

Traditional Leadership and Democratic Governance: Using Leadership Theories to Calibrate Administrative Compatibility

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Abstract: This article discusses South Africa's phenomenon of traditional leadership which is widely vested in kings, chiefs and headmen in a traditional context. It unpacks the notion of traditional leadership considerate of transformative leadership theory applicable to the post-1994 rights-based administration, given notable changes in governance systems under democratic dispensation and its reputable human rights narratives. The erstwhile regime of apartheid configured traditional authorities and their administration in a despotic manner, to an extent that kings, chiefs and their traditional headmen were elevated in status and regarded as unequal to all other humans in society. This served apartheid excellently as it enabled kings and chiefs to disregard human rights and other people's entitlements thereby rendering people powerless and docile to abuses and exploitations. Thus, apartheid entrenched that 'culture of authority' which could not be challenged. Women and children suffered the most under these instances. In contrast, the post-1994 administration embedded a new system of governance characterized by a 'culture of justification'. The system obligates that all administrative actions including those of traditional authorities, must be justified in accordance with the law as per the supremacy of the Constitution. This entails that kings and chiefs are not above the law and must similarly conform to written rules, uphold the Constitution, respect and protect people's fundamental rights. It is asserted that a contestation of power between traditional authority and central democratic governance remain widespread. Thus, it is indispensable to calibrate administrative compatibility of these regimes to essentially safeguard the democratic regime and its crucial human rights norms from collapsing. This is essential to effectuate appropriate democratic public administration.

Keywords: traditional leadership; democracy; transformation and transformative constitutionalism; human rights

1. Introduction

This study examines the notion of traditional leadership against South Africa's post-1994 democratic administration, considerate of the fact that the country subscribed to constitutionalism which inherently entrenched democratic governance at the core of its normative value system. This subject derives

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significance in the fact that both traditional leadership and democratic governance invariably play a fundamental role in effectuating public administration. Thus, an all-encompassing nature of South Africa's post-1994 transformation went as far as entrenching a continued recognition and protection of the institution of traditional leadership, its inherent administrative practices, and further had to demystify its role in post-apartheid society (Mokgoro, 1996). It is for this reason that the issue of traditional rule, its administration and democratic governance constantly remain notable phenomena of greater interest in academic scholarship particularly from constitutional law perspective, given the diverse nature of South Africa's traditional history and complex politics of the post-1994 democratic dispensation. At the center of attention in this regard has been and remain the compatibility of (ancient styled) traditional leadership with contemporary democratic settings, whose doctrines have been/are propagated largely through the human rights philosophy (Sithole & Mbele, 2008). This human rights theory is revered as a central tenet for world's social, economic and political order, which comprises fundamental morals and entitlements necessary for humans to lead secure livelihoods with guaranteed dignity (Forsythe, 2012). Instantly, this entails that the institution of traditional authority and its leadership ought to conform to human rights norms and standards particularly with regards to how it treats and interact with people when exercising public functions. This is also in accordance with section 2 of the Constitution of the Republic of South Africa, 1996 (*hereinafter, the Constitution*), which states that 'the Constitution is the supreme law of the Republic, that, any law or conduct inconsistent with it is invalid, and all obligations imposed by it must be fulfilled'.

In perspective, the institution of traditional leadership is not above the law, and therefore equally derives its administrative powers from the Constitution, which may therefore be subject to limitations in terms of the law of general application in an open and free society. This is further necessitated by the fact that South Africa's notion of democratic governance is premised on normative transformative ideals that prioritized effectuating public administration to benefit citizens. This public administration phenomenon captured the notion of 'good democratic governance' at the core of the new regime, which is mainly concerned with embedding appropriate liberal democratic practices, norms, representation, responsible and accountable government, the rule of law and legal culture, absence of corruption (Bevir, 2006), social justice and peace. Therefore, the issue of traditional leadership deserves attention both as a pre-colonial and post-colonial phenomenon,

which bears significance on aspects of providing proper leadership in society, complimenting democratic values, securing people's peace and reinforcing broader societal transformation.

