Defining 'State Capture' in South Africa:

Democracy, Bureaucratic Autonomy and Elite Populism

Ivor Chipkin

Abstract:

This paper argues that South Africa suffered a major democratic reversal after the election of Jacob Zuma as President of the country in 2009 and especially from 2012 when the project of Radical Economic Transformation was pursued with vigor in State Owned Companies. This reversal was invisible theoretically. Contemporary definitions of democracy, especially as they inform the literature on political transitions, reduce the phenomenon to the rules of political participation. Yet over the last ten years South Africa saw, not so much a rolling back of political rights as concerted attacks on the autonomy of state administrations. Without the conceptual tools to understand these attacks on the bureaucracy as attacks on democracy, the period from 2007 to 2017 has largely been construed in terms of corruption, criminality and patronage.

Like US democrats of the Jacksonian era, the African National Congress, especially under Jacob Zuma was beholden to a conception of majority rule that made it hostile to existing, autonomous administrations and that drove it to prevent others at all levels of government from coming into being. In this sense, the protagonists of 'state capture' in South Africa did not so much capture the state as block its becoming. State capture has set back the development of South Africa's democracy by corrupting, weakening and, ultimately, preventing the emergence of a South African bureaucracy.

This paper argues that that must we think of bureaucratic autonomy as a *democratic virtue*.

Introduction[i]

Late on the night of the 13th of February 2018 Jacob Zuma resigned as President of South Africa. Dressed in a dark suit and red tie, he appeared relaxed and convivial as he addressed journalists. 'Why do you look so serious,' he laughed, chastizing them for not greeting him, and giggling in his characteristic way. While admitting that he disagreed with the decision of his party, the A.N.C., to recall him, he stood down nonetheless – worried, as he put it, that life might be lost in his name. He was acting in the interests of the unity of his party, he said.

His friendly demeanour, however, gave no indication of the day's high drama. Earlier in the afternoon, a casually dressed Zuma had given an interview on national television where he flatly refused to resign. 'No-one in the leadership of the A.N.C. could tell me what I have done wrong. Why should I resign?' he asked (cited in Goba, 14 February 2018). Just the day before some commentators worried that a State of Emergency was on the cards (Swilling, 2018).

These were not isolated incidents. In the *Betrayal of the Promise*, a report published in May 2017 that helped to galvanize opposition to state capture, my colleagues and I discussed how a 'shadow state' had emerged under Zuma that had conducted a 'silent coup'[ii]. We argued that from about 2012, political decision-making had shifted away from Constitutional bodies, from Parliament and even from Cabinet, to informal networks comprising of the President, private associates and friends, including the Gupta brothers and key political allies.

The language of 'state capture' has been used to frame the events of the last decade in terms of a criminal heist or corruption. Yet something much more profound was going on. Two political imperatives came into

What has made this *coup* so difficult to observe theoretically is that it was defeated before it began to roll-back political and civic rights. The brunt of anti-democratic action was felt by public servants and *senior officials in government institutions*, who were purged from their positions and persecuted. As such, the up-ending of democracy in South Africa took the scholarship on the political transition here completely by surprise.

In this regard, this paper will make two arguments.

The first is that our conception of democracy must be broadened to include a concept of the State, rather than simply a concept of the political system. A theory of democracy must include a theory of the *democratic state*.

Secondly, I will argue that one of the features of a democratic state is its mode of administrative organisation. Democratic states make a distinction between the 'administrative' and the 'political' spheres of the state and seek to establish and maintain the autonomy between them.

I will conclude by arguing that state capture in South Africa constituted a major democratic reversal because the Jacob Zuma government actively undermined the autonomy of state administrations. In this regard it has rendered the democratic regime incompetent.

Democracy and its Discontents.

The contemporary literature on political transitions and democratic consolidation is preoccupied in the main with the rules of political participation and, in particular, with the institutional arrangements for selecting who exercises political power in the polity. Samuel Huntington defended such an approach in defining democracy. Lamenting the "ambiguity" and the "imprecision" of definitions of democracy based on what he called their sources of *authority* ('the will of the people') or their *purpose* ('the common good') he defined democracy in *procedural* terms. Like Joseph Schumpeter before him, he referred to a political system in the twentieth-century as democratic if "its most powerful collective decision makers are selected through fair, honest, and periodic elections in which virtually all the adult population is eligible to vote" (Huntington, p.7).

Such an approach has several apparent benefits. It provides a bench-mark of the political system, allows for comparison and makes it possible to analyse whether systems are becoming less or more democratic. This is the focus of Hungtington's book, 'The Third Wave'. On his definition, Apartheid South Africa was undemocratic because it excluded 70% of its population from the vote. Switzerland was too for excluding women. Hungtington includes America in this category of undemocratic political systems for excluding Southern Blacks from the vote[iii].

Similarly, Linz and Stephan in discussing problems of democratic consolidation insist that democratisation is a political concept that requires "open contestation over the right to win control of government, and this in turn requires free competitive elections, the results of which determine who governs" (Linz and Stepan, p. 3). A democracy is consolidated when it is the 'only game in town', that is, when no significant political group tries to overthrow the democratic system or secede from the state, when political change is sought within the "parameters of democratic formulas" and when political conflict is resolved according to its norms (Ibid, p. 5).

