

THE UNIVERSITY OF THE WESTERN CAPE

Revisiting Mhlontlo and his legacy

Luvuyo Ndzuzo



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A thesis submitted in partial fulfillment of the requirements of the degree of Master of Arts (History) in the department of History, faculty of Arts, University of the Western Cape

Supervisor: Professor Premesh Lalu

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ABSTRACT

The study attempts to recover the figure of King Charles Mhlonlo who fell out of favor with his colonial masters after he resisted going to war against his neighbors during the debacle that led to the killing of Hamilton Hope, magistrate of Qumbu in 1880. Three elements are explored in the study. Firstly, I consider the contested figure of Mhlonlo and how history writing presented and represented Mhlonlo in particular ways. Secondly, I consider the presentation and representation of Mhlonlo with regard to the death of Hope in the archive and the traditions of history writing that defines the king as a contested figure in the works of history. Thirdly, I consider the particular tensions of remembering the past and how it is recorded brought to the fore as a continuation to a Whig concept of history and how South Africa especially the New South Africa tried to deal with the question of state and kingship in terms of such an historiographical inheritance. At the heart of my interest in the Mpondomise king is the question of how we are to read the post-apartheid state's independent commission of enquiry' called the Nhlapo Commission that ruled on the future of relationships between the monarchy and democratic institutions. The study questions the stance of the democratic state in how it dealt with the question of traditional leadership by tracing its emergence in the complex genealogy of the inheritance of Whig History.



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DECLARATION

I declare that Revisiting Mhlontlo and his legacy is my own work, that it has not been submitted before any degree or examination in any other university, and that all the sources I have used have been indicated and acknowledged as complete references.

Full Name Luvuyo Derric Ndzuzo

Date: August 2017

Signed



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I am indebted to the former CEO of Robben Island Museum Sibongiseni Mkhize his executive and management for affording the opportunity to study. My colleagues all and sundry played a pivotal role in assisting me to think about heritage and my research. I want to particularly mention Andre Mahomed and Stanley Sello who gave me access to some of the incredible archives at the Mayibuye Archives. The Centre for Humanities Research was my intellectual home and it is where I was stretched to my limits in the process of becoming an MA student. My two fellow MA classmates played significant roles individually and as a duo in supporting and challenging me to complete this project.

At home all my parents took keen interest in seeing me through this process. My father gave me the topic of my study in 2011 when he asked me to research the Transkeian rebellion. The children I have been granted custody of inspired hopes as I encountered impediments. Lastly Nambita Kasi Ndzuzo suffered the most and still gave me her best throughout the period of this study. To her I owe a lot more than I can write here.

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Preface

Notwithstanding the existence of deconstructionist thought in the post-apartheid and post-colonial South Africa, President Thabo Mbeki, a trained economist and a former member of the South African Communist Party, reintroduced the Whig debate in South Africa in 2004.¹ The Whig debate constituted itself as a formal debate in the country when he appointed the Nhlapo Commission in which the state devolved its powers to the commission with a rider that its recommendations will be implemented by the state.² The state used public consultations, in full view of the interested and affected members of society, to deliberate on the issues in cases where the commission addressed the affected traditional leaders. The media was involved in disseminating some of the proceedings; others were recorded and were kept in archives of media houses. Jeff Peires, in his critique of the Nhlapo commission, which he was part of, suggested that Mbeki appointed Thandabantu Nhlapo, a British trained customary law expert, as a chairperson of the commission.³ Peires argued that a string of legal experts formed a big part of the commission together with a lesser number of social scientists. For him, the constitution or the composition of the commission tilted the scales and affected the work of the commission in that the disciplines that were involved were not equally distributed. Instead the concentration of professional knowledge was more legal. Peires would have preferred it to be composed by a number of social scientists so as to allow enough room for social scientific debates.⁴

¹ Sifiso Mxolisi Ndlovu and Miranda Strydom, *The Thabo Mbeki I know*, (Johannesburg: Picador Africa, 2016), p 94.

² Jeff Peires, 'History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: University of Fort Hare, 2013), p 1

³ Ibid

⁴ Ibid

But President Jacob Zuma, who followed President Mbeki in becoming president of South Africa, when addressing traditional leaders in 2009, argued along the trope of Whig history.⁵ In his statement, Zuma argued that the protracted struggle between the royals and the republicans as a compromised battle in history has always favored the republicans over the royals. Here Zuma alluded to Whig history writings that marked and framed how British, American and South African history writing was influenced by the nature of state against royalty debates. The conflict of old institutions from the past against progress was an overarching debate that was evident in the Marxist tools of analysis, like the negation of negation, took central stage where social institutions and epochs gave way to new ones. Interestingly, Jacob Zuma, like Thabo Mbeki, were schooled in Marxism as part of his political formation. Such training did well to anchor their narratives on progress in the passing of time, which firmly roots the entanglement of time to history.

