Rethinking State Capture: Characteristics, Manifestations and Enablers

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Conclusions

What is state capture?

‘The privatization of the public function.’

It involves changing policies, laws or regulations through abuse of power in favour of private interests and against the public good.

It results in the de-legitimization of the government and the increase of inequalities by providing privileges to an individual/company/network/narrow group.

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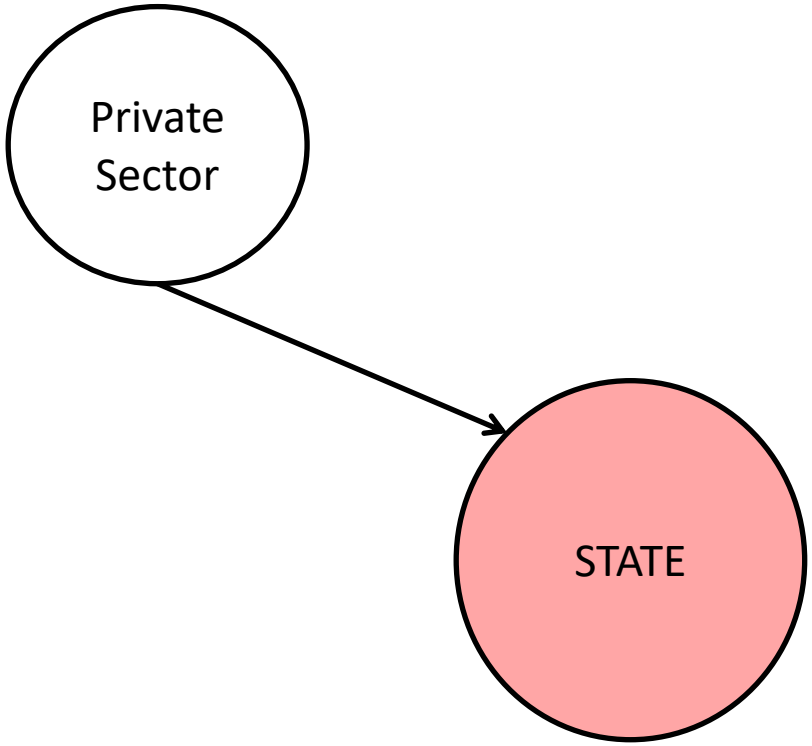
Who is the captor(s)?



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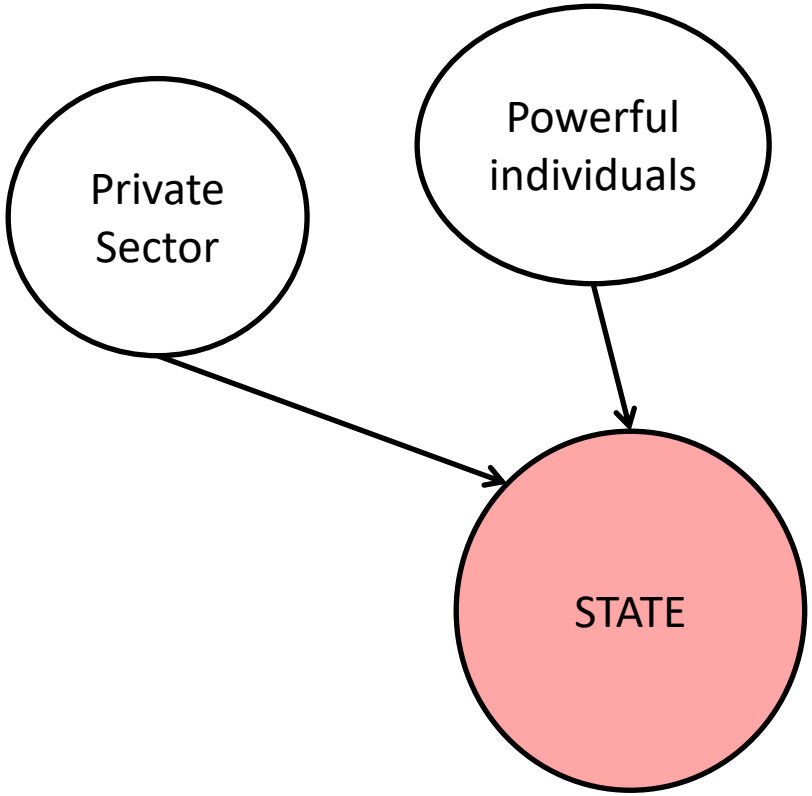

