution has become necessary. Only then will it be possible to examine how these definitions have been used to justify, support or validate different agendas. This and the following chapter, Chapters Four and Five respectively, will attempt to create this understanding.

This chapter will provide an overview of how the concept was treated in the Ancient, Medieval and early Modern periods up until the mid-19<sup>th</sup> century. It is not intended to provide an in-depth exploration of the concept but a potted history, sufficient only to be able to give a flavour of how the term was used and the type of behaviours that were regarded as ‘corrupt’ in those periods. It will conclude at the point where William Cobbett speaks of ‘Old Corruption’ (Harling 1995: 127).

## **4.2 Antiquity: ca. 2000 BCE - 500 CE**

The earliest references to corruption in the Far East are thought to date from the 21<sup>st</sup> to the 17<sup>th</sup> Century BCE. These references can be found in one of the five classics of ancient China; *The Book of Documents* (Liu 2016: 6). Who wrote *The Book of Documents*, and when it was written, are still matters of some dispute. Some scholars argue that it is a compilation of various authors and dates from as late as the 4<sup>th</sup> Century CE. Others argue that it was primarily the work of a single author, Confucius, compiled by his disciples in the 5<sup>th</sup>

Century BCE (Shaughnessy 1997: 130-131; Allan 2015: 3; Liu, Foster and French 2016: 64-114). It is not necessary to settle that dispute here. What is relevant is that, *The Book of Documents* states that during the Yao Shun Yu period (c 2300 -2100 BCE), provisions were made for the punishment of what were deemed to be corrupt officials. These provisions were later carried over to the Xia Dynasty and became part of anti-corruption regulations enacted by the Minister of Law; Gao Tau (Liu 2016: 6). Specific mention was made of the regulation of bribery as bribery was categorised as a corrupt practice. Bribery was seen to be the act of giving an official a consideration in the expectation of receiving an unfair advantage. The corruption regulation that was created applied to officials, and the penalty for corruption was an 'inking' or tattooing of the face (Liu 2016: 6).

In the Middle East, meanwhile, in the 18<sup>th</sup> Century BCE and during the first Babylonian Dynasty, a Code of Law was being published by Hammurabi, the 6<sup>th</sup> Amorite Semitic King (Pearn 2016: 125). The code typified the ideas of justice and what were thought to be the high moral standards of the time. It was made up of a prologue, epilogue and a body of almost three hundred laws. Some of these legal provisions dealt with corrupt officials (Alkadry 2002: 324). The code addressed administrative and judicial corruption, and corrupt administrative officials were dealt with severely. Judges found to be corrupt were required to recompense losses and they also lost their positions (Alkadry 2002: 332; Csáki and Gelléri 2005: 252).

Later in China, during the Shang Dynasty (17<sup>th</sup> Century BCE), an Officers Code was formulated that identified corruption with a covetousness for money and goods, and proscribed such behaviours. The penalty for this behaviour was death for the offender and their entire family. However, provision was made for commutation of sentences for higher ranks (Barbieri-Low and Yates 2015: 496). This code also applied to the Emperor and stipulated that if he was found guilty of this offence, he should be replaced (Liu 2016: 6). Later in the Western Zhou period (ca. 1050-700 BCE), the Zhou Dynasty used what was known as the Mandate of Heaven Rule to justify their overthrow of the Shang rulers. The Rule held that if a ruler was "bad and corrupt", Heaven would send

a moral man to overthrow him (Rainey 2010: 5). The Lu Code enacted in 927 BCE became the earliest legal rule that criminalized corrupt judicial behaviour in China. Not only did it state that the punishments would be as harsh as those for criminals but also that there was to be no mercy extended to the malefactors. At the same time two state organs were created to combat corruption. These were the Ministry of Justice and the Finance and Accounting Department that oversaw both state and local government departments (Liu 2016: 6).

Some of the earliest western references to corruption can be found in Homer's *Iliad* and *Odyssey* which date from the 8<sup>th</sup> Century BCE (Altschuler *et al.* 2013: 419). Homer presents two different types of corruption; institutional and judicial. In the *Iliad*, the case of Antimachos is reported. He was represented as a councillor who accepts a bribe in gold from Paris, and in consideration of this, advises the assembly of Troy not to return Helen to the Achaeans. This is presented as an instance of institutional exploitation. Specifically, the actions of a person in authority in a regulatory body who, contrary to the Greek ideal, subverts the rules to act not in the interest of the community but in order to benefit themselves (Malamis 2012: 21-22). There is no specific example of a violation of the second type of corruption cited in either the *Iliad* or the *Odyssey*. However, in both these books this second concept is clearly described as a type of judicial corruption. This was the action of a corrupt judge who renders a biased judgement because of self-interest or bribery and thereby undermines trust in the judicial system. Such actions are corrupt in that they are "within and against" the community's formally established process to right wrongs. An example of this is in the *Odyssey* when Odysseus is presented by Penelope as an ideal king in part because he eschews such behaviour (Malamis 2012: 22-24). Another idea related to corruption that starts to emerge in the writings of Homer is the notion that the East was in danger of corrupting the West with its decadence (Buchan and Hill 2014: 21).

The concept of corruption, both judicial and institutional, was referenced frequently in the following decades in Ancient Greece. Hesiod speaks of kings who were bribed, and Plato of public officials who were "bribe-takers and

money lovers”. But by the 5<sup>th</sup> and 4<sup>th</sup> Century BCE embezzlement was rife and the concept of corruption as stemming from ‘false accusation’ had also started to be mentioned. Corrupt actions of this class were of two types. The one was a form of blackmail, where money was extorted in exchange for silence. And, the second was where a person used their position to slander or libel other parties at the behest of their political opponents or more powerful interests (Loscalzo 2012: 30-32).

During the Wei State (ca. 400–200 BCE) in China, Li Kui created the Canon of Legal Principles which moved the laws on “corrupt borrowing and lending” to a new section on bribery (Barbieri-Low and Yates 2015: 608). The section was called Prohibition of Gold, and addressed bribery amongst officials. It also provided for instances where the prime minister took a bribe. Depending on the size of the bribe, he and his subordinates were to be inflicted with punishments that could include the death penalty (Liu 2016: 6).

In India during the 4<sup>th</sup> Century BCE, Kautilya wrote the Arthashastra. In it he speaks about what he considered the inevitability of the corruption of public servants:

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).

It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose.”

(Kautilya n.d.: 125)

The interpretation of corruption here is clearly a type of moral corruption and to the extent that it is embedded and accommodated for in government service

institutional corruption also. What is more interesting in terms of cultural context is that in the literature of that period, the Indian point of view appears to present corruption as reprehensible but inevitable behaviour. This is different from the literature of the Ancient Greek scholars who identified corruption as a deviation from a realizable incorruptible ideal. However, in practice, as Buchan and Hill (2014) noted, although the ancient Greeks identified and condemned different types of corruption and constantly exhorted the public to rise to the ideal standard, “there was a great deal of moral ambiguity at play in the theory and practice of public office corruption” (Buchan and Hill 2014: 19).

In the 3<sup>rd</sup> Century BCE in China during the Qin Dynasty, the Emperor Qin Shi Huang was drafting extreme laws and regulations to combat corruption. Corruption was deemed to be theft and the malefactors were to be treated under the law as thieves (Barbieri-Low and Yates 2015: 1254; Liu 2016: 7). The private use of “public cash, grain, cloth, livestock or tools” was considered corruption (Barbieri-Low and Yates 2015: 1247). An official who misappropriated public money or took money from local governments before seeking approval would be regarded as a thief. In the case of bribery, both the giver and the receiver would be severely punished, as would other persons complicit in the crime. Embezzlement was also illegal, and various provisions were created that allowed: for an ombudsman to regularly supervise local officials; for the promotion and demotion of officials to ensure honesty; and for the removal of corrupt officials (Liu 2016: 7).

According to Plutarch, during the 3<sup>rd</sup> Century BCE Agis IV of Sparta planned to institute debt reform and land redistribution. Agesilaus, who was one of the five senior magistrates in Sparta was unable to discharge his debts. He prevailed on Agis to stagger the reforms so that he, Agesilaus, could get debt relief. He did this in the hope of permanently delaying land distribution (Montagu 1759: 49; Vamvouri Ruffy 2012: 135-136). This would on the face of it be a clear case of corruption. Namely, an official who uses their position to pervert their office for personal gain. Plutarch presents it as such. However, the ‘moral ambiguity’ that was noted earlier as being characteristic of that

period in Greek history can be seen when Plutarch recounts Pericles' bribing of Cleandridas. Whilst himself refraining from commenting on the morality of the act, Plutarch makes it clear that there was no reaction by the Athenians to what should have been identified by them as an obvious case of bribery. Vamvouri Ruffy (2012) attributes this to the fact that in the latter instance, unlike the former, Athens directly benefitted from the corrupt action. (Vamvouri Ruffy 2012: 145).

With respect to the 4<sup>th</sup> Century BCE, Plato identifies as a form of corruption the acceptance of 'gifts' by public officials to encourage them to abuse their offices. Demosthenes likewise speaks of such behaviour as corruption (Buchan and Hill 2014: 16). A not dissimilar type of corruption is cited during the trial of Demosthenes when Hypereides brings up the case of Aristomachos who was the president of the wrestling academy and was tried and convicted for exploiting a public resource for private use (Buchan and Hill 2014: 19). But Demosthenes' trial, though, was a trial on the charge of bribery for which he and two other men were found guilty (Taylor 2018: 22). And which Kroeze, Vitória and Geltner (2018: 9) assert was viewed by the Athenians as an act of treason.

Also in the 4<sup>th</sup> Century BCE, Aristotle was writing on political corruption (Mulgan 2012: 28). He identified two types. The first was moral corruption with political results. Although this was in effect a form of personal corruption, he argued that if the person in question was also the head of the city-state, then their corruption would permeate the body politic. It was for this reason, he contended, that *rule of many* was better than *rule by one*. It would be much easier, he claimed, for the many to dilute the effect of personal corruption since it was likely that only a few of the many would be corrupt. The second type of corruption he identifies is the cupidity of public officials especially when they plot against the constitution and one another. This he predicted would cause uprisings of the city state (Buchan and Hill 2014: 13).

Olivelle and Olivelle (2004), translating and critically annotating the Law of Manu in India, point out that just as Aristotle identified corruption as having a

personal moral dimension, the Law of Manu also saw corrupt acts as having a basis in the moral or spiritual degeneration of the person (Olivelle and Olivelle 2004: 31-32). The Law of Manu gives guidance on both institutional corruption and judicial corruption. One example of this was to bar the king from instigating lawsuits. This was to prevent the king either acting punitively against persons he disliked, or of enriching himself unfairly. Another example was that to avoid bribery, no money could be taken by court officials except that which was allowed within the lawsuit (Olivelle and Olivelle 2004: 306). The Law of Manu, however, had graduated punishments for different castes frequently exempting the Brahmins, who are a higher caste, from punishment whilst advocating extreme punitive measures against lower caste Sudras (Olivelle and Olivelle 2004). This created a moral ambiguity and had the effect of condoning behaviour in the higher castes that was forbidden amongst the lower castes. Some scholars have attempted to present the Law of Manu as sacred texts having divine authority and suggesting therefore that breaches of this law would have the force of 'sin' since the book itself makes claim to divine origins. However, notwithstanding this claim, there is greater evidence to support the idea that the corpus is an accumulation from multiple sources and was conceived to protect social and civic structures (Nelson 1881: 216; Buhler 1886: xii; Olivelle and Olivelle 2004: xx-xxiii; Glenn 2014: 292).

Further east in China, also during the 2<sup>nd</sup> Century BCE, greater refinement of anti-corruption laws led to the inclusion of a whistle-blowing provision, where persons uncovering and denouncing bribe takers would be rewarded according to the value of the bribe that was taken. During this period, corruption included two specific acts. The one was a type of theft or embezzlement. This was when a person in an official position indulged in peculation of state assets. The other was bribery. This referred to an official accepting a consideration from someone to act in their favour (Liu 2016: 7).

In the 1<sup>st</sup> Century BCE, Sallust, the Roman historian and politician, notes how Sulla, general, consul and later dictator of Rome, 'corrupted' the army with bribery whilst prosecuting the 3<sup>rd</sup> Mithridatic War in Asia. This large-scale corruption, he states, resulted in subsequent warlords vying to win over the

forces with bigger and more frequent incentives. And he notes that the reforms of Octavian that attempted to stop this trend had little effect (Saddington 2012: 126). This had a direct impact on leadership succession and the stability of the state by allowing frequent leadership challenges. Swithinbank (2012), writing of this period, consequently suggests that the corruption of the time can be identified in two ways. One is a promotion of political instability and the other is an erosion of crucial political principles (Swithinbank 2012: 106).

Cicero, a consul of Rome, refers in his Catiline Orations to a law that he passed against bribery and corruption (Cicero and Duncan 1841: 119). He formulated the idea of *utilitas publica* or public good (Barcham 2012: 55; Arena 2018: 37). For Cicero corruption was a problem both moral and political. He referred to the risk of corruption arising through avarice (Buchan 2012: 75). And he identified corruption in the self-serving behaviour of civil servants (Tiihonen 2003: 8). Interestingly, and similar to the sentiments expressed by the Greeks, the theme of Asiatic decadence that was corrupting Rome is clearly articulated in Dio's *Romaika; a History of Rome* (Rees 2012: 159).

No discussion of corruption in antiquity can pass without some mention of the emperor that popular imagination regards as the personification of all that is corrupt: Nerō Claudius Caesar Augustus Germanicus. Emperor of Rome in the 1<sup>st</sup> Century CE he was portrayed as a matricide, as "corrupting moral, sexual, social, political, religious and ethnic norms in Rome" and the ultimate 'antichrist' whom Tacitus, Seutonius and Dio presented as a persecutor of Christians (Malik 2012: 169-172). Dio and Seutonius also alleged that the emperor sent out agents who set fire to a substantial part of Rome because he desired to seize the land thus cleared and utilise it for other purposes. Dio went even further in his claims, stating that whilst the city burnt Nero played the lyre from the roof of his palace on the Palatine Hill. This claim was made even though Tacitus had recounted that Nero was not in Rome when the fire broke out; returned immediately as soon as he heard of it; and worked assiduously to contain it (Dando-Collins 2010: 1-3). Therefore, as scandalous as this story is, its dubious claims to authenticity preclude it from being cited

as a proven instance of corruption. The Roman historian Tacitus, in his *Annals*, instead references various instances of Nero at the beginning of his reign acting to uphold the law and stabilize the state. Tacitus' account gives scholars a fair idea of what at that time were identified as corrupt practices that needed to be curbed. An example of this is when he recounts how Nero, after he identified instances of officers mishandling public accounts, transferred the charge to commissioners of proven competency (Tacitus a Yardley tr 2008: 424-426).

In summary, the types of corrupt actions that were clearly identified as such during the Classical period were judicial corruption; institutional corruption; moral corruption with political results such as the erosion of critical political principles; and self-serving actions that led to state destabilization. Bribery, influence-peddling, peculation, and embezzlement fell within the category of behaviours regarded as corrupt, with bribery being the earliest referenced form of corruption. Significantly, during this period a certain ambiguity in terms of the categorization of certain specific actions was evident. In certain circumstances, some actions were viewed as moral degradation and a corruption, but in other circumstances those same actions were, if not condoned, then at least passed on unremarked. Buchan and Hill (2014), in their analysis of the period, note that multiple definitions of corruption do co-exist in a society at any given time. They reference the four categories of Noonan: "that of high morality, that of the written law, that of the law as it is enforced and that of common practice" to make this case (Buchan and Hill 2014: 40). Notwithstanding the fact that judicial, institutional and moral corruption was identified as undesirable behaviour in both the East and the West, and punitive measures were taken to contain corruption, the idea that the East was a corrupting influence on the West was also a commonly held belief of the Graeco-Roman world.

### **4.3 Medieval Period: ca. 500-1500 CE**

MacMullen (1988) identifies extortion, bribery, and other similar instances of corruption as being rampant in the early Medieval period. He notes the

escalation of corruption in the decades following 250 CE. He reiterates Buchan and Hill's earlier observation, namely that "[d]ifferent codes could coexist within a single society". To illustrate this point he provides the example of a soldier who justifies his corrupt dealings by asserting that he is a part of the military and not of the priesthood. The soldier, he says, advances the argument that the standard by which a soldier ought to be judged should therefore be different from the standard governing the actions of a monk (MacMullen 1988: 166-168). Bond (2018), cautions against accepting MacMullen's argument that corruption had increased and become endemic during the later Roman Empire leading in no small part to its fall. She points to more recent work undertaken by legal scholars arguing that the "rhetoric of law may have contributed to a rather more fictive "fall" than actually occurred" (Bond 2018: 61).

Whether rampant corruption in Rome was a significant contributor or not, by the 4<sup>th</sup> Century CE there was a decline of the Western Roman Empire (Ward-Perkins 2015: 940). In 380 CE the Edict of Thessalonica established Christianity as the sole authorized state religion (Fernandez 2013: 161). Consequently, concepts of corruption at the time were heavily influenced by the Bible. Numerous references to the concept of judicial corruption can be found in the Old Testament. The notion of a judicial justice is given a religious foundation by asserting that God, the Almighty is just (*The Bible : Authorized King James Version* 2008: 636). This in turn is used to exhort believers to "do justice and judgment", (*The Bible : Authorized King James Version* 2008: 740). Bribery is clearly represented as unacceptable to God and a perversion of justice. An example is when reference is made to the sons of Samuel, Joel and Abiah who took bribes and perverted justice. Another, when David pleads with God not to place him with persons who have accepted bribes. Further, the Book of Isaiah states that the taking of bribes will preclude admission into heaven (*The Bible : Authorized King James Version* 2008: 338, 652, 794). The notion of partiality as perverting justice is also present with a specific injunction to "judge righteously between every man and his brother, and the stranger that is with him" (*The Bible : Authorized King James Version* 2008: 216). Despite these biblical strictures, Buchan and Hill (2014) note that;

“[p]ublic office corruption was rife among Christian and non-Christian officials of the late Roman Empire in the fourth to sixth centuries (CE)” (Buchan and Hill 2014: 53). MacMullen (1990), referring to this period, observes that Christianity notwithstanding, biblical strictures did little to reverse the trend towards corruption, and many Christians were either corrupt or complicit. He cites the instance of a military recruiter who assures his commander that the latter’s acceptance of bribes would be acceptable to God. The same recruiter, draws up a contract to effect a promotion for a bribe, and calls on God as witness when swearing to the contract (MacMullen 1990: 151-152). The recruiter makes no effort to reconcile any personal Christian ethical beliefs with his public conduct.

A critical issue that engaged the thinkers of the time, when grappling with the notion of corruption, was how to reconcile the Christian principle of sin with the Aristotelian idea of “human reason and moral judgement” (Buchan 2012: 75-76). Augustine, a Christian ecclesiast who was later beatified, contextualised politics within Christian theological beliefs, incorporating the idea of original sin. Accepting that all life on earth was fundamentally corrupt, he saw politics as “a necessary evil” to maintain order on earth (Barcham 2012: 53). According to MacMullen (1990), there was evidence to support the belief that Augustine had also deliberately courted powerful friends, sanctioned the buying of offices and condoned the acceptance of bribes by minor clerks (MacMullen 1990: 153).

In the Persian Empire during the 6<sup>th</sup> Century CE, judicial corruption was identified by Naushirwan-the-Just as an issue significant enough to justify the promulgation of laws against it. Distinct from the Christian notion of a degenerative spiritual rationale for eliminating corruption, Naushirwan held that it was a secular issue. And explicitly stated:

God alone can penetrate the thoughts of men...my vigilance and control shall extend only over your actions, not your consciences. My judgements shall always be founded on the principles of immutable justice, not the

dictates of my individual will or caprice (Kershasp 2011: 126).

Reigning from 531 to 579 CE, he addressed himself to the reform of the judiciary to eliminate corruption. Viziers were appointed to oversee the many satraps that governed in the provinces. Reported instances of corruption occasioned commissions of inquiry, and swift and merciless retribution was dealt to those found guilty (Kershasp 2011: 125-128).

In China during the Sui Dynasty, the Emperor Wen, despite basing his corruption laws on his predecessors, for the first time included the idea of graduated punishments for different ranks and even the possibility for officials above the 9<sup>th</sup> rank paying to avoid punishment (Liu 2016: 8). This differentiation of treatment bears a striking resemblance to the laws set out by Manu in India and the common practice of the late Roman Empire.

Emperor Wen's successor, Emperor Yang, instituted the first Imperial Education System to ensure that appointment and promotion of bureaucrats would be based on merit rather than corrupt means (Rainey 2010: 148-150; Liu 2016: 8). The Tang Dynasty that began in 618 CE further refined the corruption laws. The Tang Code identified and categorised six crimes; four of them related to corruption. They were "accepting bribes and breaking the law, accepting bribes without breaking the law, accepting goods and money from subordinates and ordinary people," and "theft" (Liu 2016: 8). Notwithstanding this, civil servants accepted bribes and such behaviour was generally tolerated unless it fomented unrest (Rainey 2010: 151).

In Japan in approximately 604 CE, Prince Shotoko issued the Seventeen-Article Constitution. Article 5 of the constitution makes it clear that corruption was prevalent in that period and the article enjoins officials from accepting bribes and judges from being partial (Mitchell 1996: 1). Nonetheless, by the Heian era corruption had continued to flourish (Turnbull 2000: 308). In the 8<sup>th</sup> Century Emperor Kanmu issued what proved to be an ineffectual decree to stop the purchasing of court rank (Mitchell 1996: 2).

The early 7<sup>th</sup> Century CE also saw the establishment of Islam in Arabia (Glenn 2014: 183). Mohammed established the five Pillars of Islam, and set down the Quran from which Sharia Law was derived. However, Arabian customary law had prevailed before that, and although there is some dispute about the exact date when Sharia Law started to define legal practices (Hallaq 2009: 239), by the 8<sup>th</sup> Century CE it was established doctrine (Powers 2010: 149-155). The concept of corruption is explicitly mentioned in the Quran and two specific types of behaviour are decried: the corrupting of judges and the taking of bribes (Arafa 2012: 203). Surty (2003) asserts that the bulk of the Islamic juridical writing of the following centuries was lost. After Mohammed's Sharia Law, the first related extant work is the eleven chapters of the *Adab al-Qadi* of al-Khassaf. Al-Khassaf was a qadi or adjudicator of the 7<sup>th</sup> Century CE. In the chapter on Judges and Courts, al-Khassaf sets down detailed guidelines on how judges should comport themselves to maintain their judicial integrity. He specifically refers to the prohibition against the taking of bribes, and advises on how judges ought to constantly exercise circumspection in their speech and behaviour to maintain impartiality (Surty 2003: 150-152).

Buchan and Hill (2014) declare that it was only in the mid-11<sup>th</sup> Century CE that Medieval thought focused on the question of public office corruption as separate from a spiritually degenerative corruption. They ascribe this to a change from the gift economy of patronage towards a barter or market economy (Buchan and Hill 2014: 57). Buchan (2012) had argued this case more fully in an earlier paper. There he asserts that based on a Christian notion of sin, early medieval thinkers frequently believed that the pursuit of money was akin to avarice and therefore by its very nature corrupting. Later there emerged the view that the pursuit of private and national wealth was 'worthy in itself'. (Buchan 2012: 79). Again, in the 12<sup>th</sup> Century CE the philosopher John of Salisbury attempted to reconcile Cicero's ideas of republicanism with that of Christian beliefs. He suggests that although secular rulers must rule in accordance with *utilitas publica*, they should also concede that their authority was subject to the church since they ruled by divine grace.

This led to a focus on the qualities and virtues of the ideal ruler until the 13<sup>th</sup> Century CE (Barcham 2012: 55-56).

Hòjò Shigetoki, a leader of the Kamakura regime in Japan over the same period, also wrote on bribery and corruption. Although he saw avarice as part of man's nature, he stated that it should be resisted. Bribery, he believed, would eventually result in a loss a hundred times more than the profit, and the profiteer would spend their next life in hell. In this period, judges were required to take an "oath not to permit personal feelings or fear of powerful families to sway their rational decisions". This oath seemed to have a real effect, and for the next century incidences of bribery and corruption appear minor and infrequent. It was only after the two Mongol invasions in the 13<sup>th</sup> Century that judicial integrity was weakened through lack of competence and bribery (Mitchell 1996: 2).

In 13<sup>th</sup> Century China, during the Yuan Dynasty, the problem of corruption was believed to be extremely severe (Li and Zhang Weiwei 2006: 376; Liu 2016: 8). The General Act of Yuan, a separate and distinct law on corruption from that of theft and robbery, was created. Severe punishment was prescribed in the section called Ordinance for Positions and Responsibilities. The punishment was also increased depending on the perceived severity of the offence (Liu 2016: 8).

In 13<sup>th</sup> Century France King Louis IX instituted an array of reforms to curb corruption in government. The King prohibited councillors from receiving gifts. This was to guard against undue influence that could be exerted when a dispute was being adjudicated, when contracts were being awarded, or when policies were being drafted (Jordan 2009: 204-208). Corruption included bribery and judicial and administrative corruption and was seen to include acts such as accepting gifts, selling of offices, imposition of unjust fines, or making justice expensive by charging more than the stipulated licensing fee. There was also a requirement to "show good faith and not delay the execution of justice", and periodic audits were conducted to enforce this (Jordan 2009: 212).

During the same period, King Henry III of England was attempting a similar campaign against corruption. In addressing judicial corruption and, in an effort to deliver to expectations of royal justice, he ordered that judges could accept no presents except minor ones such as bread and wine (Tiihonen 2003: 8; Jordan 2009: 215; Vitória 2018: 81). Also, that no judicial official ought to accept a reward, either directly or through an agent. And that if this were done, both taker and giver should be punished (Jordan 2009: 215). According to Watts (2018), late medieval English thought was inclined to align to Aristotle “in wondering whether a good man might be a better source of rule than a good law”. In promoting such interpersonal and discretionary relationships, however, there was little protection from allegations of corruption since only the persons privy to a relationship could attest to “whether delegated or shared authority was being appropriately used, for an appropriate mixture of public and private purposes” Watts (2018: 95).

Carniello (2002) writes of Italy and Florence’s struggle in the 13<sup>th</sup> Century to institute an impartial government. The aim was to purge the system of those who abused their office to promote their own interests, protect their friends and their financial interests, and destroy their enemies (Carniello 2002: 322). An Italian statute from 1237/8 refers to the bribing of judges. It provides that when any judge is bribed, the briber and any third party who facilitates the transaction will have all their goods seized and the judge will no longer be allowed to preside over cases (Geltner 2018: 105). In Spain, Pedro III was also waging an anti-corruption campaign. Gift-giving, even to the low level of royal couriers, was outlawed. The only exception was if the gift was given without the expectation of reciprocation. These provisions were given a moral basis (Jordan 2009: 215-216).

The 13<sup>th</sup> Century in India saw the rule of Sultan Alauddin Khilji. He was the second ruler of the Khilji dynasty. At the time of his rise to the Sultanate, every government department, and the revenue department in particular, was extremely corrupt and dishonest (Niazi 1992: 47). Corrupt practices included regular soldiers sending irregular and untrained soldiers as their substitutes on

campaigns and the exchange of good horses that were supplied by the state for lesser animals. To minimise the temptation to dishonesty, Alauddin Khilji raised the salaries of the lower level revenue officers and increased the punishment for bribery or embezzlement. To regulate the market and establish price control of essential commodities such as grain, he appointed the Controller of the Diwan-i-Riyasat and the Shahna-iMandi (Niazi 1992: 45-70). Although Niazi tried to suggest that the Sultan's conceptualisation of corruption was in part guided by his religious beliefs [he cites the political scholar Ziauddin Barani (1285–1357) as his authority], there is little confirmation for this position. Other authors not only disagree, but report on the Sultan's actual speeches to prove that he had repudiated this claim (Zakaria 2002: 91; An-Na'im 2009: 143).

There was a revival of Aristotelean thought in the 13<sup>th</sup> Century in the West. Thomas Aquinas contended that it was not the idea of sin but of man's reason and civic life that provided the basis for political government. The corrupt ruler was one who formulated laws not for the common good but for his own private interests (Barcham 2012: 57-58). By the 14<sup>th</sup> Century CE a renewed focus on classical Roman authors led to the rise of a humanist school of philosophy. Corruption, it was believed, manifested itself as a disturbance to the harmony of the state. The humanists believed that "[n]ot to act as a citizen was to promote the corruption of the republic and so was itself a form of corruption" (Barcham 2012: 62).

One other practice that is worth mentioning is a practice that characterized the reign of the Edwards in England, namely, purveyancing – the right of the king to acquire resources at below the market value. The practice itself was viewed in some quarters as a corrupt practice. But the greater complaints had to do with the opportunity for widespread extortion and bribery that purveyors and tax collectors were provided with, and the rising anger and discontent of the 'lower orders' as a result (Krug 2005: 177-193).

Just as no discussion of corruption in Antiquity can pass without some mention of Nero, no discussion on the Medieval period would be complete without a

discussion of the Italian diplomat Niccolò Machiavelli. He was regarded in popular culture as so evil for questioning the prevailing moralistic theory of politics that he was even erroneously credited with giving the Devil the name of 'Old Nick' (Mahon 2014: 242).

Machiavelli was educated in the humanist tradition in Italy at the University of Florence in the 15<sup>th</sup> Century CE. For Machiavelli corruption meant self-indulgence and idleness, a lack of self-control and orderliness in the citizenry, a waning of military competence, self-serving behaviour at the expense of the community, and the hegemony of the rich and powerful over the general populace (Buchan 2012: 79). These beliefs were somewhat in accord with the humanist idea of corruption. But where he differed from them was in his conception of the conduct of good citizenship as amoral in character – neither moral nor immoral. And in the further belief that to preserve the harmony of the state the use of even despotic force was justified (Barcham 2012: 65). He believed that all societies, if left unchecked, descend into chaos since all men when tempted, incline to corruption, and need to be constrained by fear. That maintaining balance in the state lay in careful management of class strife; the tension between those in power and those striving to overthrow it. And that very few desired to overthrow power because they wished to command. Instead the large majority of persons desired liberty to ensure their security (Rahe 2009: 49-45). The reason for his vilification, though, was in what some writers believed was the inevitable consequence of his propositions in his work *The Prince*. Namely, that to secure his position as head of the state, the morality of any action undertaken by the prince would be irrelevant and any action, however base, was justifiable (Rahe 2009: 20).

According to Jordan (2009), Medieval definitions of corruption included the twin virtues of efficiency and moral action. Corruption was recognized in actions such as dereliction of duty, conflict and competition within administrative classes, the illicit use of power and position in exchange for favours, bribery, lack of authority and deliberate attempts to obfuscate or conceal immoral actions (Jordan 2009: 217-218). For some early thinkers within the Christian and Islamic traditions, there was also the idea that such

behaviours were a departure from religious precepts and the will of God, and therefore carried connotations of 'sin'. Even towards the end of the Medieval period, concepts of corruption were influenced by some mixture of the prevalent beliefs of the ancient period namely: 1) ideas of moral degradation; 2) the idea of corruption leading to destabilization of the state; and 3) the idea of illegality and the actions associated with betraying public trust and lawful regulations for private gain. Corruption, in mainstream Medieval political thought, was a concept that linked the strength and well-being of a community to its moral fibre, and the practice of virtue amongst its constituents (Buchan 2012: 73). Machiavelli and Alauddin Khilji notably refused to embrace this idea, preferring a more pragmatic and secular political theory, traces of which can later be found in the theories of Adam Smith.

#### **4.4 Early Modern Period ca. 1500-1860**

Official corruption flourished during the Ming dynasty (1368-1644 CE) in China (Huang 1974: 48). Rent-seeking behaviour was so entrenched that government attempts to increase salaries three times over, to curb such behaviour, were ineffective. Rent-seeking behaviour is a type of political behaviour where interested parties seek advantage by securing government rights over scarce resources or advantageous positions. It occurs where government regulation or interference has created an uneven market that can be manipulated to benefit the rent-seeker by delivering greater value than the intrinsic worth of the resource or advantage. (Parker 1996: 14). Since the appointed official of this period was generally also the employer, tax collector, and judge, opportunities for extracting personal benefit could be maximized (Ni and Van 2006: 316-317). Dardess (1996) notes how Yen Sung during this period operated a 'personal bureaucratic machine' that rewarded his supporters and punished his friends (Dardess 1996: 233-234). Lau and Lee (1979), commenting on this period, classify the types of corruption as people-directed corruption and government-directed corruption. They identify people-directed corruption as "embezzlement of money by improper performance of official duties, extortion by creating new taxes, accepting or demanding improper customary fees, allowing family members or subordinates to demand

improper fees, and extorting money by torturing the criminal suspects.” Government-directed corruption included “the extortion of public funds, the embezzlement of money from public works, military funds, and public properties, as well as the coinage of false currency” (Lau and Lee 1979: 115-116). By the 18<sup>th</sup> Century corruption was seen as “one of the greatest scourges on the Qing state and society” (Park 2010: 967). Park goes on to remark that the concept of corruption was a problematic one as 18<sup>th</sup> Century commentators had differing views on which acts could be categorized as corrupt and which not. She concludes that although the corruption laws were well defined and harsh, it was generally believed that incorruptibility was impossible to attain and would lead to administrative ineffectiveness (Park 2010: 967-1005).

Coming out of the Ashikaga shogunate that reigned during the 16<sup>th</sup> Century and which had been institutionally weak, Japan, too, was dealing with high levels of corruption and personal greed. By the 17<sup>th</sup> Century the Buke shohatto (Laws for the Military Houses) was issued. This did not address the problem of bribery and corruption even though leading figures of the revival movement such as Motoori Norinaga had identified these as serious issues. It was only in the 18<sup>th</sup> Century that the code was expanded to include these. Article 7 of the expanded code emphasized the need to preserve good governance. The strictest avoidance of bribery was an imperative, it warned; as was corruption and attempts to influence persons in powerful positions (Mitchell 1996: 3). Mitchell (1996) suggests that the reason for the renewed focus on corruption was “probably prompted by the rapid growth of a money economy and a corresponding increase in consumption promoted by the expanding merchant class” (Mitchell 1996: 3).

In India, the history of the 17<sup>th</sup> to the early 19<sup>th</sup> Century was the history of opium production and the scandals of the British East India Company (EIC). Opium was known in India and used in Islamic India as an anaesthetic in the 13<sup>th</sup> Century (Derks 2012: 24). But it was the Portuguese in 1500 and later the Dutch in 1660 who had invaded the west coast of India who initiated the opium trade. Opium was eventually produced in large quantities in India and

exported by the French, Dutch and British to China, the Pacific and the USA. The ill-effects of opium addiction were well known and, even as China was being flooded with opium, the western traders prohibited their own 'white' people from using it (Derks 2012: xv-xvii). From 1773, Indian merchants managed the revenue and paid royalties to the EIC. Soon that was changed, and with the change bribery to the benefit of the EIC became widespread in a "rather corrupt constellation for production and trade" (Derks 2012: 173-174). As corrupt as the EIC was in prosecuting the opium trade, it was nothing compared to the greed of its traders who used company access and perquisites for their own private trade rather than the company's. They unscrupulously extended the Mughal decree of 1717 for the:

systematic misuse and abuse of other grants, treaties, agreements, and understandings, each of which... became the pretext for the assumption of sovereign rights over trade, revenue, law, and land on the part of a monopoly joint stock company that was at the same time systematically violating the terms of its own relationship to the Crown and Parliament of England (Dirks 2006: xiii).

Corrupt as the practices of the British EIC traders were though, if the work of a contemporaneous political theorist like Edward Burke is consulted, there is alongside Burke's stated objective of pleading the case against the company and for the Indian peasant, a very real idea that corruption is an eastern phenomenon that Britain at all costs must be protected from. This belief completely upends the fact that it was British persons in the main, who introduced, practiced and institutionalized these corrupt practices (Dirks 2006: 80-81).

Just as Nero, in the popular imagination, defined corruption in ancient times, and Machiavelli did so for the Medieval period, the Early Modern period was thought to have its monsters of corruption too. Chief amongst them was The Iberian Inquisition. The Inquisition was established by the Spanish and Portuguese Catholic Kingdoms during the 15<sup>th</sup> and 16<sup>th</sup> Century. They were

founded as state-run institutions (Simms 2015: 297), but were ostensibly set up to combat heresy and therefore were underpinned by a religious foundation. Even though they were extremely corrupt organizations, the state failed to profit from their corruption (Rawlings 2006: 151). Inquisitors, however, did. They did not receive a fixed salary but were recompensed from their 'confiscations'. This created an incentive for them to increase the number of arrests (Pérez and Lloyd 2005: 60). Over the period of its existence the Spanish Inquisition variously claimed to have burned between 28 540 and 31 912 persons (Roth 1964: 123). As an instrument of an autocratic state, the corruption and torture that the inquisition engaged in eventually led to the complete failure of the state: "political, cultural and economic" (Rawlings 2006: 2).

During the end of the Medieval and the Early Modern periods, corruption in England was conceptualised in different ways. There was the moral and political degeneration of the living world and its inhabitants; the state of decrepitude that arose from degenerative decay; the communities and secular and religious institutions that were debased, frequently through public office corruption; and the decline and fall of countries and kingdoms (Buchan and Hill 2014: 98).

In Tudor England in the 16<sup>th</sup> Century, power was centralised in the hands of the king who governed with a patrimonial bureaucracy within relationships and affiliations based on patronage. Patronage was a system of royal reward that created allegiances. It was at the start of the reign of the Stuart monarchs in the 17<sup>th</sup> Century, however, that there was a remarkable increase in patronage and "sale of honors, titles, licenses and offices" (Levy Peck 2003: 3-4). By this time corruption had reached such proportions it formed the text of sermons. It is clear from a Crown trial held in 1619 in Star Chamber that there existed also a legal definition of public service corruption: "corruption was defined as the use of 'monies designed for the public service for private ends' and 'monies taken corruptly for rewards and gratuities and private gain from public service'" (Levy Peck 2003: 161).

By the early 18<sup>th</sup> Century the practice of what was to be called 'Old Corruption' was under scrutiny. Old Corruption referred to "the widespread use of pensions, sinecures, and gratuitous emoluments granted to persons whom the British government...wished to bribe, reward or buy" (Rubinstein 1983: 55). William Cobbett and other 'radicals' saw it as an abuse of government power and essentially a betrayal of public trust. It referred to "unearned privileges and perquisites", the nepotistic appointments of unqualified persons, sale of office to persons compliant with sectional interests and not the interests of the general public, and the granting of pensions, contracts and church appointments as rewards or bribes (Harling 1995: 127-134). The radicals were also concerned that this corruption created other systemic issues. It was the close ties developed between the governments of Pitt and Liverpool and many middle-class businesses and professions which, they claimed, benefited from such government policies. This created a strong link and mutually beneficial dependency between the "aristocratic government and the older commercial and professional middle classes" (Rubinstein 1983: 63).

In addition to the definition of public service corruption, broader concepts of corruption continued as two competing notions. The more traditional thread found in earlier scholars and espoused by Adam Ferguson is that corruption is a degeneration of civic virtue and creates political instability. And the more modern concept of Adam Smith that corruption is a curtailment of liberty and disruption of the natural laws of commerce. During the 18<sup>th</sup> Century the modern conception of corruption slowly began to eclipse the classical, and by the 19<sup>th</sup> Century this transformation was complete (Hill 2012: 97-98).

The 1809 Act in the United Kingdom was an extension of The Sale of Offices Act 1551 and was passed to prohibit bribes that were paid or received to secure offices or employment "in the gift of the Crown". The Act was the result of a scandal that embroiled the Duke of York in allegations of bribery and corruption (Great Britain: Law Commission 2012: 112). The disgruntled mistress of the Duke of York alleged that she had facilitated, on behalf of the duke, the sale of commissions in the army. The duke denied the allegations that were brought against him and the house ruled that there were no just

grounds for the duke to be charged. During the investigation into the case however, the purchase and sale of appointments in the East Indian Company were exposed (Miller 1829: 335-336).

Although the 1809 Act was enacted in response to the scandal, the Great Britain: Law Commission (2012) avers that it coincided with a general movement to ban the buying and selling of 'offices of profit'. These 'offices of profit' were civil service positions that charged fees to the public for its services at the time of the 1809 Act. The fee charging was eventually replaced by salaries voted by parliament. Competitive recruitment was advocated in 1853, commenced in 1855, and was finally completed by an Order of Council in 1870 (Great Britain: Law Commission 2012: 112).

It should be noted that the anti-corruption movement in Great Britain was highly politicized. Representing sectional and group interests, these campaigns "advanced political careers and causes by delegitimizing a rival person, group or ideology (whilst legitimizing others)". They were carried out in public in the hope of gaining public support for their factions and causes (Knights 2018: 187).

## **4.5 Summary**

By the mid-19<sup>th</sup> Century the concepts of corruption that co-existed ran the entire gamut from ideas of corruption based on religion and associated with original sin, to corruption as a moral or spiritual degeneration of persons, communities and the body politic. The shift from religious control, however, to more secular concerns of government and the economy, in both the East and the West, had also led to concepts of corruption that were concerned more with management of administration and bureaucracies and political governance of parliament and empire. Also, the idea persisted that corruption was somehow more prevalent in the East and should not be allowed to infiltrate the West. This notwithstanding that fact that historical records clearly showed

that the practice, identification and combating of corruption had a similar history in both the East and the West.

Corruption was increasingly seen as involving public officials, and bribery remained a major focus of those intent on eradicating corruption. Other behaviours such as embezzlement, peculation, rent-seeking behaviour, patronage and nepotism were more and more singled out as corrupt and undesirable. In addition, especially in Great Britain, the anti-corruption movement was being manipulated to achieve political ends. It was with this legacy that mid-19<sup>th</sup> Century philosophers and theorists approached the subject of corruption. And it is the journey from there to the twenty-first century that Chapter Five explores.

## CHAPTER FIVE

### 5. THE CORRUPTION CONTEXT FROM THE MID-19<sup>TH</sup> CENTURY TO THE 21<sup>ST</sup> CENTURY

*It could probably be shown by facts and figures that there is no distinctly native American criminal class except Congress — Pudd'nhead Wilson's New Calendar. Mark Twain (Lewis, S. digitised and updated 2018)*

#### 5.1 Introduction

Before a decision can be made as to whether the question that this thesis addresses is dependent on arriving at a single definition of corruption, or whether addressing certain specific corrupt acts can argue the case sufficiently, more historical contextualization is necessary. Consequently, Chapter Five continues to develop the theme from Chapter Four but the focus shifts to how the concept of corruption and acts of corruption were categorised and understood from the mid-19<sup>th</sup> Century to the 21<sup>st</sup> Century. During this period, the political and economic positions that underlay the attitudes and assumptions on what constituted corrupt behaviours became more explicit. These attitudes and assumptions have helped frame the current discourse around corruption and to some extent still underlie current interpretations of the concept. They have in turn been used to justify certain positions and even administrative actions. And it is these positions and administrative actions that are the primary concern of this thesis.

Mény and de Sousa (2001), in the *International Encyclopedia of the Social & Behavioral Sciences* introduce their chapter by commenting on the volatility of the concept of corruption and the way in which the concept is conditional on culture, history and social context (Mény and de Sousa 2001: 2824). Similarly, Curnow (2003) makes an explicit statement of how “[p]atronage and nepotism

and the distinction between public and private interests are areas where similar behaviour has been viewed differently over time” (Curnow 2003: 62). He argues that both patronage and nepotism were not initially regarded as corrupt practices but acceptable methods of recruiting and promoting staff in the public sector. He then goes on to reflect that by the 20th century political and administrative patronage and nepotism had been replaced by assessment and examination within public personnel administration. Yet, he points out that in the last twenty years political patronage at senior levels and staff nepotism for ministerial staff has had a resurgence (Curnow 2003: 63).

From the mid-20<sup>th</sup> Century the difficulty of arriving at a common definition for corruption was even more widely acknowledged. Hao and Johnston (1995) have commented that: “One of the most intractable problems in the literature on corruption has been defining the concept” (Hao and Johnston 1995: 81). So has Lyanda (2012): “From the...definitions of corruption, one can see that there is hardly consensus on the meaning of the term”(Lyanda 2012: 39). More recently Mikkelsen (2013) has observed that “disagreements still abound as to what corruption really is”(Mikkelsen 2013: 357). In fact, changing social mores and evolving views of what constitutes ethical behaviours have made it difficult to settle on a single definition.

## **5.2 Mid to End of 19<sup>th</sup> Century**

A fundamental shift occurred in the corruption debates of the western world during the 19<sup>th</sup> Century. Kerkhoff, Kroeze and Wagenaar (2013) characterize it as a “shift from the early modern plurality of values to clashing political ideologies in modern times.” Where previously administrators managed in a duality of formal legislative and procedurally fixed norms, as well as in informal community practices, the early modern world saw this plurality give way to the idealization of a single set of norms “where the personal (private) sphere no longer played a part” (Kerkhoff, Kroeze and Wagenaar 2013: 21-22).

Consistent with this idea, Glaeser and Goldin (2006) point out that in the 19<sup>th</sup> Century corruption focused more and more on bribery of public officials by

private agents. Bribery was now defined as an illicit payment in exchange for some government-controlled resource, such as a service, a public property, or exemption from a government regulation. They identify three elements which constitute a bribe: “(a) payments to public officials beyond their salaries; (b) an action associated with these payments that violates either explicit laws or implicit social norms; and (c) losses to the public either from that action or from a system that renders it necessary for actions to arise only from such payment” (Glaeser and Goldin 2006: 7). By the mid-19<sup>th</sup> Century concerted efforts had been made to address this issue in the UK and USA.

Fukuyama (2016) notes that the political landscape of the US in the mid-19<sup>th</sup> Century was riddled with corruption in the form of patronage or clientelistic systems (Fukuyama 2016: 8). Chapter Two provided a working definition of patronage and clientelism. The discussion that follows does not explore the concepts from a sociological point of view; instead it focuses on how the terms are understood in the field of political science. In politics, patronage is conceptualized as a relationship between the patron who is offered a public office and the client who in return receives benefits such as electoral support or political allegiance (Therault 2003: 80). Clientelism is a closely related phenomenon: patrons offer selective favours or benefits to muster support amongst the electorate as individuals or social groupings. The scale of the relationship may differ and frequently relies on intermediaries (Fukuyama 2016: 4). Several scholars persist in presenting neo-patrimonialism and clientelistic relationships as markers of developing<sup>i</sup> economies (Fawcett 2012: 165; Lewis 2012: 190; Erdmann 2013: 61-62). These behaviours, however, are still prevalent in modern transitional economies, for example, India (Robinson and Verdier 2013: 263), and developed economies, such as the USA and Italy (Rothstein and Varraich 2017: 81).

Paralleling US developments, in Great Britain, two republican congressmen, Sumner in 1864, and Jenckes in 1865, attempted to address the inefficiency that the existing patronage/clientelistic system had given rise to, and proposed bills that introduced the idea of ‘merit examinations’ for civil service appointments (Ruhil and Camões 2003: 29). However, it was not until 1883,

due to public pressure, that the Pendleton Act was passed. The Act was aimed at eliminating patronage and clientelism by prohibiting “mandatory campaign contributions” and implementing examinations for aspiring bureaucrats. The goal was to substitute merit for loyalty and to do away with the practice of complicit political appointments amongst members, party elites and the president (Theriault 2003: 52). Fukuyama (2016) ascribes this change to economic development that gave rise to a new civil society which demanded a “more modern form of government that would prioritise merit and knowledge over political connections”. The Pendleton Act established the US Civil Service Commission and the merit principle. But resistance to its provisions was so widespread that the Act came into effect only after World War I. Likewise, “[i]ndividual municipal political machines such as Tammany Hall in New York were not dismantled completely until the middle of the 20th century” (Fukuyama 2016: 8).

Prevalent from the mid-19<sup>th</sup> Century to the early 1900s was the view that “the sale of personal influence” was punishable as a civil offence. In fact, the state of Georgia specified lobbying as a criminal offence in its constitution of 1877, and in the following year passed legislation defining the act of lobbying. The lobbying definition included any type of petitioning to change legislation that: a) did not focus on the legality of the bill; b) misrepresented the interests of the persons soliciting the changes; or c) was solicited by an employee of such an interested person. In 1852 Congress passed a law prohibiting attendance during legislative sessions of agents who were employed to do so, from “prosecuting any claim pending” before it (Teachout 2014: 151).

The growth in American cities from 1880 led to a correlative growth in corruption. It became a period of mergers in which there was a consolidation of industries, an increase in monopolistic profiteering and the ascendancy of ‘robber barons’ (Menes 2006: 69). ‘Robber baron,’ according to Stiles (2009), was a term first used by Henry J. Raymond in an editorial of the *New York Times* (9 February 1859). He compared Cornelius Vanderbilt, an American railroad and shipping magnate, to the German barons who wrested payment from passengers sailing past their homes on the Rhine. The term came to

mean “an industrialist who wields his power unscrupulously, to the harm of others” (Stiles 2009: 328). The types of corruption that Menes (2006) believes were on the increase in this period include: “embezzlement; graft on public contracts and franchises; regulatory corruption, including graft on crime; and insider trading” (Menes 2006: 73). The Sherman (Antitrust) Act, was passed in 1890. It was intended to contain monopolistic behaviour, but did not specifically prohibit commercial bribery. It would apply only if such payments could be shown to be in restraint of trade (Gevurtz 1987: 366-377).

The mid-19<sup>th</sup> Century saw China experiencing a diminution in its power to exact tributes. South-East Asia had been invaded by the Dutch, and Japan and Korea had enacted separate treaties with Europe. China was forced by Great Britain into opening its eastern seaboard ports to western trading (Rofel 2012: 445). Japan moved from the Tokugawa Shogunate, which had ruled since the early 17<sup>th</sup> Century, to what Iriye (2014) described as a more modern foreign policy under the new Emperor Meiji (Iriye 2014: 1). India was already part of the British Empire with the further annexation of Punjab in 1849, Berar and Nagpur in 1853, and Oudh in 1856 (Harnetty 1972: 4).

The Meiji era in Japan dated from 1868 to 1912. Political bribery was outlawed in the Meiji state (Mitchell 1996: iv). The Shinritsu Kōryō (1871-1882), a Meiji period penal code, detailed the various punishments ranging from beatings to strangulations that could be inflicted on all parties, officials, and private persons involved in bribery. In 1882, the Shinritsu Kōryō was replaced with Keihō, a penal code that contained a section on Crimes of Official Punishment. This section detailed the periods of incarceration stipulated for bribery. In 1885, a new civil service system with strict disciplinary rules was introduced. In 1887, “Regulations Concerning the Personal Conduct of Officials” was published. It enjoined officials to obey all ordinances and laws. It specified that “officials may not receive, in connection with their official functions any present whatever from others, be it as an acknowledgment of service rendered, as a fee, or in any other name or under whatever pretext” (Mitchell 1996: 10). It included a prohibition against the acceptance of free meals or free transport from transportation companies. Violations of these regulations included

penalties such as experiencing salary cuts, being removed from office, or being reprimanded (Mitchell 1996: 10-11)

In China, the Ch'ing Empire, which ended in 1911, had unprecedented high rates of corruption in the last decade of its existence (Lau and Lee 1979: 131). Lau and Lee (1979) identify two broad types of corrupt practices for which there were punitive sanctions. The first was people directed and the second government directed. In the former category was: "embezzlement of money by improper performance of official duties, extortion by creating new taxes, accepting or demanding improper customary fees, allowing family members or subordinates to demand improper fees, and extorting money by torturing the criminal suspects". The latter included: "the extortion of public funds, the embezzlement of money from public works, military funds, and public properties, as well as the coinage of false currency" (Lau and Lee 1979: 115).

In India under colonial British rule, Arthur Crawford, the British Commissioner of the Central Division of Bombay, was put on trial in 1888 for "having received bribes and borrow[ing] money from officials" (Great Britain Parliament 1889: 861). Crawford had set up a system with his Indian deputy to solicit or extort bribes from locals who sought undeserved posts, career advancement or more salubrious postings. He compounded his criminality by encouraging his victims to practise similar acts to defray their expenses (Wolpert 1962: 40-41).

In Africa and South America, the slave trade provided opportunities for bribery and embezzlement. Britain in 1807 and America in 1808 had banned the slave trade in its colonies and territories, and the Spanish 1817 and Portuguese 1842 treaties had also agreed to similar prohibitions – the earlier Portuguese treaty of 1819 had impacted trade only north of the equator. However, British officials in Brazil and Cuba drew Britain's attention to the corruption that perpetuated the slave trade well after the Spanish treaty of 1817. An example of such a breach was an advertisement in Havana in 1836 for the sale of slaves (Martinez 2012: 91-95). Also in 1843, the Portuguese Governor of Quelimane in Mozambique and the main agent of slave trade, was reported as having

made sixty thousand dollars in fifteen months through peculation (Campbell 2013: 176).

Administrative corruption was also reported in Italy's Red Sea Colonies. In 1890, in what became known as the 'Livraghi Affair', the secret killings of seven indigenous citizens led to charges of corruption against an Italian officer named Livraghi and a lawyer named Cagnassi. They had allegedly provided false evidence in the trials of both the wealthiest man in the colony, and a muslim chief, which resulted in their being sentenced to execution (Bruner 2017: 12). According to Finaldi (2017), Livraghi used torture to force confessions from the victims, and Cagnassi "channelled victims' funds into the hands of a small coterie of corrupt friends" (Finaldi 2017: 86).

By the end of the 19<sup>th</sup> century the spread of the slave trade and the annexing of foreign territories to increase commercial spheres of influence had encouraged widespread profiteering. That public officials who illegally or unfairly profited from their positions were corrupt was a widespread belief. The laws and regulations that governed the legality of corrupt acts were for the most part controlled by the commercial powers in the various territories in which they operated with a correlative diminution of local power across the east, Africa and southern Americas. In the US and the UK there was a greater focus on public sector corruption as a pernicious evil that undermined democracy.

### **5.3 First Half of the 20<sup>th</sup> Century**

In the early half of 20<sup>th</sup> Century, several corruption scandals rocked Great Britain. At the turn of the century Britain was reeling from the Liberator Building Society scandal that had seen the Liberal Party MP Jabez Balfour sentenced in 1894 to 14 years' imprisonment. Balfour had set up a colossal embezzlement scheme with numerous interconnected fraudulent companies designed to conceal large scale financial losses. The combined debts equalled approximately £7 million (McKie 2004: 184-220). Soon after the Liberator Building Society debacle, the Marconi corruption scandal of alleged insider

trading came to light (1912-1913). There has been considerable debate on the rights and wrongs of the case (Lunn 1978: iv; Gilbert 1989: 295). However, what caught the public interest at the time were allegations against the attorney general, the treasurer of the Liberal Party, and the chancellor of the exchequer to the effect that they had used privileged parliamentary information to trade in Marconi shares whilst the company, managed by the attorney general's brother, was negotiating a government contract (Donaldson 1962: 10-140). Although absolved of shady dealings by their fellow liberal ministers during the commission of inquiry, the Cecil Report generated by the investigation asserted that the attorney general had acted with "grave impropriety" (Lunn 1978: 26). In 1922 the sale of peerages, baronetcies and other honours that were meant to be awarded for service to country, in exchange for campaign contributions had become widespread under Prime Minister Lloyd George (Hanham 1960: 277). Parliament passed the Honours (Prevention of Abuses) Act to curtail this type of administrative corruption (United Kingdom Parliament 1925).

In 1936, the National Labour Secretary of State for the Colonies resigned when it was revealed that he had divulged confidential budget information to stockbrokers (Hine and Peele 2016: 36). The Lynskey Tribunal of 1948 found that the undersecretary of the Board of Trade had received gifts from suspect businessmen (Robinton 1953: 109-110). In 1956, the public discovered that the prime minister had lied during the Suez invasion. Furthermore, during the Profumo Affair of 1963, John Profumo, the Secretary of State for War, was found to be involved in a sexual relationship with a society prostitute who was also having sexual relations with a Russian envoy. Notwithstanding these incidences, the general attitude of the British public was that these were isolated individual occurrences rather than symptoms of a generalized culture of corruption and therefore there was no outcry for greater ethics regulation (Hine and Peele 2016: 36).

The election of Theodore Roosevelt as president of the USA in 1901 ushered in a new progressive era that did much to curb the excesses of the robber barons and the corruption prevalent in politics by initiatives such as the

enforcement of the anti-trust rules (Brands 2002: 341). Roosevelt also established the Department of Commerce and Labor and the Bureau of Corporations in 1903. These organizations were intended to assist the executive arm of the government to enforce existing laws and enact new laws, if necessary, to prevent further economic exploitation by the privileged classes. In the speech announcing these measures, he spoke of immigration and voter corruption and the possibility of extradition for bribery of which he said “there can be no crime more serious”; he believed that corruption undermined all law (Roosevelt 1903). Menes (2006) attributes this development to the emergence in the 1890s of civic associations, lobbying groups and a nonpartisan and independent press that culminated in the ‘muckrakers’, a group of journalists who crusaded against and exposed corruption. Their collective efforts resulted in a series of structural reforms that continued until 1910. The reforms were of four types:

structural reforms intended to remake the internal arrangements of government, regulatory reforms intended to remake the relationship between government and business, electoral reforms intended to eliminate patronage and fraud from elections, and social reforms intended to improve the lives of Americans (Menes 2006: 88).

The Clayton Antitrust Act of 1914 was enacted to further strengthen and give specificity to the earlier Sherman Act of 1890 (Gevurtz 1987: 366-377). But it was the Robinson-Patman Act of 1936 that eventually prohibited commercial bribery (Ostrowsky 1966: 1006-1008).

By the early 20<sup>th</sup> Century, Europe dominated almost all territories within the Pacific, Africa and Asia. Consequently, the system of law that prevailed over these areas were conditioned by European culture and norms (Anghie 1999: 2). However, according to Hellmann (2017), by the time universal suffrage was effected across east Asia in the mid-20<sup>th</sup> Century, the marketplace was so substantially different from state to state in terms of resources for political

mobilization and political coercion that corruption became institutionalized very differently across states (Hellmann 2017: 152).

In Japan vote buying was illegal, but from 1900 to 1919 few constraints applied to campaign practices. Candidates, although debarred from accosting voters at polling stations, could carry out electioneering elsewhere with no restraints on expenditure (Mitchell 1996: 45). Corruption was viewed more seriously by some sectors of the population than others. In 1921 Japan's richest man was murdered, and the assassin asserted that he had carried out the killing to protest corruption and inequality. Later that year the prime minister was killed and the killer, amongst other reasons, maintained that his action was motivated by the prime minister's failure to punish government officials for bribery (Mitchell 1996: 44). The Election Law of 1925 reformed campaign practices ostensibly to curb political corruption. Campaign expenditure and the distribution of election literature were restricted, as was the number of campaign workers that could be hired. Door-to-door canvassing was prohibited, and penalties for bribery were increased from fines of 500yen to 2000,000yen and included possible imprisonment for a period of one to three years (Mitchell 1996: 45-46).

The 1911 Xinhai Revolution in China ended the Ch'ing dynasty and founded the Republic of China in 1912 (Liu 2016: 10). However, administrative corruption continued to flourish throughout each of the succeeding Republic, Warlord and Nationalist periods which ended in 1949 (Gong 1994: 42). From 1860 to 1906 the Chinese state focused on regulating and taxing China's opium trade. From 1906 to 1919 the goal changed to suppression instead. Paradoxically, from 1919 to 1940 both objectives were expected to be met. Because of the value of opium, the associated bribes were enormous and led to a blurring of "the line between public and private corruption and ordinary state action", and ongoing personal official wrongdoing persisted until 1949 and beyond (Baumler 310: 11).

In India, in 1921 and 1926 specific instructions were released by the Uttar Pradesh Appointments Department to curb corruption (Gould 2010: 106). That

the police were involved in widespread bribery and extortion was confirmed by the 1938 Anti-Corruption Committee (Gooptu 2001: 133). The Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. XXXVIII of 1944) was an amendment made to the Government of India Act, 1935. It was the first law that broadly dealt with corruption, but was unable to curb “bribery and corruption of public servants, which had increased greatly during the war years, due to scarcity and controls”. India gained independence in 1947 and the first significant law on corruption was the Prevention of Corruption Act (PCA) of 1947 to rein in post-war profiteering (Law Commission of India 2015: 1). India’s 5-year plan of 1952 committed to integrity and watchfulness against corruption, and the Indian Parliament also established the Anticorruption Bureau in 1961 to investigate violations of the PCA. The Santhanam Committee tasked with addressing corruption was established in 1962, and the Central Bureau of Investigation was founded in 1963 to look specifically into government corruption (Johnson 2004a: 156).

In Burma under British colonial rule, Saha (2013) argues, bribes were paid to village headmen, evidence was fabricated by police officers, government officials embezzled, trading in drugs continued with the help of excise officers, and women were forced into sex by township officials – all with legal complicity. To illustrate this, Saha cites an 1896 case where a trader took a headman to court for failing to pay a promised bribe. He asserts that there were 240 such cases between 1896 and 1909 (Saha 2013: 3-4). In the Philippines, universal suffrage was rolled out in 1935, and patronage and clientelistic relationships proliferated. Landowners controlled vote banks, and national-level politicians weakened state institutions and awarded them and their cohorts public contracts to buy their loyalty (Hellmann 2017: 152). In Thailand when elections were gradually implemented in the 1940s, politicians, under constant threat of a factionalized military that conducted coup after coup, turned to organized crime groups called *chao po* to secure electoral victory, thus institutionalizing the corruption of oligarchs (Hellmann 2017: 152-153). In Indonesia, regional warlords, who had emerged from the guerrilla war against the Dutch, dominated the political landscape by the time the Dutch left. Inclusion of these

warlords into the democratic process helped institutionalize their corrupt networks (Hellmann 2017: 153).

In Africa between 1890 and 1910 imperial powers had conquered and occupied most of the continent. The colonial system that was established disregarded pre-existing geographical boundaries and established large colonies under the rule of European powers. By 1914 colonization had spread over the entire continent with the exception of Ethiopia and Liberia (Boahen 1985: 1).

In South Africa, the second Anglo-Boer War (1899-1902) re-established British rule in the Transvaal and the Orange Free State, and the new administrator dismantled the existing patronage network that favoured Afrikaner interests. This in turn led to the advent of rent-seeking behaviour among English-speaking mine owners (Hyslop 2005: 780). The Union of South Africa was established in 1910, and the pass laws that restricted Black movement presented prospects for low level bribery. But it wasn't until the Hertzog government of 1924 to 1933 that rent-seeking behaviour was re-introduced through agricultural subsidies and job preferences for whites (Hyslop 2005: 780). The development of the Afrikaner Broederbond that worked to secure the election of the Malan government in 1948 signalled a return to Afrikaner patronage and state-enabled rent-seeking behaviour (Hyslop 2005: 781).

In Liberia from 1915 to 1935, Akpan, Jones and Pankhurst (1985) note that "gross corruption and malpractices were resorted to in Liberia's public system and political processes". This intensified in the 1920s and early 1930s as the two major parties, True Whig and Peoples, both practised electoral fraud. The example the authors cite is the May 1927 election when the True Whig Party appeared to poll 235 000 votes, the Peoples Party 9 000 votes, and the entire population of eligible voters numbered 10 000 (Akpan, Jones and Pankhurst 1985: 718). Extortion and embezzlement, which were also rife, they attribute to the government's inability to pay salaries to public officers (Akpan, Jones and Pankhurst 1985: 728). In 1956 in Kenya, the colonial government enacted the Prevention of Corruption Act. It focused mainly on the abuse of office for

the self-enrichment of public officials. The Legislative Council of Kenya did not explore other areas of corruption, confining itself rather to bribery of public officials (Matianga 2006: 70).

By the middle of the 20<sup>th</sup> Century colonization was firmly entrenched. This led to a spread of European culture and norms, and western rule was largely applied across the colonized territories. This, however, was not consistent across territories either in form or in application. There was also a proliferation of anti-corruption laws and regulations and the creation of scores of national watchdog and regulatory organizations. Notwithstanding numerous high profile exposés of corruption, especially in Britain, the public remained sanguine and there was no concerted push for greater ethics regulation.

#### **5.4 Latter Half of the 20<sup>th</sup> Century**

Reform of political corruption and campaign funding became a major concern in the 1960s. Previously party funding was obtained by member subscriptions and donations from businesses, professional organizations and trade unions (Meny 1996: 314).

President Lyndon B Johnson's senate race in 1948 is perceived as the most corrupt election in the US (Williams 1998: 25). In 1960, however, patronage politics was still very much the vogue when the mayor of Chicago 'fixed' the state of Illinois' vote to favour presidential candidate John F Kennedy (Hyslop 2005: 777). In the 1970s, though, a series of court judgements that came to be known as the Shakman Decrees was to finally undermine the spoils system in Chicago and prevent the political firing and hiring of public employees (Masket 2013: 121).

The other reason for dispensing with the spoils system was that traditional funding and the nature of campaigns had led to increased costs. Political parties everywhere indulged in improper or illicit activities until a slew of scandals such as the "Flick scandal in Germany, the scandal of Nixon's electoral campaign, the resignation of the American Vice-President Spiro

Agnew, the Lockheed scandal in Italy, Japan and the Netherlands” prompted the view that funding of electoral campaigns with carefully monitored public funds would be the solution. Instead, according to Meny (1996), new types of funding arose such as Political Action Committees (PACs) in the US and fake parties in France. He sees both types of organizations as a corrupt source of funds (Meny 1996: 314). Although some scholars offer support for Meny’s position on PACs (Hasen 2014: 21), not all scholars see PACs as corrupting (Kipp 2016: 375). It is worth noting, however, a recent further change in attitude by some scholars to PAC funding and its relationship to corruption. Two court cases were decided in 2010 in the US: the Supreme Court case of Citizens United vs the Federal Electoral Commission (FEC); and the Washington DC district court case of SpeechNow.org vs FEC. The cumulative impact of these decisions means that there are neither limits to expenditures nor limits on contributions to PACs. This has led scholars such Alschuler and Eisen, who did not take exception to the Supreme Court ruling in Citizens United to refuse to limit expenditures by PACs, to opine that “[c]ontributions to super PACs can corrupt even when expenditures by these groups do not” (Alschuler *et al.* 2017: 5,8).

Concerns over scandals such as the Lockheed scandal during the latter half of the 20<sup>th</sup> century brought commercial bribery in transnational environments into sharp focus. Evidence was obtained of; 1) illegal political contributions by the Office of the Watergate Special Prosecutor; 2) questionable foreign corporate payments by the Church Committee that focused on multinationals; and 3) violations of federal securities laws by the Securities and Exchange Commission (Koehler 2013: 932-933). In 1977, the US passed the Foreign Corrupt Practices Act (FCPA). This Act prohibited transnational bribery in the sole context of business transactions in the commercial arena (Wouters, Ryngaert and Cloots 2013: 4-5). Afraid that the new Act would create competitive disadvantages in relation to international contracts, the US government lobbied for an international anti-corruption treaty that would apply across the board. However, when the discussion veered into tying the treaty to a code of conduct for transnational corporations, the US would not countenance such a provision and the talks broke down (Wouters, Ryngaert

and Cloots 2013: 11). There was significant variance in the extent to which different US administrations pursued application of the FCPA. During the Carter and later in the Clinton administration it was pursued a lot more diligently than in the Reagan era (Heidenheimer 2008: 345).

At that time, although the law in most countries recognized the criminality of corrupt practices within their borders, there were no grounds to prosecute offences committed in other jurisdictions. Heidenheimer (2008) contends that during the 1980s criticism and scandals were muted because corruption was widespread. Even such perceived bastions of integrity as the German and Scandinavian countries, he notes, were not prepared to eschew bribery. Their reluctance was based on the assumption that doing so would cede competitive advantage to Japan and other European countries. Heidenheimer does mention the Bofors scandal as being an exception to this, as it attracted widespread negative publicity (Heidenheimer 2008: 344). The Bofors scandal was related to alleged kickbacks to, amongst others, the Indian Prime Minister by a Swedish arms manufacturer to secure a \$1.4 billion contract for the supply of armaments. The enormity of the scandal and the subsequent public outrage led to the defeat of the Indian National Congress in the 1998 election (Hadjikhani and Hakansson 1995: 506-507).

