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# Corruption and the State<sup>1</sup>

*We tend to think of corruption as an historical constant or universal. In fact, the term has a more varied conceptual history<sup>2</sup>. Contemporary definitions of corruption are a late eighteenth century innovation. If we use Montesquieu to stand in for the 'classical' period then corruption, on his terms, is a feature of any polity (democratic, aristocratic, monarchic or despotic) when its leaders fail to act on the basis of its core or foundational principles. Jumping to the present, and on these terms, we might say that a person or a party or a government is corrupt in South Africa to the extent that he/she/it behaves in a way that undermines the principles of the Constitution. This understanding finds its way into contemporary private and public conversations, though it remains at a distance to 'modern' definitions of the term.*

It is in the late eighteenth century work of Edmund Burke and Adam Smith that corruption came to be associated with specific activities that threatened to subvert the integrity of public office (especially bribery, graft and electoral fraud)<sup>3</sup>. This is the sense in which it continues to be defined in international charters, national legislation and South African law. Typically, definitions of corruption identify an act of private abuse, or private misuse, or private appropriation, as lying at the heart of the phenomenon of corruption. Drawing on J. S. Nye's formative work, the World Bank, for example, defines corruption as the "abuse of public office for private gain". This phraseology carries with it a sense of misuse of office with violent or injurious intent (think of spousal abuse, abuse of alcohol). Nye's own phraseology was more subtle, allowing a broader range of activities to be included in the notion of corruption. He referred not to 'abuse' but to "deviation from the formal duties of public role for private gain"<sup>4</sup>. This subtlety is important, because it brings into play practices of non-compliance with internal rules and procedures where malicious intent may be absent. I will return to this later. Brooks discussed it in similar terms: the "misperformance or neglect of a recognised duty, or the unwarranted exercise of power, with the motive of gaining some advantage, more or less personal"<sup>5</sup>.

Burke and Smith would thus have no difficulty recognising the terms of the current debate about corruption; for in a fundamental way we remain, or are rather once again, within their conceptual universe – more than 200 years later. Central to their understanding of corruption was a distinction between *private* interests and *public* duties. This distinction would soon become the hallmark of *liberal* thinking. Buchan and Hill go so far as to suggest that it was Burke's campaign against the corruption of the East India Company in the late eighteenth century that laid the foundation of British nineteenth century liberal models of government<sup>6</sup>. I will return to this shortly. For the moment, let us merely note an anomaly.

For all its apparent ubiquity in the twentieth century, corruption became a public policy concern only its closing years. In 1996, the World Bank, then under the leadership of James Wolfensohn, put the issue firmly on the agenda as part of a broader focus on ‘good governance’<sup>7</sup>. In the same year the United Nations adopted a declaration against international corruption and bribery, following this up with the United Nations Convention Against Corruption, adopted in Mexico in 2003<sup>8</sup>. Since then numerous non-governmental and inter-governmental organisations have taken up the issue, including the International Monetary Fund, World Economic Forum, World Trade Organization, International Chamber of Commerce, The Organizations of Latin American States, Organization of Economic Co-operation and Development, the G-7, European Union, African Union, Southern African Development Community, Transparency International and Global Integrity<sup>9</sup>.

Hodgson and Jiang attribute the conflation of corruption with the public sector to the hold of libertarian and individualistic political ideologies that see that state as a restraint on individual freedom. In other words, they see the focus on corruption from the 1990s as the handmaiden of a liberal politics of rolling back the State. “From this individualistic and libertarian perspective [...] the solution to the problem of corruption [is] the reduction of the State”<sup>10</sup>. Was this not the intention of structural adjustment exercises undertaken by the World Bank and the International Monetary Fund in many African countries in the 1980s?

The renewed interest in corruption, coming as it does at the end of the Soviet period, reflects the ascendancy of liberalism as an economic ideology as much as it does liberalism as a *constitutional framework*. Indeed, this last aspect, though often overlooked, is more important. Modern definitions of corruption are not necessarily tied to liberal or neoliberal economic policy prescriptions; but they are closely tied to a *liberal conception of the polity*.

