IN DEFENCE OF THE ACADEMIC - STATE CAPTURE AND THE FAILURE TO DECONSTRUCT APARTHEID’S SHADOW STATE:
A Response to the State Capacity Research Report - “Betrayal of the Promise - How South Africa is Being Stolen”

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Executive Summary

State capture has somewhat captured the national discourse in South Africa. It is not new though, both in conception and in practice. Conceptually, it could be argued, as some have done, that state capture has taken place through policies such as cadre deployment. Practically, state capture has taken place through organisations such as the Broederbond before 1994.

As a response to the public protector’s report, State of Capture, and the subsequent State Capacity Research Project first report, Betrayal of the Promise: How South Africa is Being Stolen, this paper suggests that the current focus on the Gupta family is only symptomatic of the clash between two shadow states. The first is the remnants of the Broederbond post-1994 and a section of the Black capitalist class, better known as the constitutional transformers in the SCRP report; and the second is a group of ANC leaders, also known as the radical reformers, prompted by the Guptas. Yet this manifestation by the Gupta family goes against everything the ANC has stood and struggled for; for they are simply a reincarnation of the Apartheid state.

The paper therefore traces the genesis of the shadow state and argues that remnants of the old order still find traction in the state today. Our goal must be to eradicate both forms of the shadow state in order to pursue the goals of liberation.

The SCRP report over-relied on media reports, whereas the media itself is undergoing a fight between the old and the new media players while the public protector’s modus operandi is questioned in the light of strengthening this democratic institution.
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1. Introduction: A project by scholars?

One of the greatest tragedies of our era was witnessing the outbreak of the so-called Arab Spring, where ordinary citizens took to the streets to reclaim their countries and states, only to return to the way systems were before the revolution. Whether one agrees with the Arab Spring or not, it is important to understand that not much has changed in those countries; the ‘revolution’ happened and now things have somewhat returned to being the same as they were, say, in 2010.

Tunisia, where the revolt started and despite showing signs of democratic stability, has seen another strongman and nonagenarian, Beji Caid Essebsi, replacing Zine El Abidine Ben Ali. In Egypt, as in probably the rest of the countries affected by the revolts, political scientists have questioned whether a revolution really took place. They suggest that revolutions undo or overthrow systems, whereas in most of the Arab world, as in Tunisia and Egypt, there was simply a recycling of the system.

The commentator George Friedman suggests that in Egypt there never was a revolution. Instead, he explains, what happened was that the military, who had put Hosni Mubarak in power in the first place, ensured that he was deposed because of the protests. A coup occurred and the military ensured that a transitional military council was set up. When Mohammed Mursi was finally democratically elected, the military foresaw a challenge to their power, effected another silent coup and then installed the incumbent, Abdel fattah el-Sisi; one who comes from military ranks, like Mubarak. Not much has therefore changed in Egypt.

Those of us studying institutions are not surprised. We would know that often where states and political societies find themselves in their current situation or even crisis it is because of historical institutions that have been able to manifest itself over and over. Hardly anything is new and it is very difficult, as the Arab Spring showed us, to change structures or systems within a country. Understanding institutions is important.

The serious lack of institutional exploration and understanding in the State Capacity Research Project (SCRP) Report, Betrayal of the Promise: How South Africa is Being Stolen, is therefore both surprising and unsurprising at the same time. It is surprising in that a number of the academics involved in the project have hitherto spent quite a bit of their research careers concentrating on institutions in South Africa.

Adam Habib, though not an author but associated with the project, has spent a considerable amount of time examining the institutional framework of South Africa. His recent work, South Africa’s Suspended Revolution: Hopes and Prospects, deals extensively with trying to understand how South Africa is where it is today and what needs to be done, working with the existing institutions to better lives in the country. The work of the Public Affairs Research Institute (PARI), and Ivor Chipkin’s in particular, will also be mentioned later in trying to understand current phenomena in South Africa. As a result, that these scholars approach the
project of state capture in almost complete isolation of their previous work and of what has happened in South Africa’s recent history, as well as narrowing down the phenomenon to the Gupta family, is incomprehensible.

No scholar worth their work would ignore, almost completely, the earlier work that they did. In the least, they would refer to it. In this case, the scholars associated with PARI are at most guilty of this. This is surprising.

What is not surprising is that a group of academics would jump onto the ‘state capture’ bandwagon. It is explicitly such, jumping on a bandwagon, because, as pointed out, there is no theoretical interrogation of the concept itself. Readers of the report are given a bland definition of what ‘state capture’ is and the deduction made is that the Gupta family sits at the heart of this phenomenon. Criticising the Guptas, Jacob Zuma and his supporters is in vogue and so it is unsurprising that these academics would have received the funding they did, from the funders mentioned and not mentioned, to pursue this project.

As this paper will point out, the conceptualisation of ‘capture of the state’ happened as early as 2011. Here, as the paper will later explore, the concept was related to the ANC’s and, in a different sense, the DA’s practice of cadre deployment. While the ANC might have cadre deployment as official policy, we see signs of it in the DA as it assumes power of the state machinery. As this paper will later also point out, cadre deployment is to be understood as a necessity for the proper functioning of a democratic state.

In recent times the term ‘state capture’ has come from the public protector’s report, State of Capture. This investigation, which this paper will also examine briefly later, looked specifically into the relationship between the Gupta family, the ANC and government. There is a detailed description of the family in the SCRP report. Suffice to say here that the family, originally from India, started off in the IT industry in South Africa in the early 1990s and have since been able to expand their empire into mining, financing and defence, among others.

The SCRP report, like the public protector’s report, tries to detail this relationship between the Gupta family, their associates, President Jacob Zuma, his family and high-ranking members of the ANC; senior members of government. The thesis of the SCRP report in particular is that the Guptas have been able to engineer a ‘shadow state’ and that this shadow state is pursuing the project of capturing the South African state.

Let us state upfront: we believe that state capture exists, just as White monopoly capital exists. We agree that a commission of inquiry into state capture must take place. However, that inquiry, as with the SCRP academic project, will not be worth anything if it did not have a thorough approach to the notion of state capture. We hold no brief for any funder, the Guptas, the President of the Republic or the ANC. This paper is a small contribution to what should be an holistic, honest and, importantly, historic debate and discussion on the question of state capture. It is too an important discussion to be reduced to personalities and a family.

The Commission’s findings and recommendations must lay the basis of more effective governance and a regulatory system for a more sustainable transformation of South African society that is pro-poor and benefits the most vulnerable in society.
Therefore, while we might agree with the academics that a commission of inquiry must be set up, we do not agree that it should only be focussed on the Guptas; nor do we agree that it is the Gupta family that introduced state capture to South Africa. In the spirit of academic freedom and interrogation, we shudder to think that these academics have themselves been captured. What is needed is a good interrogation of state capture on both a practical and philosophical level.

Any inquiry, whether state or academic, that concentrates only on the Guptas and their associates will be ahistorical and therefore lack the serious scholarly rigour that is needed to understand and address the challenge of state capture. Unless, of course, it is part of the political project of these academics to concentrate solely on the Guptas and their associates, and not to concentrate on state capture by other parties, in government and outside of government.

The group of academics, convened by Mark Swilling of the Centre for Complex Systems in Transition at Stellenbosch University, describe their partnership as follows:

…the State Capacity Research Project is an interdisciplinary, interuniversity 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. The report officially documented the way in which President Zuma and senior government officials have colluded with a shadow network of corrupt brokers.²

Those who collaborated with Swilling on this research project are: Prof. Haroon Bhorat 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, a member of the South African Research Chair Initiative – African Diplomacy and Foreign Policy, University of Johannesburg, and; Mr Lumkile Mondi, Department of Economics, University of the Witwatersrand.

While it is not the aim of this paper to get into the personal details of authors, it is nevertheless interesting to note the role played by Mzukisi Qobo both as an academic and commentator. Qobo played an influential role in a group called The Midrand Group, led by Prince Mashele, and a group which is known to be an anti-Zuma lobby in ANC circles. Mashele himself is a former speechwriter for President Thabo Mbeki and a known critic of Jacob Zuma. Mashele is, of course, well within his rights; but let us not be too hasty to shout “independent thinker!”.

The authors indicate that their Report is the first to be followed by “…detailed case study reports of the state-owned enterprises that have been captured by the Zuma-centred power elite over the past decade…” and that a publication will appear in 2018.³ Their project is therefore not to understand state capture; it could rather be viewed as a purely anti-Zuma exercise, which offers academia very little. Thus it can only be concluded that the project is a political and not an academic one.

This paper wishes to substantiate the claim that the project wishes not to understand state capture holistically.
It will commence with a brief background into the current understanding of ‘state capture’ in South Africa. Currently, this paper will assert, the practice of ‘state capture’ is under siege by two different and opposing forces. The one is White monopoly capital, having co-opted some of the Black business class into their ranks; while the other is one led by radical forces within the ANC. The latter group, unlike the assertion of the SCRP, is led by a group of the Black capitalist class, primarily ANC leaders and not the Guptas; who are challenging the ‘shadow state’ status of White monopoly capital in South Africa. At the heart of the ‘shadow state’ is the National Treasury.

This paper will agree with the assertion that the ‘shadow state’ does exist, but takes a critical view of when this ‘shadow state’ originated. It suggests that hitherto White monopoly capital, primarily through institutions such as the Afrikaner Broederbond, were able, since as early as 1918, to influence the state and institutions in South Africa; in other words, capture it. In 1994, and despite the fall of Apartheid, White monopoly capital has been able to dominate the ‘shadow state’ space and state-owned enterprises in particular.

Therefore, in unpacking concepts such as institutions, providing a brief historical analysis of ‘state capture’, as well as concepts such as ‘shadow state’, this paper will question the bona fide of the SCRP. It will further go on to criticise the methodology employed, i.e. concentrating solely on media reports; while briefly looking at the challenge of the media in South Africa. This paper will also assert that the same contestation happening within the shadow state between the ‘old’ and the ‘new’ is happening within the media space of South Africa as well; again, between the ‘old’ and the ‘new’.

Finally, the paper will conclude by making its own recommendations.
2. Background: South Africa today

Three weeks ago, the *Sunday Times* and *City Press* simultaneously led their publications with a load of leaked emails which, one may suggest, they described as the smoking gun in the so-called *State of Capture* scandal. This follows the public protector’s report by the same name. Subsequently, commentators and the media have used the titles ‘State of Capture’ and ‘state capture’ interchangeably, even though they could mean two different things.