In the UK, there were concerns about whether parliament could police itself with respect to corruption and abuse of office. In 1992, the Select Committee on members' interests raised concerns that parliamentarians were under the impression that declaration and registration of interests were all that was required for compliance with the ethical constraint of reconciling their private interests with their official responsibilities. In 1994, two junior Conservative ministers of parliament resigned because of allegations that they had been bribed to table questions in parliament (Doig 1998: 36-37). In 1995, the Nolan Committee recommendations tried to address the question of lobbying. The recommendations included appointing a Commissioner, a Select Committee on Standards and Privileges with a defined complaints procedure, a Code of Principles, and improvements to the Register. These measures would ensure that MPs were aware not only of the requirement to register and declare all

compromising gifts and payments but also of the law on bribery in relation to MPs. House approval of these recommendations followed in 1995 (Doig 1998: 44). In 1998, the Department of Trade and Industry Minister was forced to resign after he failed to disclose a suspect £373,000 loan from the paymaster general. Ten months later, after being appointed as Secretary of State for Northern Ireland, he was again forced to resign. He allegedly facilitated the naturalization process of an Indian businessman whom the foreign office suspected of engaging in corrupt practices (Doig 2002: 389; 391-394).

As an economy in transition, the Chinese economy operates in a complex environment. It has been moving towards a market economy since 1979. The Communist Party and government still retain enormous power and influence over commercial enterprises. This creates a situation where government officials are given opportunities for bribery and corruption to the benefit of their families. This type of behaviour surged in the 1980s (Brody and Luo 2009: 317-318). Hao (1999) argues that the Chinese economy has persons that have both public and private roles, or roles of the type that make it difficult to distinguish the one from the other. These subtleties impede the positive identification of corrupt practices and has led to a shift in public perception of what constitutes corruption. He provides as evidence a collation of press reports from 1993 to 1998 that included a long catalogue of corruption activities including:

Embezzlement and bribery, but also offences against financial and economic discipline, swindling and indiscriminate collection of fees; blackmail, smuggling, black market currency exchanges; establishing illegal businesses by governmental agencies, resale profiteering, and substitution of defective or counterfeit goods; excessive housing; illegal price increases, indiscriminate issuance of bonuses, and malpractice in assigning jobs and promoting cadres; work units' 'small treasuries' (xiao jinku); illegal transfer of public assets; gambling, ticket scalping, visiting prostitutes, decadent behavior, usury, outright piracy, insider trading in the new

security markets and future markets, ignoring laws, perverting justice for a bribe, imposing fines and making unjustified financial levies at random, deceiving their superiors and deluding their subordinates, [and] vocational misconduct (Hao 1999: 407).

In Indonesia, powerful persons within the Suharto administration became politicians, joined the new parliament, and used their influence and power “to forge informal links with business interests, bureaucrats, organized crime, and even military and police commands”. Through these networks they established clientelistic relationships to remain in power and illegally benefit from public and private enterprises (Hellmann 2017: 151).

South Korea under military government from 1961 to 1987 had set up a highly sophisticated and intricate system of corruption that involved payments by business corporations to senior government personnel in exchange for government contracts, licences, loans or other public assets (Hellmann 2017: 149).

In the last decade of the 20<sup>th</sup> Century globalization of markets had created an interrelated and integrated world economy that in turn created pressure to ensure international norms that delivered consistent standards and modes of operations for contracts, trade and fiduciary responsibility. The corruption debate now focused more on how corrupt practices hindered access to the vast wealth promised by the global economy rather than on the morality of such behaviour (Johnson 2004b: x).

The Convention on the Protection of the European Communities’ Financial Interests (PIF) was formulated in 1995 and included a definition for fraud (European Union 1995). Together with the Convention, Regulation 2988/95 was introduced. The Convention focused on fraud at the EU and individual state levels in terms of criminality, whilst the Regulation defined irregularities and prescribed procedures for checks and penalties for breaches (Stefanou, White and Xanthaki 2011: 3). The Twenty Guiding Principles for the Fight

against Corruption was adopted in 1997 by the Committee of Ministers of the Council of Europe (CoE), its statutory decision-making body. The guidelines stipulated an extensive range of anti-corruption measures, which included limiting immunity, prohibiting tax deductibility for bribes, protecting the media, and ensuring that legal persons would not be shielded from liability. In 1999, 43 states endorsed the Criminal Law Convention, and it was adopted by the Council of Europe (Wouters, Ryngaert and Cloots 2013: 21)

Once the FCPA had been adopted, as noted above, the US turned to establishing a global anti-corruption treaty that would eliminate the competitive disadvantages that US firms would face. The US alleged that other World Trade Organization (WTO) members had caused trade distortions through corrupt practices. They pushed for the WTO to investigate these allegations. Strong opposition from Asian countries led the WTO to refuse (Wouters, Ryngaert and Cloots 2013: 6).

The Inter-American Convention against Corruption (IACAC) was adopted by the Organization of American States (OAS) in Caracas on 29 March 1996. Except for Cuba and Barbados, all OAS members have ratified it (OAS 1996: 1). The thrust of the IACAC was noticeably similar to that of the FCPA. However, one of its unique features, according to Carr and Jago (2016), is the inclusion of a new offence called illicit enrichment. The offence relates to instances where government officials are unable to explain levels of personal wealth incommensurate with legal earnings. It also addresses transnational bribery (Carr and Jago 2016: 207).

The United Nations (UN) in 1996 adopted the International Code of Conduct for Public Officials (ICCPO) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (UNDAC). Attempts were then made to draft a truly global anti-corruption convention. Interestingly, the US opposed several draft provisions, especially the stipulations providing for the criminalization of private corruption (Wouters, Ryngaert and Cloots 2013: 10-11). The US refocused instead on the OECD, and in 1997 the OECD Convention on Combating Bribery of Foreign Public

Officials in International Business Transactions (OECD Anti-Bribery Convention) was adopted. Simultaneously, the OECD Working Group on Bribery was created to monitor and enforce the implementation of the Convention (Danon 2017: 3). This had the effect of making the OECD, going forward, the main international body for anti-corruption regulation (Wouters, Ryngaert and Cloots 2013: 5). The preamble to the OECD Anti-Bribery Convention specifically addresses US concerns by stating that bribery “distorts international competitive conditions” (OECD 2011: 6). However, a category of payments called *facilitation payments* was included. These are described as payments made “to induce public officials to perform their functions, such as issuing licenses or permits” and criminalisation of such payments were not seen as “a practical or effective...action” (OECD 2011: 15). According to Wouters, Ryngaert and Cloots (2013), the OECD over the next few years adopted a series of recommendations on anti-corruption. These included the recommendation of the Development Assistance Committee on Anti-Corruption Proposals for Bilateral Aid Procurement in 1996 and the recommendation on improving ethical conduct in the public service in 1998 (Wouters, Ryngaert and Cloots 2013: 24).

Canada adopted the Corruption of Foreign Public Officials Act in 1998 (CFPOA) (Canada 1988). This Act was substantially the same as the US FCPA. The Act criminalizes bribery of a foreign public official by Canadians whilst conducting transnational business. It was effected in 1999 to ensure that Canada met its obligations to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions with the intent of “removing bribery as a non-tariff barrier to trade” and producing “a level playing field” in international business”. It was also designed to comply with the United Nations Convention against Corruption (Mackay 2013: 1).

By the close of the 20<sup>th</sup> century transnational commercial corruption scandals had resulted in public pressure driving some of the anti-corruption regulation. There was an emphasis on transnational regulation. Attempts were made to create global international watchdog entities and regulatory organizations.

However, whenever these bodies introduced resolutions to include regulation of corruption by private corporations the US declined to participate.

## **5.5 Early 21<sup>st</sup> Century**

The early 21<sup>st</sup> Century started with two spectacular cases of domestic fraud, both viewed in the countries involved as major acts of corruption.

In the US, one of the more spectacular cases of rent-seeking behaviour and corporate fraud that dominated media headlines was the US Securities and Exchange Commission's investigation into Enron in 2001 and the subsequent Justice Department investigation the following year. According to Bradley (2011), Ken Lay, the CEO of Enron, was a rent seeker who sought regulatory opportunity and developed relationships with government officials to undertake corrupt dealings. He positioned his company in such a way that it benefited from special tax provisions, exploited regulatory nuances and even profited from the US Treasury (Bradley 2011: 4). At the time the 7<sup>th</sup> largest company in the US, Enron's collapse led to the ruin of their auditors Arthur Andersen LLP. The auditors had been apprehended shredding vital Enron-related documents sought by the enquiry. Enron's failure also brought disrepute to the banks Citigroup and JPMorgan Chase, which had "disguised massive amounts of loans as commodity transactions in order to keep that debt off Enron's balance sheet" (Markham 2006: xv-xvi). Ken Lay was eventually convicted for fraud (Bradley 2011: 11).

In China, the Guangxia Yinchuan Industry Co. Ltd. had listed on the Shenzhen Stock Exchange in 1994. Within less than 6 months from 1999 to 2000, its stock price increased by 156% (Xia, Changyun and Ye'an 2014: 35). And by December 2000 to 440% (Bian 2014: 20). It held the fastest growing shares on the Shenzhen and Shanghai Stock Exchanges. In 2001, two newspapers and a magazine questioned the meteoric rise in the stock price. The China Securities Regulatory Commission (CSRC) opened an investigation into the company and confirmed that the company had fabricated the huge profits that it had published. The CSRC also found that the company's auditor, the Shenzhen's Zhongtianqin Certified Public Accounting (CPA) Firm, had acted

unlawfully in signing off on the audit report. A number of senior managers of Guangxia Yinchuan were eventually charged and the Zhongtianqin CPA Firm was disqualified from practising (Xia, Changyun and Ye'an 2014: 35-36).

Transnational corruption cases were also being highly publicised. In 2008, Siemens AG paid \$450m in criminal fines and admitted to violating the US Foreign Corrupt Practices Act (Eberl, Geiger and Aßländer 2015: 1209). They also paid global fines of approximately \$1.6bn. These were for corrupt dealings dating from the 90s to 2007. There were allegations of bribes of \$1.8m to Iraqi, \$31m to Argentinian, almost \$19m to Venezuelan and more than \$5m to Bangladeshi government officials (Keith 2014: 230). In 2012, Pfizer Inc. settled FCPA cases with the Department of Justice and the Securities and Exchange Commission for \$60m. They had allegedly paid about \$2m in bribes to government officials overseeing healthcare practitioners in different states including Russia, Kazakhstan and China. It was the first instance that FCPA had been used to charge a US company where there was no “territorial nexus to the United States” (Keith 2014: 231). In China in 2014, notwithstanding its efforts to lobby the government and health officials, GlaxoSmithKline (GSK) paid approximately \$500m in fines for bribery related to product sales. It was the first time that a pharmaceutical company had been fined in China (Agarwal 2016: 60).

With regards to legislation on corruption, the United Kingdom, which had eventually ratified the OECD Ant-Corruption Convention in 1988, and some considerable time after the US and Canada had drafted and passed legislation, passed the Bribery Act 2010. This act replaced the old and obsolete “Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916” (Keith 2014: 232).

A new regional convention on corruption was adopted by the African Union (AU) in 2003. Forty-three of the 53 member states were signatories to it and 27 ratified it (Adeyeye 2012: 113-114). The convention purports: “to promote and strengthen the development...of mechanisms required to prevent, detect,

punish and eradicate corruption and related offences in the public and private sectors...[p]romote, facilitate and regulate co-operation...to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption...[c]oordinate and harmonize member state policies and legislation” to combat corruption in Africa (African Union 2003: 5). The acts of corruption that the Convention recognizes include public and private sector bribery; unlawful gains made by public officials; and the unlawful diversion of public resources by public officials. The Convention also identifies as unacceptable the attempt to profit from and conceal such behaviour. And all apply to public and private sector corruption (Adeyeye 2012: 113-114).

In 2003, an Additional Protocol to the Criminal Law Convention on Corruption was adopted by the Council of Europe. The Convention covers the bribery of jurors and arbitrators; both active and passive bribery and both domestic and foreign arbitrators. A critical determinant for the application of the Convention to arbitrators and jurors in civil proceedings is whether a state’s national law recognizes the arbitration agreement. But where the context is criminal, the Convention applies to jurors regardless of national law (Deming 2010: 329-330). As of 16<sup>th</sup> October 2017, of the 47 states of the Council of Europe, 43 have ratified the protocol, 2 have signed although not yet ratified it, and 2 have neither signed nor ratified it (CoE 2017).

According to Wouters, Ryngaert and Cloots (2013), the OECD has adopted a series of recommendations related to anti-corruption. These include: “the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits; the 2009 Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions; and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions”. In 2010, 10 Principles for Transparency and Integrity in Lobbying was incorporated (Wouters, Ryngaert and Cloots 2013: 24).

In 2003, the United Nations Convention against Corruption (UNCAC) was adopted. Beyond the first and last chapters that deal with general and final

provisions respectively, the Convention consists of a further six chapters. These chapters cover: preventive measures; criminalization and law enforcement; international co-operation; asset recovery; technical assistance and information exchange; and mechanisms for implementation (UNODC 2003: v).

The OECD limited its focus to active transnational bribery of government officials by corporations. The CoE Convention addressed both active and passive bribery of elected officials, private sector bribery, influence trading and money laundering. The African Union Convention included the offence of illicit enrichment. UNCAC encompasses all of these and further includes the crimes of obstruction of justice and embezzlement (Kubciel and Rink 2016: 222). Of significance is that UNCAC goes further than just the criminalization of corruption; it focuses on the prevention of such practices as well (Kubciel and Rink 2016: 221). The prevention measures cover both the public and private sectors. They include preventative policies and practices such as the creation of anti-corruption organizations and improved transparency in election campaigning and political party financing. This ensures that public services are subject to safeguards that promote efficiency, transparency and meritocratic recruitment. It establishes codes of conduct for public servants, specifies grounds for financial and other disclosures, and proposes suitable disciplinary measures. It further addresses the promotion of transparency and accountability in public finance, specifying preventative corruption measures for judicial officials and public procurement processes. Finally, it actively promotes involvement of NGOs, community-based organizations, and elements of civil society, and is committed to raising public awareness of corruption and the means to prevent it (UNODC 2017a).

As of 3<sup>rd</sup> October 2017, UNCAC has 140 signatories and 183 state parties (UNODC 2017b). UNCAC today is one of the most comprehensive and most widely subscribed to conventions on corruption.

## 5.6 Summary

For most of the 19<sup>th</sup>, 20<sup>th</sup> and early 21<sup>st</sup> Centuries a distinction between private and public behaviour was made by theorists and practitioners who were involved in the anti-corruption debate or in defining corruption. The requirement that a public office must have been perverted before corruption can be alleged became true for most legalistic definitions and until recently dominated academic discourse. However, emerging theory and public perception are now questioning the legitimacy of this. And actual actions that have been identified as instances of corrupt behaviour often blur this line. Recent global anti-corruption measures encompass both private and public acts.

During the 19<sup>th</sup> and 20<sup>th</sup> Centuries the debate focused initially on the bribe giver alone, but gradually shifted to the bribery of public officials by private agents. Anti-corruption regulation was also extended to cover not just national but transnational corruption as well. The early 20<sup>th</sup> Century corruption reforms focused on preserving the political equality of the states' citizens by attacking patronage, clientelism and, at least initially, 'the sale of personal influence' or lobbying. Attempts were made to ensure that the political process retained its integrity. By the beginning of the 21<sup>st</sup> Century, after even more egregious betrayals of public trust by predatory private corporations, the creation of conventions and codes that constrained corrupt behaviour and sanctioned both donors and recipients became an imperative. The catalogue of offences also grew to include bribery, rent-seeking behaviour, jury tampering and money laundering. And the evolution of a broader perspective allowed anti-corruption agents to address issues such as illicit enrichment and campaign funding. In spite of that, in developed countries, practices such as lobbying or unlimited campaign spending by specialist corporate interests that were once considered corrupt or unethical practices have slowly been normalized, regularized or legalised until they are no longer defined as corrupt practices. And the concept of facilitation payments has arisen.

This chapter provided an overview of some of the incidences that shaped public perceptions of corruption and how different countries responded with anti-corruption legislation. It offered some insights into the deep ideological divides in attitudes and reactions that prevailed in the last two centuries worldwide. Important to note is the extent to which the stronger market economies dominated global policy decisions. The US, for example, was forced to enact anti-corruption legislation in response to a public outcry against the scandalous behaviour of its global corporations. It then vigorously pursued similar binding provisions for other states to 'level the global competitive markets.' Yet also strenuously resisted efforts to apply a code of conduct to its corporations. Furthermore, it persisted in confining the debate on corruption to abuse of public office, and prevailed on the OECD to adopt a similar approach. These measures were clearly designed to ensure that the US retained its market ascendancy.

The concerted anti-corruption initiatives over the last 200 years culminating with UNCAC would conceivably have pointed the way to an international consensus on what constitutes corruption. This unfortunately does not hold true. Deep divides – philosophical, ideological, cultural and economic across and within states – mean that corruption is still variously defined across nations. Chapter Six explores why this occurred, and starts to look at the ways in which different parties have exerted influence either intentionally or inadvertently to maintain these ambiguities of definition. This has allowed them or others to profit from the lack of definitional coherence.

## CHAPTER SIX

### 6. CORRUPTION A POLYSEMOUS TERM

*“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.” “The question is,” said Alice, “whether you can make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master—that’s all. Carroll (1934: 205)*

#### 6.1 Introduction

The previous chapters provided a brief historical background to the concept of corruption. This study has elaborated on why concerted scholarly efforts have failed to arrive at a single definition of corruption. What became clear was that over the last 20 centuries the term has been variously redefined in the context of different behaviours. Even currently the concept continues to evolve.

The establishment of the United Nations Convention against Corruption (UNCAC) in 2005 and the almost universal subscription to its provisions would seem to suggest that over the years a certain congruence has resulted with respect to the definition. Yet, as Johnston (1996) states, “most analytical definitions omit a large penumbra of political actions that many perceive as corrupt, and that pose significant questions relating to fairness, justice, and the connections between wealth and power” (Johnston 1996: 321). UNCAC has in fact sidestepped the need to provide a stipulative definition of the term. It has chosen instead to focus on certain specific behaviours over which international consensus exists, and catalogues these as: bribery of national public officials; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; bribery in the private sector; embezzlement of property in the private sector;

laundering of proceeds of crime; concealment; and obstruction of justice (UNODC 2003: 16-21). If one subscribes to the idea that a definition is an attribution of meaning and, at a fundamental level, “explains an unknown or dubious meaning by using a better known and less dubious meaning” (Sgarbi 2013: 28), then certainly the UNCAC catalogue can be viewed as a starting point.

Kurer (2005) observes that although a good definition ought to have enough characteristics to enable unambiguous identification of the “phenomenon in question”, such definition does not have to necessarily conform with popular understanding. Yet, when the concept of corruption is under redefinition, the re-articulation of the concept has been frequently driven by public outrage of perceived violations of ethical norms and standards (Kurer 2005: 223). The previous two chapters clearly support this view.

It can be conceded, then, that in an epistemological sense “every attempt at approaching a “real” definition is doomed to failure” (Sgarbi 2013: 29). This study does not intend to suggest that others resile from this debate but rather, now that a context and framework have been established, that this study focus on the ways in which different countries and organizations have tried to influence and benefit from different definitions.

## **6.2 Corruption Definitions in the Politics of Power**

According to Johnston (1996), if the body politic believes that it is permeated by corruption, such a belief “threatens the vitality, openness and justice of politics”. Furthermore, he argues, essential to identifying what actions constitute corruption in a justifiable and significant way is the existence of a political process that is vital and energetic, making the quest to define corruption “a political as well as an analytical process” (Johnston 1996: 321). In conceptualizing the issue as he does, he identifies how corruption beliefs impact politics and are impacted by it in turn.

Kurer (2005), in developing his argument, discusses how each of the categories of corruption definitions first identified by Heidenheimer, namely, public opinion, public office, and public interest, fell short. The public opinion category depends on arriving at a real apprehension of what exactly public opinion is. The public interest definition relies on a commonly agreed public weal. And the public office definition, although it easily recognizes abuse of the specified rules, does not address instances when the rules themselves are corrupt. Instead Kurer introduces into the debate the concept of an “impartiality principle’, whereby a state ought to treat equally those who deserve equally” (Kurer 2005: 222-223). This impartiality principle is a critical element if one considers that Kerkhoff, Kroeze and Wagenaar (2013) put forward the following argument on why public perception of what constituted corrupt actions underwent such radical changes in modern times. They argued that as concepts on the proper functioning of state and government based on the idea that a single baseline of standards should inform society were debated, differing ideologies competed to identify certain behaviours as corrupt actions. Depending on an ideological or political point of view, actions that were seen to be conservative, liberal or bureaucratic were categorized as corrupt. (Kerkhoff, Kroeze and Wagenaar 2013: 22).

Rawls, in *Political Liberalism* (2005), states an idea of distributive justice first enunciated in his *A Theory of Justice* (1971). Namely, that:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (Rawls 2005: 5-6).

Kurer (2005) embraces Rawls' model to answer the charge of cultural relativism. True to the theory of distributive justice, his impartiality principle is based on the existence of a set of universal non-discrimination norms (Kurer 2005: 236). If one considers the history of how different political regimes in different cultural contexts viewed corruption as discussed in the previous two chapters, this principle has the merit of applying across all cultural and temporal boundaries. Specifically, Kurer's definition states: "Public officials act corruptly when they violate non-discrimination norms that regulate the allocation of a polity's rights and duties in order to derive a personal advantage". This liberates the definition from the cultural relativism dictated by shifting norms and conventions. A focus on the impartiality principle encompasses all violations of non-discrimination norms, and makes it easy to identify corruption in "dubious practices as pork-barrelling and log-rolling, or discriminative allocation of public benefits and obligations generally" (Kurer 2005: 236-237). This definition, however, does not cover instances of corruption by private entities.

Madsen (2013), when discussing corruption within the private sector, like Kurer (2005), points to the inadequacy of legalistic definitions adopted in criminology by distinguishing between illicit and illegal. Legalistic definitions, he contends, fail to recognise legal acts that are unethical or abusive as corrupt. For him, all definitions depend on the academic framework adopted, whether, for example, the definitions relate to corruption in terms of consequentialism, as propounded by social capital theorists, or whether they obtain in the context of community attitudes, as in public opinion theory (Madsen 2013: 28). But, he goes on to argue that, as inadequate as legalistic definitions are, they remain the only viable approach to anti-corruption enforcement; hence he reintroduces the concept of cultural relativism. He explicitly recommends that anti-corruption measures be managed as regulatory rather than criminal transgressions. This would bring these measures within the ambit of general governance and therefore allow societies "to gauge the severity of the corrupt behaviour in accordance [with] its developmental status and would lead to a reinforcement of the global common good, of which the enforcement of norms is a major part" (Madsen 2013: 36). Implicit in this argument is the idea that

less developed countries would be regulating and sanctioning a smaller catalogue of corrupt behaviour, allowing for keener vigilance along the severity continuum than developed countries.

To further understand the role of cultural relativism in defining corruption and its impact on shaping public opinion (an ongoing debate), it is necessary to place definitions of corruption in a practical context. Of significance here is that a large body of work on cultural relativism vis-à-vis corruption focused on local or national behaviours within the developing world which were viewed as flagrant violations of legalistic definitions of corruption. For example, the Chinese practice of gift giving and its connection to bribery (Tian 2008: 443), the investigation into family responsibility and its relationship to nepotistic practices in Africa (Otaluka 2017: 3), and trust relationships or “wasta” and its link to cronyism in the Arab world (Barnett, Yandle and Naufal 2013: 46). Although these studies do not necessarily argue for the acceptance of these practices, the very basis of the studies serves to reinforce and perpetuate the idea that less developed countries ‘benefit’ from culturally relativistic definitions. To avoid being diverted by debates on cultural relativism, this study will therefore first focus on congruent behaviours manifesting within the developing and developed world, and will then examine the instruments which the Bretton Woods institutions use to assess levels of corruption on which their justifications for sanctions are based.

The preceding chapter provided examples of corruption cases that resulted in legal or regulatory reform in the early 21<sup>st</sup> Century. Most of these cases dealt with corruption as it was defined previously by the World Bank. Namely, “the abuse of public office for private gain” (Madsen 2013: 28). Now, however, UNCAC has extended the scope of corrupt activities to include both public and private abuse, and even the World Bank has revised its definition to read: “A corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party” (The World Bank 2018). Here again the phrase “to influence improperly” hinges on what is proper or improper, the interpretation of which

differs from country to country. Thus, it is necessary to examine the behaviours first to establish what correlations exist before attempting any further analysis.

Before investigating examples of corrupt behaviour, it would be appropriate to acknowledge Madsen's observation that visible and unsophisticated forms of corruption are only the tip of the iceberg. He suggests that it is likely that more sophisticated types of infractions comprise a much larger "dark figure" in the more developed nations compared than the crude corruption exposed in less developed ones (Madsen 2013: 35). Clearly, the examples that follow can hardly claim to be reflective of corruption in its entirety. But, as stated in Chapter Three, they can serve to illustrate the general trends of corrupt behaviours in developed and developing countries and the stark contrast in attitudes towards the behaviours in question.

### **6.3 Comparative Examples**

At the Bretton Woods Conference of 1944, the US set the agenda, and the resultant international financial framework was, as stated by Layne (2018) "a product both of America's hegemonic ambitions and of its overwhelming economic and financial clout". He avers that "US hegemonic power made possible the post-1945 liberal international order, which, in turn, reinforced American pre-eminence" (Layne 2018: 89). Since it is the Bretton Woods institutions, namely, the International Bank for Reconstruction and Development (IBRD) which now sits within the World Bank, and the International Monetary Fund (IMF), which are the major actors in this space and therefore under scrutiny, it is only logical that the *primum mobile* behind these instruments also be critically assessed. Accordingly, the US will provide the developed world examples that will be compared with examples from the developing world to assess whether similar behaviours have the same consequences or impacts across geographies.

### **6.3.1 Sauce for the goose versus sauce for the gander**

Two political scandals dominated the headlines in the 1970s and the public reacted very differently to each. One occurred in the US and other in India, in what were ostensibly democratic countries governed by the rule of law.

The Watergate scandal of the 1970s has been referred to in *Political Corruption in America: An Encyclopedia of Scandals, Power & Greed* as “the most egregious example of political corruption because of the effect it had in subverting the political process” (Grossman 2017). The corrupt actions of Nixon’s White House was not directed towards, “personal enrichment or private gain but the undermining of the efforts of the Democratic Party to *legally* capture the apparatus of government” (Mbaku 2007: 12). In 1970, almost at the start of his presidency and dealing with national protests to the Vietnam War, US President Richard Nixon first approved illegal wiretapping and spying on his opponents. Later he withdrew approval. However, in 1971, a clandestine unit connected to the USA Central Intelligence Unit (CIA) was set up and paid out of the president’s re-election committee account (Ervin 1980: 119-120). In June of 1972, the unit was arrested for breaking into the Democratic National Committee headquarters (Shiflett 2011: 8; Gage 2012: 174). In August Nixon denied any White House link to the break-in. However, in September, the Washington Post reported on the ‘secret fund’ for intelligence gathering on Democratic opponents that Nixon’s Attorney General Mitchell administered (Bernstein and Woodward 1972b: A01) and the concocting of information that undermined the candidacies of Senator Muskie and ex-Vice President Humphrey (Matthews 1996: 317). And in October, the FBI reported that the break-in was a small part of a much larger conspiracy of spying and sabotage (Bernstein and Woodward 1972a: A01). Yet Nixon still swept into office on greater than 60% of the popular vote. After the unit was convicted, further investigations implicated the attorney general and the president. It also came to light that the president had taped conversations that were conducted in the oval office and he tried to claim privilege to prevent release of the tapes. Nixon’s demand that the special prosecutor Archibald Cox who was seeking access to the tapes be fired, resulted in the resignation

of the attorney general and the deputy attorney general before a compliant third in command obliged the president. This gave rise to the threat of impeachment and the appointment of a replacement special prosecutor who obtained a subpoena for the tapes. The tapes, including a 1972 recording of Nixon telling his chief of staff that he had ordered the Federal Bureau of Investigation (FBI) to stop investigating the break-in and the White House, were released in August 1974. This was a clear case of obstruction of justice and Nixon was advised that he would be impeached. He resigned the presidency (Olson 2016: 195-198; Grossman 2017).

In India in December 1970 the lower house of Parliament was dissolved on the advice of the Prime Minister, Indira Gandhi, and an election was announced for March 1971 (Bhushan 1978: 3; Vohra 1997: 223). Gandhi announced her intention to contest the election from Rae Bareilly. The opposition parties united to field Raj Narain as a single candidate in Rae Bareilly. In the ensuing election, Gandhi polled 183,309 votes to Raj Narain's 71,499 votes. Raj Narain filed a suit alleging election fraud (Bhushan 1978: 4). The petition was filed in the Allahabad High Court in April 1971 (Bhushan 1978: 6-9; Vohra 1997: 239). Whilst the case was being conducted a supreme court bench in October 1974, in handing down a decision on another case, further explicated the law on election expenses. It was anticipated that this judgement would have negative consequences for the prime minister. In December 1974, the government promulgated an Ordinance to nullify the effect of this the judgement and sought to make the Ordinance retrospective (Bhushan 1978: 17-18). On 12 June 1975 Justice Sinha ruled that Mrs Gandhi had given false evidence and that the election of Mrs Gandhi be declared void. In terms of prevailing laws he further disqualified her from holding office for a period of six years (Bhushan 1978: 104; Vohra 1997: 240). Her lawyers applied for and obtained a 20-day absolute stay of judgement. Mrs Gandhi chose not to resign and took the decision on appeal to the supreme court. On 23 June the court handed down a decision of conditional stay which effectively precluded Mrs Gandhi from voting in parliament (Bhushan 1978: 107-126). There were strong calls for her resignation and on 25 June the government, citing threats to national security, declared a state of national emergency and had certain opposition leaders and

her own recalcitrant party members arrested under the Maintenance of Internal Security Act of 1971 (Bhushan 1978: 128; Vohra 1997: 241). On 26 June, an Order of Press Censorship was issued (Bhushan 1978: 129). The government passed an amendment to the constitution and the election act that retrospectively voided the violations (Vohra 1997: 241). On 7 November, the supreme court, in the light of these amendments, struck down the higher court's ruling 222. In March 1977 Mrs Gandhi and her party were defeated in the elections (Bhushan 1978: 241; Vohra 1997: 243).

Defence contracts and arms manufacturers were in the spotlight in the 1980s. In the USA and India two scandals unfolded that reached into the offices of the most senior Defence officials and politicians. Both were arms procurement scandals characterised by a flouting of rules, a bypassing of governmental organizations, bribery of corrupt high-level procurement officials and little attempt by defence organizations, even after the scandals were revealed, to institute systemic change.

In 1986, a Swedish arms company, Bofors, had secured a contract of \$1.3billion to supply approximately 400 howitzers to India (Worden, Heitzman and Library of Congress Federal Research Division 1996: 57-58). In 1987 V. P. Singh, the minister of defence initiated a vigorous investigation into Defence corruption on the suspicion that Bofors had obtained the contract through nefarious dealings. Encountering resistance to the investigation from prime minister, Rajiv Gandhi, he resigned in protest and was soon expelled from the party (McLeod 2002: 169). Shortly thereafter it was alleged that Bofors had paid nearly \$5million in bribes to senior politicians who were very close to the prime minister and also to defence officials to secure the deal (Worden, Heitzman and Library of Congress Federal Research Division 1996: 57-58). Although it was never proven that Gandhi had personally benefited from the kickbacks his unwillingness to force Bofors to reveal the identities of the persons who held the bank accounts into which the bribes had been deposited and his resistance to establishing a commission of inquiry did not stand him in good stead (Misra 2008: 373-374). In the November 1989 election, although Gandhi's party won the most seats of all participating parties, they were

insufficient to give his party a clear majority and unable to secure a mandate, he resigned (Worden, Heitzman and Library of Congress Federal Research Division 1996: 57-58). In January 1996, it was disclosed that documents had been obtained that showed that Bofors had contracted to pay into undisclosed bank accounts approximately \$72 million in bribes (Vohra 1997: 264).

Operation Illwind was launched in 1986 in the USA to investigate what would turn out to be “a network of corruption in the DoD procurement system” (Mothershed 2011: iv). Contractors and consultants to the Department of Defence (DoD) developed close relationships with active and retired officers to obtain access to classified material, and then established an illegal document exchange system amongst themselves to trade information to collude in bid rigging and to win contracts. The head of navy procurement, Melvyn Paisley, gave preference to those contractors who offered jobs and consulting positions to his friends. Senior air-force procurement personnel were incriminated in bribery and bid-rigging (Pasztor 1995: 35-38). More than 90 convictions for felonies were handed down and almost \$250 million imposed in fines. The companies convicted included “Litton, Boeing, United Technologies Corp., Loral Corp., LTV Aerospace and Defense Co., Grumman Corp, Hughes, Unisys, Raytheon, Teledyne, Cubic, Hazeltine, and Whittaker” (Cox 2011: 11-12). Unisys also made illegal campaign contributions to Senators D’Amato and Warner (Pasztor 1995: 332). And lavishly entertained Congressman Dyson in New York (Borders and Dockery 1995: 4-5). Although the Defence Secretary vowed to take immediate and severe action if corruption was proven, no real repercussions were experienced by the corporations convicted in Operation Illwind (Pasztor 1995: 358-359). And the president Ronald Reagan “left office as one of the most popular and successful Presidents in the history of the country” (Hackett 2016: 2).

With regards to the defence scandals, both examples illustrate the unwillingness of each government to tackle systemic corruption. However, whilst Reagan was still held in high regard after Illwind, in 1989 Rajiv Gandhi’s government failed to hold onto power. This was due in large part to rejection of the Indian populace to perceived corruption engendered by the Bofors Affair

(Jenkins 2007: 58). There is no evidence that a similar opprobrium attached to Reagan. In terms of the political scandals of Nixon and Indira Gandhi, each example was characterized by a head of government who engaged in illegal and corrupt practices whilst in office and who then tried to silence their opposition and discredit the press; both heads of government lost their positions in the fallout from the scandals. However, a significant difference between the two was the different public reactions to widespread reports of corruption. Nixon still won the popular vote and it was only the threat of impeachment that ended his term in office. Whereas Gandhi fell sufficiently from public regard to lose at the ballot box. This seems to support the observation made by Nuijten and Anders (2007) that, whereas instances of corruption in the developing world were perceived as evidence of a systemic problem, similar behaviours in the developed world, with the exception of Italy, were perceived as singular instances and not evidence of a widespread malaise (Nuijten and Anders 2007: 3).

### **6.3.2 If it looks like a duck, swims like a duck and quacks like a duck...**

Chapter Five discussed the observation of Curnow (2003) that nepotism was seeing a resurgence in senior ministerial levels from the 1980s. Certainly, in the US White House of 2018 and in Zuma's presidency in South Africa that appears to be true.

The US Code § 3110 of 1967 was enacted by the US Congress to combat problems associated with nepotism (Wulwick and Macchiarola 1995: 629). It states that:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official (USA 2010).

Prior to the enactment of the code, President Kennedy had appointed his brother Robert F. Kennedy as attorney general. The next White House appointment that was viewed as nepotistic was the appointment of President Clinton's wife as chairperson to the Health Care Reform Task Force (Wulwick and Macchiarola 1995: 631). It was argued at the time that the code did not apply to the president as it constituted congressional interference in his constitutionally recognised right "to select 'principal officers' and certain other federal officers" (Wulwick and Macchiarola 1995: 627).

In 2016 President Trump used these and similar arguments to appoint his daughter, Ivanka as assistant to the president, and son-in-law, Jared, as senior advisor to the White House despite their lack of experience in public policy (Koffsky 2017). Kushner, Kushner's lawyers, and two judges of the US Court of Appeals (District of Columbia Circuit) opined that the US Code § 3110 of 1967 did not apply to White House staff positions. This position was supported by the US Department of Justice which issued a memorandum that US law "exempts positions in the White House Office from the prohibition on nepotism" (Kuhner 2017: 216).

Since then there have been numerous allegations of growing conflicts of interest which allow them to personally profit from their positions. The list includes: *The Guardian* reporting on Trump's daughter winning rarely awarded trademark registrations in China (Walters 2017); followed by *The New York Times* reporting on the counsellor to the president exhorting listeners to "[go] buy Ivanka's stuff" on Fox News (Pérez-Peña and Abrams 2017); the *Washington Post* reporting that current and former officials of the White House claimed that officials from the UAE identified Kushner "as early as the spring of 2017 as particularly manipulable because of his family's search for investors in their real estate company" (Harris *et al.* 2018); and a report by the *Wall Street Journal* revealing that a Chinese immigration company "highlighted its White House ties in a bid to raise \$150 million for Kushner Cos., the development business owned by the family of Mr. Kushner, President Donald Trump's son-in-law and adviser" (Areddy 2017). But the most revealing comment on attitudes within the Trump family to nepotism is a report by *The*

*Independent* on Eric Trump, the president's son, calling nepotism "a factor of life", and endorsing the appointment of his sister to the White House staff not by resiling from the accusation of nepotism but instead by stating that nepotism is "a beautiful thing" (Shugerman 2017).

Although in South Africa (also a constitutional democracy) no specific code on nepotism has been enacted, the offence is covered under the Executive Members' Ethics Act which came into force on 28 October 1998. This Act applies to the president, and appointments can only legally be made if they are compliant with this Act (Republic of South Africa 1998). The president therefore does not have 'unfettered' executive authority to appoint, and previous successful challenges to the president's authority have assumed the status of legal precedents. Presidential appointments can and have been set aside on the grounds that the person appointed was not a 'fit and proper' person for the position (Democratic Alliance v The President of the RSA & others 2011).

In July 2014, the 25-year-old daughter of President Zuma was appointed as chief of staff to the telecommunications minister; a Zuma loyalist. Her patent lack of experience gave rise to the widely-held belief that this was a nepotistic appointment (Johnson 2015: 44). Duduzane, Zuma's son, was appointed to several directorships in companies owned by the Guptas. Subsequently numerous allegations surfaced to the effect that certain government contracts had been improperly awarded to the Guptas, thus unfairly enriching Duduzane (Johnson 2015: 37-38). An investigation into these claims by the public protector resulted in the State Capture Report which directed that a commission of inquiry be appointed to investigate further and take legal action where criminal wrongdoing could be proven (Public Protector South Africa 2016: 25). *The Financial Times* reports that on 9 July 2018 Duduzane appeared in court and was charged with corruption. The case has been scheduled for 2019 (Cotterill 2018).

When comparing these examples, it becomes clear that existing legal authority does not defend against unethical and corrupt practices. But a striking

difference in these cases is that no attempt was made by Zuma or his children to defend nepotism as a 'beautiful thing' and, notwithstanding arguments based on cultural relativism (Lodge 2014: 11) that could have been used to make light of such behaviour, their actions have continued to be decried by the public. This is evidenced by the continued media focus in South Africa on the Zumas as opposed to the dampened media response in the US to the Trumps once the question of legality appeared to be settled. Without delving further into the particulars, it would not *prima facie* be unreasonable to conclude as follows. Perceptions on nepotistic practices, if polled for comparative purposes in both countries, would certainly poll higher in South Africa where the public view such actions as both illegal and unethical than in the US where similar actions have been recently, and in a departure from previous advice (from the US Department of Justice), been ruled neither illegal nor an ethics violation. In fact, the more vigorously and publicly such types of corruption are prosecuted in the press and by the courts, the greater the likelihood of fostering a heightened public sensitivity to the existence, prevalence, and offensiveness of such behaviour and thereby increasing public perception that there is pervasive corruption.

Further, on the question of corruption in the form of nepotism, Robertson-Snape (1999) suggests that "[a] difficulty in writing about corruption...is that such misuses of office are unlikely to be documented and much of the available information is therefore anecdotal" (Robertson-Snape 1999: 589). This would also seem to apply to the study of nepotism. There is the additional difficulty that whereas nepotism appears to be easily identified and excoriated when it occurs in developing countries, the same behaviour is sometimes categorised differently in dealing with developed countries. This contention is substantiated below.

Chapter Two defined nepotism and identified the parameters within which the behaviour operates. It denoted preference or favouritism to a person based primarily on familial relationships. It elevates a person into a position that they may not have otherwise earned and from which they can expect to benefit. A

US study on a behaviour pattern with the self-same markers does not flag it as one of potential nepotism, but instead identifies the behaviour as 'Intergenerational Transmission of Employers'. Without stipulating a causal effect, the researchers infer one. They find that by the age of 30, 22% of sons would share an employer with their father, and that there is "substantial evidence that family networks influence labor market outcomes for sons. Conditional on age, earnings decile, and residential location, fathers and sons work together at the same employer more commonly than would be predicted by mere chance" (Stinson, Wignall and USC Bureau 2013: 3, 17). In this example, the use of different descriptors for the behaviour reclassifies it and allows the behaviour to masquerade as something other than nepotism.

Multiple studies point to the conclusion by Hofstede (1984: 88) that nepotism is more prevalent in collectivist societies, to assert that it is therefore more likely to be tolerated in developing countries than developed countries (Davis and Ruhe 2003: 278; Khatri, Tsang and Begley 2006: 66; Gavor and Stinchfield 2013: 5). Yet this does not accord with the evidence adduced in Chapters 3 and 4 where such practices were discouraged and frequently made illegal by early civilizations in the developing world. Neither does it accord with the World Economic Forum's 2006-2007 published set of data tables which includes a table on the impact of nepotism. To populate this table respondents were asked: "How much influence do you think individuals or firms with close personal ties to political leaders had on recently enacted laws and regulations that have had a substantial impact on your business?" In a field of 125 countries with Zambia ranked last at 125 and Finland first at 1 the score for the US and South Africa was 63<sup>rd</sup> and 48<sup>th</sup> respectively (World Bank Group 2006-2007: 432). In other words, the US was polled as being more likely to have nepotistic business practices than South Africa.

A diligent search through subsequent World Bank data tables did not uncover any further polling suggesting that this study was never repeated. However, in 2013 the World Economic Forum published data on businesses recruitment practices in selected countries. A group of researchers used the material that was published to evaluate the extent of nepotistic practices in the countries

concerned. Answers to the questions of whether senior manager positions were held by “mostly professional managers chosen for merit and qualifications” or by “relatives or friends without regard to merit” were used to create a data table ranking countries on nepotistic practices. The US was ranked joint 16<sup>th</sup> just above Malaysia and below Singapore and Qatar. South Africa is not reported in these rankings. These are not definitive results as they are built on the *perceptions* of the persons polled. But they are anomalous enough to raise an important question. Why has it not become a matter of serious concern that the country that has the greatest political, cultural and economic reach and impact in the world is less under scrutiny for nepotistic practices than South Africa and other developing countries if the evidence in academic publications and research projects are used as a proxy measure of that concern?

#### **6.4 Legitimacy of Corruption Assessments**

These examples are provided to make explicit the patterns that were slowly starting to emerge in the previous chapters. What the examples appear to reveal are the following. One, that corrupt behaviour which is systemic and pervasive can still be perceived as a singular instance of corruption in a developed country, but the same behaviour in a developing country can be perceived to be symptomatic of a larger problem. Two, that the same behaviour in two different countries can be legalized and regularized in the one country and will therefore fail to be perceived as corrupt by a significant proportion of the public in that country but continue to be viewed as corrupt in the other country. And three, that renaming or re-categorising behaviour so that a pejorative term such as ‘nepotism’ is replaced by terms such as ‘intergenerational transmission of employers’ essentially helps to sanitize behaviour and minimize the impact of the findings on assessing the extent of corrupt dealings. Furthermore, a reasonable argument can be made that the more assiduously and publicly allegations of corruption are pursued by credible media organizations in a society, the more likely it is that exposure would condition public perceptions of corruption levels. In this context, it is difficult to understand how the IMF and the World Bank can rely on instruments

such as Transparency International's Corruption Perception Index as a reasonable measure.

#### **6.4.1 Legitimacy of measurement**

In 1993, a group of past World Bank executives formed an organization called Transparency International (TI) (Krastev 2004: 11). It has the status of a non-governmental organization (NGO) and a stated mission to “stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society” (Transparency International 2016b). According to Wouters, Ryngaert and Cloots (2013), TI has been an influential driver within the anti-corruption movement. It created and is responsible for the Corruption Perception Index (Wouters, Ryngaert and Cloots 2013: 31). The Corruption Perception Index (CPI) is based on polls of international businesspersons and specialists, and attempts to rank countries according to their perceptions of corruption (Wouters, Ryngaert and Cloots 2013: 31). It is calculated by standardizing the results of 13 data sources and the average is then reported (Transparency International 2016a). The 13 data sources are: African Development Bank Governance Ratings; Bertelsmann Foundation Sustainable Governance Indicators; Bertelsmann Foundation Transformation Index; Economist Intelligence Unit Country Risk Ratings; Freedom House Nations in Transit; Global Insight Country Risk Ratings; IMD World Competitiveness Yearbook; Political and Economic Risk Consultancy Asian Intelligence; and the Political Risk Services International Country Risk Guide (Transparency International Bangladesh 2017). It is notable that the CPI is not an objective measure but a subjective one. The selection of the data sources used is based on TI's *perception* of where expertise exists. In addition, the data sources themselves are polled on their *perceptions*. Effectively, that makes the CPI 'doubly subjective' (Whyte 2015: 4) and, in the light of the previous discussion on the degree of prejudice that informs perceptions of corruption, a thoroughly unreliable tool. Nuijten and Anders (2007) point to the work of Riles (2001) to conclude that this is not scientific data that allows for

verification but 'cultural artefacts' of contested meaning, entrenched in global political positions (Nuijten and Anders 2007: 6).

The Global Integrity Index, another measure that is relied upon by the World Bank, starts from a position of recognizing that "trying to measure actual corruption, is considered virtually impossible by experts". Therefore, it attempts to ascertain instead the ability of citizens and businesses to access government, monitor a country's behaviour, and "seek redress and advocate for improved governance" (Global Integrity 2011: 1). Yet no evidence is offered to support why these elements are any less impossible to measure either in terms of universally acceptable definitions or absence of prejudice. The instrument attempts to test three factors:

1. The existence of public integrity mechanisms, including laws and institutions, which promote public accountability and limit corruption.
2. The effectiveness of those mechanisms.
3. The access that citizens have to those mechanisms (Global Integrity 2011: 4).

Only the first is fact based but, as has been argued earlier, the existence of legal mechanisms does not necessarily address adherence and enforcement of laws. The other two factors rely on the interpretation of the lead researcher and the information that they have available to them (Global Integrity 2011: 5-6). Therefore, although the Global Integrity Index is a lot more transparent in terms of the questions asked and data it solicits, it still fails to pass muster since it also, with some minor exceptions, tests perceptions.

Similarly, some researchers at the World Bank advance a set of Worldwide Governance Indicators (WGI) that includes as the sixth dimension of governance "Control of Corruption (CC) – capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests" (Kaufmann, Kraay and Mastruzzi 2009: 5-6). To create the WGI they consult 35 different measures that are either surveys or purport to be

expert assessments including measures such as the: Business Environment Risk Intelligence Business Risk Service/Financial Ethics Index; Transparency International Global Corruption Barometer Survey; and the Global Integrity Index to reason that an increase from 4 to 11 data sources from 1996 to 2007 to create its Control of Corruption indicator implies substantially lower margins of error (Kaufmann, Kraay and Mastruzzi 2009: 18). But since these are also mainly perception based and if, as argued previously, perceptions of corruption that are based on prejudice are pervasive, then a higher correlation amongst these measures does not legitimate the tool.

Kurtz and Schrank (2007: 542) offer further support for the role played by prejudice by pointing out that the interests of the persons surveyed and those of the country being assessed are rarely completely aligned and therefore their assessments are likely to contain biases. Further support was provided by a study conducted by other members of The World Bank Development Research Group Human Development and Public Services Team that concluded that the indicators were reflections of “perceptions of the quality of governance more broadly” and would provide limited guidance for making policy or conducting studies (Langbein and Knack 2008: 4). They additionally found that not only were the six WGI dimensions tautological, but that an aggregation methodology that does not allow for complete transparency of each element obscures what is actually being measured. Furthermore, they warned that “aid agency staff are reading too much into a country’s relative scores”, including the Control of Corruption Indicator (Langbein and Knack 2008: 18-17).

Most recently the IMF has proposed a new framework for assessing “the nature and severity of governance vulnerabilities—including corruption—on a systematic basis”, providing an assurance that it will only focus on corruption ‘vulnerabilities’ that are ‘macroeconomically critical’. However, as it also states that “sources of information to be relied upon to make this assessment will evolve,” this does not clarify whether the new measure will be any more reliable than the old one (IMF 2018b).

#### **6.4.2 Legitimacy of action**

That the main tools which were previously used to assess the degree of corruption in a country are unsuitable instruments has been established. And no details on more robust measurements are currently available. What remains is to examine whether negative and inequitable consequences result from these assessments.

That there are negative consequences is undisputed. The IMF's recent suspension of loans to Ukraine and Malawi was predicated on what the IMF identified as "Ukraine's slow progress in improving governance and fighting corruption, and reducing the influence of vested interests in policymaking". Also, after citing corruption in Malawi, the IMF decided "to delay completion of the third Extended Credit Facility (ECF) review until the fiscal situation could be clarified and necessary corrective measures put in place" (IMF Fiscal Affairs and Legal Department 2016: 2016). Similarly, the World Bank, quoting TI's CPI score for Chad (World Bank Group 2009a: 24) as part justification for its assessment, withdrew financing for the Chad-Cameroon pipeline (World Bank Group 2009b). It also cited corruption for justifying the suspension of loans to Cambodia (World Bank Group 2006). Having established that negative consequences attach to the application of these policies, the remaining question is whether these policies are inequitably applied.

The corruption conditionality debate has its roots in the discourse that arose around how to promote democracy in developing countries. Schmitz (2016: 55) argues that the 'governance and developmental' paradigm that was created out of this discourse was propelled by the need for self-preservation by elite organizations and was essentially a rebranding of 'old-order solutions' rather than a creation of new understandings. This, whilst obscuring the fact that democratization in this scenario became an argument for "extension of elite market interests through a global 'democratic' sphere" (Schmitz 2016: 60). Recognizing the new management remedy for achieving balance and sustainable growth in markets as being predicated on "austerity, restraint,

discipline, privatization and marketization”, he identifies the IMF and the World Bank as the main ‘enforcers’ of this solution (Schmitz 2016: 63-64).

**a. IMF**

The scope of IMF conditionality has gradually expanded. As Lee (2003) notes, the IMF clings to the position that virtually anything is within its sphere, since virtually “any structural issue could affect the overall performance of the economy” even though the IMF’s Articles of Agreement explicitly limits its role to issues of a country’s macroeconomics (Lee 2003: 880). IMF Managing Director, Horst Köhler, had already taken the position in 2002 that countries need to both own the conditions that are the basis for IMF financing and take responsibility for creating “better governance, a secure legal foundation, and less corruption”(Best 2007: 119). Best (2007: 122) later points to a parliamentary session in 2003 where Horst Köhler provided in a question and answer session the justification for conditionality as a disciplinary measure against those he called “political classes who have not enough resolve, ability, and capacity to work”, and who still had the expectation of more support and money from external funders. This absence of responsibility, and the inability to address their own problems, he argued, justified the imposition of IMF discipline. In framing the argument in this manner, Best contends that Köhler blurs responsibility and culpability and creates a ‘particularist communitarian ethics’ that places failure on individual states (Best 2007: 122). Köhler does this with no acknowledgement of shared responsibility for the failure of policies foisted on them by the Bretton Woods Institutions. Whilst blaming the ‘non-democratic and unaccountable nature’ of these states, he makes no reference to the IMF in this context as being itself non-democratic and unaccountable (Ferguson 2016: 141).

Bukovansky (2006: 189) notes that, from as early as 1995, a number of economists such as Mauro in 1995 and 1997; Tanzi in 1995; Ades and Di Telia in 1997; Rose-Ackerman in 1997; Camdessus in 1998; Tanzi and Davoodi in 1998; and Vogl in 1998, all of whom were associated with the IMF, began developing arguments that investment and economic growth were negatively impacted by corruption. Their work paralleled the increasing focus on

governance issues by IMF officials. In 1997, she notes that 'Guidelines Regarding Governance Issues' was adopted by the executive of the IMF. The IMF, in adopting these guidelines, arrogated to itself the authority to become involved in governance through the expediency of providing advice on policy and technical assistance (Bukovansky 2006: 189). The implication was that these policies were going to be provided as *advice* and developed as part of a *negotiated understanding* with loan recipients. However, Best (2007) points out that the commentary and work of IMF representatives and scholars suggest that a great deal of detail had *already been defined* on "price stability, competitive exchange rates, open trade policy, and sustainable debt levels", all of which were considered "basic principles" of sound economic practice that would provide a *basis for conditionality*. Included in this was the idea that "less corruption is equated with less government", leading to reforms aimed at reducing the role of government (Best 2007: 118). In other words, under the guise of dealing with corruption issues, an expedient justification for both intervention in the internal matters of a state and the imposition of pre-determined policies and principles were provided.

#### The IMF and the Asian Financial Crisis

The Asian Financial Crisis and the General Financial Crisis highlight the telling contrast of how economic theory and the "basic principles" of sound economic practice were applied in the developed and developing world.

Khor and Kee (2008) summarize the similarities between the causes of the two crises as: "abundant liquidity and excessive, imprudent credit expansion"; "a search for yield by lenders, and the abundance of liquidity tended to lead to lax credit standards"; "rapid increases in property asset prices"; "credit imprudence shown by lenders in both crises reflected the classic **principal-agent problem**"; and "classic cases of moral hazard, because lenders and borrowers faced little if any risk from their activities" (Khor and Kee 2008: 19-20). Notwithstanding the extraordinarily similar manifestations of the crises, the responses to them differed markedly.

With the GFC, central banks immediately intervened to try to limit repercussions within the financial markets. The US Federal Reserve Bank slashed interest rates and the US Congress approved a huge stimulus package (Khor and Kee 2008: 21). Or as Johnston *et al.* (2010) describe it, billions of taxpayers' dollars were appropriated for bail-outs with little regard to whether such decisions equated to good regulatory policy. With the result that a large proportion of it was "squandered by oligarchic recipients and appropriated by them in their own interests" funds demarcated to protect specific industry sectors from liquidation instead "served to support crony capitalism and attract oligarchic rent-seeking", and banks with government depositor guarantees "have made wind-fall gain" (Johnston et al. 2010: 208).

Conversely, during the Asian crisis, the first steps to dealing with the crisis were a tightening of monetary and fiscal policies to support exchange rates (Khor and Kee 2008: 21). When the East Asia financial crisis broke, the IMF and the US asserted that the institutions of the Asian nations were in a state of decay and that their governments were corrupt. It was claimed that wholesale reform was necessary (Stiglitz 2002: 90). To effect this the IMF imposed a remarkably wide-ranging set of structural reform, insisting that "without curing fundamental, structural 'defects' in Asia", there would be no economic recovery (Lee 2003: 877). This interference was in defiance of the IMF's own mandate. And as Feldstein (1998) maintains, ignoring its own mandate and imposing balance of payments adjustments was bound to have immediate and continuing negative consequences (Feldstein 1998: 20). That this was a contentious course of action becomes even more evident if the handling of the Asian financial crisis is compared to that of the subprime mortgage/general financial crisis (GFC) of 2007.

The IMF argued that "firms had borrowed too much too fast and had to be allowed to fail to avoid moral hazard or prop up weak firms". So they allowed Southeast Asian firms that were unable to repay their loans "to go bankrupt" (Olekskiuk 2010: 21). The 'moral hazard' that was used as a justification by the IMF refers to the notion of a potentially immoral practice created by paying off private creditors and bailing out profligate developing countries (Rogoff 2002).

It was only after there was stabilization of the exchange rates at lower levels that more expansionary fiscal policies were adopted (Khor and Kee 2008: 21). Lee (2003) explains it thus:

The Asian financial crisis tested the effectiveness and necessity of the IMF conditionality, showing it wanting on both counts. By prescribing the Washington Consensus without regard to the different economic situations in Asian countries, the IMF hardly fulfilled the tasks assigned to it: promoting global stability and helping developing countries in transition achieve stability and growth (Lee 2003: 903).

She goes on to argue that the economic soundness of the conditionalities was not the only question that was problematic. There was the further issue of whether its role extended inappropriately beyond the IMF's Articles of Agreement. Whether in fact it resulted in undermining the "borrowing countries' economic and political sovereignty" (Lee 2003: 903-904). Her concern, according to Reus-Smit (2004), was echoed by Jeffrey Sachs and Martin Feldstein, who were clear in denouncing the IMF as having made the problem worse (Reus-Smit 2004: 227). Again, as Stiglitz (2002) argued, although the IMF may not have been participating in a conspiracy, it nevertheless "was reflecting the interests and ideology of the Western financial community" (Stiglitz 2002: 130). Using arguments of 'moral hazard', systemic corruption, and poor governance, the IMF justified driving firms into bankruptcy in the developing world following the Asian Financial Crisis. This ran strikingly counter to the policy adopted by the US during the GFC, where huge bail-outs were made readily available instead and no notions of the moral hazard occasioned by rampant corporate greed was invoked.

**b. *The World Bank***

Critics of the World Bank have pointed to The World bank holding similar points of view as the IMF vis-à-vis its relationship to borrower states and their perceived levels of corruption. There are those who argue that the World Bank has an apolitical lending culture. Notwithstanding this, its policies and actions allow it to perpetuate corruption (Wanless 2013: 38). Others argue that

'interfering' in the internal affairs of a country threatens the Bank's credibility, contravenes its own mandated distinction between the political and economic spheres, and violates the sovereignty of client countries (Villaroman 2009: 11-12). Some supporters contest this by claiming that since sovereignty forms the basis for the conduct of aid relations and, therefore the grounds for countries to "contest the terms of aid relationships", no sovereignty violations can occur (Brown 2013: 262). However, for the purposes of this study this debate is moot as there exists a pre-question to even having this debate. Namely, whether corruption can ever be set as a conditionality even if the authority to do so exists, in what the previous discussion has revealed to be the absence of a clear definition and in a field riddled with prejudice. This raises the interesting question as to why the World Bank would venture into this area at all.

Krastev (2004) suggests that the World Bank started the debate on corruption to help it explain its failures. Furthermore, he suggests it provided a platform for "in-house reformers" to ask for a "change in the orthodoxy". He is supported in this view by Güven (2018: 395) who says that it was criticism suffered after the Asian Financial Crisis that precipitated this change. To achieve this change, the World Bank needed to de-politicize the rhetoric around corruption. As evidence for this claim, Krastev cites Wolfensohn, the president of the World Bank, speaking at A Global Forum on Fighting Corruption in Washington DC in 1999 (Krastev 2004: 21). Wolfensohn's exact words were: "I decided in 1996 that I would redefine the "C" word not as a political issue but as something social and economic". Wolfensohn then went on to admit that he did so because he was advised by the bank's legal advisors that the mandate of the World Bank was that it could deal with economic matters, and not "talk about political matters" (Wolfensohn 1999). In the light of this admission, the question of the legitimacy of the World Bank to set constraints by tying it no notions of corruption is suspect. It should also come as no surprise that, given the lack of clarity and consensus around the definition of corruption, the World Bank would choose the definition that would most expediently serve its goals. In fact Polzer (2001: 10) uses the World Bank's own documents to prove that the Bank chose a "conception of corruption" consistent with "Bank categories of thought and praxis" and developed its taxonomy accordingly. But whether

Krastev's suggestion has any merit or not, or whether the definition chosen by the World Bank is justifiable on any grounds, the more pertinent question is the impact that this behaviour has had and continues to have on different countries.

#### The World Bank and Africa

An excellent way to illustrate the manner in which the Bank used its definition of what constitutes corrupt behaviour to pursue 'privatization and marketization' policies to 'extend elite market interests' as was argued earlier, is to consider the case studies of Uganda and Mozambique which were undertaken by Wanless (2013: 41-44).

In Uganda, following its dictum "less corruption is equated with less government", the World Bank pursued an aggressive policy of privatization. In 1987 Uganda had almost 150 parastatals. The World Bank, amongst others, disapproved of the high cost of maintaining these institutions. Without a legislative mandate the government started to divest itself of these state companies on World Bank advice. In 1994, the World Bank reviewed this programme with the intention of assisting to accelerate divestiture (Tangri and Mwenda 2001: 118-119). A report which the Bank produced in 1998 recognised that the policy of privatization had given rise to rampant corruption (World Bank Group 1998: vi). Yet the Bank continued to publicly subscribe to the position that the political leaders of Uganda were committed to controlling corruption (Tangri and Mwenda 2013: 151). It would appear that creating opportunity for corruption with privatization expansion was less of a priority than economic growth (Tangri and Mwenda 2006: 120).

Wanless (2013: 44) uses the case of Mozambique to put forward the view that, notwithstanding claims that the Bank was bound to an anti-corruption agenda as part of its good governance commitment, the Bank seldom acted to enforce accountability for corrupt behaviour unless it suited its purposes to do so. Critics of the Bank, she maintains, used this to make the case that the World Bank was willing to overlook poor governance and corruption as long as growth-focused policies were being implemented. Hanlon (2017: 754)

identifies the World Bank as a major donor and one of the chief instigators in Mozambique of an agenda of neo-liberalism through imposed loan conditionalities. Certainly from 1986 to 2003 the President of Mozambique committed the country to privatization and market liberalism. Orre and Rønning (2017: 26) attribute this to the president's intention to attract "new financing and loans from the World Bank". Pitcher (2002) tries to argue for a more nuanced view than World Bank coercion but, even allowing for that, it does not diminish the Bank's culpability especially when she quotes the ex-resident senior financial economist of the World Bank declaring: "Of course, there is some element of force or bribery in the World Bank relationship with Mozambique" (Pitcher 2002: 130).

In 1995, the BCM and BPD banks of Mozambique were privatized at the behest of the World Bank and the IMF, although these institutions had been advised that the new owners were carrying bad debts or were relatives of the president. The banks eventually collapsed and were returned to the government. The head of banking supervision was assassinated when he tried to recall some of the loans (Hanlon 2004: 751-752). In 2001, a journalist who was highly critical of the privatisation policies was assassinated (Phiri and Macheve 2014: 53). According to Hanlon (2004: 752), the World Bank did not insist that the government investigate further. In a subsequent article Hanlon (2017: 754) makes a further assertion that "there have been closed donor meetings in which it was agreed not to oppose corruption because there were higher priorities".

## **6.5 Access to Funding**

In the previous section, it became clear that some institutions such as the IMF and the World Bank that ostensibly practice a war against corruption are not even-handed in how they apply anti-corruption policies. In most instances, they pursue these policies to prosecute a totally different agenda, and use corruption rhetoric to justify the imposition of economic and political

restructuring. But are these the only consequences countries experience if they are perceived to be highly corrupt?

In the debate on what consequences, if any are contingent on corruption rankings and perceptions, one of the areas that attracts substantial investigation by researchers and scholars is that of access to funding. The question they seek to settle is whether perceptions of the level of corruption in different countries influences donors and investors.

### **6.5.1 Aid funding**

There is a profusion of articles which claim that aid funding is withheld from countries perceived to be highly corrupt (Drazen 1999: 2; Dietrich 2013: 708; Winters and Martinez 2015: 528). And a similar glut of articles that take the position that there is little or no evidence that a high corruption ranking affects access to aid (Neumayer 2003: 121; Hanlon 2004: 747; Easterly and Williamson 2011: 1946).

An article by Alberto and Weder (2002) underscores this when it illustrates that corrupt governments are not denied aid. Instead there is evidence to support the position that some corrupt governments receive more aid (Alberto and Weder 2002: 1126-1127). And certainly, the examples of IMF and World Bank interventions in Uganda and Mozambique earlier in this chapter supports their finding. But these researchers investigated even further and adduced evidence to show that whilst Scandinavian countries targeted their aid to governments that appeared less corrupt, the US provides greater aid to governments that appeared more corrupt, as long as they favoured “democracies over dictatorship” (Alberto and Weder 2002: 127).

A more recent investigation by Swedlund (2017) sheds more light on this seeming contradiction. It finds that beyond geostrategic or fraud and corruption arguments to justify donor actions, “the likelihood of a foreign aid suspension depends not only on the strategic considerations of the donor

government, but also on the institutional incentives of the donor agency” Swedlund (2017: 454).

Notwithstanding the rhetoric then, perceptions of corruption appear to have ambiguous impact on access to aid. This debate on aid funding parallels that on Foreign Direct Investment (FDI).

### **6.5.2 Foreign direct investment**

The OECD defines foreign direct investment (FDI) as:

the category of international investment that reflects the objective of a resident entity in one economy to obtain a lasting interest in an enterprise resident in another economy (OECD 2001).

Like the studies on aid funding, the discourse on foreign direct investment has competing theories. Extending Shleifer and Vishny’s descriptors of ‘helping hand theory of corruption’ and ‘grabbing hand theory of corruption’ (Shleifer and Vishny 2002: 2-4), Cheow *et al.* (2015: xiv) explain it thus: “grabbing hand theory indicates that corruption produced uncertainties and deterred foreign investors from entering the host country” whereas “helping hand theory indicates that corruption helps to reduce the red tape in the host country and increase the FDI in host country”.

This explanation stems from the two alternative theories on how corruption is effected in an economy. The helping hand theory of corruption, assumes a ‘benevolent’ government which, in executing favourable social policies and increasing the efficiency of its bodies, tolerates corruption if the cost of elimination of corruption is too high (Aidt 2003: F638). The grabbing hand theory of corruption is based on the premise that all bureaucrats and politicians are susceptible to corruption. It posits that once corrupted these functionaries will extract ‘rents’ to the extent permitted by existing economic and political institutions (Aidt 2003: F642).

Utilizing this model, Cheow *et al.* (2015: 62) find that corruption perception had a negative impact on FDI inflows in Indonesia, Malaysia, Singapore, Thailand and Vietnam. However, Bond (2003: 16-17) points to instances in Angola (\$1.8 billion in 1999) and Nigeria (\$1.4 billion) where corruption perceptions and ranking did little to dissuade investors. And Iloie (2015: 632), investigating the relationship between FDI the TI's CPI and country risk assessments, could find little or no correlations between these three concepts.

Perceptions of corruption then, as with aid awards, appear to also have ambiguous impact on access to FDI.

## **6.6 Summary**

What has emerged from the research thus far is that not only is there no single agreed upon definition of corruption, but that it is also not possible to quantify the "dark figure" in corruption when quantifying visible corruption is so elusive. Furthermore, that some behaviours are legalized or regularized and reclassified/renamed leading to the sanitizing of actions in some countries that in other countries would be considered corrupt behaviours. These practices, are combined with an historically jaundiced view of 'the other' - as previously evidenced by western beliefs on the corrupting influence of the East. And all of this, together with different levels of media exposure, leads to entrenched prejudices in the general populace.

Furthermore, tools and scales that purport to measure levels of corruption are unreliable. They either depend disproportionately on subjective measures of popular perception; are too reliant on proxy measures; are unclear on what is being measured in the absence of a clear definition of what constitutes corrupt behaviour; or are reliant on the self-assessments of the organizations under scrutiny. Therefore, in a definitional vacuum it is possible for institutions with vested interests and specific political ideologies or economic theories to use the rubric they construct around corruption to act to pursue their own interests. This conclusion holds notwithstanding some ambiguity around whether funding or investment is negatively impacted by perceptions of high levels of

corruption. It is left to Chapter Seven to summarise the findings in this research, draw out the conclusions, and put forward some recommendations that will address the issues raised. Chapter Seven will also lay bare the assumptions underlying or implicit in this study and the limitations that further constrain it.

## CHAPTER SEVEN

### 7. CONCLUSIONS AND RECOMMENDATIONS

*“Power does not corrupt. Fear corrupts, perhaps fear of a loss of power” (Steinbeck 1957: 102).*

*“But if thought corrupts language, language can also corrupt thought” (Orwell 1946: 137).*

#### 7.1 Introduction

This study questions whether current definitions of corruption have disproportionate adverse impact on some countries. The investigation entailed a comprehensive review of current theory and practice. It established that this study raises an issue that existing theory does not adequately address. The study assessed relevant research methodologies to select research methods and a methodology most suitable for this study. It then collected all the relevant data that was available, including supporting and dissenting arguments. The data was rigorously analysed and synthesised. The findings were as follows.

#### 7.2 Findings

Corruption as a concept and specific behaviours associated with the concept date from Antiquity. The catalogue of behaviours included: self-serving actions that led to state destabilization; institutional corruption; judicial corruption; moral corruption with political results such as the erosion of critical political principles; peculation, influence-peddling, bribery, and embezzlement, the earliest referenced form of corruption being bribery. However, a degree of ambiguity was evident with respect to certain corrupt acts. In some circumstances, such acts were seen as a moral degradation and therefore corrupt, but in other circumstances these self-same actions were either

condoned or glossed over. Scholars have commented on how multiple definitions of corruption were able to co-exist in a society at any given time. These scholars distinguish 'high morality' and the written law that eschewed corrupt acts, and the common practices of the time that tolerated them. Judicial, institutional and moral corruption was condemned both in the East and the West, and corrupt acts were identified and punitive sanctions were imposed on the perpetrators. However, that the East was a corrupting influence on the West was becoming an entrenched belief.