I want to suggest that the establishment, constitution and the workings of the Nhlapo Commission was a recasting and a resurrection of the Whig history debate in the post-apartheid, post-colonial South Africa by Thabo Mbeki in October 2004. The threads of discourse leading to and from its establishment, constitution, Mbeki's Marxist political background and the circumstances around its formation brought to life a debate that Marxist historians and deconstructionist historians carefully put to rest in the annals of history.⁶ This was particularly the case where the commission found that there were no grounds for amaMpondomise to claim kingship according to customary law and practice on the basis that they did not fight any war for the establishment of their kingship.

⁵ <http://www.thepresidency.gov.za/pebble.asp?relid=583> (accessed on 3 May 2015)

⁶ Sifiso Mxolisi Ndlovu and Miranda Strydom, *The Thabo Mbeki I know*, (Johannesburg: Picador Africa, 2016), p 94.

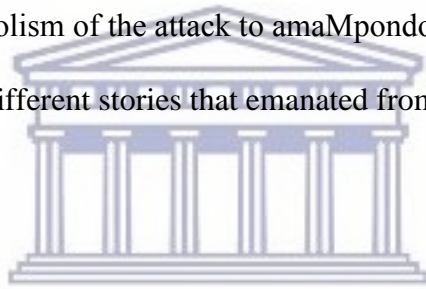
Mahmood Mamdani argues that customary law was a careful construct and function of British colonial assemblage to rule its colonies. In contrast, Thabo Mbeki may be said to have inadvertently continued this colonial tradition and also brought back to the life of official discourse elements of the historical Whig debate. In that respect, its terms and conditions were clear and showed that the state had to have the final say on the dichotomy of the state versus the monarchy.



Chapter One

Mhlontlo; the death of Hamilton Hope and aftermath an interplay of influence and power.

The chapter is about a reconstruction of the context of Charles Mhlontlo, drawing from the colonial archive and oral histories. Here I will make an effort to look at Mhlontlo as he related to colonial rule personified in his interaction with magistrate Hamilton Hope in the period before Hope's death in 1880. The idea of the attack on Hope's body with assegais by Mhlontlo's subjects, the symbolism of the attack to amaMpondomise, the debacle with colonial gun powder and the different stories that emanated from the incident will be examined.



There is an existing body of work that related to the encounters of Mhlontlo and Hope in the academy that I glean. To this end I want to take the accounts of Clifton Crais and Christopher Saunders when they studied and sought to explain the tension of chieftaincy and the state under colonial rule. Their contribution is particularly important when we want to understand the issues of that tension when exploring a historiography of Mhlontlo. Equally, I will examine the work of Joe Majija and the Nhlapo Commission report on amaMpondomise as alternate sources that facilitated a platform for the expressions of oral histories about Mhlontlo in post-apartheid South Africa. In recognizing the tension that was produced by the academy as it developed an authoritative alternative discourse or official historiography of Mhlontlo I will think with Anne Stoler, Jacques Derrida and Premesh Lalu as I pursue the question of writing about Mhlontlo after the fact of his existence.

Heritage a cultural symbol of power and conflict

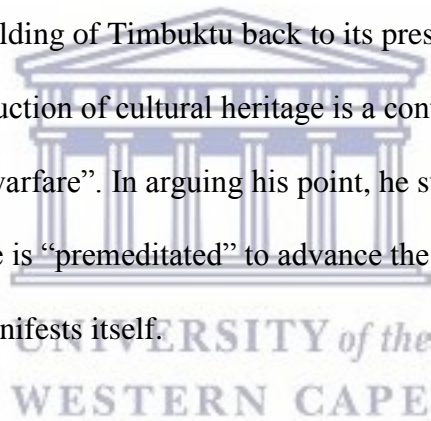
Gerard Peter, a travel magazine editor of South African Airlines, in his September 2015 issue of *Skyways*, when examining the process of rebuilding the prestige of the old African university city Timbuktu noted that “[t]hroughout history, civilizations and the products of those civilizations such as historic artefacts, architecture and religious iconography to a greater extent have been threatened or destroyed through deliberate aggression.⁷ He went on to say that “history is filled with examples of the might of one culture overpowering the sum of another, significantly buckling the course of history and erasing parts of history.”⁸ In this regard Peter suggested that the contact point of people that came from different civilizations and cultures tended to rub against each other in ways that altered civilizations and cultures of less powerful people. Where the erosion, destruction and undermining of other cultures and civilizations was prevalent and tended to be the order of the day, in the words of Uday Singh Mehta this was a sense of unfamiliarity. Peter argues that such contact affected symbols of civilizations and cultures like iconography, artefacts and architecture for instance. At another point he suggests that the same processes and activities “significantly buckling the course of history and erasing parts of history.” Peter’s argument persuades me to think about the contact and the encounter of Mhlontlo with the colonial magistrate Hamilton Hope and Hopes death in Sulenkama, and later Mhlontlo’s deposition as a direct result of Hope’s death, as I will argue in this chapter.⁹