The title ‘State of Capture’ attempts to provide an assessment of the extent of the capture; one assumes of the state, though this is not explicit. In other words, the title of the public protector’s report could well have meant that her office was assessing the extent to which capture had taken place in other spheres as well, for example business or civil society. However, this leads us to the notion of what we mean when we talk about the political concept of a ‘state’.

In some understandings, business, civil society and the media would all form part of ‘the state’. Understandably, Madonsela’s omission of the state of capture ‘of the state’ in her title would be superfluous. Yet is this what she meant by ‘the state’ given that her investigation did not entail, for example, looking at the media outlets or the business activities, apart from the ones with government, of the Guptas?

Needless to say, many believe the second title better: state capture. The state, whatever this political concept may mean, has been captured. In this instance, by a particular family. While it is useful to suggest that the family serves as a case study, scholarly endeavour would question firstly how is it possible that this family could ‘capture the state’? What are the prevailing institutions which allow for such a ‘capture’? And secondly, are they the first to do so, i.e. to capture? Does South Africa have a history of dynastic families? And to what extent is the current focus on this family symptomatic of clashes with the other pre-existing dynastic families?

The emails from the Guptas linked several high-ranking ANC and other civil society leaders, such as Black First, Land First, to the Gupta family. The emails included how the family:

- received Mineral Resources Minister, Mosebenzi Zwane’s, CV a month before he was appointed;
- intervened to have the powers of the then Communications Minister, Faith Muthambi, strengthened and these were forwarded for a presidential proclamation, detailing the minister’s new powers, before being signed by the President;
- received confidential information on cabinet meetings from Muthambi;
- paid for Cooperative Governance and Traditional Affairs Minister, Des van Rooyen’s trip to Dubai after his appointment to the cabinet in December 2015;
- arranged for Denel director, Dan Mantsha to be chauffeured around Dubai;
- paid for a deluxe suite, at the luxurious Oberoi Hotel in Dubai, for Matshele Koko, who would later become Eskom CEO;
- were asked by an SAA board member Rajesh Naithani to get him onto the board of Transnet;
- had their staff coach Minister Zwane on how to handle media conferences, including questions about his relationship with them as a family; and,
had their company’s CEO, Nazeem Howa, prepare notes for ANC Youth League president, Collen Maine, advising him on how to respond to media questions.

Since the release of this first batch, a flurry of other emails has emerged all making similar types of allegations of the alleged influence that the Guptas have on those in positions of authority in government, in state owned companies and the ruling ANC. This first batch of emails were released on the weekend of May 28, 2017; a weekend when the ANC National Executive Committee (NEC) meeting was sitting and where a second motion against President Zuma was being debated.

Sam Sole of the amaBhungane investigation unit alluded in a radio interview with Radio 702 to as much. He revealed how his unit had been given a dossier of up to 200 000 Gupta-related emails, but had held back on publishing any of them in favour of first ensuring the safety of the whistle blowers. Sole admitted that they were caught off-guard by the leaking of the same emails they were still perusing, to both the Sunday Times and City Press. He put this down to attempts to sway the ANC NEC meeting that weekend; a claim that did not go down well with his fellow journalists.

The media play an important role in our democracy and it is their prerogative to be able to influence public discourse and decisions. However, the attempt of the release of these emails is to expose the ‘shadow state’, i.e. that it is solely the Guptas who comprise the shadow state and that ministers and executives in SOEs are not complicit in the decision making.

For example, two letters were recently released as well, this time from another source, of the Director-General of Home Affairs denying members of the Gupta family citizenship in South Africa. The letter is then followed up by one written to the same members granting them citizenship and this time the author, the Minister of Home Affairs, appeals to the ‘powers invested in [him]’. The Minister at the time was Malusi Gigaba.

Yet the questions of whether anything illegal was done in this instance are not asked. The answer of course would be that nothing was done illegally. The Minister played by the ‘rules of the game’ and was able to act. He therefore was not compelled to do so and therefore it is unhelpful to suggest that the family was putting undue pressure on the minister.

Where criminality or illegality has occurred a thorough investigation should occur and the media houses should be providing the police with the necessary information for further investigation. For example, if there are ministers who have divulged classified information in contravention of the Executive Members’ Ethics Act and any legislation that protects classified information, a thorough investigation must be conducted and those found guilty must be brought to book.

The same applies to those ministers and executives of SOEs who are accused of having abused their positions to advantage unfairly Gupta owned companies and illegally awarding them with contracts worth billions. If in any of these transactions there is evidence to prove misappropriation of state funds or contravention of procurement regulations, such allegations must be investigated by law enforcement agencies and those found to have acted illegally should be charged.
Trials via the media, innuendo and unsubstantiated allegations do not strengthen our law enforcement agencies. The Hawks, for example, are on record as suggesting that Vytjie Mentor was uncooperative in the investigation. Yet Mentor continues to make allegations and the SCRP report mentions her a number of times as a source, from the media of course. As a result, cases which don’t stand the test of guilt beyond reasonable doubt, a cornerstone of any rule of law in a democracy, are then judged in the public domain and when they are thrown out because of a lack of evidence, the integrity of law enforcement agencies are questioned. This is a dangerous ploy being used by the SCRP.

As a result, South Africa is currently facing the quagmire of trial via the media, on the one hand, and the strengthening of democratic institutions on the other. Democratic institutions are eroded when the basic principles of the rule of law are not pursued but aspersions are cast and innuendo is made. Issues of personality trump issues of policy and the media play a large role in defining this horrid discourse. While we will deal with the media later, it is important to understand the climate in which an academic undertaking such a research project does so in and even an exercise such as the one by the South African Council of Churches. With a hostile attitude towards the ANC, the Guptas and anyone associated with them, it is almost understandable that a group of academics would not want to undertake an ‘objective’ and critical engagement with the concepts and issues.

One critically engages with the document, Betrayal of a Promise, knowing full-well that one would be accused of being bought or paid off, if not by the Guptas themselves then almost certainly by President Zuma and/or the ANC. However, one undertakes this engagement, with the concepts which we will now focus on, knowing full-well that the well is poisoned. Yet it was poisoned even before the Guptas attracted so much attention in our public discourse. Anyone wanting to challenge White monopoly capital would have faced a barrage of criticisms as people like Thabo Mbeki did during his (in)famous ‘Letters from the President” during his ANC presidency.
3. Unpacking concepts, testing assumptions

Any scholarly investigation needs to explore, from the outset, an understanding of key concepts. The framing of these concepts will then serve as a skeleton for the investigation and what it seeks to achieve. In responding to the report, Betrayal of a Promise, and trying to grapple with the concepts of ‘state capture’ and ‘shadow state’, it is important that various concepts are explored. We will do so now as we look at the concepts of institutions and the ‘shadow state’ pursuing ‘state capture’.

Institutions

As with the case in Egypt, in order for us to understand the current political economy or even any socio-political phenomenon within a society, it is important to understand the institutions that exists within that society. In Political Order and Political Decay Francis Fukuyama suggests that for us to understand the political landscape of a country or society a thorough investigation into the political history of that country or society must be undertaken. In other words, nothing is new. Everything that emerges within the socio-political society is able to do so because of the institutions that exist and, at times, persist within that community. Needless to mention that for Fukuyama, the state, the rule of law and accountability are used as constituents in his historical analysis of the societies he studies.

The report, Betrayal of a Promise, does make reference to ‘rules of the game’, but the authors do not link this to institutions. One assumes they omit this important link because of the intrinsic need to make an historical analysis which the authors seem deliberately not to want to make; nor do they explain these ‘rules of the game’.

Fukuyama understands institutions as ‘rules of the game’. They are “…stable, valued, recurring patterns of behaviour...” which persist “…beyond individual leaders...” while being “…persistent rules which shape, limit and channel human behaviour...”.

In other words, our colleagues, such as Chipkin, would know that the ‘recurring patterns of behaviour’ as well as the ‘persistent rules’ which ‘shape, limit and channel human behaviour’ persist long beyond ‘individual leaders’ such as the Guptas, Zuma or even Gigaba. Institutions are ‘recurring’ and ‘persistent’; and as a result, historical analysis is key.

Jackman and Miller use the work of the American political scientist Robert Putnam when they relate institutions, as rules of the game, to game theory. Game theory simply suggests: 1) through persisting and recurring engagement with each other, through the same rules, the players of the game make co-operation easier; 2) if a player plays by the rules, they are rewarded; if they break the rules they are penalised; 3) the game is improved or more intense with a smaller number of players; 4) information, especially about opponents, and fellow
players, as well as any other information e.g. conditions etc, is useful; 5) while competition is encouraged, players are also urged to be personal in their cooperation.\(^6\)

If one were to explain game theory and apply it to a space such as a ‘shadow state’, then we may suggest that it is likely that the Gupta family was no longer playing by the rules that White monopoly capital, for example, had set. Those from the Black capitalist class, co-opted by White monopoly capital, have hitherto been playing by the rules. These members of the Black capitalist class have accepted the stakes meted out to them through Black Economic Empowerment deals even though these have had little impact on restructuring the economy of the country.

As a result, the Guptas broke the rules and are now being penalised by the business community. Why is it that despite their business presence in South Africa from 1993, we have only started to hear about them in the last decade? In fact, they had been successful in their enterprises long before their dealings with the Zumas, so that Pieter-Louis Myburgh in his book, *The Republic of Gupta: A Story of State Capture*, could record that from a mere R1.4 million turnover in 1994, they could turn over R98 million by 1997.\(^7\) This early evidence of the Gupta family making the profits they do makes us to believe that their rise to influence and profit-making was established well before the Zuma administration.

Institutions can therefore be rules of the game that are both formal and informal. The formal institutions are seen in constitutions, laws, regulations etc; whereas the informal ones are the ‘unwritten’, ‘unspoken’ rules. Brushing your teeth or being punctual are examples of informal institutions. On the other hand, it is important to note the variations between cultures in determining especially the informal institutions. For example, not being punctual is fairly acceptable in some African circles. For the Chinese being early is unacceptable, and so is being late.