O'Donnell and Schmitter have a more expansive conception of democracy, resting on the principle of citizenship. In this sense they are more faithful to the history of the concept and its practice[iv]. Democracy, the argue, "involves both the right to be treated by fellow human beings as equal with respect to the making of collective choices and the obligation of those implementing such choices to be equally accountable and accessible to all members of the polity" (O'Donnel and Schmitter, p.7). By placing the fellowship of humans at the centre of their concept of democracy,

O'Donnell and Schmitter at least acknowledge the politics of recognition (Taylor, Hegel) that underpins any and all democratic processes. This is why for Blacks, Jews, Women, Colonial subjects, and even sometimes for Workers, democratic transitions are premised on a prior and ongoing struggle to be admitted as fully, equally human.

"Democratisation [...] refers to the process whereby the rules and procedures of citizenship are either applied to political institutions previously governed by other principles [...], or expanded to include persons not previously enjoying such rights and obligations [...], or extended to cover issues and institutions not previously subject to citizen participation".

This definition has the advantage, furthermore, of affording democratisation a wider remit than simply political participation. It can equally be applied to state institutions as to economic enterprises, educational establishments as to political parties and civic associations. Moreover, it brings into focus a further dimension of government, the executive. Huntington would likely object that including such a measure as executive accountability into the definition of democracy - the obligation of those implementing political choices to be equally accountable and accessible to all members of the polity – makes it vague and imprecise. I will argue shortly that it does not go far enough.

In the end, however, O'Donnell and Schmitter , like Hungtington, operationalise their definition of democracy on the basis of a "procedural minimum", including secret balloting, universal adult suffrage, regular elections, partisan competition, associational recognition and access and executive accountability (Ibid., 7).

This focus on democracy *qua* rules of political participation has to a very large extent exhausted the field of comparative politics and the study of political transitions. The literature that emerged on democratisation in Latin America and in Eastern Europe largely took its cue from such procedural definitions (Seligson, Linz and Stepan)[1].

Academic discussion of the transition from Apartheid to democracy in South Africa took and continues to take its cue from these broad approaches. The debate was overwhelmingly focused on the appropriate rules of political participation.

---

[1] For an alternative view see Avritzer's criticism of these procedural conceptions of democracy for obscuring and making it difficult to understand the significance of the *public spheres* (participatory budget processes, for example) that sometimes preceded the changes in political society (Avritzer, p. 103).

Two themes are observable. On the one hand, there were those anxious about the character of the procedural rules and whether in fact they had delivered democracy at all in South Africa (Jung and Shapiro, Koelbe and Reynolds, Lijphart, Jordan, Price, Gilliomee and Simkins). On the other hand, there were those concerned with the quality of South Africa's democracy and, in particular, whether the rules could deliver what is now called 'economic freedom'. While there was initial optimism that the constitutional settlement represented a progressive 'beach-head' (Jordan, Adler and Webster, Heller), disillusion quickly set in (even if in 1996 it was a little premature) (Bond).

Either a majoritarian system would deliver an 'elective dictatorship'[v] or democracy would stall because the rules of the political game prevented the Black majority from transforming the economy. This was the real gravamen against the South Africa's political transition and constitution that informed the politics of Jacob Zuma. Given the property clause in the constitution, black 'class elites' had little option but to channel their aspirations through an "an alternative political-economic system" based on fraud and corruption (Von Holdt, p. 8). Variants of this argument can be found in academic writing, within political parties and it forms a rich seam of opinion on university campuses.

Democratic Reversal in South Africa

The democratic reversal that started in 2012 is largely inexplicable on the terms above. The displacement of political decision-making away from elected officials, from parliament and from cabinet to shadowy, personalised networks clearly constitutes a major assault to South Africa's democracy. All of this happened, however, without any challenge to the political rules of the game. Unlike in Zimbabwe, Venezuela, in Turkey or in India, the reversal did not take place in political society; that is, it did not affect the rules of political participation. Moreover, since the election of President Ramaphosa it has not been difficult to reverse these developments. Procedurally, South Africa's democracy continued on quite well. Elections are not 'racial plebiscites', ideological loyalties are not absolute, and concepts of political choice are well understood[vi]. Opposition parties have grown respectably and the Democratic Alliance (DA), working through opposition coalitions in 2016 was even able to over-turn established ANC governments in 3 metropolitan areas, Johannesburg, Nelson Mandela Bay and Tshwane (the administrative capital of the country).

The contemporary crisis of democracy in South Africa is largely invisible on these terms. This may go a long way to explain the overwhelming silence of South African academics in the face of the recent assault on the state. Indeed, it may go some way to explain why some academics even edged it on[vii].

The immediate victims of the shift away from democracy in South Africa were not democracy activists or journalists or opposition parliamentarians. They were state officials and public servants.

In late 2014 a purge began at the South African Revenue Services (SARS), the country's tax authority. A new commissioner was appointed, Tom Moyane, who set about removing the existing leadership and a cohort of more than 50 senior managers. Ostensibly, Moyane was responding to media claims that there was a 'rogue unit' in SARS involved, amongst other things, in the sex trade, spying on the National Prosecuting Authority and even on the President, Jacob Zuma. What made these claims so incredible – they were carried week after week by the largest circulation Sunday newspaper in South Africa – was that until this point the organisation was deemed the benchmark of public integrity, professionalism and excellence (see Yale study). That the events at SARS in 2014 were part of a broader initiative was was confirmed shortly afterwards. In 2015 the heads of South Africa's elite crime-fighting unit, the Directorate for Priority Crimes or the Hawks, were similarly purged. Like at SARS, dodgy intelligence dossiers were leaked to the press alleging that the most senior policemen in the provinces of KwaZulu-Natal and Gauteng, as well as the national commissioner were complicit in illegal activities. In the meantime, President Zuma appointed Berning Ntsebenza as the commissioner of police. This once security policeman from the former Ciskei Bantustan was later found to be unfit for his post by the Constitutional Court. Many high-profile investigations had stalled under his watch. Similar events took place at the National Prosecuting Authority (NPA), starting in 2007.