By the Medieval period definitions of corruption included the concepts of efficiency and moral action. Corruption was recognized in actions such as conflict and competition within administrative classes, dereliction of duty, bribery, deliberate attempts to obfuscate or conceal immoral actions, the illicit use of power and position in exchange for favours, and the failure to exercise authority when necessary. Within Christian and Islamic traditions, the idea that such behaviours were incompatible with religious teachings and God's will began to emerge, and corrupt acts began to be viewed as 'sinful'. Some of the more entrenched ideas of corruption from the period of antiquity were also still given currency. Ideas of moral degradation, of corruption leading to destabilisation of the state, and illegality and the actions associated with betraying public trust and lawful regulations for private gain were all abjured. The extent of corruption was thought to be linked to the strength and well-being of a community, to its moral fibre, and the practice of virtue amongst its constituents. Some theorists however, notably Machiavelli and Alauddin Khilji, did not subscribe to this idea. They preferred a more pragmatic and secular political theory.

By the mid-19<sup>th</sup> century concepts of corruption encompassed ideas based on religion and original sin to corruption as a moral or spiritual degeneration of individuals, communities and the body politic. However, in the East and the West there was a shift from religious perspectives, to more secular concerns of government and the economy. This led to concepts of corruption that were concerned with management of administration and bureaucracies, and political governance. The idea that corruption was more prevalent in the East

still prevailed. Even though historical records clearly show that the practice, identification and combating of corruption had a similar history in both the East and the West, the fear that corruption from the East would increasingly infiltrate the West still persisted. Corruption concerns focused more on acts of perversion of duty by public officials. And bribery remained a major concern of those intent on addressing corrupt behaviour. Although no single universal concept of corruption was articulated, certain behaviours were progressively singled out as corrupt and undesirable. These included patronage, embezzlement, nepotism, peculation, and rent-seeking.

By the end of the 19th century, profiteering as a result of the expansion of the slave trade and the annexing of foreign territories to enlarge commercial spheres of influence had become widespread. It was generally accepted that public officials who illegally or unfairly profited from their positions were corrupt. In Asia, Africa and southern Americas, the laws and regulations that governed the legality of corrupt acts were for the most part controlled by the commercial powers in the various territories in which they operated with a correlative diminution of local power. In the US and the UK public sector corruption attracted more attention as a pernicious evil that undermined democracy.

Colonization was firmly entrenched by the middle of the 20th Century. The consequence of this was a further spread of European culture and norms. Western colonial rules were largely applied across the colonized territories. However these rules were not consistently applied in form or in manner across territories. National watchdog and regulatory organizations proliferated, and anti-corruption laws and regulations were likewise on the increase. The exposure of numerous high profile corruption cases in the West did not lead to greater public disgruntlement; consequently there was no concerted push for greater ethics regulation.

During most of the 19<sup>th</sup> and 20<sup>th</sup> Centuries, theorists and practitioners involved in the anti-corruption debate distinguished between private and public behaviour in defining corruption. However, the focus of the debate, originally

only on the bribe giver, moved towards the bribery of public officials by private agents. Corruption reforms of the early 20<sup>th</sup> century attacked patronage, clientelism, and lobbying in an attempt to preserve the political equality of the states' citizens. Ensuring that the political process retained its integrity remained a priority. Most legalistic definitions included the requirement that a public office must have been perverted before corruption could be alleged. This idea dominated the academic discourse of the time. However, public perception and emerging theory began to question the legitimacy of this distinction, especially as actions that were widely identified as instances of corrupt behaviour often blurred this line.

By the beginning of the 21<sup>st</sup> Century, after even more outrageous frauds were perpetrated by predacious private corporations, the public clamoured for the creation of conventions and codes that sanctioned both donors and recipients and that restricted corrupt behaviour. Existing anti-corruption regulation was extended to cover transnational corruption. The catalogue of offences also grew to include jury tampering and money laundering. And anti-corruption agents began to address issues such as illicit enrichment and campaign funding. Concurrently, in developed countries, practices such as lobbying or unlimited campaign spending by specialist corporate interests that were once considered corrupt or unethical practices were slowly normalized, regularized or legalised until they were no longer defined as corrupt practices. And the concepts such as facilitating payments were introduced.

Over the last few decades public outcry has driven global anti-corruption legislation. The stronger market economies have dominated global policy decisions even though deep ideological divides in attitudes and reactions have prevailed in different states. An example of this is the way in which the US reacted when it was forced to enact anti-corruption legislation in response to a public outcry against the scandalous behaviour of its global corporations. Afraid of losing its competitive edge, it vigorously pursued similar binding provisions for other states. Yet when it came under pressure to apply a code of conduct to its corporations strenuously resisted these efforts insisting on confining the debate on corruption to abuse of public office, and prevailing on

the OECD to adopt a similar approach. This was clearly designed to ensure that the US retained its market ascendancy. Concerted anti-corruption initiatives have culminated in the 2003 United Nations Convention against Corruption. Although one of the most comprehensive and most widely subscribed to conventions on corruption, it does not address deep philosophical, ideological, cultural and economic divides across and within states. As a result, corruption continues to be variously defined across nations.

### **7.3 Conclusion**

In the final analysis, there is no single agreed upon definition of corruption. Neither is it possible to quantify the extent of corruption across geographies, because the same behaviours in different countries can be legalized regularized, reclassified or renamed. This does not allow for a proper assessment of the prevalence of corruption in the developed as opposed to the developing world. Neither does it allow for the testing of longstanding prejudices that the developing world is inherently more corrupt than the developed world. Consequently, the tools and measures that purport to scale levels of corruption cannot be relied on since they depend disproportionately on subjective measures of popular perception. This ambiguity with definition, allows institutions and organizations that subscribe to defined political ideologies or economic theories to choose or construct definitions of corruption that conform with their theories. They are then able to use corruption as a justification for imposing on client countries certain rules and procedures in defiance of the country's sovereignty. Thus, allowing these institutions and organizations to act to pursue their own interests with no real accountability.

This has been clearly illustrated in the analysis and examples provided that showed how the IMF and The World Bank used specific definitions of corruption to exceed their mandate and justify economic and political interventions. Specious arguments of corruption and poor governance provided the pretext for intervention, and these programmes were selectively and relentlessly pursued with a total disregard for actual corrupt dealings.

Therefore, although the exact impact on funding access and FDI cannot be fully understood, the actions of donor agencies, dominant markets, and other vested interests make it clear that the question of whether current definitions of corruption have disproportionate adverse impact on some countries must be answered in the affirmative.

The suggested response to these findings follows in the recommendations drafted below.

## **7.4 Recommendations**

1. Recommendation one (and most urgent): that there not be just the abandonment of existing corruption measures but the vehement decrying of them too. These measures are clearly doubly subjective and inherently prejudicial. Continuing to subscribe to them reinforces old stereotypes even whilst scholars continue to wrestle with the polysemous nature of corruption. It allows instruments such as The Corruption Perception Index, The Global Integrity Index, and other similar measures to sway public opinion, influence public policy disproportionately, and to insert themselves even further into the discourse, thus allowing for the possibility of even greater errors of judgement.

For example, Transparency International UK (TI-UK) has recently published a Defence Companies Anti-Corruption Index. It analyses “what companies are publicly committing to in terms of their openness, policies and procedures”, and focuses “only on what companies choose to make publicly available”. The results are then shared with the company so that they may make the necessary corrections. This, they naively claim, “will drive reform in the sector, reducing corruption and its impact” (Transparency International UK 2018). Unfortunately, based on the methodology, there is no way to assess this claim. All this Index can measure is the ingenuity of defence companies to create seemingly cogent documentation to support their claim that they are effectively addressing corruption.

The following example illustrates this. The 2012 Index asserted that at Lockheed Martin there was “extensive evidence” of ethics and compliance systems based on internal and public information. TI(UK) gave them an A rating (Transparency International UK 2012: 7, 17). At the time, the US Department of Justice (DoJ) had just reached a \$15.85M settlement with the company for allegations that it “mischarged perishable tools used on numerous government contracts” (US Department of Justice 2012). The 2015 Index showed no downgrading. It asserted that there was more than sufficient “public evidence on their ethics and anti-corruption programmes” at Lockheed Martin and upheld the A rating (Transparency International UK 2015: 3, 7). At the same time as the Index was being compiled, Lockheed Martin paid the DoJ a fine of \$27.5M to settle allegations of overbilling (US Department of Justice 2014). Subsequently the company paid the DoJ \$5M in 2016 for allegedly submitting “false claims for payment” (US Department of Justice 2016). And in 2018 paid \$4.4M to settle claims of providing defective equipment to coastguards (US Department of Justice 2018).

2. Recommendation two: that since corruption levels are impossible to ascertain, funders and donors no longer link funding to such criteria. As has been shown in Chapter Six and reinforced in the discussion on the recommendation above, funder and donor organizations rely too heavily on 1) perception based measures to assess levels of corruption, or 2) measures that are deeply flawed in terms of what they purport to measure and how they are constructed.

The case has also been made in Chapter Six that perceptions of levels of corruption are influenced by deeply entrenched prejudices. The tools and measures in reporting their results further entrench these prejudices and; even when faced with credible evidence from alternate sources, these measures do not have a mechanism for self-correction. Funders and donors who deliberately link their funding to corruption levels as reflected in these measures can no longer claim to be operating without bias.

3. Recommendation three: that funder and donor agencies refrain from using arguments based on corruption as a justification for interference in the internal mechanisms of a nation state. Recognition of the sovereign rights of states has been enshrined in almost all the guiding principles of these agencies. Yet they frequently ignore these principles.

In the previous chapter that used the examples of Uganda and Mozambique, it was clearly illustrated that corruption was not a valid justification for what amounted to undue interference and a gross disregard of the sovereign rights of those states. These states were not able to make economic and infrastructure decisions free from external pressure and implied threats of being starved of funds.

4. Recommendation four: that, at a minimum, such interests not use self-serving definitions of corruption to drive economic or political change whilst trying to hold to a moral high ground. This is not to argue that such agencies may not insist that funding be tied to economic or political policy changes – that is not what this study has addressed and is a question that needs further investigation to resolve. What is imperative is that they do not cloud their objectives with spurious arguments based on morality and ethics.

These agencies are in fact free to write their articles of association and/or their memoranda of association in a manner that suits themselves, their sponsors and other shareholders. However, stripping the moral/ethical argument camouflage from these organizations will help client countries understand from the beginning the true nature and mechanism of the relationship.

5. Recommendation five: that actors in this arena make their agendas explicit. Clear articulation of their real mission is necessary. Goals, criteria and expected outcomes need to be defined and publicly committed to. This will enable recipients to conduct a more accurate cost-benefit analysis before they engage with such agencies.

The Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008) provide guidance for this. In 2005 signatory countries set about defining goals around ownership, alignment, harmonization, and managing for results and mutual accountability (OECD 2008: 8-9) In 2008 they revisited these goals and, in an attempt to “accelerate and deepen implementation”, committed to the following, namely, that they would: broaden country-level policy dialogue on development; strengthen their capacity to lead and manage development; strengthen and use developing country systems to the maximum extent possible; reduce costly fragmentation of aid; increase aid’s value for money; welcome and work with all development actors; deepen engagement with civil society organizations; adapt aid policies for countries in fragile situations; focus on delivering results; be more accountable and transparent to the public for results; continue to change the nature of conditionality to support ownership; and increase the medium-term predictability of aid (OECD 2008: 16-20). Although the agreements are not free of justified criticism (Roberts 2009: 11; Booth 2011: 1; Lim 2011: 10), the concerns that prompted them and some of the targeted goals provide a useful starting point.

6. Recommendation six: should agencies continue, however, to declare that interference in sovereign matters of state are undesirable, care must be taken that these agencies never exceed their mandate. Currently, beyond some degree of bad press coverage and cynical and bitter commentary by practitioners in the development sector, there is very little that is done to sanction these agencies.

Most of the research into the negative consequences of their actions have in fact been undertaken and then published by the agencies themselves, under claims of transparency and self-correction. This is self-policing and is clearly insufficient. There should be penalties and serious repercussions for any agencies exceeding their mandate. The United Nations under UNCAC should be tasked with monitoring this, and regular audits of these agencies need to be undertaken.

7. Recommendation seven: The United Nations should also consider undertaking wide-ranging and in-depth research into the impacts of such agencies on the countries where they are operating. Such research should also extend to the long-term impacts on the developing world of past policy imposition by these agencies.

It is not inconceivable that such research may very well significantly extend the reach of programmes such as 'Heavily Indebted Poor Country' (HIPC) scheme and the 'Multilateral Debt Relief Initiative' (MDRI) as the extent to which these policies have exacerbated poverty in the developing world becomes clear. That this research is worth pursuing finds support in the finding by Easterly (2001) – speculations aside – that “the number of adjustment loans from the IMF and World Bank- reduces the growth elasticity of poverty reduction” (Easterly 2001:1).

8. Recommendation eight: client countries who act on bad-faith advice from these agencies and incur losses should also have the right to pursue legal action if necessary. There is certainly a case to be made that developing countries that followed IMF advice with respect to the Asian Financial Crisis discussed in Chapter Six suffered real and sustained losses. This advice differed markedly from the advice acted upon to negate the ill-effects of the GFC. Why such different advice was advanced in these examples and who profited from such advice should be investigated, and legal consequences should attach to any fiduciary breach.
9. Recommendation nine: countries should have a right to recover losses from the advisor. This course of action is currently available when consulting or banking organizations provide irresponsible advice to clients which results in the client incurring significant losses. There is no reason why these agencies should be exempt from similar financial liability. It would at least force them to act with greater caution and responsibility when dispensing policy advice.

10. Recommendation ten: that once these criteria, goals, and expected outcomes are defined, funders make explicit the processes and methodologies they deploy when assessing countries for aid or loans. There is an exhaustive array of methodologies and processes developed by Public Administration gurus ranging from Institutional to Behavioural Systems approaches, from Closed and Open Models to Structural Functional approaches, from Public Policy to Political Economy approaches, and even the Marxian approach. Business Management theory has even more methodologies and models. Once the nature and context of the relationship are defined and the goals and outcomes are clear, it may be possible to adopt an existing methodological model and customize it to deliver the desired results, the caveat always being that both parties, the donor and the recipient, act in good faith.

11. Recommendation eleven: it is not necessary to confine solutions to existing models and frameworks. Healthy debate in development circles has raised concerns about the appropriateness of naively importing models from the developed world without due regard to the sometimes vastly differing aims, objectives and value systems of the client country in the developing world.

Perhaps with the creation of Development Studies departments in several major universities, the quest for truly inclusive and harmonized methodologies can be achieved, informed as much by a thorough understanding of the lived experience of indigenous grassroots actors of the developing world as by the process rigour demanded by the donors and funders of the developed world.

12. Recommendation twelve: the literature review revealed a still very siloed approach to the study of corruption. Insights gleaned from any one discipline either was not taken up, or was very slow in being taken up and critiqued or supplemented by other disciplines. Cross-disciplinary research should be actively pursued so that insights in any one discipline are more easily disseminated to other disciplines. Many universities, now include inter-disciplinary studies and other universities, research institutes and

even government agencies are vigorously investigating mechanisms to encourage cross-disciplinary research. The corruption discourse can only benefit from such efforts. Advocates in this space need to channel their efforts to ensure that the corruption debate is seen by these institutions and agencies as significant enough to be placed high on the agenda.

13. Recommendation thirteen: research in corruption in the end remains an armchair indulgence unless it can be put to practical use. Except where organizations with vested interests commissioned the research, the insights generated by researchers have thus far had limited impact on the way in which organizations and agencies in the public and private sector behave within this space. What needs to happen is active, even aggressive efforts to draw public and private sector decision makers into public debate at academic conferences and other fora. Such an effort, if pursued appropriately, will result in many benefits. It will give unbiased and alternatively funded researchers and scholars access to the issues and concerns faced by agencies who wish to address corruption, thus enabling these researchers and scholars to also address these questions. It will provide practitioners in grassroots organizations access to some of the best thinking, tools and artefacts with which to pursue their goals. And by expanding the debate, it will force decision makers to confront and reassess their thinking along more informed lines.

14. Recommendation fourteen: who will direct the ongoing and future corruption discourse is also of great concern. For too long the discourse has been led by dominant organizations with vested interests and deep pockets. Care will need to be taken that powerful interests with political and/or financial clout do not drown out the voices of development sector activists or impoverished or suppliant client nations and their advocates. To this end recent civic engagement on issues of public concern has now begun to create an environment that can be used to profitably interrogate and even recalibrate the status quo with regards to numerous areas of public concern. This is most evident in the US where public outcry has succeeded in reopening the debate around gun ownership, challenged the

control of the leadership in Congress and forced the government to re-examine its detention of refugee children. In this environment, there is the possibility for more radical voices to even more successfully challenge the current hierarchy and orthodoxy within the corruption scholarship landscape – this is an opportunity that must not be allowed to pass without significant victories.

## **7.5 Research Constraints**

Given the time available for a PhD study, access to information, and the qualifications and background of the researcher, the study was subject to certain constraints. What follows is a brief discussion of the limitations that might have influenced the results of the study, the delimitations that defined the scope of the research, and the assumptions upon which the study was premised.

### **7.5.1 Assumptions**

This study, as with most research, had to resort to certain fundamental assumptions. The first of these is that agencies which use conditionality to enforce economic or political policy shifts are indulging in unnecessarily intrusive behaviour. This results in an undesirable loss of the right to the sovereignty of a nation. But, the concept of sovereignty itself is a contested one (Brand 1994: 1686; Krasner 2001: 1; Kalmo and Skinner 2010: 1). This study, however, chose not to enter that debate but relied, rather, on the resolution adopted by the United Nations General Assembly in February 1996 (United Nations 1996) to provide a working definition, and to point to a general consensus amongst signatories of respect for such a right.

Secondly, the discussion on conditionality assumed that in most instances focusing solely on The World Bank and IMF (the biggest and most influential instruments in that arena) would suffice. Similarly, instead of critiquing each of the different corruption measures, the two most influential, TI's CPI and the Global Integrity Index, were seen to be representative of the rest. The

deficiencies identified with respect to these organizations and tools, applied variously across the board.

Finally, it might appear that one of the assumptions that this study was based on was that the organizations under consideration are single monolithic structures with all functionaries animated by the same vision, mission and values. This, would be an erroneous assumption. The researcher was well aware of numerous reports that point to differing and contrasting views co-existing within, for example, The World Bank (Independent Panel appointed by the World Bank 2013: 43). Even at the IMF which has developed a culture where staff allege that “strong contrarian views could ‘ruin one’s career’”, the very fact that this finding was made by the review panel hints at other, if hidden, views and opinions (Independent Evaluation Office 2011: 19). In the final analysis, though, this issue was deemed as irrelevant and peripheral to the central question. It was therefore left unexplored.

### **7.5.2 Delimitations and scope of study**

The corruption discourse has generated a vast body of research. In considering this argument clear lines were drawn as to what information could be reflected in this study. The methodology was stringently applied, and any tangential information or arguments that were not expected to materially substantiate or refute the central thesis were not considered. Arguments such as whether certain corrupt behaviours impeded economic prosperity or aided it, although avidly investigated, were in the end discarded. Other theories that purported to explain why certain types of corrupt behaviour encouraged other types of corrupt behaviours whereas some types did not, or why a population would tolerate corrupt behaviours amongst its governing classes in certain instances and not others, though fascinating per se, were ultimately adjudged irrelevant to the crux of this research.

It would have been impossible to document all potentially relevant information. Limiting the sweep and scope to the major and most influential agencies and actors was essential. Examples used had to fit into defined categories.

Defence examples were selected because Roeber (2005) identified them as the “most corrupt of all legal international trades” on the grounds that “the industry’s share of corruption is grossly disproportionate to its share of trade” (Roeber 2005: 5-6). Examples were chosen from the political sphere because, as Thomas Mann opined in *The Magic Mountain* in 1924, “[e]verything is politics” (Mann and Woods 2005: 610). And examples from the financial sector because it triggered a global recession (Verick and Islam 2010: 3). Similarly, the USA was selected for comparison because of its central role in the establishment of the Bretton Woods Institutions and because in “an era of ‘unipolarity’, America’s foreign and domestic policies have assumed an unprecedented prominence in the affairs of other nations” (Beeson 2003: 1).

### **7.5.3 Limitations**

It is understood that the trustworthiness of the results depends on the quality of the data consulted. To achieve this, extensive searches were conducted to ensure cross referencing at multiple data points for information and interpretation. This was particularly important when consulting historical texts and commentaries. These texts were sometimes created by historians who had to rely on a very small body of evidence. Sometimes only a single piece of evidence. Their interpretations could therefore be more reflective of their own personal views than was desirable. To counter this, this study consulted as many revisionist histories as were possible within the time available. Where these existed or were relevant, the arguments and views were included in the study. However, a scarcity of studies in English of early Chinese and Islamic texts that explored this topic sometimes led to a heavy reliance on single studies.

The study was conducted as desk research and not field research. Published documents were extensively used to develop its theme. Direct contact with the organizations and personages whose instruments and policies came under scrutiny was not made. Because of this, meticulous attempts were made to trace speeches, legal case notes and other corroborating evidence to give validity to the findings of this study.

#### **7.5.4 Research methodology limitations**

Since this chapter also concedes the restraints and limitations of the study, it would perhaps be pertinent to summarize the limitations the chosen research methodology posed as discussed in detail in Chapter Three. Argumentation methodology necessitates the use of both inductive and deductive logical processes with their inherent limitations. Inductive processes uphold or rebut generalizations by the use of whatever data is available. The paucity of research in the field has already been noted, and the inductive method applied here cannot, therefore, pass the muster of incontrovertibility. Deductive processes, meanwhile, are based on certain assumptions which, if unsound, will *ipso facto* lead to questionable conclusions. The situation is exacerbated if, as was necessary at times in this study, the assumptions are based on induction. Recourse to both primary and secondary texts and the sourcing of secondary data were some of the expedients used to mitigate the limitations.

#### **7.5.5 Researcher limitations**

The single biggest challenge was the status of the researcher as an international student. The opportunity to engage with peers for support and advice was virtually non-existent. The assemblage of a virtual focus group to review and comment on the work as it progressed proved extremely helpful.

A qualitative study is somewhat marred by the researcher not being entirely independent from the research process; a certain reflexivity sometimes becomes evident (O'Dwyer and Bernauer 2014: 31). This may influence the type of data selected and the weight given to certain arguments, preferencing them above others when reference material is selected. In this context, the researcher's extensive career as a management consultant necessitated a wariness against privileging conservative arguments and solutions, and orthodox processes and methodologies. A rigorous application of the methodology and defined criteria for selection of examples, coupled with an assurance of commitment to considering and presenting all relevant points of view achieved this objective.

## **7.6 Questions that Remain**

As mentioned previously, productive areas for future studies include the creation of clear goals, criteria, and expected outcomes for all actors within these relationships. This cannot be done via a theoretical understanding alone. It must be created through active participation of all vested interests with the theorist, academic, or scholar acting, not as a protagonist, but as a facilitator in the process.

# ADDENDUM A

## STATE CAPTURE

*"It's very possible that I could be the first presidential candidate to run and make money on it."* US president Donald J Trump as quoted by Useem (2000)

*"When I established the commission of inquiry, one of the things they will have to clarify is, what is state capture? I'm sure I'd be very keen to know. Is that phrase correct?"* South African president Jacob G Zuma as quoted in News24 (2017)

### A.1 Defining State Capture

According to Draper (1977) the idea of the state as 'captured' to serve special interests finds its antecedents in the writing of Engels as early as 1844. As Draper explains:

The state is the institution, or complex of institutions, which bases itself on the availability of forcible coercion by special agencies of society in order to maintain the dominance of a ruling class, preserve existing property relations from basic change, and keep all other classes in subjection (Draper 1977: 251).

This compliance of the governed by the ruling classes is generally achieved through the economic pressure of capitalistic exploitation of labour combined with state institutions such as the army, the state bureaucracy and administration, and the legal apparatus of the state. Describing political structures in terms of power relations, then, existed before Marx. Nevertheless, he was the first to posit a demonstrable link between class structures and the state with the idea that the state wielded a power that was founded in and legitimised through society (Draper 1977: 252).

This idea of a state captured to serve special interests is referenced more recently by Edwards (2017: 88) as he writes of how ethnic groups within Guyana use the state to amass economic and political power legally and illegally to establish and consolidate their socio-economic advantages. More recent definitions of state capture are, however, a lot narrower. As Lodge (2014) explains, these definitions focus on attempts by private entities – individuals and organizations – “to shape the regulatory domain that affects their commercial operations” using both legitimate and illegitimate strategies (Lodge 2018: 13). Meirotti (2018) calls this out as a type of meta-corruption. It is a corruption that occurs when state officials who are expected to represent citizens’ interests cede their authority and control to corporate interests (Meirotti 2018: 3).

## **A.2 State Capture in South Africa**

In 2009 Jacob Zuma, a member of the ruling ANC party, was elected president of South Africa. He came into the position in the wake of an alarming catalogue of corruption charges against him. In 2005 he had been removed from the position of deputy president by President Thabo Mbeki after Zuma’s financial advisor Schabir Shaik was convicted of soliciting a bribe from an arms manufacturer on behalf of Zuma (Vasagar 2005; Feinstein, Holden and Pace 2011: 25). Whilst he was president, rumours surfaced that the president was in thrall to a family of Indian businessmen – the Guptas. Media reports focused over months on alleged state capture in South Africa; the rumours were finally given substance by the public protector’s report (Labuschagne 2017: 65).

### **A.2.1 Timeline of events**

A review of media reports (African News Agency Reporter 2016; City Press 2016; Cloete 2016; Davis and Grootes 2016; Eliseev and Whittles 2016; Gallens 2016; Hogg 2016; le Cordeur 2016; Motsoeneng 2016; Myburgh, Serrao and Basson 2016; News24 2016; Presence 2016; Reuters 2016; Evans 2018) and cross checking with Corruption Watch (Corruption Watch 2016,

2017) allow for a sequential tracing of some of the alleged incidents that led to the current situation:

**a. 2015**

8 <sup>th</sup> June	A document in the possession of the South African Airways board chairperson alleges that Treasury has been captured by corporate interests
23 <sup>rd</sup> September	A new mining minister is appointed even though ANC members point to his suspicious links to the Guptas
23 <sup>rd</sup> October	One of the Gupta brothers offers the deputy finance minister, Mcebisi Jonas, the finance minister's job whilst an arms dealer and President Zuma's son Duduzane Zuma are present
28 <sup>th</sup> October	The CEO of Trillion Capital Partners, which is owned by a business partner of the Guptas, writes the job description for the finance minister
1 <sup>st</sup> -8 <sup>th</sup> December	During this week a parliamentary backbencher, Des van Rooyen, visits with the Guptas seven times
9 <sup>th</sup> December	The sitting finance minister Nhlanhla Nene is removed and van Rooyen appointed in his place. Markets plunge
11 <sup>th</sup> December	The ANC meets with business leaders amidst predictions of impending economic disaster
13 <sup>th</sup> December	van Rooyen is removed and replaced by Pravin Ghordan. Markets recover

**b. 2016**

19 <sup>th</sup> February	The Directorate for Priority Crime Investigation known as the Hawks seeks to question Ghordan as part of an alleged criminal investigation
15 <sup>th</sup> March	A former ANC MP claims to have been offered a cabinet position by the Guptas

16 <sup>th</sup> March	The deputy finance minister confirms that the Guptas had offered him the finance minister position before Nene was fired
17 <sup>th</sup> March	The previous public enterprises minister reveals that she was pressured to accede to Gupta requests for favour and refused
20 <sup>th</sup> March	The previous head of Government Communication Information Systems states that the president asked him to 'assist' the Guptas, which he understood as an attempt to pressure him to direct advertising and advertising revenue to their new media enterprise
6 <sup>th</sup> April	Four banks, Sasfin, and KPMG close Gupta accounts
21 <sup>st</sup> April	Minister Jeff Radebe announces an inter-ministerial committee to investigate why certain banks and audit firms have closed Gupta accounts
June – July	The public protector undertakes investigation into state capture with a treasury budget of R1.5m
15 <sup>th</sup> July	The public relations company that represents the Guptas is discovered trying to leak to the media an alleged cabinet decision of the Gupta's bank account closures seven weeks before any such announcement is published by the minister
June-August	The CEO of Oakbay Investments, which is the holding company for the Gupta family businesses in South Africa, asks Ghordan to lobby the banks on the Guptas' behalf
23 <sup>rd</sup> August	Ghordan is asked to appear before the Hawks for a cautionary warning
1 <sup>st</sup> September	The mineral resources minister announces a judicial inquiry into the closure of the Gupta accounts – the information that had been the subject of the public relations leak
11 <sup>th</sup> October	The energy minister announces that Eskom, an electricity public utility, will lead a nuclear build programme

13 <sup>th</sup> October	The head of the national prosecuting authority declares fraud charges against Ghordan
17 <sup>th</sup> October	Ghordan applies to the courts for a declaratory order declaring that he has no authority to interfere with banks. His application identifies suspicious transactions by Gupta related businesses amounting to billions of rands
17 <sup>th</sup> October	The head of the national prosecuting authority drops charges against Gordhan and in turn faces calls for his own disbarment and also court action against him instituted by two civil society organisations
1 <sup>st</sup> November	The president applies for an interdict to prevent the release of the public protector's report into state capture
2 <sup>nd</sup> November	The court orders the publication of the State of Capture report and recommends the appointment of a presidential judicial commission of inquiry with the appointment of an independent judge. The public protector's report documents the close relationship between the Guptas and the CEO of Eskom
11 <sup>th</sup> November	The CEO of Eskom resigns, but Eskom announces that it will continue with soliciting proposals for the nuclear programme
15 <sup>th</sup> November	The opposition Democratic Alliance lays criminal charges against the president
29 <sup>th</sup> November	At an ANC national executive meeting three ministers, supported by the chief whip, ask the president to step down

Given this historical background, it came as no surprise that the South African Public Protector's State Capture of Report, 6 of 2016/7 released on 14 October 2016 raised numerous concerns (Public Protector South Africa 2016).

### **A.2.2 Significance of events**

The public protector's report identified the existence of powerful plutocrats who operated in parallel with formal structures of government and wielded considerable influence on government officials. The power of this unlawful and covert relationship between government and oligarchical external agents was exerted to plunder state resources for the benefit of these plutocrats (Labuschagne 2017: 52). The Guptas, the plutocrats in question, effectively controlled "the primary decision-making powers of the highest political functionary in government" and were able to exploit that relationship for their own self-enrichment. The report suggests that the president inappropriately and in contravention of the Executive Ethics Code and his constitutional duties had permitted his son, acting in concert with the Guptas, to remove the minister of finance. The reason for this was self-evident: the minister had strenuously resisted the Guptas' quest to "drain treasury resources". The report also included an allegation, later confirmed by the deputy minister of finance, that he had been offered the position of minister of finance and numerous benefits in exchange for his extending future favours to the Guptas (Labuschagne 2017: 63-64). In addition, the CEO of Eskom (a parastatal) exchanged 58 phone calls with the Guptas after which the Gupta-controlled Tegeta company without following legal tender protocols secured an extremely beneficial contract (Labuschagne 2017: 64).

These and similar actions substantiate the argument put forward by Labuschagne (2017: 52) that the report sufficiently confirms state capture of the type where external agents wield considerable influence on the foremost political officials of a country. A situation that Wolf (2017: 4) likens to the creation of a "mafia-like shadow state"

Bhorat *et al.* (2017: 15), in their analysis of state capture in South Africa, list seven characteristics that identify the extent of Gupta state capture:

1. They gained control over state owned enterprises (SOE) by undermining these SOE's governance and operational structures
2. They took control of the public service

3. They obtained access to rent-seeking opportunities by manipulating regulations
4. They obtained power over the country's financial sovereignty
5. They gained access to strategic procurement opportunities by destabilising essential institutions and prescribed executive procedures
6. They appointed loyalists to positions in the security and intelligence services
7. They undermined the executive by establishing parallel government and decision-making structures

Bhorat *et al.* (2017: 3) present state capture as follows: where an interdependent relationship develops between the legitimate and shadow state with power being progressively shifted into the shadow state networks. By all accounts the South African situation would appear to conform with this. However, they further assert that state capture is indicative of a “global trend in the growth of increasingly authoritarian, neopatrimonial regimes” (Bhorat *et al.* 2017: 3). The full report is appended at the end of this addendum.

What follows is an analysis of current reporting in the US that would suggest that this trend is not confined to neopatrimonial states.

### **A.3 State Capture in the US**

Stremlau (2018: 150), departing from the position of Bhorat *et al.*, insists that all democratic countries must be considered potentially vulnerable to state capture. The situation in the US is more opaque than South Africa as it is only relatively recently that the media has begun a more comprehensive effort to investigate the abdication of public to private interest in Trump's government. However, there are sufficient early signs to raise concerns.

As more evidence is accumulated, it would appear that Trump and a close circle which includes his family, his advisors and even members of his Cabinet are “challenging, circumventing and changing customs, laws and regulations to further their private financial and business interests” (Stremlau 2018: 151).

According to Professor Hansen of the Copenhagen Business School, initial concerns were raised when Trump elected not to place his assets in a blind trust and also to appoint his children to run the Trump Organisation instead of an independent board. Further, there is reason to fear the extent to which Trump's business liabilities affect his dealings with banks to whom he is deeply indebted and how he handles foreign countries that are or may become business partners. Hansen sees a real threat of state capture in these circumstances (Hansen 2017).

### **A.3.1 State capture by wealthy US interests**

After Hansen published his views, the following allegations have surfaced about how Trump and his family have directly sought to use the presidency to increase their financial strength:

1. The attorneys general of Maryland and the District of Columbia have filed lawsuits alleging that Trump stands to profit from foreign and state government spending at his hotel in Washington, D.C., thus violating "the Constitution's bans on gifts from foreign and state governments" This ban D.C. Attorney General Karl Racine calls the US's " original anti-corruption laws" (Overby and Neely 2018). Typical examples of questions that have been raised around possible emolument issues include the following. In 2017, the government of Saudi Arabia rented 500 rooms at the hotel to house and feed US veterans employed on a lobbying campaign for the Saudis. The Republican Governor of Maine, when he travelled to D.C. lobbying the government to overturn the designation of a national park in Maine also stayed at the hotel (Taylor and Overby 2019). Suspicions were not allayed when Trump aide Kellyanne Conway explained the popularity of the hotel to customers as: "look at it as a piece of the president" (Harwood 2018).
2. In 2018, the government of Qatar paid \$6.5 million for an apartment in Trump World Tower bringing its ownership to four apartments at a total cost of \$16.5 million. Qatar's purchase took place as the Qatari government was desperately lobbying Washington in the midst of a Middle Eastern crisis that had pitted the Qataris against the United Arab

Emirates and Saudi Arabia. Other governments who have tenancy in the building include Saudi Arabia, India and Afghanistan (Swaine and Borger 2018).

3. Since winning the presidency, dozens of trademarks have also been granted to Trump family businesses in China where foreign trademarks are in general notoriously difficult to obtain. In addition, China has pledged funding for an Indonesian Trump-linked development project. At the same time, Trump undertook to find a way to save ZTE, a major Chinese company, from bankruptcy, notwithstanding the company's history of violating American trade controls on Iran and North Korea (Sui-Lee 2018).
4. Trump constantly promotes his businesses by his presence, spending 159 of his first 514 days in office visiting Trump properties (Harwood 2018).
5. In at least two instances Mar-a-Lago, the president's private club has been promoted on the website of American embassies abroad as the "Winter White House". Mar-a-Lago has doubled its fees for members to \$200,000.00 (de Haldevang 2017).
6. Conway has encouraged Americans to purchase his daughter Ivanka's products (Harwood 2018).
7. Trump wine has been offered for sale at a national park in the state of Virginia (Harwood 2018).

Other concerns have attached to members of Trumps administration pandering to plutocratic interests. Some examples are listed below:

1. There have been far-reaching deregulation and roll-back of bank rules. In May, Congress approved the escalation from \$50 billion to \$250 billion in assets – the level at which banks are subject to stiffer regulation. In July Congress exempted some non-banks from assessments designed to calculate whether a firm would need a bail-out in a national economic crisis. Other financial-sector interventions have included undermining the Consumer Financial Protection Bureau, an agency that polices financial institutions by appointing Mick Mulvaney, who was opposed to the institution, to run it. Investigations

have been halted, promising cases ended, and the bureau's name has been changed. At the Treasury Department's Office of Financial Research, which collects data to predict issues such as the mortgage crisis, Trump has appointed as secretary Jeb Hensarling, who wanted the office abolished altogether (Garofalo 2018).

2. The Federal Communications Commission (FCC) has already rolled back regulation and thereby enhanced the power of monopolistic providers in the market such as AT&T, Comcast and Verizon where the Trump appointed chair of the FCC once worked. There has been deregulation of broadband data services and a repeal of net neutrality (Cassidy 2017; Coldewey 2019).
3. Credible accusations have been levelled by a team of nine academic researchers that the Environmental Protection Agency has succumbed to "regulatory capture" where private industry interests supersede public interest (Dillon *et al.* 2018: 89).
4. Trump's much touted tax cut measures for the middle class were eventually passed by a republican majority house and senate, and went to the wealthiest sector. Republicans used the specious argument of the cuts being part of a model of trickle-down economics to boost the economy, when selling the package to the public. The Joint Committee on Taxation calculates that one of the major effects of the tax overhaul that was delivered for taxpayers who earn \$1 million or more is a tax cut of \$37 billion (Steverman, Merrill and Lin 2018). A possible motivation for the tax overhaul is evidenced in this quote taken from a speech by Trump at a private function at Mar-a-Lago to his wealthy friends: "You all just got a lot richer" (Darby 2017).
5. Notwithstanding a Trump executive order of January 2017 which placed a two-year ban on former lobbyists being involved in areas they had previously lobbied, Trump has 164 former lobbyists in his administration (West 2018).

These and other similar concerns have attracted a fair amount of media attention, but the biggest story thus far has not been suspected state capture by US business interests but potential state capture by foreign entities.

### **A.3.2 State capture by foreign interests**

On May 17<sup>th</sup> 2017, the acting attorney general appointed Robert S. Mueller III to serve as Special Counsel “to ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election” (Office of the Deputy Attorney General USA 2017: 1). The investigation was launched because of concerns that Trump had fired the chief of the Federal Bureau of Investigation (FBI) whilst the FBI was investigating links between his presidential campaign and Russia.

Whether the investigation will eventually prove that “there was collusion between Donald Trump’s presidential campaign and Russia” (LaFraniere, Vogel and Shane 2019), or whether the “sitting president of the United States [w]as an unregistered and obviously secret agent of the Russian government” as the original FBI had set out to investigate (Rubin 2019) or whether the results will show that there was instead “an attempt at state capture by an international crime syndicate” (Gessen 2019) are questions that are still to be answered. What is significant is that there have already been troubling primary and secondary outcomes of the investigation. To date some of the outcomes include (Graff 2018, 2019):

1. In relation to the investigation into the Russian government’s election attack: twelve Russian military intelligence officers, thirteen people from the Internet Research Agency, and three Russian companies have been indicted. A guilty plea has also been entered into by a Californian man who aided their identity theft.
2. An investigation has been launched into whether the WikiLeaks’ publishing of the emails stolen by Russian hackers connects Russia to Trump. A Trump advisor has been indicted in connection with this affair.
3. Another investigation has been launched into the roles of the UAE, Saudi Arabia, and Israel, who were eager to help the campaign. Their business ties to Trump and his son-in-law, Jared Kushner, are also being scrutinized.

4. Trump's campaign chair has been convicted at trial and accepted a plea agreement for money laundering. A lawyer has pleaded guilty to lying to investigators about Ukrainian work. The campaign chair's associate has pleaded guilty to failing to register as a foreign agent. A Russian contact has been indicted for obstruction of justice. Another associate has pleaded guilty to his own role in the money laundering scheme.
5. Also under investigation is why the Trump Tower Moscow project was so lucrative and why everyone lied to congress about their involvement in it. Trump's personal lawyer has pleaded guilty to lying to congress about the status of the project.
6. Trump's former national security advisor and his foreign policy aide have pleaded guilty to charges related to their campaign and transition contacts with Russia.
7. A Trump campaign aide's plea agreement states that he assisted a Ukrainian businessman channel \$50,000 to the Trump's inauguration fund.
8. The National Rifle Association is under investigation for possible facilitation of Russian reach into the US conservative movement. A Russian agent has pleaded guilty and is cooperating with the investigation
9. A Russian national who served as the chief accountant of the Internet Research Agency was indicted for meddling in the 2016 campaign, and for intended meddling in this year's midterms.
10. Illegal influence by the Turkish government over Trump is also under enquiry. Trump's former national security advisor is reportedly providing information on this.

Although some of the matters related to foreign interests reported above are still to be fully investigated before they can be relied on as irrefutable, Strelau (2018) argues that there is sufficient information available to at least make a case that Trump has effected state capture to business interests in the US. He identifies Trump's "authoritarian leadership traits and dictatorial rule that have resulted from the type of populist demagogic campaign" as one marker of state capture. The second he sees as Trump's conversion of public service

authority to his private enrichment (Stremlau 2018: 161). So even if there is finally no case that can be made that Trump is actively serving foreign interests, the information that is available does make a strong argument for state capture as there is *prima facie* evidence of the betrayal of public interest to private interest by subversion of the structures of state.

#### **A.4 Conclusion**

In the case of Zuma, the passage of time has resulted in enough conclusive evidence so that state capture can be proven – the report by Borat *et al.* (2017) included below demonstrates this. In the case of Trump, on the other hand, the investigation is still in its initial stages and, while reasonable surmises can be made, no absolute conclusions could be drawn. The pattern of behaviour nevertheless bears all the hallmarks of state capture and as stated previously some scholars have unequivocally stated that it is a form of state capture. However, it was decided not to include this comparison of state-capture in the body of the thesis as a definitive study of meta-corruption when assembling the arguments for this paper. It has instead been included in this addendum so that as full a picture of the situation as possible could be presented. As comparisons go, it would be impossible to assess which presidents pattern of behaviour is the more egregious. Both presidents have incalculably harmed democracy, and both have done it for self-enrichment.

#### **A.5 Betrayal of the Promise: How South Africa is Being Stolen**

The situation in the USA continues to develop and more corroborating evidence will be documented as time goes on. However, in South Africa investigations and reports have already documented the widespread and systemic markers of state capture. A copy of The State Capacity Research Project report by Borat *et al.* (2017) that provides evidence of state capture follows:

# BETRAYAL OF THE PROMISE: HOW SOUTH AFRICA IS BEING STOLEN

May 2017

**State Capacity Research Project**  
Convenor: Mark Swilling

#### Authors

Professor Haroon Borhat (Development Policy Research Unit, University of Cape Town),  
Dr. Mbongiseni Buthelezi (Public Affairs Research Institute (PARI), University of the Witwatersrand),  
Professor Ivor Chipkin (Public Affairs Research Institute (PARI), University of the Witwatersrand),  
Sikhulekile Duma (Centre for Complex Systems in Transition, Stellenbosch University),  
Lumkile Mondi (Department of Economics, University of the Witwatersrand),  
Dr. Camaren Peter (Centre for Complex Systems in Transition, Stellenbosch University),  
Professor Mzukisi Qobo (member of South African research Chair programme on African Diplomacy and Foreign Policy, University of Johannesburg),  
Professor Mark Swilling (Centre for Complex Systems in Transition, Stellenbosch University),  
Hannah Friedenstien (independent journalist - pseudonym)



## Preface

The State Capacity Research Project is an interdisciplinary, inter-university research partnership that aims to contribute to the public debate about 'state capture' in South Africa. This issue has dominated public debate about the future of democratic governance in South Africa ever since then Public Protector Thuli Madonsela published her report entitled *State of Capture* in late 2016.<sup>1</sup> The report officially documented the way in which President Zuma and senior government officials have colluded with a shadow network of corrupt brokers.

Calls for Zuma to resign have intensified (including from within his own party) and the largest protest marches since the advent of democracy in 1994 have taken place in support of this demand. However, the academic community has contributed little to this discussion. To remedy this, the State Capacity Research Project was initiated to achieve two objectives:

1. Provide a conceptual framework that draws from the literature on the political economy of development, neopatrimonialism in Africa and democratic governance that can help to make sense of what we describe in our first chapter as a 'silent coup'.
2. Collate a vast quantity of published and unpublished empirical material on the extensive 'repurposing' of state institutions to redirect rents away from development and into the hands of an increasingly confident power elite that intentionally operates in extra-legal and anti-constitutional ways.

We agree with the intentions of the governing party's commitment to 'radical economic transformation', but in our view this is being used as an ideological smokescreen to mask the rent-seeking practices of the Zuma-centred power elite.

One of our aims is to change the popular discourse from a focus on corruption to a focus on the systemic nature of state capture as the political project of a well-organised network that strives to manage what we call the symbiotic relationship between the constitutional state and the shadow state. To this end, this is not only a collaboration between University research institutions, we also aim to collaborate with various stakeholders, social movements and organisations engaged in similar work. This is why we have collaborated with the South African Council of Churches (SACC), who mounted their own independent process called the Unburdening Panel. The results of this work by the SACC were merged with some of our research and presented by the Secretary-General of the SACC at a public meeting at Regina Mundi, Soweto, on 18 May 2017.<sup>2</sup> Although the SACC's Unburdening Panel and the State Capacity Research Project (SCR) were totally independent processes using very different methodologies, the SACC concluded

that the individual confidential testimonies they were receiving from Church members matched and confirmed the arguments developed by the SCR using largely publicly available information. This triangulation of different bodies of evidence is of great significance.

The State Capacity Research Project is an academic research partnership between leading researchers from four Universities and their respective research teams: Prof. Haroon Borhat from the Development Policy Research Unit, University of Cape Town; Prof. Ivor Chipkin from the Public Affairs Research Institute, University of the Witwatersrand; Prof. Mzukisi Qobo, part of the South African Research Chair Initiative – African Diplomacy and Foreign Policy, University of Johannesburg; Mr Lumkile Mondli, Department of Economics, University of the Witwatersrand; Professor Mark Swilling, Centre for Complex Systems in Transition, Stellenbosch University.

Our programme, with funding from the Open Society Foundation of South Africa, is as follows:

1. Produce this, our first report, by May 2017.
2. Release detailed case study reports of the state-owned enterprises that have been captured by the Zuma-centred power elite over the past decade.
3. Possibly by early 2018 produce a book manuscript and some journal articles.

In our view the South African case is just one quite typical example of a global trend in the growth of increasingly authoritarian, neopatrimonial regimes where a symbiotic relationship between the constitutional and shadow states is maintained, but with real power shifting increasingly into the networks that comprise the shadow state. Understanding the South African context and challenge, therefore, is an important contribution to our understanding of this global phenomenon. It is also our contribution to the broad struggle to save South African democracy and development practice from a power elite that pursues its own interests at the expense of South African society, in particular the poorest people who will suffer first and most from the consequences of what is in reality a *de facto* silent coup.

An advisory panel of international experts will act as a sounding board to ensure that we achieve a balance between academic rigour and doing what is required to make an impact on the public discourse. They will be expected to peruse reports and publications prior to publication, but not to attend meetings. Their comments and suggestions will be addressed in the most responsive and appropriate way.

<sup>1</sup> Public Protector South Africa. 2016. *State of Capture*. [Online] Available: <http://cdn24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d8810ed060937f76.pdf>.

<sup>2</sup> <http://www.enca.com/south-africa/catch-it-live-south-african-council-of-churches-releases-corruption-report>

# Contents

<b>Executive Summary</b>	1
<b>1 Politics of Betrayal</b>	4
<b>2 Power, Authority and Audacity: How the Shadow State Was Built</b>	21
<b>3 Repurposing governance</b>	40
<b>4 How the capture of the state is structured: A brief note</b>	56
<b>5 Conclusion and Recommendations</b>	61

## Executive Summary

This report suggests South Africa has experienced a silent coup that has removed the ANC from its place as the primary force for transformation in society. Four public moments define this new era: the Marikana Massacre on 16 August 2012; the landing of the Gupta plane at Waterkloof Air Base in April 2013; the attempted bribing of former Deputy Minister of Finance Mcebisi Jonas to sell the National Treasury to the shadow state in late 2015; and the Cabinet reshuffle in March 2017. Resistance and capture is what South African politics is about today.

Commentators, opposition groups and ordinary South Africans underestimate Jacob Zuma, not simply because he is more brazen, wily and brutal than they expect, but because they reduce him to caricature. They conceive of Zuma and his allies as a criminal network that has captured the state. This approach, which is unfortunately dominant, obscures the existence of a political project at work to repurpose state institutions to suit a constellation of rent-seeking networks that have been constructed and now span the symbiotic relationship between the constitutional and shadow state. This is akin to a silent coup.

This report documents how the Zuma-centred power elite has built and consolidated this symbiotic relationship between the constitutional state and the shadow state in order to execute the silent coup.

At the nexus of this symbiosis are a handful of the same individuals and companies connected in one way or another to the Gupta-Zuma family network. The way that this is strategically coordinated

constitutes the shadow state. Well-placed individuals located in the most significant centres of state power (in government, SOEs and the bureaucracy) make decisions about what happens within the constitutional state. Those, like Jonas, Vytjie Mentor, Pravin Gordhan and Themba Maseko who resist this agenda in one way or another are systematically removed, redeployed to other lucrative positions to silence them, placed under tremendous pressure, or hounded out by trumped up internal and/or external charges and dubious intelligence reports. This is a world where deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear. Unsurprisingly, therefore, the shadow state is not only the space for extra-legal action facilitated by criminal networks, but also where key security and intelligence actions are coordinated.

It has been argued in this report that from about 2012 onwards the Zuma-centred power elite has sought to centralise the control of rents to eliminate lower-order, rent-seeking competitors. The ultimate prize was control of the National Treasury to gain control of the Financial Intelligence Centre (which monitors illicit flows of finance), the Chief Procurement Office (which regulates procurement and activates legal action against corrupt practices), the Public Investment Corporation (the second largest shareholder on the Johannesburg Securities Exchange), the boards of key development finance institutions, and the guarantee system (which is not only essential for making the nuclear deal work, but with a guarantee state entities can borrow from private lenders/banks without parliamentary oversight). The cabinet reshuffle in March 2017 has made possible this final control of the National Treasury.

The capture of the National Treasury, however, followed five other processes that consolidated power and centralised control of rents:

- The ballooning of the public service to create a compliant politically-dependent, bureaucratic class.
- The sacking of the 'good cops' from the police and intelligence services and their replacement with loyalists prepared to cover up illegal rent seeking (with some forced reversals, for example, Robert McBride)
- Redirection of the procurement-spend of the SOEs to favour those prepared to deal with the Gupta-Zuma network of brokers (those who are not, do not get contracts, even if they have better BEE credentials and offer lower prices).
- Subversion of Executive Authority that has resulted in the hollowing out of the Cabinet as South Africa's pre-eminent decision-making body and in its place the establishment of a set of 'kitchen cabinets' of informally constituted elites who compete for favour with Zuma in an unstable crisis-prone complex network;
- The consolidation of the Premier League as a network of party bosses, to ensure that the National Executive Committee of the ANC remains loyal.

At the epicentre of the political project mounted by the Zuma-centred power elite is a rhetorical commitment to radical economic transformation. Unsurprisingly, although the ANC's official policy documents on radical economic transformation encompass a broad range of interventions that take the National Development Plan as a point of departure, the Zuma-centred power elite emphasises the role of the SOEs, particularly their procurement spend. Eskom

and Transnet, in turn, are the primary vehicles for managing state capture, large-scale looting of state resources and the consolidation of a transnationally managed financial resource base, which in turn creates a continuous source of self-enrichment and funding for the power elite and their patronage network.

In short, instead of becoming a new economic policy consensus, radical economic transformation has been turned into an ideological football kicked around by factional political players within the ANC and the Alliance in general who use the term to mean very different things.

The alternative is a new economic consensus. Since 1994 there has never been an economic policy framework that has enjoyed the full support of all stakeholders. A new economic consensus would be a detailed programme of radical economic transformation achieved within the constitutional, legislative and governance framework. The focus must be a wide range of employment- and livelihood-creating investments rather than a few 'big and shiny' capital-intensive infrastructure projects that reinforce the mineral-energy-complex. For this to happen, an atmosphere of trust conducive for innovation-oriented partnerships between business, government, knowledge institutions and social enterprises is urgently required. None of this is achievable, however, until the shadow state is dismantled and the key perpetrators of state capture brought to justice.

# 1

## Politics of Betrayal

### Introduction

It is now clear that while the ideological focus of the ANC is 'radical economic transformation', in practice Jacob Zuma's presidency is aimed at repurposing state institutions to consolidate the Zuma-centred power elite. Whereas the former appears to be a legitimate long-term vision to structurally transform South Africa's economy to eradicate poverty and reduce inequality and unemployment, the latter – popularly referred to as 'state capture' – threatens the viability of the state institutions that need to deliver on this long-term vision.

Until recently, the decomposition of South African state institutions has been blamed on corruption, but we must now recognise that the problem goes well beyond this. Corruption normally refers to a condition where public officials pursue private ends using public means. While corruption is widespread at all levels and is undermining development, state capture is a far greater, systemic threat. It is akin to a silent coup and must, therefore, be understood as a political project that is given a cover of legitimacy by the vision of radical economic transformation. The March 2017 Cabinet reshuffle was confirmation of this silent coup; it was the first Cabinet reshuffle that took place without the full prior support of the governing party. This moves the symbiotic relationship between the constitutional state and the shadow state that emerged after the African National Conference (ANC) Polokwane conference in 2007 into a new phase. The reappointment of Brian Molefe as Eskom's chief executive officer (CEO) a few weeks later in defiance of the ANC confirms this trend.

While it is obvious that the highly unequal South African economy needs to be thoroughly transformed, the task now is to expose and analyse how a Zuma-centred power elite has managed to capture key state institutions to repurpose them in ways that subvert the constitutional and legal framework established after 1994. As will be argued in this report, it is now clear that the nature of the state that is emerging – a blending of constitutional and shadow forms – will be incapable of driving genuine development programmes. By its very nature this mode of governance is counter development. The need for radical economic transformation must be rescued from a political project that uses it to mask the narrow ambitions of a power elite that is only really interested in controlling access to rents and retaining political power.

The dawn of democracy in 1994 delivered a promise that united South Africa. Nelson Mandela's inauguration on 10 May 1994

expressed this promise in the clearest terms. Speaking on behalf of the democratically elected ANC-led government, he promised:<sup>3</sup>

*... to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination ... [to] build [a] society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world.*

To deliver on this founding promise, the ANC needed to use the state institutions it inherited from the apartheid era. These institutions included national, provincial and local-level government administrations, state-owned enterprises (SOEs), the judiciary, parliament and the executive.

Unsurprisingly, transforming the core administrations and SOEs into vehicles for service delivery and development became a major challenge. Undertaking deep institutional reforms is a daunting exercise that requires extraordinary levels of dedication, technical capacity and a well-defined governance programme aimed at systematically overcoming the complex legacy of apartheid. Although significant progress was made, there is now widespread dissatisfaction across society and within the ANC itself with the performance of these institutions. Whereas the promise of 1994 was to build a state that would serve the public good, the evidence suggests that our state institutions are being repurposed to serve the private accumulation interests of a small powerful elite. The deepening of the corrosive culture of corruption within the state, and the opening of spaces for grafting a shadow state onto the existing constitutional state, has brought the transformation programme to a halt, and refocused energies on private accumulation.

The then Public Protector Thuli Madonsela's *State of Capture* report,<sup>4</sup> existing and growing empirical evidence (much of it referred to in this report), declarations by senior ANC members of bribery attempts, well-known sophisticated forms of bribery via 'donations' by businesses to the ANC, the perversion of corporate governance norms in SOEs, the resultant slow collapse of the Tripartite Alliance (the ANC, the Congress of South African Trade Unions (COSATU) and the South African Communist Party) and much else, have all made it clear that the 2012 National Development Plan's recommendation that "South Africa needs to focus relentlessly on building a professional public service and a capable state"<sup>5</sup> has been usurped. Instead of the plan's vision of a "professional public

<sup>3</sup> University of Pennsylvania. n.d. *Inaugural Speech*. [Online] Available: [https://www.africa.upenn.edu/Articles\\_Gov/Inaugural\\_Speech\\_17984.html](https://www.africa.upenn.edu/Articles_Gov/Inaugural_Speech_17984.html).

<sup>4</sup> Public Protector South Africa. 2016. *State of Capture*. [Online] Available: <http://cdn24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed06099f7f6.pdf>.

<sup>5</sup> National Planning Commission. 2012. *National Development Plan 2030: Our future – make it work*. [Online] Available: <http://www.gov.za/sites/www.gov.za/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf>.

4 | Betrayal of the Promise: How the Nation is Being Stolen

service and a capable state”, a symbiotic relationship has emerged between a constitutional state with clear rules and laws, and a shadow state comprising well-organised clientelistic and patronage networks that facilitate corruption and enrichment of a small power elite. The latter feeds off the former in ways that sap vitality from formal institutions and leave them empty shells incapable of executing their responsibilities.

What this power elite cannot achieve via the constitutional state, it achieves via the shadow state and vice versa. Some senior officials and politicians have participated unwittingly in this hegemonic project because they are insufficiently aware of how their specific actions contribute to the wider process of systemic betrayal that has up until now remained opaque.

This detailed report will provide the evidence that the nation needs to realise that the time has come to defend the founding promise of democracy and development by doing all that is necessary to stop the systemic and institutionalised process of betrayal that is now in its final stage of execution. It is not too late. The 1994 democratic promise remains an achievable goal.

An analysis is required that proceeds on two levels:

1. Firstly, we must understand what the Zuma-centred power elite has attempted to achieve on its own terms, and why Zuma continues to enjoy the support of a political coalition that ensures he remains in power as the lead exponent of radical economic transformation.
2. Secondly, it is necessary to demonstrate empirically (based on public reports) how state institutions have been captured and repurposed, and why this will make radical economic transformation unrealisable if the Zuma-centred power elite remains in place.

#### Key terms

\* **Corruption and state capture:** Corruption tends to be an individual action that occurs in exceptional cases, facilitated by a loose network of corrupt players. It is somewhat informally organised, fragmented and opportunistic. State capture is systemic and well-organised by people with established relations. It involves repeated transactions, often on an increasing scale. The focus is not on small-scale looting, but on accessing and redirecting rents away from their intended targets into private hands. To succeed, this needs high-level political protection, including from law enforcement agencies, intense loyalty and a climate of fear; and competitors need to be eliminated. The aim is not to bypass rules to get away with corrupt behaviour. That is, the term corruption obscures the politics that frequently informs these processes, treating it as a moral or cultural pathology. Yet, corruption, as is often the case in South Africa, is frequently the result of a political conviction that the formal ‘rules of the game’ are rigged against specific constituencies and that it is therefore legitimate to break them.

The aim of state capture is to change the formal and informal rules of the game, legitimise them and select the players allowed to play.

- \* **Repurposing:** Repurposing state institutions refers to the organised process of reconfiguring the way in which a given state institution is structured, governed, managed and funded so that it serves a purpose different to its formal mandate. Understanding state capture purely as a vehicle for looting does not explain the full extent of the political project that enables it. Institutions are captured for a purpose beyond looting. They are repurposed for looting as well as for consolidating political power to ensure longer-term survival, the maintenance of a political coalition, and its validation by an ideology that masks private enrichment by reference to public benefit.
- \* **Rents and rent seeking:** Development is a process that is consciously instigated when states adopt policies to directly and/or indirectly reallocate resources to redress the wrongs of the past and to create modern transformed industrialised economies that can support the wellbeing of society. To achieve this, state institutions must be used to allocate resources from one group to another, or to support one group to overcome the disadvantages of the past. These allocations are what can be called beneficial rents. Once measures are taken, however, that result in a flow of potentially beneficial rents to specific economic actors (whether these are businesses, households or public institutions), there is competition to access these flows and this creates the conditions for rent seeking. There is legal, ethical rent seeking, such as lobbying or legal interventions to benefit certain groups. Rent seeking can also be corrupt, however, and lead to state capture and repurposing. Corrupt rent-seeking behaviour can undermine the development agenda by diverting resources into the hands of unproductive elites. It follows that if beneficial rents are necessary for realising development, a system is needed to counteract the inevitable competition to access them from being corrupted by those who gain leverage via political access, passing of bribes, promises of future returns, etc. The literature on neopatrimonialism clearly provides examples of countries that did manage to accelerate development by effectively deploying beneficial rents to boost specific economic actors.<sup>6</sup> Limiting corruption was a key part of these programmes. The most successful ones tended to be guided by a long-term developmental vision and tended to centralise control of rents to limit overly competitive destructive rent seeking. They never eliminated corruption, but they prevented it from corroding the development process. Centralised rent management can, of course, also be corrupted by power elites who use centralisation to eliminate lower-level competitors to further enrich themselves and entrench their power positions.
- \* **Power elite:** We use the notion of a ‘power elite’ to refer to a relatively well-structured network of people located in government, state institutions, SOEs, private businesses, security agencies, traditional leaders, family networks and the governing party. The defining feature of membership of this group is direct (and even indirect) access (either consistently

<sup>6</sup> For a useful overview see Kalsall, T. 2013. *Business, Politics and the State in Africa*. London: Zed Press.

or intermittently) to the inner sanctum of power to influence decisions. It is not a ruling class per se, although it can see itself as acting in the interests of an existing class or, as in the South African case, a new black business class in the making. Nor is it just the political-bureaucratic leadership of the state, which is too fragmented to reliably mount a political project. The power elite is not necessarily directed by a strong strategic centre, and it includes groups that are to some extent competing for access to the inner sanctum and the opportunity to control rents. The power elite exercises its influence both through formal and informal means. However, what unites the power elite is the desire to manage effectively the symbiotic relationship between the constitutional and shadow states. In order to do this, and in broad terms (expanded on in Chapter 4), this power elite loosely organises itself around a "patron or strongman", who has direct access to resources, under whom a layer of "elites" forms who dispense the patronage, which is then managed by another layer of "brokers or middlemen".

✱ **Symbiotic relationship between the constitutional state and the shadow state:** Drawing on the well-developed literature on neopatrimonialism,<sup>7</sup> we will refer to the emergence of a symbiotic relationship between the constitutional state and the shadow state. The constitutional state refers to the formalised constitutional, legislative and jurisprudential framework of rules that governs what government and state institutions can and cannot do. The shadow state refers to the networks of relationships that cross-cut and bind together a specific group of people who need to act together for whatever reason in secretive ways so that they can either effectively hide, actively deny or consciously 'not know' that which contradicts their formal roles in the constitutional state. This is a world where deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear. Unsurprisingly, therefore, the shadow state is not only the space for extra-legal action facilitated by criminal networks, but also where key security and intelligence actions are coordinated. As extra-legal activity becomes more important, ensuring a compliant security and intelligence apparatus becomes a key priority. What matters is the symbiosis between the two, which is what the rent-seeking power elite emerges to achieve. The symbiosis that binds the power elite consists of the transactions between those located within the constitutional state and those located outside the constitutional state who have been granted preferential access via these networks to the decision-making processes within the constitutional state. These networks have their own rules and logics that endow key players within the networks with the authority to influence decisions, allocate resources and appoint key personnel. They draw on informal power that is linked to Zuma as both the party leader and president of the country. Invariably, there are a range of power nodes spread out across the networks. The Gupta and Zuma families (popularly referred to as the 'Zuptas') comprise the most powerful node, which enables them to determine for now how the networks operate and who has access. They depend on a

range of secondary nodes clustered around key individuals in state departments, SOEs and regulatory agencies. In practice, this symbiosis is highly unstable, crisis-prone and therefore very difficult to consolidate in a relatively open democracy, as still exists in South Africa. It is much easier to consolidate in more authoritarian environments like Russia, which is why this kind of neopatrimonialism can quite easily drift into authoritarianism to consolidate the symbiotic relationship between the constitutional and shadow state thus reinforcing the current political crisis we face in South Africa.

- ✱ **Radical economic transformation:** We agree that although the official ANC ideology of radical economic transformation is ill-defined and lacks a discernible conceptual framework, this transformation is needed if the 1994 promise is to be realised. Too little has been done to this end since 1994. Because the notion of radical economic transformation, however, is apparently used to mask a political project that enriches the few, subverts South Africa's democratic and constitutional system, weakens state institutions and expatriates capital overseas, we will attempt to make clear when using this term to differentiate between this ideological role and the real intentions of ANC policy documents. In our conclusion, we argue that a new economic consensus will be required that will entail very radical change, but without subverting the constitutional state. For radical economic transformation to become the basis for a new economic consensus, it must in practice be achieved within the existing constitutional order, and an appropriately enacted legislative framework. As we will demonstrate, contrary to what is stated in ANC policy documents, the power elite profess a commitment to radical economic transformation, but see the constitutional order and legislative framework as an obstacle to transformation.
- ✱ **Political project:** When we argue that it is necessary to focus on the political project of the Zuma-centred power elite, we are referring to the way power is intentionally deployed in ways that serve the interests of this power elite and are legitimised, in turn, by an ideology that is repeatedly articulated by a specific (but ever-shifting) political coalition of interests (that includes the power elite but also wider networks). We will show that the abuse of power by Zuma is what enables strategies that are aimed at promoting corrupt rent-seeking practices by preferred networks and the consolidation of power by an inner core around Zuma. Legitimated by the ideology of radical economic transformation, this comprises the political project pursued by the Zuma-centred power elite. It will be argued that it is time that the ANC reclaims this ideology from the power elite that has co-opted the term for its own political project.

To reveal the systemic betrayal associated with the Zuma presidency, this report provides:

- An analytical overview of the evolution of the Zuma-led state and how a power elite emerged that has executed the betrayal of the founding promise.
- A detailed account of the emergence of the shadow state and

<sup>7</sup> Kelsall, T. 2013. *Business, Politics and the State in Africa*. London: Zed Press.

- the key role that the Gupta networks have played as brokers.
- Insight into key governance dynamics, including the role of state guarantees, the decomposition of cabinet governance, ballooning of a politically loyal top management in the public service, deployment of shadow state loyalists onto boards of SOEs and the key role of procurement.
  - A note on how state capture is organised and facilitated by the Gupta networks and sanctioned by the power elite.
  - A concluding section that draws out the implications for the future of state capacity and how to best defend the founding promise.

This report will be followed with a succession of detailed case studies over the coming months that will elucidate in greater detail the examples summarised in this report. These case studies will provide further evidence of a power elite that has pursued a strategy of systemic betrayal to seize control of key state institutions. The consequences and implications with respect to each case will be carefully described.

#### Understanding the political project

Commentators, opposition groups and ordinary South Africans underestimate Jacob Zuma, not simply because he is more brazen, wily and brutal than they expect, but because they reduce him to caricature. They conceive of Zuma and his allies as a criminal network that has captured the state. This approach, which is unfortunately dominant, obscures the existence of a political project at work to repurpose state institutions to suit a constellation of rent-seeking networks that have constructed and now span the symbiotic relationship between the constitutional and shadow state. It is being pursued in the context of two, related transitions:

1. The transition from traditional black economic empowerment (BEE), which was premised on the possibility of reforming the white-dominated economy (now depicted as white monopoly capital), to radical economic transformation, which is driven by transactors disguised as a black capitalist class not dependent on white monopoly capital.
2. The transition from acceptance of the constitutional settlement and the 'rules of the game' to a repurposing of state institutions that is achieved, in part, by breaking the rules.

These two transitions fuse in the strategic shift in focus from reforming the economy (the focus of the Mbeki era (1999–2008)), which we call the constitutional transformers, to repurposing state institutions (with special reference to procurement and SOEs) as the centrepiece of a new symbiotic relationship between the constitutional state and the shadow state, which we call the radical reformers.

#### The 'Polokwane moment'

The scholarly literature on South Africa's transition notes that the betrayal of the democratic transition starts early on. The jettisoning

of the Reconstruction and Development Programme (RDP) in 1996 in favour of the Growth, Employment and Redistribution (GEAR) strategy marked a profound shift away from the RDP model of development that sought to reconcile participatory democracy with state-led development to a model of development that sought welfare receipts from a growing capitalist economy. The first drew on an impressive tradition of radical politics and scholarship showing the complicity of the capitalist sector in the emergence of apartheid. The second married welfarism, market-oriented policies and the racial transformation of economic ownership and control. The first was deeply sceptical of the ability of the capitalist sector, even in a growing economy, to generate developmental outcomes. The second was a bet that it could.

Developmental welfarism started during the Mandela presidency (1994–1999), though its specific institutional form took shape during the Mbeki era. It was organised around three policy platforms and an organisational shift:

- Massive expansion of the grants system for the poor and the unemployed, focusing principally on mothers and the aged.
- A strong focus on 'deracialising' control of the economy through affirmative action policies designed to fast-track the placement of black people into management and senior management positions.
- Transformation of white ownership of the economy through BEE policies.