Institution writing therefore is not simply law or constitution writing. To be judged a ‘good’ institution, it has to be measured by its persistence; how long it is able to survive. Institutions therefore are built over time and to change them requires time as well.\(^8\)

The amalgamation of institutions, rules of the game, is therefore, as Jackman and Miller point out, what we know as culture. The political “prevalence of [political] values”, or their absence, and the political “cultural pattern [reflecting] the attitudes of individuals” or communities, is what we understand as political culture.\(^9\)

However, as the American political scientist Ronald Inglehart adds, individuals, actors and non-actors, are both changers of culture but also changed by culture at the same time. In other words, in the understanding of Giddens, while culture, and political culture, is the structure, individuals are the agents. The structure or system then has the ability to shape the agent while the agent, at the same time, has the ability to shape the system and structure.\(^10\)
Given our African subscription to “umuntu ngumuntu ngabantu - we are therefore I am”, we might want to ‘Africanise’ Inglehart and suggest that communities as agents, rather than individuals, are both changers and re-enforcers of culture. The collective or community becomes Giddens’ agent and culture remains his system or structure.

Put differently, to understand the phenomenon of ‘state capture’, agents need to create a ‘shadow state’ (the structure). Individuals play a very small role, if any, in the formation of the shadow state. Yet a community, or cabal, as suggested the Guptas are in Betrayal of a Promise, of actors need to create the structure of the ‘shadow state’. This though is very short-sighted because it is not useful to concentrate on individuals such as Muthambi, Zwane, Gigaba, Zuma or even the Guptas. Individuals, as we saw with the definition of institutions, come and go. Rather, what is important to understand is that influence only happens on the structure through a network, and a pre-existing network at that.

It is not a new phenomenon that the ‘shadow state’ has been established or that it is pursued now only by a community of actors. White monopoly capital, through (informal) institutions such as the Broederbond, created this ‘shadow state’ and continued to pursue it post-1994.

Culture, as pointed out by Inglehart, is made up of individuals or communities, in the African sense, but is fundamentally group orientated. Putnam re-emphasizes this point when he suggests that because game theory exists or, better put, the game exists, the player tends to play along. Playing along is then an assimilation of the individual/community into group-think. As a result, informal rules that may exist; the subconscious ones in the group-think, will be much harder to change if the agent wishes to change the structure. The formal rule, on the other hand, may change with a stroke of the pen.

Here earlier work by Chipkin and Meny-Gibert, Why the past matters: Histories of the public service in South Africa, comes in useful. Immediately, one should notice the title of this essay which Chipkin co-authored in 2011, ‘Why the past matters’. Yet the SCRP seems to be paying absolutely no attention to the past and ‘state capture’, or ‘shadow state’ in the past.

In this rather seminal essay by Chipkin and Meny-Gibert, they assert that the current state of the South African public sector is largely influenced by the legacy of Apartheid and the histories of the various state administrations, including the administrations in the Homelands. While calling for more scholarly investigations of this nature into public administration in South Africa, though it seems Chipkin has abandoned this 6 years later, the thesis of the essay suggests that agents (bureaucrats) coming into the structure of the public administration, are often influenced by the institutional culture (the group think) that already exists within that structure.13

Put in practical terms, if the institutional culture of the cabinet is to succumb to the influence of a ‘shadow state’ then concentrating on or exposing individual cabinet members is a superfluous exercise. More so, it is not individual members who have introduced this institutional culture and as a result there can be no holy cows because just as Malusi Gigaba and Jacob Zuma are part of the national executive, so too was Pravin Gordhan, Trevor Manual and Thabo Mbeki.
It is suggested by SCRP report that “…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…” This may come as a surprise to the authors who are meant to be schooled in political theory. But that explanation of state capture lies at the heart of all politics: changing the formal and informal institutions, legitimising them and selecting who plays and who sits on the bench. Any kind of politics, even the best democracy, seeks to do that: change the rules, legitimise them and select the players.

If in the light of the above we were to then, for example, unpack the following paragraph which sums up the report, Betrayal of a Promise, when it says:

> 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 regulates 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.  

The centralisation of power-elite is not a phenomenon in South Africa peculiar to the Zuma administration nor did it only originate in 2012. Institutions just do not work this way, especially if they are successful.

PARI should be aware of the ongoing debates between the ANC government and COSATU during the late nineties after the implementation of GEAR and the calling then already of the
rationalisation of the ‘ballooning public sector’. The then Deputy-Minister of Finance, Jabu Moleketi, espoused the notion of labour market flexibility and COSATU and the SACP cried foul. It is needless to mention where Moleketi finds himself today.

Only recently did the new Minister of Finance, Malusi Gigaba, assent to implement the new Financial Intelligence Centre (FIC) Act which regulates, among others the FIC. In the 2015/16 financial year alone, it is estimated that nearly R60 billion left South Africa through illicit means. Parliament was recently informed that nearly 9 million suspicious transactions and 2490 ‘products’ were reported to the Centre. Global Financial Integrity, a Washington based research and advocacy group, reported that ranking 12th globally for illicit financial outflows from the country, South Africa had lost an estimated USD122 billion between 2003 and 2012. This all happened under the watch of Manual, Gordhan and Nene as finance ministers.15

The most horrifying part was that the Auditor-General had for a number of years consistently found that there were irregularities with the FIC and its top management’s performance management systems. In other words, under Gordhan and his predecessors, the Auditor-General was consistently pointing out, on an annual basis, that the FIC was not ensuring that a performance management system was being put in place. It is therefore difficult to understand why the SCRP would laud FIC as one of the National Treasury’s successes needing to be captured.

Another example of National Treasury failure, largely ignored by the mainstream media as well as the SCRP, is the Integrated Financial Management System on which, according to reports, already R1.2 billion had been spent. After 8 years of preparation, the parliamentary portfolio committee on appropriations heard that cabinet decided in 2015 to abandon the project.

The system was intended to integrate and modernise human resource and financial management systems across government. Instead, what was found was that the financial and operating controls did not exist in the Treasury. Deloitte had also investigated the matter and found that of the 54 findings, 49 had ‘catastrophic’ risk ratings while 5 had ‘high’ risk ratings. The system would have cost South Africans R4.3 billion with the first phase, which has already been paid costing R1.2 billion. As mentioned, the project has now been abandoned.16

It is important to note too, though again omitted by the SCRP report, that national budgetary expenditure currently sits at approximately one trillion Rand annually. The bulk of these funds go into departments such as health, housing, policing, education and social development; departments that we have yet to hear that the Guptas have their fingers in.

The 5 bullet points mentioned above and which outline preceding events to the cabinet reshuffle of 17 May 2017 are events that could be traced back to the Mbeki administration, except for the formation of the ‘Premier League’. However, even then political alliances within the ANC and the Tripartite Alliance were being made.

The securitisation or the use of securomats is also not something unique to the Zuma administration. The employment of the security apparatus to fight factional wars in the ANC emerged during Mbeki’s administration. We are all aware of that history. However, even Mbeki’s indulgence could not be divorced from the cardinal role played by securomats during Apartheid.
It is surprising that none of these academics have up until now come out to defend someone like Robert McBride, through all his fights with the state.

While the SCRP report mentions “the sacking of good cops”, little research by these academics and/or commentary by them about how the security forces have been politicised, factionalised and in particular how they, individually or as a collective, have come out in support of these “good cops”. As the Lincoln case in the Western Cape High Court proves, the security cluster is no stranger to being used for political ends, even during the Mandela era.

South Africa is yet to understand the rationale of the AFRISAM deal, which was financially unviable but which was financed by PIC funds during the Mbeki era; the role and function played in this deal by people such as Dr Elias Links, former South African Ambassador to the European Union; and whether any minister in the Mbeki administration assisted in facilitating this deal. These are the kind of investigations that must also take place under the commission of inquiry.

It is well known that Mbeki had his kitchen cabinet which included the likes of Essop Pahad and Joel Netshitenzhe. SOEs were also used to ensure a rapid roll-out of BEE projects. The fights between ministers and directors-general is also a topic that institutes such as PARI would be aware of and how often Mbeki would play these two groups of people against each other in order to maintain control. The institutions emerging from these 5 bullets points were therefore well in place long before the Guptas arrived on the scene.

At the core of our understanding therefore of ‘state capture’ and the ‘shadow state’ must be the role that institutions play, whether formal or informal. The Zuma administration a group of ANC leaders and the Guptas, are merely emerging as actors in a performance that has been rehearsing for the last few decades. What they have done differently is change some of the scenes and actors in the play and this has annoyed the ‘old’ role-players.

In order to understand this symbiotic relationship between state capture and the shadow state it is therefore important to have an appreciation for the state and its historical context in South Africa. However, before we do this it is important to note an important factor that has greatly influenced the South African state. Again, this is a phenomenon that did not originate in 1994, as we will see later even organisations such as the Broederbond practiced it, but something that is almost completely ignored in the SCRP report. It is the question of state capture through cadre deployment.

**Developmental state, SOE’s and cadre deployment**

In his study of the Japanese Ministry of International Trade and Industry (MITI), especially in the years following the Second World War, Chalmers Johnson coined the term ‘developmental state’.

Johnson’s work is relevant in two respects for our purposes. Firstly, he points out the need for an interventionist state, where specific sectors are identified and supported. This could be both in the realm of social services, so as to increase human capital, but it could also be in areas which the state deems as necessary to use as drivers of development and which the state
has at its disposal. In Japan, companies such as Toyota were heavily subsidized and supported; in Park’s developmental state of South Korea it was electronic giants such as Samsung.

Since 2009, and especially through instruments such as the National Development Plan: Vision 2020, South Africa has declared itself a developmental state. In this interventionist respect, the state-owned enterprises (SOEs) have specifically been identified as drivers of development within the country. It was therefore necessary that re-purposing of these state entities take place under the Zuma administration, given that the Plan itself was declared under his presidency.

The second important aspect that Johnson introduces us to is his observation of the particular characteristics possessed by bureaucrats working in the context of a developmental state such as Japan. Peter Evans would later expound on this idea and develops the concept of “embedded autonomy”. In deconstructing embedded autonomy, Evans highlights that these bureaucrats, though highly skilled, enjoyed the institutional culture of gakubatsu. The bureaucrats have studied together at the same institution and are then sent (deployed) to work in various strategic positions within the state; whether this is in government, parastatals and/or government agencies.