The scale of the disruption to the state by these events is beginning to be better understood. The Nugent Commission of Inquiry, appointed on the 24th of May 2018, to investigate, *inter alia*, why SARS has consistently under collected taxes since the appointment of Tom Moyane as commissioner has just released its first interim report. It is worth quoting some of its findings.

"What is clear to the Commission is that SARS reeks of intrigue, fear, distrust and suspicion. […] The trajectory of modernisation, that had been in the making for a decade, was summarily stopped when the current Commissioner […] The operating model has been restructured such that fragmentation of functions inhibits co-ordinated action to the benefit of delinquent taxpayers. The Large Business Centre as it had existed has been eviscerated to the detriment of revenue collection. The restructuring of the organisation displaced some 200 managerial employees from their jobs, many of whom ended up in positions that had no content or even job description, and in exasperation many skilled professionals have left. Others remain in supernumerary posts with their skills going to waste. Measures to counter criminality have been compromised and those who trade illicitly in commodities like tobacco operate with little constraint" (Nugent, p.2)

The destabilisation of state institutions in the justice sector as well as the tax authority was the backdrop to a concerted attempt to capture and repurpose State Owned Enterprises. At stake was a bold project of political and economic transformation grounded in an aggressive new nationalism.

State Capture and the Rise of Elite Populism

The term that has been used most frequently in South Africa to explain the phenomena described above has been that of 'state capture'. A Bloomberg journalist noted with surprise in 2017, for example: "South Africans […] have adopted a once-obscure political science term, "state capture," as a staple of even casual conversation" (Bloomberg: 2017). In her report of the way that the State energy company, Eskom, had been looted by friends and family of the President and the influence that they had in cabinet and government decisions, Thuli Madonsela, the Public Protector referred to 'The State of Capture' (Public Protector, 2016). The popularity of the term testifies to the widespread appeal of Marxist-sounding slogans in the public discourse. The term seemed to recall notions in the Communist manifesto of the state *qua* organising committee of the bourgeoisie and resonated with the experience of South Africa as a state 'captured' by whites to serve their own interests.

The term, in fact, originates with Joel Hellman, Daniel Kauffman and others to describe features of the political and economic transition in the former Soviet Union. They defined it as *shaping the formation of the basic rules of the game* (i.e. laws, rules, decrees and regulations) through *illicit* and non-transparent private payments to public officials (Hellman, Joel *et al*, p.3). It was a phenomena of political transitions, they suggested, because it occurred in circumstances where initial beneficiaries of liberalisation and democratisation (Russian oligarchs, for example) quickly developed interests in stalling change.

Unfortunately, this aspect of the analysis never made it into the public debate in South Africa. It works for South Africa too. Powerful private interests, including large, international companies have managed to secure lucrative government contracts either at extortionate rates and/or illegally and then been complicit in efforts to avoid accountability by colluding in the weakening of key state institutions. The international auditing firm, KPMG, for example, was complicit in the original SARS debacle by writing ostensibly independent reports confirming the 'rogue unit' accusations. It later apologised for its role and disavowed its earlier work. In an effort to displace attention away from their clients, the Guptas, Bell Pottinger, a UK-based public-relations company, worked hard to develop the narrative that the real protagonist of capture was something called 'white monopoly capital'. Mckinsey too, the large international firm of management consultants scored valuable contracts with Eskom on the basis of its connections

with a black-empowerment partner, Regiments and later Trillian. The latter were, in fact, Gupta-linked companies whose 'empowerment' credentials were very poor indeed.

The problem with the term 'state capture', however, is that it tilts the analysis of the current situation away from a focus on democracy towards a focus on corruption. In the World Bank's latest study of 'Privilege-Resisant' policies, where 'capture' is analysed as an obstacle to good governance, there is no discussion of the concepts and the ideologies that underpin or are used to justify it (Mahmood and Slimane, 2018). It obscures the fact that the repurposing of state institutions was driven by more than the abuse of public office for private gain. State Capture in South Africa had an *ideology* or, at least, a set of political convictions – a dimension mostly overlooked in legal, political and scholarly discussions of the phenomenon.

In South Africa 'capture' was informed by a critical reading of South Africa's political economy and of the constraints that the transition imposed on economic transformation. As one South African public intellectual, Richard Pithouse, put it in 2016, "if there's a philosopher of the moment it is, by some distance, Frantz Fanon". "Twenty years ago," he noted, "things were very different. The left, in and out of the ANC, was largely committed to more orthodox Marxist ideas" (Pithouse, 2016). The idea that has become more and more compelling in intellectual and some political circles in recent years is that post-Apartheid South Africa resembles a 'postcolony'.

It happens sometimes, Fanon wrote in the Wretched of the Earth, "that decolonization occurs in areas which have not been sufficiently shaken by the struggle for liberation, and there may be found those same know-all, smart, wily intellectuals. We find intact in them the manners and forms of thought picked up during their association with the colonialist bourgeoisie. Spoilt children of yesterday's colonialism and of today's national governments, they organize the loot of whatever national resources exist" (Fanon, p.48).