The object of this article is to illustrate that because transformative constitutionalism pursues an agenda of transforming society across all spectrums, traditional leadership must conform to the Constitution. This is in terms of leadership theory and transformative leadership theory which require leaders to be morally upright, be visionaries and serve their communities diligently, and also model the way for their followers (Ncube, 2010). This is indispensable to safeguard social justice and societal peace. The article takes into account South Africa's system of public administration which largely pursues transformation in social, legal and political realities. The article adopts qualitative style of research. It utilized literature in the form of articles and books to analyze theories of leadership as may be applied to calibrate traditional leadership within the context of South Africa's democratic governance. Transformative leadership theory is particularly preferred because it resonates corresponding ideals with transformative constitutionalism. It begins by expounding the meaning of traditional leadership, followed by theoretical connotations describing the nature of leadership required to advance democracy and guiding how traditional leadership can be modernized. Thereafter, the case of *Dalindyebo* briefly presents the manifestation of administrative tension between traditional leadership and central democratic governance.

2. Meaning and Context of Traditional Leadership

The institution of traditional leadership is an ancient practice that has defined Africa for centuries. It is an indigenous system of governing communities largely premised on uncodified cultural ethics. Although it is profoundly entrenched, it has been through various phases of influence, disintegration and remodeling by known western processes of imperialism, colonization and apartheid. In South Africa, apartheid re-configured traditional leadership in a manner that entrenched racial stereotypes and conflicts. Nonetheless, traditional leaders served the purpose of governing their communities by providing security, regulating social activities, doing dispute resolution and dispensing justice, roles which they somewhat continue to perform. Traditional leadership is not subject to elections, meaning that its succession is hereditary in accordance to clan-based system. Traditionally, and

in terms of the custom of male primogeniture, only men were eligible as heir to ascend the throne Kingship or Chieftaincy, but the Constitutional Court changed this theory in *Shilubana and Others v Nwamitwa* 2008 (9) BCLR 914 (CC); 2009 (2) SA CC (CC) where it declared that the eldest daughter of Hosi (Chief) Fofeza of Valoyi community is the rightful heir to chieftaincy, and that depriving her chieftaincy would be contrary to constitutional precepts of developing customary law, promoting right to equality and preventing gender-based discrimination.

Worth noting is the fact that the post-1994 regime encountered multiple concerns and challenges in integrating the institution of traditional leadership into new democratic order. Hence, tension between much yearned political change and an uncertain future during the post-1994 transition did not only bedevil South Africans of European descent. Instead, traditional leaders were anxious too as they were uncertain about their future role in a democratic South Africa, just as they were anxious of losing power. This was particularly because politicians perceived the then traditional leadership as being influenced by colonial and apartheid policies of enforcing ethnic divisions to ensure tougher control, and thus it was viewed as not being reflective of traditional or cultural practices of South Africans (Tshehla, 2005). Nonetheless, the crafters of the Constitution constitutionalized the institution of traditional leadership by affording it recognition and protection in the Interim Constitution and chapter 12 of the final Constitution, 1996. Traditional Leadership and Governance Framework Act 41 of 2003 was also enacted to give effect to constitutional provisions, with the primary objective of obligating state to protect and promote the institution.

3. Theoretical Framework

Just over two decades ago, South Africa saw a phenomenal change and leaped into human rights centered democratic governance. Because this period sits in history as a watershed moment described by many as miraculous (Giliomee, 1995; Webster, 1995; van der Walt, 2006; Inman, 2013) for it prevented severe bloody conflicts thereby averting loss of life, it is also recognized to have embodied hopeful symbol for emerging democracies (Colasurdo & Marlin, 2013). But this cannot easily be said with regards to theoretical inventions, as it was not as swift as anticipated. This was necessitated by the diverse nature of population demographics ranging from imbalanced scholarly aptitudes to wide-ranging socio-economic conditions largely characterized by pervasive inequalities inherited from the past, which sadly

remain predominant even today. Essential theories that mattered related particularly to the nature of leadership and the nature of system of governance needed to advance democracy and its doctrines, which would in turn epitomize aspirations of South African people. Also intrinsically important was the need to tailor legal systems in accordance with established international norms and standards concerning human rights, especially with regards to known historic humanitarian values premised on preserving human worth. Thus, strengths in theoretical conceptualization of this study rests on notions of leadership, transformation and democratic governance, featuring as key tenets for South Africa's effective public administration, which is also applicable to traditional leaders across all spectrums.