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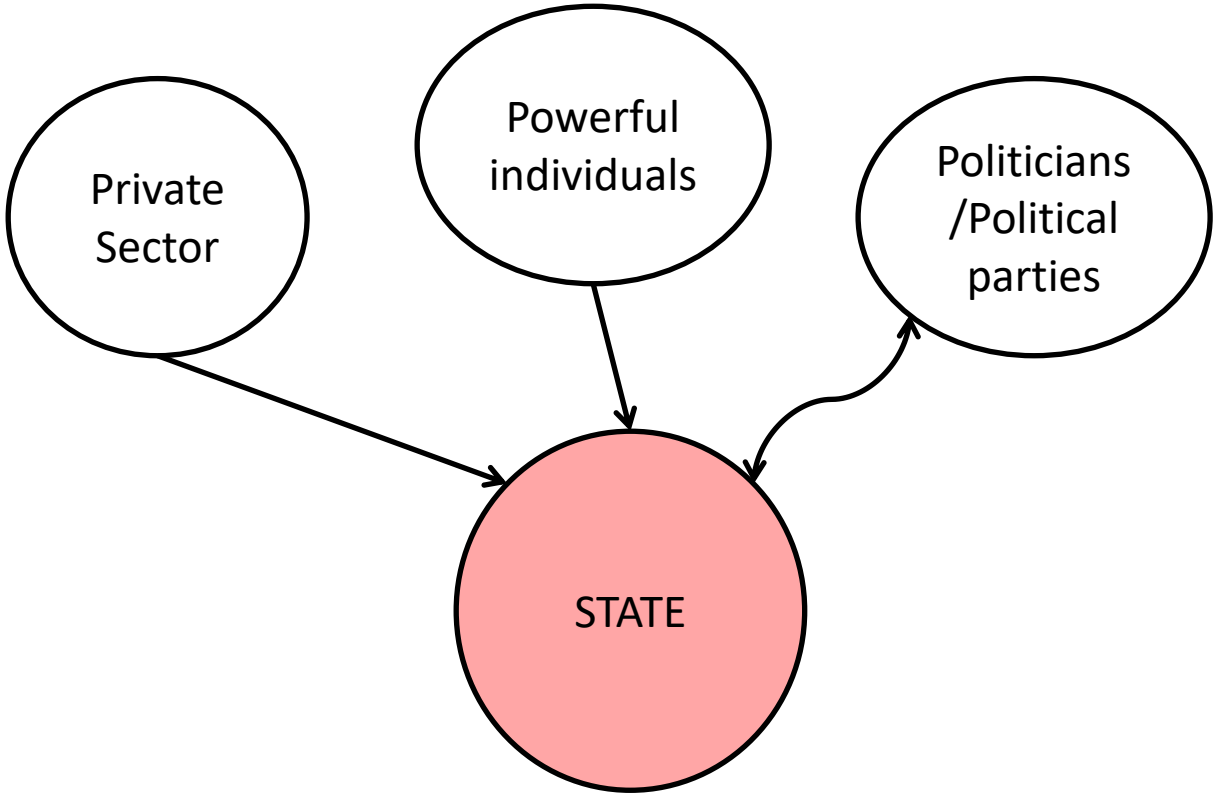