Achille Mbembe defined it as a space of vulgarity where the project of decolonisation had stalled and resulted in the "mutual 'zombification' of both the dominant and those apparently dominated" (Mbembe, p.104). In the postcolony, that is, new zombie-like elites reproduced the terms of colonial power – what Mbembe called the 'commandement' – making of decolonisation, a vulgar parody. It is not difficult to see the appeal of the analysis. Corruption and growing inequality in South Africa are the result of a process of decolonisation that has not gone far enough, indeed, that has been constrained by the terms of a constitutional settlement that protects property rights, 'Western' norms and gives whites and new Black elites powerful legal instruments through which to maintain their privilege.

In India, Partha Chaterjee makes a similar argument. Nationalist movements, their imaginations fired by ideas of republican citizenship expanded the space of what he calls *civil society* – a domain

in which, according to the *formal* structure of the State, its laws and constitution, everyone is treated as a citizen with equal rights. In reality, however, the vast majority of inhabitants are only "tenuously", "ambiguously" rights-bearing citizens and are not, therefore, proper members of civil society. Instead, they are members of *political society* – this arena where "population groups" accept that in order to access government services their activities are often "illegal" and "contrary to good civic behaviour" (Chatterjee, pp. 37-42). Political society thus brings into the corridors of power, the "squalor, ugliness and the violence of popular life" (Ibid, p.74).

There is an unexpected *twist* in all of this. These conceptions of the 'postcolony' and of 'subaltern' politics are not just useful analytical constructs, nor do they simply describe the way that poor, working people, or marginalised communities struggle for services. *They have entered into the ideologies and practices of new political elites that have themselves been reading and absorbing postcolonial debates.* Malusi Gigaba, for example, the former Minister of Public Enterprises styled himself as an intellectual of Fanonian-bent. It was under his watch that the repurposing of State-Owned Enterprises began in earnest, especially at Eskom and at Transnet[viii]. President Zuma himself frequently railed against Western educated Africans, what he called 'clever blacks', stressing the importance of 'traditional' norms and practices and elevating the status and remit of kings, chiefs and traditional authorities in South Africa.

What has happened in South Africa is not unique. Çapan and Zarakol show that in the case of Turkey postcolonial concepts have been used by both the political leadership and pro-government academics to justify interventionist and "neo-colonial" policies towards Syria and the Middle East and domestic repression, especially against the Kurds (Çapan and Zarakol, p. 204).

In the South African context this postcolonial turn in elite politics has been accompanied by the renunciation in the ANC of its historic commitment to 'nonracialism'. It is symptomatic of a broader repudiation of such values in parts of the student movement, in opposition political parties like the Economic Freedom Fighters and amongst extremist groups in (un)civil society like the Black First Land First organisation. This speaks to the resurgence of ethno-nationalist or nativist tendencies in the mainstream of Black politics, some that come dangerously close to fascism. In *Do South African Exist?* this author explored various political tendencies within the rubric of 'African nationalism', including one that we might call cosmopolitanism and a more conventional nationalism grounded in a politics of racial authenticity (Chipkin, 2007).

I will introduce the concept of *elite populism* to refer to elites in political parties, government and the state talking in the name of the subaltern to justify violating the norms and rules of the constitution and of government. In South Africa 'state capture' has been driven by such an ideology.

What Constitutes the Democratic State?

Marxists have a long history of thinking about the form of the state in a way that does not reduce democracy to the rules of political participation. We have only to think of Marx's writing on the Paris Commune in his essay on the Civil War in France. Procedurally, it is very likely that the Commune would have passed Hungtington's procedural test for democracy. There was universal suffrage and there were regular elections for key posts in the state. What was unique about the Commune, according to Marx, however, is that the poor and the working class were, for the first time, in power. This is the sense in which it was "truly democratic" – a definition closer to the original and classical understanding of democracy as the 'government of the poor' (Engels, p.628). Hence the paradoxical situation that the model of the Dictatorship of the Proletariat was a procedural democracy[ix].

De Tocqueville offers another route to thinking about democracy in relation to the form of the State. He does so by categorising political regimes by their relationship to 'public officials'. I will follow his lead in this regard.

"Whenever a democratic republic converts salaried offices to unpaid ones, I think one may conclude that it is veering toward monarchy. And whenever a monarchy begins to remunerate unpaid offices, it is a sure sign of progression toward a despotism or a republic". "I, therefore, think," he continues, "that to change from salaried to unpaid offices is by itself the instigation of a real revolution". (Ibid, p. 238). I want to remain with De Tocqueville here, *by defining the state as regards to its relationship to public office*.

De Tocqueville is not especially impressed with this aspect of democracy. He notes that records are not properly collected in the Unites States, that public finances are poorly managed and that, generally, democracy creates 'administrative instability'. Ultimately, he argues, "democracy, pushed to its limits, damages the art of government" (Ibid., p.242). Why? The lack of distinction between political office and administrative office means that "men (sic) reach office to some degree by accident and have no guarantee of staying there" (238). In the United State, moreover, people of great talent pursue wealth, those of moderate desires seek political office and only those who are most "inadequate" or "coarse" go into public office. This is not the case in monarchies and why De Tocqueville is not always sure that the American experiment – the first great democratic republic – would survive a despotic assault[2].

---

2 As an aside, this drama between democracy and despotism has characterised Brazilian politics for the last half century. Brazilians are ambivalent about democracy precisely because military rule and/or authoritarian governments have a better record at public administration than democratic ones (Linz and Stepan, p. 173). Jair Bolsonaro the far-right cadidate who won the Brazilian Presidential election is an admirer of the last military regime and has positioned himself as a crusader against corruption and poor governance.