⁷ Gerard Peter, ‘Timbuktu: rebuilding a historic ancient city’, *Skyways 20th anniversary: celebrating two decades of a successful partnership*, (Kyalami: Panorama Media, September 2015), p 39.

⁸ Gerard Peter, ‘Timbuktu: rebuilding a historic ancient city’, *Skyways 20th anniversary: celebrating two decades of a successful partnership*, (Kyalami: Panorama Media, September 2015), p 39.

⁹ For a clearer understanding of this read; Joe H, Majija, *Dark clouds at Sulenkama: a true history*, (Umthatha: 2009)

Crais, Saunders and the colonial record, as we will see, apportion the fall of Mhlontlo and the end of the amaMpondomise kingdom to the act of killing the colonial magistrate Hamilton Hope. However, according to the amaMpondomise word press, amaMpondomise, to this day, lament the fall of their kingship in 1904 a time when Mhlontlo was deposed by the King William's Town court and continue to call for its reinstatement.¹⁰ In that court Mhlontlo was not found guilty of killing Hope as a result of lack of the original letter that was written by Davis in October 1880 but was deposed and relocated to be among the Gcaleka people far from his homestead. In their recollection of the kingdom they see the decision to depose Mhlontlo as a deliberate effort by the colonial state to destroy the kingship of Mhlontlo beyond recovery. As if to be in conversation with amaMpondomise, Gerard Peter, while enunciating on the rebuilding of Timbuktu back to its prestigious position in the past, argued that "[t]oday, the destruction of cultural heritage is a continuing concern." He puts it at the center of modern day "warfare". In arguing his point, he suggests that today the destruction of cultural heritage is "premeditated" to advance the tactics of warfare, I would add, in whatever manner it manifests itself.



Here Peter argues for the recognition of subtle power that was found in cultural heritage. He considered this subtle power to be an underlying existence of an expressed identity that was connected to symbols of culture. His idea of a recognized pattern of attacks on cultural symbols helps to formulate part of what he considers to be some of the most influential "psychological weapons of modern warfare." At best Peter sees the attacks on such symbols as a new and sophisticated way of combat and that such combat cuts through the foundational elements of the people that are associated with that culture which he calls the "soul". He

¹⁰ <https://amampondomise.wordpress.com/2014/01/29/amampondomise-restatement-of-resolutions-taken-ebhotwe/> (accessed on 3 May 2015)

makes a clear argument to say that this kind of warfare is deliberate and “premeditated”. In other words, Peter is suggesting that such acts are not accidents and in fact they are calculated ways of “significantly buckling the course of history and erasing parts of history”.¹¹

Joe Majija argues that there “are numerous accounts” “of the story of the killing of Magistrate Hamilton Hope by the Mpondomise in 1880 is as intriguing as the life of Chief Mhlontlo, the Mpondomise Chief who was ruling at the time of the killing of Hamilton Hope, the magistrate at Qumbu at the time.”¹² In this chapter I am going to examine some of these accounts and continue to trace the voice of Mhlontlo as I go along.

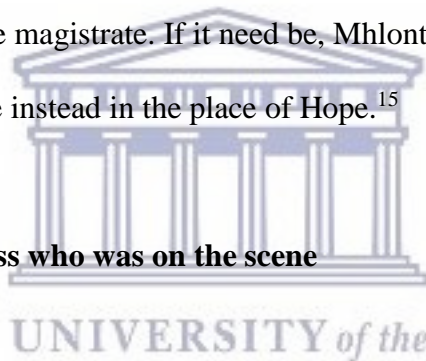
Crais recovers the story of the death of Hope the in his book *The politics of evil: Magic, State Power, and the Political Imagination in South Africa* published in 2002.¹³ The book provides a new reflection on the modern South African past. It offers a fresh perspective to the close examination of power, resistance and culture in the modern era. Crais studies the processes and the building blocks involved in the firm and ever controlling political order. Over and above that, his is the study of how people understood and fought against the colonial state in a multiple way. He studies how the state is built up as a cultural and political process and a moral problem and contrasts this with how the indigenous people relate to it as power, authority and evil. All these mixed together and influenced each other to formulate the texture of the making of the colonial state and how colonial power was exercised.