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## Liberal State

A distinctive feature of the liberal idea of the state is its emphasis on neutrality – that the state should provide a neutral framework within which different conceptions of the good life can be pursued<sup>11</sup>. Kymlicka explains: “The state does not justify its actions by reference to some public ranking of the intrinsic value of different ways of life, for there is no public ranking to refer to”<sup>12</sup>. There has been, especially since Rawls, an important debate about the limits of liberal neutrality. Joseph Raz, for example, distinguishes between “neutral political concern” and the “exclusion of ideals”. In the first case, the state is neutral *viz.* the consequences of its policies. In other words, government actions should not benefit any particular idea of the good life over another. The second admits that government policies may, effectively, privilege some life-chances over others, but the state limits it from *choosing* to support certain life-chances over others. “The first,” summarises Kymlicka, “requires neutrality in the consequences of government policy; the second requires neutrality in the justification of government policy”<sup>13 14</sup>.

Weber’s distinctive contribution to the debate about the liberal model of the state is to distinguish precisely between government and state or government and bureaucracy. Governments, especially in a democracy, represent particular interests and do and should adjudicate between conceptions of the good life. That is their prerogative. Yet

the state in the form of the bureaucracy does not adjudicate; it merely implements the policies and programmes of the government of the day. This is the sense in which the state is neutral. Yet Weber also worried about the conditions of such neutrality. Writing in 1917, at the same time as the Russian revolution but from a very different perspective, he worried about the loss of neutrality that came when the bureaucracy developed its own interests.

Central to the liberal conception of the state is the idea that the bureaucracy can be organised in such a way that it:

- operates neutrally vis-à-vis any social class or group of individuals and
- can become a reliable instrument for whoever controls parliament (the legislature) and government (the executive).

On these terms corruption refers to:

- any kind of bias or partisanship that bureaucrats practise either towards themselves (Weber's major concern) or to a social class or group (Burke's objection),
- any deviation in the work of bureaucrats from the policies and programmes of the government of the day.

## Lenin and the National Democratic Revolution

*A proletarian dictatorship, in ways impossible for a liberal democracy, worked in the general interest. Bourgeois interests were by definition particular. Working class interests were universal (for work, for housing, for healthcare).*

Yet for most of the twentieth century and for a good part of the nineteenth century too, the idea that the bureaucracy could or should be neutral relative to social interests was rejected out of hand. This was precisely the burning question in 1917 in Russia after the February Revolution and prior to the October coup. "Such a conjuncture," reports Erik Olin Wright, "sharply raised a central theoretical issue that has preoccupied much writing and political struggle on the Left for a century"<sup>15</sup>:

"Should the state be considered an essentially neutral apparatus that merely needs to be 'captured' by a working-class socialist political party for it to serve the interests of the working class, or is the apparatus of the state in a capitalist society a distinctively capitalist apparatus that cannot possibly be 'used' by the working class, and as a result, must be destroyed and replaced by a radically different form of the state?" (*Ibid*, 195).

Lenin, following Marx, insisted that all states were dictatorships and modern, liberal states were bourgeois dictatorships. In other words, the apparent neutrality of the bureaucrat was a ruse, obscuring his or her complicity in reproducing bourgeois economic domination. A genuinely democratic state, especially in the Aristotelian sense, would dispense with such deception and declare openly its partisan character (in favour of the poor and the working class). Marx called such a state a Dictatorship (of the Proletariat) precisely to emphasise that it had to take sides. In this sense, the state was never neutral, nor should it be. Right up until the 1970s, the formula of the Dictatorship of the Proletariat (DOP) was a key platform of most Communist Parties, including Western European ones<sup>16</sup>. State partisanship was not thought of as simply a moral choice, akin, for example, to Christian concern for the poor. A proletarian dictatorship, in ways impossible for a liberal democracy, worked in

the general interest. Bourgeois interests were by definition particular. Working class interests were universal (for work, for housing, for healthcare)<sup>17</sup>.