Those of us interested in the theoretical foundations of a developmental state continue to interrogate whether South Africa today ever possessed the characteristics or hallmarks of a developmental state. While it is interventionist and while cadre deployment does take place, we have witnessed a misunderstanding and dismissal of both these important developmental state characteristics.

In 2011 Daniel Plaatjies suggested a ‘capturing the state’ through cadre deployment. He writes that the ANC, through this policy, was able to capture what SCRP terms the constitutional state. Through formal institutions such as regular, free and fair elections, the legislature, the executive and even the judiciary, the ANC was able to send into these institutions its cadres in order to deliver on its manifesto, rather than deliver at the whims of the policy persuasion of an individual as, for example, in the case of Thabo Mbeki and HIV/AIDS; and that through delivering on its manifesto political accountability occurs.

Citing Kgalema Motlanthe, former president of the Republic and deputy-president of the ANC, Plaatjies suggests that it is important to identify first key sites within the state before pursuing a deployment strategy. Implicit in this is the understanding that once the key sites are identified the appropriate cadres, with the appropriate capacity, be deployed to those sites. Again, citing Matheson, Plaatjies notes that:

…deployment as a political strategy in the recruitment and appointment of the administration is considered ‘essential for the proper functioning of democracy’. Without this an incoming political administration would find itself unable to change policy [and administrative] direction.

Cadre deployment, presupposing an organisation: the ANC or the Broederbond, could easily be understood in the ‘shadow state’ terms of the SCRP. At the same time, as Plaatjies points out, based on Matheson’s work, a repurposing is essential for a democratic state, and dare we suggest developmental state, to be able to deliver on its promises. One may even venture
further to suggest that it is precisely that a ‘repurposing’ did not take place since 1994, of both the state and its entities, that we have the call for radical economic transformation but even more so, now that the repurposing is taking place, great opposition to this repurposing, even in academic circles, is evident.

The state versus the shadow state

At the kernel of the SCRP report is the idea that a shadow state has been able to pursue state capture. As mentioned earlier, the report suggests that the cabinet reshuffle of 17 May 2017 was a catalytic movement in the pursuit of state capture. Yet it was not so much the cabinet reshuffle as much as it was the replacement of the finance minister. National Treasury sits at the heart of state capture in order for this shadow state to achieve its goals, it is suggested.

Before we delve into the contestation of the state, even by the shadow state, it is important to examine closely the conclusions of what constitutes a shadow state in the report. The report suggests that the shadow state is run by a network of corrupt, rent-seeking brokers. As mentioned, the National Treasury and all its functions and entities sit at the heart of the project of the shadow state. The report claims that the goal is ultimately to take control of the FIC, the Chief Procurement Office, the PIC, the boards of development finance institutions and the guarantee system. 21

The FIC is designed to be a highly sophisticated state entity that is governed by the Financial Intelligence Centre Act (FIC Act). Its objective is to provide financial intelligence to be used in the fight against crime and the protection of national security. As a result, one of the key purposes is to combat money laundering and terrorism. Rumours have it that President Zuma was under obligation to protect his friends, the Guptas and all participating in the shadow state, from scrutiny by the FIC and the banks. It would then make sense for him to want to “control” the FIC for this specific purpose.

The reality is of course that while the Guptas may have been the FIC’s focus, much more illicit cashflows are leaving the country. The Guptas therefore serve as a smokescreen for the bigger culprits which seem to be missing FIC’s attention. At the same time, we must note the signing of the FIC Act by President Zuma in April. This “further strengthen[s] the transparency and integrity of the South African financial system in its objectives to combat financial crimes, which include tax evasion, money laundering and the financing of terrorism and illicit financial flows,” according to his office. 22

It therefore does not add up that the president would on the one hand sign and accede to the promulgation of the Act and on the other want to protect his friends. The president could easily have stonewalled the Act for two years until he leaves office, frustrating any efforts to strengthen the law even further.

Another allegation made is that the shadow state under the President has set its eyes on the Public Investment Corporation and the Guarantee fund System. They do so in order to ram through the costly nuclear agreement without objections from Treasury, it is suggested. The
PIC is the largest fund manager in South Africa as the custodian of government employees’ pension funds which it uses to invest in various sectors of the economy.

The PIC is a state success story and has been used effectively to block greedy private sector executives from awarding themselves undeserved bonuses or to rally against corporations that do not advance transformation in their executive composition and culture. By acting in this manner, the PIC is already at the forefront of advancing radical economic transformation, which is becoming President Zuma’s blueprint after the adoption of the National Development Plan. It makes no sense even for President Zuma to work against an outcome of his success story.

The allegation that the shadow state has captured National Treasury to facilitate a nuclear deal is also without any basis. Government has committed itself to prudent financial management and fiscal consolidation, which Finance Minister, Malusi Gigaba, has committed to on numerous occasions since his appointment. There has been a public commitment that a costly nuclear building programme will not be entertained, and that thorough feasibility studies would be undertaken to determine affordability and in compliance with the recent Western Cape High Court judgement in this regard.

The authors of the SCRP suggest that the following are characteristic of the shadow state:

- Corruption and rent-seeking
- Repurposing, especially of SOE’s
- Rents and rent seeking
- The existence of a power elite
- A symbiotic relationship between the constitutional state and the shadow state.

It is the contention of this paper that neither the shadow state nor its characteristics are peculiar to the Zuma administration nor the existence of the Gupta fraternity. These characteristics have existed in South Africa, and even in states the world over, before. The suggestion therefore that this is a new phenomenon or a phenomenon that is not understood within its historical context lends one to think that the authors have a specific agenda against the Zuma administration. While they have the right to do so, readers must understand their bias.
4. Two groups of protagonists: National Treasury and State-Owned Enterprises - prizes to be won

Newspaper reports, as reliable as they may or may not be, indicate that on 13 December 2015, six days after the president appointed Des van Rooyen as the finance minister, the president was summoned to a meeting facilitated by, among others, his deputy, Cyril Ramaphosa. A number of meetings had been held and Ramaphosa, together with the ANC’s Secretary-General, Gwede Mantashe, the Treasurer-General, Zweli Mkhize, and Minister in the Presidency, Jeff Radebe, facilitated these meetings.

At one of the meetings, where both Patrice Motsepe, brother-in-law to Ramaphosa, and Nkosazana Dlamini-Zuma were present, Motsepe is said to have told the president to shut-up and listen. This warranted a rebuke from Dlamini-Zuma because, after all, Motsepe was to be reminded that he was addressing the president of the Republic. If he was not to respect the man, he should at least respect the institution, the office, of the presidency. This anecdote tells of a comfortability with the presidency in some quarters.

However, the meeting of 13 December 2015 is most telling. Present at the meeting was Maria Ramos, CEO of the ABSA Group and wife of former Finance Minister Trevor Manuel; Colin Coleman, head of Goldman Sachs South Africa; Bobby Godsell, Business Leadership South Africa’s chairperson; Stephen Koseff, Investec Bank Global CEO; Mark Lamberti, Imperial Holdings CEO; Johann van Zyl, Toyota Europe CEO; Ian Kirk, Sanlam CEO, and; Johan Petrus Burger, FirstRand CEO.

The direct results of this meeting was, in the least, contrary to two provisions of the Constitution of the Republic. Firstly, in contravention of section 91 of the Constitution, they instructed the president to appoint Pravin Gordhan as the new finance minister with immediate effect. His appointment was thus announced the night of 13 December 2017. They then provided the president with a list of instructions of what he should commit to in his State of the nation Address. This is in direct contravention of section 42 (5) of the Constitution. Although the input of stakeholders is often sought in the drafting of the State of the nation Address, in this instance the president was held ransom. One of the items to be mentioned by the president was the repurposing of SOEs which the SCRP takes a critical stance on.

It is important to note here that none of these two contraventions have even in the slightest been engaged by our academia or the media. The so-called defenders of the Constitution have yet to reject this direct influencing of state institutions by this group of business people, who are in the main White. The SCRP makes no mention whatsoever of this meeting and its serious ramifications. This meeting is the evidence of a shadow state.
In the opening chapter of his influential book, *A History of Inequality in South Africa 1652-2002*, the economist Sampie Terreblanche writes:

…Those who are not prepared to acknowledge the evils of white domination, and accept responsibility for apartheid’s residues, are usually adamant that the large-scale ‘benefits’ (broadly defined) that accumulated in their hands and in those of their parents and grandparents over an extended period of colonialism belong to them and them alone.  

This assertion by Terreblanche is useful in two respects. Firstly, it alludes to ‘White domination’. In recent times, there has been a debate about whether ‘White monopoly capital’ exists. While it is certain that more research should be going into this debate, rather than outright dismissing the term as a public-relations stunt as some have done, it is useful to understand ‘capital’ in various forms. Here the work of Bourdieu is useful.

Bourdieu suggests that capital, in the main, exists in three forms: economic, cultural and social. Often when we refer to ‘White monopoly capital’ the tendency is to concentrate on the economic understanding of capital only. Yet, have studies gone into whether there is more social capital among White South Africans than there are among Black South Africans? Given the current campaign for decolonization, it could be correct to suggest that White South Africans enjoy more cultural capital in South Africa as well and that in all three instances, not just economic, they possess a monopoly over these forms of capital. Yet more research is needed into this than just a denial of the existing phenomenon.

The second aspect that the quote from Terreblanche alludes to is the existence of the denial by some within our country of the benefits and legacy of colonialism and Apartheid. While Terreblanche might be referring to Whites such as Helen Zille, we may also include now the Black capitalist class that was co-opted by White monopoly capital. Terreblanche is explicit in this when he writes: “…the rapid development of the black [sic] elite testifies to its successful co-option by the corporate sector…” This co-option by the White elite of Black political leaders in particular was a reward for ensuring that White monopoly capital remains intact and to ensure that measures such as heavy taxation, which will bring about social justice, are not pursued.

In their seminal work, *The Super-Afrikaners: Inside the Afrikaner Broederbond*, a book first published in 1972 and republished recently, Ivor Wilkins and Hans Strydom, write as follows:

…Evidence of direct links between the Prime Minister, his Cabinet and the Broederbond Executive is conclusive. Not only did Mr Vorster, when he was South Africa’s Premier [sic], attend Broederbond meetings, he held one in his official residence, Libertas. Cabinet Ministers attend Broederbond Executive Council meetings when policies affecting their departments are discussed…

They continue:

…The secret October 1969 newsletter also revealed Broeder tactics influencing appointments in the public service. It warned Broeders in the civil service to be on
their guard against public servants and magistrates ‘whose attitude is not right’ and might have made ‘wrong recommendations’ resulting in the appointment of ‘hostile persons’”.