¹¹ Gerard Peter, ‘Timbuktu: rebuilding a historic ancient city’, *Skyways 20th anniversary: celebrating two decades of a successful partnership*, (Kyalami: Panorama Media, September 2015), p 39.

¹² Joe H. Majija, *Dark clouds at Sulenkama: a true story*, (Umthatha: 2009) p 3.

¹³ Clifton Crais, *The Politics of Evil: Magic, State Power, and the Political Imagination in South Africa*, (Cape Town: Cambridge University Press, 2002)

In the opening lines of chapter one: 'The death of Hope' Crais firmly illustrates the loyalty of Mhlontlo to Hope and he argues that Mhlontlo fully supported Hope. "He held Hope in his hand. "Go on I will follow," the Mpondomise paramount chief told the British magistrate Hamilton Hope in the early days of October 1880, "And where you die I will die." As Mhlontlo spoke these unwiring words of loyalty the chief's wife lay ill not too far away, slowly perishing from a long disease."¹⁴ In this way Crais described Mhlontlo as a willing collaborator to colonial authority, his was an unproblematized notion of the relationship between Mhlontlo the colonial magistrate that was indicated by the words he inscribed in how we come to know Mhlontlo in his work. The words that Crais allotted to Mhlontlo - "and where you die I will die" - suggested that Mhlontlo was willing to lay his life for the safety and protection of the life of the magistrate. If it need be, Mhlontlo, according to the text in Crais' book, was willing to die instead in the place of Hope.¹⁵



The surviving colonial witness who was on the scene

The official record also affirms the collaboration of Mhlontlo through a letter of A. E Davis, the only direct witness of the death of Hope. In the letter Davis the clerk of the resident magistrate of Qumbu at the time, described Mhlontlo as one that agreed to meet Hope and his team for the purposes of going "to quell the rebellion in Matatiele District."¹⁶ Davis placed on record that Hope and Mhlontlo had a standing agreement to join forces in arms and that Hope went to meet Mhlontlo in the strength of an agreed appointment. The letter further illustrated the cordial relations between Mhlontlo and Hope, stating that Mhlontlo joined Hope with "four hundred" men to be enlisted for war on Friday. Davis said "on the morning [Friday]

¹⁴ Clifton Crais, *The Politics of Evil: Magic, State Power, and the Political Imagination in South Africa*, (Cape Town: Cambridge University Press, 2002) p 35

¹⁵ Ibid

¹⁶ Joe H. Majija, *Dark clouds at Sulenkama: a true story*, (Umthatha: 2009), pp 79 - 84

about four hundred armed men collected with Mhlontlo and Mr. Hope addressed a few words to them.” Davis continued to say “Mr. Hope addressed a few words to them telling them why they were there, and that those who were willing to accompany him and Mhlontlo to fight against “Mugwayi’s Basotos” would be enrolled, and that he wished them make as much haste as possible.¹⁷ According to the account of Davis’ letter, Hope was active, taking charge of the battalion while on the other hand Mhlontlo was reticent and passive, suggesting consent on Mhlontlo’s part.

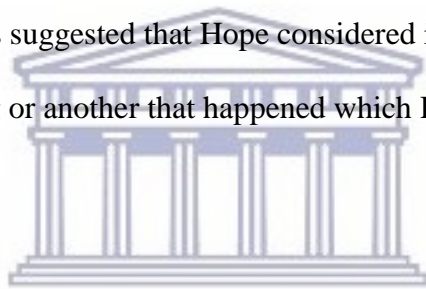
Davis described Mhlontlo as one that was giving full support to the magistrate, leaving no room for any notion that Mhlontlo was reluctant to join Hope. He suggested that Hope and Mhlontlo shared the same understanding about the importance and urgency of the move to “Matatiele”. He suggested that during a dinner, “Mhlontlo said he was fully alive to the fact that no delay was necessary and promised to accompany Mr. Hope on the morrow”¹⁸. This is after Mhlontlo requested to delay the move so that more of his men could join the following day meaning Saturday. According to Davis, Mhlontlo gave an undertaking that he and his men join Hope. But Davis also mentioned that Mhlontlo gave the undertaking after a long discussion between Mhlontlo and Hope.” During this time, Mr. Hope had a long conversation with Mhlontlo who told him that he wished to push on to Mr. Rutters where he had arranged to meet Mr. Thomson, Resident Magistrate of Maclear District.”¹⁹ The nature of the “long conversation” is of interest to me, especially in as far as Davis is the source that records the wishes of Hope and the consent of Mhlontlo.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

