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After Capture: Notes on the current situation and some thoughts for democratising the future.

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In the classical texts, tyranny, as opposed to despotism, refers to a form of government that breaks its own rules. This is a useful starting point for discussing political developments in South Africa over the last ten years and the civil-society response to it. The African National Congress government under Jacob Zuma became more and more tyrannical as it set itself up against the Constitution and the rule of law. Civil-society has been reinvigorated in this context, largely to force government to play by the rules of the game.

Here, I will discuss this move to tyranny as the result, not simply of corruption, but of a political response to South Africa's racially defined inequality, which incorrectly identified the Constitution as an obstacle to radical economic transformation. We will see that it justified a growing lawlessness in key parts of government and enabled widespread corruption in the state market place – that area where businesses do government's outsourced work.

In the second part of this essay, I will reflect on the character of the civil-society coalitions that have emerged in this context and note too their recent, major achievements.

Turning Against the Constitution.

From about 2010 the South African government started to introduce measures to control the diffusion of information and to regulate tacitly the press. In 2011, in the face of impressive opposition, a majority of ANC MPs (Members of Parliament) passed into law the *Protection of State Information Bill*. The Act was especially controversial for giving government officials the right to classify as 'top secret' any government information in the 'national interest'. As activists from the Right2Know campaign argued over and over again the definition of the 'national interest' was so broad as to exclude virtually nothing from censorship. The Act also criminalized 'whistleblowing' and investigative journalism by imposing heavy jail sentences on anybody holding 'classified' information. This resonated with the findings of a 2008 Ministerial Review Commission on Intelligence. It found that the mandate of the South African intelligence services was so broadly defined that ordinary democratic activity could be construed as a national security threat. Eventually, President Jacob Zuma refused to assent to the legislation, halting its passage into law, on the basis that it would fail at the Constitutional Court. It was, nonetheless, symptomatic of a wider trend.

During this period, there were concerted efforts to create alternative media platforms, more sympathetic to the ANC government. In this regard a daily circulation newspaper, *The New Age*, was launched in 2010. It is owned by the Guptas with an explicit mandate to present a

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positive image of the South African ruling political party, the [African National Congress](#) (ANC). Today it claims that it provides positive news that is critically constructive. In 2013 the Guptas launched a 24-hour news channel, ANN7, with the same purpose. More recently as the current administration has come more and more under pressure (see below), it has become more brazenly a propaganda channel.

A more direct move to control the media came shortly after in 2015.

The South African Broadcast Corporation (SABC) is the country's public broadcaster. It has an impressive reach. Public radio is the primary source of news and information for the vast majority of South Africans. In 2011 Hludi Motsoeneng was appointed acting SABC chief operating officer. In 2014 the Public Protector, an institution established in terms of Chapter 9 of South Africa's constitution to protect the rights of citizens against abuses by government, found that the corporation's Chief Operating Officer (COO) had been illegally appointed. He had never finished school and was thus ineligible by the post's own criteria. This notwithstanding, the Communications Minister Faith Muthambi approved his appointment in July 2014. Even after several courts confirmed this finding the executive stood by him. When Motsoeneng's appointment was finally set aside by the Supreme Court of Appeal in September 2016, the Minister of Communications, Faith Muthambi, intervened to secure him a senior, acting post.

It was not difficult to understand why.

Under Motsoeneng the SABC had moved, effectively, to prohibit reporting news either critical of government or that was, potentially, embarrassing. The shift towards a more politicized news room had started during the Thabo Mbeki administration when then head of news, Snuki Zikakala, had blacklisted several, critical political commentators. What was happening under Motsoeneng looked more like 'institutional capture'. The policy of the organization was illegally changed to remove editorial discretion from senior journalists and, instead, to grant it to the COO, that is, to Motsoeneng himself. Critical or independent journalists were also purged.

These events were happening in the context of an audacious political project unfolding in other parts of the State as well.

In December 2007 in Polokwane, a provincial town about 3 hours' drive North of Johannesburg, accumulating tensions with the ruling African National Congress burst into the open. During the 52nd National Conference of the party, Thabo Mbeki failed in his bid to secure a third term as the organisation's President. Jacob Zuma was elected in his stead, coming to power on a wave of resentment and grievance against the previous administration – not least for allegedly conspiring to destroy Zuma's political career. Within days of taking office the ANC 'recalled' Mbeki from his position in government. The national election that followed in 2009 saw Jacob Zuma become President of both the ANC and the country.