## Hypothesis

Corruption in South Africa has been made possible by the fact that the ANC in government does not have a liberal conception of politics and of the State. This is not a normative claim, but an analytical one. In pursuit of its political programme of overcoming the legacy of apartheid and hence of working in the interests of “Blacks in general and Africans in particular”<sup>18</sup>, the ANC has simultaneously sought to transform the structure of the State itself. The ANC’s argument is not simply that successive Nationalist Party governments implemented racist laws and policies, but that the very structure of the state itself worked in tandem with white interests. The Apartheid State was, if you like, a ‘White State’. On these terms, democratising the State has been associated with numerous efforts to *Blacken* it, where Blacken in this context has referred not only to a project of demographic change, but also to one of structural change<sup>19</sup>.

*The new ‘instruments’ and designs introduced to the public sector to de-bureaucratise it, that is, make it more amenable to democratic control, were derived from the practices of avowedly liberal governments seeking to expand the role of the market and to introduce business principles into the workings of government.*

Let us note the following. The purpose of state transformation has not been to undo the social bias of the State, but to change its direction – from the white minority to the black majority, most notably to Africans. In other words, the purpose of state transformation in South Africa has not been to create a neutral state. To accuse the ANC government of failing in this respect is to miss the point.

Consider the following extract from the ANC’s *State, Transformation and Property Relations* document of 1998. In language reminiscent of Lenin’s, the document declares:

“We [the National Liberation Movement] have inherited a state which was illegitimate and structured to serve the interests of a white minority. [...] To attain all these and other objectives, it became the seedbed of corruption and criminal activity both within the country and abroad. [...] The NLM cannot therefore lay hands on the apartheid state machinery and hope to use it to realise its aims. The apartheid state has to be destroyed in a process of fundamental transformation. The new state should be, by definition, the antithesis of the apartheid state”<sup>20</sup>.

The Apartheid-era bureaucracy was regarded as unfit to carry out the orders of the democratic government. In the first place, it was staffed at senior levels by largely white, Afrikaans-speaking men – the very people responsible for implementing the racist programmes of the former government. Transformation of the state thus required “extending the power of the NLM over all levers of power: the army, the police, the bureaucracy, intelligence structures, the judiciary, parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on”<sup>21</sup>. In the second place, the very organisation of the Apartheid public service (authoritarian, hierarchical, inwardly-focused, rule-driven<sup>22</sup>) impeded mass participation in the workings of government and made it unlikely that it could be used to implement the policies of the new government. There is an irony in this. The new ‘instruments’ and

designs introduced to the public sector to de-bureaucratise it, that is, make it more amenable to democratic control, were derived from the practices of avowedly liberal governments seeking to expand the role of the market and to introduce business principles into the workings of government. This irony was not always lost on those who introduced these measures<sup>23</sup>.

*Hence, in order to overcome Apartheid corruption (manifest in the very structure of the economy and society) one needed corruption on liberal terms (that is, a state that served partisan interests).*

Public sector reform in South Africa has often been beset by contradictory interventions. Even if some actions about the public service after 1994 have been informed by liberal conceptions of state neutrality<sup>24</sup> or impartiality, they have come up against others that have not. The ANC's policy of cadre deployment is a case in point. It is not enough that an ANC government has embarked on programmes to undo the legacy of Apartheid (legislative reforms, massive

housing programmes, the implementation of Affirmative Action, the introduction of Black Economic Empowerment measures). Members of the African National Congress are given strategic positions in the public service and in the State *qua* members of the African National Congress. In a similar vein, Ministers, rather than senior public servants (Directors-General, for example), control the appointment of departmental officers. In both cases, the intention is to strengthen political control over the public service. In these situations the measure of public service is not the degree to which public servants deal impartially with the public, but the opposite. It is the degree to which the organisation and structures of the administration are tilted towards the service of Blacks and Africans in particular.

Let us note the consequences of this politics for the notion of corruption. From the perspective of the NDR, corruption was evident in the structure of the country's political economy – gross racial and class inequality derived from South Africa's 'colonialism-of-a-special-kind' – and not in the partisan behaviour of government officials. Hence, in order to overcome Apartheid corruption (manifest in the very structure of the economy and society) one needed corruption on liberal terms (that is, a state that served partisan interests). Consider the case of Black Economic Empowerment.