Mbeki's fourth innovation was the organizational shift of political control away from the ANC itself to the Presidency – an institution that he sought to build into a powerful apparatus of control and coordination at the centre of the state. These actions were to support the aspiration of creating a South African version of the developmental state.

The 2007 'Polokwane moment' when Mbeki was unseated as President of the ANC is often said to be the revenge of Luthuli House against Mbeki's *bonapartism*. The party re-established control of the state by recalling a sitting state president and installing a temporary replacement until the conditions were in place for Zuma to become president. Reflecting Zuma's commitment to the party branches, in his final address to the 52<sup>nd</sup> ANC National Conference he noted that "ANC branches are supreme".<sup>8</sup>

The 'Polokwane moment' represented a three-pronged reaction to Mbeki's approach:

- The shift in power from Luthuli House to the Presidency was resented, particularly by provincial party bosses.
- Black business was unhappy with an approach that hitched their accumulation potential to the commitments of white business and wanted more state support for black business.
- Radical factions resented the accommodation of business and limited nature of state intervention.

<sup>8</sup> ANC 2007. 52<sup>nd</sup> National Conference closing speech. [Online] Available: <http://www.anc.org.za/content/52nd-national-conference-closing-speech-anc-president-jacob-zuma>.

During his years as president, Mbeki's pragmatic approach to business was to engage CEOs via 'working groups'. Zuma's election created the conditions that resulted in the rise of the SOEs and preferential procurement as the primary means for creating a powerful black business class. At first, this was welcomed by the radical factions who interpreted this as a commitment to enhanced state intervention. But the Polokwane conference represented more than this. It was based on a conviction about the nature of economic change in a society where the African majority remain subordinated to white interests

#### An Africanist conviction

At least since the historic Morogoro conference in 1969 the position of the ANC has been that the anti-apartheid struggle was a nationalist struggle led by the working class. The ANC said then that "the main content of the present stage of the South African revolution is the national liberation of the largest and most oppressed group – the African people."<sup>9</sup> In the 1969 text this was a strategic consideration, tempered by the fact that if Africans could deliver political freedom, it was the increasingly organised working class that would deliver economic freedom. The relationship between these 'phases' of the 'national democratic revolution' have defined the terms of political struggle within the ANC and its alliance with Cosatu and the South African Communist Party ever since.

There were signs of a shift at the 1985 ANC conference in Kabwe. For all its analysis of the South African 'social formation' as capitalist and its identification of the 'ruling class' as made up of white monopoly capitalists there was no mention of the working class as a protagonist of change. The ANC has struggled with this question of who the 'motive forces' of the national democratic revolution are – the working class or Africans? During Mbeki's era, the answer was the latter in his famous 'I am an African' speech.<sup>10</sup> The challenge, however, is that it was neither Africans as a whole nor the working class per se that benefited most during the post-1994 period.

Despite the economy growing at a rate faster than anything seen in South Africa since the 1960s due to the economic policies Mbeki promoted, black ownership of the economy remained unremarkable. Mbeki noted this in his speech at the Polokwane conference.<sup>11</sup>

*Black ownership of the economy as a whole remains very low; a recent survey put black ownership of the economy at about 12 percent ... If we take foreign ownership of South African-based firms into account, black ownership might be about 15 or 18 percent of local ownership. While we are progressing, our rate of progress is unacceptably low, and we cannot take our eyes off the empowerment challenge.*

<sup>9</sup> SAHistory.org, n.d. *Strategy and tactics statement*. [Online]

Available: <http://www.sahistory.org.za/archive/strategy-and-tactics-statement-adopted-anc-morogoro-conference-april-may-1969-abridged>.

<sup>10</sup> Mbeki.org, 2016. *I am an African speech*. [Online] Available: <https://www.mbeki.org/2016/06/01/i-am-an-african-speech-by-president-thabo-mbeki-8-may-1996/>.

<sup>11</sup> IOL.co.za, 2010. *Mbeki's speech at ANC conference: Part 1*. [Online] Available: <http://www.iol.co.za/news/politics/mbekis-speech-at-anc-conference-part-1-382829>.

<sup>12</sup> Polity.org, 2010. ANCYL: Malema: Address by the president of the ANCYL at the 1st National General Council, Midrand. [Online]

Available: <http://www.polity.org.za/article/ancyl-malema-address-by-the-president-of-the-ancyl-at-the-1st-national-general-council-midrand-25082010-2010-08-26>.

<sup>13</sup> SAHistory.org, 2017. *Draft declaration by the ANC*. [Online]

Available: <http://www.sahistory.org.za/archive/draft-declaration-anc-20-december-2012-53rd-anc-annual-conference-mangaung>.

Yet the problem was not simply the slow pace of change. The 'Polokwane moment' was informed by a basic conviction that the economy remained in white hands and because of this the 'people' did not share in the wealth of the country. When Malema as ANC Youth League leader announced the slogan of 'Economic Freedom in Our Lifetime' in 2010, a recall of an older slogan from the 1940s, he insisted on the promise of the Freedom Charter. "Simply put," he explained, "economic freedom in our lifetime means that all the economic clauses of the Freedom Charter should be realised to the fullest."<sup>12</sup>

The problem with BEE up until at least 2007 was that white businesses – referred to as 'white monopoly capital' in government discourse since 2014 – could game the policy through fronting, the practice of either appointing blacks to positions without decision-making authority or by bringing in 'empowerment partners' on terms that did not alter the balance of economic power in firms. In other words, the BEE route to transformation left white monopoly capital intact. Moreover, it had produced a small black elite, while leaving ordinary people, especially women and youth, excluded from the economy.

#### What was the alternative?

When Julius Malema was expelled from the ANC in 2012 and formed the Economic Freedom Fighters (EFF) the alternative to BEE was expressed as the need for nationalisation of the mines and land. Malema's critique resonated with the Fanonist critique of post-colonial nationalist movements in Africa. Later, the EFF would ground its analysis in what it claimed was a reconciliation of Fanon and Marxism-Leninism. Yet within the ANC another strategy was beginning to emerge.

It was grounded on the simple conviction that the economy was transformed to the extent that the grip of white monopoly capitalism was broken, and that black people would own and control large-scale companies. The 53<sup>rd</sup> ANC National Conference held in Mangaung in 2012 set the stage for what was to emerge.<sup>13</sup>

*[W]e are boldly entering the second phase of the transition from apartheid colonialism to a national democratic society. This phase will be characterised by decisive action to effect economic transformation and democratic consolidation, critical both to improve the quality of life of all South Africans and to promote nation-building and social cohesion.*

The Mangaung conference was preceded by the Black Business Council's (BBC) 2012 split from Business Unity South Africa because they argued that their interests were not well represented in the organisation. After the split the BBC became the preferred business partner of government. The name of the council is misleading

because it is a professional umbrella institution representing the Black Management Forum, the Association of Black Chartered Accountants, the Black Lawyers Association and the Association of Black Securities and Investment Professionals. Michael Spicer, former CEO of Business Leadership South Africa, contends that although the government formally regretted the rupture, through its funding and other material support, it was happy to support an exclusively black business organisation. The BBC also assumed a higher profile role in the delegations of business people taken on President Zuma's international travels.<sup>14</sup>

The National Empowerment Fund was used to fund the BBC in 2012 with a R3 million grant to promote black economic empowerment. The support was meant to provide an alternative voice to what was perceived by government as a marginalised group given the history of South Africa. The Department of Trade and Industry (DTI) provided support amounting to R7 million for similar purposes. The first expression of the Mangaung resolution was in an announcement made by the DTI in 2014, after the BBC had lobbied Zuma. In discussion of a new programme of radical economic transformation, the DTI declared it would "create hundred Black industrialists in the next three years", further stating that:<sup>15</sup>

*Over the next five years, a host of working opportunities will become available to South Africans. For example, a new generation of Black industrialists will be driving the re-industrialisation of our economy. Local procurement and increased domestic production will be at the heart of efforts to transform our economy, and will be buoyed by a government undertaking to buy 75% of goods and services from South African producers [emphasis added].*

As discussed further in Chapter 3, the centrepiece of the strategy was to use the state's procurement spend to bring about radical economic transformation. This was not nationalisation, but the creation of a new black-owned economy.

The battleground for economic transformation was shifting away from the economy itself to the state and, specifically, to SOEs that outsourced massive industrial contracts to private-sector service providers. Enter Eskom, Transnet, SAA, the Passenger Rail Agency of South Africa (PRASA) and other SOEs as the vehicles for change. This model required preferential procurement from black-owned companies and the displacing of white-managed and -owned businesses from SOE-linked value chains.

The problem, however, was that the existing constitutional and legislative environment constrained this model of economic transformation by insisting that bidders for state contracts satisfied more than racial conditions, namely price and experience. In other words, the blackness of firms was not a sufficient condition for securing contracts from the state. Moreover, given that

white-managed and -owned businesses had more experience than emerging black companies, were better capitalised and, moreover, could bring in empowerment partners to circumvent racial conditions, it seemed that the formal rules of the game were rigged in favour of white monopoly capitalists and against black-owned businesses.

This model of economic transformation has received clearer theoretical and political articulation since then. The ANC's policy discussion paper circulated to branches in 2017 was titled *Employment Creation, Economic Growth and Structural Change*. This document uses the above cited resolution from the 53<sup>rd</sup> National Conference and the National Development Plan as a point of departure for defining radical economic transformation:

*Primarily, radical economic transformation is about fundamentally changing the structure of South Africa's economy from an exploitative exporter of raw materials, to one which is based on beneficiation and manufacturing, in which our people's full potential can be realized. In addition to ensuring increased economic participation by black people in the commanding heights of the economy, radical economic transformation must have a mass character. A clear objective of radical economic transformation must be to reduce racial, gender and class inequalities in South Africa through ensuring more equity with regards to incomes, ownership of assets and access to economic opportunities. An effective democratic developmental state and efficiently run public services and public companies are necessary instruments for widening the reach of radical economic transformation enabling the process to touch the lives of ordinary people.<sup>16</sup>*

It is hard to disagree with the ambitious content of this vision for inclusive structural transformation. As an ideology, it has very broad appeal because of South Africa's economic challenges.

This ideology, however, can also cement a coalition that (largely unwittingly) enables the betrayal of this vision by a power elite who are only interested in rent seeking and political survival, and who are prepared to use extra-constitutional and unlawful means to achieve their goals where necessary.

#### Understanding rents and rent-seeking

Since 1994, the South African government has adopted a wide range of policies that actively seek to reallocate resources across a wide range of sectors, including such things as housing subsidies, social grants, incentives for new black-owned industries, BEE strategies, preferential procurement, investments in education, land reform and tariffs.

For neoclassical economists, these expenditures are rents that require state intervention and therefore are usually inefficient – a

<sup>14</sup> Spicer, M. 2016. The business government relationship: What has gone wrong. *Focus* 78:3-19.

<sup>15</sup> Gov.za. 2014. *The DTI to create 100 black industrialists in next three years*. [Online] Available: <http://www.gov.za/dti-create-100-black-industrialists-three-years>.

<sup>16</sup> ANC.org. 2017. *Economic transformation discussion document*. [Online] Available: [http://www.anc.org.za/sites/default/files/National%20Policy%20Conference%202017%20Economic%20Transformation\\_1.pdf](http://www.anc.org.za/sites/default/files/National%20Policy%20Conference%202017%20Economic%20Transformation_1.pdf).

windfall gain for a private actor is a loss for society. Although this perspective is no longer influential, it has translated in the past into policy advice about how to 'level the playing field' and ensure 'good governance' by minimising state intervention to remove the conditions for rent seeking.

For heterodox economists, these kinds of beneficial rents are necessary during certain stages of development. State interventions such as using procurement to benefit certain groups, promoting research and development to create competitive sectors, protecting certain industries during the early phases of their development, favouring historically disadvantaged groups in various ways or subsidising certain actors/groups while they are establishing themselves are all deemed to be necessary developmentally beneficial rents if the goal is growth, development and poverty eradication. There is reference in the economics literature to both productive and unproductive rent seeking. The former (beneficial rents) seek to achieve clearly defined transformation goals and there is an exit plan. The latter become permanently captured by interest groups who would use their political power to hold on to rents even when they no longer perform productively.

Bearing in mind the definition of rents and rent seeking provided at the start of this chapter, comprehending rents and the competition to control rent seeking is key to understanding the contemporary political crisis. As we will argue, what started off, according to our findings, as collusion in relatively low-level corruption between the Zuma family and the Guptas has evolved into state capture and the repurposing of state institutions. In less than a decade the Zuma and Gupta families have managed to position themselves as a tight partnership that coordinates a power elite that aims to manage the rent seeking that binds the symbiotically connected constitutional and shadow states. What unites this power elite is an ideological commitment to building a black business class, using state institutions to drive investment and growth, and streamlining through centralisation the control of rent seeking. Different constituencies are attracted to different combinations of this political project, from those who simply want to be awarded SOE contracts to radicals pleased with more state intervention; from party loyalists terrified about electoral losses if the economy does not improve to a vast network of people who exchange loyalty for patronage. The resolutions of the 53<sup>rd</sup> National Conference and the 2017 ANC policy discussion document *Employment Creation, Economic Growth and Structural Change* capture this common purpose. But in reality, these resolutions and the 2017 policy document contradict what the Zuma-centred power elite does in practice.

To understand this political project, however, it is necessary to understand the limits of the post-1994 policy framework that Mbeki himself talked about at the Polokwane Conference.

#### From constitutional transformers to radical reformers

A critique of South Africa's transition to democracy has been developing for several years within mainstream ANC thinking

(originating in the ANC Youth League under Malema) that has focused on the profound continuities between the apartheid and the post-apartheid economies: glaring inequality that still largely coincides with the country's traditional racial profile. What is new about this critique is that it increasingly repudiates South Africa's constitutional settlement as an obstacle to radical economic transformation. This has led to the current clash between radical reformers and the constitutional transformers. The former want to subvert and bypass constitutionally entrenched institutions to manage rents on behalf of a power elite, while the latter seek to build state capacity to deliver on the 1994 promise of equality and development by managing rents to promote investment and service delivery.

This difference between the radical reformers and constitutional transformers lies in how the transition to democracy is understood. The institutions produced by this transition are associated with two different ways of doing politics. The constitutional transformers operate within the confines of the Constitution and are invested in institution building. That is, social and political transformation is deemed contingent on giving flesh to the socio-economic rights defined in the Constitution by building state administrations able to work programmatically to achieve progressive policy outcomes. Building a capable state is their aim, including limiting corruption wherever possible. There has been much activism from social movements on this front to force municipalities and national and provincial departments to implement their own policies and/or to comply with constitutional mandates. The Socio-Economic Rights Institute and the Social Justice Coalition, for example, have been using constitutional provisions to win struggles waged by poor communities.

Starting as a revolt against Thabo Mbeki, though not yet associated with a clear ideology, the 'Polokwane moment' gave rise to a new power elite that found a language of its own in the narratives of the radical reformers. Its protagonists claimed to speak for 'ordinary people', those who are not well educated, who don't speak English well, who live in shacks or small towns and rural areas and who are excluded from the economy and the formal institutions of the state. They constitute a politics profoundly mistrustful of the formal 'rules of the game', whether of the Constitution or of government. The formal rules are rigged, this position proclaims, in favour of whites and urban elites, and against ordinary people. Radical economic transformation is thus presented as a programme that must frequently break the rules – even those of the Constitution. The argument is compelling at first glance, especially because unemployment and poverty are presented as overwhelmingly black experiences.

#### The constitutional transformers

For those progressive forces that negotiated the democratic breakthrough and for the many people that moved into government after 1994, the constitution was deemed a framework *through which* transformation could be achieved.

The Constitution was based on a complex negotiated settlement, including a deal made with major conglomerates that they would mobilise investments in the post-apartheid economy – in particular, in manufacturing – to support the democratic project. At the time, a handful of people representing the conglomerates that owned the large bulk of assets could make this deal. However, as elaborated further below, the combined impact of the shareholder value movement, financialisation, trade liberalisation (from the General Agreement on Tariffs and Trades to the World Trade Organisation), BEE deals and import-dependency combined to break up these conglomerates and severely limit investment, particularly in the manufacturing sector.

Strategic refocusing (as required by the shareholder value movement) resulted in a massive increase in returns to shareholders that, in turn, undermined reinvestment (a total of R384 billion between 1999 and 2009, equal to 17 percent of gross fixed investment during this same period).<sup>17</sup> This was reinforced by transfers to BEE groups (R317 billion between 2000 and 2014 equal to 8 percent of gross fixed investment during this period).<sup>18</sup> These two sets of transfers (both underestimated here because they exclude transfers to external shareholders, and are only for specific periods) created disincentives for reinvestment because of the need to service the (often debt-based) equity claims of these groups.

Debt-based buyouts of key South African manufacturers (such as the South African Iron and Steel Corporation, Dorbyl and Scaw) by local and international companies limited investment in expansion because of the need to service company debt. Furthermore, international listings of South African companies promoted disinvestment rather than supporting the much-promised capital raising for inward investment. And debt-based expansion of consumption to deracialise the middle class resulted in consumer-rather than production-based growth (which largely reached its limits by the early 2000s).<sup>20</sup>

As a result, South Africa continues to lag its emerging market peer group in terms of investment expenditure as a share of gross domestic product. Data for 2012 for example, shows that in China and India investment levels were between 1.8 to 2.8 times that of South Africa. Yet the interesting anomaly is that the rates of return on investment in South Africa are not low; real returns have averaged around 15 percent between 1994 and 2008 while nominal returns were 22 percent between 2005 and 2008.<sup>21</sup> Notably these

rates of return are the same as that of China, albeit over a longer period. Usually investment levels are high if returns on investment are high. Not so in South Africa. What this suggests is that non-price factors have affected the level of investment in South Africa. These range from product and factor market distortions to structural concerns around political stability and governance. The rate of return, therefore, is not the only factor that guides and influences investment levels in an economy. Furthermore, and exacerbating the problem, South Africa's notoriously low savings levels (fueling our consumption-driven economic growth trajectory) means that we rely on short-term capital flows to finance domestic investment. The dependence on short- to medium-term capital inflows tends to perpetuate dependence on the resource sector, processors of resources, and powerful, publicly-quoted oligopolies in the services sector. The market power of these companies produces the generous margins that portfolio investors seek.<sup>22</sup>

The upshot is that South Africa remains dependent on short-term capital flows to finance investment focused on a narrow band of capital-intensive or highly concentrated sectors, in an environment of low-savings and high internal rates of return. The path dependency then in this job-starved, capital intensive growth trajectory is starkly evident. The most significant result of this economic conundrum is that poverty, when measured using the official national poverty line (as updated in 2011), increased from 31 percent in 1995 to 53.8 percent in 2011.<sup>23</sup>

Instead of using the post-1994 moment to attack the unproductive structure of the economy (in particular the mineral-energy-complex), the constitutional transformers adopted economic policies that were inappropriate to direct the restructuring of the extractive institutions at the centre of corporate South Africa. They assumed that a remarkably simple mix of economic policies would provide the framework for macroeconomic stabilisation and growth of a market-driven economy. These included inflation and public expenditure controls; removal of market 'distortions' such as tariffs, capital controls, excessive labour market protections and requirements to lend to particular sectors (to avoid inefficient rents); a faith in foreign direct investment and the associated transfers of technology and management efficiencies.<sup>24</sup>

This economic cocktail was coupled to an equally simple equation of development with fiscal policy, resulting in a massive expansion in expenditures on welfare, housing, health and education.<sup>25</sup>

<sup>17</sup> Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.

<sup>18</sup> Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.

<sup>19</sup> Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.

<sup>20</sup> Khan, F. 2013. Poverty, Grants, Revolution and 'Real Utopias': Society must be Defended by any and all Means Necessary! *Review of African Political Economy*, 40(138):572-588; Swilling, M. 2008. Tracking South Africa's Elusive Developmental State. *Administratio Publico*, 16(1): Mohamed, S. 2010. The State of the South African Economy. In: J. Daniel, P. Naidoo, D. Pillay and R. Southall. (Ed.). *New South African Review 1: Development or Decline?* Johannesburg: Wits University Press.

<sup>21</sup> Bhorat, H., Cassim, A. & Hirsch, A. 2014. Policy co-ordination and growth traps in a middle-income country setting: the case of South Africa. Cape Town: University of Cape Town. Paper commissioned by the United Nations University-WIDER and Korea International Cooperation Agency, WIDER Working Paper 2014/155.

<sup>22</sup> Bhorat, H., Hirsch, A., Kanbur, R. & Ncube, M. (2013). Economic Policy in South Africa Past, Present, and Future. In H. Bhorat, A. Hirsch, R. Kanbur, & M.Ncube (Eds.) *The Oxford Companion to the Economics of South Africa*. Oxford: Oxford University Press.

<sup>23</sup> Bhorat, H., Naidoo, K., Oosthuizen, M. & Pillay, K. 2015. *Demographic, employment, and wage trends in South Africa*. WIDER Working Paper Number 141. Helsinki: United Nations University World Institute for Development Economics Research. ([wider.unhcr.org](http://wider.unhcr.org)).

<sup>24</sup> Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.

<sup>25</sup> Swilling, M. 2008. Tracking South Africa's Elusive Developmental State. *Administratio Publico*, 16(1); Khan, F. 2013. Poverty, Grants, Revolution and 'Real Utopias': Society must be Defended by any and all Means Necessary! *Review of African Political Economy*, 40(138):572-588.

The combination of market-oriented macroeconomic stabilisation and development-as-welfarism did not adequately address the problem and consequences of low investment levels caused by the way the South African corporate structure was being transformed by a combination of shareholder value, BEE deals and financialisation.<sup>26</sup>

Critics of the post-1994 market-oriented economic policies argued that international evidence shows that public investment does not in fact displace private investment; but instead it catalyses private investment. Furthermore, international experience shows that lowering tariffs without restructuring by using industrial policy had proven unviable in other contexts (especially where developmental rent management worked well). These critics further argued that capital account stability was a good thing; that a stable well-paid workforce was preferable to an over-indebted underemployed poorly paid workforce; and that the state needed to actively lead corporate restructuring to ensure that investment rather than dividends and rents was prioritised.<sup>27</sup>

Although the adoption of the developmental state discourse in the early 2000s marked a realisation that the state needed to play a stronger leadership role in the economy, this entailed a narrow focus on infrastructure-led growth to draw in private investors rather than strategies to guide corporate restructuring and private-sector investment into strategic industrial sectors.

When Mbeki was forced to resign as president, the ANC was facing the consequences of growing inequalities, persistent poverty and remarkably high unemployment levels. This prompted the ANC Youth League to lead the way in calling for more radical economic transformation. All talk of privatising SOEs fell away as they came to be viewed as key instruments for ratcheting up investment levels in the wake of the ongoing failure of the corporate sector to adopt a long-term dividend-oriented approach to investment. At the same time, there was growing dissatisfaction in the black business sector – the slow pace of accumulation in this sector was blamed on an over-dependence on the white corporate sector.

#### The radical reformers

The rise of Zuma can be understood in this context. With an economic environment set by the developmental state discourse, infrastructure-led growth, BEE, the emerging significance of the SOEs and state-investment institutions like the Public Investment Corporation, conditions were ripe for an assertive power elite to repurpose state institutions in the name of addressing the contradictions of the Mbeki era. As discussed in Chapter 3, the solution of the Zuma faction was heavy dependence on the use of the procurement systems of the SOEs. Repurposing the SOEs to become the primary mechanisms for rent seeking at the interface between the constitutional and shadow state became the strategic focus of the power elite that formed around Zuma. To facilitate this, they needed brokers to help bypass regulatory controls and shift money around (through local and international financial institutions)

to finance deals as well as the transformation of the ANC into a compliant legitimating political machine. The Gupta networks emerged as the anointed brokers of this expanding rent-seeking system.

#### Repurposing the state

Yet the politics of radical economic transformation, despite the slogan, is not focused on the economy, but on the state. This was most clearly expressed in the National Macro Organization of State (NMOS) Project launched on 4 June 2014 at a NMOS project team workshop attended by all national government departments. The NMOS was established to implement the new Cabinet portfolios announced on 25 May 2014 after the general election. Significantly, the NMOS steering committee, comprising all Director-Generals and chaired by the Director-General in the Presidency, reports directly to the president. The Department of Public Service and Administration (DPSA) acted as the secretariat of the NMOS project team, which reported to the steering committee. The NMOS was ostensibly about the renaming of some departments (e.g., the Department of Water Affairs to the Department of Water and Sanitation), the splitting of existing departments (e.g., the Department of Women was created from the Department of Social Development), creation of new departments (e.g., the Department of Small Business Development), transfer of functions from one department to another, and reorganisation of departments (especially those who received new functions).

The 2014 NMOS built on and reinforced the 2009 NMOS that initiated the proliferation of Cabinet portfolios. However, there was a renewed urgency in the 2014 NMOS with the Department of Government Communication and Information System insisting in its communication strategy for the NMOS that "[t]he reconfiguration of Cabinet and government departments is meant to create a *capable state* that will be able to implement the National Development Plan, respond to the current challenges and *speed up service* delivery to improve the lives of all people who live in South Africa [emphasis added]". As this statement suggests, the emphasis was that the NMOS Project be presented as improving service delivery. However, what 'capable' meant and how to 'speed up' service delivery was never further elaborated. All attention was focused on the operational details, specifically how many departments and who was responsible for what. By this point, Minister of Public Enterprises, Malusi Gigaba, appointed on 1 November 2010, had also taken the first steps towards repurposing the SOEs. Throughout his tenure until 2014 as public enterprises minister, Gigaba was engaged in the restructuring of SOE boards, which became broadly representative of 'Gupta-Zuma' interests.

Over the last 20 years the value of goods and services that government purchases, largely from the private sector, has grown to between R400 and R500 billion a year. This figure is testament to the near complete outsourcing of government's core functions. Ironically, as government does less, there is more and more of it – personnel, ministries, departments, agencies and entities.

<sup>26</sup> Mohamed, S. 2010. The State of the South African Economy. In: J. Daniel, P. Naidoo, D. Pillay and R. Southall. (Eds.). *New South African Review 1: Development or Decline?* Johannesburg: Wits University Press.

<sup>27</sup> Zalk, N. 2016. *op. cit.*

## The appointment of Malusi Gigaba as Minister of Public Enterprises marked the start of the systemic reconfiguring of the SOE boards.



**November 2010**  
**Malusi Gigaba – Appointed Public Enterprises Minister.**

**December 2010**  
 Appoints Department of Trade and Industry official Iqbal Sharma to Transnet board.

**December 2010**  
 New Age reports that Brian Molefe will become Transnet CEO.

**February 2011**  
 Appoints Brian Molefe Transnet CEO.

**July 2012**  
 Anoj Singh becomes Transnet CFO.

This duo sign-off on some of the most controversial Gupta-Transnet linked contracts, including the work directed to Trillian.

### June 2011

Announces wholesale changes to some SOE boards:

#### Eskom:

Nazia Carrim is the wife of Muhammed Noor Hussain, family member of Gupta business associate Salim Essa.

Romeo Khumalo is a co-director with Essa in a company.

Mark Pamensky is a former director in Gupta company, Oakbay.

Marriam Cassim previously worked for Gupta company, Sahara.

Ben Ngubane was in business with Essa.

Kuben Moodley was in business with Pamensky and advises Gupta-aligned Mines Minister Mosebenzi Zwane.

Viroshni Naidoo is Kuben Moodley's husband.

#### Transnet:

Tries to make Sharma Board Chair, but Cabinet veto's reportedly based on his proximity to the Gupta family.

Transnet then creates the Board Acquisitions and Disposals Committee to supervise the planned pipeline of future large-scale infrastructure spending (tenders worth more than R2.5billion).

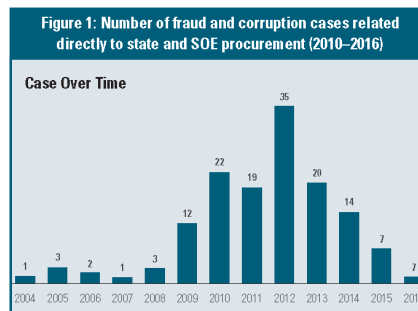
Sharma appointed to chair this committee.

Essentially government has become a massive tender-generating machine. The Public Affairs Research Institute called it a “contract state”<sup>28</sup>. This constitutes the core of what could in theory be a system for allocating beneficial rents to drive development. In reality it has provided many opportunities for entrenching clientelism and patronage networks that become dependent on the favour of those who make the decisions at the top of the pyramid. Seen from this angle, the NMOS can be seen as a framework that enabled the knitting together of the symbiotic relationship between the formalities of bureaucratic governance in the constitutional state and the increasingly significant informal networks of the ‘shadow state’, reinforced by the Guptas as external brokers (see Chapter 2) and a parallel set of increasingly compliant intelligence and policing apparatuses (see Chapter 3).

The proliferation of government departments at the national and provincial levels from 2009 onwards to extend the political patronage networks followed the decentralisation of financial accountability to departmental heads (defined as chief accounting officers). This process of decentralisation of financial accountability followed the abolition of the State Tender Board in 2000. The rationale for these financial management reforms came from the ‘new public management’ movement that became popular internationally and in South Africa (via the public management schools) during the 1990s.

Extolling the virtues of ‘steering and not rowing’, the movement depicted contracting out and decentralisation of financial accountability as institutional reforms for improving the efficiency of the public service. However, lessons from the around the world show that combining the decentralisation of financial accountability with a ballooning of the public service creates ideal conditions for a proliferation of corruption. One without the other is preferable, but together these conditions create a perfect storm. The result in South Africa was the expansion across all levels of government (national, provincial and local) of a competitive kleptocratic culture. By the 2014 election, this culture had been in place for more than a decade.

To substantiate the above argument, we analysed the fraud and corruption cases for the period 2010–2016 that relate directly to procurement by state institutions and SOEs. There were 166 cases involving amounts ranging from R70 000 to R2.1 billion. The total amount at stake for all these cases is a staggering R17 billion. However, some caution is required in understanding this figure. Not all the amounts are known for all the cases, which means it could be an underestimation. Also, the documentation we reviewed sometimes refers to the contract value and sometimes to the amount that has been fraudulently or corruptly misappropriated. What is significant, though, is that the evidence supports the argument that fraud and corruption proliferated during the 10 years leading up to 2014, peaking in 2012.



**Table 1: Value of fraud and corruption charges against Transnet, Eskom and the South African Social Security Agency (2010–2013)**

Region	Date	PC#	Particulars of the case	Charges	Amount
Gauteng	2010	PC027	Transnet Johannesburg CAS 2573/08/2010	Fraud & corruption	R 95.6 mill
Gauteng	2012	PC059	Eskom (emergency coal) Gauteng. SEOU enquiry CAS 04/03/2012	Fraud & corruption	R 121.7 mill
Gauteng	2013	PC082	South African Social Security Agency (SASSA) Payment of Social Grants Net1 Allpay Sunnyside CAS 1274/01/2013	Fraud, corruption and Public Finance Management Act (1999) transgression	Unknown

Signalling that the power elite around Zuma was concerned about increasingly competitive and out of control corrupt practices at the lower levels, Zuma instructed then Minister of Finance Pravin Gordhan to lead an initiative to investigate Malema-linked rent-seeking practices in Limpopo in 2012. Although Limpopo accounted for only 10 percent of the 166 cases analysed, the amounts involved equalled 15 percent of the total amount for all 166 cases.

Gordhan did more than just investigate – he shut these networks down. The political fallout from this episode (including the repercussions of the expulsion of Malema earlier that year) in the context of spreading corruption in all provinces led Zuma and other leading national figures to start calling for the re-establishment of the State Tender Board. This reflected a deeper underlying concern, not with rent seeking per se, but with the fact that there was too much rent seeking competition at the lower levels of the state that was out of control (hence the reference in the ANC 2014 Election Manifesto to the need to centralise tenders).<sup>29</sup>

<sup>28</sup> PARI. 2014. *The Contract State: Outsourcing and Decentralisation in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute.

<sup>29</sup> Another example of an action to shut down lower level corrupt rent seeking was the 18-month investigation into corruption in the Nelson Mandela Bay Municipality led by Crispian Oliver that started in 2015 (Oliver, C. 2016. *State capture at a local level – a case study of Nelson Mandela Bay*. Johannesburg: Public Affairs Research Institute). This investigation, commissioned by Pravin Gordhan when he was Minister of Cooperative Governance and Traditional Affairs, was most likely allowed to proceed to conclusion because the Gupta-Zuma network were not implicated, meaning it was most likely seen as contributing to the reinforcement of the centralisation of control of rent seeking practices.

The Limpopo episode may not have triggered, but it certainly reinforced, what appears from the outside to be a coherent multi-pronged strategy to centralise control of rent seeking by an increasingly confident power elite. In practice, there was a guiding goal to centralise control, but this was achieved via a mish-mash of tactical decisions to exploit opportunities as they came up in opportunistic ways. The absence of strategic coherence and coordination meant there were many contradictory outcomes, mishaps, miscommunications, fall-outs and breakdowns along the way.

With the takeover of the National Treasury now made possible by the appointment of Malusi Gigaba as Minister of Finance, centralisation of rent seeking to consolidate the symbiosis between the constitutional and shadow state has moved into a new implementation phase. The increased confidence and brazenness of the Gupta networks on SOE boards and in senior management since the reshuffle confirms this.

#### In summary: seven broad areas of capture

The evolution in recent decades of rent management systems within neopatrimonial regimes around the world has taken many forms. In summary, though, they can be characterised within a spectrum that ranges from centralised/coordinated to chaotic. The South African rent-seeking system is a kind of hybrid, partly because of Zuma's personally vulnerable position due to outstanding and unresolved charges against him, the Constitutional Court finding on Nkandla and his embeddedness within a well-structured constitutional order. He aspires to be like Putin or Angola's Dos Santos, but is entangled by constitutional state requirements he cannot dispense with (like reporting to Parliament and subordination – at least for now – to the Constitutional Court) and competitive dynamics within the shadow state that the Gupta networks do not always control (witness the PRASA debacle).

As Chapter 2 outlines in detail, the Guptas managed to position themselves as the key strategic brokers of the networks that connected the constitutional and shadow states. They began with little more than a tight connection to Zuma. Like Schabir Shaik before them, they turned this political capital of having access to the president to their advantage to secure deals in his name in return for a percentage of the contract. The inclusion of Zuma's twin children in Oakbay companies as early as 2009 was used to full advantage. For Zuma and others around him, it was convenient to have a single clearinghouse where deals were brokered and financial transactions managed at a distance, especially if this clearinghouse was managed by non-South Africans with no loyalties to factions within the ANC. The word in black business circles was that without a deal with the Guptas, landing contracts with SOEs would be impossible.

This raises the question about whether there is in fact a strategic centre of sorts. In general, the answer is no. Nor is there one single powerful network that overrides all others. The clearest and most disturbing indicator that the South African rent-seeking system

tends towards the chaotic end of the spectrum is the collapse of the cabinet system as the core of the executive branch of the state (see Chapter 3).

There is evidence that Zuma tends to govern via a set of 'kitchen cabinets' comprising selected groups from different networks. Kitchen cabinets are small informal reference groups that are convened on an as-needed basis. They can also be shell structures that are activated when needed. As will be demonstrated, they have been known to be drawn from the state security establishment, Gupta networks, SOE sector, sub-groups of cabinet ministers and deputy ministers, family networks, international networks (e.g., Angola, Russian intelligence), key black business groups, the ANC (in particular the Premier League and Magashule), and selected loyalists in the public service (usually loyal director generals).

Kitchen cabinets can be once-off consultative events (e.g., with black business), or semi-permanent structures like inter-ministerial committees comprising people from different sectors and environments to tackle a common issue, or regular meetings with key networks (e.g., the Guptas or family networks). They are essentially how the competing nodes within the power elite coalesce and disperse to influence decision-making. Given that it is well known that those with the greatest influence are those who have spoken last to Zuma, it is unsurprising that these kitchen cabinets will lobby hard for face-time and follow-through on the deals they want to see realised. When we refer to the 'power elite' in this report, it is essentially key individuals located in these networks who are united by a sense that they have an historic mission to ensure the emergence of a black business class powerful enough to displace the white business class that remains a dominant force in the economy. How this reconciles with the growing prominence of Gupta-linked/owned companies with limited BEE credentials that win key contracts (e.g. T-systems or Cutting Edge at Transnet) remains somewhat of a mystery.

In summary, this power elite has centralised control within seven broad areas (some of which are elaborated in greater detail in subsequent chapters):

- i. Securing control over SOEs by chronically weakening their governance and operational structures (chapters 3 and 5):

The appointment of Gigaba on 1 November 2010 as Minister of Public Enterprises marked the start of a systematic process of reconfiguring the boards of SOEs to ensure compliance, starting with his attempt to get little known DTI official and known Gupta associate Iqbal Sharma appointed as Transnet Board Chairperson in 2011 and the successful appointment of Brian Molefe as Transnet CEO in the same year. Throughout his tenure until 2014 as Minister of Public Enterprises, Gigaba was engaged in the restructuring of SOE boards. This, however, was only the first step in the repurposing of the SOEs. The second was to exploit the loophole

in the Public Finance Management Act that made it possible to use the procurement procedures of SOEs to benefit selected contractors who had been sanctioned by the Gupta network. The loophole is that SOEs are not required to table their budgets and expenditure plans in Parliament, unlike government departments, which means they cannot be scrutinised in the same way as departmental budgets and expenditures. The details of SOE expenditure can, therefore, be hidden from public scrutiny.

ii. Securing control over the public service via, for example, NMOS (Chapter 3).

After the 2014 election, the NMOS project steering committee reported directly to the president creating the opportunity to couple political loyalty and responsibility for specific functions and associated budgets with deals to effectively manage procurement to control the rent-seeking networks.

iii. Securing access to rent-seeking opportunities by shaking down regulations.

Government ministers acting in concert with private interests use regulatory instruments or policy decisions in an arbitrary manner to “shake down” incumbent businesses – including black businesses – and favour particular interests. Instead of prioritising job creation and economic growth, decisions are taken for the benefit of a particular company, faction or group. The Tegeta vs Glencore Optimum deal is an example.

iv. Securing control over the country's fiscal sovereignty.

And then, there is the National Treasury. Gordhan and the National Treasury were regarded as an obstacle to this project of centralising the management of rents. The National Treasury believed in levelling the playing field and good governance. Hence the establishment of the Chief Procurement Officer in 2013. The National Treasury were aware of and opposed the increasingly corrupted and centralised rent management system that Zuma's power elite was setting up. It used the Financial Intelligence Centre to track illicit financial flows in ways that illuminated the workings of the shadow state. Prior to the cabinet reshuffle, the Financial Intelligence Centre was the only intelligence agency not controlled by the Zuma network. And the National Treasury controlled the Industrial Development Corporation and the Public Investment Corporation, which is the second largest investor on the Johannesburg Stock Exchange.

Zuma's power elite realised that to effectively centralise control of rent seeking, they needed control of the Office of the Chief Procurement Officer, the Finance Intelligence Centre, the Public Investment Corporation and the unique power available to the Minister of Finance to issue guarantees. This is only possible if a loyal Minister of Finance is in place.

v. Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes.

Momentous national decisions appear to be taken on the basis of ad-hoc political judgments, without prior consideration of the legal, financial, economic or other public policy implications. Where technical opinions contradict the plans of vested factional interests they are arguably actively suppressed or excluded from consideration. Processes are constructed in a manner that avoids deliberation on basic facts and critical evidence (see The Special Significance of the Nuclear Deal).

vi. Securing the loyalty of the security and intelligence services by appointing loyalists (Chapter 3).

Securing control of the SOE boards went in conjunction with the process of removing key people from the security and intelligence agencies. They were replaced with loyalists who were prepared to use dirty tricks and other means to deal with troublesome individuals, especially if they were key players (see Chapter 3).

vii. Securing parallel government and decision-making structures that undermine the executive. This includes strengthening of the ‘Premier League’ (those with the apparent power to determine leadership positions).

There appears to be concerted efforts underway that undermine collective political institutions in the Executive, including Cabinet. It appears that critical decisions are delegated to handpicked groups, masked as Inter-Ministerial Committees, that are able to function in an unaccountable manner. Recent examples include:

- The IMC on Banks (purportedly set up to investigate the regulations and legislation that govern them, but strangely chaired by Mines Minister Mosebenzi Zwane and set up after the Bank's closed the Gupta bank accounts);
- The IMC on Communication, unusually chaired by the President;
- The National Nuclear Energy Co-ordination Committee (NNECC), chaired by President Zuma.

The nature of IMC's is that in and of themselves they lack transparency, in that they do not report to Parliament (which individual members of Cabinet are required to do) and they are not formulated in legislation (as is the case of formal Cabinet Structures).

Additionally, a series of political appointments at Cabinet and provincial government levels reinforced the Premier League, with Ace Magashule emerging as its de facto leader. The rise of Magashule to chief political confidante of the President, with rumours that Zuma views him as the preferred candidate for vice-president, points to the fact that since the 2014 election Zuma

has come to depend increasingly on the provincial party machines represented by the Premier League.

#### The special significance of the nuclear deal

It is no secret that one of Zuma's top priorities is to ensure that the nuclear deal with the Russians is finalised. Ignoring for the moment the obviously important issues that this is the most expensive form of power available, it is unaffordable now and will be more unaffordable when built due to inevitable budget overruns (as is normal in all Russian nuclear projects) and the procurement process has been illegal (as per the recent course case), what matters is that the nuclear deal has emerged from the depths of the shadow state system.

The Guptas bought their uranium mine because they assumed the nuclear deal would be done, and there is evidence that Russian intelligence has a presence in the Presidency to guide the process.

To ensure effective support for the nuclear deal, intelligence capabilities have been boosted that are now interfaced with the Gupta networks that brokered the shadow state transactions to pave the way for the nuclear deal. There are allegations that one set of transactions involved Russian funding for the local government elections, which may explain where the ANC managed to find R1 billion for this campaign.

The nuclear deal is also central to the consolidation of a new framework for radical economic transformation. If the nuclear deal is implemented, this will signify the final consolidation of Zuma's rent-seeking system as the glue that binds together the constitutional and shadow states. It is reasonable to assume that the Russians have linked the approval of the nuclear deal to major investment initiatives in the future that could be useful for shoring up support of black business.

It is arguable, therefore, that alternative energy futures are at the heart of the South African political crisis. According to the CSIR, in 2016 the price of renewable energy was 62c/KwH over the life cycle, compared to coal which was R1.03 - R1.20/KwH and nuclear was R1.30/KwH over the life cycle.<sup>30</sup> The CSIR estimated that the nuclear energy option could result in an increased annual cost of R90 billion compared to the cost of renewable energy. There is, therefore, no economic rationale for building nuclear power plants in South Africa. Many experts and commentators now argue that the only reason the Zuma-centred power elite push the nuclear option is because it creates an opportunity to extract rents on a massive scale while giving the Russians the strategic advantage they aim to achieve in building all their nuclear power plants. They are building nuclear power plants in 30 countries at the moment. As one commentator put it, a Russian nuclear plant is a 'combination of an embassy and military base' - to this one can add another

advantage: they give Russia financial control of the economy if the financing was done by issuing a sovereign guarantee.

#### Conclusion

We must understand the politics of the power elite around Zuma in this context. The political party he heads is ideologically committed to radical economic transformation, which is to be achieved in part by using government's procurement spend to favour black businesses. This, in turn, is the cornerstone of a strategy to displace the traditional corporates who have hitherto done little to increase gross domestic fixed investment. However, this ideology masks the repurposing of state institutions to enrich a narrow power elite.

This sets the context for understanding Gigaba's statements after he took office in April 2017. He made it clear that he is committed to radical economic transformation and that he does not intend depending on white monopoly capital. Now that they have control of the National Treasury via Gigaba, the power elite assumes they will have the wherewithal to centralise and control rent seeking. A key condition of success is a compliant ANC. Extracting a flow of funds via shadow state networks (such as during the PRASA deal – see Chapter 2) makes it possible to keep the ANC going, but as a giant political Ponzi scheme that legitimates what is going on by denying the existence and salience of the shadow state.

The politicisation of procurement as a means to achieve radical economic transformation frequently results in the subversion of service delivery mandates. Therefore, in recent years there have been purges of professional public servants and the repurposing of administrations away from their constitutional and legislative mandates. It has also opened departments and especially SOEs to massive competition and rivalry, not so much about policy, but about who gets what tenders. This weakens and often breaks administrations, which are then unable to deliver services. A vacuum is created that can be filled by transactions that occur within the shadow state. This is especially devastating for working families and for the poor, who are more dependent on government services than the middle class and the rich. Failures in health and education, for example, reproduce historical, racialised patterns of inequality. It distracts attention from the economy itself and the inclusive structural transformation that is needed to make the economy more productive and labour-absorptive.

Development in an unequal society cannot work without the allocation of beneficial rents. What matters is whether the rent management system is corrupted by clientilistic and patronage networks or not. Once it is corrupted, a process sets in that can lead to the hollowing out of the state, endemic conflict and economic collapse while an elite enriches itself. This cannot be allowed to happen.

<sup>30</sup> CSIR, 2017. Electricity scenarios for South Africa: presentation to the Portfolio Committee on Energy, Cape Town, 21 February 2017.

## How the Gupta's captured nuclear

The proposed 9.6GW nuclear project is one of the largest public investment programmes in South African history. Compared to the size of our economy, it would be one of the biggest investments undertaken by any country in the world.

### May 2010:

The Guptas and Duduzane Zuma buy Uranium One's Dominion Mine – later named Shiva Uranium – via an Industrial Development Corporation loan.

### 2011

Cabinet approves the Integrated Resources Plan (IRP2010) 2010-2030, a 20 year road map, outlining the mix of the country's future electricity generation. This includes the need for 9 600 MW of nuclear power but not as the primary solution. The IRP will be updated every two years.

Zuma establishes the inter-ministerial National Nuclear Executive Committee (NNEEC) as a political structure that will oversee the nuclear programme.

### 2014

Contract of the Director General of Dept of Energy Neliiswe Magubane – a trained electrical engineer with more than 15 years experience – is not renewed. The position is left vacant for nearly a year when Thabane Zulu is appointed Director General, with no experience in energy sector (from Human Settlements).

### 2015

Several things happen:  
Former Finance Minister Nene and former Energy Minister Tina Joemat-Pettersson accompany Zuma to Brics Summit in Russia where Nene is presented with a letter of guarantee, in his name, from the Russians, to sign against nuclear. He refuses;

A joint National Treasury – Dept of Energy Task Team is established to take the nuclear build programme forward and compile detailed preliminary report that models the fiscal and financial implications of nuclear;

This report is never submitted to any formal government structure. Instead during a Cabinet meeting on 9 December, Nene delivers a presentation laying out the unaffordability of Nuclear; and the Energy Dept., at the same meeting, submits a memo to Cabinet recommending that nuclear procurement go ahead. Cabinet approves this and hours later Nene is fired.

### 2017

DoE transfers procurement to Eskom

Eskom releases RFI

Court ruling declares the nuclear procurement plan invalid because government did not follow due process.



## Securing a Loyal Intelligence and Security Apparatus



### December 2009

President Jacob Zuma appoints **Menzi Simelane** as Director of the South African National Prosecuting Authority (NPA).

### December 2010

**Nomgcobo Jiba**, reportedly close to Zuma is promoted to Deputy the NPA.

### April 2011

Head of Crime Intelligence (a unit within the SAPS) **Richard Mdluli** is arrested and charged on counts of fraud and corruption, as well as for his alleged involvement in the murder of his mistress' husband. He has been on suspension since then.

### December 2011

**Menzi Simelane** is suspended following a Supreme Court of Appeal decision that his appointment is invalid.

### June 2012

Jiba suspends and institutes charges against Major General **Johan Booysen**, former Head of the Hawks in KwaZulu-Natal, who was investigating corruption charges against reported presidential ally, **Thoshan Panday**. He is subsequently arrested and charged with 116 crimes, including racketeering, murder and attempted murder. The charges are later withdrawn, following a court order in his favour.

### October 2013

**Mxolisi Nxasana** is appointed as NPA head. He clashes with Jiba and lays criminal charges of perjury, flowing from statements she made under oath in the course of the Booysen case.

### May 2014

President Zuma appoints **Nathi Nhleko** as Minister of Police and **David Mahlobo** as State Security Minister

### July 2014

President Zuma commences the process to remove Nxasana, after convening an enquiry to determine his fitness to hold office.

### October 2014

News of the so-called SAPS "rogue unit" breaks, implicating former Finance Minister **Pravin Gordhan** and former deputy SARS commissioner **Ivan Pillay**.

**Tom Monyane** has been appointed SARS commissioner the month before.

### December 2014

Police Minister **Nhleko** suspends Hawks Head **Anwar Dramat**. At the time he was reportedly about to launch an investigation into **Nkandla**.

### December 2014

**Nhleko** appoints Lieutenant General **Mthandazo Ntsemeza** as Acting Head of the Hawks (made permanent in Sept 2015)

### January 2015

**Ntsemeza** suspends Major General

**Shadrack Sibiyi**, former Head of the Hawks in Gauteng. At the time he was investigating **Mdluli**.

### March 2015

Police Minister **Nhleko** suspends **Robert McBride**, Executive Director of the Independent Police Investigative Directorate (IPID).

### May 2015

President Zuma "agrees" to let Nxasana resign. He is paid R17m – the balance of his ten-year contract. Civil society groups file a case to review the R17m golden handshake. In 2017 Nxasana says in his responding affidavit: "It was never my intention to make a request to leave the office, nor did I ever make such a request to the President ... The president's version in this regard is false."

In effect, this suggests President Zuma lied in his affidavit when he said Nxasana left on his own volition.

### June 2015

Zuma appoints Advocate **Shaun Abrahams** NPA head.

### September 2016

Jiba struck off the roll of South African advocates. She is placed on special

leave.

### March 2017

Hawks head **Berning Ntsemeza** loses his appeal and is ordered out of his position by the High Court based on his lack of integrity to hold such an office.

### March 2017

**Fikile Mbalula** is appointed police minister



David Mahlobo



Nathi Nhleko



Tom Moyane



Mthandazo Ntsemeza



Shaun Abrahams



Fikile Mbalula



Menzi Simelane



Nomgcobo Jiba



Thoshan Panday



Mxolisi Nxasana

## Securing a Loyal Intelligence and Security Apparatus



### 2013

An anonymous document emerges at the height of moves to oust trade union federation general-secretary Zwelinzima Vavi over his criticism of the Zuma administration claiming he was funded by US organisations to undermine the government.

### 2015

A blog claims former public protector Thuli Madonsela, former DA parliamentary leader Lindiwe Mazibuko and EFF leader Julius Malema are spies.

In the wake of #Feesmustfall student protests at Parliament, the government activates the National Joint Operational and Intelligence Structure (NATJOINTS), the government body that coordinates the joint work of the police, intelligence agencies and the military. At the time, this raises questions as ordinarily NATJOINTS is only activated when national security is threatened. State Security Minister David Mahlobo reportedly claims that he has intelligence that students were receiving military training, that academics were teaching Afro-pessimism and that NGOs were funding the protests on behalf of foreign forces.

Project Spider Web intelligence report emerges in an attempt to discredit National Treasury by claiming the department is effectively controlled by foreign interests.

### 2016

The Helen Suzman Foundation (HSF) is robbed in what is reported as a well-planned robbery executed in military style. The HSF has been at the forefront of several legal challenges in defence of our democracy.

The Gupta's hire UK-based public relations consultancy Bell Pottinger, which uses fake news, disinformation and other dirty propaganda, including orchestrating the "White Monopoly Capital" narrative and distorting the meaning of "Radical Economic Transformation", in order to divert people's attention away from their state capture project.

Former Finance Minister Pravin Gordhan, together with former SARS Commissioners Ivan Pillay and Oupa Magashule, are charged by NPA head Shaun Abrahams on various counts, including fraud and corruption, allegedly linked to their time at SARS. The charges are dropped for lack of evidence and are clearly a political battering ram.

### 2017

Chief Justice Mogoeng Mogoeng's office is broken into and 15 computers stolen containing information about judges and other court officials.

Former Social Development Director-General Zane Dango's home is broken into shortly after he resigns amid the social grant crisis. The house is ransacked but nothing is stolen.

Operation Checkmate Intelligence Report emerges, which Zuma reportedly uses to fire Gordhan and Jonas based on claims in the report that they are complicit with foreign forces to discredit government. The report is discredited by the ANC leadership.

An alleged "coup plotter" is arrested by the Hawks who claims he is linked to two absurdly named structures: "the Anti-State Capture Death Squad Alliance" and the "Anti-White Monopoly Capitalists Regime". This leads to civil society groups calling on South Africans not to be fooled by such an unlikely story, suggesting that the real motive is to create an artificial "security crisis" to justify more power and influence, and a closing down of democratic space.

# 2

## Power, authority and audacity: How the shadow state was built

*"I was taken aback and continue to be surprised by the fact that the representative of the said family finds such power, authority and audacity."  
– Former Prasa CEO Lucky Montana  
writing to then Prasa board chair Sifiso Buthelezi (2012)*

### Introduction

According to amaBhungane Centre for Investigative Journalism,<sup>1</sup> Siyabonga Mahlangu, special legal adviser to the then Public Enterprises Minister Malusi Gigaba, sent this text message to then CEO and chairman of SAA, Vuyisile Kona in December 2013:<sup>2</sup>

*Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she [Dudu Mnyeni] was going. U will compromise the mission.*

The text message was sent after a meeting at the Gupta's Saxonwold compound, which was attended by Mahlangu and Kona, where Kona reportedly was offered a R500 000 bribe, seemingly linked to a controversial Airbus fleet deal. The text, according to amaBhungane, likely referred to a subsequent discussion Kona had with Myeni, who was appointed chairperson of SAA a week later, and whose appointment, it appears, was discussed at the Saxonwold meeting. At the time, a SAA source, speaking in confidence to amaBhungane, said: "The 'mission' was clearly this contract, all of these contracts."<sup>3</sup> In hindsight, 'the mission' became a much bigger, more ominous and carefully orchestrated long-term plan, which would unfold over the next seven-plus years, culminating in what we now know as the capture of the state.

Nearly three years later in July 2016, Zuma, speaking in vernacular in a speech that received very little media coverage but which was captured in a YouTube clip, said:<sup>4</sup>

*If it were up to me, and I made the rules, I would ask for six months as a dictator. You would see wonders, South Africa would be straight. That's why, if you give me six months, and allow Zuma to be a dictator, you would be amazed. Absolutely. Everything would be straight. Right now to make a decision you need to consult. You*

*need a resolution, decision, collective petition. Yoh! It's a lot of work!*

Referring to the emergence of a shadow state, Gordhan said at the press conference after his removal as Minister of Finance:

*We have failed to join the dots.*

To 'join the dots', it is necessary to start with the emergence of the Gupta network that has become the lynchpin of the symbiotic relationship between the constitutional and shadow state. This report shows how the Gupta family gradually and systematically inserted themselves into Zuma's political and personal life before and after he became president.

Their privileged access to Zuma after he was elected was a form of political capital that they successfully transformed into a vast and powerful network that effectively brokered the process of state capture and the repurposing of a range of state institutions. They were useful for Zuma because they were dependent on him, and they could, therefore, be trusted to manage the shadow state transactions that Zuma required. They were loyal to him, not to any ANC faction or established business interest. They were essentially brokers and fixers who could make things happen for the Zuma-centred power elite with maximum deniability and limited culpability.

The broker-cum-fixer role played by the Gupta family is, of course, not unique to South Africa. In his PhD on the role of brokers in war economies in Africa, Dr Sybert Liebenberg, an independent public and development specialist, found that they are often non-nationals and that their primary aim is always to secure access to state resources, which requires at an early stage "the establishment of a management capability in close proximity to the actual resources"<sup>5</sup>. As "entrepreneurs or brokers" they facilitate and ultimately seek to control the "political market place"<sup>6</sup>. According to an article written by Dr Vashna Jagarnath, a senior lecturer in the Department of History at Rhodes University, "When Zuma won the Presidency, the alliance between the President and the Gupta brothers would make both the Gupta family and Zuma's family fabulously wealthy. This wealth did not come from the kind of productive investment

<sup>1</sup> This chapter 2 depicts the facets of Gupta linked state capture as it has been reported in the South African media and elsewhere. The authors did not research the underlying facts, unless otherwise indicated and the evidence is presented as a summary of published material and not as proof of the underlying facts. Opinions expressed by the authors are based on the reports, assuming their veracity.

<sup>2</sup> Skini, S. 2013 Gupta's tried to buy SAA boss. [Online] Available: <http://www.timeslive.co.za/sundaytimes/article790030.ece>

<sup>3</sup> Sole, S. 2013. R10-billion contract behind SAA dogfight. [Online] Available: <http://amabhungane.co.za/article/2013-03-22-r10billion-contract-behind-saa-dogfight>

<sup>4</sup> Jacob Zuma: 'If I were a dictator for just 6 months everything would be sorted'. 2016. Video. SouthAfricanism.com. Youtube: <https://www.youtube.com/watch?v=ma1NYSsqo8>

<sup>5</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

<sup>6</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

joburg-from-selling-shoes-to-assailing-the-state/#:WPSmqIN07UL

■ **Power, Authority and Audacity:  
How the Shadow State Was Built**

that creates jobs, pays taxes and lays the foundation for long-term economic development.” As we will see in Chapter 3, it followed from a political project that, increasingly, set itself up against the Constitution and the law and operated in the shadows of the state.<sup>7</sup>

**The Gupta family arrives in South Africa**

The Guptas, who emigrated from India to South Africa in 1993, were best known as the power behind computer marketer Sahara, but subsequently are known for their claimed close friendships with the Zuma family. Over the past two decades they have slowly inserted themselves as brokers within South Africa’s power networks, but their nimbleness in achieving this could hardly have been predicted given the obscurity of their past.

According to the *Sunday Times*, until 1989, the Gupta brothers – Ajay (51), Atul (48) and Rajesh (45) – grew up in a modest apartment block in Rani Bazar, Saharanpur, Uttar Pradesh, “a dusty, fly-infested city in northern India”<sup>8</sup> nearly 200 kilometres from Delhi. Their father, Shiv Kumar Gupta, died in 1994, and was, according to locals interviewed by the newspaper, comparatively relatively wealthy. He was, for example, one of a handful in the community to own a car. He apparently made a living running five cooperative stores, earning commission on the sale of oil, rice, wheat flour, and cornmeal to locals who qualified for government ration cards. He also apparently made money importing spices from Madagascar and Zanzibar through his Delhi-based business SKG Marketing.<sup>9</sup> According to historian Dr Jagamath:<sup>10</sup>

*Uttar Pradesh is a known as a notoriously corrupt state in which gangsters frequently double as politicians. Business is regularly conducted through the intersection of gangsterism and politics. To contain the fallout from the acute social costs of these kinds of arrangements, a rapacious political elite, divided along caste lines, has often backed authoritarian and violent forms of far-right populism, often termed fascism. The aim is to turn the working class and poor against vulnerable minorities, especially Muslims, rather than an endemically criminal and predatory political class. Under these conditions a devastating form of hypercapitalism has been able to thrive while rational, democratic and progressive forms of solidarity, discussion and organisation have become increasingly difficult.*

In a 2011 interview with the *Sunday Times*, Atul Gupta said: “We are never shy of our background. I am proud of it. We come from families that do not show or expose their business to others. It is considered showing off.”<sup>11</sup> Both Atul and Rajesh obtained Bachelors degrees in science from the JV Jain Degree College in Delhi and after graduating, all three brothers commuted between Saharanpur and Delhi for about four years to look after SKG Marketing, and settled in the city in the late 1980s. During this time Atul completed various computer courses and became a computer supervisor at a printing company in Delhi. The family then sent Atul to China to investigate businesses there, but this did not work out and the family set their sights on Africa. In the 2011 *Sunday Times* interview, Atul said: “... we didn’t have much option to invest in China because they only wanted us to buy between 5% and 12% (shares) in the factory, while Ajay wanted management control.”<sup>12</sup>

In 1993, Shiv Kumar sent Atul to South Africa because he believed “Africa would become the America of the world.”<sup>13</sup> In 1994, according to Atul, his family transferred R1.2 million into an account he had opened in South Africa. With this money, he opened Correct Marketing, an import and distribution business selling computers and components.

Around the same time, he also tried to set up a chain selling shoes imported from India, but struggled to get customers to pay. In about 1996, he sold Liberty Da Trend, the boutique he owned in Johannesburg’s Killarney Mall. Atul said: “I didn’t come with money. As and when I requested money, my family transferred the money.”<sup>14</sup> And so, from a modest turnover of R1.4 million in 1994, Correct Marketing’s sales rocketed to about R98 million in 1997 – the year its name changed to Sahara Computers – and was turning over R127 million by 1999, according to Pieter-Louis Myburgh’s recently released book *The Republic of Gupta: A Story of State Capture*. Ajay arrived in South Africa in about 1995 and Rajesh joined the Gupta businesses here in about 1997.

Given this fairly innocuous entry into South Africa, the origins of the Gupta’s close relationship with President Jacob Zuma and his family is even more intriguing. It remains unclear precisely how the Gupta family first inserted themselves into South Africa’s political class, but there seems to be consensus that it was through former Minister in the Presidency under Mbeki, Essop Pahad, who was formally introduced to Atul during a visit to India with Mbeki in 1996.<sup>15</sup> The meeting was brief and their friendship grew after

<sup>7</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>8</sup> Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: <http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/>

<sup>9</sup> Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: <http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/>

<sup>10</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>11</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>12</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>13</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>14</sup> Jagamath, V. 2016. *Ajay comes to Jo’burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#WPsmqIN97U1>.

<sup>15</sup> Myburgh, PL. 2017. *The Republic of Gupta: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg.35.

the Guptas moved to South Africa.<sup>16</sup> In 2006, Ajay Gupta, on the recommendation of Pahad, was appointed to serve on South Africa's International Marketing Council of South Africa (later named BrandSA)<sup>17</sup> and, in 2010, it seems the Gupta family made an early breakthrough with Pahad, funding his magazine *The Thinker* (the magazine is still publishing but no longer funded by Guptas). Pahad also sat on the board of Sahara. During Mbeki's administration, the Guptas apparently spoke of regular visits to the Mbeki family, but it seems that – except for their relationship with Pahad – they were unable to gain traction. Myburgh's book describes how Atul was included in a confidential consultative business council constituted by Mbeki in about 2006<sup>18</sup> but the Thabo Mbeki Foundation has distanced the former president from any meaningful association with the Guptas.<sup>19</sup> According to a *Sunday Times* interview, Atul Gupta claimed that they met Zuma "around 2002, 2003 when he was the guest at one of Sahara's annual functions."<sup>20</sup>

#### Jacob Zuma comes to power

Jacob Zuma was elected ANC President at the Polokwane conference in December 2007. In July 2008, Duduzile Zuma, his 26-year-old daughter, was asked to join the board of the Gupta technology company Sahara Computers (she resigned in 2010).

Duduzane, her twin brother, was also taken under the Gupta's wing and joined Sahara, though the date is unclear. The twins were two of the five children of Jacob Zuma and Kate Mantsho, who committed suicide in 2000. Zuma is reported as having always felt particularly concerned about their wellbeing.

By May 2009, the closeness between Zuma and the Guptas was noted in the media when the president personally thanked Atul Gupta at his closing address of the Twenty20 India Premier League, which Sahara had sponsored.<sup>21</sup> At face value, this may have seemed like the courteous thing to do (given the Gupta's sponsorship of the event), but historian Jagamath gives this event interesting context against Indian culture. Commenting on a later cricket event, also hosted by the Guptas – a Twenty20 match between South Africa and India at Durban's Moses Mabhida Stadium in January 2011 – Jagamath wrote:<sup>22</sup>

*One of the Guptas' early attempts at giving a positive spin to their personal wealth and power began with an event held at the Moses Mabhida stadium in Durban on January 9, 2011. This event was held after a Pro20 cricket match between South Africa and India. It celebrated the achievements of Indian cricket*

*legend Sachin Tendulkar and South African cricket great Makhaya Ntini. Bollywood, cricket and politics were choreographed into a single spectacle. This event borrowed directly from a model long established in India where a toxic mix of politics, Bollywood and cricket has been standard practice for many years. Popular film and sport have been corrupted to produce a politics of spectacle designed to serve the interests of a reactionary and rotten political class. The Durban event bore all the hallmarks of this well-established form of political spectacle. Zuma was placed in a lineage that ran from Gandhi to Mandela and surrounded by Bollywood stars, cricket heroes and schmaltzy shots of the Guptas' mother. The celebrity, sequins, bad lighting, lip-synching and bogus interpretations of history were aimed at wooing the audience into political narcolepsy.*

The Guptas used this match as an opportunity to simultaneously host a concert to mark the launch of their newspaper, the *New Age*, which was formed in June 2010 and published its first edition in December 2010. At the time of the Twenty20 match and concert, the media reported: "Bollywood heavyweights, Shahrukh Khan, Anil Kapoor, Shahid Kapoor and Priyanka Chopra, will lead a star-studded line-up that will perform in the New Age Friendship Celebration Concert, which brings together leading entertainment stars from South Africa and India."<sup>23</sup>

#### Origins of the nuclear deal

In May 2010, exactly a year after the first Gupta sponsored Twenty20, the media broke a story that Gupta-owned company Oakbay Resources and Energy, together with minority shareholders, including Duduzane Zuma's BEE vehicle, Mabengela Investments, was the buyer of Toronto-listed Uranium One's Dominion mine in Klerksdorp. Oakbay paid \$37 million (about R280 million). Mabengela Investments is reportedly jointly controlled by Duduzane Zuma and Gupta brother Rajesh (Mabengela is named after a hill overlooking President Jacob Zuma's Nkandla homestead).<sup>24</sup>

At the time that Oakbay bought Dominion – later named Shiva Uranium – media speculation was rife that President Zuma had intervened a month earlier, in April 2010, to extend the tenure of then Public Investment Corporation head Brian Molefe to facilitate negotiations towards a large investment in the project.<sup>25</sup> The Presidency denied these allegations, saying that the president's son was, "a businessman in his own right", and did not need his father's help.

<sup>16</sup> Myburgh, P.L. 2017. *The Republic of Guptas: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg.35.

<sup>17</sup> Charter, L. 2016. *Gupta brothers are not my friends – Mbeki*. [Online] Available: <http://www.dispatchlive.co.za/news/2016/04/11/gupta-brothers-are-not-my-friends-mbeki/>.

<sup>18</sup> Myburgh, P.L. 2017. *The Republic of Guptas: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg.35.

<sup>19</sup> Myburgh, P.L. 2017. *The Republic of Guptas: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg.33.

<sup>20</sup> Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: <http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/From-Saharanpur-to-Saxonwold-The-incredible-journey-of-the-Gupta-family/>.

<sup>21</sup> Andrew, M. & Serino, K. 2010. *Keeping it in the family*. [Online] Available: <https://mg.co.za/article/2010-03-19-keeping-it-in-the-family/>.

<sup>22</sup> Jagamath, V. 2016. *Ajay comes to Jo'burg: From selling shoes to assailing the State*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#:~:WpSmqIN97U1>.

<sup>23</sup> Sport24.co.za. 2010. *CSA launch historic T20 match*. [Online] Available: <http://www.sport24.co.za/Cricket/Proteas/CSA-launch-historic-T20-match-20101102>.

<sup>24</sup> <https://www.ft.com/content/abd6e034-e519-11e5-a09b-1f8b0d268c39>

<sup>25</sup> Brimmer, S. 2010. *Zuma 'meddled in mine buyout'*. [Online] Available: <http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout>.

## ■ Power, Authority and Audacity: How the Shadow State Was Built

The interesting thing was that Dominion had been on 'care and maintenance' since 2008 with Uranium One chief executive Jean Nortier saying: "We had to close that chapter; we certainly weren't going to try to bring Dominion back into production — it certainly was going to require too much capital."<sup>26</sup> Bringing Dominion back to full production was projected to cost far more than the \$37 million purchase price, according to media reports. At time of the purchase, journalist Brendan Ryan wrote:<sup>27</sup>

*Who in their right mind would buy one of the most notorious dogs in the entire South African mining sector — the failed Dominion Uranium mine — and do it at a time when uranium prices are still depressed? ... It's either the steal of the century — given that developers Uranium One wrote off an investment of \$1.8 billion when they shut Dominion down in October 2008 — or it's a classic case of throwing good money after bad.*

Unbeknown to Ryan at the time, and certainly in retrospect, the Zuma power elite had their sights set on a large-scale nuclear programme that would create a new and lucrative market for uranium. Molefe, then CEO of the Public Investment Corporation, seems to enter the story at this point in what may have been his first act to ingratiate himself with the Zuma group after being identified for so long as an 'Mbeki man'. Although he denied having a hand in the Gupta's Uranium One deal, there seem to be too many unexplainable coincidences.