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The Polokwane revolt in the African National Congress was informed by a conviction that economic transformation as pursued during the Mandela and especially during the Mbeki periods 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 hand-outs to survive. The economic policies of the Mbeki period were widely slated as a self-imposed programme of structural adjustment. In the wake of Polokwane and especially after the 2009 election, a search began in earnest for a more 'radical' model of economic transformation. At the time, the Zuma presidency was applauded in 'left-wing' circles for promising a break with the 'neoliberal' policies of the Mbeki years.

The idea of using government's procurement budget to realise social and economic outcomes is not a new one. It was the backbone of South Africa's '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). From about 2011, sections of the ANC and ministers and officials in the Department of Trade and Industry, supported by elements of organised Black business began referring to 'Radical Economic Transformation'. This was the name for an ambitious project to leverage the procurement budgets of State-Owned Enterprises (SOE) to a) displace established white firms and b) to create new, black-owned and controlled industrial enterprises. The two largest SOEs were the focus of attention: Eskom (that generated and transmitted electricity) and Transnet (responsible for the bulk rail network). Here was a vision of economic transformation that was not contingent on the reform of 'white businesses' 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 easy to see why this vision was profoundly compelling in nationalist circles.

From around 2011, however, the project of Radical Economic Transformation increasingly began setting itself up against key state institutions and the Constitutional framework. At stake was 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 parts of government 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 the Black First Land First grouping and in 'ultra-left' critiques of South Africa's 'elite transition'. It was not the position of the ANC itself. The centre-piece of this critique was the National Treasury.

The National Treasury was that department of State responsible for government finances, including approving departmental budgets and allocating moneys from the fiscus. There was one major reason why the National Treasury was a red flag to the project of Radical Economic Transformation.

Its constitutional mandate placed it on the horns of 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 political life of the country after Apartheid. The National Treasury, itself a creature of the constitution, had to try to reconcile black-economic empowerment with considerations of

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fair value for the fiscus and for citizens. When the protagonists of Black Economic Empowerment thus insisted that 30% of government contracts, especially in State-Owned Enterprises, be set-aside for Black 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.

As the Zuma administration radicalized and tended towards illegality and straightforward criminality, so it became dependent on managing increasing complex relations, many of them involving people engaged in unlawful activities. At this time, the Zuma administration made moves to establish control over key state institutions, especially those involved in criminal investigations and prosecution: The South African Revenue Services (SARS), the Hawks and the National Prosecuting Agency. In all these proceedings, there is the shadow of South Africa’s intelligence services.

We have to see the moves against the media in the light of these developments.

There are two imperatives at play:

Firstly, as the project tends to illegality it is driven into the shadows with the concomitant risk of the loss of political control. Hence, some form of management system was needed.

Secondly, it has been necessary to shut down certain investigations and immunise or protect key people from prosecution

Taken together, the events at SARS and the Hawks (and at the NPA too) suggest that as the Zuma administration radicalised and resorted increasingly to unlawful means to pursue Radical Economic Transformation so it was driven to ‘capture’ and weaken key state institutions. In this way, the political project of the Zuma administration has come at a very heavy price for the capability, integrity and stability of the South African state.

Civil-Society Reinvigorated

For a long time, there was very little organized opposition to these events. The South Africa media had largely managed to fend off moves formally to introduce censorship. Moreover, there was still a legacy of brave, independent, investigative journalism. Largely through the efforts of several such journalists, many of them associated with AmaBhungane, an unaffiliated network of journalists, stories regularly broke about the corruption of government officials. The Public Protector’s ‘State of Capture’ report went far in creating public outrage. But the political response was strangely muted. Within the ANC, some individuals raised concerns but as an organization the ANC reliably rallied behind its President. This began to change when the then Minister of Finance, Nhlanhla Nene, was unexpectedly dismissed in December 2015. Financial markets reacted strongly and the South African currency, the Rand, plummeted in value. These events triggered a political response as thousands marched on the street to protest ‘state capture’. Yet the

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phenomenon remained largely a middle class one. It was not very difficult for those around the Zuma administration to present such opposition as the work either of political forces opposed to radical change or as in the service of a foreign agenda. This began to change after the dismissal of the new Finance Minister, Pravin Gordhan and his deputy Mcebisi Jonas in 2017 – both are highly respected technocrats but also savvy politicians. Opposition to the Zuma administration grew, including from within the ANC.

The problem with the resistance up until then, however, was that its analysis of what was going on was superficial. It ultimately fell back on the assumption that the President and his allies were corrupt, motivated by self-interest or that they were kingpins of a vast network of patronage. Apart from the obvious flaws of such an analysis – it resonates with all sorts of racist clichés about African leaders - it obscured the political project that was at work.