"Bureaucracies in late nineteenth-century America," writes Daniel Carpenter, "were rarely, if ever, politically distinct from the reigning ideology and distributive focuses of the dominant party in national politics. At their centre, agencies were partisan reflections of the presidential administration in power. At their periphery, they were captured creatures of local elites and organized economic interests" (Carpenter, p. 40). There was little concentration and centralisation of authority at the national centre of government, little penetration of institutional control throughout the territory of the state and government departments lacked specialisation (Skowronek, p. 20). What substituted for the institutional weakness of the State (or the statelessness of the American Republic) were the two great, competing political parties. Carpenter gives the example of the US postal service to show the extent to which patronage or *spoils system* was integrated into the heart of government. When the Democratic Party won the US presidency in 1885, 40 000 Republican postmasters were pushed out and replaced by Democrats. Four years later when a Republican President came into office, 50 000 Democrats resigned or were fired. "In the span of eight years 100 000 men and women had staffed the nation's 56 000 post offices" (Carpenter, p.41). "Such parties would not articulate a clear policy linkage between citizens and government, but they would bind together a radically decentralised state and faction-ridden nation" (Skowronek, p.26). The other binding ingredient was the US Supreme Court that made and enforced public policy (Ibid., p.28).

Daniel Carpenter and Stephen Skowronek show that the spoils system was the consequence of a particular *idea of democracy* – what they call Jacksonian democracy. What was this idea? We know already from De Tocqueville: the purpose of democracy was 'to serve the wellbeing of the greatest number' (De Tocqueville, *Op Cit.*, p. 272)$_x$. In the American case this meant bringing ordinary citizens directly into the running of government. Marx would have approved such a move. In his Critique of Hegel's Philosophy of Right he opposes bureaucracies as specialised 'corporations' on the grounds that they transform the state into their 'private property', making the objectives of the state their own objectives (Marx, p.24).

This is why Stephen Skowronek believes that the passing of the Pendleton Act in 1883 marked nothing less than the reconstitution of the American state. "Without a doubt," he writes, "the establishment of *merit examinations* for administrative appointments was the single most significant departure in American government procedure" (emphasis added) (48). In the first place it broke the hold of party bosses over national administrations. Secondly, it earmarked for political parties a fundamentally new role as *custodians of public policy*, rather than as recruitment agencies for public service. In other words, the Pendleton Act was not simply a development in public administration. It was an event in democracy.

We might say, in the spirit of De Tocqueville, that the professionalisation of American civil servants constituted a real change in the political character of the regime, not from a democracy

to a monarchy or the other way round, but from one kind of democracy to another – from democracy *qua* political system to democracy *qua* form of state.

Therein lies the fundamental modern innovation in democratic practice – one that has not been adequately registered by democratic theorists. Democracy cannot ever simply be reduced to the rules of the political system. If democracy is to be more than about words and pronouncements, declarations and manifestos, it is only meaningful to the extent that the political system is attached to institutions to give policies and programmes practical effect. In that case democracy is always also a form of state. *A politics, especially procedural democratic politics, that prevents the emergence of effective state administrations is one that short-circuits its own raison d'étre*. For it renders the political regime incompetent. The democratic state may, ultimately, take many forms but for the moment the historical record is unambiguous that it involves autonomous, professionally constituted administrations staffed by specially trained officials – in short, bureaucracies with bureaucrats.