The timing is indicative. According to amaBhungane, Molefe's last day as CEO of the Public Investment Corporation would have been 12 April 2010, two days before the Dominion transaction was closed.

However, his contract was extended for three months, to the reported irritation of senior ANC and alliance officials.<sup>28</sup> At the time, the *Sunday Times* reported that Jacob Zuma was "understood to have phoned a senior official in the finance ministry to ask that Molefe remain in the job."<sup>29</sup>

According to amaBhungane, company registration documents show that Atul Gupta and Duduzane Zuma took over as directors of the Dominion holding company on 14 April, the day the sale was finalised. If, as alleged in media reports, Molefe was involved in negotiations to commit Public Investment Corporation funding, his departure at that crucial time might have compromised the negotiations. The investment committee rejected the deal as being too risky, but the Industrial Development Corporation provided the loan.

### Brian Molefe gains his foothold

By March 2011, the *Mail & Guardian* was reporting several anomalies associated with the appointment of Molefe as the new CEO of Transnet, which, according to the newspaper, appears to have been pre-determined.<sup>30</sup> The Gupta family denied reports that they influenced the selection of Molefe; however, the media provided circumstantial but compelling information to the contrary. According to the media article, the advert for the position of CEO was published on 26 January 2011 and candidates were given until 1 February 2011 to respond. Former Public Enterprises Minister Malusi Gigaba announced the appointment of Molefe on 16 February. Transnet said 63 applications had been received and nine applicants were interviewed. The board's corporate governance and nominations committee, chaired by Transnet chairperson Mafika Mkwanazi, apparently handled the process. The *Mail & Guardian* reported that: "A senior executive with knowledge of Transnet board operations said the applications had to be vetted and interviews for busy executives and board members arranged. 'Molefe's appointment was miraculously quick', the executive said"<sup>31</sup>.

Transnet non-executive director and former CEO of DaimlerChrysler, Juergen Schrempf, who had only been appointed a few months before in December 2010, resigned shortly after Molefe's appointment. While he did not comment, the *Sunday Times* reported that he was unhappy about the handling of Molefe's appointment and because Mkwanazi had submitted three names of candidates to Gigaba without prior board approval.<sup>32</sup>

Interestingly, on 7 December 2010, about three months before his appointment, the *New Age*, without quoting its sources, said: "The *New Age* has it on good authority that Molefe will be appointed CEO by the board."<sup>33</sup> The paper correctly predicted other appointments to the new Transnet board, including Don Mkhwanazi and Ellen Tshabalala.

### The Guptas set their sights on the SEOs

In September 2012, most of the SAA board, led by former chair Cheryl Carolus, resigned, apparently over a breakdown in its relationship with then Minister for Public Enterprises Malusi Gigaba.<sup>34</sup> Chief Executive Siza Mzimela and some of her key people followed in early October. This period seems to mark the start of the capture of the parastatal.

It appears that a large SAA tender, worth at least R10 billion, was at the root of the contest. About six months after the resignation of the board, questions emerged in the media about a meeting held

<sup>26</sup> Brimmer, S. 2010. *Zuma 'meddled in mine buyout'*. [Online] Available: <http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout>.

<sup>27</sup> Brimmer, S. 2010. *Zuma 'meddled in mine buyout'*. [Online] Available: <http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout>.

<sup>28</sup> AmaBhungane Centre for Investigative Journalism. 2011. *Going off the rails*. [Online] Available: <http://amabhungane.co.za/article/2011-03-04-going-off-the-rails>.

<sup>29</sup> AmaBhungane Centre for Investigative Journalism. 2011. *Going off the rails*. [Online] Available: <http://amabhungane.co.za/article/2011-03-04-going-off-the-rails>.

<sup>30</sup> Creamer, T. 2011. *Transnet, DPE deny outside influence on Molefe appointment*. [Online] Available: [http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28?op\\_id:4136](http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28?op_id:4136).

<sup>31</sup> Creamer, T. 2011. *Transnet, DPE deny outside influence on Molefe appointment*. [Online] Available: [http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28?op\\_id:4136](http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28?op_id:4136).

<sup>32</sup> Sole, S. 2013. *R10-billion contract behind SAA dogfight*. [Online] Available: <http://amabhungane.co.za/article/2013-03-22-r10billion-contract-behind-saa-dogfight>

in Johannesburg at the Saxonwold compound of the Gupta family in October 2012 – involving the airline's acting CEO as well as the special adviser to Minister Gigaba.<sup>35</sup>

The *Mail & Guardian* reported at the time that SAA's fleet committee had selected the new Airbus A350 over Boeing's long-haul offering and given a recommendation to the SAA board in late August 2012 – and that the outgoing board had agreed to the choice. It is this decision that seems to have ultimately precipitated the exodus of the board. According to the *Mail & Guardian* article, the new fuel-efficient, long-haul fleet was central to a detailed turnaround plan that Carulus's board had prepared. SAA was struggling, partly because of high fuel costs, and securing the correct aircraft was key to the turnaround strategy.

But Gigaba appears to have delayed his support for this strategy, acknowledging that the fleet committee had made a recommendation to the board to procure from Airbus but saying "the department was concerned that there was no long-term strategy that had been shared with it that informed the fleet renewal programme."<sup>36</sup> According to the *Mail & Guardian* article, the delay meant that SAA lost its production slot offered by Airbus during its bid.

After Carulus left, Gigaba brought Kona back as both acting CEO and board chair. According to the *Mail & Guardian*, he attended the October 2012 meeting at the Gupta's Saxonwold house. Also present at the meeting, according to the article, were Rajesh Gupta, Duduzane Zuma and the son of Free State Premier Ace Magashule, Tshepiso (who at one point listed Mabengela as his employer).

According to amaBhungane, at the meeting, Rajesh apparently made an offer to make R100 000 available to Kona and then increased it to R500 000.<sup>37</sup> The news report did not specify what the money was for, but said that Kona refused and later spoke to board colleague Dudu Myeni about the meeting.

On 27 November, following this meeting, Mahlangu apparently sent the text message to Kona: "Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she was going. U will compromise the mission." On 8 January 2013, Myeni, who is close to Zuma and chairs his charitable foundation, was made SAA chair. On 11 February the SAA board announced the cautionary suspension of Kona as acting CEO pending an investigation into alleged contraventions of financial regulations. On 11 March 2013, Gigaba removed him from the board, citing a breakdown in trust.

Both Mahlangu and a spokesperson for the Gupta family told the media that the meeting at the Gupta residence was about how various companies that the Gupta family controlled could switch

their corporate travel business to SAA and that nothing unlawful was discussed. AmaBhungane noted that "given that the Guptas' Oakbay Investments owns just under 5% of SAA's rival Comair this explanation was barely credible".<sup>38</sup>

#### PRASA

In late 2012, in a letter written by then Prasa CEO Lucky Montana to then Prasa board chair Sifiso Buthelezi, extraordinary details emerged of how the Gupta family and Duduzane Zuma allegedly planned to capture the parastatal and profit from a R51 billion tender.<sup>39</sup> This letter was only leaked four years later in 2016, but demonstrates how the Gupta network brokers political access for commercial gain. This was one of the first early warning signals that something more serious was afoot.

The Guptas, the letter said, represented China South Rail, one of seven companies then bidding to supply Prasa with 600 commuter trains. Such representatives, or facilitators, are often positioned to earn huge 'success fees'. According to Montana's letter, in 'numerous meetings' the Guptas, Duduzane Zuma and their associates allegedly pressured then Minister of Transport Ben Martins and Montana to favour the rail company. They also, the letter said, proposed allocating shares to Montana and "directly, unashamedly and unapologetically demanded" that Martins restructure Prasa's board.

Montana wrote the letter after discovering that the National Department of Transport was preparing a Cabinet memorandum to restructure the board. Montana proposed that he "negotiate my exit" from Prasa, saying: "I feel betrayed, in spite of having ... been given assurances by our honourable minister that the restructuring of the Prasa board was not on the cards." His threat to leave apparently led to further reassurances from Martins and the board remained unchanged.

Another bidder, France-backed Gibela, was ultimately handed the R51 billion tender in December 2012. According to amaBhungane,<sup>40</sup> the BEE beneficiaries included Dudu Myeni's son Thalente whose registered address was the Zuma residence in Forest Town, Johannesburg. The BEE consortium sold out of the deal early on. The question here is whether this was a case where the Zuma-elite did not back the Gupta bid. If so, the PRASA tender is an example where competing rent-seeking groups, both with access to Zuma, clashed, leading to one winner.

Lucky Montana was arguably tied to one and he managed to win Martins over in support of the Gibela bid. As suggested below, the key difference between the two bids was the Gupta-mediated one with China South Rail would probably have required a hefty payoff

<sup>35</sup> Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: <https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa>.

<sup>36</sup> Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: <https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa>.

<sup>37</sup> Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: <https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa>.

<sup>38</sup> Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: <https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa>.

<sup>39</sup> Brümmer, S. & Sole, S. 2016. Guptas' R51bn train grab. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

<sup>40</sup> AmaBhungane team and Letsolo, M. 2014. Jacob Zuma links to 'untouchable' SAA boss. [Online] Available: <https://mg.co.za/article/2014-11-06-jacob-zuma-links-to-untouchable-saa-boss>.

## ■ Power, Authority and Audacity: How the Shadow State Was Built

to the Guptas as brokers in the deal. The Gibela deal, in contrast, followed the conventional rent seeking route; i.e. sell off the BEE stake after the award is made and pay off whoever needs to be paid after that.

However, this did not stop China South Rail and their Gupta representatives. They appear to have gone from strength to strength at another parastatal, Transnet. There, thanks to their close relationship with Molefe, the rail company won tenders to supply 95 locomotives in 2012 and the largest share of the 1 064 locomotives, worth R50 billion, split between four bidders in 2014 (see below).

It is instructive that the pressure on Montana to favour the Gupta-led consortium started in September 2012, only three months after Zuma appointed Martins as transport minister and two months after Prasa issued the train tender. Montana wrote:<sup>41</sup>

*I have previously reported to the chairman of my attendance of numerous meetings at various periods with the minister of transport, key advisors in the ministry of transport and representatives of the Gupta family. It is in these meetings where I was introduced to representatives of the Gupta family and the son to the president, Mr Duduzane Zuma, and their relationship with one of the bidding companies, China South Railways ... I had taken issue with the representative of the Gupta family over what I considered to be attempts on their part to 'extort' money from [the bidders].*

Montana told amBhungane that he was called to a first meeting at Martins' Pretoria residence as he was about to depart for a transport conference during the third week of September 2012 in Germany. There, he was introduced to Rajesh Gupta, Duduzane Zuma and an associate. They apparently indicated their general interest in the tender.

Montana's letter says that at the conference bidders approached him to say:<sup>42</sup>

*That they are required to pay money on the side, that they are aware that the Prasa AGM [annual general meeting] will be postponed, which truly materialised, and further informed that [the] purpose of the postponement was to allow time for the board of Prasa to be restructured. This will ensure that the requirements of the Gupta family and China South Railways are achieved.*

Montana said that the bidders had told him that a Gupta associate had met with bidders in Switzerland, telling them: "We work with Lucky [Montana], we work with Ben Martins [and we have] the support of the president. [If] you don't work with us, you are not going to get this bid."<sup>43</sup>

Montana said he asked for a meeting at the Minister's house on his return, where he 'blasted' Rajesh Gupta and Duduzane Zuma.

And he told them the correct route was for China South Rail – whom they said they now formally represented – to 'submit a compliant bid'. He said: "I thought that was the end of the matter. Unfortunately it was not."<sup>44</sup>

Before the adjudication process, according to the letter, Rajesh Gupta pressured Montana to include two Gupta nominees among the bid evaluators. Their CVs were delivered by a driver. "I rejected that," Montana said. The letter goes on: "I must also add that the Guptas have presented a plan that I and other people have been allocated shares within CSR [China South Rail], the plan which I rejected contemptuously in the presence of our minister." The letter refers to a Gupta associate's alleged direct demand to Martins to restructure the board. "I was taken aback and continue to be surprised by the fact that the representative of the said family finds such power, authority and audacity."<sup>45</sup>

On 28 October 2012 the letter says, then transport Director General George Mahlalela showed Montana "a written memorandum for the appointment of a new chairperson and other Prasa directors [that] was being processed for submission to the cabinet". The next day, the letter says, Montana met a Gupta associate who reported that:

*There is agreement at political level that Prasa shall be instructed to cancel the [tender if it is] not awarded to CSR [China South Rail] or any one of the other two Chinese bidders. The restructuring of the board of Prasa is intended to achieve this stated objective. ... I had made it clear that the procurement process for the new trains will run its full course based on the principles required by our constitution and the law.*

The awarding of the tender to the Gibela consortium was just the start of bitter contestations over access to rents via Prasa. In 2012 the South Africa Transport and Allied Workers Union triggered an investigation by the Public Protector that reported in 2015 that they had found evidence that billions had been stolen. A new board chaired by Popo Molefe was appointed in August 2015 to clean up the SOE, but it was apparently not made aware of the Public Protector's investigation. The CEO, Lucky Montana, was fired in 2015, in part because Popo Molefe apparently discovered that R80 million from a locomotive contract had been paid to the ANC. Popo Molefe and his board were eventually dismissed by the Minister of Transport in 2017, shortly before she herself lost her job.

### The Guptas go provincial

Having gained their foothold in the SOEs, the Guptas turned their sights to the province of the Free State where they appeared to be brokering the patronage network of Premier Magashule, a Zuma loyalist.

In May 2013, according to an amBhungane investigation, a company called Estina, which was indirectly linked to the Guptas, was given

<sup>41</sup> Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

<sup>42</sup> Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

<sup>43</sup> Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

<sup>44</sup> Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

<sup>45</sup> Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: <http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab>.

a farm and tens of millions of Rands to start a dairy by the Free State provincial government. Magashule had endorsed the project in his State of the Province address in February that year. According to the media investigation, the provincial agriculture department had reportedly already contributed R30 million, which was set to rise to R342 million over three years.<sup>46</sup>

There were doubts as to Estina's capacity to conduct operations. Its only director, Kamal Vasram, worked in information technology and had no apparent farming background, according to amaBhungane. It subsequently emerged that he was linked to the Guptas.

The provincial Department of Agriculture claimed that Estina and an Indian company, Paras, were involved jointly and had committed R200 million to the project, but amaBhungane was told by a spokesperson for Paras Dairy: "We don't do any business in South Africa and we don't have any Estina on our database."<sup>47</sup>

Deeds records showed that Estina obtained a 99-year lease on the 4 400 hectare Krynauwslust farm near Vrede from the department, apparently rent free, according to amaBhungane.

The provincial government, the Gupta family and Vasram all denied Gupta involvement in the project, except for a consulting subcontract amounting to R138 000 awarded to Linkway Trading, a Gupta company. However, the amaBhungane investigation strongly suggested that the Guptas played an active behind-the-scenes role in the dairy project. As the story unfolded, it emerged that the National Treasury, through its dedicated public-private partnership unit, had not approved the dairy project, nor had the Free State provincial government sought the required permission to deal with Estina.

Ultimately, a National Treasury investigation found that the dairy project had many irregularities, stating that "a company without agricultural experience and led by a computer sales manager – flouted treasury rules and was designed to milk provincial government coffers."<sup>48</sup> One of the investigators said to amaBhungane: "Estina is using government's money to establish a plant, putting cows on land that is given by government rent-free. Now they get to make a fortune off the infrastructure."

According to documents linked to the investigation and given to amaBhungane, the dairy project appears to have been conceived during a visit to India by senior Free State Department of Agriculture officials and then Agriculture Member of the Executive Council, Mosebenzi Zwane, whose hometown is Vrede. The trip was signed off by Magashule.

By June 2014, the Free State agricultural department announced that it had cancelled its contract with Estina, which had nevertheless done well out of the deal after the province ultimately invested a total of R144 million in the dairy farm, according to amaBhungane.

#### The gift that keeps on giving: The locomotive deal, VR Laser and Trillian

On 17 March 2014, while the media reported that many cattle were dying of disease and starvation on the Free State farm, Transnet released a press statement saying that it had awarded a R50 billion contract for the building of 1064 locomotives. It split the contract between four major train builders – China South Rail, Bombardier, General Electric and China North Rail.<sup>49</sup>

The *Mail & Guardian* had reported three weeks earlier that the National Union of Metalworkers of South Africa had submitted a report to the Public Protector, raising concerns about the way Transnet had structured, adjudicated and awarded this tender.<sup>50</sup> The union contended that government's policy of localisation and job creation had, in the case of the Transnet locomotive tender, been abused by "the implementation of opaque and underhand business dealings to line the pockets of a selected minority business and political elite".<sup>51</sup>

#### VR Laser Services

What piqued the union's, and ultimately the media's interest in this deal, was that the man who oversaw the awarding of the R50 billion tender, Iqbal Sharma, was simultaneously closing a deal, which potentially put him (and Duduzane Zuma) in a position to benefit directly from key subcontracts out of the locomotives deal.

Before his appointment to the Transnet Board in December 2010 by then Public Enterprises Minister Gigaba, Sharma, who is also Fatima Meer's nephew, had been the head of Trade and Investment South Africa within the DTI. This is where he reportedly met the Guptas.

In 2011, Gigaba apparently wanted him appointed Transnet board chairperson, but the Cabinet vetoed this because he was too close to the Guptas, which signalled that by 2011 Zuma had not yet secured a fully compliant Cabinet. Seemingly to circumvent Cabinet's veto, Transnet would later create a new structure, formally called the Board Acquisitions and Disposals Committee, to supervise the planned pipeline of future large-scale infrastructure

<sup>46</sup> Sole, S. 2014. *Free State dairy project damned in treasury investigation*. [Online] Available: [amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation](http://amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation).

<sup>47</sup> AmaBhungane Centre for Investigative Journalism. 2013. *Guptas' farm cash cows in Free State*. [Online] Available: [amabhungane.co.za/article/2013-05-31-guptas-farm-cash-cows-in-free-state](http://amabhungane.co.za/article/2013-05-31-guptas-farm-cash-cows-in-free-state).

<sup>48</sup> Sole, S. 2014. *Free State dairy project damned in treasury investigation*. [Online] Available: [amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation](http://amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation).

<sup>49</sup> Transnet. 2014. *Transnet awards largest ever locomotive supply contract in South Africa's history*. [Online] Available: <http://www.transnet.net/PressOffice/Press%20Office%20Release/Transnet%20wards%20largest%20locomotive%20supply%20contract%20in%20South%20Africa%20history.pdf>.

<sup>50</sup> Faull, L., Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. *Transnet tender boss's R50-billion double game*. [Online] Available: <https://mg.co.za/article/2014-07-03-transnet-tender-boss-r50-billion-double-game%20>.

<sup>51</sup> Faull, L., Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. *Transnet tender boss's R50-billion double game*. [Online] Available: <https://mg.co.za/article/2014-07-03-transnet-tender-boss-r50-billion-double-game%20>.

## ■ Power, Authority and Audacity: How the Shadow State Was Built

spending (comprising all tenders worth more than R2.5 billion). Sharma was appointed to chair this committee and it was from this position that he adjudicated the locomotives deal.

In February 2014, a few weeks before Transnet announced the main tender awards, a company in which Sharma, Rajesh Gupta and Duduzane Zuma were partners, acquired a stake in VR Laser Services, a Gauteng engineering firm that produces steel plate components for heavy vehicle bodies. Throughout this period, Sharma was overseeing the locomotive tender process.

When the story emerged in the media, Sharma denied any conflict of interest, claiming that VR Laser did not do – and had no intention of doing – business with Transnet. To distance himself from the allegations, he said he had bought the property company that owns VR Laser's premises, but not VR Laser itself.

However, amaBhungane<sup>52</sup> established that, as Sharma was completing the tender process and the acquisition of the property holding company linked to VR Laser, each of the four multinational train manufacturing companies that would later win a part of the locomotive supply contract visited the engineering company's premises to assess the possibility of subcontracting work to VR Laser.

The winning bidders for the locomotives deal were required by state procurement policy to source up to 60 percent of their components from South African subcontractors, placing VR Laser in a highly advantageous position.

### Trillian Group

The size of the locomotive deal meant that financial arrangement and corporate structuring advice was necessary. A Gupta-linked company, Trillian Asset Management, ultimately benefitted from this opportunity. The emergence of Trillian, and the company's ultimate involvement in this deal, is convoluted but is worth noting because it demonstrates the extent to which the Guptas and their associates have gone to achieve the capture of state institutions.

In 2012, when Transnet issued the locomotives tender, the rail company appointed a consortium led by consultants McKinsey to advise on the deal structure and how to fund it.

Their consortium partners included Nedbank and McKinsey's long-time empowerment associate, Letsema Consulting. Financial

advisory services were included in the mandate and payment was clearly capped at R35.2 million.<sup>53</sup>

Transnet's formal letter of intent noted: "Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based."<sup>54</sup> However, these restrictions seem to have quickly been ignored. Months after the contract was awarded, Transnet invoked unexplained conflict of interest concerns relating to first Letsema, but then to Nedbank, according to amaBhungane.<sup>55</sup> To resolve this conflict of interest, Transnet proposed Regiments as a substitute for Letsema and Nedbank. Regiments, started by six Johannesburg-based entrepreneurs in 2004, is a fund manager and investment advisor specialising in public sector infrastructure programmes and projects.

At that point, Regiments was given an estimated R10 million share of the contract. But, as subsequently became clear, there followed an extraordinary ballooning of the scope and cost of services, driven by then Transnet chief financial officer Anoj Singh and approved by then Transnet CEO Molefe.

In November 2013, following the triggering of the conflict of interest against Letsema, Singh apparently confirmed in writing that the main scope of the engagement would be allocated to Regiments. McKinsey, originally the consortium leader, remained "only responsible for the business case and limited technical optimisation aspects."<sup>56</sup> In February 2014, the contract scope for Regiments was amended to reflect a new reality. Although the addendum to the contract purported to be between Transnet and McKinsey, amaBhungane reported that Regiments' director Eric Wood (who would later emerge as a key Gupta ally) scratched out McKinsey and signed on behalf of Regiments.

Additionally, Singh, signing on behalf of Transnet, also increased the contract value by R6 million, bringing the total contract to R41.2 million, of which a R21 million 'fixed price' would go to Regiments, according to the amaBhungane investigation. Two months later, in April 2014, Singh sent a memo to Molefe in which he motivated for a post-facto revision in the fee allocation to Regiments, asking to add an additional R78.4 million. The additional fee was apparently based on Regiments' own calculation of 'the billions'<sup>57</sup> its advice had supposedly saved Transnet. Singh's rationale was that Regiments had apparently demonstrated to Transnet that it could save money by splitting the locomotive order between four bidders (ultimately awarded), rather than choosing one or two. According to Singh, as summarised by amaBhungane,

<sup>52</sup> Faull, I., Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. Transnet tender boss's R50-billion double game. [Online] Available: <https://mg.co.za/article/2014-07-03-transnet-tender-boss-r50-billion-double-game%20>.

<sup>53</sup> McKune, C., Brümmer, S. & Sole, S. 2016. Transnet's shady Gupta loan deal. [Online] Available: <http://amabhungane.co.za/article/2016-09-18-transnets-shady-gupta-loan-deal>.

<sup>54</sup> Sole, S., McKune, C. & Brümmer, S. 2016. How to eat a parastatal like Transnet - chunk by R600m chunk. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

<sup>55</sup> Sole, S., McKune, C. & Brümmer, S. 2016. How to eat a parastatal like Transnet - chunk by R600m chunk. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

<sup>56</sup> Sole, S., McKune, C. & Brümmer, S. 2016. How to eat a parastatal like Transnet - chunk by R600m chunk. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

<sup>57</sup> Sole, S., McKune, C. & Brümmer, S. 2016. How to eat a parastatal like Transnet - chunk by R600m chunk. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

although this would make each locomotive more expensive, as bidders would have a smaller volume to dilute their overheads, the full complement of 1 064 could be delivered more quickly. Based on this reasoning, the amendment to the original contract value increased Regiment's payment from R21 million to R99.5 million. Molefe provided approval for this.

In early 2015, the then group treasurer of Transnet, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: "I arrived here with integrity, and I will leave with my integrity intact."<sup>58</sup> She was replaced by Phetolo Ramosebudi, the previous group treasurer of SAA, who weeks after his appointment on April 28 2015, compiled a proposal purporting to approve a 'contract extension' for Regiments' support to Transnet on the locomotive transaction, raising its fee from the previous R99.5 million by R166 million to total R265.5 million. Without citing any contract, Ramosebudi suggested "the financial advice and negotiation support that Regiments provided through this entire process, which took in excess of 12 months, was done at risk with an expectation of compensation only on successful completion of the transaction".<sup>59</sup>

During the course of Regiments' work for Transnet, Wood became acquainted with the Guptas, who – seemingly in a bid to get in on the lucrative Regiments contract with Transnet – approached Regiments to buy a majority stake. When the directors of Regiments refused the purchase offer, Trillian Asset Management, which at the time was a small firm of investment professionals owned by four men, including brothers Rowan and Ben Swartz, emerged as a player. Trillian worked with a second investment firm, whose principals included Stanley Shane. Shane, in turn, held two noteworthy board appointments: at Transnet, where he chaired the procurement committee and at a third investment firm, where his co-directors included Essa, the Gupta associate. According to amaBhungane, he was well placed to make the introductions that followed.

When the Swartz brothers indicated in 2015 that they wanted to sell their 50 percent share in Trillian, Shane introduced the buyer: a shelf company named Lipshell 103, according to amaBhungane. Trillian's share register shows that the Swartz brothers' shares were transferred to Lipshell on September 1, 2015. Company records indicate that Essa was registered as Lipshell's sole director later that month, backdated to just before the acquisition. Lipshell subsequently increased its stake to a controlling 60 percent of what became the Trillian group of companies, including the original Trillian Asset Management. Lipshell was renamed Trillian Holdings, where Essa remains its only director.

According to amaBhungane, in December 2015, Transnet paid Trillian Asset Management, R93.5 million, purportedly for acting as the 'lead arranger' for a R12 billion 'club loan' by a syndicate

of five banks to help fund the R50 billion purchase of 1064 new locomotives (remember that McKinsey had originally been appointed to arrange the corporate and financial structuring for the deal, which then passed to Regiments, as explained above, and now Trillian was receiving payment for allegedly doing the work).

Usually in such a deal, the lead arranger would be one of the lenders – typically an experienced financial or advisory institution, lending at least as much money as each of the others. Trillian Asset Management was a small boutique asset manager, arguably without the capacity to lead a R12 billion bank syndicate. Furthermore, the SOE's own corporate treasury, one of the largest in the country, could arguably have arranged the loan itself. Trillian allegedly did at least R170 million worth of work for Transnet. It remains unclear what kind of work could justify such large pay-outs of state resources.

On 1 March 2016, Eric Wood left Regiments to join Trillian and in May 2016 Transnet apparently transferred its contract with Regiments to Trillian. Two Regiments directors, Litha Nyhonyha and Magandheran Pillay, are now in court seeking to declare Wood a delinquent director. They are accusing him of sharing confidential company information with third parties, which they say, then paved the way for Trillian Capital Partners to make millions of Rands in illicit payments from Transnet for work Regiments did. The two directors claim that Wood leaked company information to, among others, Salim Essa in a bid to divert business from Regiments to Trillian prior to the scheduled date of his departure and, in doing so, had caused the company severe reputational harm, court papers state. Wood responded that he and the directors of Regiments had decided to break up the company but could not agree on how to apportion different parts of the business. In his view the Transnet business belonged to him, so he took it with him. These claims became the subject of an independent investigation led by Advocate Geoff Budlender SC, appointed by Trillian Board Chair Tokyo Sexwale, that has stalled because of Trillian's apparent refusal to accede to Budlender's requests for information. The National Treasury is also investigating the Trillian–Transnet contracts.

Trillian not only had contracts with Transnet, but also with Eskom, allegedly as a sub-contractor to McKinsey dating back to September 2015. Although McKinsey has denied that it sub-contracted to Trillian as part of its Eskom work, there is a letter on a McKinsey letterhead dated 9 February 2016 signed by McKinsey's Vikas Sagar requesting Eskom to pay Trillian directly for services rendered. Furthermore, Trillian bank statements, seen by our researchers, show that it paid out R160 million to an unknown beneficiary (but through Bank of Baroda) on 14 April 2016 – the same day that Eskom paid Tegeta nearly R600 million to help buy the Optimum mine. In her *State of Capture report*, Madonsela presented evidence that a number of firms had contributed to the R2.15 billion that

<sup>58</sup> Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

<sup>59</sup> Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: <http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk>.

## ■ Power, Authority and Audacity: How the Shadow State Was Built

Gupta-controlled Tegeta Exploration and Resources had to pay for Optimum. This included R235 million from Trillian and its subsidiaries – an allegation Trillian has repeatedly denied without giving details. Indeed, the R160 million payment noted above seems more than a coincidence.

As we will see in the next chapter, there is circumstantial evidence to suggest that the drama between Regiments and Trillian was related to factional battles within the ANC over funding. Regiments had strong links to the Batho Trust, an investment vehicle established in the 1990s to support Mbeki's campaign. Batho later created the Thebe Investment Corporation, which became an important ANC fundraiser. We must ask whether the shift of contracts away from Regiment to Trillian was to sever this link to the ANC and to redirect paybacks to a Zuma aligned party-political faction? What is clear is that Trillian is involved in highly questionable dealings between SOEs and shadowy business groups.

This research project observed how Trillian, for example, wrote an advisory note for Eskom to grant the Duvha 3 contract worth R4 billion to Dongfang Electric Company, a Chinese SOE, even though on technical specifications and price, Dongfang was initially disqualified by the procurement committee. The two companies that were front runners, General Electric and Murray and Roberts, suddenly found themselves out of the running. This is now the subject of a court battle with General Electric challenging Eskom on the fairness of the tender award to Dongfang.<sup>60</sup>

### Guptas go transnational

In December 2014, it emerged that the Guptas allegedly make use of the global financial system in what law enforcement circles refer to as 'shadow transnationalism' – an essential element for brokers facilitating large-scale criminality to "navigate resources to international clearing hubs where they enter the legitimate trade and accrue value to the members of the network".<sup>61</sup> The deal involved the listing of Oakbay and a R100 million Industrial Development Corporation loan, given to the company in 2010 to buy the Shiva Uranium mine.

On 28 November 2014, the Gupta company, Oakbay Resources and Energy, listed on the Johannesburg Stock Exchange. Atul Gupta, his wife Chetali, brother Rajesh and sister-in-law Arti own about 80 percent of the company. Oakbay's main asset, and the main driver of its value, was its subsidiary Shiva Uranium.

But, according to an amaBhungane investigation and documents observed by this group of researchers, the Guptas appear to have significantly inflated Oakbay's market value above the inherent value given at the time, with the help of a Gupta associate in Singapore. This allowed them to pay off their Industrial

Development Corporation loan, but it also meant that the state-owned entity lost out when the Oakbay share price market corrected. At the time that this story broke, Oakbay's financials showed that it had not been able to maintain profitability at Shiva. According to the 2010 purchase agreement for the mine, the entire debt should have been repaid by April 2013. But Oakbay's financials stated that, by the end February 2014, only R20 million had been paid and the debt with interest had grown to R399 million. In June 2014, after negotiations with the Industrial Development Corporation, they agreed to restructure the debt, including a new repayment schedule that would end in 2018. As part of this agreement, and as Oakbay's pre-listing statement showed, the Industrial Development Corporation would take a small stake (about 3.6 percent) in Oakbay in lieu of the debt. Oakbay's interim financials at the end of August 2014 gave the company a net asset value of about R4.6 billion, which translated into an asset value of R5.74 a share, according to amaBhungane.<sup>62</sup> This dropped to R4.84 a share once substituted with the lower value put on them by a valuer appointed as part of the listing requirements.

Despite this, Oakbay listed at R10 a share, which was nearly double the underlying asset value. This was significant, because it was this R10 'market' value, minus a 10 percent discount, at which the Industrial Development Corporation got shares (its 3.6 percent) in lieu of Oakbay's outstanding debt. When compared with the underlying value of R5.74 provided by Oakbay's own financials, or to the adjusted R4.84, the Industrial Development Corporation ultimately gave Oakbay a discount of between R93-R119 million (essentially cash in hand to clear their debt – an ultimate loss to South Africa given that these are state resources).

The question was how Oakbay allegedly inflated its market value. The answer, according to an amaBhungane investigation, lay in Singapore, where a company called Unlimited Electronic & Computers paid R10 a share in a private placement shortly before the listing acquiring 2.3 percent of the company. Unlimited Electronic & Computers, according to amaBhungane, is owned by Kamran 'Raj' Radiowala, who has been associated with the Guptas since about 2006.<sup>63</sup> Online company registration data cited by amaBhungane has him being appointed managing director of an Indian electronics distribution company, SES Technologies, in 2007. SES was co-owned by the Guptas' South African business Sahara Computers, and its board included Ashu Chawla, one of their associates in South Africa. The SES chief operating officer for some time was George van der Merwe, who held the same position at Sahara and who was the former CEO of Oakbay.

### ... and move their money offshore

In July 2015, the first detailed analysis of how the Guptas move the proceeds of their business activities was presented by

<sup>60</sup> Hofstatter, S. & Paton, C. 2017. GE claims Eskom favoured Chinese firm's bid, with backing of Trillian. [Online] Available: <https://www.businesslive.co.za/bd/companies/energy/2017-04-26-ge-claims-eskom-favoured-trillian-bid/>

<sup>61</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

<sup>62</sup> amaBhungane Centre for Investigative Journalism. 2014. *Another state bonanza for the Guptas*. [Online] Available: <http://amabhungane.co.za/article/2014-12-04-another-state-bonanza-for-the-guptas>.

<sup>63</sup> amaBhungane Centre for Investigative Journalism. 2014. *Another state bonanza for the Guptas*. [Online] Available: <http://amabhungane.co.za/article/2014-12-04-another-state-bonanza-for-the-guptas>.

amaBhungane. Their operation centres on a Gupta-controlled shell company called Homix. Shell companies, by virtue of the ownership anonymity that they provide, are classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network:<sup>64</sup>

*The term 'shell company' generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.*

Between 2014 and 2015, Homix moved R166 million through its accounts, primarily from five companies.<sup>65</sup> As is characteristic of shell companies, Homix has no discernible office infrastructure or staff commensurate with a company processing such large sums of money, according to amaBhungane, which visited its premises. Bank records obtained by amaBhungane, and other bank records observed by this group of researchers, show that as the money came into the Homix bank account, it immediately went straight out again, to an equally obscure entity called Bapu Trading.

This pattern displays the three classic money laundering characteristics of placement, layering and integration where placement is the movement of cash from its source (the five companies), followed by placing it into circulation (layering) through, among other mechanisms, financial institutions and other businesses (for example Homix), and finally integration, the purpose of which is to make it more difficult to detect and uncover by law enforcement. We shall say more about this in Chapter 4.

Another example of the Gupta's attempts to externalise (placement phase) the proceeds of their operations happened six days after the Gupta family infamously 'fled' South Africa in April 2016 on a late-night flight. On 13 April 2016, a Gupta plane allegedly tried to leave with a box believed to have been full of diamonds.<sup>66</sup> According to an amaBhungane investigation,<sup>67</sup> a Gupta business jet was preparing to depart Fireblade Aviation's VVIP ('very, very important person') terminal at OR Tambo International Airport when X-ray scanners picked up something suspicious inside a suitcase belonging to the departing party. In the suitcase was a box containing diamonds, according to AmaBhungane claims (a claim that has not been refuted by the Gupta family). When Fireblade security asked to look inside, a Gupta security staffer apparently refused, took the bag from the counter and left. Fireblade confirmed to amaBhungane that a "potential security incident" had taken place early one morning in April last year, but would not identify which client was involved.

The Guptas' immense offshore assets are noteworthy and, in money-laundering terms, may indicate the final stage: layering (in which they 'legitimately' realise the value of their questionable gains). These are investments, such as a Hindu Temple they're building in India for R200 million and a villa in Dubai worth R448 million, which is listed as one of the most expensive houses in the United Arab Emirates. This does not include cash, which may be sitting in offshore accounts in, for example, Hong Kong, that can be directed with ease as payoffs into their network (see below).

Returning the focus to Homix, at a point in time, the Reserve Bank became suspicious of money laundering after payments from Homix to accounts in Hong Kong did not match claimed imports (mis-invoicing is a classic money laundering scheme). It froze some of the money. AmaBhungane investigations showed, however, how at least some of the money (R51 million not frozen by the Reserve Bank) that moved through Homix was transferred out of the country into Hong Kong, where long-time Gupta associate Salim Essa is the family's placeholder in several shell companies in that country (the leaking of the Panama Papers in 2016 showed that Hong Kong was the most active centre in the world for the creation of shell companies).<sup>68</sup> This money went to two companies: YKA International Trading Company and Morningstar International Trade. AmaBhungane could not trace YKA's sole director, a Chinese resident. Morningstar's registered director and owner is Mahashveran Govender, a South African, who is untraceable. However, Morningstar's Hong Kong registered address is the same registered address of three other Essa companies, which are linked to the Guptas – Tequesta Group, Regiments Asia and VR Laser Asia.

Homix first emerged when amaBhungane broke a story of how national telecom company Nectel had benefitted, with the assistance of Homix, from multi-million rand Transnet tenders. Homix appeared to have positioned itself as a facilitator of state-owned company contracts. Despite Homix being virtually untraceable, Nectel's top managers had approved paying the Gupta company tens of millions of Rands in 'commissions' – ultimately more than R100-million – for no apparent work other than ensuring that they got the Transnet deal, according to amaBhungane.

In April 2015, Nectel's auditors, Deloitte, reported these unusual payments to Nectel's Board of Directors questioning the 'commerciality' of the 'fees'. The money was billed as being in respect of contracts being secured with Transnet. Deloitte correspondence suggested that Nectel management approved the Homix payments despite not knowing "who this entity is".<sup>70</sup>

<sup>64</sup> Department of the Treasury Financial Crimes Enforcement Network. 2006. *The role of domestic shell companies in financial crime and money laundering: Limited Liability Companies*. [Online] Available: [https://www.fincen.gov/sites/default/files/shard/LLCAssessment\\_FINAL.pdf](https://www.fincen.gov/sites/default/files/shard/LLCAssessment_FINAL.pdf).

<sup>65</sup> Brümmer, S., Comrie, S., McKune, C. & Solo, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

<sup>66</sup> Comrie, S. 2017. *EXPOSED: The Guptas and the 'box of gems'*. [Online] Available: <http://amabhungane.co.za/article/2017-02-19-exposed-the-guptas-and-the-box-of-gems>.

<sup>67</sup> Comrie, S. 2017. *EXPOSED: The Guptas and the 'box of gems'*. [Online] Available: <http://amabhungane.co.za/article/2017-02-19-exposed-the-guptas-and-the-box-of-gems>.

<sup>68</sup> Price, M. 2017. *Hong Kong takes aim at middlemen in wake of Panama Papers scandal*. [Online] Available: [www.reuters.com/article/us-hongkong-regulations-moneylaundering-idUSKBN15T33D?l=0](http://www.reuters.com/article/us-hongkong-regulations-moneylaundering-idUSKBN15T33D?l=0).

<sup>69</sup> Brümmer, S., Comrie, S., McKune, C. & Solo, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

<sup>70</sup> Brümmer, S., Comrie, S., McKune, C. & Solo, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

## ■ Power, Authority and Audacity: How the Shadow State Was Built

The contract that appears to have precipitated the relationship between Homix and Neotel was a master service agreement to provide Transnet with a suite of telecom services worth hundreds of millions of Rands a year. Neotel got the contract for an initial five years when it bought Transnet's in-house provider, Transtel, in 2008. At the end of 2013, Transnet put the master agreement out to tender. It was provisionally awarded to a competitor, T-Systems, but the latter withdrew by agreement some months later when it apparently became apparent its solutions were inappropriate. In April 2014, during this hiatus, Neotel paid its first R30-million to Homix, according to documents seen by amaBhungane and this group of researchers. The Deloitte correspondence identifies the payment as relating to routers and other equipment that Neotel sold to Transnet. Transnet is understood to have paid Neotel about R300 million for the equipment. Neotel's payment to Homix equals a 10 percent 'commission'.

Four months later, in August 2014, Transnet notified Neotel that it was the new preferred bidder for the master agreement and that negotiations should be concluded before Christmas. But by early December, individuals close to the negotiations claimed that Transnet became "intransigent without clear reason".<sup>71</sup> A week later, according to these individuals, Neotel's CEO, Sunil Joshi, met Transnet's chief financial officer, Anoj Singh, to whom the SEO's procurement structures reported. After the meeting, Joshi allegedly asked his staff to approach Homix again.

A 'success fee' was agreed with Homix – 2 percent of the R1.8 billion value of the master agreement with Transnet, equating to R36 million, plus R25 million in respect of a related agreement to sell assets to Transnet. Transnet then resumed negotiations and the master agreement was signed before Christmas.

Companies that paid money into Homix's bank account included Cutting Edge Commerce (R3.3 million between October 2014 and February 2015), of which the Guptas' Sahara System owns 51 percent. Cutting Edge's website says it provides information technology and consulting services and lists its public-sector clients as SAA, Airports Company South Africa and Transnet. Other companies are Regiments Capital (R84 million between November 2014 and March 2015) and Burlington Strategy Advisors (R1.8 million in March 2015).

Burlington Strategy Advisors, a subsidiary of Regiments Capital, signed a R5 million contract in March 2015 with German crane maker Liebherr Africa to provide it with market feasibility studies in relation to the supply of cranes to Transnet. Liebherr was a key supplier to Transnet, but the SOE was pressuring suppliers to include local companies in projects. In response, the German company signed the feasibility study agreement with Burlington and made an upfront payment of R2 million, according to amaBhungane. About 90 percent of this was paid straight on to Homix, according to bank records subsequently obtained by amaBhungane. When Burlington failed to provide actual services, Liebherr demanded that the R2 million be repaid, which is yet to happen.

It appears that the Guptas tried to obscure their link to Homix, but they failed. Company records for the company list an unknown individual Yakub Ahmed Suleman Bhikhu as the company's only active director. But when Neotel's board commissioned a law firm in April 2014 to investigate the company's links to Homix (see below), another individual, Ashok Narayan identified himself as CEO of Homix to Neotel's auditors. Narayan was a former managing director of Sahara Systems. He was also a director of Linkway Trading, a Gupta company, which had been a project consultant for the Free State Vrede dairy project in its early stages.

### Enter Mosebenzi Zwane

On 22 September 2015, President Zuma – reportedly to the surprise of even top members of the ANC – announced that he would fill a six-month-old vacancy in his Cabinet with the relatively unknown Mosebenzi Zwane, who he appointed to the critically important mineral resources portfolio. Zwane's appointment as a minister escalated him from a backbencher member of parliament who previously had been in the Free State provincial government. He had no experience in mining or in a national portfolio position. His origins in the Free State suggest that this was a move orchestrated by Ace Magashule.

In April 2016, seven months after Zwane's appointment, Gupta-owned Tegeta Exploration & Resources acquired Optimum coal mine from Glencore. Duduzane Zuma owns 12.8 percent of Tegeta. Various members of the Gupta family own 36 percent of the company, Gupta associate Salim Essa owns 21.5 percent and just over 20 percent is owned by two off-shore companies registered in the United Arab Emirates, for which ownership details are unavailable.

The Guptas bought Optimum from Glencore for R2.2 billion. The purchase was, however, riddled with allegations of political interference and bias towards sectional business interests, namely the Guptas. It is now widely accepted that Eskom prejudiced Glencore, by using the full might of the law, to force Optimum into business rescue to enable Tegeta to buy the company on highly favourable terms.<sup>72</sup> Former Public Protector Madonsela's *State of Capture* report found that Eskom may have repeatedly broken the law to accommodate Tegeta. We shall return to this incident in Chapter 3 as it marks a key moment in the radicalisation of the Zuma administration and of the project of radical economic transformation.

But even before Tegeta bought Optimum, there were several red flags raised about the Gupta-owned company in their operation of the Brakfontein mine. In September 2015, a few months after Tegeta began supplying coal from Brakfontein, Eskom's coal scientist and a senior laboratory services manager, Mark van der Riet and Charlotte Ramavhona, were suspended after conflicting lab results raised concerns about the quality of coal Eskom received from Brakfontein mine, through Tegeta. At the time, the two were told they were being suspended as a matter of course following

<sup>71</sup> Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

<sup>72</sup> Cape Times. 2016. *Top bosses take to the streets to save SA*. [Online] Available: <https://www.pressreader.com/south-africa/cape-times/20161103/281822873357371>.

an alleged anonymous tip-off that Eskom received about collusion in the labs, according to amaBhungane.<sup>73</sup> Three independent sources alleged to AmaBhungane that their suspension related to disputes over the quality of Brakfontein's coal, and indeed based on circumstantial evidence, this appears to be the case.

A year later, in September 2016, a leaked draft report of a National Treasury investigation into the Brakfontein contract confirmed that the two had been correct to raise red flags. Despite Eskom's statements that tests conducted by the South African Bureau of Standards at the end of August 2016 had approved the quality of Brakfontein's coal, subsequent tests found that Brakfontein's coal failed to meet standards.

In December 2015, while Van der Riet and Ramavhona were still on suspension and Tegeta's purchase of Optimum was being finalised, Tegeta was granted a short-term contract to supply 255 000 tons of coal a month to another power station, Amot. It subsequently emerged that the award of this contract resulted in Eskom extending Tegeta a R586 million (ex VAT) upfront payment for this coal supply, six hours after the Gupta company's banks refused them a R600 million loan to close the Optimum Coal deal. The State of Capture report concluded that the payment was likely pushed through to plug a R600 million hole in the R2 billion the Guptas needed to buy Optimum. At a special late-night tender committee meeting on 11 April 2016, Eskom executives, led by Brian Molefe, agreed to transfer R586 million to Tegeta – money that was then used, two days later, to help pay for the purchase of Optimum.

About three months after the R586 million extension, Optimum's business rescue practitioners, Piers Marsden and Peter van den Steen, filed a report with the Directorate of Priority Crime Investigation in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act.

Their concerns centred on the fact that while Eskom had claimed that the prepayment was needed to open new mining areas at Optimum's mine so that it could meet the requirements of delivering an additional 250 000 tons to Amot, the business rescue practitioners had not seen any of the prepayment, meaning that it had quite clearly been directed elsewhere and not into Optimum's accounts to assist with its liquidity, as purported by Eskom. (The business rescue practitioners had been brought in by Glencore after the company was forced to put Optimum into business rescue because Eskom, led by Molefe, had refused to renegotiate a 1993 loss-making coal-supply contract – clearly to force it into liquidation to create the space for the Guptas to come in and 'save the day' by buying it – see graphic)

The draft findings of a year-long National Treasury investigation concluded in April 2017 that the prepayment should be treated

as a loan. According to the investigation: "The advance payment of R659 558 079 should be regarded as a loan because there is no evidence that Optimum Coal Mine or Tegeta Exploration and Resources used the funds to procure any equipment for increasing the volume of the coal or further processing the coal," adding that the interest should be recovered from Tegeta or the Eskom officials involved. The draft report also recommended that a forensic audit firm be appointed to "investigate why Eskom gave and continues to give preferential treatment to Tegeta ... by not enforcing key conditions of the Coal Supply Agreement".<sup>74</sup>

In August 2016, Eskom acting CEO Matshela Koko, gave Tegeta a R7 billion coal contract without a tender, ignoring warnings from the National Treasury that such a contract could be irregular.<sup>75</sup> Under the contract, Tegeta's Koorfontein Mines would deliver 2.4 million tons of coal a year at R414 a ton to Komati power station, 40 kilometres south of Middelburg. The contract was due to run until August 2023. However, two months after the seven-year contract was signed, Eskom's board decided to mothball the power station. This means that Eskom will either need to buy Tegeta out of the contract or assume the cost of transporting the coal to another power station, at least 50 kilometres away.

According to amaBhungane, the R7 billion contract is one of three lucrative coal contract extensions that Eskom tried to push to Tegeta over a 15-day period in August 2016. Treasury rejected two of the contracts (one a R855 million extension for the provision of coal to Amot power station, without an open tender) but told Eskom they could sign the Koorfontein contract provided that strict conditions were met. However, indications are that Eskom failed to meet the conditions, but signed anyway (see Chapter 3 for further information on the ballooning of the coal contracts to Tegeta).

#### Guptas move into the military

In February 2016, the Guptas emerged as beneficiaries in a deal with state-owned arms manufacturer Denel, to profit from the sale of its products in Asia. This deal was another demonstration of how the Guptas access and control key board positions to personally gain from state resources.

Denel had recently announced the formation of a joint venture company called Denel Asia, but did not identify the Gupta family as shareholders. According to media reports, the joint venture was concluded in the absence of Denel's permanent CEO, chief financial officer and company secretary, all three of whom were on suspension. At the time, it was speculated that the three were removed to clear the way for the deal.<sup>76</sup>

Announcing the joint venture, Denel said in a press release that Denel Asia, headquartered in Hong Kong, would help Denel

<sup>73</sup> Comrie, S. 2016. *Tegeta coal quality hopelessly non-compliant, says report*. [Online] Available: <http://amabhungane.co.za/article/2016-08-30-tegeta-coal-quality-hopelessly-non-compliant-says-report>.

<sup>74</sup> Comrie, S. 2017. *R10bn in 15 days - another massive Eskom boost for the Guptas*. [Online] Available: [amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas](http://amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas).

<sup>75</sup> Comrie, S. 2017. *R10bn in 15 days - another massive Eskom boost for the Guptas*. [Online] Available: [amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas](http://amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas).

<sup>76</sup> Daily Maverick. 2016. *amaBhungane: How Denel was hijacked*. [Online] Available: [www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked](http://www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked)

## ■ Power, Authority and Audacity: How the Shadow State Was Built

"find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles". Denel's joint venture partner in the company was identified as "VR Laser, a company with 20 years extensive experience [in] defence and technology in South Africa".<sup>77</sup> Denel also said that VR Laser had "a good understanding" of the target "markets and opportunities". Hong Kong corporate records showed that VR Laser was founded on 29 January 2016 with Denel holding 51 percent and Hong Kong shell company, VR Laser Asia 49 percent.

Interestingly, VR Laser Asia was registered in Hong Kong after the Gupta family and associates acquired VR Laser Services, a Boksburg engineering firm, two years before – another deal that attracted controversy. At the time, a friend of the Guptas, Iqbal Sharma, had obtained an interest in VR Laser Services while it was in prime position to benefit from subcontracts in Transnet's R50 billion tender for locomotives. Sharma was chairing the Transnet committee that oversaw the tender process.

Westdawn Investments, a Gupta contract mining company, better known as JIC Mining Services, owns a 25 percent stake in VR Laser Services, and Salim Essa, another Gupta business associate, owns 75 percent, according to shareholder records seen by amaBhungane. Duduzane Zuma acquired a stake through Westdawn. Sharma's stake was via ownership of VR Laser's premises. Furthermore, VR Laser's only two directors are Essa and Pushpaveni Govender, who is also a director of other Gupta companies. Kamal Singhala, a 25 year-old nephew of the Guptas who gives his address as the family's Saxonwold compound, is a former director.

Momentum for the Denel/VR Laser joint venture appears to have built after Public Enterprises Minister Lynne Brown appointed a new Denel board in late July 2015. When Brown announced the new board, she apparently abandoned a list of proposed directors prepared for her by the Department of Public Enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

The list that Brown presented to Cabinet reportedly bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was, for example, not a single engineer (Denel being a highly technical state-owned company) and most had never served on a corporate board before.

She retained only one member of the outgoing board, Johannes "Sparks" Motseki, "for purposes of continuity".<sup>78</sup> Motseki, a former treasurer of the Umkhonto weSizwe Military Veterans Association, is a Gupta business partner. A company of which he is the sole director was allocated 1.3 percent in the Gupta-led consortium that bought Shiva Uranium in 2010. Once appointed, the new chair Dan Mantsha, who was also the legal adviser to the Minister of Communications and Zuma loyalist

Faith Muthambi, suspended Denel CEO Riaz Saloojee, chief financial officer Fikile Mhlontlo and company secretary Elizabeth Africa. No formal reasons were given at the time, according to amaBhungane. He appointed acting CEO, Zwelakhe Ntshepe.

In January 2016, Ntshepe announced the formation of Denel Asia, jointly owned by Denel and VR Laser Asia. Denel launched this Gupta joint venture without approval from the finance and public enterprises ministers as required under the Public Finance Management Act and in line with government guarantee conditions. Denel's lucrative Asian market – and more specifically, a potential \$4 billion (R62 billion) tender to deliver long-range artillery to the Indian army – appears to have been the incentive for the deal.

By March 2016 Denel was marketing its products at India's DeExpo under the banner of Denel Asia, although neither Brown, nor then Finance Minister Gordhan (Treasury had described the formation of Denel Asia as illegal) had given the necessary authority for the formation of the joint venture. At the time, Minister Brown apparently held a report from law firm ENSAfrica that cited red flags about VR Laser's proximity to so-called 'politically exposed persons' and concerns about the company's solvency. According to a source with insight into the transaction, Denel had offered its intellectual property to Denel Asia in return for a promise of R100 million marketing contribution from VR Laser.

In May 2017, Finance Minister Gigaba ordered the dissolution and deregistration of Denel Asia.

### Transnet continues yielding

In July 2016, it emerged that a Gupta-linked company was positioned to win the majority share of a Transnet contract worth R800 million, without a competitive tender.

Documents obtained by amaBhungane and the *Mail & Guardian* showed that, in November 2015, the rail division of the parastatal issued the tender for an information technology solution, but controversially 'confined' it to one bidder only, the business software giant SAP.<sup>79</sup> A condition of the tender was that 60 percent of the value was to be spent on 'supplier development', normally aimed at BEE.

This was well above the National Treasury's 25 percent limit on subcontracting and dwarfed Transnet's planned target of not less than 20 percent. When SAP submitted its bid in December 2015, it committed itself to placing the entire 60 percent with one company: Global Softech Solutions, according to amaBhungane. At that time, Global Softech Solutions was half-owned by the Guptas' Sahara Systems and the balance by an associate of theirs. In its bid documentation, SAP told Transnet that the price it had quoted was pushed up by the 'risk' of subcontracting such a large share of the contract to Global Softech Solutions, a company it had not used

<sup>77</sup> Duda, S. 2016. *Denel expands its horizons*. [Online] Available: [www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303](http://www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303).

<sup>78</sup> Daily Maverick. 2016. *amaBhungane: How Denel was hijacked*. [Online] Available: [www.dailymaverick.co.za/article/2016-05-29-amaBhungane-how-denel-was-hijacked](http://www.dailymaverick.co.za/article/2016-05-29-amaBhungane-how-denel-was-hijacked).

<sup>79</sup> amaBhungane Centre for Investigative Journalism. 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: [amaBhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal](http://amaBhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal).

before. In response to questions from the media, Transnet said that “suppliers appoint subcontractors at their discretion”.<sup>80</sup> But in the bid documentation, SAP suggested the choice lay with Transnet, saying: “Should Transnet have a preference of an additional specific partner to engage with, SAP will be happy to review their skills and their resource matrix.” Oakbay Investments said in response to questions from amaBhungane: “The notion that a global multinational such as SAP, which has almost 300 000 customers in 190 countries and reports over €20-billion in annual revenues, could be pressured, is quite preposterous.”<sup>81</sup>

Transnet’s technical team also appeared confused by the choice of Global Softech Solutions. Minutes of a January 2016 meeting between Transnet and SAP representatives to discuss SAP’s bid quoted by amaBhungane note: “SAP to use GSS [Global Softech Solutions] for local supplier development. Why only one entity? Where [is] GSS track record? Not provided.”<sup>82</sup> The minutes proposed a meeting to discuss supplier development between Transnet’s BEE manager Abdool Lutshka and ‘Sunil’ from SAP, understood to be Sunil Geness, SAP Africa’s director of government relations.

Global Softech Solutions is led by Leela Yemini, who, according to his LinkedIn profile, was educated in India and worked for Transnet as a SAP consultant for two years before starting Global Softech Solutions in 2010. In July 2014, he was joined by an Indian citizen, Mukul Teckchandani. According to his LinkedIn profile, Teckchandani was the general manager of Sahara Systems since March 2014. On 8 September 2015, when the close corporation was converted to a company, Sahara Systems was allotted half the shares, with Yemini retaining the other half. On 26 May 2016, Sahara Systems transferred its shares to a company called Futureteq. This was the same day Transnet’s internal audit called a stop to the initial contract award process. According to amaBhungane, Futureteq appears to operate from Gupta company premises in Midrand. Fehmeda Jeena, who owns 50 percent of Futureteq, is the ex-head of new business development for Sahara Systems, and Himanshu Tanwar, their digital transformation consultant, is a former marketing manager for Sahara Systems.

#### Treasury’s bulwark: Declaratory order

In the course of 2016, and providing the clearest signal that the Guptas are breaching financial regulations, South Africa’s ‘Big 4’ banks, as well as auditor KPMG and advisor Sasfin, ended their relationships with the Guptas.

While they have not given detailed reasons, this research project has established that the at least some of the banks took a decision based on serious financial regulatory breach associated with the family. On 14 October 2016, former Finance Minister Pravin Gordhan

filed an affidavit showing how R6.8 billion in ‘suspicious and unusual transactions’ may have contributed to the decision by South Africa’s major banks to close accounts associated with the Gupta family.

The payments – made by the Gupta family and their companies over the past four years – were listed in a Financial Intelligence Centre report attached to court papers filed in the Gauteng division of the High Court in Pretoria. Gordhan, who was the sole applicant in the case, was asking the court for an order declaring that he cannot interfere with the banks’ decision to close the Gupta accounts. Gordhan had been under immense pressure to intervene, both from Gupta representatives and from within government.

According to court documents, the Gupta companies and their executives have claimed that they are ‘the victims of an ‘anti-competitive and politically-motivated campaign’ and that the banks have provided ‘no justification whatsoever’ for closing their accounts. Correspondence attached to Gordhan’s application showed that between April and September 2016, then Oakbay CEO Nazeem Howa sent repeated letters trying to persuade Gordhan to influence the banks to reopen their accounts.

At the end of July 2016, Gordhan wrote to both the Financial Intelligence Centre and the Registrar of Banks at the South African Reserve Bank asking if there was any evidence they could legally share that would indicate the banks were right to be concerned about the Guptas’ financial dealings.

In response, Financial Intelligence Centre Director Murray Michell compiled a report listing financial transactions by Gupta family members and entities that banks had reported. The list includes 52 transactions ranging from R5 000 to R1.37 billion, totalling R6.8 billion. It also includes 20 multiple transactions for which no amounts were given. Michell wrote that the legislation did not permit him to give details of the banks’ reports, but referred to the possibility of them being submitted to court.

Separately, Registrar of Banks Kuben Naidoo wrote to Gordhan that Standard Bank informed the Reserve Bank’s financial surveillance department about “a particular foreign exchange transaction involving VR Laser Asia, an associated company of Oakbay, which could form the basis of an exchange control related investigation by that department”.<sup>83</sup>

The correspondence attached to Gordhan’s affidavit also gives insight into a behind-the-scenes tug-of-war over the inter-ministerial committee that Cabinet appointed in April to ‘engage’ with the banks on the Guptas’ behalf. The committee was led by the Minister of Mineral Resources Mosebenzi Zwane, a Gupta loyalist.

<sup>80</sup> AmaBhungane Centre for Investigative Journalism, 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: [amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal](https://www.amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal).

<sup>81</sup> AmaBhungane Centre for Investigative Journalism, 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: [amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal](https://www.amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal).

<sup>82</sup> AmaBhungane Centre for Investigative Journalism, 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: [amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal](https://www.amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal).

<sup>83</sup> Comrie, S. Sole, S and Brümmer, S. 2016. *Gordhan blows whistle of Guptas; R6.8bn “suspicious and unusual payments”*. [Online] Available: <https://www.dailymaverick.co.za/article/2016-10-15-amabhungane-gordhan-blows-whistle-on-guptas-r6.8bn-suspicious-and-unusual-payments/#WSNELxQRqT8>

## ■ Power, Authority and Audacity: How the Shadow State Was Built

Gordhan, his affidavit shows, sought legal advice on whether there was any basis for him as Minister of Finance to intervene with the banks.

A resulting legal opinion, from advocates Jeremy Gauntlett and Frank Pelsler, warned that not only was there no legal way he could intervene, but that the planned meeting between ministers and the banks could have 'unintended consequences' and create 'adverse perceptions' about political interference in the banking sector. This was echoed in a letter Lesetja Kganyago, Governor of the Reserve Bank, sent Gordhan. He wrote: "We caution against the unintended consequences of this being viewed as undue political interference in banks' operations ... This could introduce heightened levels of uncertainty and pose a risk to South Africa's financial stability."

The court case is ongoing.

In March 2017, the media reported that the Bank of Baroda, which appears to be one of the last financial institutions with exposure to the Guptas, were closing their accounts.<sup>64</sup> The status of this is unclear; Oakbay denied the claim. Closing client bank accounts can take up to several months due to administrative and regulatory procedures.

### Buying a bank

With the Gupta's access to the domestic and the global financial system increasingly constrained, they engaged in what was perhaps a desperate and last ditch attempt to externalise the proceeds of their deals: an ambitious bid to buy Habib Overseas Bank, through Gupta-linked Vardospan.

On the day, perhaps not coincidentally, that Gordhan and former Deputy Finance Minister Jonas were removed from their positions, Vardospan filed an urgent High Court application in Pretoria to compel regulators to rule on its application for a banking licence. Vardospan owners Hamza Farooqui and Salim Essa were seeking an explanation for why the Reserve Bank, the Registrar of Banks and the Minister of Finance had delayed their application for seven months. Ultimately the application was rejected after the courts ruled it was not an urgent matter.

The attempted purchase of the bank by the Guptas should be viewed for what it is: an attempt to circumvent and evade established financial regulatory requirements designed to protect South Africa from illicit financial behaviour. This group of researchers has been told that Habib Bank became concerned about the identity and modus operandi of Vardospan after the buyer apparently offered to increase the purchase price by a considerable amount on condition that Habib helped to expedite the sale. Habib never accepted this.

### Conclusion

This chapter has provided details that were reported in the media, courts and other investigations for some of the more well-known deals executed by the Gupta family over the past decade. These deals would not have been possible without the political leverage they could deploy to engineer these deals that have, in turn, greatly enriched them and their collaborators. To this extent their modus operandi fits the classic model of broker-cum-fixer rather than the image of all-powerful puppeteer. Their aim is to convert political leverage into commercial gain, while simultaneously guarding against overdependence on a political marketplace they cannot directly control. To manage their risk, they either increase control where they can by ensuring others depend on them, or diversify their portfolio beyond their narrow Zuma-centred network (which is, in turn, highly risky). Their aim is to ensure others become increasingly dependent on them, hence the establishment of transnational financial networks. As the Zuma-centred power elite came to depend more and more on a symbiotic relationship between the constitutional and shadow states, they became increasingly dependent on the Gupta networks for getting things done.

The information and reports provided in this chapter makes it possible to identify a specific modus operandi that the Guptas tend to follow when they set out to achieve an outcome. The first step is to create a legitimate commercial vehicle, usually with Zuma family members as key beneficiaries. This enables two things: they can present themselves as BEE compliant, and they can bully those they deal with by claiming – often quite explicitly – that they have political endorsement at the highest level (i.e. 'without us this deal won't go through').

Once they have established a negotiating position for themselves, they then use their access to change the rules of the game (the use of Homix as a facilitator between Transnet and Neotel is a clear example of this – the most obvious question being why Transnet, with one of the biggest and most experienced treasury teams in the country, and Neotel, a national telecoms company with a R4 billion turnover, needed an obscure shell company to broker an information technology contract between the two large companies?) This is either through insider information on forthcoming policy/regulatory changes that they can either anticipate or manipulate to their own advantage or by ensuring that the right decision-makers are in place in the right structure to make decisions that are favourable to them. To achieve any of these moves, they are prepared to offer payments of various kinds – from straight bribes to payments for services rendered and so-called 'commissions'. Having access to large amounts of money in cash makes this all viable. It also ensures future cooperation and pliability as recipients become 'locked in' to their network as a result. Finally, they are masters at fronting, obfuscation, denial, intimidation and lying. That they act with such impunity points to their belief that they enjoy powerful political protection.

<sup>64</sup> Mkokeli, S., Bonorchis, R. & Antony, A. 2017. Bank of Baroda beings closing Gupta-linked accounts. [Online] Available: <https://mg.co.za/article/2017-03-02-bank-of-baroda-begins-closing-gupta-linked-accounts>.

A 2011 response by former Gupta spokesperson Gary Naidoo, when the media confronted the family with questions over a deal in the steel sector, gives an interesting retrospective insight into the shallowness of their word and the irony of the current political moment because of their theft of our nation. Naidoo said on behalf of the Guptas:

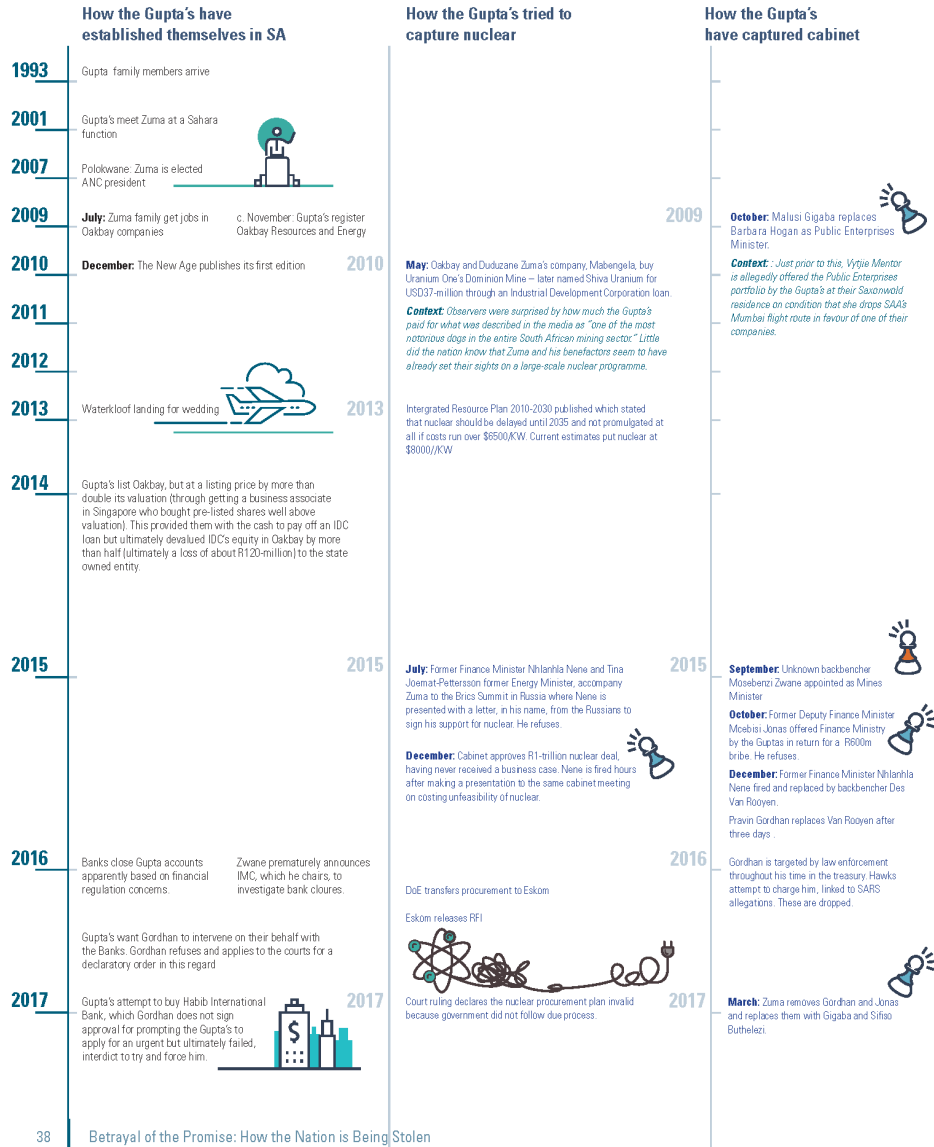
*It would seem that there are forces at play which are determined to find fault with the relationship between the president, the government and the Guptas. For the umpteenth time, let us repeat: a friendship has existed between the family and the president for many years and it goes back to way before the current president's ascent to power. For the record the family took a decision in 2007 to forgo all government tenders and contracts to stop the continuous insinuation of an improper relationship between government and the Guptas.*

*These attacks have intensified since the launch by the family of a national English daily newspaper and [the family's] entry into the highly contested mining sector. We remain surprised by some quarters of the media's continuous and malicious attacks on the president, the family and its business partners in the face of not a single shred of evidence. Rather, these attacks are based on conjecture and insinuation and innuendo. We are even more surprised by your focus on trying at all costs to find something improper in the family's entrepreneurship, rather than to recognise its innovation in creating jobs and growing foreign direct investment into South Africa. Finally, for the record, the family subscribes to the highest standards of governance and ethics (including proactive management of conflicts) in business and the continuous suggesting of impropriety is both tiresome and defamatory.*

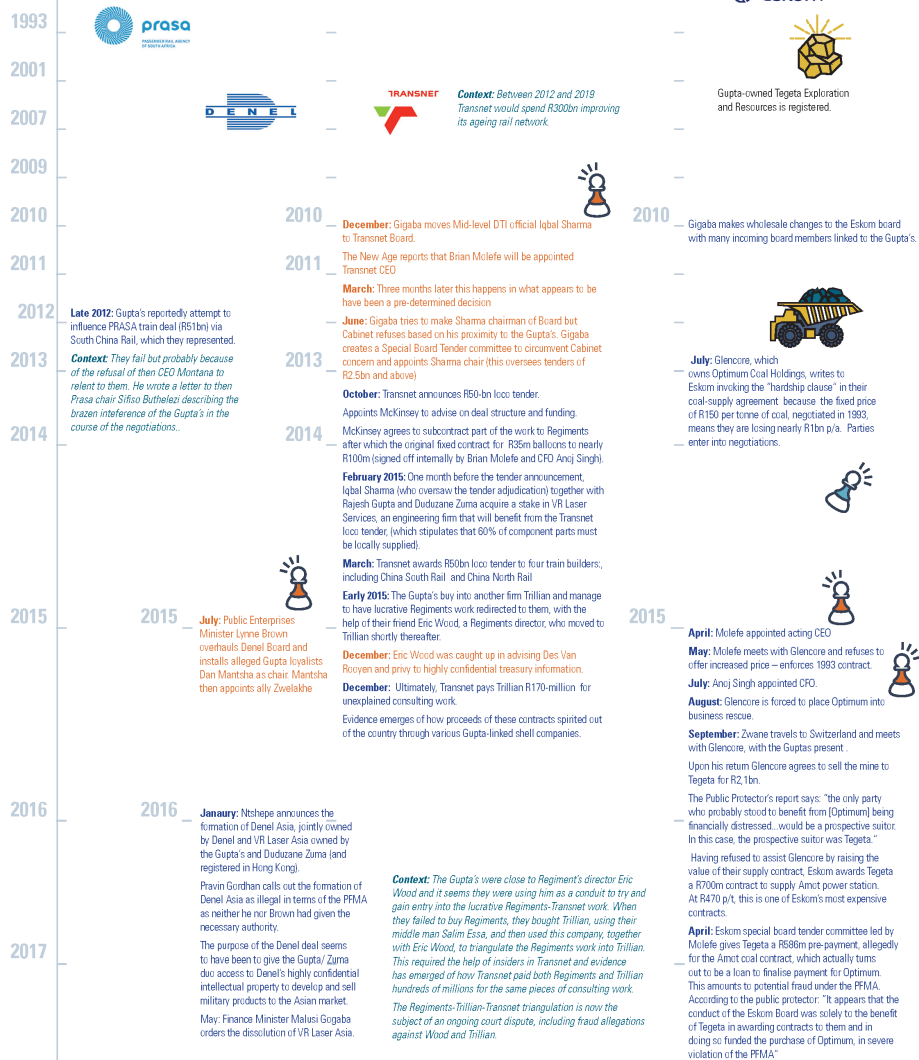
■ **Power, Authority and Audacity:  
How the Shadow State Was Built**

## Betrayal of the promise: How the nation has been stolen

In less than a decade, the Zuma and Gupta families have managed to position themselves as a tight partnership that coordinates a power elite to manage the rent seeking that binds the constitutional and shadow states.