An evident example of these appointments that had to be signed off by the Bond was that of Wessel Meyer who was appointed to the Prime Minister’s Department from the SABC. The Bond had to sign-off on this appointment before it could be made. Therefore, it is important to note that on state-owned enterprises, Wilkins and Strydom write in 1972:

“...In South Africa, where the economy increasingly takes the look of a socialist state, there are a large number of semi-State corporations, all of which have powerful Broederbond representation in their top echelons. In terms of political influence, the most important of these is the State-controlled South African Broadcasting Corporation (SABC) which holds a jealously-guarded monopoly of radio and television.”

With this history, it is easy to understand why someone like Hlaudi Motsoeneng would receive the great opposition that he did at the broadcaster. Yet the influence of the Broederbond in the running of SOEs must not be underestimated. The following examples of this stand out:

- JGH Loubser, head of the South African Railways, the largest employer in South Africa at the time;
- DP de Villiers, head of SASOL, was a member of the Broederbond;
- Ampie Roux, chairman of the South African Atomic Energy Board, which was looking at the time and certainly later did develop nuclear capabilities;
- Six of the board members including its chairperson, Tommy Muller, of the State Iron and Steel Corporation (Iscor), were members of the Broederbond;
- RL Straszacker, head of Eskom, was a broeder; and,
- TW de Jongh, governor of the South African Reserve Bank, was also a member of the secret society.

These are just a few of the key examples of how members of the Broederbond were deployed to head up certain strategic roles within the state and SOEs. In fact, Wilkins and Strydom underscore the importance that patronage played in how the network functioned and hence, among others, the establishment of a financial house such as Sanlam. The presence of Ian Kirk, Sanlam CEO, at that meeting of 13 December 2015 must therefore not be underestimated. Those who were in the room, including ABSA’s head and Manual’s wife, Ramos, were carefully chosen. It is needless to mention ABSA’s own deeply Afrikaner roots.

It is this deep presence of White capital at this meeting of 13 December 2015 and the role played by people like Manual that led to a report, Project Spider Web, which surfaced in June 2015 and which stated:

*The white establishment through the private sector has a huge influence in the running of the National Treasury ... The white establishment felt it was too risky to leave the running of the government solely in the hands of the ANC.*

This report was dismissed based on grammatical and spelling errors. When reports such as this surface and are critical of the hegemonic narrative, they are dismissed as conspiratorial;
when they conform to the narrative then they are deemed credible. As the academy we must interrogate them irrespective of whether they conform to the hegemonic narrative or not.

Chris Malikane, the advisor to the new Minister of Finance, Malusi Gigaba, puts it differently when he writes:

*The power of white monopoly capital could be seen in the private sector, in all apparatuses of the state such as government, the universities, the courts, the press, the security forces and political parties.*

*The strength of white monopoly capital is that it owns and controls South Africa’s resources and it has strong international backers. The dominance of white monopoly capital in the economy determines the nature of the state and society as whole, since the existence of the state is supported by the resources monopolised by white capital.*

As a result, White monopoly capital, as institutionalised by actors such as the *Broederbond*, continue to control the levers of power in South Africa to this day. They continue to influence the institutions of the state and direct the purpose of various entities of our democracy. So strong is their influence that Richard Poplak, an intellectual dwarf compared to Malikane, describes Malikane as ‘South Africa’s scariest man’. Again, it is important to highlight that the *Broederbond* might not have existed in its classical form post 1994, but its relics certainly continued to influence the post-Apartheid state. Yet its philosophy, ethos and politics are alive and well in South Africa today.

There is no doubt an existential difference in the *Broederbond* pre- and post-1994. The *Bond* obviously did not exist and operate in the same form as it did after 1994 as it did before 1994. Therefore, remnants of the *Bond* would have existed after 1994 but this did not preclude the possibility that it functioned as a shadow state before the dawn of democracy. As a result, while the bond would not have existed after 1994, its remnants and institutions would have continued well into the new democratic dispensation.

At the same time, while concentration here is placed on the *Broederbond*, it serves as an example of state capture by a shadow state and should not exclude the possibility that White English capital also played a role in the influencing, repurposing and changing of state institutions.

One such example is the reports that President Zuma complained in a NEC meeting of the ANC about a meeting held between an ANC official and Remgro chairman, Johann Rupert. It was later reported that not only did Ramaphosa deny meeting Rupert but he also denied partaking in any meeting with business leaders subsequent to the Van Rooyen appointment as finance minister.

The work by Anthony Butler, *Cyril Ramaphosa*, details these historic relationships and alliances between figures such as Ramaphosa, Godsell, the Oppenheimers and the Ruperts.

It is common cause that the Afrikaner businessmen, ironically led also by academics such as Frederick Slabbert-van Zyl, met with the leadership of the ANC in exile. At this point it must be questioned whether then already there was a capture of the ANC project being formu-
lated by these Afrikaner leaders. These talks which eventually led to the release of political prisoners, the return of exiles and the resolve to enter into multi-party democracy could have been the laying of the foundations of capture of the ANC because the state had already been captured, albeit the Apartheid state.

As a result, in the early years of freedom, we saw a rapid rise in a few Black businesspeople, such as Patrice Motsepe and his sisters, Tshepo, married to Ramaphosa, and Bridgette, married to Radebe. The family is dynastic and is typical of a co-option of the new, post-1994 Black elite by White capital. While it would be disingenuous not to recognise that the Motsepes come from an entrepreneurial family, their rapid rise and, in particular, that of Ramaphosa, Patrice Motsepe and Bridgette Radebe must be attributed to instruments such as Black Economic Empowerment. Patrice Motsepe often holds the title of being South Africa’s richest Black person, with a net worth of R17 billion in 2015, while his sister, Radebe, has a net worth currently of approximately R1 billion.¹⁰

Therefore, if there were to be an examination of ‘state capture’ then it would make more sense to understand the role played by certain businesspeople, especially families such as the Oppenheims, Ruperts and Motsepes, before and, more importantly, post 1994.

Pertinent questions that need to be asked include examining all avenues of state capture, starting with the early days of the Mandela administration, and the role of the Oppenheims and Ruperts. Then Mbeki’s presidency when individuals such as Mzi Khumalo, Saki Macozoma, Moss Ngoasheng and certainly Sipho Pityana became instant millionaires and billionaires, benefitting from the very policies that his government had been advancing.

There are many similar shady deals that speak to the advancement of friends and comrades of those that were close to power then. When the ANC knew that White capital was interested in co-opting Black leaders, deals were struck and these were often done in the corridors of power. However, an important distinction must be made here between those individuals used in order for state capture by White capital and those individual leaders who simply used their political positions, i.e. their political capital, in order to accumulate personal wealth.

If we were to be conspiratorial, like much of the SCRP report, then we could draw linkages between Enoch Godongwana’s position as chairperson of the ANC’s subcommittee on economic transformation and his success in business. We could go further and wonder why other more experienced comrades of Trevor Manual were not appointed to head this same subcommittee on economic transformation instead of him when the first ANC NEC was elected again on South African soil after its unbanning. Yet this is the work of conspiracy theory not academics.

What is the work of academics is to interrogate a distinction or perhaps a variation between state capture and the personal enrichment of some because of the political positions they held. Our conceptualisation of state capture must notice a trend of whereby some who held senior political positions simply used these positions, not even in government, to strike business deals or facilitate business deals between others. Is this state capture? Given that these office bearers are not in government it would not qualify as corruption in the classical sense. Is this perhaps a variation of state capture? These are the questions that need to be examined as well.
We have yet to learn and understand the role of former Economic Development Deputy-Minister, Enoch Godongwana, in the deal involving the investment of SACTWU pension funds in Trilinnear Investment and Godongwana’s sudden resignation from the cabinet.

It is commonly understood that it was Essop Pahad who introduced the Gupta family to former President Mbeki and the ANC. Does he have anything to do with their rapid profit making between 1994 and 1997? What was the role that former President Motlanthe played in the Oilgate saga or the role of former Premier Mashatile in the Gauteng Shared Service Centre? All these questions need to be asked in the context of state capture.

Currently, it is a well-known fact that leading members of the South African Communist Party have been appointed to the councils of universities and the boards of the SETAs. The director-general as well as the CEO of the National Skills Fund are both senior members of the SACP. The Minister of Higher Education is the General-Secretary of the SACP. Has higher education in South Africa been captured by the SACP?

The Manuel-Ramos dynasty also needs interrogation. A thorough understanding needs to be undertaken into Trevor Manuel’s relationship with the likes of Brimstone, a Western Cape based investment company headed by one of his friends while he was finance minister, and which benefitted positively from its relationship with Old Mutual. Manuel’s active encouragement of the demutualisation of Old Mutual and Sanlam and his giving the greenlight to Old Mutual to take its primary listing to London some 15 years ago also needs closer examination.

It would be interesting to investigate the role played by Manuel and his then director-general in Treasury and today his wife, Maria Ramos, in the acquisition of ABSA by Barclays. Today, maybe coincidently, Ramos heads Barclays Africa while Manuel is chairman of Old Mutual Emerging Markets. Who is really the architect of state capture here? When and how did the repurposing of the state begin? Did it really start under Zuma and the Guptas? There is absolutely no doubt that a more thorough investigation, as called by the ANC recently, is needed into how and when the state was captured and by which forces.

**Team 2: Emerging independent Black middle class**

In that essay by Malikane quoted earlier, he suggests two groups of Black capitalist class. The first one relies on the tender system of the state whereas the second is established through the extension of private sector credit in order to attain shares and leadership in White owned enterprises. Malikane goes on to suggest, importantly, that the latter is often comprised of the leaders of the ruling party and in return, though he is not that explicit, the leaders of the ruling party keep the racialized monopolistic character of the economy intact.40

In other words, in the understanding of the SCRP, the first which relies on state tenders are ‘radical reformers’ and the latter ‘constitutional transformers’.41 This is if we accept these descriptions as proposed by SCRP.

