

# The corrupt parallel universe that defines our constitutional order

**W**HEN corruption becomes endemic to a society, appointments to key public service positions demand candidates who are similarly compromised. It is how the system sustains itself.

In a small story that failed to generate much public attention, former public prosecutor Vusi Pikoli stated in his recent book, *My Second Initiation*, that several ANC members had approached him to offer him his job back on condition that he did not pursue charges against President Jacob Zuma: "Look man, if you can just give us a guarantee that on reinstatement you will not bring charges against the man, then the matter is straightforward," they allegedly said.

That insight illustrates a system defined by two parallel elements: upfront, a formal democratic order



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ostensibly defined by constitutional principles such as the separation of powers of party and state, excellence and the rule of law; behind it, eating away at those more formal requirements, an informal arrangement that protects and promotes patronage, unethical behaviour, ineptitude and self-interest.

Corruption has become our

unofficial political economy. It has its own language, rules of engagement and rewards. And, increasingly, it is starting to define how our more formal constitutional dispensation functions.

It is the reason why the biggest single *sotto voce* debate in South Africa today is about public protector Thuli Madonsela, who, like Pikoli before her, refuses to prostrate herself before that parallel force. As a result, her formal pursuit of justice is relentlessly held hostage by an informal bulwark against meaningful progress. In her actions, these two worlds clash.

South Africa is usually blind to this. We suffer a well-entrenched "silo analysis" of public appointments. When yet another national police commissioner is found to be wanting, we analyse it from a police perspective. This is a

problem, we tell ourselves, to do with the police force and how it is managed. No doubt it is, but it is by no means particular to that institution. Rather, it is symptomatic of a far more pervasive attitude.

But it is worth singling out the justice system for special attention. If corruption is endemic, the government, to sustain itself, must ensure that the police and legal system are compromised in this way too. It is in the government's interest to appoint people who, for whatever reason, bring with them some controversial baggage. That is the card up the executive's sleeve to be brought out should that person demonstrate an inclination towards independence or the more formal constitutional system to which they seemingly adhere. Indeed, often the fact that the card exists at all is enough to ensure that those unseen

parameters act as a check on the extent on the public decisions made by such people.

The recent cabinet nomination to head up the Independent Police Investigative Directorate, Robert McBride, fits the bill perfectly. His apartheid-era violence aside, his record in public office as the Ekurhuleni Metro Police chief is one that is severely and fundamentally compromised. Accused of being dictatorial, misusing state resources and, most notoriously, being involved in a drunk driving accident, he comes with enough baggage to guarantee his compliance with the instructions of those he answers to.

At the very top sits Zuma, his reputation badly damaged by a series of allegations, and yet he is endlessly capable of manipulating the legal system to avoid formal interrogation. He, more than anyone,

relies on that informal system to sustain his position. And the justice system is at the heart of this impulse towards self-protection.

Occasionally, the informal system protrudes and becomes visible and an individual is found out or removed from office. Then the formal system can be used, ironically, to regulate the informal one. But even that works in the president's favour, should some future opportunity for the services of a compromised candidate arise.

And so the system self-replicates. Over time, it becomes possible to render the entire structure subservient to those unstated rules and requirements that have long since usurped their official counterparts. And while the public clamours to interrogate how well any member of the public service has complied with their job

description, behind the scenes the real test of any good cadre is how well they have complied with the political rules of engagement and the power that underpins them.

Pikoli paid a high price for refusing to comply, but not an unexpected one. It remains to be seen what fate awaits Madonsela. Both are negotiating in a foreign currency. Principles will buy you public praise, but if you want actual power you have to offer up some personal controversy instead, which is why McBride will always prosper where they fail.

If you want to understand South Africa today, you have to understand the functionality of corruption. It is systemic.

And it lurks everywhere — a parallel universe that is increasingly defining the constitutional order that sits above it.