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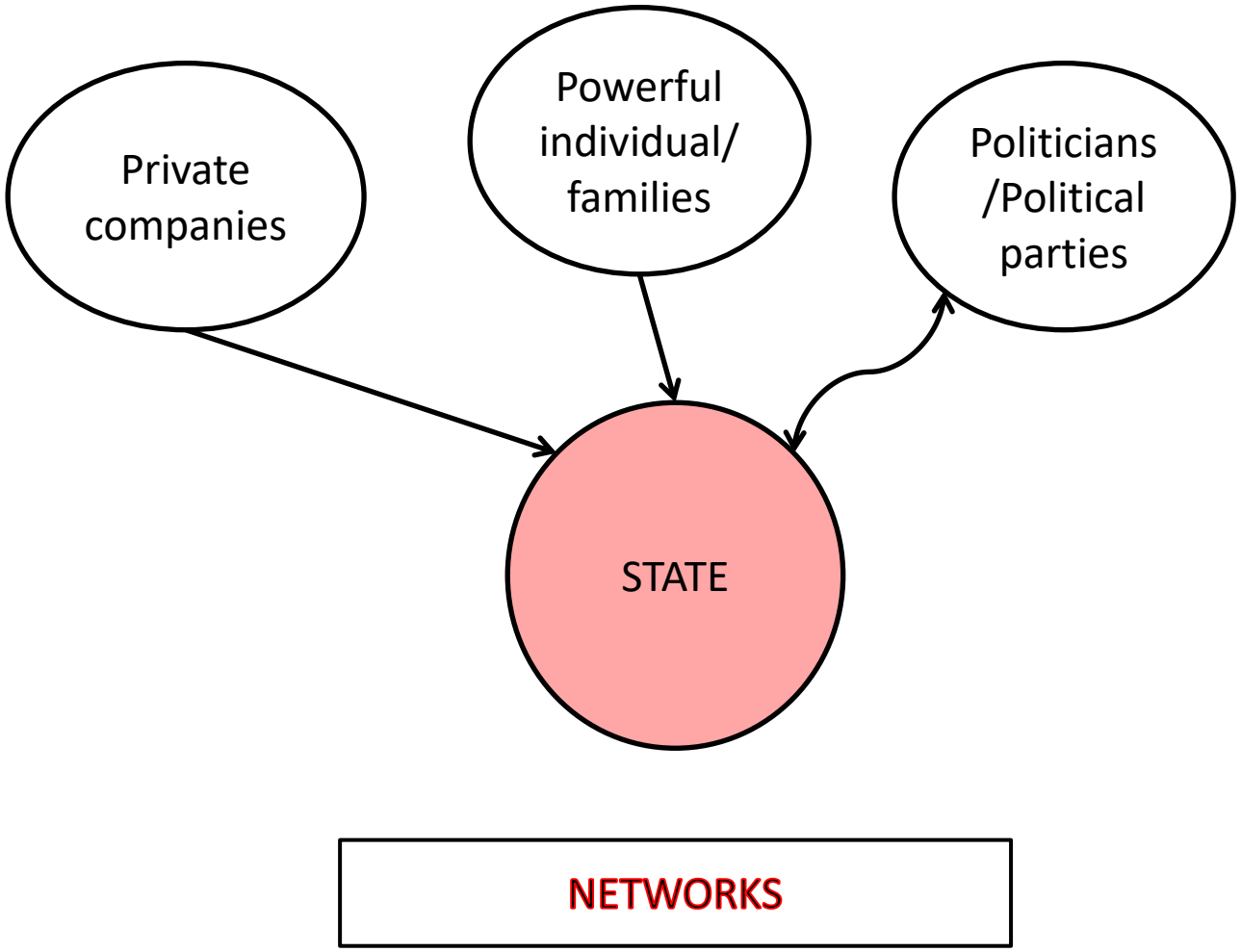

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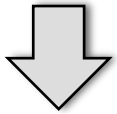
What is captured (and why)?