## **Black Economic Empowerment**

Let us follow the logic of the Mbeki presidency. I am drawing on the *State, Transformation and Property Relations*, an important theoretical intervention from this period and likely written by Thabo Mbeki himself. One of the tasks of the National Democratic Revolution, it argues, is to change property relations in South Africa, including patterns of ownership, investment and of procurement. How can this be done when capital is held in "overwhelmingly white hands", limiting the influence of the ANC government in how and where it is invested. The solution is deemed to lie in the creation of a *black capitalist class*, one created essentially through government procurement practices and regulatory interventions requiring minimum quota for Black equity in private (White) firms. By virtue of their dependence on the ANC, black capitalists would be amenable to influence from the NLM. Patterns of investment could then be directed into sectors and initiatives that benefitted the black majority.

"In a systematic way, the NDR [National Democratic Revolution] has to ensure that ownership of private capital at all [...] levels [...] is not defined in racial terms. Thus the new state – in its procurement policy, its programme of restructuring state

assets, utilisation of instruments of empowerment, pressure and other measures – promotes the emergence of a *black capitalist class*” (emphasis added)<sup>25</sup>.

Let us leave aside the political innovations in the argument above; especially how it departs from the conventional ANC-SACP-Cosatu understanding of the relationship between capitalism and apartheid<sup>26</sup>. For our purposes, it is interesting to note that an argument about corruption emerges at this point in the document, that is, after the discussion of the black capitalist class as a strategic goal of the NDR. Here is the sentence: “While these forces [the middle strata and black capitalists] are direct beneficiaries of the NDR and share an interest in its advancement in the current phase, they can easily be co-opted into the agendas of their white counterparts; and they can easily also become a source of corruption within the state”<sup>27</sup>. What does corruption refer to here?

It is no longer corruption *qua* violence and racial inequality in the structure of South Africa’s society and economy. Here corruption comes to resemble a Burkian definition. In other words, it refers to those who in the name of serving the public good, serve themselves or serve other private interests. Yet the resemblance is only superficial. Unlike Burke, the ANC does not object in principle to the use of public goods for private gain. Corruption happens if the *wrong* individuals benefit or the private benefit does not further the public good. In the case of the Mbeki government, that is, there was a subtext. Not all Black beneficiaries were the ‘right’ kind of beneficiaries, only those deemed so by the National Liberation Movement. Moreover, it was at the discretion of the NLM to decide whether a private benefit was simultaneously a public good. On this analysis, there was corruption to the extent that public resources were directed for *inappropriate* private gain, where the measure of ‘appropriateness’ was at the discretion of the National Liberation Movement to decide<sup>28</sup>.

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### Three concluding observations

While both liberal and NDR notions of corruption invoke a measure of ‘misuse’ of public funds, any resemblance between them is only superficial. In the liberal definition, ‘misuse’ refers to a *legal or public service standard*. In the other, ‘misuse’ implies a standard determined in and by the *National Liberation Movement*.