In May 2017, several colleagues and myself published a report called the *Betrayal of the Promise*. We had worked quietly and quickly to gather as much information in the public domain and ‘join the dots’, so to speak. I have discussed the highlights of the argument we made above. The centre-piece of the analysis was how a populist political project turned against the constitution, the law and South Africa’s democratic processes and institutions. Essentially, we were able to show that the struggle today was between those that sought change within the framework of the constitution and those that were ready to jettison the terms of the transition. The report proved to be hugely influential in South Africa and I think has played an important part in galvanising political opposition to ‘state capture’ from constituencies beyond the middle classes.

The report, that is, marked an inflection point in two ways. In the first place, it provided a new vocabulary for understanding political phenomena that was readily taken up in the media and especially amongst social movements and political organisations, even those allied to the ANC. Terms like a ‘shadow state’, ‘silent coup’ and ‘repurposing institutions’ have become part of the every day language of political discussion on South Africa. Secondly, together with the work of the Public Affairs Research Institute (PARI) the report has been influential in galvanizing a new kind of political activism in South Africa – one that focuses on defending honorable civil servants and building progressive state administrations.

The launch of the report on the 25th of May was covered live by one of the major national television channels, ENCA. It was all over the radio and there were numerous interviews with myself, Mark Swilling and other authors. The print media gave the report extensive coverage. It was front-page news on most of South Africa’s major daily and weekly publications and was the lead story in the Sunday papers. The City Press, for example, South Africa’s second largest circulation paper, reported carefully on the report’s argument and on its new terms. It also generated numerous opinion pieces published in various papers.

The weekend after our report came out an enormous trove of emails were leaked into the public domain. They have and continue to provide rich confirmation of the *Betrayal’s* argument. We had discussed the emergence of a ‘shadow state’ and discussed how

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political power was seeping away from constitutional bodies. Apart from evidence of further illegal rent-seeking, the emails provide details of Gupta associates involved in the day-to-day administration of key departments – writing speeches, commenting on proposals, suggesting regulations. That is, they are witness to the evolving, silent coup d'état.

The reception amongst political parties was no less spectacular, especially within parts of the ANC and within the South African Communist Party (SACP). The SACP and the ANC have been long-standing historical allies (since, at least, the 1950s) and together with the Congress of South African Trade Unions (COSATU), form the 'Tripartite Alliance' – the united front that spearheaded resistance to Apartheid and that today makes up the government of the country. The rise to power of Jacob Zuma is, in part, credited to the SACP and to the unwavering support given to him at the time by its General Secretary, Blade Nzimande.

While the communist party had become increasingly critical of the ANC and, especially, of its President, tensions merely smoldered. The report seems to have been the match that set it on fire. The weekend after the launch, Blade Nzimande came out strongly to endorse the argument, using the report's terms and concepts. He has continued to do so. Most dramatically, the country's largest circulation newspaper, The Star, reported that: "Due to the damning report, pressure mounted on Nzimande to break his silence on the alleged looting of public purse by the Guptas. During his party's 14th national congress this week, Nzimande assured his supporters that his relationship with Zuma had broken down irreparably due to the Guptas' influence on the incumbent"¹.

When a colleague and I were invited to present the report to the party's 14th National Congress, the details of the report were received in hushed silence. Apart from the nearly 2000 party delegates, many cabinet ministers and senior political figures were in attendance. I overheard the ANC Deputy General-Secretary, Jessie Duarte, complaining bitterly to a party official that the SACP had organised a 'hostile' congress.

Since then the SACP has come out officially against 'state capture' and has supported efforts in the ANC to remove the President. In a surprise cabinet reshuffle in October 2017, Blade Nzimande was dropped from the cabinet. Then on Wednesday the 29th of November the SACP contested a local government election as an independent party against the ANC – for the first time in its history. This is an unprecedented development and signals the end of the historic alliance between the two movements.

If this marks the most dramatic consequence of the report, the study has been useful in galvanising action across civil-society too.

It was also widely taken-up by some of South Africa's major Trade Unions. Since, at least, 1985, the largest unions in South Africa have been affiliated to the Congress of South African Trade Unions (COSATU). In April 2017, several COSATU affiliates, including the massive National Union of Metalworkers of South Africa (NUMSA) split to form a new body, the South African Federation of Trade Unions. Three years earlier NUMSA had been

¹ <https://www.iol.co.za/news/special-features/the-zuma-era/nzimande-dismayed-by-looted-40bn-10300509>

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expelled from COSATU for its increasingly robust critique of the union leadership and of the ANC. When he was still General Secretary of COSATU, Zwelinzama Vavi had said that under Jacob Zuma, South Africa was “headed for a predator state”. Whereas this critique has previously rested on accusations of corruption in the ANC, after May 2017 there was growing appreciation for relationship between corruption and the disregard of the constitution and the rule of law. This is a significant development, especially that for many involved there is sympathy for the argument that the 1996 constitution was the result of an ‘elite pact’ that came at the expense of workers and the poor. As we will see shortly, this had made possible new kinds of unexpected and even awkward political alliances.