Changing policies, laws and regulations



Public-Decision Making

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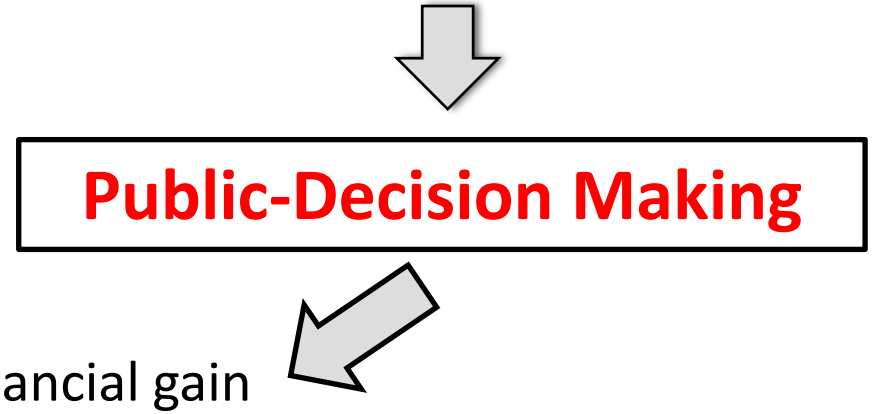

Financial gain

rents, tax breaks,
investment credits, etc

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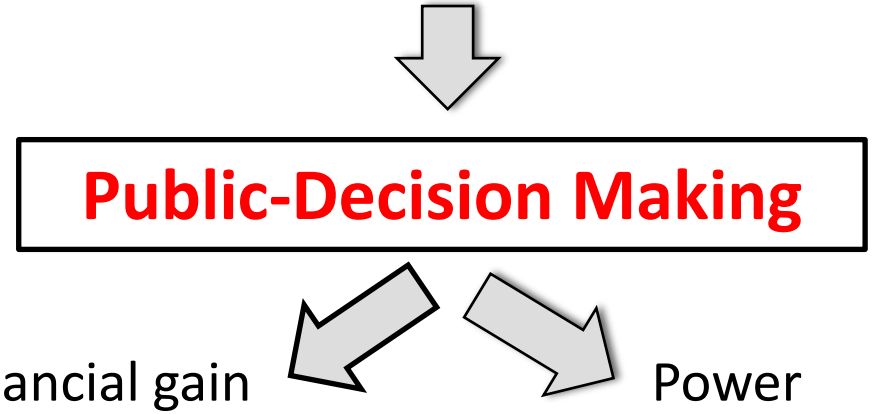

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Power

abuse public resources,
permanence in gov.

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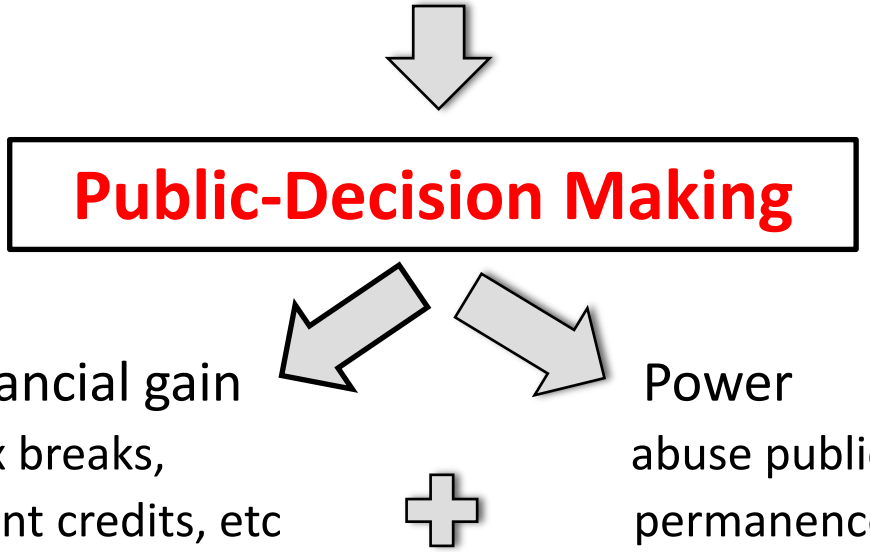