How the Gupta's have captured the SOE's



# 3

## Repurposing Governance

### Introduction

This section starts by returning to the notion of radical economic transformation as a way of understanding why procurement and SOEs have become so central to the political project of the Zuma-centred power elite. We will then argue that the notion of radical economic transformation has been radicalised by proponents who have started to argue that the constitutional framework and the National Treasury are obstacles to transformation. In this regard, from 2011 onwards the power elite has shown itself to be increasingly prepared to break the law and violate the constitution. We see this clearly at Transnet and Eskom, in both cases under the leadership of Brian Molefe. There is a growing shadow security state emerging, relying on intelligence agencies to destabilise opposition and to neutralise potential threats from those state institutions that have the mandate and capacity to investigate and prosecute wrongdoing, including the Hawks, SARS and the National Prosecuting Authority of South Africa. With a coherent political outcome in mind, the discourse of radical economic transformation increasingly becomes an ideological cover for a small power elite to pursue their personal interests through extra-legal means, using the state as a personal resource.

### From conviction to ideology

The Polokwane revolt in the ANC was informed by a conviction that economic transformation as pursued after 1994 had produced an anomaly, if not a perversion: a small black elite beholden to white corporate elites, a vulnerable and over-indebted black middle class and a large, African majority condemned to unemployment and dependent on welfare handouts to survive. The rise in the Gini coefficient between 1994 and 2009 lends credence to this view.

Since the adoption of the GEAR strategy in 1996, most people in the ANC and the Alliance believe that the RDP had been jettisoned. "Few," noted Ben Turok in 2009, "seem to have accepted arguments such as those advanced by Minister of Finance Trevor Manuel, immediately before the [Polokwane] Conference, that 'GEAR was the ANC government's macro-economic programme to implement the RDP'".<sup>1</sup> GEAR was widely slated as a self-imposed programme of structural adjustment. As a Cosatu briefing document from 2002 put it: "The movement [...] sharply warned against the danger of promoting the interests of a new elite over and above that of the majority who stood to benefit from national liberation".<sup>2</sup>

The repudiation of the Mbeki administration at Polokwane was absolute. All six of the most senior ANC and government officials lost their positions. After Polokwane, the earliest expressions of this conviction as a set of policy proposals came from the ANC Youth League.

Articulating a vision of 'Economic Freedom in our Lifetime' – an adaptation of the famous slogan from the 1940s – Malema, then president of the league, recalled the Freedom Charter's categorical imperative: "The national wealth of our country, the heritage of South Africans, shall be restored to the people". At the League's first National General Council in August 2010, he explained that "**Nationalisation of Mines** is but one of the components of realising economic freedom in our lifetime, and we should never compromise on that principle [emphasis added]"<sup>3</sup>

Nationalisation was not the only alternative to the market-friendly approaches pursued after 1994. Cosatu, for example, was exploring how the economy could be reconstructed using an investment strategy that differentiated between six types of capital: publicly owned fiscal resources, publicly owned resources in the hands of parastatals, public sector financial institutions, socially controlled resources, retirement funds, private capital.<sup>4</sup> The first two and especially the second – capital held by parastatals – would come to form the main pillars of what would later be called radical economic transformation. The battle to transform the economy was shifting away from the economy itself to the state and, in particular, to who controlled government's procurement budgets.

### Radical economic transformation and public procurement

The idea of using government's procurement budget to realise social and economic outcomes is not a new one.<sup>5</sup> It was the backbone of South Africa's racially exclusive 'developmental state' in the 1930s and formed a key platform of the apartheid project, especially in relation to cultivating a class of Afrikaner capitalists (national capitalists) in relation to English-speaking capitalists (imperial capitalists).<sup>6</sup> Today, moreover, the international development literature frequently extolls the virtue of such a policy. From Turkey to Mexico,<sup>7</sup> governments and development agencies seek ways to leverage their procurement spend to create or nurture local industries. "If developing country governments are shown to possess significant purchasing power in imperfectly

<sup>1</sup> Turok, B. 2008. From The Freedom Charter to Polokwane: The Evolution of ANC Economic Policy. New Agenda: South African Journal of Social and Economic Policy.

<sup>2</sup> Cosatu. 2002. *Theory of Transition*. [Online] Available: <http://amadlandawonyo.wikispaces.com/Theory+of+the+Transition%2C+COSATU%2C+Feb+2002>.

<sup>3</sup> ANC Youth League. 2010. Political report. [Online] Available: <http://www.ancyl.org.za/docs/raps/2010/politicalreport.html>.

<sup>4</sup> Cosatu. 2002. *Theory of Transition*. [Online] Available: <http://amadlandawonyo.wikispaces.com/Theory+of+the+Transition%2C+COSATU%2C+Feb+2002>.

<sup>5</sup> McCrudden, C. 2004. Using public procurement to achieve social outcomes. *Natural Resources Forum: A United Nations Sustainable Development Journal* 28(4):249-348.

<sup>6</sup> See the famous edition of the *Review of African Political Economy*, June 1976.

<sup>7</sup> Silva, M. & Scott, G. 2014. *Empowering small and medium-sized enterprises (SMEs) by leveraging public procurement*. [Online] Available: <https://www.issd.org/sites/default/files/publications/empowering-smes-eight-big-ideas-mexico.pdf>

competitive markets," suggest some scholars, "a menu of traditional and non traditional procurement contracts that can support economic development to become viable"<sup>8</sup>

We will see in a moment that similar ideas had informed the redesign of South Africa's system of public procurement in the 1990s. The focus was on government's purchase of goods and services to incentivise the emergence of black-owned small- and medium-sized enterprises. It was a key idea in the New Growth Path and the economic vision issued by the Economic Development Department, and it gave meaning to the notion of South Africa as a developmental state.<sup>9</sup> These ideas were clearly in wide circulation at that time because it is specifically mentioned by Gigaba after his appointment of Minister of Public Enterprises in 2010.

In a document from 2011, however, the dti complained that Broad-based Black Economic Empowerment (B-BBEE) considerations hardly figured in state procurement practices.<sup>10</sup> This was about to change. In December 2011 the cabinet approved the Preferential Procurement Regulations to align them with the B-BBEE Act. At stake, noted **the dti**, was the possibility of using R846 billion in public investment programmes for transforming the economy.

During this time much of the thinking around preferential procurement was coming from **the dti**. From 2009 it was a key member of the Advisory Council established in terms of the BBBEE Act. It also acted as Secretariat to this council.

Table 2: Value of South African SOE procurement (2010–2011)

	State Owned Enterprise	SOE Procurement Expenditure	% of Total Government Procurement Expenditure
1	ACSA	R 2,200,000,000.00	0,26%
2	City Power	R 1,500,000,000.00	0,18%
3	CSIR	R 700,000,000.00	0,08%
4	Denel	R 1,600,000,000.00	0,19%
5	<b>Eskom</b>	<b>R 74,000,000,000.00</b>	<b>8,75%</b>
6	IDC	R 226,000,000.00	0,03%
7	PetroSA	R 12,000,000,000.00	1,42%
8	SAA	R 14,800,000,000.00	1,74%
9	SAPO	R 6,000,000,000.00	0,7%
10	SARS	R 2 700 000 000.00	0,32%
11	SITA	R 6 000 000 000.00	0,7%
12	TELKOM SA	R 13 000 000 000.00	1,5%
13	<b>TRANSNET</b>	<b>R 70 000 000 000.00</b>	<b>8,3%</b>
	<b>TOTAL</b>	<b>R 212 726 000 000.00</b>	<b>25%</b>

Source: DTI, 2011

<sup>8</sup> Taylor, T.K. & Yülek, M. A. Leveraging international public procurement in support of economic development: Forecasting public sector expenditures and market size in Turkey. [Online] Available: <http://www.ippa.org/PPCS/Proceedings/Part9/PAPER9-6.pdf> . Pg:2436.

<sup>9</sup> Economic Development Department. 2011. *The New Growth Path*. Pretoria: Economic Development Department.

<sup>10</sup> DTI. 2011. *Leveraging public procurement. Annual small business summit*. [Online] Available: [http://www.thedti.gov.za/sme\\_development/summit/Leveraging%20Public%20Procurement%20as%20a%20Market%20for%20Small%20Enterprises.pdf](http://www.thedti.gov.za/sme_development/summit/Leveraging%20Public%20Procurement%20as%20a%20Market%20for%20Small%20Enterprises.pdf). Pg:3.

There was more than R200 billion in SOE spending to leverage in the interests of black economic empowerment in 2010/11. The lion's share was in only two companies: Eskom and Transnet. They made up more than two-thirds of the total procurement expenditure in SOEs at R144 billion or 17 percent of government's total procurement budget.

In 2014 Deputy Minister of Trade and Industry Mzwandile Masina announced that the department would seek to create 100 'black industrialists' over the next three years. The idea had first been mooted in 2012 by the Presidential Advisory Council on B-BBEE. Masina noted that this formed part of government's "radical economic transformation programme"<sup>11</sup> This may have been the first time the expression was used in a government policy document.

*Over the next five years, a host of working opportunities will become available to South Africans. For example, a new generation of Black industrialists will be driving the re-industrialisation of our economy. Local procurement and increased domestic production will be at the heart of efforts to transform our economy, and will be buoyed by a government undertaking to buy 75% of goods and services from South African producers.<sup>12</sup>*

In other words, radical economic transformation referred to an ambitious project, not simply to create black-owned small- and medium-sized enterprises, but to control the leading heights of the economy. Here was a vision of economic transformation that was not contingent on the reform of white business and that did not depend on the goodwill of whites to invest in the economy, to employ black people and to treat them as equals.

It is not difficult to see how and why this vision of radical economic transformation was and is compelling, even virtuous.

When he was still Minister of Public Enterprises, Gigaba addressed the Black Management Forum. He told the audience: "As government we are committed to the creation of a new generation of black industrialists who are 'creators', 'producers', 'strategists' and 'decision-makers'". He added, "This is more than just an economic imperative but a **moral requirement** [emphasis added]", concluding that "a strong black industrial class is a prerequisite for robust entrepreneurship and innovation in Africa at large."<sup>13</sup>

If the vision was bold, its execution would have to be audacious. For radical economic transformation required the following:

- Exercise of control over state procurement budgets.
- Repurposing state institutions to focus on economic transformation, apart from their official mandates.
- Displacing established white-managed and -owned companies from a variety of sectors.

The SOEs would be at the forefront of this initiative. Vast sums of money were concentrated in only 13 organisations with the balance of R600 billion splintered across thousands of government procurement points

#### Procurement reform (1994–2012)

Historically, South Africa, following what was then traditional international practice, operated a centralised procurement system. This was reflected nationally in the establishment of a State Tender Board. Each of the four provinces had their own tender board, though these only enjoyed advisory powers. In addition, the larger municipalities made their own procurement arrangements, generally centred on their own tender boards. SOEs also had autonomous procurement powers.

The first major study of the politics of procurement in South Africa noted that the initial trigger for reform after 1994 was the desire to effectively include emerging small- and medium-sized enterprises in government contracts. Traditionally these contracts had gone to established and big white-owned businesses. "Procurement reform was therefore centrally predicated upon and explicitly justified as an attempt to merge the two sides of South Africa's 'dual economy', procurement being utilised as a lever to help include previously disadvantaged business-owners in the mainstream."<sup>14</sup>

In the 1980s concerns about the inefficiencies in developing country procurement practices converged with the 'good governance' agenda, informed by the move to New Public Management. In South Africa specifically, central tender boards were regarded as both "out-dated, cumbersome and unwieldy, both bad procurers and a bottleneck placed across the effective discharge of government responsibilities".<sup>15</sup> This conclusion by the Procurement Forum dovetailed with similar proposals and opinions emerging from both the Department of Public Service and Administration and the National Treasury. The result was the major decentralisation of the tendering system.

The process of decentralisation only really started in 2003. Originally the Green Paper on Public Sector Procurement Reform envisaged a Procurement Compliance Office to oversee procurement centres in each department or agency. It would be the lynchpin of the new system, exercising high-level control over education and training, and enjoying robust powers to monitor, audit, investigate and sanction. Yet the office was not established, falling victim to policy differences between the National Treasury and the Department of Public Works. Indeed, something resembling this office would only be created in 2012 – the Office of the Chief Procurement Officer – in the National Treasury. In this context, there was a proliferation of procurement points across the state, with wide discretion to buy goods and services from the private sector in the absence of proper oversight. Whereas in the 1990s there were maybe a dozen points of procurement, tens of thousands of

<sup>11</sup> DTL 2014. *The dti to create 100 Black industrialists in three years*. [Online] Available: <https://www.thedti.gov.za/editmedia.jsp?id=3106v>.

<sup>12</sup> DTL 2014. *The dti to create 100 Black industrialists in three years*. [Online] Available: <https://www.thedti.gov.za/editmedia.jsp?id=3106v>.

<sup>13</sup> Gov.za. 2014. Minister *Malusi Gigaba: Black Management Forum business breakfast*. [Online] Available: <http://www.gov.za/address-minister-malusi-gigaba-mp-occasion-business-breakfast-hosted-black-management-forum-bmf>.

<sup>14</sup> Public Affairs Research Institute. 2014. *The Contract State: Outsourcing and Decentralisation in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute. Pg 16. Also see Brunette, R. Forthcoming. *Zumaism as Machine Politics Radicalised* and Brunette, R., Klaaren, J. & Nqaba, P. Forthcoming. *The Contract State: Towards a Fiscal Sociology of Public Procurement from South Africa*.

<sup>15</sup> Public Affairs Research Institute. 2014. *The Contract State: Outsourcing and Decentralisation in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute

procurement points emerged as decentralisation proceeded from 2000 onwards following the abolishment of the State Tender Board.

The effects were quickly felt. The Auditor General reported year-on-year increases in wasteful and irregular expenditure. Corruption levels were rising. The system was out of control. From the perspective of the protagonists of radical economic transformation the dissolution of the State Tender Board in 2000 must have been viewed as a shocking mistake. It eliminated a centre from which hundreds of billions of Rands could have been controlled.

Whereas the move to public management and the creation of the Senior Management Service Programme, in particular, provided a vehicle through which the public administration could be politicised, it also massively constrained opportunities to pursue economic nationalism.<sup>16</sup> It is hardly surprising, therefore, that one of the highlights of the ANC's 2014 election manifesto was the call for a State Tender Board. Explaining the ANC policies at the time, President Zuma said:<sup>17</sup>

*The state must buy at least 75% of its goods and services from South African producers. The state's buying power will support small enterprises, co-operatives and broad-based black economic empowerment.*

*We will ensure that large public entities such as Eskom and Transnet buy specified goods for the infrastructure build programme locally [...] to further prevent corruption, tender processes will be centralised under a central tender board.*

In effect two competing models of 'bringing corruption under control' were emerging. The first was driven by the National Treasury that sought to reinvigorate the idea of a Procurement Compliance Office by establishing the Office of the Chief Procurement Officer in 2013. Work done by the Public Affairs Research Institute in 2012 had shown that the corruption was increasingly related to vulnerabilities in the procurement system.<sup>18</sup> The Office of the Chief Procurement Officer was not intended to be new state tender board, but rather to oversee the system so that, in the words of its first officer, Kenneth Brown, "the procurement of goods, services and construction works is conducted in a fair, equitable, transparent, competitive and cost effective in line with the Constitution and all relevant legislation"<sup>19</sup>. The office has focused on ensuring 'fair value' in contracts, in open and effective competition, ethics and fair dealing, accountability and reporting and, lastly, equity. The latter was the office's term for discussing preferential procurement. It is not difficult to see that the Office of the Chief Procurement Officer, like the Constitution, was based on the belief that BEE could be reconciled with fair value in tendering and competitive bidding.

The second was driven by the power elite, with key actors like Molefe and others who were less confident that the fight against rent seeking could be reconciled with radical economic transformation by relying on the Office of the Chief Procurement Officer or the National Treasury. They viewed the problem as the procurement framework, more generally the Public Finance Management Act and beyond that, the Constitution. Their solution was not to try to eliminate competitive corruption to access rents, but to repurpose state institutions to establish a centralised rent-seeking system that would cut out the lower-level rent seekers who were prone to getting caught, making mistakes and, in the process, compromising wider networks (as was the case with Malema in the Limpopo Province or with Montana in PRASA, for example).

#### Radical economic transformation and the shift to extra-legal means

It is common in today's South Africa, in public and academic discourse, to discuss the Zuma presidency and its associated networks simply in terms of corruption. Tom Lodge, Professor of Peace and Conflict Studies at University of Limerick and well-known political sociologist, for example, suggests that "increasingly within the ANC, leadership behaviour appears to be characterized by neo-patrimonial predispositions and, while formal distinctions between private and public concerns are widely recognized, officials nevertheless use their public powers for private purposes"<sup>20</sup>. In South African law, the use of public office for private gain is the definition *par excellence* of corruption. Lodge mobilises several arguments to explain this turn of events.

The first is historical: "From the 1950s the ANC was drawn into extra-legal and armed opposition, processes which led its leadership to incorporate criminal groups into its networks."<sup>21</sup> The second is financial: "The ANC believed it needed massive funding to win its first election and this set expectations for future contests in which it began to rely on resources generated by party-controlled enterprises or by politically motivated contracting"<sup>22</sup>. Thirdly, he proposes that as the ANC Youth League displaced the trade unions as the organised base of the party, so it "became increasingly amenable to a politics in which authority is manifest in the exercise of personal power, conspicuous consumption, and individual generosity"<sup>23</sup>.

These are useful insights. They explain corruption as a consequence of the ANC's history, of structural constraints on its finances and of its organisational culture. However, what we see from 2011 is a presidency and new appointees to state institutions increasingly prepared to play fast and loose with the law and the Constitution, not simply out of self-interest, but out of **political conviction**. Let us return to **the dti** document from 2011 discussed above.

<sup>16</sup> Chipkin, I. 2016. *The State, Capture and Revolution in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute.

<sup>17</sup> Politicsweb.co.za. 2014. *On the ANC's 2014 election manifesto* - Jacob Zuma. [Online] Available: <http://www.politicsweb.co.za/news-and-analysis/on-the-ancs-2014-election-manifesto-jacob-zuma>.

<sup>18</sup> Technical Assistance Unit. 2012. *Diagnostic research report on corruption, non-compliance and weak organisations*. Prepared by the Public Affairs Research Institute. [Online] Available: [http://www.pari.org.za/wp-content/uploads/Diagnostic-corruption-TAU-PARI-FINAL\\_24Oct2012-2.pdf](http://www.pari.org.za/wp-content/uploads/Diagnostic-corruption-TAU-PARI-FINAL_24Oct2012-2.pdf).

<sup>19</sup> Office of the Chief Procurement Officer. n.d. *About us*. [Online] Available: [http://ocpo.treasury.gov.za/About\\_Us/Pages/The-Chief-Procurement-Officer.aspx](http://ocpo.treasury.gov.za/About_Us/Pages/The-Chief-Procurement-Officer.aspx).

<sup>20</sup> Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(463):1.

<sup>21</sup> Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57.

<sup>22</sup> Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57.

<sup>23</sup> Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57.

The department looked forward to a change in the Preferential Procurement Framework to bring it into line with the B-BBEE Act. At stake was the requirement to include empowerment criteria in the evaluation of tender bids, so that price was not the sole consideration. There were two imperatives at work, not necessarily in contradiction, but theoretically distinct.

1. A 'good governance' measure that required that procurement matters be considered against a standard of fiscal probity, efficiency and effectiveness.
2. A *political* criterion that sought to privilege the racial transformation of the economy.

We see precisely this tension expressed in the Constitution. Section 217 deals with procurement. It is worth quoting the full text of subsections 1 and 2.<sup>24</sup>

1. *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.*
2. *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*
  - a. *categories of preference in the allocation of contracts; and*
  - b. *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

Reading these clauses together, the full force of the dilemma becomes apparent. The Constitution assumes that there is no major tension or contradiction between, on the one hand, procuring goods and services in a way that is *fair, equitable, transparent, competitive and cost-effective* and, on the other, giving *preference and protection* to black South Africans. It is precisely this assumption that the protagonists of radical economic transformation have called into question.

While in theory these imperatives could be reconciled by finding suitably capable and cost-effective black-owned companies, in practice – and given the history of apartheid – they worked against each other. At least, this was the claim. As the head of the Black Management Forum, Dumisani Mpafa, complained in 2016: "Any black entrepreneur would tell just how hard it is to penetrate the private sector because of long-established relationships, over and above the deliberate bias towards white-owned companies."<sup>25</sup>

As long as price and experience were the overriding criteria for awarding tenders, **the dti**, the Black Management Forum and others, including Mzwanele Manyi's Progressive Professionals Forum insisted that the 'rules of the game' were rigged against black businesses. At

the National Broad-based Black Economic Empowerment Summit in 2013, for example, delegates complained that the Public Procurement Policy Framework Act was:<sup>26</sup>

*A major impediment in advancing the objective of B-BBEE in the public sector [...] The PPPFA [Public Procurement Policy Framework Act] makes it impossible for black-owned companies to compete fairly with large companies. The Act puts in place a weighting of 80% on price and 20% on B-BBEE score for smaller tenders, and 90% weighting on price, with 10% weighting on B-BBEE for larger tenders.*

Earlier in 2010, the Black Management Forum had proposed that considerations of race count for 50/100 points on the B-BBEE scorecard. Underpinning this narrative was a clear conviction that the economy was dominated by white business.

The project of radical economic transformation was cast in binary terms: black economic empowerment was obstructed by the insidious forces of what became increasingly to be referred to as white monopoly capitalism. Chris Malikane, the Wits-based economist who followed Malusi Gigaba into the finance ministry as an advisor argued, for example, that after 1994 white monopoly capital had enjoyed "unfettered dominance [...] over all levers of power in all spheres of society"<sup>27</sup> He suggested that this control extended to the "private sector," but also to "all apparatuses of the state such as government, the universities, the courts, the press, the security forces and political parties"<sup>28</sup>. What he calls credit-based BEE and affirmative action strengthened the hold of white monopoly capitalism by creating a black middle class and a black capitalist class beholden to it. However, Malikane also describes a second black capitalist class brought into existence through the state procurement system.

*The battle that is now raging over the removal of the Finance Minister in particular, is led by white monopoly capital together with this credit-based black capitalist class, whose ownership and control of the state and the ruling party is being threatened by the rise of the tender-based black capitalist class, which also has links with the leadership of political parties by winning tenders with the State.*<sup>29</sup>

Malikane portrays a tender-based capitalist class as locked in a life-and-death struggle with white monopoly capital (and its credit-based BEE allies) to overcome the colonial class structure. However, for this project to proceed, the protagonists of this position have increasingly depicted the existing legislative and institutional framework, including the National Treasury and the Reserve Bank, as fundamental obstacles. Malikane therefore calls for a broad front of workers and youths and progressive whites to support tender-based capitalists to

<sup>24</sup> Republic of South Africa. 1996. *The Constitution of the Republic of South Africa*. Pretoria: Republic of South Africa. Section 217 (1). (2).

<sup>25</sup> The Sunday Independent. 2016. *Treasury rules continue to betray black entrepreneurs*. [Online] Available: <http://www.pressreader.com/south-africa/the-sunday-independent/2016/03/28/2054801349421>.

<sup>26</sup> DTI. 2013. *The national broad-based black economic empowerment summit. A decade of economic empowerment – (2003-2013) Summit Report*. [Online] Available: [http://www.dti.gov.za/economic\\_empowerment/docs/National\\_Summit\\_Report.pdf](http://www.dti.gov.za/economic_empowerment/docs/National_Summit_Report.pdf).

<sup>27</sup> Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: <http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/>.

<sup>28</sup> Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: <http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/>.

<sup>29</sup> Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: <http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/>.

smash these institutions.

The project of radical economic transformation has increasingly been set up against key state institutions and the Constitutional framework on the basis of a critical reading of South Africa's political economy and of the constraints that the transition imposed on economic transformation. This was an analysis emerging from within the DTI and on the fringes of the ANC. It resonated closely with the neo-Fanonian readings of South Africa's post-colonial situation, widely in discussion on university campuses in 2015 and 2016, in the Black First Land First grouping and in ultra-left critiques of South Africa's 'elite transition'. However, it was not the position of the ANC itself.<sup>30</sup>

#### The National Treasury: Empowerment and guarantees

There were two major reasons why the National Treasury posed a significant obstacle to the project of radical economic transformation. Firstly, we have seen that its constitutional mandate placed it on the horns of a very sharp dilemma. In South Africa, the terms of public procurement are not defined simply in statute (subject to legislative revision) but are inscribed in the ground law of the country. South Africa's constitutional drafters were prescient, perhaps, about the significance that procurement would assume in the post-apartheid era.

The National Treasury, itself a creature of the Constitution, had to try to reconcile BEE with considerations of fair value for the fiscus and for citizens.

When the protagonists of BEE thus insisted that 30 percent of government contracts, especially in SOEs, be set aside for black-owned companies, irrespective of their experience, capacity or the price at which they offered to provide services or goods, the National Treasury

balked. Indeed, the more the institution insisted that government entities proceed in a way that was "fair, equitable, transparent, competitive and cost-effective", the more controversial it became.

The second area where the National Treasury caused ructions was over its control of guarantees. In terms of the Constitution any withdrawal from the National Revenue Fund must be approved by Parliament. Hence a state subsidy would need parliamentary approval. This, in effect, is what the B-BBEE caucus was demanding; a subsidy given to black companies for doing business.

The bar, however, for guarantees was much lower. It only needed a letter from the Minister of Finance. With a guarantee, state entities could borrow from private lenders/banks (though not foreign governments) to finance their investment plans and pay the growing number of black-owned sub-contractors. This is, indeed, how SOEs in South Africa have tended to finance their investments. If government entities default on interest payments, banks have a 'first call' on the South African fiscus. In effect guarantees shift the risk from the lending institution to the fiscus. It is not hard to understand, therefore, why the banks liked them.

In principle, therefore, guarantees are issued on the basis that the borrowing institution has a sound business plan, a secure and adequate revenue stream and is reliably managed. In other words, they are issued by the Minister of Finance on the basis that the loans will never be 'called-in'.

The table below is drawn from Chapter 7 of the National Treasury's 2017 Budget Review. It shows the exposure of the fiscus to loans taken out by various state entities between 2014 and 2017.

Table 3: South African government guarantee exposure (2014/15–2016/17)

R billion	2014 / 15		2015 / 15		2016 / 17	
	Guarantee	Exposure <sup>2</sup>	Guarantee	Exposure <sup>2</sup>	Guarantee	Exposure <sup>2</sup>
<b>Public institutions</b>	<b>469.6</b>	<b>220.9</b>	<b>469.9</b>	<b>255.8</b>	<b>471.7</b>	<b>308.3</b>
<i>of which:</i>						
<i>Eskom</i>	<i>350.0</i>	<i>149.9</i>	<i>350.0</i>	<i>174.6</i>	<i>350.0</i>	<i>218.2</i>
<i>SANRAL</i>	<i>38.9</i>	<i>27.4</i>	<i>38.9</i>	<i>27.2</i>	<i>38.9</i>	<i>30.1</i>
<i>Trans-Caledon Tinnel Authority</i>	<i>25.6</i>	<i>20.8</i>	<i>25.8</i>	<i>21.2</i>	<i>25.7</i>	<i>20.7</i>
<i>South African Airways</i>	<i>14.4</i>	<i>8.4</i>	<i>14.4</i>	<i>14.4</i>	<i>19.1</i>	<i>17.9</i>
<i>Land and Agricultural Bank of South Africa</i>	<i>6.6</i>	<i>2.1</i>	<i>6.6</i>	<i>5.3</i>	<i>11.1</i>	<i>5.4</i>
<i>Development Bank of Southern Africa</i>	<i>12.9</i>	<i>4.1</i>	<i>13.9</i>	<i>4.4</i>	<i>12.7</i>	<i>4.2</i>
<i>South African Post Office</i>	<i>1.9</i>	<i>0.3</i>	<i>4.4</i>	<i>1.3</i>	<i>4.4</i>	<i>3.9</i>
<i>Transnet</i>	<i>3.5</i>	<i>3.8</i>	<i>3.5</i>	<i>3.8</i>	<i>3.5</i>	<i>3.8</i>
<i>Denel</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>
<i>South African Express</i>	<i>1.1</i>	<i>0.5</i>	<i>1.1</i>	<i>0.5</i>	<i>1.1</i>	<i>1.0</i>
<i>Industrial Development Corporation</i>	<i>1.6</i>	<i>0.3</i>	<i>2.0</i>	<i>0.2</i>	<i>1.9</i>	<i>0.2</i>
<i>South African Reserve Bank</i>	<i>7.0</i>	–	<i>3.0</i>	–	<i>3.0</i>	–
<b>Independent power producers</b>	<b>200.2</b>	<b>96.2</b>	<b>200.2</b>	<b>114.0</b>	<b>200.2</b>	<b>125.8</b>
<b>Public-private partnerships<sup>3</sup></b>	<b>10.1</b>	<b>10.1</b>	<b>10.3</b>	<b>10.3</b>	<b>10.9</b>	<b>10.9</b>

Source: Budget Review 2017

<sup>30</sup> See for example, the ANC's 2017 organisational renewal document that argues that during the Mbeki period there was "marked progress towards a National Democratic Society." This was because economic growth was relatively quick, fiscal expenditure on social and other services grew dramatically and civil society activism was strong. Most noteworthy is that the ANC suggested that "institutions tasked with defending and promoting the Constitution sought to play their role, with the judiciary standing out among them in asserting its independence and a progressive interpretation of the provisions of the Constitution". This was a far cry from the suggestion that the Constitution was an obstacle to progressive transformation in South Africa. (See ANC, 2017, *Organisation renewal and organisational design discussion document*, 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa.

Eskom has by far the largest exposure to the banks at R218 billion in 2016/2017. SAA's exposure has increased to R17.9 billion in 2016/2017 from less than half that in 2014/2015. Generally South African ministers of finance have been careful in issuing guarantees, balancing the country's exposure with an assessment of the borrowing organisation's financial viability, for should this deteriorate the risk increases that the fiscus would be required to purchase the original debt. The National Treasury has, therefore, been loathe to extend further guarantees to SAA. The company is effectively bankrupt. So too is the South African Broadcasting Corporation.

It is not hard to see why the National Treasury has until now been preoccupied with how state entities, especially Eskom, are governed and beyond that, with the sovereign reputation of the State. If Eskom's debts became repayable it could bankrupt the economy. South Africa came close to this towards the end of 2016 when the World Bank threatened to call on its loans to Eskom after Spain complained that the company was reneging on its commitment to sign the independent power producer contracts. The crisis was averted when the Deputy Minister of Finance intervened undertaking to convince the Minister of Energy to get Eskom to sign the contracts. In April both the Deputy Minister of Finance and Minister of Energy lost their jobs, and these contracts had not been signed at the time of writing (early May 2017).

Also related to energy, Nhlanelo Nene and later Pravin Gordhan were major obstacles to the nuclear build programme, when they made it clear that they would not approve the requisite loan guarantees.<sup>31</sup> Both subsequently lost their jobs.

There is an important subtlety to note here. Radical economic transformation via the SOEs is not devoted to any *particular* investment project, but rather is focused on continuing investment. In this regard, the nuclear deal is not so much about nuclear energy as it is an excuse for massive industrial expenditure. This is a clear example of repurposing an institution or a project for a goal that, at best, may or may not align with government policy and, at worst, may fly in its face. The nuclear deal is again a good example. No referenced research has contradicted the findings of the Centre for Scientific and Industrial Research that argues overwhelmingly in favour of renewable energy for South Africa as the cheapest and safest route to meeting the country's base-load needs.<sup>32</sup> In other words, nuclear power is undesirable because it is both unaffordable in current circumstances and it is the wrong energy solution, regardless of its safety risks.

### Radical economic transformation in practice

As this concept of radical economic transformation gained momentum with parts of Jacob Zuma's power elite, the National Treasury increasingly became the object of frustration. The trigger may have been the perceived insincerity of the Minister of Finance in respect of changes to the National Treasury's regulations about preferential procurement.

There were steps taken in 2009 to align this framework with the codes of B-BBEE and particularly to bring the SOEs under the auspices of the B-BBEE codes.<sup>33</sup> In 2009, the National Treasury announced that with the DTI it had revised its preferential procurement regulations to align with the B-BBEE Act. On 6 June 2011, Minister Pravin Gordhan promulgated corresponding National Treasury regulations. On the same day he extended the remit of these regulations to include SOEs.<sup>34</sup> Yet six months later, almost to the day, he reversed his decision: "... Pravin Gordhan exempt the institutions [listed in Schedules 2, 3B and 3D of the Public Finance Management Act] from the provision of the Preferential Procurement Regulations".<sup>35</sup>

The schedules in question listed all major public entities, including the very companies that **the dti** saw as the advance-guard of economic transformation, as well as government business enterprises. In other words, Gordhan had excluded the SOEs from the remit of B-BBEE. It must have seemed a clear signal to the Zuma-centred power elite and the protagonists of radical economic transformation that the National Treasury was not prepared to play ball.

There have been regular and major changes to the Zuma cabinet – almost as if the President is experimenting with different configurations of people, alliances and departments. Between October 2010 and March 2017 there have been 10 cabinet changes, with rapid turnover in the three years between 2012 and 2014; of special importance was Public Enterprises, the shareholder of Ministry of Transnet and Eskom respectively. On 31 October 2010 Barbara Hogan<sup>36</sup> was removed as the Minister of Public Enterprises, to be replaced by Malusi Gigaba. Gigaba was an early, vocal supporter of using the procurement budgets of SOEs to pursue economic transformation.

### SOEs: Transnet and Eskom

Brian Molefe became CEO of Transnet in 2011. Right from the start of his tenure there was a move to commission large-scale industrial

<sup>31</sup> Given the secrecy around the deal, this was hardly surprising. As we write the High Court in South Africa has ruled that all current initiatives to procure nuclear power are unconstitutional and, therefore null and void. The court's major objection seems to have been the way negotiations bypassed parliament and the lack of public consultation and scrutiny around their terms.

<sup>32</sup> See the CSIR report: Wright, J., Bischof-Niemz, T., Calitz, J. & Crescent, M. 2016. *Least-cost electricity mix for South Africa until 2040*. CSIR Energy Centre, Johannesburg: Presentation at a Nelson Mandela Foundation dialogue, 14 November 2016.

<sup>33</sup> National Treasury. 2009. Supply chain management: Request for public comments. Draft preferential procurement regulations, 2009 aligned with the aims of the Broad-based Black Economic Empowerment Act and its related strategy. [Online] Available: <http://www.treasury.gov.za/divisions/ocpo/sc/PPFA/letter%20dep%20hbbee001.pdf>.

<sup>34</sup> Government Gazette. 2011. R. 501 *Preferential Procurement Policy Framework Act (5/2009): Notice in terms of Section 1 (iii) (f)*. [Online] Available: <http://www.treasury.gov.za/divisions/ocpo/sc/PPFA/1-34350%208-6%20NatTreas.pdf>.

<sup>35</sup> Government Gazette. 2011. R. 1021 *Preferential Procurement Policy Framework Act (5/2009): Exemptions from the application of the Preferential Procurement Regulations, 2011*. [Online] Available: <http://www.treasury.gov.za/divisions/ocpo/sc/PPFA/1-34332%207-12%20NatTreas.pdf>.

<sup>36</sup> She had gone on record saying that as Minister of Public Enterprises she had come under political pressure to broker a Gupta-related deal with SAA.

projects, procure key services and goods from private companies, and displace established, ostensibly 'white' firms from government work in favour of selected beneficiaries.

Together with the Chief Financial Officer, Anoj Singh, bold plans were announced to procure new locomotives for the transport of coal and iron ore to Richards Bay. The project was worth R51 billion.

The tender was published in October 2013 and the process was to be overseen by Iqbal Sharma, head of the Board Tender Committee. Sharma himself had been introduced to Transnet by Gigaba who brought him over from **the dti**, where he had been a senior official. Gigaba had originally earmarked him as chair of the board, but the proposal was shot down by a Cabinet that was worried by his close links to the Gupta family. It was only after more cabinet reshuffles that cabinet-level resistance to Gupta-linked appointments died away.

A key aspect of the tender was that it required that 60 percent of the locomotive components be sourced locally. It was a major opportunity for local manufacturing companies. VR Laser, a company that already had a long-established relationship with Denel and that specialised in the fabrication of all types of vehicle hulls was a strong contender. In December 2013, Sharma approached VR Laser on behalf of himself and on behalf of Salim Essa, a close business associate of the Guptas, to buy the company. When investigative journalists at aMaBhungane exposed the conflict of interest, Sharma insisted that he only had a stake in the VR Laser Property Services, the company that owned the site where the manufacturing company was based. Price Waterhouse Cooper was later asked to investigate the matter but the findings had not been made public.

What was important about this case is that it set the pattern for other and larger deals. There were four steps that have become a kind of 'repurposing *modus operandi*':

- A new minister changes the board composition of a SOE, in this case Transnet.
- The SOE announces a major new acquisition or build project.
- People brought on to the board are either strongly in favour of radical economic transformation and/or have close personal links to some of the bidders.
- The tender is awarded in circumstances where there is a clear conflict of interest.

One of the most flagrant examples of this manipulation of the procurement process happened at Eskom in 2014. In December 2014 there was another cabinet reshuffle. This time Gigaba was moved to Home Affairs and Lynne Brown was installed as the Minister of Public Enterprises. Brown proceeded to change the Eskom board, also bringing Molefe over from Transnet as the CEO.

The Public Protector noted that almost all the new appointees to the Eskom board had links to the Gupta family.<sup>37</sup> Nazia Carrim is the

wife of Muhammed Sikander Noor Hussain, a family member of Salim Essa. Romeo Khumalo was a director alongside Essa at Ujiri Technologies. Mark Pamensky was a former director of the Gupta's Oakbay Resources and Exploration. Kuben Moodley was a special advisor to the Minister of Environmental Affairs; Mosebenzi Zwane was a director of one of Pamensky's companies. Marriam Cassim used to work at Sahara Computers – owned by the Guptas. Ben Ngubane was also a director with Salim Essa at Gade Oil and Gas. As the board chair of the South African Broadcasting Corporation he had overseen controversial deals between the broadcaster and ANN7, the Gupta's television station. Devapushum Viroshini Naidoo was also Kuben Moodley's partner. Those board members who were not part of the right network were quickly removed.<sup>38</sup> The Eskom board, in other words, was a tangled web of mostly undeclared, personal and business associates, all linked to Salim Essa and the Gupta family.

In this context, Eskom began to renegotiate some of its coal-supply contracts. Apart from the Koeberg nuclear power station and the still modest renewable energy programme, most electricity in South Africa is generated from coal. One of the suppliers was Optimum mine, owned at the time by Glencore/Exaro. Optimum mine was contracted to deliver 5.5 million tons of coal a year to the Hendrina power station at a price of R161 a ton (according to the Denton report). This was on the low-end of what Eskom paid; most prices were in the range of R200-R400 a ton. There were also concerns about the coal coming from Optimum. The mine had shifted 30 kilometres from its original shaft and the quality of the asset was declining. When international coal prices began to decline, the sustainability of the Optimum mine was called into question. Glencore's business model until then had been to use revenues from coal exports to effectively subsidise the cost of the local coal.

In 2013 Glencore/Exaro invoked the 'hardship clause' in its contract with Eskom to trigger negotiations about a new contract. The company wanted an additional R115 per ton to make the Optimum mine viable. It was losing R100 million a month. Following lengthy negotiations, a proposal was submitted to the Eskom board on 15 April 2015. The decision was referred to CEO Brian Molefe who refused to approve the proposed new terms. On 10 June he again refused any deal with Glencore and on 31 July 2015 the company went into business rescue. Glencore/Exaro looked to sell the mine and met with the Guptas in Switzerland in September 2015 – the infamous meeting arranged and facilitated by Mosebenzi Zwane, the freshly appointed Minister of Mineral Resources with close ties to the Gupta brothers. The deal was finalised on 10 December 2015. The Optimum Coal Mine was sold to Tegeta, an Oakbay Investments subsidiary. Oakbay was the holding company for numerous Gupta enterprises, among others Sahara computers, Ann7, the *New Age* and, of special interest here, the mining company Tegeta.

Reports suggest that Molefe had driven the mine to bankruptcy so that it could be bought by Oakbay. Beyond this, Tegeta did not actually have the R659 million needed to purchase the Optimum

<sup>37</sup> Public Protector South Africa. 2016. State of Capture. [Online] Available: <http://cdn24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d8810ed06093f76.pdf>.

<sup>38</sup> Public Protector South Africa. 2016. State of Capture. [Online] Available: <http://cdn24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d8810ed06093f76.pdf>.

mine. On the evening of 11 April 2016, the Eskom board met and agreed to a R659 million prepayment to Tegeta for coal supplies. The Oakbay company was essentially paid to provide a service from an asset that it did not yet even own. The transaction was of dubious legality.

During this period, the Public Protector found that Molefe had called Ajay Gupta no less than 44 times. Ajay Gupta had called Molefe a total of 14 times. Even more dramatically in the run-up to the signing of the Tegeta deal, between August and November 2015, Molefe could be placed in the Saxonwold area on 19 occasions.<sup>39</sup> Given the obvious conflicts of interest and that Jacob Zuma's son, Duduzane Zuma, had a major stake in the company (through his 45 percent share of Mabengela Investments, which, in turn owned 28.5 percent of Tegeta), the whole deal was likely unlawful.

The *Business Day* reported on 21 April 2017, claiming sight of a document from the Office of the Chief Procurement Officer, that the "fiscus wants the prepayment to be declared irregular expenditure and Eskom to be investigated for failure to prevent irregular and fruitless expenditure".<sup>40</sup>

The document also suggested that Molefe be investigated for misleading the fiscus. At the time of the deal he had given written assurances that the coal in question met Eskom's requirements. It seems that it did not, and findings to this effect were suppressed by the Group Executive for Generation Matshele Koko. What did happen was that the price of coal supplied by Tegeta rocketed from the R161 per ton paid to Glencore/ Exarro to R550 per ton (R700 per ton with transport). We see this in the massive expansion of contracts granted to Tegeta and other Oakbay mines, including Koorfontein, during 2016.

The Office of the Chief Procurement Officer's website provides information about contract deviations and expansions. It currently only has information for 2016. In the second quarter of the year it records that with respect to Eskom, a Tegeta contract to supply the Majuba Power Station was increased from R3 794 748 750 by an additional R2,9 million. Another Tegeta contract to supply coal to the Arnot Power station rose by R854 955 000, in addition to the original contract value of R235 021 150. Koorfontein mine, owned by Tegeta, with a contract to provision the Komati Power Station had its contract increased by a further R341 544 200. In the third quarter of 2016, the Koorfontein mine saw the value of its contract increase by a further R6 955 200 000, in addition to the original amount of R341 544 200 – a 2000 percent escalation. In effect, as the Denton report makes clear, Eskom was paying massive rents to third parties for the same coal it had previously bought cheaply. Undoubtedly, some of this money was for self-enrichment. Based on research by the Public Affairs Research Institute elsewhere, however, it is plausible that some of it went

into the coffers of the ANC or, more precisely, the Zuma faction to fund its internal campaigns and struggles in the organisation.<sup>41</sup> This is why it was so important to manage these rent-seeking practices. We shall return to this shortly.

What happened at Eskom was nothing short of audacious. The SOE had leveraged its procurement budget to displace an established corporation in favour of a newcomer with strong links to the proponents of radical economic transformation. As much as this smacked of corruption, from the perspective of these proponents the Guptas were a useful 'battering ram' to displace white monopoly capital. The trouble was that Glencore/Exarro was a largely black-owned and controlled firm.

The National Treasury's insistence that SOEs conduct themselves lawfully and award procurements based on fairness, equity, transparency, competitiveness and cost-effectiveness made the institution a permanent thorn in the side of the Zuma administration. The first moves against it started in December 2015 when then Minister of Finance Nhlanhla Nene was unceremoniously dismissed and replaced by an unknown party backbencher Des van Rooyen with links to the Gupta family. After a tumultuous weekend, Pravin Gordhan was restored to the finance portfolio.

The measure was intended to restore confidence in the government and in the Rand after precipitous falls in both. Much has been written about these events and this is not the place to repeat them. For the proponents of radical economic transformation, Gordhan's return represented a temporary setback. On 30 March 2017, he was fired again and replaced by someone sympathetic to the project – Gigaba, the very person who, as Minister of Public Enterprises, had restructured a number of SOE boards to manage the type of rent-seeking practices described above at Eskom.

#### Fragmenting the political centre

As long as the project of radical economic transformation was pursued within the framework of the Constitution and the law, then it was possible to use the architecture of government and the institutions of the state to discipline its great variety of actors and coordinate its multiple moving parts: Boards of SOEs, their CEOs and their officials and staff at many levels, ministers, the Cabinet, and the ANC.

But historically and into the transition this is a role that the ANC has wanted for itself. In numerous organisational reports and various strategic documents the ANC insists that it is a movement, rather than simply a political party, precisely because of its special duty to 'lead society'. This goes a long way to explaining the dramatic politicisation of the public service in South Africa after 1998, principally through the expansion of the Senior Management

<sup>39</sup> Public Protector South Africa. 2016. *State of Capture*. [Online] Available: <http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d38f10ed060937f76.pdf>. Pgs:301-302.

<sup>40</sup> Phillip, X. 2017. *Tegeta advance 'must be converted to loan'*. [Online] Available: <https://www.businesslive.co.za/bd/companies/mining/2017-04-21-tegeta-advance-must-be-converted-to-loan/>.

<sup>41</sup> Public Affairs Research Institute. 2016. *State capture at a local level*. [Online] Available: [http://pari.org.za/wp-content/uploads/Crispian-Olver\\_State-Capture-at-a-Local-Level-Case-of-NMB\\_Working-Paper\\_Nov-16.pdf](http://pari.org.za/wp-content/uploads/Crispian-Olver_State-Capture-at-a-Local-Level-Case-of-NMB_Working-Paper_Nov-16.pdf).

Service Programme.<sup>42</sup> Originally intended to have a maximum of 3 000 members, it comprised 7 283 people by 2005, most of them in national departments. By expanding the size of the programme, the ANC tried to establish political control of the state. Indeed, the limited political control of the state was the major problem that the 2017 organisational renewal document identified: the ANC's influence was waning.<sup>43</sup> Three strategic decisions, in particular, had gone awry:

- The shrinking of the influence of Head Office and the ceding of certain responsibilities to government.
- The establishment of coordination structures at various levels.
- The setting up of 'governance committees' in all legislatures. In this context, the ANC complained of "insidious internal strife" and "factional battles for power, the loss of 'organisational capabilities', growing distance from the 'masses' and the tendency of the organisation to be focused on fund-raising instead of implementing its policies.

As the ANC weakened and fragmented the prospect of managing radical economic transformation through the ANC became a chimera. Indeed, Jacob Zuma's presidency has seen a precipitous decline in the organisation's electoral fortunes and is witnessing a major revolt from within the ANC – especially from members committed to democracy and the constitutional framework.

These divisions have also weakened the Cabinet as a stable centre of political control. The clearest and most disturbing indicator that the South African rent-seeking system tends towards chaos is the collapse of the cabinet system as the core of the executive branch of the state. Cabinet meetings are badly managed and poorly chaired, and they have been informalised. Partly as a result of this, cabinet decisions are no longer regarded by independent-minded professional uncorrupted senior officials in departments as strategically significant. Decisions are only regarded as significant if they have been endorsed by a specific network with reference to the wishes of President Zuma. When asked to consider an initiative by a network, Zuma invariably supports it thus diluting the value of his strategic judgement. It is also well-known that the last person to brief the President is what the President will support. Hence the competition to access him just before Cabinet meetings, or key public appearances. Everyone knows that it is easy to say they have Zuma's support. What really matters is not so much what he personally supports or what Cabinet has resolved, but what a particular network wants to see happen and as such is backed by Zuma. In other words, Zuma does not support initiatives as such; he anoints particular networks that can then activate initiatives in his name in return for rents. Zuma's role includes activating actions to penalise those who do not conform (including the use of bogus intelligence reports, cutting off access to rents, removal and sidelining).

Cabinet approval is secured only when needed, and not because there is a wider strategic plan that it sees itself implementing. Cabinet, moreover, is no longer supported by a strong professional policy support unit like the Policy Coordination and Advisory Service headed by Joel Netshitenze in the Mbeki era. This unit filtered what went through to Cabinet, and managed the integration process as best it could. Although the Department of Planning, Monitoring and Evaluation (as it was called after the 2014 NMOS) came closest to this unit, its mandate was too broad and unwieldy, and it was never allowed to play the same role regarding Cabinet.

When issues come to Cabinet that do need further attention and resolution, Zuma's preference is to establish ad hoc inter-ministerial committees populated invariably by a group of loyalists and members of the state security establishment. These committees effectively ratify what the Zuma-anoointed networks want to see happen, thus endowing them with a veneer of Cabinet/ executive authorisation. When a committee brings a matter for decision to Cabinet, it is invariably rubberstamped and hardly ever debated.

On numerous occasions, issues have been brought to Cabinet for decisions and Cabinet ministers confront the issue for the first time, such as in the closing of the Oakbay accounts. In these cases, supporting documentation has not been circulated beforehand and it has not been filtered by key agencies (e.g. the National Treasury, Department of Planning, Monitoring and Evaluation or even a professional specialist unit in the relevant department) to inform the decision. There is a generally understood assumption that if the issue has come via a member of a particular 'in-group' and Zuma supports it in ways that the in-group seems to understand, then the role of Cabinet is to rubberstamp a decision already taken elsewhere. Cabinet approval of the nuclear deal is a case in point. At no time during the process had a plan been presented to Cabinet in respect of the nuclear deal. The only documentation presented to Cabinet was a nuclear costing presentation by former Finance Minister Nene – a few hours before he was called by Zuma to a meeting and fired.

In this context, political power in South Africa has fragmented across the state and society, condensing momentarily in fleeting and fluctuating networks, few with formal power, most operating in the shadows and all heavily contested. In this context of unstable political relations, the Gupta-Zuma nexus has come to be a relatively constant site of authority. It is an attractive one, moreover, because it can marshal substantial resources and is armed with the capacity to undertake propaganda. In other words, the Guptas serve as 'fixers' in a project that is always at risk of spinning out of control. Saxonwold, however, hosts only one of the 'kitchen cabinets' through which contemporary political power in South Africa is exercised. There are others, including the Premier

<sup>42</sup> Chiplin, I. 2015. *The State Capture and Revolution in Contemporary South Africa*. [Online] Available: <http://pani.org.za/wp-content/uploads/The-State-Capture-and-Revolution-in-Contemporary-South-Africa-1.pdf>. Pgs:13-14.

<sup>43</sup> ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa. Pg:35.

<sup>44</sup> ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa. Pgs:30, 134, 135, 136.

League of provincial barons and networks in parts of the state and police intelligence agencies.

#### Ballooning of the Senior Management Service Programme

The fragmentation of power across the State and its retreat into shadowy networks outside the formal architecture of government has been compounded by the ballooning of the public service in the Zuma period. Vinothan Naidoo has recently finished a methodologically innovative study of what he calls the 'machinery of government'.<sup>45</sup> Tracking the number of national government departments and entities from 1994 he finds, unsurprisingly, that there is growth and also fluctuation in the number of departments and entities in the Mandela period as the new administration experiments with different configurations. In 1999 the number of departments and entities peaks at 30 and then settles at just below that figure..

There was tremendous stability in the number of departments (below 30) and entities during the Mbeki era. The number of public entities proliferated growing from less than 100 in 1998 to more than 250 in 2008. This coincides with the influence of the new public management thinking on the organisation of the state and the move to introduce 'business principles' in the structuring of government to improve efficiency.

In 2009, two years after the Polokwane conference, and the year that Jacob Zuma is sworn in as President, the number of government departments and entities spikes sharply. New departments are established and several are split in two. The Department of Provincial and Local Government is divided into two departments – the Department of Cooperative Government and the Department of Traditional Affairs. Likewise, two separate administrations are hived off from the Department of Education – the Department of Basic Education and the Department of Higher Education and Training. The same happens to the Department of Environment and Tourism. Sometimes new departments are renamed and sometimes entirely new institutions are created – the Department of Performance, Monitoring and Evaluation, the Department of Women and the Economic Development Department. All in all, there were 15 'big bang organisational events' with Zuma's coming into power, as compared to 14 such events for the entire period since 1994. There has been a commensurate multiplication of ministers, deputy ministers, and director generals and the proliferation of government administrations.

"The rationale for expanding the number of national departments was officially based on a strategic assessment of policy and functional demands," notes Naidoo. He adds that "there is [...] reason to doubt the integrity of this view, based on heightened

patronage pressures exerted on President Zuma following an acrimonious succession from Mbeki, coupled with questionable rationale behind the creation of some departments".<sup>46</sup>

In other words, it is far from clear that the ballooning of government departments was motivated by the desire to improve the effectiveness of government. Such a large growth of the government system, with a huge expansion in the Cabinet, has compounded already severe problems of coordination across government. It is accompanied, not surprisingly, with the growth of the shadow state and the move to find more manageable centres of control and management outside the State in more personalised networks - what we have called 'kitchen cabinets'.

What is more, the organisation of the state comes to be based less on functional criteria than on political ones, and has been accompanied by the politicisation of state administrations. Of central importance in this regard has been the Senior Management Service Programme. Established in 2001 to transform the civil service from a bureaucracy into one organised on the model of public management, it quickly became the preferred route of bringing the public service under political control. Never intended to be more than 3 000 people, by 2005 it employed more than 7 000 and may have swelled to more than 10 000 people today.<sup>47</sup> Work done by the Public Affairs Research Institute indicates that turbulence and dysfunctionality in government administration is often related to competition between different ANC, government and constitutional bodies competing for the right to appoint officials to key state positions.<sup>48</sup> In other words, the ballooning and politicisation of the state has come at the great expense of state functionality.

#### Investigations and prosecutions

As the Zuma administration radicalised, it became dependent on managing increasingly complex relations, many of them involving people engaged in unlawful activities. Zuma moved to establish control over key state institutions, especially those involved in criminal investigations and prosecution: SARS, the Hawks and the National Prosecuting Authority.

In September 2014 Jacob Zuma appointed Tom Moyane as the new head of SARS. Nene was summarily informed by Zuma that Moyane would be the next SARS Commissioner. SARS was one of the major achievements of the ANC government, developing into a highly efficient revenue service, dramatically increasing tax compliance after 1998 and frequently delivering 'windfall' taxes to finance the growing welfare state. SARS had worked both to simplify tax paying procedures and to improve customer service while, simultaneously, building the agency's capacity to detect and pursue delinquent tax payers.<sup>49</sup> By 2014 the agency was beginning

<sup>45</sup> Naidoo, V. 2017. *Tracking South Africa's expansionary state, 1994-2010: re-tooling the machinery of government*. Cape Town: Department of Political Science, University of Cape Town.

<sup>46</sup> Naidoo, V. 2017. *Tracking South Africa's expansionary state, 1994-2010: re-tooling the machinery of government*. Cape Town: Department of Political Science, University of Cape Town. Pg:24

<sup>47</sup> Chipkin, I. 2016. *State, Capture and Revolution*. Johannesburg: Public Affairs Research Institute. Pg:13.

<sup>48</sup> Phadi, Mosa, Pearson, Joel and Lesffre, Thomas. (forthcoming in 2017). 'The Seeds of Perpetual Instability: The Case of Mogalakwena Local Municipality' in *Journal of Southern African Studies* (JSAS).

<sup>49</sup> For a brief overview of the history of SARS, see Hausman, David. (2010). *Reworking the Revenue Service: Tax Collection in South Africa, 1999 – 2009*. Princeton University: Innovations for Successful Societies.

to run up against politically connected persons involved in a variety of illicit activities, some of them associates of the president and his family, as well as businessmen known to be financial contributors to the ANC.<sup>50</sup>

A dossier appeared in October 2014 alleging that senior investigators at SARS, located in the Special Projects Unit, constituted a 'rogue unit'. Among other things, it was said that they were illegally spying on the president. Poor journalistic standards at the *Sunday Times* saw these allegations printed in more than 30 articles in the newspaper between August 2014 and April 2016. The *Sunday Times* has since issued an apology.<sup>51</sup> It was also found guilty by the Press Ombudsman for "inaccurate, misleading and unfair" reporting.<sup>52</sup> These reports were, nonetheless, used by the new SARS Commissioner to launch an investigation into 'rogue' activities at SARS and to suspend the former (acting) commissioner Ivan Pillay, as well as most of the agency's investigative staff led by Johann Van Loggerenberg. In so doing numerous high-profile and politically sensitive cases have simply stagnated or never been closed.

Berning Ntlemenza was appointed the Acting Head of the Directorate of Priority Crime Investigation (the 'Hawks') in 2014, following the suspension of his predecessor Anwar Dramat. The circumstances around his appointment are complicated and need not detain us here other than to note certain similarities with the events at SARS. Likewise, senior Hawks officials, including General Booysen in KwaZulu-Natal and General Sibiyi, head of the Hawks in Gauteng, were suspended following the appearance of 'dossiers' implicating them in wrongdoing. General Booysen was accused of running a 'hit squad' in Cato Manor – charges that have routinely been thrown out of court. Sibiyi was accused of being implicated in the illegal rendition of Zimbabweans back to their country of origin. Both were involved in high-profile investigations, together with officials from SARS against people with links to the president and his family. Dramat was suspended on the same grounds as Sibiyi. When the Independent Police Investigative Directorate, under Robert McBride, cleared Dramat of wrongdoing, McBride himself was illegally suspended by Police Minister Nathi Nhleko. The decision was later overturned in a landmark judgement by the Constitutional Court, which confirmed the independence of the directorate relative to the police and the police minister.<sup>53</sup> Dramat, in turn, decided to take early retirement for which he received R3 million. This left a vacuum that was filled by Berning Ntlemenza.

Ntlemenza was an extremely controversial choice. A High Court had

already found him to be a liar and an unreliable witness, evidence that was simply ignored by Minister Nhleko and the president when they considered him for the position. These facts would later be the basis of a successful challenge to his appointment by the Helen Suzman Foundation and by Freedom Under Law, both civil society organisations focused on defending South Africa's Constitution.<sup>54</sup>

What stands out is that Ntlemenza wasted no time in pursuing criminal charges against the Minister of Finance, Pravin Gordhan (and the individuals implicated in the so-called SARS 'rogue' unit).

The charges seemed frivolous for a priority crime unit to pursue, namely that as Commissioner of SARS Gordhan committed fraud by unlawfully approving an early retirement payment to Ivan Pillay.<sup>55</sup> As it turns out the Hawks had either overlooked or withheld vital evidence that exonerated both the minister and Pillay. Ultimately the National Prosecuting Authority, despite a very public announcement to the contrary, declined to go to trial.<sup>56</sup> The prospect of a trial evaporated and, with it, the excuse to remove Gordhan from the finance portfolio.

In all these proceedings, there is the shadow of South Africa's intelligence services. In 2014, Jane Duncan described how "conveniently leaked intelligence reports, or documents that are claimed to be intelligence reports, have been used to smear those that are considered threats to the current political establishment".<sup>57</sup> She saw this as part of "the creeping use of security services to suppress social and political dissent" in what she called a developing "national security state".<sup>58</sup> Indeed, the first report of a 'rogue unit' appeared in an article by Jacques Pauw describing an illegal intelligence unit that had sought to discredit Glynnis Breytenbach. "According to a recording in the possession of the City Press," the article noted:

*Members of the Special Operations Unit concocted a story that Breytenbach was a former agent of Israeli intelligence agency Mossad. They then leaked the information to the media to discredit her. The information was repeated by her National Prosecuting Authority bosses when motivating why she should be charged with corruption.*<sup>59</sup>

Curiously, Pauw's piece appeared on the same day that the *Sunday Times* ran with its own story of a 'rogue unit' – this time at SARS. There is an uncanny similarity between details, raising the prospect that the original story had been 'spun' to displace attention from

<sup>50</sup> Van Loggerenberg, J. & Lackay, A. 2016. *Rogue: The Inside Story of SARS's Elite Crime-busting Unit*. Johannesburg and Cape Town: Jonathan Ball Publishers.

<sup>51</sup> *Timeslive.co.za*. 2016. *SARS and the Sunday Times: our response*. [Online] Available: <http://www.timeslive.co.za/sundaytimes/opinion/2016/04/03/SARS-and-the-Sunday-Times-our-response/>.

<sup>52</sup> Tham, M. 2015. *Press Ombudsman's rulings against Sunday Times vindicate Pillay and van Loggerenberg*. [Online] Available: <https://www.dailymaverick.co.za/article/2015-12-16-press-ombudsman-rulings-against-sunday-times-vindicate-sars-officials/>.

<sup>53</sup> South Africa Constitutional Court. 2016. *McBride v Minister of Police and Another (CCT25/15)*. [Online] Available: [www.saflii.org/za/cases/ZACC/2016/30.html](http://www.saflii.org/za/cases/ZACC/2016/30.html).

<sup>54</sup> *Mg.co.za*. 2017. *Court sets aside appointment of Berning Ntlemenza*. [Online] Available: [mg.co.za/article/2017-03-17-breaking-court-sets-aside-appointment-of-berning-ntlemenza](http://mg.co.za/article/2017-03-17-breaking-court-sets-aside-appointment-of-berning-ntlemenza).

<sup>55</sup> Despite the long investigation, it seems that there is still insufficient evidence on the basis of which to which would support any charges being lodged in relation to the 'rogue unit' allegations.

<sup>56</sup> Since 2010 the National Prosecuting Authority has been the site of major contestation regarding its leadership and the cases it has chosen to prosecute or not. Much of this was related to Zuma's own criminal charges arising from the notorious arms deal. Some, however, may have been related to cases of illegality stemming from procurement violations and/or illegality from radical economic transformation.

<sup>57</sup> Duncan, Jane. 2014. *The Rise of the Securocrats. The Case of South Africa*. Johannesburg: Jacana Media. Pg.3.

<sup>58</sup> Duncan, Jane. 2014. *The Rise of the Securocrats. The Case of South Africa*. Johannesburg: Jacana Media. Pg.32.

<sup>59</sup> Pauw, Jacques. 14 August 2014. 'How Spy Unit Nailed Mdluli Foes' in City Press. see <http://www.pressreader.com/south-africa/citypress/20140810/281638188364837>

the State Security Agency.

Pauw's story was especially credible given the context. In 2008, then Minister of Intelligence, Ronnie Kasrils had commissioned an investigation into the various services. The concern at the time was that "politicians and intelligence officers can abuse [their] powers to infringe rights without good cause, interfere in lawful politics and favour or prejudice a political party or leader, thereby subverting democracy".<sup>60</sup> The report by Joe Matthews, former National Assembly speaker Frene Ginwala and Laurie Nathan found severe shortcomings in The National Strategic Intelligence Act (1994), which created opportunities for abuse by defining the notion of 'national security' too broadly.

The report found that there were no rules regulating counterintelligence work making it easy for "interference in politics and infringing rights without sufficient cause"<sup>61</sup> to occur. In a finding that surely calls into question the rationale of the Hawk's own 'Crimes Against the State' unit, Mathews, Ginwala and Nathan noted that "in a democracy it is wholly inappropriate for an intelligence service to make judgements on whether lawful activities are threats to the constitutional order".<sup>62</sup>

The Minister of Intelligence after Kasrils, Siyabonga Owele, sought to suppress this report. Its recommendations were certainly not implemented. By 2014 Piet Coetzer, Stef Terblanche and Garth Cilliers, writing for the *Intelligence Bulletin*, were describing the State Security Agency as in 'disarray'.<sup>63</sup> This is the context in which the various intelligence-like dossiers discussed above started to appear.

The formal link to the State Security Agency is suggested by the story of Mandisa Mokwena. She had been recruited into the senior management of SARS from the National Intelligence Agency. Ivan Pillay subsequently charged her with fraud, though the case has never come to court. She subsequently returned to the intelligence fraternity. Mokwena was likely one of the authors of the infamous 'Spiderweb report' alleging a conspiracy by Gordhan, Pillay and van Loggerenberg, among others, to marginalise black staff at the agency. In a further twist, Mandisa Mokwena is married to Bamard Mokwena, the former human resources manager at Lonmin, who played a central role in driving a labour dispute at the mine into the worst massacre of the post-apartheid period. It later emerged that he too was an intelligence operative.<sup>64</sup>

The role that the National Prosecuting Authority plays in enforcing the law (particularly in respect to holding public servants to account for fraud or corruption) cannot be understated. Since Shaun Abraham's appointment as National Director of Public Prosecutions in June 2015, there are several questionable decisions and actions

that have been made, over and above the frivolous charges laid against Gordhan. These include the charges laid against Robert McBride, which were taken to court and then also dropped due to insufficient evidence and the withdrawing of charges of perjury against the Deputy National Director of Public Prosecutions Nomgcobo Jiba who is currently still on 'special leave' after being struck off the roll of advocates in September 2016.<sup>65</sup> The charges of perjury were laid in relation to statements that Jiba made under oath about the initiation of criminal charges against General Booyen. As highlighted in an amaBhungane article:<sup>66</sup>

*Jiba was roundly criticised by judges in three separate cases during her tenure as acting prosecutions head – all of them politically sensitive – leading to accusations that she was protecting President Jacob Zuma or his allies.*

In the most recent controversy, Abraham's predecessor, Mxolisi Nxasana, filed an affidavit in response to a case filed by civil society organisations that related to the review of his R17 million pay-out on leaving the National Prosecuting Authority. It was Nxasana who instituted the charges against Jiba, following which the president initiated an inquiry into Nxasana's fitness to hold office. In his affidavit, Nxasana directly contradicts the affidavit previously filed by President Zuma that stated that Nxasana wanted to leave of his own volition. Nxasana said under oath that "It was never my intention to make a request to leave the office, nor did I ever make such a request to the President" and that "The president's version in this regard is false."<sup>67</sup>

Taken together, the events at SARS, the Hawks and the National Prosecuting Authority suggest that as the Zuma administration radicalised resorting increasingly to extra-legal means to pursue radical economic transformation it was driven to 'capture' and weaken key state institutions. The political project of the Zuma-centre power elite has come at a very heavy price for the capability, integrity and stability of the South African state.