The South African Council of Churches (SACC), the largest ecumenical association of Christian Churches in the country was already active in the struggle against corruption. It had convened confessionals for compromised politicians and officials and/or those with information on corruption to ‘unburden themselves’. The release of the churches’ report on these panels coincided with the release of our own. Many originally believed that the ‘Betrayal of the Promise’ was a church document. We had consulted with them but our report was the result of a different process.

The church has mobilised religious opposition to the current administration. Its own report was taken up by a group of ‘veterans and stalwarts’ of the ANC who addressed an open letter to the General Secretary of the organisation explaining that “Our hearts are broken as we watch some in the leadership of our movement [...] abrogate to themselves the power of the State to serve their own self-interests rather than the interests of the people of South Africa”². In July, the largest gathering of civil society organisations came together under the umbrella of the ‘Future South Africa’ coalition to fight ‘state capture’ and to rebuild state integrity.

There are two features of this coalition that are noticeable. Though it comprises many of the people and the kinds of organisations that advanced the anti-Apartheid struggle in the 1980s and 1990s and in this sense marks a revival of an older civil-society, it is not exclusively so. Organised business formations shared a platform with radical trade-unionists and avowedly liberal associations.

Furthermore, civil-society activists in South Africa have for the first time ever taken up issues of state building and even more, surprisingly, of public administration. For the first time, there is appreciation for the fact that the immediate victims of tyranny in South Africa have been honest civil servants committed to a public service ethos. The move to authoritarianism has first and foremost been a politics in and of State administrations. This fact goes some way in explaining why journalists and activists have not been subject to the kind of repression seen elsewhere. The influence in the conjuncture of the Public Affairs Research Institute (PARI) has been in developing this awareness.

Tactics

² <https://www.dailymaverick.co.za/article/2017-05-25-open-letter-from-the-stalwarts-for-the-sake-of-our-future-take-a-stand-and-defend-our-revolution/#.WiLJ8raB3Vo>

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Taken together, 2017 has seen the re-emergence of powerful coalitions of civil-society groupings, often bringing together new and unexpected partners. Working separately and occasionally together they have used four, effective tactics.

- **Litigation:** the growing lawlessness of the government has made litigation an often powerful tool. The High Courts have overwhelmingly safe-guarded their independence and civil-society groupings have used the high courts to challenge successfully illegal government decisions and appointments. This has ranged from challenging the President's appointments of heads of key state institutions (the state prosecuting authority and the police), to reinstating criminal charges against the President himself, to upholding the independence of state organs, to insisting on the force of law of constitutional principles, to further developing the jurisprudence on public law.
- **Social Mobilisation:** Some civil-society groupings have been successful at drawing people onto the streets in fairly large numbers. Especially important, is that they have constituted new and diverse publics.
- **Political Mobilisation:** Especially impressive has been the ability of activists to build energetic and diverse political coalitions, drawing senior figures in the ANC itself into alliances with a broad range of other organisations.
- **Unsettling Hegemony:** as we have seen the shift to tyranny in South Africa has been accompanied by political arguments about the nature of South Africa's transition from Apartheid and about the Constitution. Essentially, the Zuma government has been able to justify growing criminality as a necessary instrument of radical change and/or depicting opponents as acolytes of 'White Monopoly Capitalism'. Reports like the 'Betrayal of the Promise' were key parts of unsettling these claims and of providing a new language of resistance.

Another Country?

Over several days from the 16th of December 2017, the African National Congress gathered in Johannesburg at its 54th National Congress to elect a new President. Cyril Ramaphosa, the current Deputy President of the country, defeated a candidate, Nkosazana-Dlamini Zuma, who is strongly affiliated to the networks of tyranny. The result is not a straightforward victory, however. Former, key allies of Jacob Zuma have taken half of the top six positions in the organisation. Yet in the broader National Executive Committee (NEC), consisting of 80 people, Ramaphosa's supporters make up 41. What distinguishes Ramaphosa from Dlamini-Zuma, apart from questions of policy, is that he is more likely a constitutionalist – after all he was one of its key architects during the transition. We will have to see whether he is able to stamp his authority on the party. What is certain, though, is that he and the ANC operate in a different country, one that is less naïve about the risks to democracy and development.

There is fire in the belly of a rejuvenated civil-society. The High Courts have stood by the Constitution and parts of the media have played heroic roles. In various administrations and across government numerous officials and public servants have quietly resisted

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tyranny. Parliament has discovered its authority. In all of this civil-society organisations have played a leading role.