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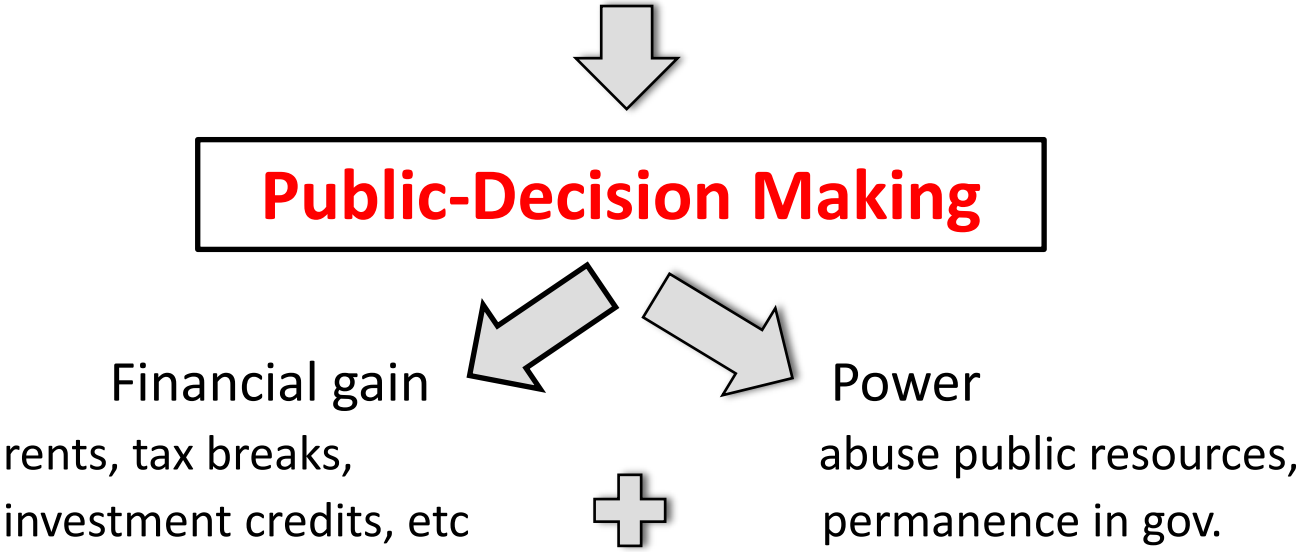

Contextual Motivation

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How is a state captured?

1) By undue influence
2) Through corrupt means

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How is a state captured?

1) By undue influence

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But…

When is the influence in public-decision making considered illegitimate in a given society?

Is state capture a form of corruption?

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From legitimate to illegitimate influence

Influence on behalf of private interest is democratic practice.

Concern – Disproportionate influence difficult to match by less powerful voices

Potential turning points from legitimate to illegitimate influence are:

Unequal access to policy-makers and decision-making processes, conflict of interests, direct political corruption and influence-peddling, unbalanced information and representation in shaping public debates and opinion.

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Lobbying regulation

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Corruption and state capture

State capture is much more than corruption

Corruption

↓

Violate the rules

State capture

↓

Change the rules

It is about the distribution of corruption not the quantity (Fazekas and Tóth, 2014)