#### NOTES

- 1 This is an extract of ‘The Withering of the State’, a PARI Short Essay (No. 5, October 2012) by Ivor Chipkin.
- 2 Buchan, Bruce and Hill, Lisa, *From Republicanism to Liberalism: Corruption and Empire in Enlightenment Thought*, School of History and Politics, University of Adelaide, pp. 2.
- 3 *Ibid*, pp. 2.
- 4 Nye, Joseph S., *Corruption and Political Development: A Cost-Benefit Analysis*, in *American Political Science Review*, 61 (2), 1967, pp.: 417-427, pp. 419.
- 5 Brooks, Robert, *Corruption in Politics and American Life*, Dodd, Mead and company, 1910, pp. 46.
- 6 Buchan, Bruce and Hill, Lisa, *From Republicanism to Liberalism: Corruption and Empire in Enlightenment Thought*, School of History and Politics, University of Adelaide, pp. 25.
- 7 see Doig and Theobald.
- 8 Camerer, Marianne Irene, *Corruption and Reform in Democratic South Africa*, a thesis submitted to the Faculty of Political Studies at the University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Doctor of Philosophy, March 2009, pp. 4.
- 9 *Ibid*, 4.
- 10 Hodgson, Geoffrey M. and Jiang Shuxia, ‘The Economics of Corruption and the Corruption of Economics: An Institutionalist Perspective’ in *Journal of Economic Issues*, Vol. XLI (4), 2007, pp. 1047.
- 11 cf Rawls, Kymlicka, Raz.
- 12 Kymlicka, Will, ‘Liberal Individualism and Liberal Neutrality’ in *Ethics* Vol. 99(4), 1989, pp. 883 – 905, pp. 886.
- 13 Kymlicka, Will, ‘Liberal Individualism and Liberal Neutrality’ in *Ethics* Vol. 99(4), 1989, pp. 883 – 905, pp. 884.
- 14 See the debate between Kymlicka and Raz. Joseph Raz, *Morality of Freedom*, Oxford: Oxford University Press, 1986 and Will Kymlicka, ‘Liberal Individualism and Liberal Ethics’ in *Ethics* 99, 1989, pp. 883-884. See also William Galston, *Liberal Purposes. Goods, Virtues and Diversity in the Liberal State*, Cambridge: Cambridge University Press, 1991 – especially Chapter 4.

- 15 Olin Wright, *Erik, Class, Crisis and the State*, London: Verso, 1983, pp. 195.
- 16 In 1976, at its 22nd Congress, the French Communist Party (PCF) formally declared that the concept of the dictatorship of the proletariat inapplicable in the conditions of Western Europe. See Etienne Balibar, *On the Dictatorship of the Proletariat*, New Left Books, 1977.
- 17 It is not so much the critique of capitalism that Marxists have foregone, but rather their claims about the historical role of the working class. If no particular class can claim to represent the universal, then a State that works in favour of any particular groups is simply partisan, hence corrupt because it mistakes private interests for those of society as a whole.
- 18 African National Congress, *Building a National Democratic Society, Strategy and Tactics*, adopted at the 52nd National Conference of the ANC, 1999.
- 19 I have discussed this elsewhere (Chipkin:2011; Chipkin and Meny-Gibert:2012).
- 20 African National Congress, 'The State, Property Relations and Social Transformation' in *Umrabulo No.5, Third Quarter*, 1998.
- 21 African National Congress, 'The State, Property Relations and Social Transformation' in *Umrabulo No.5, Third Quarter*, 1998.
- 22 See McLennan, Anne and FitzGerald, Patrick, 'Administration Initiative and the Mount Grace Consultation' in (McLennan, A. FitzGerald, P eds.) *The Mount Grace papers: The new public administration initiative and the Mount Grace Consultation*, Johannesburg: Public and Development Management Programme (P & DM), University of the Witwatersrand Press, 1991.
- 23 Geraldine Fraser-Moleketi was the Minister of Public Service and Administration at the time. She writes in her Masters dissertation, written when she was in office: "the minimalist, neo-liberal ideology of NPM [New Public Management] clashed with the democratic and radical approaches of the ANC especially with regard to the 'macro' sides of reform". "But such an appreciation", she continued, "could not detract from the potential these tools offered to result in greater efficiencies in state administration" (Moleketi, 14).
- 24 The introduction of New Public Management principles in the organisation of the public service in the late 1990's was driven by concerns with efficiency and innovation.
- 25 African National Congress, 'The State, Property Relations and Social Transformation' in *Umrabulo No.5, Third Quarter*, 1998.
- 26 In the State, Transformation and Property Relations, Apartheid is deemed to have prevented Blacks from benefitting from capitalism such that capitalism developed in a "skewed" manner. The more traditional argument was that capitalist development was a condition (in a transcendental sense) of Apartheid itself.
- 27 African National Congress, 'The State, Property Relations and Social Transformation' in *Umrabulo No.5, Third Quarter*, 1998.
- 28 I have discussed elsewhere how this measure of who was an 'appropriate' beneficiary was allied to a politics of Black authenticity. See Ivor Chipkin, *Do South African Exist: Nationalism, Democracy and the Identity of 'the People'*, Johannesburg: Wits University Press, 2007.

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