In constitutional law terms, South Africa's post-1994 regime subscribed to the theory of constitutionalism, which is fundamentally premised on legitimizing government, its functionaries (at local, provincial and national levels), their administrative actions (Burns, 2003), and also set boundaries for acceptable resolutions of social and political conflicts (Penna, 2001). According to Currie and De Waal (2005), constitutionalism is a theory of constitutional democratic governance which emphasizes that government must derive its powers from written precepts in the Constitution, and act within such confines as clearly spelled out. In the main, an intuitive implication of this theory is essentially that effective public administration entirely depends on having competent and democratized leadership that accepts the Constitution as supreme law, and act in conformity to it. Subsequently, this constitutionalism theory culminated in conceptualization of constitutional supremacy, which meant that the Constitution supersedes all laws, policies and administrative actions performed within the republic. Taken from constitutionalism theory, and considerate of the fact that South Africa pursued social, legal and political transformation, Karl Klare (1998) formulated a noble theory of 'transformative constitutionalism', using it to describe the country's system of governance from sociological, legal and political perspectives. Klare posited this theory as a 'long-term project of constitutional enactment, interpretation and enforcement committed to transforming a country's political, legal and social institutions, and power relations in a democratic, participatory and egalitarian direction'. With regards to the institution of traditional leadership, the transformative nature of the Constitution is discernible through its doctrines that obligates traditional leadership to also respect and protect human rights, advance social and substantive justice and in the main, be accountable to the

Constitution. This is evident through section 211(1) of the Constitution which thus states that ‘the institution, status and role of traditional leadership according to customary law, are recognized, subject to the Constitution’. This essentially entails that traditional leaders must conform to the law, act within set perimeters, and cannot veto laws passed by Parliament (Mashele, 2004). It is for this reason that Karin van Marle (2009) accentuated that this Constitution profoundly alters assumptions about law, politics, economics and society, by extending scope into historically blurry areas like traditional authority which were conventionally viewed as difficult to regulate through legal methods. Thus, constitutionalism and transformation theories impact intensely on the institution of traditional leadership in furtherance of founding proper leadership in society.

Determining choice in theory of governance inadvertently coincided with the need to determine the nature of leadership required for democratic stability in pursuit of sustainable development. Hereof, such leadership would be required to be cognizant of and be content with pursuing broader societal transformation geared towards redressing injustices of the past. Thus, theories of leadership fairly enlightens on leadership ethos that are desirable post democratization. Subscribing to team leadership theory, Horner (1997) posited that the idea of leadership as a process has a potential to proffer workable theory which can connect communities and leadership by integrating their efforts in a manner that allows responsiveness to transformation. This is particularly significant for South Africa where traditional leaders have to get accustomed to providing desirable leadership which resonate the spirit and purport of the Constitution for serving interests of their communities. This also accord to Hogg’s (2001) social identity theory of leadership, which also views leadership as a group process arising out of social categorization and depersonalization associated with social identity whereby followers empower individuals as leaders, thus creating long-lasting perceptions in societal status. In terms of this theory, traditional leaders are behaviorally influenced by communities they lead because such communities constantly endorse their acts without questioning, at times contrary to constitutionally entrenched democratic doctrines.

Osborn, Hunt and Jauch (2002) posited that leadership should be construed as an emerging social construction embedded in context, and should not only be concerned with the incremental influence of a superior toward subordinates, rather it is crucially about the collective incremental influence of leaders in and around the system. And because South Africa opted to democratize, it is essential that traditional leaders be assessed according to context of systems of democratization

and societal expectations arising thereof. This is achievable when we employ the transformative leadership theory, necessitated fundamentally by transformative constitutionalism influencing democratic governance systems. Within this context, Ndebele (2007) and Reddy (2007) discernibly argued that leadership should possess strong sense of purpose, moral trust, empowerment to others, values and principles, and embed visionary authority. Hence, leadership largely rests on morally legitimate value in person who never deliberately act in bad faith (Bass and Steidlmeier, 1999). These ideals intuitively incorporate aspects of personality and character into leadership theory, rendering it an inclusive phenomenon which requires an appreciation of material conditions and individual capabilities and attitude to situations. The context of South Africa's transformative democratic governance system impliedly posits transformative leadership theory as that which requires those performing public functions or whose actions affect rights and/or interests of communities ought to be transformative leaders. It is destined for safeguarding social justice, redistributive justice and democracy, social transformation, culture of justification, access to educational opportunities and wider social welfare services (Shields, 2010). Its prime objective is to propagate for leaders to yearn for equitable and just society where people's humanitarian needs are fulfilled.