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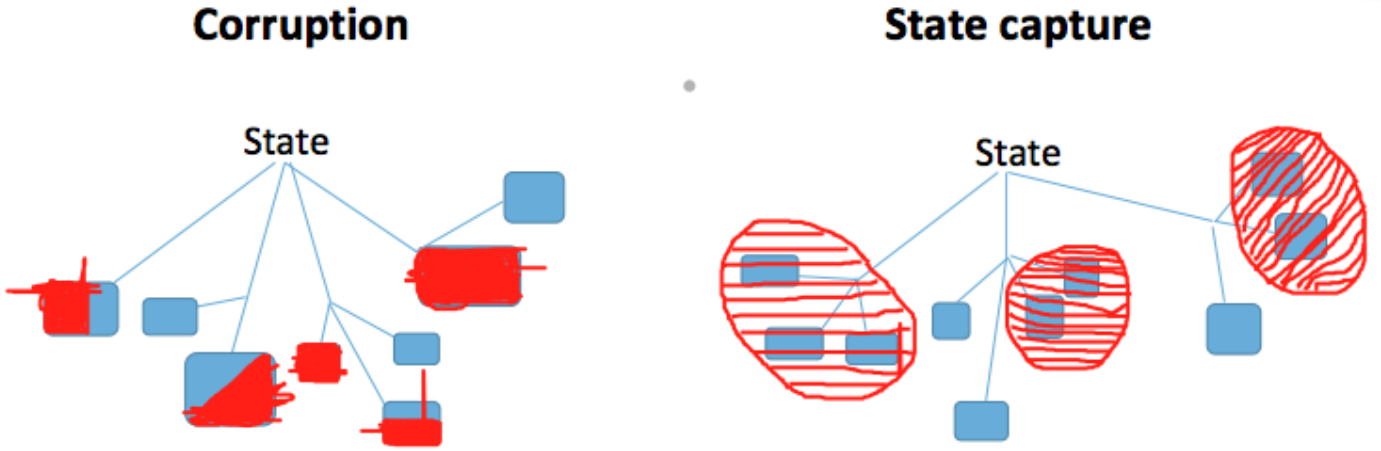
Corruption and state capture



Essence of state capture…

Network structure in which corrupt actors cluster around certain state organs and functions
(Fazekas and Tóth, 2014)

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Manifestations of State Capture

Same principle, different expressions

Context presents the opportunities and shapes the motivations behind the capture

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	Motivations	Actors	Opportunities
Western Balkans	Loyalty patronage networks	Political parties	Post-conflict agreements, democratization processes
East Europe	Compensate market inequalities	Small companies	Discretion regional authorities Russia
East Asia (e.g. Chabeol, South Korea)	Nationalistic protection economy	Interventionist governments, large companies, banks	Open economy to international market
Africa (e.g. South Africa, Uganda)	Perception of state as primary source of power and financial fortune	Individual ruler, powerful families	Elections
USA	Ideology power	Conservative networks	Inequalities among lawmakers

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Enablers: Lack of an effective and independent judiciary

How can the judiciary contribute to state capture?

- Limitation of the legal framework (insufficient recognition corruption crime, definition of the crime, lack of legal harmony among jurisdictions, etc)
- Political control over the judiciary (appointment of judges and prosecutors, corrupting judicial authorities, fear and intimidation, etc)
- Prosecutor's performance (lack proper investigations, not initiating processes on corruption, involvement in corruption, etc)
- Shortcomings in judicial performance (lengthy court proceedings, absence of parties from court, delays, soft sentencing and abuse of acquittals, etc)

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Enablers: Creation of Tailor-Made Laws

TMLs = Legal acts created for the purpose of serving only the interests of a natural person, a legal person or a narrow group/network of connected persons and not the interest of others in a sector, group of society or the public interest (Transparency International)

Three types:

1) Laws to control a sector/industry or part of it
2) Laws to diminish institutional oversight capacity
3) Laws to remove or appoint un/wanted officials

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Strategies in the adoption of TMLs

- The institutional system (Parliament capacity and decision-making, etc)
- Legal loopholes (legal ambiguities, abuse of urgent procedures, etc)
- The typology of laws (creation of 'special laws' – *lex specialis*, etc)