We can observe reversals or advances in democracy along two axes: procedural (political) and administrative (state). Schematically, we can represent the possibilities in the following table:
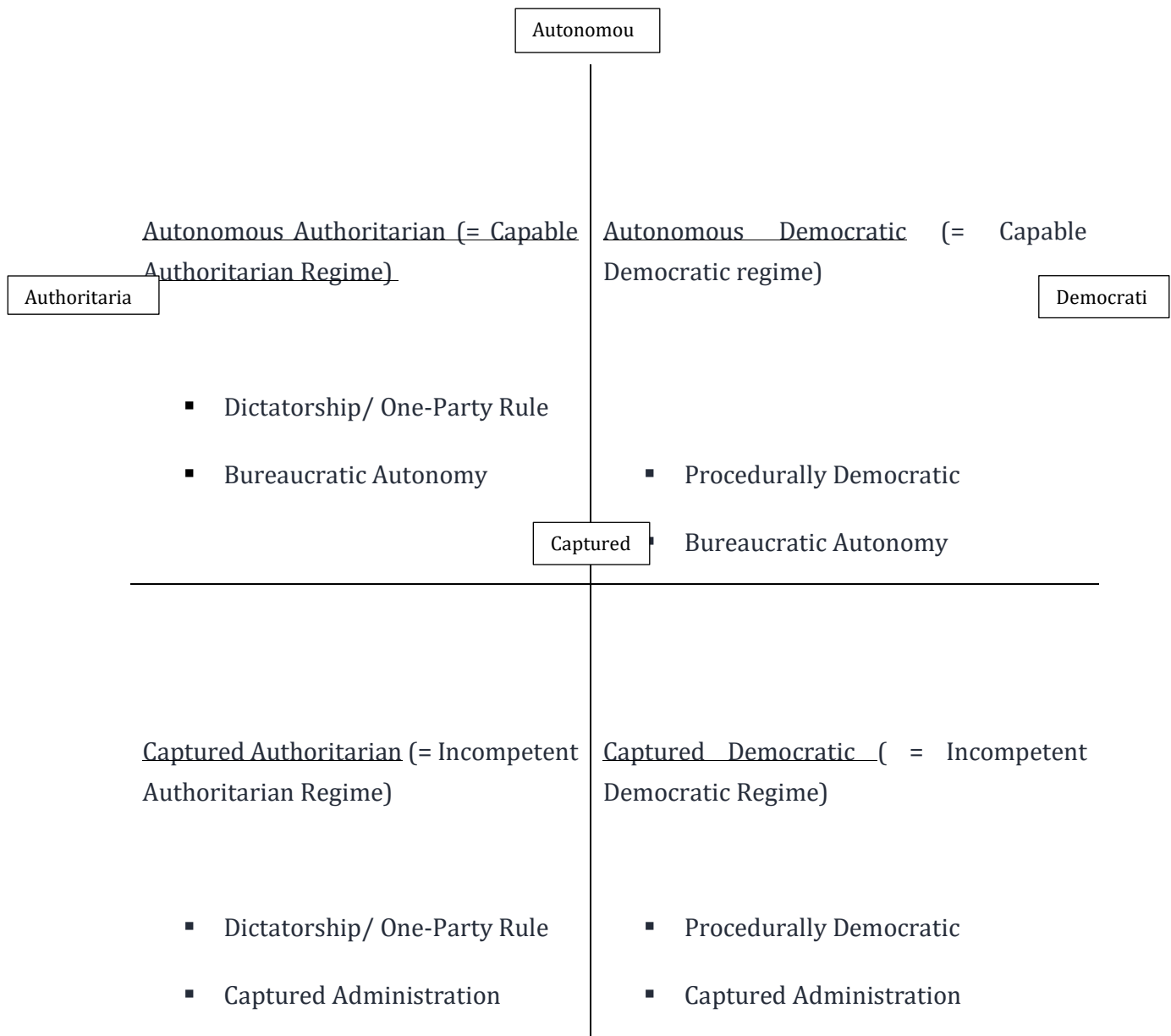
| Autonomou |

Autonomous Authoritarian (= Capable Authoritarian Regime)

Authoritaria

Autonomous Democratic (= Capable Democratic regime)

Democrati

- Dictatorship/ One-Party Rule

- Bureaucratic Autonomy

Captured

- Procedurally Democratic

- Bureaucratic Autonomy

Captured Authoritarian (= Incompetent Authoritarian Regime)

Captured Democratic (= Incompetent Democratic Regime)

- Dictatorship/ One-Party Rule

- Captured Administration

- Procedurally Democratic

- Captured Administration

Figure 1. Typology of Regimes

South Africa is today an 'incompetent democratic regime'.

Conclusion

This paper has argued that from about 2012 South Africa suffered a major democratic reversal that was largely invisible theoretically. That is, contemporary definitions of democracy, especially as they inform the literature on political transitions, reduce the phenomenon to the rules of political participation. Yet over the last ten years South Africa saw, not so much a rolling back of political rights as concerted attacks on the autonomy of state administrations. Without the conceptual tools to understand these attacks on the bureaucracy as attacks on democracy, the period from 2007 to 2017 has largely been construed in terms of corruption, criminality and patronage. This paper has sought to correct this mistake by arguing that the concept and practice of democracy requires that we think of bureaucratic autonomy as a *democratic virtue*.

It has done so by distinguishing between the political system and the state, arguing that a theory and practice of democracy cannot be reduced to the former to the neglect of the latter. In other words, a theory of the democratic political system must be accompanied by a theory of the democratic state. The reason is practical. If democracy is to be more than a talk-shop it must have institutions and mechanisms to give practical effect to the policies and promises of political parties. To the extent that it does not, then democracy remains, at best, partial. Even worse, when democratic thought generates ideas and practices that prevent the state from emerging, it short-circuits itself.

This is how I propose that we understand the phenomenon of state capture in South Africa. Like US democrats of the Jacksonian era, the African National Congress, especially under Jacob Zuma was beholden to a conception of majority rule that made it hostile to existing, autonomous administrations and that drove it to prevent others at all levels of government from coming into being. In this sense, the protagonists of 'state capture' in South Africa did not so much capture the state as block its becoming.

State capture has set back the development of South Africa's democracy by corrupting, weakening and, ultimately, preventing the emergence of a South African bureaucracy.

Let me conclude with a final remark on ongoing initiatives to investigate and root our state capture in South Africa. As the hearings unfold at the Zondo Commission into State Capture, like at the Nugent commission into the South African Revenue Services (SARS), so South Africans are confronted with the depth and depravity of South Africa's ruling elite, whether political or economic. Yet to the extent that the commission's analysis remains anchored in terms like corruption and looting, it will miss out on its potential. For 'State Capture' was not simply a system of criminality and misconduct. It was driven by a conception of politics that weakened the state. The commission is in a position to help us draw this conclusion so that a 'post-capture' epoch heralds not simply better anti-corruption measures but a concerted effort to build effective state administrations.

References

Adler, Glenn and Webster, Eddie (1995), 'Challenging Transition Theory: The Labor Movement, Radical Reform, and the Transition to Democracy in South Africa' in *Politics and Society*, Vol.23(1), 75-106.

Avritzer, Leonardo (2002) *Democracy and the Public Space in Latin America*, Princeton: Princeton University Press.