In a nutshell, the above theoretical connotations demonstrate that appropriate ethics of leadership may be determined according to circumstances and in-built individual characters. Situations are also acknowledged as being capable of producing well-grounded leaders, but intuitive moral capital offers a profound normative framework within which leadership may be built. Hence, traditional leaders ought to be of reasonably commendable levels of moral standing which when assessed against common societal moral values, become prototypical.

4. Traditional Leadership and Democratic Governance at the Crossroad

Since 1994, various developments in traditional context proved that democratic governance and traditional leadership are in a quagmire. Scholars such as Mpilo Sithole (2009) have ostensibly argued that South Africa's traditional leadership symbolizes an example of a tension that exists between Eurocentric democracy and human rights, and social group rights as theoretically enshrined in the Constitution. To some extent, this view is particularly problematic because it somewhat

entrenches stereotypes and a rejection of democracy as a better system of governance. It is asserted that this tension is actually stem from power greed, egoism and patronage. This is discernible from the challenge of traditional leaders contesting for authority with central democratic governance, effectively giving an impression that this tension comes about because one side is perhaps hell-bent on proving supremacy of authority over the other.

The case of *Dalindyebo v S* (090/2015) [2015] ZASCA 144 (1 October 2015), evidently presents a clear manifestation of dismal tension between the institution of traditional leadership and central democratic governance. The matter involved a Paramount Chief, King Buyelekhaya Dalindyebo of the AbaThembu, who was found guilty by Mthatha High Court, Eastern Cape in 2009 for committing criminal acts during or about 1995. His charges inter alia, included arson (for setting fire to the houses of his subjects), kidnapping, attempted murder (unlawfully detained and brutally assaulted young men alleged to have committed crime), murder (for the death of a young man beaten by his subjects on his instruction) and defeating the ends of justice (by coercing his victims not to report his crimes to the police). The High Court of Mthatha had sentenced him to 15 years in jail. On appeal, the Supreme Court of Appeal (SCA) sustained the guilty verdict on other charges, but not guilty on murder, thus reduced his imprisonment to 12 years. The SCA condemned him as a tyrannical and medieval despotic king who ruled in total disregard of people's human rights and freedoms as espoused by the newly founded constitutional state upholding the rule of law, emphasizing that traditional leaders ought to provide desired leadership and be beyond reproach. Surprisingly, the king is on the record to have verbally lashed at the judge who passed judgment, hinting that such judge "should get lashes on his bottoms". Also shocking was a suggestion within his circles that a replacement be sought amongst chiefs to serve his jail term. In fact, the king denounced judgment by a democratically established institution of justice. This amounted to contempt of court, as it undermined a coherently operational structure meant to safeguard right and dispense justice, proving the complex nature of traditional leadership.

5. Conclusion

Although the institution of traditional leadership is a phenomenon of long-standing history, its sustainability and compatibility with contemporary democratic governance systems remain contentious. This article reveals that there is an

indispensable need to earnestly calibrate conventional methods of traditional leadership to bring them in line with modern trends of democratic public administration. The essence being that if you accept democracy and human rights philosophies as better methods of governing, then it is peremptory to comply with international norms and standards dictating such systems of governance. Further that because leadership is a complex multidisciplinary notion, traditional leaders ought to embrace collective morality as a tool which reinforces properly functional leadership and democratic institutions. They have to provide credible trustworthy leadership that compliments the institutional framework of democratic governance for stability and sustainable development (Reddy, 2007). This is feasible through adopting transformative theory of leadership as a panacea. When kings or chiefs disregard the law, systems of democratic governance collapses because their actions affect communities particularly at the local government level. Thus, both executive branch of government and the institution of traditional leadership should recognize each other as legitimate public administrative entities and embrace mutually conducive ethics of leadership. But it should be clear that the state governs all, including traditional leaders. Hence, the state ought to intensify human rights education, necessary to empower traditional leaders realize that human rights and freedom underpinned struggles against institutionalized injustices and oppression of the past. This article asserts that the institution of traditional leadership should better be preserved as an embodiment of culture, tradition and customs essentially for heritage and social identity purposes.

6. References

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