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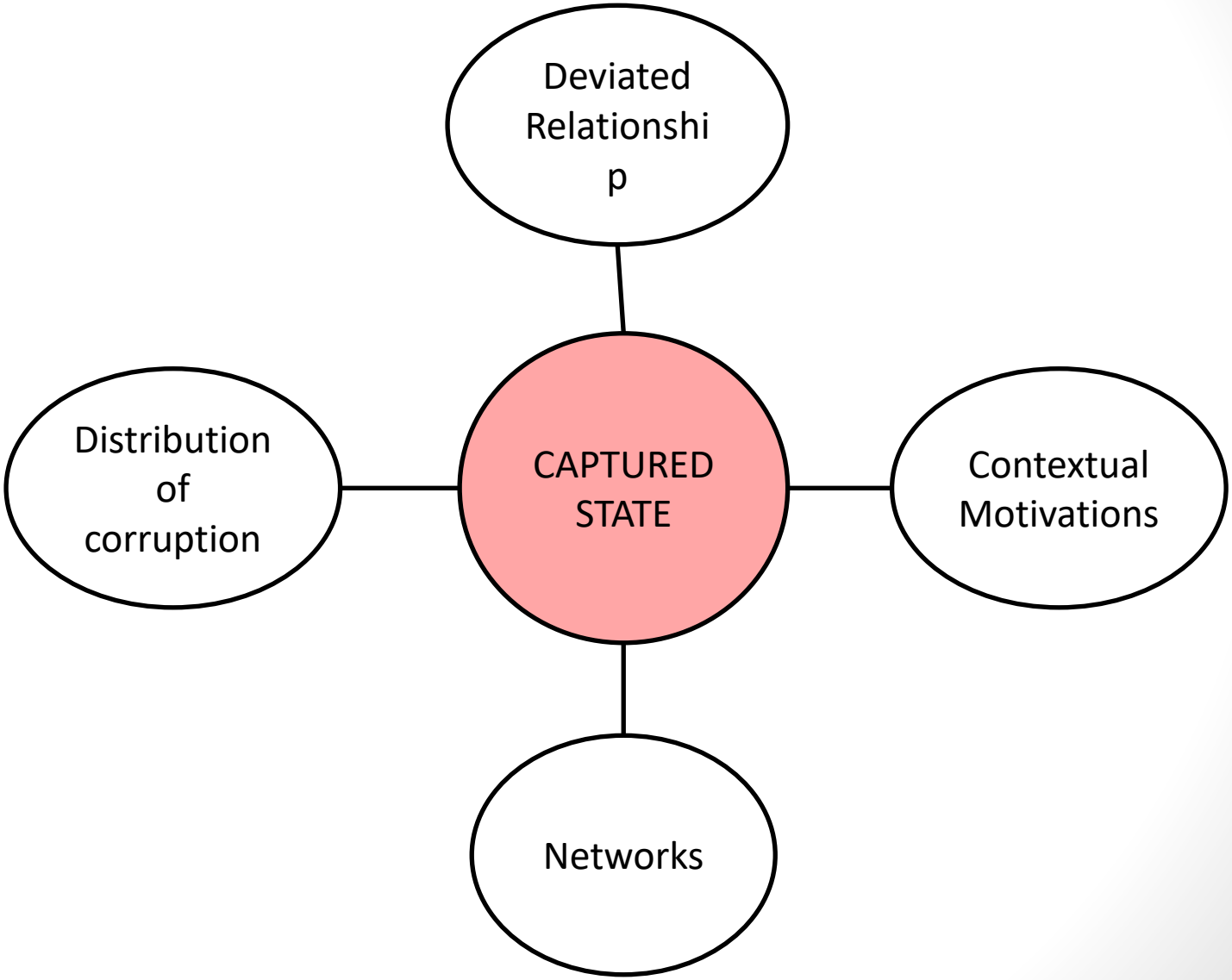