Bhorat, Haroon; Buthelezi, Mbongiseni; Chipkin,Ivor; Duma Sikhulekile; Mondi, Lumkile; Camaren, Peter; Qobo, Mzukisi; Swilling, Mark and Friedenstein, Hannah (pseudonym), (May 2017), *Betrayal of the Promise: How South Africa is Being Stolen*, State Capacity Research Group, http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf (accessed 2 March 2018).

Bloomberg (November 2017), 'In Depth: A timeline of how the Guptas bought South Africa', *Business Report*, https://www.iol.co.za/business-report/in-depth-a-timeline-of-how-the-guptas-bought-south-africa-11929842 (accessed at 13:00 GMT, 10 March 2018).

Brunette, Ryan, Nqaba, Patronella and Rampedi, Mahlatse (2017), *3 Cities*, Johannesburg: Public Affairs Research Institute (PARI).

Carpenter, Daniel P., (2001) *The Forging of Bureaucratic Autonomy. Reputations, Networks and Policy Innovation in Executive Agencies, 1862 – 1928*, Princeton and Oxford: Princeton University Press.

Çapan, Zeynep Gülşah and Zarakol, Ayşe (2017) 'Postcolonial colonialism? The case of Turkey', *Against International Relations: Postcolonial Perspectives* (ed. Charlotte Epstein), London and New York: Routledge, 195 – 210.

Chatterjee, Partha (2004), *The Politics of the Governed. Reflections on Popular Politics in Most of the World*, New York: Columbia University Press.

Chipkin, Ivor (2007) *Do South Africans Exist? Nationalism, Democracy and the Identity of 'the People'*, Johannesburg: Wits University Press.

Chipkin, Ivor (2016a) The Decline of African Nationalism and the State of South Africa, *Journal of Southern African Studies*, Vol.42(2), 215-227.

Chipkin, Ivor (July 2016b) *The State, Capture and Revolution in Contemporary South Africa*, PARI Working paper, Johannesburg, Public Affairs Research Institute, https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2017/05/08-

August-2016-State-Capture-and-Revolution-Working-Paper-2-ilovepdf-compressed.pdf.

Dahl, Robert (2003) 'Madisonian Democracy' in The Democracy Source Book (eds. Robert Dahl, Ian Shapiro, José Antonio Cheibub), Cambridge, Massachusetts and London: MIT Press.

De Tocqueville, Alexis (2003) *Democracy in America and Two Essays on America*, London: Penguin Books.

Peter Delius (1989) 'Sebatakgomo; migrant organization, the ANC and the Sekhukhuneland revolt', *Journal of Southern African Studies*, 15(4), 581-615.

Engels, Friederich (1978) 'Introduction to the Civil War on France' in *The Marx-Engels Reader* (ed. Robert Tucker), New York: W.W Norton and Company.

Evans, Peter and James E. Rauch (1999) 'Bureaucracy and Growth: A Cross-National Analysis of the Effects of "Weberian" State Structures on Economic Growth', *American Sociological Review*, Vol. 64 (5), 748-765

Gargarella, Roberto (2013), *Latin American Constitutionalism,1810-2010: The Engine Room of the Constitution,* Oxford University Press, p. 207.

Gigaba, Malusi, (2010) Speech by Mr. Malusi Gigaba, Minister of Public Enterprises, at the ABSIP networking function for Young Black professionals at Deloitte, Woodlands Office Park, Woodmead, http://www.dpe.gov.za/newsroom/Pages/Speech-by-Mr--Malusi-Gigaba,-Minister-of-Public-Enterprises,-at-the-ABSIP-networking-function-for-Young-Black-professionals.aspx (accessed 11 March 2018).

Goba, Neo (14 February 2018), 'I won't resign, says defiant Zuma', *TimesLive*, https://www.timeslive.co.za/politics/2018-02-14-i-wont-resign-says-defiant-zuma/ (accessed 2 March 2018).

Jeff Guy (2018) 'An Accommodation of Patriarchs: Theophilus Shepstone and the Foundations of the System of Native Administration in Natal', *Journal of Natal and Zulu History*, 32(1), 81-99

Hellman, Joel, Jones, Geraint and Kaufmann, Daniel (2000), 'Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition Economies', *World Bank Policy Research Working Paper* No. 2444 (Washington). This paper and related data from the BEEPS can also be found on the web at http://www.worldbank.org/wbi/governance.

Hungtington, Samuel P. (1991), *The Third Wave. Democratization in the Late Twentieth Century*, Norman: University of Oklahoma Press.

Jordan, Pallo (1997), 'The National Question in Post-'94 South Africa. A discussion paper in preparation for the 50th National Conference of the ANC, http://www.anc.org.za/content/national-question-post-94-south-africa-discussion-paper-preparation-50th-national-conference, accessed 8 March 2018.

Koelbe, Thomas and Reynolds, Andrew (1996), 'Power-Sharing Democracy in the New South Africa' in *Politics and Society*, Vol. 24(3), 221-236.

Lijphart, Arend (1977), 'Majority rule versus democracy in deeply divided societies, *Politikon* Vol.4(2), 113-126.

Lijphart, Arend (2004), 'Constitutional Design for Divided Societies', *Journal of Democracy*, Vol.15(2), 96-109.

Linz, Juan J. and Stepan, Alfred (1996), *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, Baltimore and London: The Johns Hopkins University Press.

Mahmood, Syed Akhtar and Slimane, Meriem Ait Ali (2018), *Privilege-Resistant Policies in the Middle East and North Africa. Measurement and Operational Implications*, MENA Development Report, World Bank Group.