Malikane, though, is clear to link those who have benefitted from the tenders of the state as being associated with radical economic transformation. It is this group of Black capi-
talists who are therefore emerging within the ANC and leading the discussion on radical economic transformation. We would remember that the term first emerged with the ANC Youth League under the leadership of Julius Malema, or what one may refer to as the Brett Kebble generation (even the relationship between Kebble and ANC leaders such as Andrew Mhlangeni need to be reviewed). At the time, nationalisation of the mines was just one component of this radical economic transformation or the second phase of the transition, as the Strategy and Tactics document of the ANC would later put it.

Even though Malikane tries to articulate what he thinks radical economic transformation might mean, as opposed to the ‘inclusive growth’ model of Manual and Gordhan, the authors of the SCRP somewhat dismissively suggest that radical economic transformation is an ideological cover for a small power elite to pursue their personal interests through extra-legal means, using the state as a personal resource.\textsuperscript{42}

It is not surprising that they conflate the need for genuine radical economic transformation with corruption and rent seeking since these academics have defined their research and located it firmly in politics of scaremongering.

In its Economic Transformation discussion document prepared for the upcoming national policy conference (2017), the ANC speaks of a package of policy interventions that must be put in place to achieve the following objectives:

• reducing unemployment and youth unemployment
• returning land to our people and supporting land reform
• increasing Black ownership and control in the economy
• activating small businesses and co-operatives
• raising the level of investment
• strengthening social justice and conditions for the poor and working class
• improving the employment impact of infrastructure projects
• reducing inequality and poverty
• dismantling monopoly practices and structures
• asserting South Africa’s interests in the global economy
• improving integration into the African economy
• stimulating inclusive growth.

Even though these may be described as lofty and too broad, one can see the difference between these proposals and those made by one such as Malikane. It could be argued that these listed above were proposed by the constitutional transformers whereas Malikane’s is more of radical reformers.

What the SCRP does not recognise is that something drastic needs to occur in order to re-shape the economy of the country. In the first instance, the economy must be deracialised because the scourges of poverty, inequality and unemployment are deeply racialized. Secondly, the fight against corruption and rent-seeking cannot be divorced from the battle against transforming the nature of this economy. Corporate South Africa remains largely White and it would not be far off to suggest that it is largely the source of corrupt pratices and activities bordering on rent-seeking;
Rather, the report demonizes a group of businesspeople who form part of this Black capitalist class and who left Business Unity South Africa because that organisation was untransformed and wished to perpetuate the ‘co-option’ route. The Black Business Council, comprised of reputable but radical organisations such as the Black Management Forum, is simply dismissed by the SCRP.

At the same time, one cannot ignore the onslaught against Gigaba since his appointment in April 2017. There has been attempts to paint Gigaba as inexperienced and ignorant of this significant portfolio. When he showed a competent grasp of fiscal, monetary and other policies, the focus then shifted to depicting him as a Gupta corruption enabler who cannot be trusted. We were told about how he enabled the appointment of Gupta proxies onto the board of SOEs when he was Public Enterprises Minister. Now there are claims to have documentary proof that he vetoed a decision to deny the Guptas permanent residence when he was Home Affairs minister.

Interestingly, his personal life has not escaped scrutiny either. A television lifestyle interview with his wife Noma was turned into a national scandal on social media, first by a misreading of her explanations about how she supports her husband in his role as minister and later by a woman who claims she and the minister had a love affair.

Yet those making claims that he is a Gupta enabler have never placed any evidence of benefits that he might be deriving from this family to do them all these favours. It is always insinuations and innuendo. It is also telling that the interview with his wife, conducted by eNCA, was broadcast at a time that Gigaba was familiarising himself with the Finance ministry. Was this all just coincidence?

As stated before, it is the contention of this paper that the current furore surrounding ANC leaders who are leading radical economic transformation with the assistance of the Guptas, as they would have done with the assistance of families such as the Kebbles before them, is simply a clash between the old shadow state and the new one. These ANC leaders, of which President Zuma is simply the patron, are treading in territory that belongs to White capital and which was guarded by their Black surrogates such as Manual and Gordhan.

Scholarly work such as that of Picard, and who support this idea of a White run shadow state, suggests that:

…The new non-racial government in South Africa after May 1994 inherited from the state system an authoritarian local level state administration that is tolerant of corruption and the institutionalised use of patronage in the public sector to advance Afrikaner ethnic claims. This inherited institutionalised state dampened economic and social development and weakened the evolution of democratic civil society.

The example of the Broederbond in particular is an example that the concept and practice of a ‘shadow state’ is not new to South Africa. It is suggested that the ANC was captured during the late eighties and this allowed for the uninterrupted existence of the shadow state personified through White capital.
Butler reports how Gavin Rellly, who succeeded Harry Oppenheimer and feared for Anglo’s future in post-Apartheid South Africa, returned “smiling” from “assessing the ANC leadership” for they were merely “patriotic sheep in Marxist wolves’ clothing”. Terreblanche points out that while the formal negotiations were happening, informal negotiations with the ANC leadership was also happening. It is said that ANC leaders were “wined and dined from morning till night by the captains of mining, industry, and banking”.

According to one Waldmeir, whom Terreblanche sourced:

…ANC leaders were bombarded with invitations to conferences, cocktail parties and dinner engagements with local and visiting businessmen, all of whom delivered impromptu lectures on market economics. ANC officials were sent to Washington DC for a familiarisation course at the World Bank. Everywhere they heard the same message: generating economic growth is the biggest priority. Nothing must be done to jeopardise that…

It is therefore not surprising that ANC leaders co-opted by White capital, such as Manual and Gordhan, who are the SCRP’s constitutional transformers, are insistent that it is only ‘inclusive growth’ rather than a radical restructuring of the economy that will take the South African economy out of its quagmire.

There is no scholarly evidence to suggest that the hold that White capital had on the state, which existed pre-1994, ended with the dawn of democracy. In fact, the evidence points to the exact opposite: sunset clauses, property rights and privatisation of state entities all point to a preservation of the White capital shadow state. If anything, therein lies the betrayal of the promise.
5. A critique of methodology: the South African media

From the outset, it is clear that the research undertaken, where hardly any empirical data is employed, is nothing but a collation of news reports from the print media in particular, that is quite hostile towards transformation.

What has been done is a rehash of allegations that have surfaced in the media and then a collective opinion is formed. As mentioned earlier, the subjective views towards President Zuma and the ANC, again an individual right they enjoy, makes for interesting opinion pieces in newspaper columns, but do little towards critical scholarly endeavour.

The same orientation of reasoning as employed by Swilling and his colleagues are advanced by the South African mainstream media. Swilling et al can therefore rely heavily on such secondary and untested data. A good example of this is the deputy editor of the Financial Mail, Sikonathi Mantshantsha. A quick review of his editorial columns over the past six months is telling of a deputy editor determined to paint this ANC administration as greedy and corrupt. This is media which is presented as unbiased, as if Mandela’s administration, for example, was not as greedy and corrupt; or as if the White private sector and its failure to transform itself for the benefit of all South Africans is not greedy and corrupt. A cursory glance at the Competition Commission’s recent findings into the construction industry and the bread industry on price fixing is nothing short of criminality, but yet we hear no howling from academics and editors for resignations and criminal prosecutions.

Mantshantsha is preoccupied with Eskom and the management and governance of the electricity utility under Brian Molefe and Ben Ngubane, who have since both departed. For him, it would seem that President Zuma is the sum total of all of South Africa’s woes. In an editorial column on December 9 headlined “It’s time for honesty”, Mantshantsha writes of how we have to “rid the nation of the many obstacles on that path towards (South Africa’s) full potential”.

He also advises the ANC to adopt a “realistic plan” for economic recovery, one that “declines to adopt the minimum wage discussed for most of the past three years.” Nedlac has adopted a basic minimum wage of around R3 500, which on the face of it is not realistic enough to advance the living standards of the lowest paid workers in our country. If this is the adopted minimum wage that Mantshantsha is rallying against, then we have to question whose interests he serves.

In a January 2017 column headlined “Leaders will be punished”, the Financial Mail Deputy Editor predicts that the masses will punish the ANC at the polls and that South Africa is being driven towards the direction of Zimbabwe and Venezuela, which he dismisses as failed states.
Again, in May he dismissed radical economic transformation as leading us down the Zimbabwe and Venezuela paths. “The privileged blacks who preach radical economic transformation will not acknowledge that Venezuela and Zimbabwe are melting into an endless hell of poverty as a result of the kind of radicalism they encourage.”

Mantshantsha continues on his anti-government posture in another column penned on April 6, 2017 headlined “Malusi Gigaba’s friends”. In this column, he accuses the new finance minister of being beholden to the Gupta family without producing any shred of evidence to support this claim. His only refrain in making such allegations is that Gigaba has not responded to questions about him and the Guptas, except to say that his lawyers will deal with those making these claims.48

Again, this is an indication that the Financial Mail and its deputy editor are part of an open campaign to malign the new finance minister without providing much evidence of any gain he may have derived from taking decisions that benefit the Guptas.

In a column published in April 28, 2017, Mantshantsha laments the country’s downgrades by ratings agencies, joining the chorus that blamed these on the cabinet reshuffle where Pravin Gordhan lost his job as finance minister.

That Zuma has now almost completed his capture of treasury, which until recently stood between him and the many millions his coveted nuclear electricity deal would deliver for him, is celebrated in some circles as RET. Yet nobody has bothered to define this version of transformation. Even worse, the President and his supporters are gloating before checking the impact his irrational decisions will have on the economy. These proponents of a programme they know absolutely nothing about will soon find out what Zuma’s actions really cost them.49

What is notable, however, is that the Financial Mail’s deputy editor starts the column with facts that prove that the doom and gloom predicted after the cabinet reshuffle, especially the predicted fall of the Rand, had not actually materialised. He notes that since the reshuffle, the Rand had clawed back to below R13 to the US Dollar. Currently, the Rand is at the same levels when both Nene and Gordon were at the helm of Treasury. In other words, what has changed besides the ministers?

At the same time, a discussion in academia should pursue in respect of the logic used by rating agencies. How is it possible, for example, that banks automatically get a downgrade, despite how well they are doing, simply because the sovereign rating has been downgraded?