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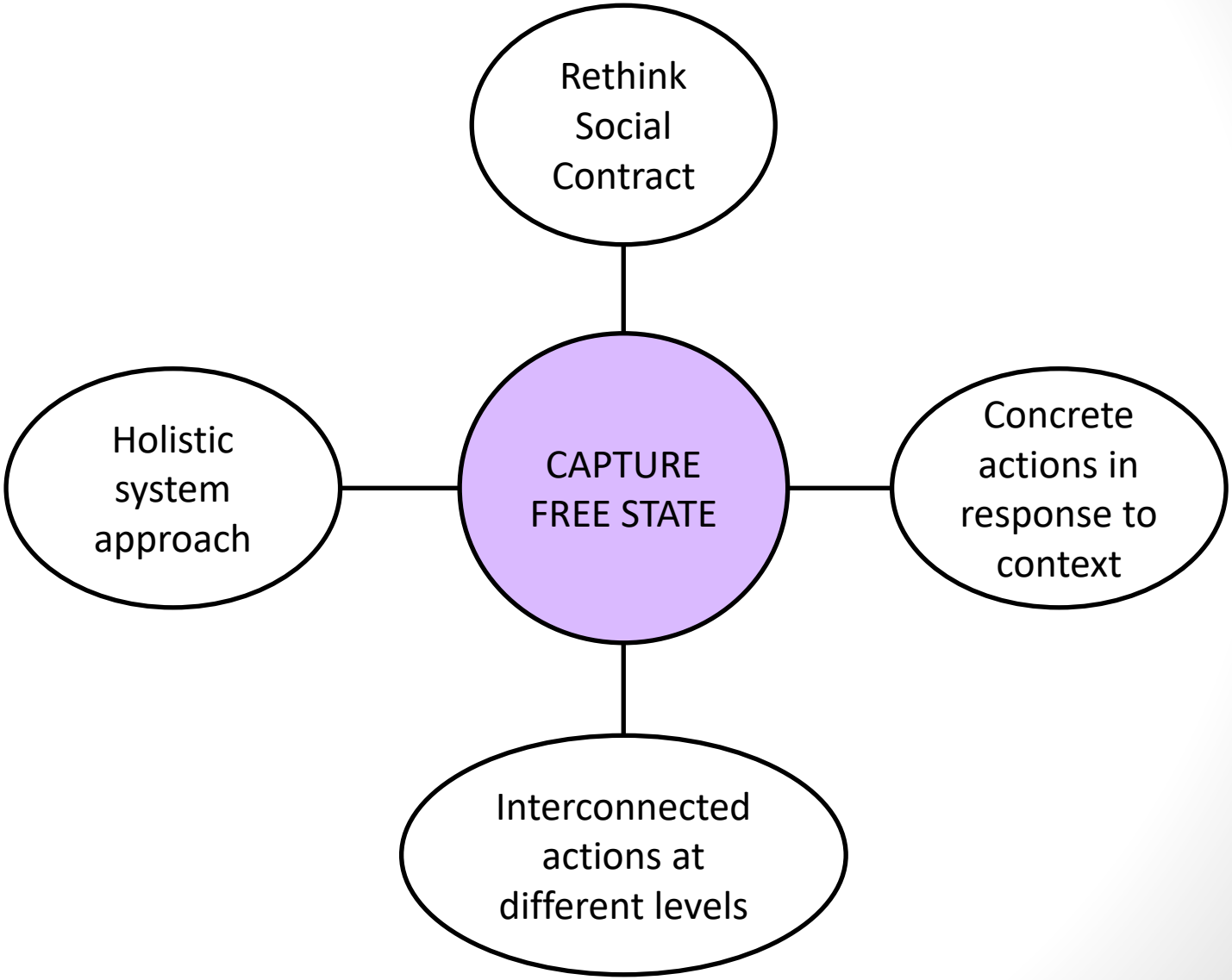

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Thank you!

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