Marx, Karl (1978), 'Contribution to the Critique of Hegel's Philosophy of Right' in *The Marx-Engels Reader* (ed. Robert Tucker), New York: W.W Norton and Company.

Mbembe, Achille (2015), *On the Postcolony*, Johannesburg: Wits University Press.

Mota, Aurea and Wagner, Peter (2018), Collective action and political transformation. The entangled experiences in Brazil, South Africa and Europe, Barcelona: Edinburgh University Press.

Nugent (Judge), 24 September 2018, 'Interim Report' of the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service.

O'Donnell, Guillermo and Schmitter, Philippe C. (2013), *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, Baltimore: The Johns Hopkins University Press.

Olver, Crispian (2017) *How to Steal a City. The Battle for Nelson Mandela Bay*, Johannesburg and Cape Town: Jonathan Ball Publishers.

Phadi, Mosa and Pearson, Joel (2017), *The Mogalakwena Local Municipality in South Africa. An Institutional Case-Stud*y, Johannesburg: Public Affairs Research Institute (PARI).

Pithouse, Richard, https://mg.co.za/article/2016-04-07-violence-what-fanon-really-said

Price, Robert (1997), 'Race and Reconciliation in the New South Africa', *Politics and Society*, Vol.25(2), 149-178.

Public Protector South Africa (2016), *The State of Capture*, Report No. 6 of 2016/2017, http://www.pprotect.org/sites/default/files/legislation_report/State_Capture_14October2016. pdf (accessed 11 March 2018).

Rauch, James E. and Evans, Peter (2000) 'Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries', *Journal of Public Economics*, Vol. 75 (1) Available at SSRN: https://ssrn.com/abstract=252768.

Sachs, Albie (2017), *Oliver Tambo's Dream. Four lectures by Albie Sachs*, Cape Town: African Lives.

Schumpeter, Joseph (2003), *Capitalism, Socialism and Democracy*, London and New York: Routledge. This edition published in the Taylor and Francis e-Library.

Seligson, Mitchell A. (1987) 'Democratization in Latin America: The Current Cycle' in *Authoritarians and Democrats: The Politics of Regime Transitions in Latin America* (eds. James M. Malloy and Mitchell A. Seligson), Pittsburgh: Pittsburgh University Press.

Swilling, Mark, (2018), 'Zexit, a nuclear deal and Russia's strong-arm persuasion' in *Daily Maverick*, https://www.dailymaverick.co.za/opinionista/2018-02-12-zexit-a-nuclear-deal-and-russias-strong-arm-persuasion/#.Wp5IgmaB08Y (accessed 2 March 2018).

[i] I am grateful to the many hours of conversation and debate that I have had with Brian Levy. He also introduced me to a key literature that helped me finish this piece.

[ii] An updated version of the report has been published as a book: Chipkin, Ivor and Swilling, Mark (2018) *Shadow State: The Politics of State Capt*ure, Johannesburg: Wits University Press.

[iii] Hungtington's concept of democracy also suffers from ambiguity and imprecision. At what point, for example, would America have become democratic on his terms: at the point when Southern Blacks received formal political rights at the end of the Civil War (after the passing of the Fifteenth Amendment to the US Constitution) or only in the 1960s when the civil rights movement began to push back white terrorist groups like the Ku Klux Klan and insist on the removal of electoral qualifications that served effectively to disenfranchise Blacks? This remains an ongoing struggle. In other words, is the measure of political participation a formal one or a substantive one?

iv See Rosanvallon, Pierre (2011), *La société des égaux*, Paris: Éditions du Seuil.

v 'Elective Dictatorship' was the term that Gilliomee and Simkins used to describe the political system in South Africa as early as 1998. Their characterisation of South Africa as a 'dominant-party system' has been very influential and sparked a wide debate. For a critique of this literature for its racism see Suttner, Raymond (2006), 'Party-Dominance 'Theory': Of what value? in *Politikon*, Vol.33(3), pp. 277-297.

vi See, for example, Lodge, Tom (1994), 'Election of a Special Kind' in Southern African Review of Books, March/April.

vii See my exchange with Patrick Bond in the *Daily Maverick* an online newspaper in South Africa. It started with my '#FeesMustFall: Separating Treasury's truth from 'ultra-left' fiction in the *Daily Maverick*, 16 October 2016. Bond replied with '#FeesMustFall demand reflects sound fiscal logic, not 'ultra-leftism' in the *Daily Maverick*, 24 October 2016 and ended with my response in 'The Bonds That Tie: Changing South Africa's public culture' in the *Daily Maverick*, 13 November 2016.

viii The Betrayal of the Promise report noted: "The appointment of Gigaba on 1 November 2010 as Minister of Public Enterprises marked the start of a systematic process of recon guring the boards of SOEs to ensure compliance, starting with his attempt to get little known DTI of cial 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 rst 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 bene t selected contractors who had been sanctioned by the Gupta network" (Betrayal of the Promise, pp. 15-16).

ix Schumpeter suggests something similar in 'Capitalism, Socialism and Democracy'. There he argues that Marx's own use of the term 'revolution' or the expression 'dictatorship of the proletariat', "come within the meaning of democracy as ordinarily understood" (Schumpeter, p. 236).

x This conception of democracy is what Schumpeter calls the Classical Doctrine and is underpinned, he argues, by Utilitarian philosophy. "The more untenable [Utilitarianism] proved to be, the more completely it dominated official phraseology and the rhetoric of the politician" (Schumpeter, p. 24).