## Conclusion

This chapter has traced the emergence of the notion of radical economic transformation, arguing that it privileges the use of the state procurement system to advance a form of BEE that is not dependent on the established and white-owned and -managed companies. We have seen how these ideas were incubated in the Black Management Forum and the DTI.

We have argued that after 2011 this project radicalises and becomes increasingly sceptical that economic transformation can be achieved within the framework of the law and Constitution.

<sup>60</sup> Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: [cdn.mg.co.za/uploads/final-report-september-2008-615.pdf](http://cdn.mg.co.za/uploads/final-report-september-2008-615.pdf). Pg:10.

<sup>61</sup> Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: [cdn.mg.co.za/uploads/final-report-september-2008-615.pdf](http://cdn.mg.co.za/uploads/final-report-september-2008-615.pdf). Pg:16.

<sup>62</sup> Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: [cdn.mg.co.za/uploads/final-report-september-2008-615.pdf](http://cdn.mg.co.za/uploads/final-report-september-2008-615.pdf). Pg:134.

<sup>63</sup> The Intelligence Bulletin. 2014. *Political abuse has State Security Agency in disarray*. [Online] Available: <http://www.theintelligencebulletin.co.za/articles/security-watch-1812.html>.

<sup>64</sup> Mammonch, G. 2016. *Murder at Small Knopie: The Real Story of the Marikana Massacre*. Cape Town: Penguin Books. Pgs:56-58.

<sup>65</sup> Van Wyk, P. 2016. *NPA's Nomgcobo Jiba and Lawrence Mvwebi struck off the roll of advocates*. [Online] Available: <https://img.co.za/article/2016-09-15-npas-nomgcobo-jiba-and-lawrence-mvwebi-struck-from-the-roll-for-advocates>.

<sup>66</sup> Sole, S. 2016. *Willie's shock gambit ups the stakes at NPA*. [Online] Available: [amaBhungane.co.za/article/2016-02-05-willies-shock-gambit-ups-the-stakes-at-npa](http://amaBhungane.co.za/article/2016-02-05-willies-shock-gambit-ups-the-stakes-at-npa).

<sup>67</sup> Tham, M. 2017. *Zuma committed perjury, former NPA head Nxasana claims in affidavit*. [Online] Available: <https://www.dailymaverick.co.za/article/2017-04-13-zuma-committed-perjury-former-npa-head-nxasana-claims-in-affidavit/#VUoKhN9600>.

These ideas start to inform governance decisions, especially in the SOEs during the tenure of Molefe as CEO of Eskom and Gigaba as Minister of Public Enterprises. We see massive rents being charged on government contracts, with spectacular efforts made to displace established companies and to contract with others, usually those with Gupta links.

We have seen too that radicalisation brought with it daunting problems of political management. The problem was that the Zuma administration could not rely on the law and the institutions of the State to discipline the procurement process. Nor, however, could it rely on the ANC itself. As numerous internal reports show, many of them candidly, the organisation is riven by disputes and contradictions – hardly an effective apparatus to bring control to the state or manage an out-of-control rent-seeking system. With Zuma preferring to operate through highly personalised networks of kitchen cabinets, political power has become fragmented and its exercise capricious.

Radical economic transformation has increasingly come to be a

fig-leaf for the enrichment of a small power-elite, as well as the means through which this group finances its political operations. In this context, the Zuma-centred power elite has weakened the institutional fabric of the state and undermined its formal, rational-legal infrastructure.

The implications are that Zuma's political project, legitimised by a rhetorical commitment to radical economic transformation, is both undermining the democratic and constitutional form of the South African state as well as weakening the capability of government and of public institutions – the very administrations that progressive policies, for example, in health or education need for effective implementation.

The state, in short, is being turned into an *undevelopmental* mishmash of apparatuses connected via the networks that manage the symbiotic relationship between the constitutional and shadow states.

## TEGETA / OPTIMUM –

**“It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of Optimum Coal Holdings and is thus in severe violation of the Public Finance Management Act.” State of Capture report, 2016.**

### July 2013

Owner of Optimum Coal Holdings, Glencore, writes to Eskom to invoke the “hardship clause” in their contract to enable the parties to renegotiate the coal-supply contract, which was leading to losses of about R1-billion for Glencore.

### May 2014

They sign a “Co-operation Agreement”, which paves the way for a new coal-supply contract to stop Glencore’s losses.

### March 2015

Eskom’s Executive Procurement Committee approves a new contract for Glencore but defers final approval to new Acting CEO Brian Molefe.

### April 2015

Brian Molefe becomes Eskom’s acting CEO.



### May 2015

Molefe informs Glencore that he rejects new terms and he suspends all negotiations

### July 2015

Several things happen -

- i) Eskom imposes as R2.5-billion fine on Glencore for supplying poor quality coal, penalties are rarely applied by Eskom and appear to have been done selectively in Eskom’s case and probably contributed to Optimum’s financial difficulties
- ii) Glencore then announces that it has to retrench 380 employees because of its financial troubles;
- iii) KPMG approach Glencore with an offer from an “anonymous client” – later confirmed to be the Guptas – offering to buy Optimum for R2-billion. Optimum turns the offer down.

### August 2015

Glencore announces that they are placing Optimum Coal Holdings and Optimum Coal Mine under business rescue.

According to the Public Protector’s report: “The only individuals/entities who stood to benefit from [Optimum] not being awarded a revised contract by Eskom was the subsequent prospective suitors who could now purchase an entity in business rescue.”



### September 2015

Mosebenzi Zwane is appointed Mines Minister.

### November 2015

Two things happen -

- i) Department of Mineral Resources places work stoppages on Glencore mines, worsening their financial position.
- ii) Zwane travels to Switzerland to meet Glencore’s Ivan Glasenberg. Thuli Madonsela’s State of Capture report cites an “independent source” saying that **Rajesh Gupta** and **Salim Essa** were present at the meetings. Days after Zwane’s return, Optimum’s business rescue practitioners conditionally agree to sell the mine to Tegeta for R2,15-billion.

In her report, Madonsela notes: “It is potentially unlawful for the Minister to use his official position of authority to unfairly and unduly influence a contract for a friend or in this instance his boss’s son at the expense of the state. (**Duduzani Zuma** is a shareholder in Tegeta). This scenario would be further complicated if his actions were sanctioned by the President.”



### December 2015

Glenore agrees to sell Optimum. At the time, several board members are conflicted, according to the Public Protector.

- **Ben Ngubane** (chair) – co-director at Elgasolve (part-owner of Tegeta)
- **Mark Pamensky** – interests in entities related to or part-owning Tegeta
- **Viroshini Naidoo** – director of Albatime which part-funded the Tegeta purchase of Optimum
- **Molefe** (CEO) was in frequent phone contact with the Gupta family (owners of Tegeta) during the period of the sale, and in contact with **Ms Ragavan** (director at Tegeta) during the final month.

### January 2016:

Two things happen -

- i) Tegeta given easier terms for Hendrina
- ii) Tegeta given lucrative contracts to supply Amot

### February 2016

- i) Tegeta given another lucrative contract to supply Amot (in total these contracts amount to R1.6-billion).

Public Protector states: "It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of [Optimum Coal holdings] and is thus in severe violation of the PFMA."

### April 2016

A few things happen -

- i) April 11: Tegeta is short of R600million to buy Optimum and banks refuse bridging finance to the company
- ii) April 11: The Eskom board approves another R600-million contract for Tegeta, plus prepayment.
- iii) April 13: Eskom makes the payment.
- iv) April 14: Tegeta's full funds transferred to buy Optimum.
- v) April 21: Eskom give Tegeta another lucrative Amot contract.
- vi) April 24: Tegeta attempt to access mine rehabilitation fund

### May - September 2016

Mine rehabilitation funds at a Bank of Baroda account are being used the Public Protector's report shows that once the fund for Optimum and Koorfontein had been moved from Standard Bank to Bank of Baroda, they were not ring-fenced and the interest was not reinvested, suggesting that it may have been used for other purposes, which is illegal.

# 4

## How the capture of the state is structured: A brief note

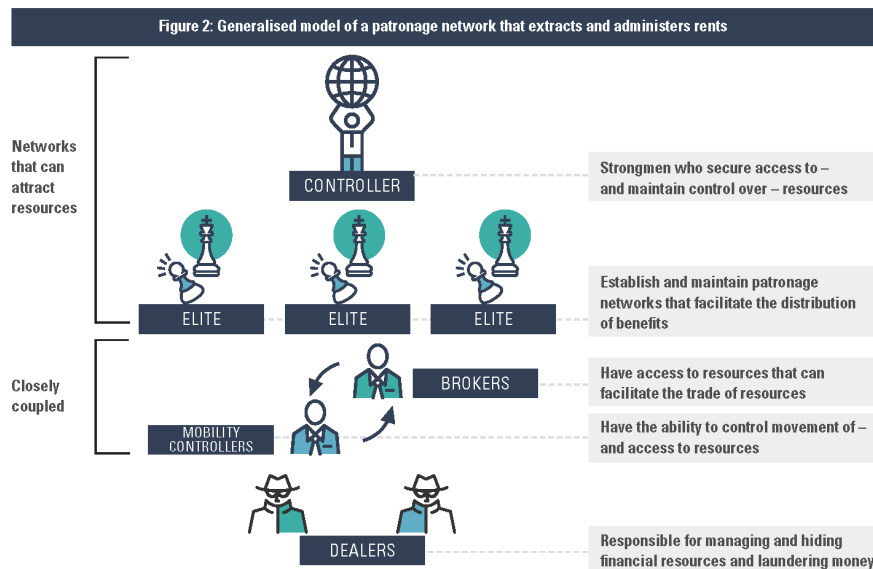
### Introduction

The symbiotic nexus between the constitutional and shadow state requires the integration of a range of skillsets similar to what exists in most international corporations. The composition of the Zuma-centred power elite is in many respects highly organised, following the structure of what in academic terms is called a 'war economy'.<sup>1</sup> In a war economy, the 'shadow state' establishes a number of informal structures (see below), which produce systems of "profit, power and protection",<sup>2</sup> and which, in turn, serve to further their operations making it possible to have continued preferential access to resources and power through an exploitative economic system. The cycle can, therefore, continue.

One of the key requirements in establishing these shadow structures

is the ability to secure a system of command and control over how the resources are accessed, moved and distributed. At the outset, control must be established over the sources of extraction, including the ability to flexibly respond to any changes in the operating environment.<sup>3</sup> Once access to the source of extraction is secured, networks of middlemen or brokers must be established that can move resources within the network to sustain loyalty (this is critical to ensuring the survival of the network) and externally, usually transnationally. The ability to transact within this network is facilitated through the establishment of political market places, where support is traded through the provision of access to resources.

The skillsets of this patronage network is localised within a number of groups. These are indicated in the following figure and expanded on below.



<sup>1</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University, Pg.3.

<sup>2</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University, Pg.3.

<sup>3</sup> Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University, Pg.121.

- The controllers: These, also known as patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are usually the strongmen directly responsible for predation and exploitation. Their function is to secure access and maintain control over resources.<sup>4</sup> A patron or controller typically favours one group over another (or others), resulting in the exclusion of those out of favour and the inclusion of those within favour. This sets up a competitive set of nodes with the network around the patron or controller, which has the ultimate effect of rendering elites (the next layer down) unable to cooperate effectively as they fear being ousted by their partners, or falling out of favour with the patron.
- The elites: The elites (e.g., Ace Magashule, Faith Muthambi, Malusi Gigaba, Brian Molefe, Mosebenzi Zwane and Ancj Singh) are responsible for establishing and maintaining patronage networks, which facilitate the distribution of benefits.
- The entrepreneurs: These are also known as brokers (e.g., Iqbal Sharma, Eric Wood, Salim Essa and Ashok Narayan). Broker networks consist of middlemen who facilitate the movement of funds, information and/or goods both domestically and across transnational networks, and make use of “recruitment networks, lending networks, remittance networks and smuggling networks” to do so.<sup>5</sup> The following requirements are necessary for broker activity:
  - Networks of brokers are required to secure domestic and cross-border networks through which resources can be moved to international clearing hubs and enter legitimate trade activities.
  - Brokers are often of a different nationality or ethnicity – usually a minority – so that they cannot mount a significant challenge to the controller or patron.
  - Brokers have commercial ties to different clusters of communities through which they are able to achieve networked competence.
  - Brokers have access to ports of entry.
  - Brokers and ports are ‘choke points’ for intervention in patronage networks.<sup>6</sup> If brokers are identified and their ability to operate is significantly reduced, then the patronage network is weakened and may collapse.
- The dealers: Groups that are able to move the money transnationally (e.g., the professional money laundering syndicates in Hong Kong, the United Arab Emirates and elsewhere).<sup>7</sup>

Securing and establishing cross-border networks is an essential requirement of this network to navigate illicit proceeds into international clearing hubs where it enters the legitimate trade and accrues value to the members of the network.<sup>8</sup> In many instances

these networks use clandestine methods to mask the origins of resources in order to protect its members from external scrutiny.<sup>9</sup>

From an operational perspective, these networks of brokers and dealers must perform a number of functions, including:

- Collusion with customs or corrupt officials to create false records pertaining to the types of goods traded, quantities and the identities of parties involved in the transactions.
- Providing licences for others to obtain illicit goods in violation of the law.
- Laundering cash generated from illicit activities in collusion with formal financial institutions in order to establish legitimate business entities that can generate funds.
- Using shell companies in order to hide ownership details and move assets offshore (e.g., the Gupta entities: Hornix, Regiments Asia, Morningstar International, etc.)
- Exchanging one potentially traceable commodity, such as oil or timber, for another less traceable one – also known as trade misinvoicing.
- Purchasing legitimate goods outside of the country with the proceeds of illicit activities, and then importing the legitimate goods back into the country to generate ‘clean revenues’.<sup>10</sup> The R200 million temple the Guptas are building in India and their R448 million villa in Dubai, reportedly the most expensive house in the United Arab Emirates, may fall into this category.

Ultimately, the key to realising the full potential of control over resources is the ability to strip assets and convert them into monetary resources – typically through money-laundering – that can fund the patronage operations.<sup>11</sup>

The conversion of such assets also requires the existence of an appropriate infrastructure for handling and moving such assets, including banking, “alternative remittance systems ... import-export firms that participate in false invoicing schemes, precious metal markets, and the use of trusts, international business companies, and non-transparent jurisdictions as mechanisms to hide funds”<sup>12</sup>

#### Money-laundering procedures

Money laundering is the process of transforming illicit money into ostensibly legitimate assets. Thus money laundering through formal channels typically follows a three-stage process: placement, layering and integration. Placement involves moving funds into activities or accounts from where they can be legitimised through layering (i.e. blended with legitimate funds, recycled through

<sup>4</sup> IPIS, 2002. *Supporting the War Economy in the DRC: European Companies and the Coltan Trade*. Antwerp: International Peace Information Service.

<sup>5</sup> Sandoval, G. 2013. *Shadow Transnationalism: Cross-Border Networks and Planning Challenges of Transnational Unauthorized Immigrant Communities*. *Journal of Planning Education and Research*, 33(2):11–18.

<sup>6</sup> Liebenberg, S. 2014. *A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa*. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

<sup>7</sup> Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*, 98(2):345–371.

<sup>8</sup> Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*, 98(2): 361.

<sup>9</sup> Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*, 98(2):361.

<sup>10</sup> Winer, J.M., Roule, T.J. (2003). *Follow the Money: Finance of Illicit Resource Extraction*, In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

<sup>11</sup> Winer, J.M., Roule, T.J. (2003). *Follow the Money: Finance of Illicit Resource Extraction*, In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

<sup>12</sup> Winer, J.M., Roule, T.J. (2003). *Follow the Money: Finance of Illicit Resource Extraction*, In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

## How the capture of the state is structured: A brief note

cash-based operations, moved into 'legitimate companies', or moved around in complex transactions, etc.). These funds are then integrated back into the revenue stream of the money launderer (i.e. often through purchasing property and other goods).

The laundering process often necessitates financial systems with lax regulation and controls. Rents are also often distributed in cash, and indeed this may be preferable in many instances, but there are likely limits to how beneficiaries can make use of cash in formal transactions because large cash dealings can trigger high-risk alerts with banks. The benefit of cash is that it can be moved overseas, through both formal and informal channels, including the use of diplomatic immunity to traffic large sums of cash across borders (which could raise further questions over the Gupta's seeming preferential access to the Waterkloof Airforce Base) and the use of informal money exchange networks such as the hawala network, respectively.

The broker network in action: Transnet and Hong Kong transactional flows

With the patronage network model in mind, the Gupta's apparent access to lucrative Transnet work and the subsequent movement of related funds, both domestically and transnationally, is instructive.

### Controller/patron and elite stages

Zuma appointed Gigaba as Minister of Public Enterprises in November 2010 about 18 months after he became president. This was after he had removed Barbara Hogan from the position in October 2010, coincidentally following her pushback against alleged presidential interference in state-owned company board appointments, and after Vytjie Mentor refused an offer for the position thereafter, apparently made to her at the Gupta's Saxonwold home on condition she would drop the SAA flight route to Mumbai.

### Brokers established

In December 2010, Gigaba appointed Iqbal Sharma to the Transnet. His proximity to the family is by now, in our view, indisputable (see Chapter 2). In February 2011 Gigaba appointed Molefe as CEO of Transnet. In about June 2011, Gigaba wanted Sharma appointed Transnet Board chair, but the Cabinet apparently vetoed this on the grounds that he was too close to the Guptas. Seemingly to circumvent Cabinet's veto, Transnet later created a new structure, called the Board Acquisitions and Disposals Committee, to supervise the planned pipeline of future large-scale infrastructure spending (all tenders worth more than R2.5 billion). Sharma became chair of this committee. It was at this point that Gupta-linked entities began benefitting from Transnet tender opportunities.

### Brokers at work: extracting the resources

- **R51 billion locomotives deal:** While he chaired the Board Acquisitions and Disposals Committee, Sharma oversaw the adjudication of the R51 billion tender for the purchase of 1 064 locomotives, which was ultimately split between four companies:

China North Rail (232 diesel locomotives at R7.8 billion), China South Rail (359 electric locomotives at R14.6 billion), General Electric (233 diesel locomotives at R7.1 billion) and Bombardier (240 electric locomotives at R10.4 billion).

The Gupta's proximity to China South Rail is documented in former Prasa CEO Lucky Montana's letter (see Chapter 2) in which he lays out how they apparently aggressively represented China South Rail (one of seven bidders then vying to supply Prasa with 600 commuter trains). Such representatives often earn large success fees, sometimes described as commissions. While they were not successful in their bid to position the rail company in this instance, the Chinese company's success in the Transnet locomotives deal appears to have benefitted the Guptas. Transactions seen by this group of researchers suggest that the Chinese company, now called China South Locomotive & Rolling Stock Corporation Limited following a merger with China North Rail, has been paying large sums of money into Gupta-linked entities based in Hong Kong. Our research in this regard is ongoing, but the circumstantial evidence of a triangulated link between China South Rail winning a portion of the tender, the Gupta's apparent brokering of the rail company in South Africa, and the offshore transactional flows from the rail company to Gupta-linked entities, is compelling. Just before the successful bidders of the locomotives tender were announced, Sharma emerged as a buyer of VR Laser Property, which owns the property upon which VR Laser Services is situated (owned by the Guptas and Duduzane Zuma) and which was arguably in a highly advantageous position to benefit from supplying component parts to the successful bidders in the locomotives deal (which were required by state procurement policy to source a large proportion of their components from South African subcontractors). Additionally, the size of the locomotive deal meant that financial arranging and corporate structuring advice was necessary. As explained in Chapter 2, after a series of highly questionable events, a Gupta-linked company, Trillian Asset Management, ultimately benefitted from this opportunity to the value of at least R170 million.

- **Information technology:** Chapter 2 details how a national multi-billion Rand telecoms company, Nectel, benefitted from significant Transnet work, but seemingly only as a result of an obscure Gupta-linked entity, Homix, which acted as a broker between Nectel and Transnet. Additionally, global software giant SAPS, was strongly encouraged by Transnet to partner with a Gupta entity, Global Softech Solutions, in order to win Transnet work (Chapter 2).
- **Procurement:** German maker of cranes and Transnet supplier Liebherr Africa was reportedly pressured by Transnet to partner with Burlington Strategy Advisors, which is a subsidiary of Regiments Capital (see Chapter 2), and which also ultimately paid money into a Gupta-linked entity (Homix).

### Brokers at work: moving the resources

In July 2015, the first detailed analysis of how the Guptas allegedly launder the proceeds of their business activities was presented by

amaBhungane. Their operation in this regard centres on a Gupta-controlled shell company called Homix. Shell companies, by virtue of the ownership anonymity that they provide, are classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network:<sup>13</sup>

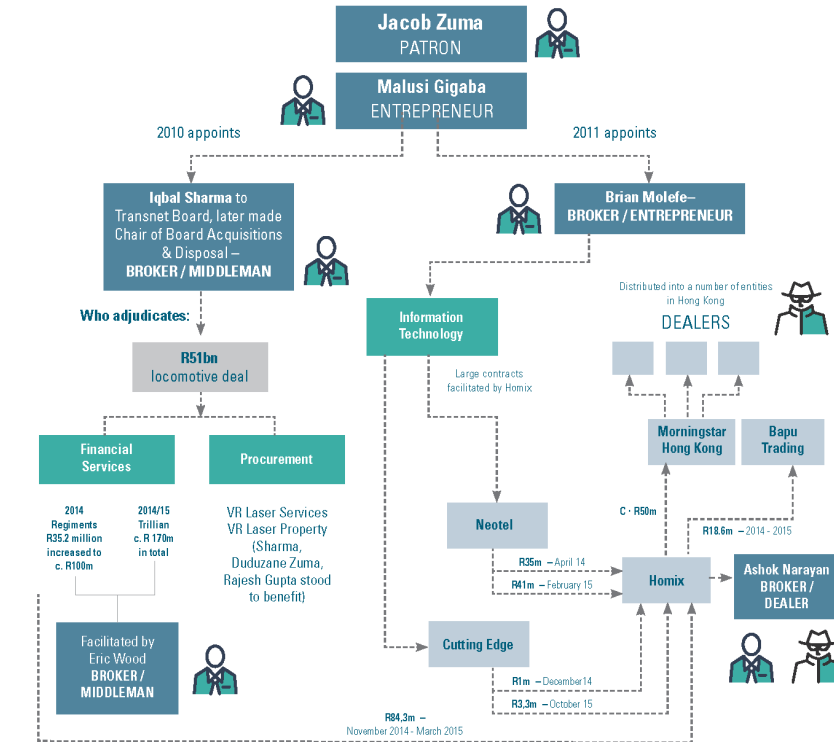
*The term 'shell company' generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.*

Between 2014 and 2015, Homix moved R166 million through its accounts, primarily from five companies, mostly linked to Transnet work, according to an amaBhungane investigation.<sup>14</sup> As is

characteristic of shell companies, Homix has no discernible office infrastructure or staff commensurate with a company processing such large sums of money. Bank records obtained by amaBhungane, and other bank records observed by this group of researchers, show that as the money came into the Homix bank account, it went straight out again, to an equally obscure entity called Bapu Trading.

This pattern displays the three classic money laundering characteristics of placement, layering and integration where placement is the movement of cash from its source (the five companies), followed by placing it into circulation (layering) through, among other mechanisms, financial institutions and other businesses (for example Homix), and finally integration, the purpose of which is to make it more difficult to detect and uncover by law enforcement.

## The Broker Network in Action: Transnet



<sup>13</sup> Department of the Treasury Financial Crimes Enforcement Network. 2006. The role of domestic shell companies in financial crime and money laundering: Limited Liability Companies. [Online] Available: [https://www.fincen.gov/sites/default/files/shared/LLCAssessment\\_FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf).

<sup>14</sup> Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. State capture - the Guptas and the R250 million "kickback laundry". [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

■ **How the capture of the state is structured: A brief note**

In moving their money transnationally, the Guptas appear to have made extensive use of Hong Kong, whose financial system is infamous as a money-laundering capital and where during the 1960s, 1970s and 1980s money launderers and couriers made a living from providing access to underground financial services. While regulations have significantly tightened this practice, professional money-laundering networks remain active in the country.

The Gupta's movement of their money through Hong Kong is likely to prove to be only a subset of the full extent of their transnational

organisation and movement of rents. The four Gupta-linked companies that feature most prominently in the Hong Kong movement of money are Regiments Asia Ltd (unrelated to the SA company Regiments), Tequesta Group Ltd, and Morningstar International Trade Ltd. Morningstar International Trade Ltd shares a Hong Kong address with three of Salim Essa's companies (where he is listed as the director): Regiments Asia, Tequesta Group and VR Laser Asia. As stated above, and although circumstantial at this stage, funds passing through these Hong-Kong based companies appear to be linked to the R51 billion locomotives deal (see Chapter 2 and Chapter 3).

**Table 4: Table of known outflows from Gupta-linked companies and individuals**

Dates	From	Destination	US\$ (million)	R (million)
December 2012–May 2016	Gupta-linked South African entities	Gupta family members and Gupta-linked entities	485.7	6 800
Late 2014–early 2015	Homix (see next section)	Bapu Trading (R186 million)	13.57	190
May 2015	Homix (see next section)	Morningstar (R66-R14 million)	3.71	52
April–September 2016	Homix, Tequesta, Morningstar and Regiments Asia	A group of Hong Kong companies (new information, not in the public domain)	240	3 370

**Conclusion**

While a complete analysis of Gupta transactions has not been performed in this section, and it relies mainly on publicly available information, there is already enough to give a sense of the severity and extent of rent-seeking practises that have burgeoned within the shadow state in recent years.

What is most telling about the transactions accounted for in this section, is that they far outweigh the claims that the Gupta family have made regarding their revenue streams. Generally speaking, there should be some level of parity between inflows to Gupta-linked companies and outflows, and some level of agreement between declared revenues from the state and actual revenues flowing to Gupta-linked companies. Yet there is little parity to speak of.

For example, according to the *State of Capture* report, Ajay Gupta claimed, in a meeting with the then Deputy Minister of Finance Mcebisi Jonas, that the Gupta family had already accrued R6 billion in proceeds from contracts with state agencies<sup>15</sup> and wanted to increase that to R8 billion. The Deputy Minister told the Public Protector that at this meeting Ajay Gupta offered him the position of Minister of Finance, in exchange for opening up access to the National Treasury (offering R600 million to be deposited in an

account of his choice and R600 000 to be paid immediately). He rejected the offer. By the Gupta's own account of their business activities and revenues to the Public Protector,<sup>16</sup> revenues for 2016 amounted to R2.6 billion. Government contracts, they reported, accounted for only R235 million of their total revenues. This is considerably less than the R6 billion claimed by Ajay Gupta and suggests that additional revenue generation may be moving through unofficial channels.

Separately, in 2017, the former Finance Minister Gordhan submitted evidence to the courts obtained from the Financial Intelligence Centre that revealed 72 suspicious transactions over the course of 2015 and 2016 related to Gupta-linked accounts, totalling R6.8 billion. Taken together, the aforementioned reports and actions make a compelling case for asking questions related to how much money the Guptas are earning from the state, how much of this is declared and how much is being moved offshore and therefore remains unproductive to the South African economy. This warrants further official investigation and scrutiny, which this research team is undertaking.

<sup>15</sup> Excerpt from the State of Capture report, Page 94: "Mr Ajay Gupta continued to speak. He disclosed names of "Comrades" they were working with and protecting. He mentioned that collectively as a family, they "made a lot of money from the State" and they wanted to increase the amount from R6 billion to R8 billion and that a bulk of their funds were held in Dubai." Public Protector South Africa. 2016. *State of Capture*. [Online] Available: <http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed06093f7f6.pdf>.

<sup>16</sup> Excerpt from the State of Capture report: "According to a letter submitted to my office, total revenues from their business activities for the 2016 financial year amounted to R2.6 billion, with government contracts contributing a total of R235 million of the revenues." Public Protector South Africa. 2016. *State of Capture*. [Online] Available: <http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed06093f7f6.pdf>. Pg: 85.

<sup>17</sup> Treasury.gov.za. 2017. Minister of Finance vs Oakbay Investments and Others (2016), The High Court of South Africa (Gauteng Division, Pretoria), Case Number 80978/16, 14 October 2016. [Online] Available: [http://www.treasury.gov.za/comm\\_media/press/2017/2017021001%20-%20ARGUMENT%20IN%20THE%20AKBAY%20MATTER.pdf](http://www.treasury.gov.za/comm_media/press/2017/2017021001%20-%20ARGUMENT%20IN%20THE%20AKBAY%20MATTER.pdf).

# 5

## Conclusion and Recommendations

This report documents the systematic repurposing of state institutions in accordance with a political project mounted by the Zuma-centred power elite. It was demonstrated that the purpose of this political project is systemic illegal and/or unethical rent-seeking action. These pre-meditated and co-ordinated activities are designed to enrich a core group of beneficiaries, to consolidate political power and to ensure the long-term survival of the rent-seeking system that has been built by this power elite over the past decade. To this end a symbiotic relationship between the constitutional state and the shadow state has been built and consolidated.

At the nexus of this symbiosis between the constitutional and shadow states are 12 companies and 15 individuals connected in one way or another to the Gupta-Zuma family network. The way this is strategically coordinated constitutes the shadow state. Decisions made within this nexus about what happens within the constitutional state are executed by well-placed individuals located in the most significant centres of state power (in Government, SOEs and the bureaucracy). The official testimony to the Public Protector by former Deputy Minister of Finance Mcebisi Jonas – that has not been successfully and credibly contested – is about how he was offered a place in this network with a R600 million bribe. This transaction reveals the clear modus operandi of those who operate within the shadow state and how this has made it possible for them to gain control of the constitutional state. Crucially, we in turn have no idea how many others accepted these kinds of unimaginably enormous bribes. Those who resist this agenda are systematically removed, redeployed to other lucrative positions to silence them, placed under tremendous pressure, or hounded out by trumped up internal and/or external charges and dubious intelligence reports.

It has been argued in this report that the Zuma-centred power elite has sought to centralise the control of rents to eliminate lower-order rent-seeking competitors from about 2012 onwards. The ultimate prize was control of the National Treasury because this gives this power elite control of the Financial Intelligence Centre (which monitors illicit flows of finance), the Chief Procurement Office (which regulates procurement and activates legal action against corrupt practices), the Public Investment Corporation (the second largest shareholder on the JSE) and the power to issue guarantees (which is essential for making the nuclear deal work). The cabinet reshuffle in March 2017 made possible final control of the National Treasury.

The capture of the National Treasury, however, followed four other processes that consolidated power and centralised control of rents: the ballooning of the Senior Management Service in the public

service to create a compliant politically dependent bureaucratic class; the routing of the good cops from the policy and intelligence services and their replacement with loyalists prepared to cover up illegal rent seeking (with some forced reversals, eg. McBride); redirection of the procurement-spend of the SOEs to favour those who are prepared to deal with the Gupta-Zuma network of brokers (those that don't - don't get the contract, even if they have better BEE credentials and their price is lower); and the consolidation of the Premier League as a network of party bosses to ensure that the NEC of the ANC remains loyal because it is implicated in the flow of large amounts of cash to keep this political Ponzi scheme going.

At the epicentre of the political project mounted by the Zuma-centred power elite is a rhetorical commitment to RET. Unsurprisingly, although the ANC's official policy documents on RET encompass a broad range of interventions that take the National Development Plan as a point of departure, what is emphasized by the Zuma-centred power elite is the role of the SOEs and, in particular, the procurement spend of the SOEs. ESKOM and TRANSNET, in turn, are the centre-pieces of this strategic focus on SOEs as the drivers of RET. This is because ESKOM is regarded as key to ensuring that the nuclear deal happens, and TRANSNET because it is regarded as key to ensuring that the mining industry is captured and the Transnet properties released to a select group of private companies. In short, instead of becoming a new economic policy consensus, RET has been turned into an ideological football kicked around by factional political players within the ANC itself and the Alliance in general who use the term to mean very different things. Crucially, RET is used to give ideological legitimacy to what is essentially a political project to manage the symbiotic relationship between the constitutional and shadow state.

To resolve the current crisis, three things need to happen:

Firstly, the Gupta-Zuma network comprising 12 companies and 15 individuals that holds the symbiotic relationship between the constitutional and shadow state together needs to be broken and dismantled. This will require political action within and outside the tripartite alliance to dislodge Zuma as the kingpin of the symbiosis, coupled with legal action to criminalise and bring the perpetrators of state capture to justice. To this end, the Public Protector's recommendation that a Judicial Commission of Inquiry be established must be an urgent priority. It will also require bold action by the banking sector and the Reserve Bank to expose and shut down the financial mechanisms that the shadow state uses. The closing of the Oakbay accounts was a brave step, but does not go far enough. The Gupta-Zuma networks have rapidly reconfigured

## ■ Conclusion and Recommendations

and found ways to circumvent these restrictions. The signing of the FICA amendment bill, for example, grants false comfort because implementation could be thwarted because of the fractured and weak nature of the law enforcement agencies. The purchase of the Habib bank must obviously be prevented by the regulators concerned. Furthermore, every effort must be made to protect the information technology systems of the Independent Electoral Commission (IEC) from being taken over by a Gupta-Zuma linked company. If this happens as some suggest may be the case, the ANC elections in December and the General Elections in 2019 have very little chance of being truly free and fair.

Secondly, a new national economic consensus is required. This has never been given serious attention beyond setting out multiple policy frameworks, and bureaucratic processes. The short-lived post-1994 Reconstruction and Development Programme developed by the Presidency was unilaterally replaced by GEAR in 1996 – a policy framework developed by the Ministry of Finance and adopted without approval of the Alliance partners. At the same time the Department of Labour's Presidential Labour Market Commission came up with a social plan. A few years later ASGISA was also adopted without full consensus. The adoption in 2002 of the 'developmental state' framework came closest to a consensus, but it lacked substance and focussed primarily on a weakly defined industrial policy framework that has failed to induce confidence in the economy; and public investment in infrastructure as a way of 'crowding in' private investment. The adoption of the New Growth Path later on did not improve matters, especially when this was interpreted by Gigaba after he was appointed Minister of Public Enterprises in 2010 as a license to transform the governance of the SOEs. The economic policies inscribed in the National Development Plan also never enjoyed full support of the Alliance partners, not least because the NDP is pessimistic about the future of manufacturing, saying virtually nothing about de-financialisation and is vague when it comes to achieving employment-centred development in an environment where trade unions have policy influence. While the external environment in the wake of the global financial crisis has had adverse effects on South Africa's growth outlook, governance failures and policy uncertainty have inflicted the most damage. Promises made by the ANC to Alliance partners after the final draft of the NDP was published that further work will take place to strengthen the economic policies of the NDP were never implemented. The DTI's industrial policy framework adopted in 2007 was resisted by National Treasury who argued against 'picking winners' thus thwarting the implementation of industrial policy in South Africa.

In short, there has never really been a broadly shared and fully supported economic policy framework. RET is already a factional political football. One can speculate that a positive outcome of this political crisis would be the adoption, for the first time ever, of a new economic consensus that can both unite the different factions of the Alliance by giving real substance to RET while enjoying broad stakeholder support in the business community, labour sector and civil society. Without this, the Zuma-centred power elite will be

able to co-opt RET to mask ongoing rent-seeking practices via the manipulation of SOE procurement spend. This is unlikely to crowd in private investment. The nuclear deal will likely be justified in terms of RET, masking how ESKOM's procurement system and the issuing of a sovereign guarantee will be used to effectively hand over the South African economy to foreign interests: The open secret, of course, is that this is intended to be the Russians. The nuclear deal is the ultimate 'big and shiny' capital intensive project that reinforces the Mineral-Energy-Complex (MEC), crowds out investment in the cheapest energy available (which is renewable energy), increases indebtedness to foreign lenders and of course benefits the cohort of rent-seeking corrupt insiders.

A new economic consensus will have to address the core challenge of investment. As argued in Chapter 1, after 1994 the combination of the shareholder value movement, BEE and financialisation redirected surpluses away from productive employment-creating investments. Since they were adopted in 2007, industrial policies have not had much success beyond defending the position of the automotive sector and limited successes in the clothing and textile sector. These two sectors remain vulnerable in the face of global competitive challenges from other developing countries as well as risks around the longevity of AGOA which has been a boon for the auto sector. The introduction of 100 Black Industrialists programme by then Deputy Minister at DTI has diverted focus implementing good industrial policy strategies. It would seem the Black Industrialist scheme, as good as it seems on paper, has been poorly administered, with very little value created thus far.

Since 1994, compared to its peers in the rest of the world, South Africa has been an anomaly. High returns on investment are usually associated with high investment levels, as it is the case with China. In South Africa, returns on investment have been similar to China's, but investment levels – and therefore employment creation rates – are low. This is partly caused by market concentration that gives large conglomerates too much market power to extract higher margins than would have been possible in a more competitive environment, and partly by a low level of confidence in the post-1994 democratic project by a business class that remains dominated by white decision-makers. Even international financial institutions such as the International Monetary Fund have underlined the concentration of product markets as problematic, and in need of deep reforms.

Using SOE procurement spend has tended to reinforce investment in large 'big and shiny' capital-intensive projects concentrated within the MEC. This reinforces a pattern of job-starved economic growth in an economy with one of the highest unemployment rates in the world. What is therefore really needed is employment- and livelihood-creating investments across a wide spectrum of small and medium enterprises capable of absorbing large numbers of unskilled and semi-skilled workers. This, however, will need to be supported by a proliferation of innovations that emerge from what are often referred to as 'triple helix' innovation networks (i.e. partnerships between enterprises, knowledge institutions, and state institutions)

which connects knowledge, market opportunities with investment flows and an enabling regulatory environment. Innovative policy, which 'creatively destroys' to engender new forms of economic development, lies at the heart of true inclusive economic growth. This kind of strategy, however, will only be realizable if the financialisation of the economy is complemented by, for example, channelling more public funds through South Africa's well-developed Development Finance Institutions (DFIs) and redirecting the investments of the DFIs away from blue chip companies and/or capital intensive projects into higher risk employment- and livelihood-creating enterprises located in both the private and non-profit sectors.

Thirdly, all stakeholders, in particular the political actors that will replace the Zuma-centred power elite at some point in the future, must commit to realizing the vision of a new economic consensus within the framework of the Constitution and relevant legislation. The recent trend to regard the Constitution and the rule of law (such as the PFMA) as an obstacle to RET is dangerous and needs to be stopped. Transformation is perfectly compatible with the Constitution and respect for the Judiciary. Indeed, without this the necessary trust that is required for 'triple helix'-type employment- and livelihood-centred economic development will not materialise. A new trust compact is required if stakeholders are going to work together in meaningful ways.

In short, the promise expressed by President Nelson Mandela during his inauguration address in 1994 continues to be what all South Africans aspire to achieve. It is a promise that all South Africans expect Government to understand and fully support across

every sector. It is, however, a promise that has been betrayed by the Zuma-centred power elite. In the process, the ANC has been marginalised from realising the promise, made explicit by the fact that the so-called 'top six' of the ANC did not support the April reshuffle nor the re-appointment of Brian Molefe as ESKOM CEO. It is, nevertheless, a promise that can still be achieved if a new economic consensus emerges to realise authentic and truly inclusive radical economic transformation. It is time, therefore, that political conditions are created that enable and catalyse the realisation of our founding promise.

What is clear is that state capture by shadowy elites has profound implications for state institutions. It destroys public trust in the state and its organs; it weakens key economic agencies that are tasked with delivering development outcomes; and it erodes confidence in the economy. When there is no trust in public institutions, there is little goodwill to express solidarity through tax, large companies are predisposed to sit on cash rather than reinvest profits towards productive use, criminality proliferates exploiting weaknesses in intelligence and crime enforcement authorities, and both capital and skills flee the country. The majority of South Africans will bear the brunt of these corrosive developments. Worryingly, large-scale corruption enables much wider corrupt activities to go undetected at the lower tiers of government. Under such conditions, it is impossible to achieve transformative objectives that could improve livelihood of the majority of South Africans.



## REFERENCE LIST

Adeyeye, A. O. 2012. *Corporate social responsibility of multinational corporations in developing countries*. Cambridge University Press.

African News Agency Reporter. 2016. Maimane lays charges against Zuma. *IOL*, 15<sup>th</sup> November 2016. Available: <https://www.iol.co.za/news/maimane-lays-charges-against-zuma-2090196>  
(Accessed 28th December 2018).

African Union. 2003. *African Union convention on preventing and combating corruption*. Available: [https://au.int/sites/default/files/treaties/7786-treaty-0028\\_african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_e.pdf](https://au.int/sites/default/files/treaties/7786-treaty-0028_african_union_convention_on_preventing_and_combating_corruption_e.pdf)  
(Accessed 29th December 2018).

Agarwal, A. K. 2016. *Business leadership and law*. New Delhi: Springer.

Aidt, T. S. 2003. Economic analysis of corruption: a survey. *The Economic Journal*, 113 (491): F632-F652.

Akpan, M. B., Jones, A. B. and Pankhurst, R. 1985. Ethiopia and Liberia, 1914-35: two independent African states in the colonial era. In: Boahen, A. A. ed. *Africa under colonial domination 1880-1935*. London: Heinemann Educational Books Ltd, 712-745.

Alberto, A. and Weder, B. 2002. Do corrupt governments receive less foreign aid? *American Economic Review*, 92 (4): 1126-1137.

Alkadry, M. G. 2002. Bureaucracy: Weber's or Hammurabi's? Ideal or ancient? *Public Administration Quarterly*, 26 (3): 317-345.

Allan, S. 2015. *Buried ideas: legends of abdication and ideal government in early Chinese bamboo-slip manuscripts*. State University of New York Press.

Alschuler, A. W., Tribe, L. H., Eisen, N. and Painter, R. W. 2017. *Why limits on contributions to super PACs should survive Citizens United*. University of Chicago Law School. Chicago.

Altschuler, E. L., Calude, A. S., Meade, A. and Pagel, M. 2013. Linguistic evidence supports date for Homeric epics. *BioEssays*, 35 (5): 417-420.

Aluko, A. and Bagheri, M. 2012. The impact of money laundering on economic and financial stability and on political development in developing countries. *Journal of Money Laundering Control*, 15 (4): 442-457.

An-Na'im, A. A. 2009. *Islam and the secular state: negotiating the future of shari'a*. Harvard University Press.

Anghie, A. 1999. Finding the peripheries: sovereignty and colonialism in nineteenth-century international law. *Harvard International Law Journal*, 40 (1): 1-80.

Arafa, M. A. 2012. Corruption and bribery in islamic law: are islamic ideals being met in practice? *Annual Survey of International & Comparative Law*, 18 (1): 170-242.

Areddy, J. T. 2017. Kushners' partner in china draws scrutiny over U.S. visa program. *The Wall Street Journal*, 4th August 2017 Available: <https://www.wsj.com/articles/kushners-partner-in-china-draws-scrutiny-over-u-s-visa-program-1501887240> (Accessed 30th October 2018).

Arena, V. 2018. Fighting corruption: political thought and practice in the late roman republic. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 35-48.

Austin, J. L., Austin, J. L., Urmson, J. O., Urmson, J. O. and Sbisà, M. 1975. *How to do things with words*. Harvard University Press.

Australian Government: Attorney-General's Department. 2017. *Proposed amendments to the foreign bribery offence in the Criminal Code Act 1995 (Public Consultation Paper)*. Canberra: Australian Government: Attorney-General's Department. Available:

<https://www.ag.gov.au/Consultations/Documents/Foreign-bribery-offence/public-consultation-paper-amendments-to-the-foreign-bribery-offence.pdf> (Accessed 16th November 2018).

Badke, W. B. 2004. *Research strategies: finding your way through the information fog*. 2nd ed. New York: IUiverse.

Bailey, K. D. 1994. *Methods of social research*. 4th ed. New York. Ontario: The Free Press.

Baker, G. P. and Huntington, H. B. 1905. *The principles of argumentation*. Ginn.

Banfield, E. C. 1958. *The moral basis of a backward society*. Free Press.

Barbieri-Low, A. J. and Yates, R. D. S. 2015. *Law, state, and society in early imperial China (2 vols): a study with critical edition and translation of the legal texts from Zhangjiashan*. Tomb. Brill.

Barcham, M. 2012. Rule by natural reason: Late medieval and early renaissance conceptions of political corruption. In: Barcham, M., Hindness, B. and Larmour, P. eds. *Corruption: expanding the focus*. ANU E Press. Available: <http://press-files.anu.edu.au/downloads/press/p191341/pdf/ch04.pdf> (Accessed 27th April 2017).

Barnett, A., Yandle, B. and Naufal, G. 2013. Regulation, trust, and cronyism in middle eastern societies: the simple economics of “wasta”. *The Journal of Socio-Economics*, 44: 41-46.

Bartram, J. W. 1999. Pleading for e-consolidation in Virginia: larceny, embezzlement, false pretenses and § 19.2-284. *Washington and Lee Law Review*, 56 (1): 249-294.

Bastiat, F. 2017. *Economic sophisms and “what is seen and what is not seen”*. O’Keefe, D. Indianapolis: Liberty Fund.

Baumler, A. 310. *The Chinese and opium under the republic: worse than floods and wild beasts*. SUNY Press.

Bayley, D. H. 1966. The effects of corruption in a developing nation. *The Western Political Quarterly*, 19 (4): 719-732.

Beeson, M. 2003. *The rise of the ‘Neocons’ and the evolution of American foreign policy*. Paper presented at The Post-Cold War International Order and Domestic Conflict in Asia. Singapore, University of Queensland, 18.

Bellow, A. 2004. *In praise of nepotism*. New York, Toronto: Knopf Doubleday Publishing Group.

Ben-Dor, G. 1974. Corruption, institutionalization, and political development: the revisionist theses revisited. *Comparative Political Studies*, 7 (1): 63–83.

Bernstein, C. and Woodward, B. 1972a. FBI finds Nixon aides sabotaged democrats. *The Washington Post*. 10<sup>th</sup> October 1972. Available: <https://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/101072-1.htm> (Accessed 31st December 2018)

Bernstein, C. and Woodward, B. 1972b. Mitchell controlled secret GOP fund. *The Washington Post*. 29<sup>th</sup> September 1972 Available: <https://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/092972-1.htm> (Accessed 31st December 2018).

Best, J. 2007. The moral politics of IMF reforms: universal economics, particular ethics. In: Day, R. B. and Masciulli, J. eds. *Globalization and political ethics*. Leiden, Boston: BRILL, 107-128.

Bhorat, H., Buthelezi, M., Chipkin, I., Duma, S., Friedenstein, H., Mondi, L., Peter, C., Qobo, M. and Swilling, M. 2017. Betrayal of the promise: how South Africa is being stolen. *State Capacity Research Project*. Available: <http://markswilling.co.za/wp-content/uploads/2017/05/25052017-Betrayal-of-the-Promise.pdf> (Accessed 28h December 2018).

Bhushan, P. 1978. *The case that shook India*. New Delhi: Vikas Publishing House.

Bian, J. 2014. *China's securities market: towards efficient regulation*. Abingdon, New York: Taylor & Francis.

The Bible: Authorized King James Version. 2008. Oxford, GB: Oxford Paperbacks.

Blumi, I. 2018. *Destroying Yemen: what chaos in Arabia tells us about the world*. Oakland, California: University of California Press.

Boahen, A. A. 1985. Africa and the colonial challenge In: Boahen, A. A. ed. *Africa under Colonial Domination 1880-1935* London: Heinemann Educational Books Ltd 1-18.

Bogdan, R. and Knopp Biklen, S. 2007. *Qualitative research for education: an introduction to theory and methods*. 5<sup>th</sup> ed. Pearson.

Bond, P. 2003. *Against global apartheid: South Africa meets the World Bank, IMF and international finance*. 2nd ed. London, New York: Zed Books Ltd, University of Cape Town Press.

Bond, S. E. 2018. The corrupting sea: law, violence and compulsory professions in late antiquity. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anti-corruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 49-63.

Booth, D. 2011. *Aid effectiveness: bringing country ownership (and politics) back in*. Overseas Development Institute. London. Available: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6028.pdf> (Accessed 14th December 2018).

Booth, W. C., Colomb, G. G., Williams, J. M., Bizup, J. and Fitzgerald, W. T. 2016. *The craft of research*. Chicago: University of Chicago Press.

Borders, R. and Dockery, C. C. 1995. *Beyond the hill: a directory of congress from 1984 to 1993: where have all the members gone?* University Press of America.

Bown, M. 2017. Bribery: am I a criminal? Implications of the US Foreign Corrupt Practices Act and the UK Bribery Act in the outsourced FM environment. *Journal of Facility Management and Research*, 1 (1): 51-58.

Bradley, R. L. 2011. *Edison to Enron: energy markets and political strategies*. John Wiley & Sons.

Brand, R. A. 1994. External sovereignty and international law. *Fordham International Law Journal*, 18 (5): 1685-1697.

Brands, H. W. 2002. *The Reckless Decade: America in the 1890s*. University of Chicago Press.

Breen, M. 2012. IMF conditionality and the economic exposure of its shareholders. *European Journal of International Relations*, 20 (2): 416-436.

Brody, R. G. and Luo, R. 2009. Fraud and white-collar crime: a Chinese perspective. *Cross Cultural Management*, 16 (3): 317-326.

Bronowski, J. 1973. *The ascent of man*. 1st American ed. Boston: Little, Brown.

Brown, W. 2013. Sovereignty matters: Africa, donors, and the aid relationship. *African Affairs*, 112 (447): 262-282.

Bruner, S. C. 2017. *Late nineteenth-century Italy in Africa: the Livraghi affair and the waning of civilizing aspirations*. Cambridge Scholars Publishing.

Buchan, B. 2012. Changing contours of corruption in western political thought, c. 1200-1700. In: Barcham, M., Hindess, B. and Larmour, P. eds. *Corruption: expanding the focus*. ANU Press, 73-96.

Buchan, B. and Hill, L. 2014. *Political corruption and governance: An intellectual history of political corruption*. Palgrave Macmillan.

Buhler, G. 1886. *The laws of Manu: with extracts from seven commentaries*. Oxford: Clarendon Press.

Bukovansky, M. 2002. *Corruption is bad: Normative dimensions of the anti-corruption movement (Working Paper)*. Australian National University. Canberra. September 2002. Available: <https://openresearch-repository.anu.edu.au/bitstream/1885/40136/3/02-5.pdf> (Accessed 16th November 2018).

Bukovansky, M. 2006. The hollowness of anti-corruption discourse. *Review of International Political Economy*, 13 (2): 181-209.

Bush, T. 2012. Authenticity in research: reliability, validity and triangulation'. In: Briggs, A., Coleman, M. and Morrison, M. eds. *Research methods in educational leadership & management*. 3rd edn. London: SAGE Publications Ltd, 75-89.

Butler, R. A. 2012. Reform of the United Nations Security Council. *Penn State Journal of Law & International Affairs*, 1 (1): 23-39.

Campbell, G. 2013. Madagascar and Mozambique in the slave trade of the western Indian Ocean 1800-1861. In: Clarence-Smith, W. G. ed. *The Economics of the Indian ocean slave trade in the nineteenth century*. Routledge, 166-193.

Canada. 1988. *Corruption of Foreign Public Officials Act* S.C. 1998, c. 34. Justice Laws Website of Canada. Available: <http://laws-lois.justice.gc.ca/eng/acts/c-45.2/FullText.html> (Accessed 12th October 2017).

Carniello, B. R. 2002. The rise of an administrative elite in medieval Bologna: notaries and popular government, 1282–1292. *Journal of Medieval History*, 28 (4): 319-347.

Carr, I. and Jago, R. 2016. Corruption, the United Nations Convention against Corruption ('UNCAC') and asset recovery. In: King, C. and Walker, C. eds. *Dirty assets: emerging issues in the regulation of criminal and terrorist assets*. Routledge.

Carroll, L. 1934. *Alice's adventures and Through the looking glass*. 3rd ed. St. Martin's Street London: Macmillan.

Cassidy, J. 2017. The real Trump agenda: helping big business. *The New Yorker*. 21<sup>st</sup> April 2017. Available: <https://www.newyorker.com/news/john->

[cassidy/the-real-trump-agenda-helping-big-business](#) (Accessed 28th December 2018).

Castro, C. and Nunes, P. 2013. Does corruption inhibit foreign direct investment? *Política. Revista de Ciencia Política*, 51 (1): 61-83.

Cheow, C. Y., Chong, S. J., Lim, H. P., Ling, L. C. and Genn, S. J. 2015. Relationship between FDI inflows and corruption in 5 selected ASEAN countries. Bachelor of Economics (HONS), Universiti Tunku Abdul Rahman.

Chui, C. 2014. *Australia: global trend in facilitation payments law: implications for companies in Asia Pacific*. Available: [http://www.mondaq.com/article.asp?article\\_id=294822&signup=true](http://www.mondaq.com/article.asp?article_id=294822&signup=true) (Accessed 21st November 2018).

Cicero, M. T. and Duncan, W. 2008. *Select orations of Cicero (1841)*, Translated from Latin by Duncan, W. Kessinger Publishing, LLC.

City Press. 2016. State capture timeline. *City Press*, Available: [https://citypress.news24.com/Special-Report/4\\_days\\_in\\_December/state-capture-timeline-20161208](https://citypress.news24.com/Special-Report/4_days_in_December/state-capture-timeline-20161208) (Accessed 28th December 2018).

Clark, S. R. 2014. Essays in insider trading, informational efficiency, and asset pricing. Doctor of Philosophy, University of Iowa. Available: <http://ir.uiowa.edu/etd/1306> (Accessed 3rd October 2017).

Cloete, K. 2016. Energy Minister says Eskom to fund nuclear as new procurement framework is unveiled. *Creamer media's Engineering News*, 11<sup>th</sup> October 2016. Available: [http://www.engineeringnews.co.za/article/energy-minister-says-eskom-to-fund-nuclear-as-new-procurement-framework-is-unveiled-2016-10-11/rep\\_id:4136](http://www.engineeringnews.co.za/article/energy-minister-says-eskom-to-fund-nuclear-as-new-procurement-framework-is-unveiled-2016-10-11/rep_id:4136) (Accessed 28th December 2018).

CoE. 2017. *Status of signatures and ratifications of the treaty 191*. Available: [https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/191/signatures?p\\_auth=C2ShKrQT](https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=C2ShKrQT) (Accessed 15th October 2017).

Coldewey, D. 2019. FCC Chairman Pai celebrates congress failing to bring back net neutrality. *TechCrunch*, Available: <https://techcrunch.com/2019/01/02/fcc-chairman-pai-celebrates-failure-to-nullify-his-net-neutrality-repeal/> (Accessed 3rd January 2019).

Corbin, J. and Strauss, A. 1990. Grounded theory research: procedures, canons, and evaluative criteria. *Qualitative Sociology*, 13 (1): 3-21.

Corbin, J., Strauss, A. and Strauss, A. L. 2014. *Basics of qualitative research*. SAGE Publications.

115th Congress USA (2017-2018). 2018. *Joint resolution; Supporting a diplomatic solution in Yemen and condemning the murder of Jamal Khashoggi*. Government Gazette 12/13/2018. Available: <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/69/text?q=%7B%22search%22%3A%5B%22Khashoggi%22%5D%7D&r=4&s=2> (Accessed 6th February 2019).

Corruption Watch. 2016. *State capture report calls for commission of inquiry*. Available: <https://www.corruptionwatch.org.za/state-capture-report-commission-inquiry-set/> (Accessed 28th December 2018).

Corruption Watch. 2017. *ESKOM/Brian Molefe saga: a timeline*. Available: <https://www.corruptionwatch.org.za/eskommolefe-saga-timeline/> (Accessed 28th December 2018).

Cotterill, J. 2018. Jacob Zuma's son charged with corruption in Gupta family probe. *The Financial Times*, Available: <https://www.ft.com/content/83b5c11e-8365-11e8-a29d-73e3d454535d> (Accessed 30th October 2018).

Cox, M. 2008. A primer in political pathologies: corruption and its correlates. In: Cox, M. ed. *State of corruption, state of chaos: the terror of political malfeasance*. Lexington Books, 3-14.

Cox, T. M. 2011. Is the Procurement Integrity Act important enough for the Mandatory Disclosure Rule?: a look at the Procurement Integrity Act and the case for its inclusion in the Mandatory Disclosure Rule. Master of Laws, The George Washington University. Available: <https://scholarspace-etds.library.gwu.edu/downloads/ft848q77t?locale=en> (Accessed 2 May 2018).

Crotty, M. 1998. *The foundations of social research: meaning and perspective in the research process*. SAGE.

Csáki, C. and Gelléri, P. 2005. Conditions and benefits of applying decision technological solutions as a tool to curb corruption within the procurement process: the case of Hungary. *Journal of Purchasing and Supply Management*, 11 (5): 252-259.

Curnow, R. 2003. What's past is prologue: administrative corruption in Australia. In: Tiihonen, S. ed. *History of corruption in central government: cahier d'histoire de l'administration*. Amsterdam, NL: IOS Press, 37-64.

Dando-Collins, S. 2010. *The great fire of Rome: The fall of the Emperor Nero and his city*. Da Capo Press.

Danon, E. 2017. Levelling the business playing field and improving victims' compensation, the case for a multilateral resolution of foreign bribery allegations. Paper presented at the 2017 OECD Global Anti-Corruption & Integrity Forum (Conference Paper). Paris, OECD, 1-15. Available: <https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-Danon-foreign-bribery.pdf> (Accessed 28th September 2017).

Darby, L. 2017. Trump explains the GOP tax bill to his wealthy friends: "You all just got a lot richer". GQ. Available: <https://www.gq.com/story/trump-wealthy-friends-richer> (Accessed 28th December 2018).

Dardess, J. W. 1996. *A ming society: t'ai-ho county, kiangsi, fourteenth to seventeenth centuries*. University of California Press.

Davis, G. and Grootes, S. 2016. Mcebisi Jonas confirms the Guptas offered him a job. EWN, Available: <https://ewn.co.za/2016/03/16/Mcebisi-Jonas-confirms-job-offer-by-Guptas> (Accessed 28th December 2018).

Davis, J. H. and Ruhe, J. A. 2003. Perceptions of Country Corruption: Antecedents and Outcomes. *Journal of Business Ethics*, 43 (4): 275-288.

de Figueiredo, J. M. and Kelleher Richter, B. 2013. *Advancing the empirical research on lobbying*. Cambridge: National Bureau of Economic Research. Available: <https://www.nber.org/papers/w19698.pdf> (Accessed 20th December 2018).

de Haldevang, M. 2017. After outcry by ethics watchdogs, the US State department pulled a story advertising Trump's Mar-a-Lago resort. Quartz, Available: <https://qz.com/967330/us-government-websites-could-be-violating-ethics-laws-by-promoting-trumps-mar-a-lago-resort/> (Accessed 28th December 2018).

Deming, S. H. 2010. *The Foreign Corrupt Practices Act and the new international norms*. American Bar Association.

Democratic Alliance v The President of the RSA & others. 2011. 263/11, 46. (The Supreme Court of Appeal of South Africa). Available: <http://www.saflii.org/za/cases/ZASCA/2011/241.pdf> (Accessed 30th October 2018).

- Denzin, N. K. and Lincoln, Y. S. 2011. *The sage handbook of qualitative research*. SAGE.
- Derks, H. 2012. *History of the opium problem: the assault on the east, ca. 1600-1950*. Leiden, Boston: Brill.
- Dietrich, S. 2013. Bypass or engage? Explaining donor delivery tactics in foreign aid allocation\*. *International Studies Quarterly*, 57 (4): 698-712.
- Dillon, L., Sellers, C., Underhill, V., Shapiro, N., Ohayon, J. L., Sullivan, M., Brown, P., Harrison, J. and Wylie, S. 2018. The environmental protection agency in the early Trump administration: prelude to regulatory capture. *American Journal of Public Health*, 108 (S2): S89-S94.
- Dion, M. 2010. Corruption and ethical relativism: what is at stake? *Journal of Financial Crime*, 17 (2): 240-250.
- Dirks, N. B. 2006. *The scandal of empire: India and the creation of imperial Britain*. Cambridge: Harvard University Press.
- Doig, A. 1998. 'Cash for questions': Parliament's response to the offence that dare not speak its name. *Parliamentary Affairs*, 51 (1): 36-50.
- Doig, A. 2002. Sleaze fatigue in 'The House of Ill-Repute'\*. *Parliamentary Affairs*, 55 (2): 389-399.
- Donaldson, F. 1962. *The Marconi scandal*. Bloomsbury Publishing.
- DPAD UN/DESA. 2014. *Country classification: data sources, country classifications and aggregation methodology*. Available: [http://www.un.org/en/development/desa/policy/wesp/wesp\\_current/2014wesp\\_country\\_classification.pdf](http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf) (Accessed 9th October 2017).

Draper, H. 1977. *Karl Marx's theory of revolution: state and bureaucracy*. New York, London: Monthly Review Press.

Drazen, A. 1999. *What is gained by selectively withholding foreign aid?* University of Maryland, National Bureau of Economic Research. College Park, Maryland. Available:  
[http://econweb.umd.edu/~drazen/Working\\_Papers/cutoff3.pdf](http://econweb.umd.edu/~drazen/Working_Papers/cutoff3.pdf) (Accessed 12 December 2018).

Easterly, W. 2001. *The effect of International Monetary Fund and WorldBank programs on poverty*. (Working Paper) The World Bank Development Research Group Macroeconomics and Growth. Available:  
[https://openknowledge.worldbank.org/bitstream/handle/10986/19722/multi\\_page.pdf?sequence=1&isAllowed=y](https://openknowledge.worldbank.org/bitstream/handle/10986/19722/multi_page.pdf?sequence=1&isAllowed=y) (Accessed 12 December 2018)

Easterly, W. and Williamson, C. 2011. Rhetoric versus reality: The best and worst of aid agency practices. *World Development*, 39 (11): 1930-1949.

Eberl, P., Geiger, D. and Aßländer, M. S. 2015. Repairing trust in an organization after integrity violations: the ambivalence of organizational rule adjustments. *Organization Studies*, 36 (9): 1205–1235.

Ebikake, E. 2016. Money laundering. *Journal of Money Laundering Control*, 19 (4): 346-375.

Edwards, D. 2017. *Corruption and state capture under two regimes in Guyana: a plural society approach*. University of West Indies. Cave Hill, Barbados. Available:  
[https://www.researchgate.net/publication/320757202\\_corruption\\_and\\_state\\_capture\\_under\\_two\\_regimes\\_in\\_guyana\\_a\\_plural\\_society\\_approach](https://www.researchgate.net/publication/320757202_corruption_and_state_capture_under_two_regimes_in_guyana_a_plural_society_approach)  
(Accessed 28th December 2018).

Edwards, S. J. A. 2000. *Swarming on the battlefield: past, present, and future*. RAND Corporation.

Eisner, E. W. and Noddings, N. 2017. *The enlightened eye: qualitative inquiry and the enhancement of educational practice*. Teachers College Press.

Eliseev, A. and Whittles, G. 2016. ANC heavyweight speaks out against Gupta influence. *EWN*, Available: <https://ewn.co.za/2016/03/17/More-ANC-heavyweights-speak-out-on-Gupta-jobs-saga> (Accessed 28th December 2018).

Elo, S., Kääriäinen, M., Kanste, O., Pölkki, T., Utriainen, K. and Kyngäs, H. 2014. Qualitative content analysis: a focus on trustworthiness. *Sage Open*, 4 (1)

Erdmann, G. 2013. Neopatrimonialism and political regimes. In: Anderson, D., Cheeseman, N. and Scheibler, A. eds. *Routledge handbook of African politics*. Routledge, 59-69.

Ervin, S. J. 1980. *The whole truth: the Watergate conspiracy*. New York: Random House.

European Union. 1995. Convention on the Protection of the European Communities' Financial Interests, OJ C 316. EUR-Lex. Available: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I33019> (Accessed 12 October 2017).

Evans, J. 2018. Ajay Gupta on Jonas finance minister offer claim: 'I was not even present'. *News24*, Available: <https://www.news24.com/SouthAfrica/News/ajay-gupta-of-jonas-finance-minister-offer-claim-i-was-not-even-present-20180927> (Accessed 28th December 2018).

Evans, D., Gruba, P. and Zobel, J. 2014. *How to write a better thesis*. 3<sup>rd</sup> ed. Melbourne: Springer

Fawcett, L. 2012. The middle east after empire: sovereignty and institutions. In: Cummings, S. N. and Hinnebusch, R. eds. *Sovereignty after empire: comparing the middle east and central Asia*. Edinburgh University Press Ltd, 157-177.

Feinstein, A., Holden, P. and Pace, B. 2011. Corruption and the arms trade: sins of commission. In: *SIPRI Yearbook 2011: armaments, disarmament and international security*. Great Clarendon Street, Oxford: OUP Oxford, 13-38.

Feldstein, M. 1998. Refocusing the IMF. *Foreign Affairs*, 77 (2): 20-33.

Ferguson, J. 2016. From African socialism to scientific capitalism: reflections on the legitimate crisis in IMF-ruled Africa. In: Moore, D. B. and Schmitz, G. J. eds. *Debating development discourse: institutional and popular perspectives*. London: Palgrave Macmillan UK, 129-148. Available: [https://books.google.com/books?id=Ng6\\_DAAAQBAJ](https://books.google.com/books?id=Ng6_DAAAQBAJ) (Accessed 11th November 2018).

Fernandez, J. C. 2013. The persecutores in the late antique Christian literature (4th-5th century ad): Christian historical retrospective of the period of persecution after the Edict of Thessalonica—AD 380. In: García-Gasco, R., Sánchez, S. G. and de la Fuente, D. A. H. eds. *The Theodosian age (A.D. 379-455): power, place, belief and learning at the end of the western empire*. Archaeopress, 161-168.

Finaldi, G. 2017. *A history of Italian colonialism, 1860–1907: Europe's last empire*. Taylor & Francis.

Fox News. 2018. *Poll: voters say corruption most important 2018 topic*. Available: <https://www.foxnews.com/politics/poll-voters-say-corruption-most-important-2018-topic> (Accessed 6th February 2019).

Freeman, J. 2010. *Blood, sweat & theory: research through practice in performance*. Faringdon: Libri Publishing.

Friedrich, C. J. 1972. *The pathology of politics: violence, betrayal, corruption, secrecy, and propaganda*. Harper & Row.

Friedrich, C. J. 2011. Corruption concepts in historical perspective. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, 15-23.

Fukuyama, F. 2016. What is corruption? Paper presented at the 2016 RIDGE December Forum. Montevideo, Uruguay, Research Institute for Development, Growth and Economics, 1-19. Available: [http://www.ridge.uy/wp-content/uploads/2016/05/Fukuyama\\_Francis.pdf](http://www.ridge.uy/wp-content/uploads/2016/05/Fukuyama_Francis.pdf) (Accessed 13 September 2017).

Fung, S. 2017. The questionable legitimacy of the OECD/G20 BEPS project. *Erasmus Law Review*, 2: 76-88.

Gage, B. 2012. Deep throat, Watergate, and the bureaucratic politics of the FBI. *Journal of Policy History*, 24 (2): 157-183.

Gallens, M. 2016. 3 ministers ask Zuma to step down. *News24*, Available: <https://www.news24.com/SouthAfrica/News/exclusive-3-ministers-ask-zuma-to-step-down-20161128> (Accessed 28th December 2018).

Gardiner, J. 2011. Defining Corruption. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 25-40: 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers.

Garofalo, P. 2018. Trump's learned nothing from the financial crisis, and his deregulation spree could trigger another. *NBC*, Available:

<https://www.nbcnews.com/think/opinion/trump-s-learned-nothing-financial-crisis-his-deregulation-spree-could-ncna906971> (Accessed 28th December 2018).

Gavor, M. P. and Stinchfield, B. 2013. Towards a theory of corruption, nepotism, and new venture creation in developing countries. *International Journal of Entrepreneurship and Small Business*, 18 (1): 1-14.