Importantly, we must note the same tone used by this deputy-editor and that of the authors of the SCRP. The authors of that piece of work wish to portray the project as a scholarly undertaking when in actual fact it is nothing more than the exercise pursued by the likes of Mantshantsha.

Jane Duncan, writing on the media’s role in South Africa’s democracy and using the 2009 national and provincial elections, suggests that the challenge with the media is that too much concentration is on personalities rather than the issues facing South Africa. Issues such
as unemployment, crime, poverty, the economy, HIV/AIDS, housing and corruption must be explored and spoken about by our leaders and if they do not do it then the media must make sure that these issues are spoken about.

However, the obstacle in the media not tackling issues but rather personalities is “...owing to its overtly commercial nature...” As a result, “...South Africa's media system has a political economy that skews media attention towards upper-income brackets...” Put differently, “…issues affecting lower LSM’s (Living Standards Measurement), such as poverty and unemployment, are less likely to be canvassed in the media...”.

Duncan continues: “…by focusing on the ‘who’, ‘what’, ‘where’, at the expense of the ‘why’, delivery problems are not exposed consistently, and when they are, they are not related to party policy decisions...”.

Thus, the focus on the Gupta family by both the media as well as Swilling et al falls into this trap of focussing on the who, where and what instead of the why. Why has the Gupta phenomenon been able to take root in South Africa? Why has state captured occurred, if it has occurred? Why is there a shadow state? Instead we are made to focus on events (landing of an aeroplane), places (Waterkloof) and people (the Guptas); but no one asks: why did this happen? Why could this happen? Notwithstanding the role that the president could play here, it is important for us to understand why such a breach could occur, even by the president, if such is the case.

Mantshantsha and those of the same ilk insist on basing much of their hearsay on the former public protector’s hastily prepared State of Capture report, produced on the day she left office. Yet it is important to remember that even Madonsela indicated that the report was incomplete and hence the need for further investigations through a commission of inquiry.

Reporting on her brief investigation, she states that the investigation was sparked by media reports:

The complaints followed media reports alleging that the Deputy Minister of Finance, Hon. Mr. Mcebisi Jonas, was allegedly offered the post of Minister of Finance by the Gupta family long before his then colleague Mr. Nhlanhla Nene was abruptly removed by President Zuma on December 09, 2015. The post was allegedly offered to him by the Gupta family, which allegedly has a long standing friendship with President Zuma’s family and a business partnership with his son Mr. Duduzane Zuma. The offer allegedly took place at the Gupta residence in Saxonwold.”

“The media reports also alleged that Ms. Vytjie Mentor was offered the post of Minister for Public Enterprises in exchange for cancelling the South African Airways (SAA) route to India and that President Zuma was at the Gupta residence when the offer was made and immediately advised about the same by Ms. Mentor.”

The complainants in this regard were Democratic Alliance leader Mmusi Maimane and Father S. Mayebe on behalf of the Dominican Order; a group of Catholic priests.

Media reports have been relied upon in the past to initiate investigations into possible maladministration in state affairs, so this is not an isolated case. In this case, Jonas and Mentor had
approached newspapers (the latter first posted on her Facebook page) to tell their story allegedly involving ministerial offers made by the Guptas to them in return for certain favours.

An analysis of the work of Swilling and his fellow academics shows the methodological challenges with the report. By relying primarily on newspaper clippings and not empirical data or court-tested allegations, the report could be argued to be deeply flawed. Some would go further to suggest that these academics find themselves in the ‘regime change’ paradigm. They have also unmasked themselves as lacking either the will or the ability to interrogate the ANC’s radical economic transformation drive by examining each of its aspects in terms of attainability and need.

The old and new in the South African media today

This paper suggests that there has always been a shadow state in South Africa which has sought state capture and which in many respects can be seen to have taken place through organisations such as the Afrikaner Broederbond. The institutions for state capture were therefore established well before 1994.

The paper then goes on to contend that the hype surrounding the Guptas is simply evidence of the clash happening between old White capital, with the cooperation of a few Black capitalists, on the one hand; and a new breed of ANC leaders, prompted by the Guptas, in this shadow state space, on the other. The fight we are therefore witnessing is simply a fight between the old players in the shadow state and the new ones. Yet we should do away with the shadow state completely because to tolerate new players within the shadow state would be to allow the perpetuation of the Apartheid shadow spaces.

Currently the same fight is happening in the media space. Old media groups such as Naspers and the Times Group are fighting the new Black owned Independent Group. The campaign to demonise Independent is similar to the one of demonising the new players in the shadow state realm. The fact that PIC funds were used to finance the Independent deal, though legitimate and above board, is used to slander Independent and cast aspersions on the media house. One can only imagine that this is taking place because here again Independent, as in the case of the shadow state, is challenging White monopoly; in this instance in the media.
6. A critical look at the Public Protector’s Report

The so-called Nkandla judgement was explicit about the remedial powers of the public protector. Yet while political parties and the public protector’s office were praised at the time for challenging the matter in the Constitutional Court, it is frowned upon that the president of the Republic also exercised his rights to challenge the remedial action proposed in the State of Capture report in our courts.

Our liberal democracy has evolved into one where litigation has become common and it would not be surprising if South Africa becomes as litigious of a country as the United States. Unlike in the US though, the poor cannot access the best attorneys and therefore the necessary mechanisms would have to be put in place to ensure this. This then brings into sharp focus the role of the courts in our democracy and that South Africans are now engaging in; what the DA’s James Selfe has termed ‘lawfare’.

While the president exercises his constitutional rights to review the finding, it is common cause that most parties agree to a commission of inquiry being set up. However, it is the terms of reference that are contested, as well as who should appoint the judge who will head the commission. This paper wishes not to delve into the powers of the public protector. It does however wish, from a scholarly point of view, to question the *modus operandi* of that office, specifically in regard to this particular report.

Once she had received a complaint, Advocate Thuli Madonsela, the public protector at the time, was under obligation to investigate. In fact, in the report she describes the obligation that Maimane’s specific complaint placed on her office, leaving it with no choice but to initiate an investigation:

*The investigation was principally undertaken because of the Second Complainant having lodged his complaint under the Executive Members Ethics Act, which does not allow the Public Protector discretionary power to consider whether or not to investigate a matter falling under his/her jurisdiction. Given that the Executive Members’ Ethics Act requires investigations under it to be concluded within 30 days, the investigation was given priority.*

With this obligation placed on her, it was unfathomable that Madonsela would be able to conclude the investigation within 30 days and she admits as much in the report.

The focus of her investigation was President Zuma. The scope included:

- Whether President Zuma, improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son to be involved in the process of removal and appointment of the Minister of Finance in December 2015;
- Whether President Zuma, improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son to engage or be involved in the process of removal and appointing of various members of the cabinet;
• Whether President Zuma, improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son to be involved in the process of appointing members of Boards of Directors of SOEs;
• Whether President Zuma has enabled or turned a blind eye to, in violation of the Executive Ethics Code, alleged corrupt practices by the Gupta family and his son in relation to allegedly linking appointments to quid pro quo conditions;
• Whether President Zuma and other Cabinet members improperly interfered in the relationship between banks and Gupta owned companies, thus giving preferential treatment to such companies on a matter that should have been handled by independent regulatory bodies;
• Whether President Zuma, improperly and in violation of the Executive Ethics Code, exposed himself to any situation involving the risk of conflict between his official duties and his private interest, or used his position or information entrusted to him to enrich himself and/or enabled businesses owned by the Guptas.

With such an extended scope and the potential to cause serious reputational damage to those concerned, it was incumbent upon Madonsela to take her time and investigate thoroughly all of these serious allegations. As the head of state, it was imperative that when such allegations were made against President Zuma, any investigating authority should thoroughly examine all facts and allegations before them and conduct an extremely thorough probe instead of just relying on guesswork and innuendo.

But because she was in a hurry to leave office with a bang, this time around Madonsela dispensed with her usually thorough professional approach and fairness in the chase for media headlines. She rushed to produce a report that could best be described as half-baked and ill considered.

Let us examine one of her conclusions in relation to the first accusation as to whether President Zuma allowed members of the Gupta family and his son Duduzane, a business partner to the Guptas, to pick and choose Cabinet members. She writes:

If the Gupta family knew about the intended appointment it would appear that information was shared then in violation of section 2.3(e) of the Executive Ethics Code which prohibits members of the executive from the use of information received in confidence in the course of their duties or otherwise than in connection with the discharge of their duties.

This is the kind of conclusion that is derived from a rushed investigation by someone seeking to score quick headlines without thinking about the consequences on those that are accused of very serious violations. To insinuate that the Executive Ethics Code could have been violated without a deep probe of that allegation to establish facts, is truly disingenuous. Sadly, however, the rest of the conclusions follow a similar theme.

The modus operandi applied in the investigation involved interviews with Mcebisi Jonas, Vytjie Mentor, Thembba Maseko, and interviews with a number of ministers including Public Enterprise Minister, Lynne Brown, and “selected witnesses”.

The former public protector is adamant that she served those implicated, in the report, with notices to alert them of the evidence she collected and how it implicated them. Among these
were President Jacob Zuma, Eskom Board Chairman Ben Ngubane, Ajay Gupta, Corporate Governance and Traditional Affairs Minister, Des van Rooyen, and Mineral Resources Minister, Mosebenzi Zwane. President Zuma was interviewed in his office. The transcripts and tapes of this interview were subsequently released to the media by Madonsela despite the President, who insists that he was not afforded adequate time to respond, expressing his disappointment at this conduct.

Jonas made dramatic allegations to Madonsela. He claimed to have been offered the minister of finance position by Ajay Gupta at the family’s Saxonwold home in the presence of the president’s son, Duduzane, and businessman, Fana Hlongwane. Jonas alleged that he was offered R600,000 in cash on the spot and promised another R600 million should he agree to push Gupta business interests as soon as he is confirmed.