Geltner, G. 2018. Fighting corruption in the Italian city-state: Perugian officers' end of term audit (sindacato) in the fourteenth century. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 103-123.

Gessen, M. 2019. The Trump-Russia investigation and the mafia state. *The New Yorker*. 31<sup>st</sup> January 2019. Available: <https://www.newyorker.com/news/our-columnists/the-trump-russia-investigation-and-the-mafia-state> (Accessed 11th February 2019).

Gevurtz, F. A. 1987. Commercial bribery and the Sherman Act: the case for per se illegality. *University of Miami Law Review*, 42: 365-400.

Ghosh, B. and Rajivlochan, M. 2014. *Historical method in sociological research*. In: Jayaram, N. ed. *Methods and methodologies of research in social sciences*. Available: <https://www.researchgate.net/publication/274963527/download> (Accessed 12 August 2018).

Gilbert, B. B. 1989. David Lloyd George and the great Marconi scandal. *Historical Research*, 62 (149): 295-317.

Glaeser, E. L. and Goldin, C. D. 2006. Corruption and reform: introduction. In: Glaeser, E. L. and Goldin, C. D. eds. *Corruption and reform: lessons from America's economic history*. Chicago: University of Chicago Press, 3-22.

Available: <http://www.loc.gov/catdir/toc/ecip0517/2005022496.html>

(Accessed 23rd August 2017).

Glenn, H. P. 2014. *Legal traditions of the world: sustainable diversity in law*. Oxford University Press.

Global Integrity. 2011. *The Global Integrity Report: 2011 methodology white paper*. Washington DC, Capetown: Global Integrity. Available: [https://www.globalintegrity.org/wp-content/uploads/2013/08/2011\\_GIR\\_Meth\\_Whitepaper.pdf](https://www.globalintegrity.org/wp-content/uploads/2013/08/2011_GIR_Meth_Whitepaper.pdf) (Accessed 11th December 2018).

Gong, T. 1994. *The politics of corruption in contemporary China: an analysis of policy outcomes*. Praeger.

Gooptu, N. 2001. *The politics of the urban poor in early twentieth-century India*. Cambridge University Press.

Gopal, A. 2017. Rents, patronage, and defection: state-building and insurgency in Afghanistan. PhD, Columbia University.

Gould, W. 2010. *Bureaucracy, community and influence in India: society and the state, 1930s - 1960s*. Routledge.

Graff, G. M. 2018. A complete guide to all 17 (known) Trump and Russia investigations. *Wired*. Available: <https://www.wired.com/story/mueller-investigation-trump-russia-complete-guide/> (Accessed 28th December 2018).

Graff, G. M. 2019. The Roger Stone indictment: 4 key takeaways. *Wired*. Available: <https://www.wired.com/story/roger-stone-indictment-wikileaks-mueller-investigation/> (Accessed 11th February 2019).

Great Britain Parliament. 1889. Hansard's Parliamentary Debates. Hansard.

Great Britain: Law Commission. 2012. Statute law repeals: nineteenth report, draft Statute Law (Repeals) The Stationery Office.

Green, S. P. 2006. *Lying, cheating, and stealing: a moral theory of white-collar crime*. Oxford University Press.

Grossman, M. 2017. *Political corruption in America: an encyclopedia of scandals, power, and greed*. online: Grey House Publishing. Available: <http://ezproxy.cul.columbia.edu/login?qurl=https%3A%2F%2Fsearch.credoreference.com%2Fcontent%2Fentry%2Fghpca%2Fwatergate%2F0%3FinstitutionId%3D1878> (Accessed 23 April 2018).

Gurría, A. 2018. Planet integrity: building a fairer society. Opening remarks in *2018 OECD global anti-Corruption & integrity forum*. Available: <http://www.oecd.org/governance/planet-integrity-building-a-fairer-society-paris-march-2018.htm> (Accessed 20th November 2018).

Güven, A. B. 2018. Whither the post-Washington consensus? International financial institutions and development policy before and after the crisis. *Review of International Political Economy*, 25 (3): 392-417.

Hackett, G. 2016. *That 80's show! - the politics, film, and television of the Reagan years*. Master of Arts in History, East Tennessee State University.

Hadjikhani, A. and Hakansson, H. 1995. Connected effects due to political actions against a business firm: the case of Bofors. Paper presented at *The IMP lift International Conference*. Manchester, IMP, 502-521. Available: <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:2n490&datastreamId=FULL-TEXT.PDF> (Accessed 12th October 2017).

Hallaq, W. B. 2009. Groundwork of the Moral Law: A new look at the qur'ān and the genesis of shari'a. *Islamic Law and Society*, 16 (3/4): 239-279.

- Hallebone, E. and Priest, J. 2009. *Business and management research: paradigms and practices*. Palgrave Macmillan.
- Hammersley, M. 2013. *What is qualitative research?* Bloomsbury Academic.
- Hanham, H. J. 1960. The sale of honours in late Victorian England. *Victorian Studies*, 3 (3): 277-289.
- Hanlon, J. 2004. Do donors promote corruption?: the case of Mozambique. *Third World Quarterly*, 25 (4): 747-763.
- Hanlon, J. 2017. Following the donor-designed path to Mozambique's US2.2billion secret debt deal. *Third World Quarterly*, 38 (3): 753-770.
- Hansen, H. K. 2017. Trumpism: On the road to state capture? *BOS: the business of society (Blog)*. Available: <http://www.bos-cbscsr.dk/2017/02/08/trumpism-road-state-capture/> (Accessed 28th December 2018).
- Hao, Y. 1999. From rule of man to rule of law: An unintended consequence of corruption in China in the 1990s. *Journal of Contemporary China*, 8 (22): 405-423.
- Hao, Y. and Johnston, M. 1995. China's surge of corruption. *Journal of Democracy*, 6 (4): 80-94.
- Harling, P. 1995. Rethinking "Old Corruption". *Past & Present*, (147): 127-158.
- Harnetty, P. 1972. *Imperialism and free trade: Lancashire and India in the mid-nineteenth century*. Manchester University Press.
- Harris, S., Leonnig, C. D., Jaffe, G. and Dawsey, J. 2018. Kushner's overseas contacts raise concerns as foreign officials seek leverage. *The*

*Washington Post*, 27th February 2018 Available:

[https://www.washingtonpost.com/world/national-security/kushners-overseas-contacts-raise-concerns-as-foreign-officials-seek-leverage/2018/02/27/16bbc052-18c3-11e8-942d-16a950029788\\_story.html?noredirect=on&utm\\_term=.04128611311c](https://www.washingtonpost.com/world/national-security/kushners-overseas-contacts-raise-concerns-as-foreign-officials-seek-leverage/2018/02/27/16bbc052-18c3-11e8-942d-16a950029788_story.html?noredirect=on&utm_term=.04128611311c)

(Accessed 30th October 2018).

Harstad, B. and Svensson, J. 2011. Bribes, lobbying, and development. *The American Political Science Review*, 105 (1): 46-63.

Harwood, J. 2018. President Trump's money-making power is as unprecedented as his words. CNBC, 29<sup>th</sup> June 2018. Available:

<https://www.cnbc.com/2018/06/28/trump-collects-on-business-and-presidency-is-boosting-brand.html> (Accessed 28th December 2018).

Hasen, R. L. 2012. Fixing Washington. A review of 1. Republic lost: how money corrupts politics - and a plan to stop it and 2. Capitol punishment: the hard truth about Washington corruption from America's most notorious lobbyist by Lessig, L. and Abramoff, J., reviewed in *Harvard Law Review* 126(2), 550-586.

Hasen, R. L. 2014. Super PAC contributions, corruption, and the proxy war over coordination. *Duke Journal of Constitutional Law & Public Policy*, 9 (1): 1-21.

Heidenheimer, A. J. 2008. The topography of corruption: explorations in a comparative perspective. *International Social Science Journal*, 48 (149): 337-346.

Heidenheimer, A. J. and Johnston, M. 2011a. Introduction to part 1. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, 3-14.

Heidenheimer, A. J. and Johnston, M. 2011b. Preface. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, xi-xvi.

Hellmann, O. 2017. The historical origins of corruption in the developing world: a comparative analysis of east Asia. *Crime, Law and Social Change*, 68: 145–165.

Higgs, J. and Cherry, N. 2009. Doing qualitative research on practice. In: Higgs, J., Horsfall, D. and Grace, S. eds. *Writing qualitative research on practice*. Rotterdam, The Netherlands: Sense Publishers, 3-12.

Higgs, J. and Trede, F. 2009. Framing research questions and writing philosophically: the role of framing research questions. In: Higgs, J., Horsfall, D. and Grace, S. eds. *Writing qualitative research on practice SENSE publishers*, 13-26.

Hill, L. 2012. Ideas of corruption in the eighteenth century: the competing conceptions of Adam Ferguson and Adam Smith. In: Barcham, M., Hindess, B., and Larmour, P. eds. *Corruption: expanding the focus*. ANU Press, 97-112.

Hine, D. and Peele, G. 2016. *The regulation of standards in British public life: doing the right thing?* Oxford University Press.

Hofstede, G. 1984. Cultural dimensions in management and planning. *Asia Pacific Journal of Management*, 1 (2): 81-99.

Hogg, A. 2016. Fresh Zupta attack on SA banks: Judicial Enquiry coming. Madness continues. BizNews, 1<sup>st</sup> September 2016. Available: <https://www.biznews.com/sa-investing/2016/09/01/fresh-zupta-attack-sa-banks-madness-continues> (Accessed 28th December 2018).

Hopkin, J. 2006. Conceptualizing political clientelism: political exchange and democratic theory. Paper presented at the *2006 American Political Science Association annual meeting*. Philadelphia, Available: [https://www.researchgate.net/publication/237386883\\_Conceptualizing\\_Political\\_Clientelism\\_Political\\_Exchange\\_and\\_Democratic\\_Theory](https://www.researchgate.net/publication/237386883_Conceptualizing_Political_Clientelism_Political_Exchange_and_Democratic_Theory) (Accessed 22nd November 2018).

Horowitz, J. 1972. *Law and logic: a critical account of legal argument*. Vienna: Springer-Verlag.

Hosli, M. O. and Dörfler, T. 2017. Why is change so slow? assessing prospects for United Nations Security Council reform. *Journal of Economic Policy Reform*: 1-16.

Huang, R. 1974. *Taxation and governmental finance in sixteenth-century Ming China*. Cambridge University Press.

Hyslop, J. 2005. Political corruption: before and after apartheid. *Journal of Southern African Studies*, 31 (4): 773-789.

Iloie, R. E. 2015. Connections between FDI, corruption index and country risk assessments in central and eastern Europe. *Procedia Economics and Finance*, 32: 626-633.

IMF. 2017. About the IMF. Washington D. C.: International Monetary Fund. Available: <https://www.imf.org/en/About> (Accessed 26th September 2017).

IMF. 2018a. *IMF and good governance*. Washington D.C.: International Monetary Fund. Available: <https://www.imf.org/en/About/Factsheets/The-IMF-and-Good-Governance> (Accessed 20th November 2018).

IMF. 2018b. *Review of 1997 guidance note on governance—a proposed framework for enhanced fund engagement*. Washington D.C.: International Monetary Fund. Available: <https://www.imf.org/en/Publications/Policy->

[Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance](#) (Accessed 11th November 2018).

IMF Fiscal Affairs and Legal Department. 2016. *Corruption: costs and mitigating strategies*. Washington D.C.: International Monetary Fund. Available: <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf> (Accessed 13th November 2018).

Independent Evaluation Office. 2011. *IMF performance in the run-up to the financial and economic crisis: IMF surveillance in 2004–07*. Washington D. C.: International Monetary Fund. Available: [https://www.imf.org/ieo/files/completedevaluations/Crisis-%20Main%20Report%20\(without%20Moises%20Signature\).pdf](https://www.imf.org/ieo/files/completedevaluations/Crisis-%20Main%20Report%20(without%20Moises%20Signature).pdf) (Accessed 14th December 2018).

Independent Panel appointed by the World Bank. 2013. *Independent panel review of the Doing Business Report*. Washington D. C.: The World Bank Organisation. Available: <http://pubdocs.worldbank.org/en/237121516384849082/doing-business-review-panel-report-June-2013.pdf> (Accessed 14th December 2018).

Iriye, A. 2014. *Japan and the wider world: from the mid-nineteenth century to the present*. Routledge.

Iyanda, D. O. 2012. Corruption: definitions, theories and concepts. *Arabian Journal of Business and Management Review*, 2 (4): 37-45.

Jenkins, R. 2007. India's Unlikely Democracy: Civil Society versus Corruption. *Journal of Democracy*, 18 (2): 55-69.

Jennings, G. 2015. *Qualitative research for the university sector: paradigms that inform research*. Imagine Consulting Group International Pty Ltd.

Jha, A. S. 2014. *Social research methods*. New Delhi: McGraw Hill Education (India).

Johnson, P. and Duberley, J. 2010. *Understanding management research: an introduction to epistemology*. London: SAGE Publications.

Johnson, R. A. 2004a. Corruption in four countries. In: Johnson, R. A. ed. *The Struggle Against Corruption: A Comparative Study*. Springer, 145-166.

Johnson, R. A. 2004b. Preface. In: Johnson, R. A. ed. *The struggle against corruption: a comparative study*. Springer, x-xi.

Johnson, R. W. 2015. *How long will South Africa survive?: the looming crisis*. Oxford University Press.

Johnson, V. R. 2006. Regulating lobbyists: law, ethics, and public policy. *Cornell Journal of Law and Public Policy*, 16 (1): 1-56.

Johnston, J., Kouzmin, A., Thorne, K. and Kelly, S. 2010. Crisis opportunism: bailouts and e-scads in the GFC. *Risk Management*, 12 (3): 208-234.

Johnston, M. 1986. The political consequences of corruption: a reassessment. *Comparative Politics*, 18 (4): 459-477.

Johnston, M. 1996. The search for definitions: The vitality of politics and the issue of corruption. *International Social Science Journal*, 48 (3): 321-335.

Johnston, M. 2002. The definitions debate: old conflicts in new guises. In: Jain, A. K. ed. *The political economy of corruption*. London New York: Taylor & Francis.

Jordan, W. C. 2009. Anti-corruption campaigns in thirteenth-century Europe. *Journal of Medieval History*, 35 (2): 204-219.

Kalmo, H. and Skinner, Q. 2010. Introduction: a concept in fragments. In: Kalmo, H. and Skinner, Q. eds. *Sovereignty in fragments: the past, present and future of a contested concept*. Cambridge: Cambridge University Press, 1-25.

Kaufmann, D. 2015. Corruption matters. *Finance & Development*, 52 (3): 20-23.

Kaufmann, D., Kraay, A. and Mastruzzi, M. 2009. Aggregate and individual governance indicators 1996–2008. The World Bank Development Research Group Macroeconomics and Growth Team. Available: <https://openknowledge.worldbank.org/bitstream/handle/10986/4170/WPS4978.pdf> (Accessed 11th November 2018).

Kautilya. n.d. *Arthashastra*. Translated from Sanskrit by Shamasastri, R. Bangalore: Government Press (Originally published in 1915).

Keith, N. 2014. Is Canada's anti-corruption law in step with international trends? *Business Law International*, 15 (3): 223-236.

Kerkhoff, T., Kroeze, R. and Wagenaar, P. 2013. Corruption and the rise of modern politics in Europe in the eighteenth and nineteenth centuries: a comparison between France, the Netherlands, Germany and England. *Journal of Modern European History*, 11 (1): 19-30.

Kershasp, P. 2011. *Routledge Library Editions: Iran: Studies in Ancient Persian History*. Florence SC: Routledge.

Khatri, N., Tsang, E. W. and Begley, T. M. 2006. Cronyism: a cross-cultural analysis. *Journal of International Business Studies*, 37 (37): 61-75.

Khor, H. E. and Kee, R. X. 2008. Asia: a perspective on the subprime crisis. *Finance & Development*, 45 (2): 19-23.

Kipp, J. N. 2016. If it looks like a super PAC, acts like a super PAC, and is restricted like a super PAC, then treat it like a super PAC: why contribution limits on a hybrid PAC's independent- expenditure arm are impermissible. *William & Mary Bill of Rights Journal*, 25 (1): 373-402.

Knights, M. 2018. Anticorruption in seventeenth- and eighteenth-century Britain. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 181-196.

Koehler, M. 2013. The story of the Foreign Corrupt Practices Act. *Ohio State Law Journal*, 73 (5): 929-1013.

Koffsky, D. Deputy Assistant Attorney General USA. 2017. Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office. Office of Legal Counsel. Available: <https://www.justice.gov/opinion/file/930116/download> (Accessed 30th October 2017).

Kopecký, P. 2011. Political competition and party patronage: public appointments in Ghana and South Africa. *Political Studies*, 59 (3): 713-732.

Kothari, C. R. 2004. *Research methodology: methods & techniques*. New Delhi: New Age International (P) Ltd.

Krasner, S. D. 2001. Problematic sovereignty. In: Krasner, S. D. ed. *Problematic sovereignty: contested rules and political possibilities*. New York: Columbia University Press, 1-23.

Krastev, I. 2004. *Shifting obsessions: three essays on the politics of anticorruption*. Budapest, New York: Central European University Press.

Kroeze, R., Vitória, A. and Geltner, G. 2018. Introduction: debating corruption and anticorruption in history. In: Kroeze, R., Vitória, A. and Geltner, G. eds.

*Anticorruption in history: from antiquity to the modern era.* Oxford, New York: Oxford University Press, 1-20.

Krug, I. 2005. Wartime corruption and complaints of the English peasantry. In: Christie, N. and Yazigi, M. eds. *Noble ideals and bloody realities: warfare in the middle ages.* Boston, US: Brill Academic Publishers, 177-193.

Kubciel, M. and Rink, A. C. 2016. The United Nations Convention Against Corruption and the criminal law provisions. In: Hauck, P. and Peterke, S. eds. *International law and transnational organized crime.* Oxford University Press, 219-240.

Kuhn, T. S. 1977. *The essential tension: selected studies in scientific tradition and change.* Chicago: University of Chicago Press.

Kuhner, T. K. 2017. American kleptocracy: how to categorise Trump and his government. *King's Law Journal*, 28 (2): 201-238.

Kurer, O. 2005. Corruption: an alternative approach to its definition and measurement. *Political Studies*, 53 (1): 222-239.

Kurer, O. 2015. Definitions of corruption. In: Heywood, P. M. ed. *Routledge Handbook of political corruption.* Abingdon: Routledge, 30-41.

Kurtz, M. J. and Schrank, A. 2007. Growth and governance: models, measures, and mechanisms. *The Journal of Politics*, 69 (2): 538-554.

Labuschagne, P. 2017. Patronage, state capture and oligopolistic monopoly in South Africa: The slide from a weak to a dysfunctional state? *Acta Academica*, 49 (2): 51-67.

LaFraniere, S., Vogel, K. P. and Shane, S. 2019. Trump's possible collusion with Russia still at 'heart' of Mueller investigation, lead prosecutor suggests. *The Independent*. 11<sup>th</sup> February 2019 Available:

<https://www.independent.co.uk/news/world/americas/us-politics/mueller-investigation-trump-russia-collusion-special-counsel-campaign-a8773696.html> (Accessed 11th February 2019).

Langbein, L. and Knack, S. 2008. *The Worldwide governance indicators and tautology: causally related separable concepts, indicators of a common cause, or both?* (Policy Research Working Paper No. 4669). Washington, DC: World Bank. Available: <https://openknowledge.worldbank.org/handle/10986/6839> (Accessed 11th November 2018).

Lau, C. and Lee, R. P. L. 1979. Bureaucratic corruption in nineteenth-century China: its causes, control, and impact. *Southeast Asian Journal of Social Science*, 7 (1/2): 114-135.

Law Commission of India. 2015. Report No.254: The Prevention of Corruption (Amendment) Bill, 2013. New Delhi: Government of India. Available: [http://lawcommissionofindia.nic.in/reports/report\\_no\\_254\\_prevention\\_of\\_corruption.pdf](http://lawcommissionofindia.nic.in/reports/report_no_254_prevention_of_corruption.pdf) (Accessed 11th October 2017).

Layne, C. 2018. The US–Chinese power shift and the end of the pax americana. *International Affairs*, 94 (1): 89–111.

le Cordeur, M. 2016. Gupta PR firm knew about bank probe weeks before Zwane dropped bomb. *Fin24*. 22<sup>nd</sup> September 2016. Available: <https://www.fin24.com/Economy/exclusive-gupta-pr-firm-knew-about-bank-probe-weeks-before-zwane-dropped-bomb-20160922> (Accessed 28th December 2018).

Lee, C. H. 2003. To thine ownself be true: IMF conditionality and erosion of economic sovereignty in the Asian financial crisis. *University of Pennsylvania Journal of International Economic Law*, 24 (4/2): 875-904.

- Leff, N. H. 1964. Economic development through bureaucratic corruption. *The American Behavioral Scientist (pre-1986)*, 8 (3): 8.
- Levy Peck, L. 2003. Court patronage and corruption in early Stuart England. 1<sup>st</sup> ed. London: Routledge.
- Lewis, D. 2012. Sovereignty after empire: the colonial roots of central Asian authoritarianism. In: Cummings, S. N. and Hinnebusch, R. eds. *Sovereignty after empire: comparing the Middle East and Central Asia*. Edinburgh University Press, 178-197.
- Leys, C. 2011. What is the problem about corruption? In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, 59-77.
- Li, Z. a. and Zhang Weiwei, t. 2006. On official corruption in the Yuan dynasty. *Frontiers of History in China*, 1 (3): 375-403.
- Lim, S. 2011. Aid effectiveness and the implementation of the paris declaration: a comparative study of Sweden, the United Kingdom, South Korea and China in Tanzania. Doctor of Philosophy University of Manchester Available:  
[https://www.research.manchester.ac.uk/portal/files/54511056/FULL\\_TEXT.PDF](https://www.research.manchester.ac.uk/portal/files/54511056/FULL_TEXT.PDF) (Accessed 14th December 2018).
- Lischinsky, A. 2008. Examples as persuasive argument in popular management literature. *Discourse & Communication*, 2 (3): 243-269.
- Liu, E. 2016. A historical review of the control of corruption on economic crime in China. *Journal of Financial Crime*, 23 (1): 4-21.
- Liu, G., Foster, C. and French, W. N. 2016. *Introduction to the Tsinghua bamboo-strip manuscripts*. Brill.

Lodge, T. 2014. Neo-patrimonial politics in the ANC. *African Affairs*, 113 (450): 1–23.

Lodge, T. 2018. State capture: conceptual considerations. In: Meirotti, M. and Masterson, G. eds. *State capture in Africa: old threats, new packaging*. Johannesburg: EISA, 13-28.

Loftus, S. F. 2006. Language in clinical reasoning: Learning and using the language of collective clinical decision making. Doctor of Philosophy, University of Sydney. Available: <https://ses.library.usyd.edu.au/bitstream/2123/1165/6/06chapter5.pdf> (Accessed 12th August 2018).

Long, H. 2014. An empirical review of research methodologies and methods in creativity studies (2003–2012). *Creativity research journal*, 26 (4): 427-438.

Loscalzo, D. 2012. Doro fig-sandaled' (Cratin. Fr. 70 Kassel-Austin and Aristoph. Eq. 529) and other aspects of comic sykophantia. *Acta Classica*, Supplementum IV: 30-44.

Lunn, K. 1978. The Marconi scandal and related aspects of British anti-semitism, 1911-1914. PhD, University of Sheffield. Available: <http://etheses.whiterose.ac.uk/14911/1/463744.pdf> (Accessed 9th October 2017).

Mackay, R. 2013. Bill s-14: an act to amend the Corruption of Foreign Public Officials Act. Ottawa: Library of Parliament Canada. Available: <https://lop.parl.ca/content/lop/LegislativeSummaries/41/1/s14-e.pdf> (Accessed 14th October 2017).

MacLeish, A. 1940. *A time to speak: the selected prose of Archibald MacLeish*. Boston: Houghton Mifflin Company.

MacMullen, R. 1988. *Corruption and the decline of Rome*. Yale University Press.

MacMullen, R. 1990. *Changes in the Roman empire: essays in the ordinary*. Princeton, N.J.: Princeton University Press.

Madsen, F. G. 2013. Corruption: a global common evil. *The RUSI journal*, 158 (2): 26.

Mahon, J. E. 2014. The devil you don't know. In: Arp, R. ed. *The devil and philosophy: the nature of his game*. Open Court.

Makarim & Taira, S. 2012. *Indonesia: Indonesia's anticorruption laws*. Available:

<http://www.mondaq.com/x/160720/White+Collar+Crime+Fraud/Indonesias+AntiCorruption+Laws> (Accessed 21st November 2018).

Malamis, D. 2012. Crimes of the agora: corruption in Homer and Hesiod. *Acta Classica*, Supplementum IV: 17-29.

Malik, S. 2012. Ultimate corruption manifest: Nero as the antichrist in late antiquity. *Acta Classica*, Supplementum IV: 169-186.

Mann, T. and Woods, J. E. 2005. *The Magic Mountain/Der Zauberberg (1924)*. Translated from German by Woods, J. E. New York, London, Toronto: Alfred. A. Knopf.

Markham, J. W. 2006. *A financial history of modern U.S. corporate scandals: from Enron to reform*. M.E. Sharpe.

Martinez, J. S. 2012. *The slave trade and the origins of international human rights law*. USA: Oxford University Press.

Masket, S. 2013. The networked party: how social network analysis is revolutionising the study of political parties. In: La Raja, R. J. ed. *New directions in American politics*. New York and Abingdon: Routledge, 107-124.

Masterson, M. 1970. Criticism and the Growth of Knowledge: Volume 4: Proceedings of the International Colloquium in the Philosophy of Science, London, 1965. In: Lakatos, I. and Musgrave, A. eds. *Proceedings of the 1965 International Colloquium in the Philosophy of Science*, London, 1965. Cambridge University Press.

Matianga, F. 2006. Case study on the role of parliament in the fight against corruption: the case of the Kenyan Parliament In: Stapenhurst, R., Johnston, N. and Pelizzo, R. eds. *The role of parliament in curbing corruption*. World Bank Publications, 69-77.

Matthews, C. 1996. *Kennedy and Nixon: the rivalry that shaped postwar America*. New York: Simon & Schuster.

May, T. 2001. *Social research: issues, methods and process*. 3rd ed. Maidenhead, United Kingdom: Open University Press.

Mayer, L. H. 2008. What is this "lobbying" that we are so worried about? *Yale Law & Policy Review*, 26: 485-566.

Mbaku, J. M. 2007. *Corruption in Africa: causes consequences, and cleanups*. Lexington Books.

McKie, D. 2004. *Jabez: the rise and fall of a Victorian rogue*. Atlantic.

McLeod, J. 2002. *The history of India*. Westport, CT: Greenwood Publishing Group, Incorporated.

McMullan, M. 1961. A theory of corruption based on a consideration of corruption in the public services and governments of British colonies and ex-colonies in West Africa. *The Sociological Review*, 9 (2): 181-201.

McNabb, D. E. 2013. *Research methods in public administration and non-profit management: quantitative and qualitative approaches*. 3rd ed. New York, London: M E Sharpe Inc.

Meirotti, M. 2018. Introduction. In: Meirotti, M. and Masterson, G. eds. *State capture in Africa: old threats, new packaging*. Johannesburg: EISA, 1-10.

Melgar, N., Rossi, M. and Smith, T. W. 2010. The perception of corruption in a cross-country perspective: why are some individuals more perceptive than others? *Economía Aplicada*, 14 (2): 183-198.

Menes, R. 2006. Limiting the reach of the grabbing hand. graft and growth in american cities, 1880 to 1930. In: Glaeser, E. L. and Goldin, C. eds. *Corruption and reform: lessons from America's economic history*. University of Chicago Press, 63-93.

Meny, Y. 1996. 'Fin de siècle' corruption: change, crisis and shifting values. *International Social Science Journal*, 48 (149): 309-320.

Mény, Y. and de Sousa, L. 2001. Corruption: Political and public aspects. In: Baltés, P. B. and Smelser, N. J. eds. *International encyclopedia of the social & behavioral sciences*. Oxford: Pergamon, 2824-2830. Available: <http://www.sciencedirect.com/science/article/pii/B0080430767044909> (Accessed 19th April 2017).

Metcalfe, M. 2012. *Business research through argument*. Springer US.

Metcalfe, M. and Powell, L. 2000. Revisiting argumentative research methodology Paper presented at the *2000 Australian Conference on Information Systems*. Brisbane.

Mikkelsen, K. S. 2013. In murky waters: a disentangling of corruption and related concepts. *Crime, Law and Social Change*, 60 (4): 357-374.

Miller, J. R. 1829. *The History of Great Britain from the death of George II. to the coronation of George IV.: designed as a continuation of Hume and Smollett*. Jones & Company.

Miller, S. 2017. *Institutional corruption: a study in applied philosophy*. Cambridge: Cambridge University Press.

Misra, M. 2008. *Vishnu's crowded temple: India since the great rebellion*. New Haven: Yale University Press.

Mitchell, R. H. 1996. *Political bribery in Japan*. University of Hawai'i Press.

Mohamed Muhumed, M. and Gas, S. 2016. The World Bank and IMF in Developing Countries: Helping or Hindering? *International Journal of African and Asian Studies*, 28: 39-49.

Montagu, E. W. 1759. *Reflections on the rise and fall of the ancient republics: adapted to the present state of Great Britain*. London: A. Millar.

Morrison, M. 2012. Understanding methodology. In: Briggs, A. R. J., Coleman, M. and Morrison, M. eds. *Research methods in educational leadership & management*. SAGE publications.

Mothershed, A. A. 2011. Perception is reality, or is it? A case study of four department of defense (DoD) procurement scandals: Does media coverage lead to procurement reform? Master of Laws, The George Washington University. Available: <https://search-proquest-com.ezproxy.cul.columbia.edu/docview/921187462?pq-origsite=summon&accountid=10226> (Accessed 1 May 2018).

Motsoeneng. 2016. South Africa's FNB bank closes accounts of Gupta holding company. Reuters. 6<sup>th</sup> April 2016. Available: <https://www.reuters.com/article/us-safrica-zuma-companies/south-africas-fnb-bank-closes-accounts-of-gupta-holding-company-idUSKCN0X31AY> (Accessed 28th December 2018).

Mulgan, R. 2012. Aristotle on legality and corruption. In: Barcham, M., Hindness, B. and Larmour, P. eds. *Corruption: expanding the focus*. ANU E Press, 25 -35. Available: <http://press-files.anu.edu.au/downloads/press/p191341/pdf/ch02.pdf> (Accessed 27th April 2017).

Muno, W. 2010. Conceptualizing and measuring clientelism. Paper presented at the *Neopatrimonialism in Various World Regions* workshop by the GIGA German Institute of Global and Area Studies. Hamburg. 23<sup>rd</sup> August 2010. Available: [https://www.researchgate.net/publication/228735911\\_Conceptualizing\\_and\\_measuring\\_clientelism](https://www.researchgate.net/publication/228735911_Conceptualizing_and_measuring_clientelism) (Accessed 22nd November 2018).

Myburgh, P., Serrao, A. and Basson, A. 2016. Sars probes Gordhan era tenders. News24. 23<sup>rd</sup> August 2016. Available: <https://www.news24.com/SouthAfrica/News/exclusive-sars-probes-gordhan-era-tenders-20160823> (Accessed 28th December 2018).

Myrdal, G. 1972. *Asian drama; an inquiry into the poverty of nations*. Pantheon Books.

Navot, D. 2016. Real politics and the concept of political corruption. *Political Studies Review*, 14 (4): 544-554.

Nelson, J. H. 1881. Hindu law at Madras. *Journal of the Royal Asiatic Society of Great Britain & Ireland*, 13: 208-236.

Neumayer, E. 2003. The determinants of aid allocation by regional multilateral development banks and united nations agencies. *International Studies Quarterly*, 47 (1): 101-122.

News24. 2016. Former senior MP claims Guptas offered her Cabinet post. News24. 15<sup>th</sup> March 2016. Available: <https://www.news24.com/SouthAfrica/Politics/former-senior-mp-claims-guptas-offered-her-cabinet-post-20160315> (Accessed 28th December 2018).

News24. 2017. 14 quotes from Zuma's interview. News24. 14<sup>th</sup> November 2016. Available: <https://www.news24.com/Analysis/14-quotes-from-zumas-interview-20171114> (Accessed 28th December 2018).

Ni, S. and Van, P. H. 2006. High corruption income in Ming and Qing China. *Journal of Development Economics*, 81 (2): 316-336.

Niazi, G. S. K. 1992. *The life and works of Sultan Alauddin Khalji*. Atlantic Publishers.

Nichols, P. M. 2013. Are facilitating payments legal? *Virginia Journal of International Law*, 54 (1): 127-155.

Nickerson, R. S. 2010. Inference: deductive and inductive. In: Salkind, N. J. ed. *Encyclopedia of research design*. Thousand Oaks, CA: SAGE Publications, Inc, 594-596.

Nilsen, E. 2019. New polling shows voters — including independents — want Congress to pass an anti-corruption bill. *Vox*, 3<sup>rd</sup> January 2019. Available: <https://www.vox.com/policy-and-politics/2019/1/3/18148633/hr1-voters-independents-anti-corruption-bill-poll> (Accessed 6 February 2019).

Nodoushani, O. 2000. Epistemological foundations of management theory and research methodology. *Human systems management*, 19 (1): 71-80.

Novikov, A. M. and Novikov, D. A. 2013. *Research methodology*. London: CRC Press.

Nuijten, M. and Anders, G. 2007. Corruption and the secret of law: an introduction. In: Nuijten, M. and Anders, G. eds. *Corruption and the secret of law: a legal anthropological perspective*. Ashgate, 1-26.

Nye, J. S. 1967. Corruption and political development: A cost-benefit analysis. *The American Political Science Review*, 61 (2): 417-427.

O'Dwyer, L. M. and Bernauer, J. A. 2014. Research in the qualitative tradition and connections to the quantitative tradition. In: *Quantitative research for the qualitative researcher*. Thousand Oaks, CA: SAGE Publications, Inc, 23-41.

OAS. 1996. *Inter-American convention against corruption (B-58)*.

Organization of American States. Available:

[http://www.oas.org/en/sla/dil/docs/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.pdf](http://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf) (Accessed 14th October 2017).

OECD. 2001. *Glossary of statistical terms*. OECD. Available:

<https://stats.oecd.org/glossary/detail.asp?ID=1028> (Accessed 12 December 2018).

OECD. 2008. *Paris declaration on aid effectiveness and Accra agenda for action*. Paris: Organisation for Economic Co-operation and Development.

Available:

<http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm> (Accessed 14th December 2018).

OECD. 2011. *Convention on combating bribery of foreign public officials in international business transactions*. OECD. Available:

[http://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf) (Accessed 12th October 2017).

OECD. 2018a. *About the OECD*. Available: <http://www.oecd.org/about/> (Accessed 27th December 2018).

OECD. 2018b. *History*. OECD. Available: <http://www.oecd.org/about/history/> (Accessed 27th December 2018).

OECD. 2018c. *Members and Partners*. OECD. Available: <http://www.oecd.org/about/membersandpartners/> (Accessed 27th December 2018).

Office of the Deputy Attorney General USA. 2017. *Appointment of special counsel to investigate Russian interference with the 2016 presidential election and related matters*. Washington DC: Department of Justice. Available: <https://www.justice.gov/opa/press-release/file/967231/download> (Accessed 28th December 2018).

Oleksiuk, D. 2010. *Asian values and the spirit of capitalism: pragmatism and ideology in southeast Asian law reform*. University of Victoria. Victoria Canada. Available: <https://www.uvic.ca/research/centres/capi/assets/docs/studentessays/Asian Values and the Spirit of Capitalism 0.pdf> (Accessed 30th October 2018).

Olivelle, P. and Olivelle, S. 2004. *Manu's code of law: a critical edition and translation of the Manava-Dharmasastra*. Cary, US: Oxford University Press.

Olson, K. W. 2016. *Watergate: the presidential scandal that shook America*. Lawrence: University Press of Kansas. Available: <https://clio.columbia.edu/catalog/12303914> (Accessed 23 April 2018).

Orre, A. and Rønning, H. 2017. *Mozambique: a political economy analysis*. Oslo: Norwegian Institute of International Affairs. Available: <https://www.cmi.no/publications/file/6366-mozambique-a-political-economy-analysis.pdf> (Accessed 14th November 2018).

Orwell, G. 1946. Politics and the English language. In: Orwell, S. and Angus, I. eds. *George Orwell: In front of your nose, 1946-1950*. Boston: Nonpareil Books.

Ostrowsky, S. D. 1966. Antitrust law—Robinson-Patman Act—Section 2(c)—commercial bribery - *Rangen, Inc. v. Sterling Nelson & Sons*. *Boston College Law Review*, 7 (4): 1006-1008.

Otaluka, W. O. 2017. The cultural roots of corruption: an ethical investigation with particular reference to nepotism. Doctorate of Philosophy, University of Kwazulu-Natal. Available:

<https://researchspace.ukzn.ac.za/handle/10413/14232>

(Accessed 14<sup>th</sup> November 2018)

Overby, P. and Neely, B. 2018. Trump emoluments case: a blast of subpoenas and a politically risky schedule. *NPR*. 5<sup>th</sup> December 2018.

Available: <https://www.npr.org/2018/12/05/673464251/trump-emoluments-case-a-blast-of-subpoenas-and-a-politically-risky-schedule> (Accessed 28<sup>th</sup> December 2018).

Park, N. E. 2010. Corruption in eighteenth-century China. *The Journal of Asian Studies*, 56 (4): 967-1005.

Parker, G. R. 1996. *Congress and the rent-seeking society*. Ann Arbor: University of Michigan Press.

Pasztor, A. 1995. *When the Pentagon was for sale: inside America's biggest defense scandal*. New York: Scribner.

Pathak, R. P. 2011. *Research in education and psychology*. New Delhi: Pearson Education India.

Pearn, J. 2016. Hammurabi's code: a primary datum in the conjoined professions of medicine and law. *Medico-Legal Journal*, 84 (3): 125-131.

Pellegrini, L. 2011. *Corruption, development and the environment*. Springer Netherlands.

Perakyla, A. 2011. Analyzing talk and text. In: Denzin, N. K. and Lincoln, Y. S. eds. *The SAGE handbook of qualitative research*. 4<sup>th</sup> edn. SAGE Publications, 529-544.

Pérez, J. and Lloyd, J. 2005. *The Spanish inquisition: a history*. Yale University Press.

Pérez-Peña, R. and Abrams, R. 2017. Kellyanne Conway promotes Ivanka Trump brand, raising ethics concerns. *The New York Times*, 9<sup>th</sup> February 2017. Available: <https://www.nytimes.com/2017/02/09/us/politics/kellyanne-conway-ivanka-trump-ethics.html> (Accessed 30th October 2018).

Peters, J. G. and Welch, S. 2011. Gradients of corruption in perceptions of American public life. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, 155-172.

Phairas, D. 2016. Preventing and recognizing embezzlement. *The Journal of Medical Practice Management: MPM*, 31 (4): 209-211.

Philp, M. 2011. Conceptualising political corruption. In: Heidenheimer, A. J. and Johnston, M. eds. *Political corruption: concepts and contexts: Volume 1 of political change in development*. 3<sup>rd</sup> edn. New Brunswick, London: Transaction Publishers, 41-57.

Phiri, M. Z. and Macheve, J., Antonio. 2014. Mozambique's peace decades since the end of the conflict: inclusive or managed democracy? *African Journal on Conflict Resolution*, 14 (1): 37-62.

Pillay, S. 2014. *Development corruption in South Africa: governance matters*. Palgrave Macmillan US.

Pitcher, M. A. 2002. *Transforming Mozambique: the politics of privatization, 1975–2000*. Cambridge University Press.

Polzer, T. 2001. *Corruption: deconstructing the World Bank discourse* (Working Paper). London School of Economics and Political Science. Available: <http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf> (Accessed 13th November 2018).

Powers, B. A. and Knapp, T. R. 2011. *Dictionary of nursing theory and research*. New York: Springer Pub. Co.

Powers, D. S. 2010. Wael B. Hallaq on the origins of Islamic law: a review essay. *Islamic Law and Society*, 17 (1): 126-157.

Prasad, A. 2016. Playing the game and trying not to lose myself: a doctoral student's perspective on the institutional pressures for research output. In: Prasad, A. ed. *Contesting institutional hegemony in today's business schools: doctoral students speak out*. United Kingdom: Emerald Group Publishing Limited. 69-90.

Presence, C. 2016. Cabinet intervenes in Gupta account debacle. *Business Report*. 21<sup>st</sup> April 2016. Available: <https://www.iol.co.za/business-report/companies/cabinet-intervenes-in-gupta-account-debacle-2012775> (Accessed 28th December 2018).

Public Protector South Africa. 2016. *State of capture*. Office of the Public Protector of the Republic of South Africa. Available: <http://saflii.org/images/329756472-State-of-Capture.pdf> (Accessed 30th October 2018).

- Rahe, P. A. 2009. *Against throne and altar: Machiavelli and political theory under the English republic*. Cambridge University Press.
- Rainey, L. D. 2010. *Confucius and confucianism: the essentials*. Wiley.
- Ravitch, S. M. and Mittenfelner Carl, M. 2015. *Qualitative research: bridging the conceptual, theoretical, and methodological*. Singapore: SAGE Publications.
- Rawlings, H. 2006. *The Spanish inquisition*. Malden, MA: Blackwell Pub.
- Rawls, J. 2005. *Political liberalism*. Columbia University Press.
- Rees, W. 2012. Absolute power corrupts absolutely: Cassius Dio and the fall of the Roman republic. *Acta Classica*, Supplementum IV: 151-168.
- Reich, R. 2015. Facebook. *Robert Reich*. Available: <https://www.facebook.com/RBReich/posts/940156392663624> (Accessed 6th December 2018).
- Republic of South Africa. 1998. *Executive Members' Ethics Act 1386*. Government Gazette number 19406. 28<sup>th</sup> October. Available: [http://www.saflii.org/za/legis/num\\_act/emea1998252.pdf](http://www.saflii.org/za/legis/num_act/emea1998252.pdf) (Accessed 30th October 1998).
- Reus-Smit, C. 2004. *The politics of international law*. Cambridge University Press.
- Reuters. 2016. Former official adds to allegations against South Africa's Zuma: report. The Daily Star, 20<sup>th</sup> March 2016. Available: <http://www.dailystar.com.lb/ArticlePrint.aspx?id=343141&mode=print> (Accessed 28th December 2018).

Roberts, R. 2009. *Reflections on the Paris Declaration and aid effectiveness in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit.

Robertson-Snape, F. 1999. Corruption, collusion and nepotism in Indonesia. *Third World Quarterly*, 20 (3): 589-602.

Robinson, J. A. and Verdier, T. 2013. The political economy of clientelism. *The Scandinavian Journal of Economics*, 115 (2): 260-291.

Robinton, M. R. 1953. The Lynskey tribunal: the British method of dealing with political corruption. *Political Science Quarterly*, 68 (1): 109-124.

Roeber, J. 2005. Parallel markets: corruption in the international arms trade. Paper presented at the *2005 Campaign Against Arms Trade*. London: London School of Economics. Available: <https://www.caat.org.uk/resources/publications/corruption/parallel-markets-0205.pdf>

(Accessed 28<sup>th</sup> December 2018)

Rofel, L. 2012. Between tianxia and postsocialism: contemporary Chinese cosmopolitanism. In: Delanty, G. ed. *Routledge handbook of cosmopolitanism studies*. Routledge, 443-451.

Rogoff, K. S. 2002. Moral hazard in IMF loans how big a concern? *Finance & Development*, 39 (3). Available:

<https://www.imf.org/external/pubs/ft/fandd/2002/09/rogoff.htm> (Accessed 28th December 2018)

Rogow, A. A. and Lasswell, H. D. 1963. *Power, corruption, and rectitude*. Prentice-Hall.

Roosevelt, T. 1903. Third annual message of the President of the USA. *The American Presidency Project*. Available:

<http://www.presidency.ucsb.edu/ws/?pid=29544> (Accessed 2nd October 2017).

Rose-Ackerman, S. 2013. *Corruption: A study in political economy*. Elsevier Science.

Rosefielde, S. and Vennikova, N. 2004. Fiscal federalism in Russia: a critique of the OECD proposals. *Cambridge Journal of Economics*, 28 (2): 307-318.

Roth, C. 1964. *The Spanish inquisition*. W W Norton & Company.

Rothstein, B. 2011. *The quality of government: corruption, social trust, and inequality in international perspective*. University of Chicago Press.

Rothstein, B. 2014. What is the opposite of corruption? *Third World Quarterly*, 35 (5): 737-752.

Rothstein, B. and Teorell, J. 2008. What Is quality of government? A theory of impartial government institutions. *Governance: An International Journal of Policy, Administration, and Institutions*, 21 (2): 165-190.

Rothstein, B. and Varraich, A. 2017. *Making sense of corruption*. Cambridge University Press.

Rubin, J. 2019. No president has ever been asked: Are you a Russian agent? *The Washington Post*, 13<sup>th</sup> January 2019. Available: [https://www.washingtonpost.com/opinions/2019/01/14/no-president-has-ever-been-asked-are-you-russian-agent/?utm\\_term=.4453923fa256](https://www.washingtonpost.com/opinions/2019/01/14/no-president-has-ever-been-asked-are-you-russian-agent/?utm_term=.4453923fa256) (Accessed 18th January 2019).

Rubinstein, W. D. 1983. The End of "Old Corruption" in Britain 1780-1860. *Past & Present*, (101): 55-86.

Ruhil, A. V. S. and Camões, P. J. 2003. What lies beneath: the political roots of state merit systems. *Journal of Public Administration Research and Theory*, 13 (1): 27-42.

Saddington, D. 2012. Under the centurion's boot: corruption and its containment in the Roman army. *Acta Classica*, Supplementum IV: 122-130.

Saha, J. 2013. *Law, disorder and the colonial state: corruption in Burma c.1900*. Springer.

Saunders, M., Lewis, P., Thornhill, A. and Bristow, A. 2015. Understanding research philosophies and approaches. In: Saunders, Mark N. K.; Lewis, Philip and Thornhill, Adrian eds. *Research Methods for Business Students*. Harlow: Pearson Education, 122-161.

Schmelzer, M. 2017. 'Born in the corridors of the OECD': the forgotten origins of the Club of Rome, transnational networks, and the 1970s in global history. *Journal of Global History*, 12 (1): 26-48.

Schmitz, G. J. 2016. Democratization and demystification: deconstructing 'governance' as development paradigm. In: Moore, D. B. and Schmitz, G. J. eds. *Debating development discourse: institutional and popular perspectives*. London: Palgrave Macmillan UK, 54-90.

Schwandt, T. 1998. Constructivist, interpretivist approaches to human inquiry. In: Denzin, N. K. and Lincoln, Y. S. eds. *The landscape of qualitative research: theories and issues*. Thousand Oaks: SAGE publications.

Searle, J. R. and Searle, J. R. 1969. *Speech acts: an essay in the philosophy of language*. Cambridge University Press.

Sgarbi, A. 2013. What is a good legislative definition? *Beijing Law Review*, 4 (1): 28-36.

Shakespeare W. ed. Rolfe, W. J. 1910. Shakespeare's Comedy of *Measure for Measure*. New York, Cincinnati, Chicago: American Book Company.

Shaughnessy, E. L. 1997. *Before Confucius: studies in the creation of the Chinese classics*. State University of New York Press.

Shiflett, J. 2011. Menace to democracy: the forgotten lessons of Watergate that continue to plague the Presidential Records Act (Thesis). B.A., Columbia University. Available:

<https://academiccommons.columbia.edu/doi/10.7916/D8Q81M1K>

(Accessed 28<sup>th</sup> November 2018)

Shleifer, A. and Vishny, R. W. 2002. *The grabbing hand: government pathologies and their cures*. Cambridge, London: Harvard University Press.

Shugerman, E. 2017. Donald Trump's son Eric calls nepotism 'a beautiful thing'. *The Independent*, 12<sup>th</sup> April 2017 Available:

<https://www.independent.co.uk/news/world/americas/donald-trump-nepotism-criticism-eric-trump-family-a7679101.html> (Accessed 30th October 2018).

Simms, N. 2015. Forerunner of the science of psychoanalysis? An essay on the Spanish and Portuguese inquisition. *The Journal of Psychohistory*, 42 (4): 295-309.

The social history of crime and punishment in America: an encyclopedia.

2012. Thousand Oaks, California: SAGE. Available:

<http://sk.sagepub.com/reference/socialhistory-crime-punishment> (Accessed 27th December 2018).

Søreide, T. 2014. *Drivers of corruption: a brief review. (World Bank Study)*.

Washington, DC: World Bank. Available:

<https://openknowledge.worldbank.org/handle/10986/20457> (Accessed 16th November 2018).

Sparling, R. A. 2017. Impartiality and the definition of corruption. *Political Studies*, 66 (2): 376-391.

Stefanou, C., White, S. and Xanthaki, H. 2011. *OLAF at the crossroads: action against EU fraud*. Bloomsbury Publishing.

Steinbeck, J. 1957. *The short reign of Pippin iv: a fabrication*. Penguin Books.

Steverman, B., Merrill, D. and Lin, J. 2018. A year after the middle class tax cut, the rich are winning. Bloomberg. 18<sup>th</sup> December 2018. Available: <https://www.bloomberg.com/graphics/2018-tax-plan-consequences/> (Accessed 28th December 2018).

Stiglitz, J. E. 2002. *Globalization and its discontents*. W. W. Norton & Company.

Stiles, T. J. 2009. *The first tycoon: the epic life of Cornelius Vanderbilt*. Alfred A. Knopf.

Stinson, M., Wignall, C. and USC Bureau, 2013. *Fathers, children, and the intergenerational transmission of employers*. Washington D.C.: U.S. Department of Commerce/U.S. Census Bureau.

Strati, A. 2000. *Theory and method in organization studies: paradigms and choices*. London: SAGE Publications.

Stremlau, J. 2018. State capture in the USA: lessons and challenges for sustainable democracy in Africa. In: Meirotti, M. and Masterson, G. eds. *State capture in Africa: old threats, new packaging*. Johannesburg, Gauteng: EISA, 150-166.

Sui-Lee, W. 2018. Ivanka Trump wins China trademarks, then her father vows to save ZTE. *The New York Times*, 28<sup>th</sup> May 2018. Available:

<https://www.nytimes.com/2018/05/28/business/ivanka-trump-china-trademarks.html> (Accessed 28th December 2018).

Surty, M. I. 2003. The ethical code and organised procedure of early Islamic law courts, with reference to al-Khassif's Adab al-Qadi. In: Abdel, H. M., Edge, I., Adel, S. O. and Daniels, K. eds. *Criminal justice in Islam*. London: I. B. Taurus, 149-166.

Swaine, J. and Borger, J. 2018. Trump set to benefit as Qatar buys \$6.5m apartment in New York tower. *The Guardian*, 4<sup>th</sup> May 2018. Available: <https://www.theguardian.com/us-news/2018/may/04/trump-qatar-buys-apartment-new-york-tower> (Accessed 28th December 2018).

Swedlund, H. J. 2017. Can foreign aid donors credibly threaten to suspend aid? Evidence from a cross-national survey of donor officials. *Review of International Political Economy*, 24 (3): 454-496.

Swithinbank, H. 2012. The corruption of the constitution: The lex gabinia and lex manilia and the changing res publica. *Acta Classica*, Supplementum IV: 101-121.

Tacitus, C. and Barrett, A. A. 2008. *The annals: the reigns of Tiberius, Claudius, and Nero*. Translated from Latin by Yardley, J. C. Oxford: Oxford University Press.

Tangri, R. and Mwenda, A. 2001. Corruption and cronyism in Uganda's privatization in the 1990s. *African Affairs*, 100 (398): 117-133.

Tangri, R. and Mwenda, A. 2013. *The politics of elite corruption in Africa: Uganda in comparative African perspective*. London, New York: Routledge.

Tangri, R. and Mwenda, A. M. 2006. Politics, Donors and the Ineffectiveness of anti-corruption institutions in Uganda. *The Journal of Modern African Studies*, 44 (1): 101-124.

Taylor, C. 2018. Corruption and anticorruption in democratic Athens. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 21-34.

Taylor, J. and Overby, P. 2019. Federal watchdog finds government ignored emoluments clause with Trump hotel. *NPR*, 16<sup>th</sup> January 2019. Available: <https://www.npr.org/2019/01/16/685977471/federal-watchdog-finds-government-ignored-emoluments-clause-with-trump-hotel> (Accessed 17th January 2019).

Teachout, Z. 2014. *Corruption in America: from Benjamin Franklin's snuff box to Citizens United*. Harvard University Press.

The Bretton Woods Committee. 2017a. *About the Bretton Woods institutions*. Washington D. C.: The Bretton Woods Committee. Available: <http://www.brettonwoods.org/page/about-the-bretton-woods-institutions> (Accessed 26th September 2017).

The Bretton Woods Committee. 2017b. *About the issues*. Washington D. C.: The Bretton Woods Committee. Available: <http://www.brettonwoods.org/page/about-the-issues> (Accessed 26th September 2017).

The World Bank. 2013. *Corruption is "public enemy number one" in developing countries, says World Bank Group president Kim*. Washington D. C.: World Bank Group. Available: <http://www.worldbank.org/en/news/press-release/2013/12/19/corruption-developing-countries-world-bank-group-president-kim> (Accessed 6th December 2018).

The World Bank. 2017a. *History*. Washington D. C.: World Bank Group. Available: <http://www.worldbank.org/en/about/history> (Accessed 26th September 2017).

The World Bank. 2017b. *What we do*. Washington D. C.: World Bank Group. Available: <http://www.worldbank.org/en/what-we-do> (Accessed 26th September 2017).

The World Bank. 2018. *What is fraud and corruption?* Washington D. C.: World Bank Group. Available: <http://www.worldbank.org/en/about/unit/integrity-vice-presidency/what-is-fraud-and-corruption> (Accessed 26th February 2018).

Therault, S. M. 2003. Patronage, the Pendleton Act, and the power of the people. *The Journal of Politics*, 65 (1): 50-68.

Thomas, M. A. and Meagher, P. 2004. *A corruption primer: an overview of concepts in the corruption literature*. College Park, Maryland: Center for Institutional Reform and the Informal Sector (IRIS), University of Maryland.

Thomas, R. 2014. *Corporate governance and anti-bribery: critical board and company secretary issues*. St Edmunds: Ethics International Press Limited.

Tian, Q. 2008. Perception of business bribery in China: the impact of moral philosophy. *Journal of Business Ethics*, 80 (3): 437-445.

Tiihonen, S. 2003. Central government in historical corruption perspective. In: Tiihonen, S. ed. *History of corruption in central government: cahier d'histoire de l'administration*. Amsterdam: IOS Press, 1-36.

Tilman, R. O. 1968. Emergence of black-market bureaucracy: administration, development, and corruption in the new states. *Public Administration Review*, 28 (5): 437-444.

Torfason, M. T., Flynn, F. J. and Kupor, D. 2012. Prosocial Gratuities Are Linked to Corruption. *Social Psychological and Personality Science*, 4 (3): 384-354.

Transparency International. 2016a. *Corruption perceptions index 2016: short methodology note*. Berlin: Transparency International. Available: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016) (Accessed 28th September 2017).

Transparency International. 2016b. *Mission, vision and values*. Berlin: Transparency International. Available: [https://www.transparency.org/whoweare/organisation/mission\\_vision\\_and\\_values/0/](https://www.transparency.org/whoweare/organisation/mission_vision_and_values/0/) (Accessed 28th September 2017).

Transparency International. 2018. *Corruption perceptions index 2017*. Berlin: Transparency International. Available: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017) (Accessed 21st February 2018).

Transparency International. 2019. *Corruption perception index 2018*. Berlin: Transparency International. Available: <https://www.transparency.org/cpi2018> (Accessed 7th February 2019).

Transparency International Bangladesh. 2017. *Corruption perceptions index 2016: full source*. Berlin: Transparency International. Available: <https://www.ti-bangladesh.org/beta3/index.php/en/highlights/5147-corruption-perceptions-index-2016-full-source> (Accessed 28th September 2017).

Transparency International Secretariat. 2007. *Policy paper on poverty, aid and corruption*. Berlin: Transparency International. Available: [https://www.transparency.org/files/content/pressrelease/aid\\_corruption\\_policy\\_paper\\_2007.pdf](https://www.transparency.org/files/content/pressrelease/aid_corruption_policy_paper_2007.pdf) (Accessed 6th December 2018).

Transparency International UK. 2012. *Defence companies anti-corruption index 2012*. London: Transparency International UK. Available: <https://www.transparency.org.uk/publications/defence-companies-anti-corruption-index-2012/> (Accessed 14th December 2018).

Transparency International UK. 2015. *Defence companies anti-corruption index 2015*. London: Transparency International UK. Available: <https://companies.defenceindex.org/report.pdf> (Accessed 14th December 2018).

Transparency International UK. 2018. *Defence companies anti-corruption index 2019*. London: Transparency International UK. Available: <http://ti-defence.org/dci/> (Accessed 14th December 2018).

Turnbull, S. R. 2000. *The Samurai tradition*. Japan Library.

Twain Mark (Samuel Clemens). digitised and updated 2018. *Following the equator: a journey around the world*. Hartford Connecticut: The American Publishing Company. Available: [http://www.gutenberg.org/ebooks/2895?msg=welcome\\_stranger](http://www.gutenberg.org/ebooks/2895?msg=welcome_stranger) (Accessed 27th December 2018).

United Kingdom Parliament. 1925. Honours (Prevention of Abuses) Act 1925. Available: <http://www.legislation.gov.uk/ukpga/Geo5/15-16/72> (Accessed 9th October 2017).

United Nations. Assembly, G. 1996. *Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes*. New York: United Nations. Available: <http://www.un.org/documents/ga/res/50/ares50-172.htm> (Accessed 14th December 2018).

United Nations. 2018. *Overview*. New York: United Nations. Available: <http://www.un.org/en/sections/about-un/overview/> (Accessed 27th December 2018).

United States Department of Justice. 1997. *The Foreign Corrupt Practices Act of 1977 (FCPA) Pub. L. 95-213, 91 Stat. 1494 (1977), 15 U.S.C. §§78dd-*

1, et seq. Washington D.C.: United States Department of Justice. Available: <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/fcpa-english.pdf> (Accessed 18 December 2018).

UNODC. 2003. *United Nations convention against corruption*. Vienna: United Nations Office on Drugs and Crime. Available: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf) (Accessed 16th October 2017).

UNODC. 2017a. *Convention highlights*. Vienna: United Nations Office on Drugs and Crime. Available: <https://www.unodc.org/unodc/en/corruption/convention-highlights.html> (Accessed 16th October 2017).

UNODC. 2017b. *Signature and ratification status*. Vienna: United Nations Office on Drugs and Crime. Available: <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (Accessed 16th October 2017).

US Department of Justice. 2012. *Lockheed Martin corporation reaches \$15.85 million settlement with U.S. to resolve False Claims Act allegations*. Washington D.C.: Department of Justice: Office of Public Affairs. Available: <https://www.justice.gov/opa/pr/lockheed-martin-corporation-reaches-1585-million-settlement-us-resolve-false-claims-act> (Accessed 14th December 2018).

US Department of Justice. 2014. *Defense contractor agrees to pay \$27.5 million to settle overbilling allegations*. Washington D.C.: Department of Justice: Office of Public Affairs. Available: <https://www.justice.gov/opa/pr/defense-contractor-agrees-pay-275-million-settle-overbilling-allegations> (Accessed 14th December 2018).

US Department of Justice. 2016. *Lockheed Martin agrees to pay \$5 million to settle alleged violations of the False Claims Act and the Resource*

*Conservation and Recovery Act*. Washington D.C.: Department of Justice: Office of Public Affairs. Available: <https://www.justice.gov/opa/pr/lockheed-martin-agrees-pay-5-million-settle-alleged-violations-false-claims-act-and-resource> (Accessed 14th December 2018).

US Department of Justice. 2018. *Lockheed Martin agrees to pay \$4.4 million to resolve claims it provided faulty equipment to the Coast Guard*. California: Department of Justice: U.S. Attorney's Office, Northern District of California. Available: <https://www.justice.gov/usao-ndca/pr/lockheed-martin-agrees-pay-44-million-resolve-claims-it-provided-faulty-equipment-coast> (Accessed 14th December 2018).

USA. 2010. *United States Code, 2006 Edition, Supplement 4, Title 5 - government organization and employees*. Washington D.C.: Government Printing Office.

Useem, J. 2000. What Does Donald Trump Really Want? *Fortune*. 3<sup>rd</sup> April 2000. Available: <http://fortune.com/2000/04/03/what-does-donald-trump-really-want/> (Accessed 28th December 2018).

Vamvouri Ruffy, M. 2012. Physical and social corruption in Plutarch. *Acta Classica*, Supplementum IV: 131-150.

van Eemeren, F. H., Garssen, B., Krabbe, E. C. W., Snoeck Henkemans, A. F., Verheij, B. and Wagemans, J. H. M. 2014. Argumentation theory. In: van Eemeren, F. H., Garssen, B., Krabbe, E. C. W., Snoeck Henkemans, A. F., Verheij, B. and Wagemans, J. H. M. eds. *Handbook of argumentation theory*. Dordrecht: Springer Netherlands, 1-49.

van Eemeren, F. H. and Grootendorst, R. 1984. *Speech acts in argumentative discussions: a theoretical model for the analysis of discussions directed towards solving conflicts of opinion*. De Gruyter.

van Eemeren, F. H., Grootendorst, R. and Kruijer, T. 1987. *Handbook of argumentation theory*. Dordrecht: Foris Publications.

van Klaveren, J. 1957. Die historische erscheinung der korrupcion, in ihrem zusammenhang mit der staats-und gesellschaftsstruktur betrachtet. *Vierteljahresschrift für Sozial und Wirtschaftsgeschichte*, 44 (4): 289-324.

Vasagar, J. 2005. Mbeki fires deputy in corruption scandal. *The Guardian*, 15<sup>th</sup> June 2005. Available: <https://www.theguardian.com/world/2005/jun/15/southafrica.jeevanvasagar> (Accessed 28th December 2018).

Verick, S. and Islam, I. 2010. *The great recession of 2008-2009: causes, consequences and policy responses*. Bonn: Institute for the Study of Labor.

Villaroman, N. G. 2009. The loss of sovereignty: how international debt relief mechanisms undermine economic self-determination. *Journal of Politics and Law*, 2 (4): 3-16.

Vitória, A. 2018. Late medieval polities and the problem of corruption: France, England and Portugal, 1250–1500. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 77-90.

Vohra, R. 1997. *The making of India: a historical survey*. M.E. Sharpe.

Volante, L., Fazio, X. and Ritzen, M. 2017. The OECD and educational policy reform: international surveys, governance, and policy evidence. *Canadian Journal of Educational Administration and Policy*, 184: 34-48.

Walters, J. 2017. Brand Ivanka: inside the tangled empire of the president's closest ally. *The Guardian*, 1<sup>st</sup> May 2017 Available: <https://www.theguardian.com/us-news/2017/may/01/ivanka-trump-brand-white-house-ethics> (Accessed 30th October 2018).

Walton, D. 2007. *Witness testimony evidence: argumentation and the law*. Cambridge: Cambridge University Press.

Wanless, M. 2013. The World Bank's fight against corruption: 'see nothing, hear nothing, say nothing'. *Hydra*, 1 (2): 38-48.

Ward-Perkins, B. 2015. Christie Neil. The fall of the Western Roman Empire: an archaeological and historical perspective. by Christie, N., reviewed in *Antiquity*, 86(333), 940-941. Available: <https://www.cambridge.org/core/article/christie-neil-the-fall-of-the-western-roman-empire-an-archaeological-and-historical-perspective-xiv306-pages-29-illustrations-2011-london-bloomsbury-academic-9781849663373-hardback-9780340759660-paperback-1999-9781849660310-ebook/751233E83764B4C15A4F6D6C562A093C> (Accessed 22nd April 2017).

Watts, J. 2018. The problem of the personal: tackling corruption in later medieval England, 1250–1550. In: Kroeze, R., Vitória, A. and Geltner, G. eds. *Anticorruption in history: from antiquity to the modern era*. Oxford, New York: Oxford University Press, 91-102.

West, G. 2018. *Revolving door: former lobbyists in Trump administration*. Washington D.C.: The Center for Responsive Politics. Available: <https://www.opensecrets.org/news/2018/07/revolving-door-update-trump-administration/> (Accessed 28th December 2018).

White, R. D. 2000. Consanguinity by degrees: inconsistent efforts to restrict nepotism in state government. *State & Local Government Review*, 32 (2): 108-120.

Whyte, D. 2015. Introduction: a very British corruption. In: Whyte, D. ed. *How corrupt is Britain?* London: Pluto Press, 1-37.

Williams, R. 1998. *Political scandals in the USA*. Edinburgh: Keele University Press.

Winters, M. S. and Martinez, G. 2015. The role of governance in determining foreign aid flow composition. *World Development*, 66: 516-531.

Wolf, L. 2017. The remedial action of the "State of Capture" report in perspective. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad PELJ/PER*, 20: 1-46.

Wolfensohn, J. D. 1999. Remarks at a global forum on fighting corruption. Washington D.C.: The World Bank Group. Available: <http://documents.worldbank.org/curated/en/619341468197364318/text/99963-WP-Box393210B-PUBLIC-1999-02-24-JDW-Remarks-at-A-Global-Forum-on-Fighting-Corruption.txt> (Accessed 30th October 2018).

Wolpert, S. A. 1962. *Tilak and Gokhale: revolution and reform in the making of modern India*. University of California Press.

Worden, R. L., Heitzman, J. and Library of Congress Federal Research Division. 1996. *India: a country study*. 5 ed. Washington, D.C.: The Division.

World Bank Group. 1998. *Recommendations for strengthening the government of Uganda's anti-corruption programme*. Washington D.C.: World Bank Group. Available: <http://documents.worldbank.org/curated/en/447541468311071400/pdf/337480UG0GCA.pdf> (Accessed 13th November 2018).

World Bank Group. 2006. *Cambodia: World Bank releases new statement and update*. Washington D.C.: World Bank Group. Available: <http://www.worldbank.org/en/news/press-release/2006/06/06/cambodia-world-bank-releases-new-statement-update> (Accessed 13th November 2018).

World Bank Group. 2006-2007. *Impact of nepotism*. Washington D.C.: World Bank Group. Available:

[https://siteresources.worldbank.org/INTEXPCOMNET/Resources/1.29\\_Impact\\_of\\_Nepotism.pdf](https://siteresources.worldbank.org/INTEXPCOMNET/Resources/1.29_Impact_of_Nepotism.pdf) (Accessed 29th October 2018).

World Bank Group. 2009a. *The World Bank Group program of support for the Chad-Cameroon petroleum development and pipeline construction: program performance assessment report*. Washington D.C.: World Bank Group.

Available:

<http://siteresources.worldbank.org/INTOED/Resources/ChadCamReport.pdf> (Accessed 13th November 2018).

World Bank Group. 2009b. *World Bank statement on Chad-Cameroon pipeline*. Washington D.C.: World Bank Group. Available:

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21894530~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

(Accessed 13th November 2018).

World Bank Group. 2018. *Combating corruption*. Washington D.C.: World Bank Group. Available:

<http://www.worldbank.org/en/topic/governance/brief/anti-corruption>

(Accessed 20th November 2018).

Wouters, J., Ryngaert, C. and Cloots, A. S. 2013. The international legal framework against corruption: achievements and challenges. *Melbourne Journal of International Law*, 14 (1): 205-280.

Wulwick, R. P. and Macchiarola, F. J. 1995. Congressional interference with the President's power to appoint. *Stetson Law Review*, XXIV (3): 625-652.

Xia, B., Changyun, W. and Ye'an, Z. 2014. *Private equity funds in China: a 20-year overview*. Lee, V. Enrich Professional Publishing.

Yantis, B., Attia, M. and Lathouris, G. 2018. Money laundering. *American Criminal Law Review*, 55 (4): 1469-1495.

Zakaria, R. 2002. *Communal rage in secular India*. Popular Prakashan.

---

## NOTES

<sup>i</sup> Whilst acknowledging that the categorizations of economies by the United Nations are not without controversy, for the purposes of this study the terms “developed economies, economies in transition and developing economies” as defined in the World Economic Situation and Prospects (WESP) of the Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA) will be used for ease of reference and economies in these instances will be taken to refer also to countries

DPAD UN/DESA. 2014. *Country classification: data sources, country classifications and aggregation methodology*. Available: [http://www.un.org/en/development/desa/policy/wesp/wesp\\_current/2014wesp\\_country\\_classification.pdf](http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf) (Accessed 9th October 2017).