But instead of probing further to determine the veracity of such serious allegations which involve possible bribery and fraud, all Madonsela could find was a possible infringement of the Prevention and Combating of Corrupt Activities Act. She writes:

*In view of the fact that the allegation that was made public included Mr Jonas alleging that the offer for a position of Minister was linked to him being required to extend favours to the Gupta family. Failure to verify such allegation may infringe the provisions of Section 34 of Prevention and Combating of Corrupt Activities Act, 12 of 2004 which places a duty on persons in positions of authority who knows or ought reasonably to have known or suspected that any other person has committed an offence under.*

Madonsela does not, however, clarify who the allegations would have been reported to since Jonas only indicates that he informed Nene of apparent plans to replace him. So, who failed to verify these allegations thus infringing the law? If this was a court of law, the onus would have been on Jonas, the accuser, to prove beyond reasonable doubt and produce concrete evidence that such an offer had been made to him. But then again, Madonsela is not a court of law. She has not made any real findings but has couched her report in a manner that suggests grave wrongdoing without producing a shred of evidence to prove this.

Madonsela continues:

*There seems to be no evidence showing that Mr Jonas’ allegations that he was offered money and a ministerial post in exchange for favours were ever investigated by the Executive. Only the African National Congress and Parliament seemed to have considered this worthy of examination or scrutiny. If this observation is correct, then the provisions of section 2.3 (c) of the Executive Ethics Code may have been infringed as alleged.*

However, there is no evidence to suggest that Jonas ever reported this incident to the president or cabinet but only informed Nhlanhla Nene. We have not been told what Nene did with the information. Yet Madonsela insists that the onus is on the national executive and the president to have acted on information to which they were not privy.

Madonsela uses the same principle in relation to her interview with Mentor, who alleges that she was offered the position of public enterprises minister by the Guptas, with President
Zuma present in another room. She could have the job, she relays, if she agreed to cancel the SAA route to Mumbai, India. Again, here the insinuation is that the Executive Ethics Code could have been violated as a result of failure to verify mentor’s allegations. It is still not clear who should have verified the allegations because just as in the Jonas revelation, the onus should have been placed on the accuser to prove these serious allegations.

However, it is Madonsela’s final “recommendations” that have left the president with no choice but to lodge his own review application to set aside this report. Below is Madonsela’s proposed remedial action.

• The president is to appoint, within 30 days, a commission of inquiry headed by a judge solely selected by the chief justice who shall provide one name to the president.
• The judge is to be given the power to appoint his/her own staff and to investigate all the issues using the record of this investigation and the report as a starting point.
• The president is to ensure that the commission is adequately resourced, in conjunction with the National Treasury.
• The commission of inquiry is to be given powers of evidence collection that are no less than that of the public protector.
• The commission of inquiry is to complete its task and to present the report with findings and recommendations to the president within 180 days. The president shall submit a copy with an indication of his/her intentions regarding the implementation to parliament within 14 days of releasing the report.
• Parliament is to review, within 180 days, the Executive Members’ Ethics Act to provide better guidance regarding integrity, including avoidance and management of conflict of interest. This should clearly define responsibilities of those in authority regarding a proper response to whistleblowing and whistleblowers. Consideration should also be given to a transversal code of conduct for all employees of the State.
• The president is to ensure that the Executive Ethics Code is updated in line with the review of the Executive Members’ Ethics Act.52

The courts will decide whether a Chapter 9 institution may order the president to institute a judicial commission of inquiry and whether it has the right to determine how the presiding judge should be selected or what powers such a commission should have. While the Constitutional Court has rightly indicated that the public protector’s remedial action is more than mere recommendations and has to be acted upon, it is clearly inconsistent with the separation of powers for a Chapter 9 institution to force the president to institute a judicial commission of inquiry.

The president has rightly chosen to seek a review order this time around, which is the correct route to take. A report of this magnitude cannot be left unchallenged for fear of the damage it does to the office he occupies and our constitutional democracy.

The SCRP commence their report by indicating that the project emerges from this State of Capture report released by the public protector. However, the report makes no mention of any of these challenges in the investigation, nor takes a critical look at how the institution of the public protector, one that has emerged as one of the most important in our democracy, operates. What we need from our academia is strengthening of democratic institutions; not just praising them. If we fail to do that as academics, we may suggest that therein lies the betrayal.
7. Conclusion

Responses from the electorate and civil society

Since these allegations of state capture came to the fore, there have been numerous calls for the president to step down. Business leaders such as Sipho Pityana, some ANC stalwarts and now members of the cabinet have expressed the view that the president is too damaged to continue in this position. There has been serious pushback by his supporters in the party and in the NEC of the ANC in particular.

It is now history that the ANC suffered its heaviest electoral decline last August. It has lost important metros; with the capital Tshwane and the economic hub Johannesburg being the hardest to accept as now governed by the DA. There have been many schools of thought since the local government elections as to who should shoulder the blame for these losses.

The anti-Zuma school of thought somehow traces the ANC’s electoral decline to that moment under a marquee in Polokwane in 2007 when just over 60% of ANC delegates rejected Mbeki in favour of Zuma. They point out that the rot would have started there, by placing into office a man they deem as deeply compromised and not fit for leadership.

But shouldn’t Zuma be judged based on the performance of the ANC at the polls since he assumed power and his track record in government, rather than his past misdeeds? When he ran for president in 2009 his fraud and corruption charges had just been withdrawn by the National Prosecuting Authority. He had also not shaken off the rape trial that put him on the spot some three years earlier. Yet that same Zuma was able to command the ANC to a 62% plus victory, just shy of two-thirds majority.

In 2014 when he again ran for office, Madonsela had just released her Secure in Comfort report and this had generated a massive public outcry over wastage of public resources on a single family. This time the opposition were emboldened, they quoted Madonsela’s report at every turn, telling voters what a mistake it would be to return the ANC in office with Zuma as its leader. Rent-a-quote analysts and self-proclaimed ‘independent thinkers’ used their influence in the media sphere to write and share their biased opinion demonising Zuma.

There was a different story to tell at the polls, however. That very same compromised leader had led the ANC to a 62% national victory. The ANC retained all its provinces except the Western Cape. Yes, the counter argument here is that Zuma wasn’t solely responsible for this victory and that it was the greater ANC machinery that went to work on the ground to convince the electorate to renew the ANC’s mandate. The people, they said, had shown faith in the ANC and not in Zuma.

Surprisingly, that argument was history when the ANC haemorrhaged votes during the 2016 local government elections in August. Suddenly it was all Zuma’s fault. The president’s many scandals, his association with the Guptas, the Nkandla saga etc. had alienated traditional ANC voters who rebelled by punishing the party at the polls.
However, voters are not punishing the ANC at the polls solely because of President Zuma. Even if he were to step down tomorrow, the declining electoral trend would continue unabated for an extended period. The ANC, as a collective, needs to take responsibility for its failure to deliver on its mandate. Government leaders have become unresponsive to people’s needs. The ANC has disappeared from its core constituencies and others have occupied this space instead.

The party needs to go back to its basics, introspect and come out with painful answers about why it is losing support. People want their government to care; they need a growing economy, they want jobs, decent shelter, healthcare, a functioning education system; they want to feel safe and to become productive citizens rather than just recipients of social grants. As a result, the ANC Youth League should be commended for suggesting that two deputy-secretaries-general be elected in December 2017, one for organising and one for monitoring and evaluation.

That better life for all that was promised in successive election campaigns has to be attained by many more for the ANC’s mandate to govern to be renewed every five years. Those who blame Zuma alone for this decline have their heads buried deep in the sand. For at the moment, the ANC’s core constituency is concerned about jobs, security, water and housing.

We should also not be naïve to think that the Black capitalist class co-opted by White monopoly capital, both domestic and foreign, is not funding drives within civil society to be antagonistic towards the current administration. The role of Sipho Pityana and ‘Save South Africa’ is one such example, where the challenges faced in the country seemed to have been reduced to the president and the Guptas. While one has respect for the churches and wish not to cast aspersions on the men and women of the cloth, we need not be naïve and remember on which side the Church was during the French Revolution.

**Recommendations**

At the heart of South Africa’s current impasse is the revaluation of the 1994 social contract and as a result the Constitution that is meant to unite all of us. However, this Constitution in the current political climate stands the real danger of losing popular legitimacy if issues of socio-economic challenges are not addressed. Hitherto, the Constitution of the Republic itself has been seen as a major obstacle, if not the only one, to this radical economic transformation that people wish to enjoy.

The SCRP report has a *sine qua non* argument that the Constitution is that which must be safeguarded at all costs. For political economists, this is a very narrow interpretation of their role and as a result they are grouped with the constitutional transformers, the elite, that have been able to benefit from the Constitution. They therefore do not assist South Africans in dealing with the real challenge of disillusionment with a Constitution that is twenty-years old. The social contract, palpable through the Constitution, is simply not resonating. Is this the case though?
Recommendation 1: more objective research into consensus

The first recommendation, even before an economic consensus within the framework of the Constitution can be reached, would be to engage with South Africans more and to, on an ongoing basis, discover what the issues are facing South Africans. More than a study into the Guptas, research needs to be conducted to determine how many South Africans will ‘uphold, defend and respect’ the Constitution. If so, why? If not, why not?

The Freedom Charter was the last real canvassing of the thoughts and ideas of South Africans about their political, economic and social future. Something similar again should be done. The fact that it was elites that negotiated the constitutional settlement and therefore it is not resonating with the rest of the populace is a common theme in political and democratic theory. In fact, one questions now why South Africans were not afforded the opportunity to vote, through a referendum, on the Constitution before it was signed.

Reaching a new economic consensus as proposed by the SCRP simply means that history will be repeated. Elites will be deciding this consensus and as a result shadow states will be at play.

Recommendation 2: a thorough investigation into state capture

A thorough investigation and research must go into state capture; but it must include all protagonists, as exemplified in this paper, which will include White capital and institutions such as the Broederbond. In order for the SCRP to be worthwhile a proper research and scholarly undertaking needs to occur, situated within political theory, using 1994 as a benchmark. In other words, all possible forms of state capture and shadow states before 1994 and post 1994. To concentrate on the Zuma administration and the Guptas is a smokescreen, if not downright factional.

A judicial commission of inquiry with terms of reference beginning from 1990 must be appointed. Yet the commission must be set up in terms of the applicable law. The commission must then provide for guidelines for parliament to set clear and stringent regulations for the formulation of rules, practices and even legislation to prevent nepotism, corruption and general abuse by the executive and party officials from doing business with government, directly or by proxy.
8. Endnotes

1 Marfleet, P. 2016. Egypt: contested revolution. p14
16 As found online on: https://www.businesslive.co.za/bd/national/2017-06-05-lapses-lapses-in-governance-put-treasury-at-risk/