The “long conversation” of the night before and the wishes of Hope and the consent by Mhlontlo, according to Davis, met a good amount of men the following morning. Davis argues that on “Saturday the 23rd instantly the men arrived early and some seven or eight hundred had collected all armed”.²⁰ The turnout suggested a good response on the part of amaMpondomise to the call that was made to go “to quell the rebellion”. However, Hope was not satisfied and had a good deal of suspicion according to the letter that Davis, when he observed that “Mhlontlo and some twenty of his councilors were in close conversation, and messengers were constantly going to and fro between Mhlontlo and the different clans.”²¹ Davis argued that Hope instructed his men to “secretly load their rifles”, suggesting a state of nervousness on the part of the magistrate. This suspicion as amaMpondomise conversed while they did their war rituals suggested that Hope considered it to be superstitious or, perhaps, that there is one thing or another that happened which Davis did not record in his letter.



What could possibly threaten the confident colonial magistrate of Qumbu in conversations that send and receive messages from clan to clan? What Davis recorded in his letter about the events of the day did not show any sign of endangering a life. However, when setting atones for suspicion one can inscribe oneself in the text of a report. For instance, Davis suggested that an intimidated magistrate was brought in the center of a circle of men that were doing “umguyo”, a war ritual according to Davis. “About 1 o’clock Mhlontlo then came to Mr. Hope and sat down in the Marquee with us all, and after partaking of a friendly glass of Brandy and water, asked us all to go up to the “Umguyo” where he said it would be decided

²⁰ Ibid

²¹ Ibid

upon what number of men would be enrolled.²² He also suggested that Hope and the whole team were invited to join in.

At this point Davis grants Mhlontlo agency and firmly puts him in the position of control, an agency he later devolves to amaMpondomise. He argued that after Mhlontlo stopped the singing and dancing he said a few words and took an action of removing himself and Davis from the rest of the men, including Hope and his men.

Mhlontlo then addressed the people saying “Mpondomise there is your Magistrate. We are Government people in the true sense” of the word Government is our rock and shade. I am going aside to inform Sunduza (myself) the words which I wish Mr. Hope “to say” Mhlontlo then led me out of the ring and when about ten yards away we stood.

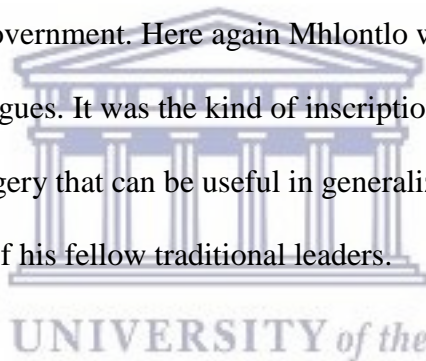
The act of moving out of the circle activated agency for amaMpondomise. With Mhlontlo out of the scene then other role players come into center stage. Davis argued that

At that moment I saw the men fall on Messrs. Hope, Warrene and Herman with their assegais and stab them to death. Mhlontlo and three of his men held me fast and disarmed me, and after Mr. Hope was killed some thirsty men rushed up to me and would have stabbed me, but Mhlontlo ordered them back saying that no man was to lay hands on me, that he has saved my life through my father being one of the oldest missionaries, and my brother (Revd. W.S. Davis) being their missionary. That he (Mhlontlo) was fight only against the Government that all missionaries and their sons as well as the shopkeepers were to be saved.²³

²² Ibid

²³ Ibid

Davis acknowledges that Mhlontlo did not kill Hope with his hands. Neither did he directly implicate Mhlontlo by instructing that Hope be killed. He further mentioned that his own life was saved because of Mhlontlo's interventions when "some thirsty men rushed up to me and would have stabbed me, but Mhlontlo ordered them back".²⁴ However, Davis implicated Mhlontlo in the death of Hope by saying Mhlontlo argued that he "was fighting only against the Government."²⁵ This is important especially understanding that magistrates, soldiers and colonialists are viewed as representatives of colonial government, whereas other roles such as missionaries and their kin, and shopkeepers are not. While acknowledging the role Mhlontlo played in saving his life, he also impressed that Hope and his colleagues were killed as part of Mhlontlo's fight against the government. Here again Mhlontlo was given agency and reason for killing Hope and his colleagues. It was the kind of inscription that fixed Mhlontlo in the category of blood-thirsty savagery that can be useful in generalizing the notion of his perceived resistance and that of his fellow traditional leaders.



The Davis report inscribed and fixed Mhlontlo as a cunning and dangerous killer who need no provocation to commit murder. If there was anything about the Davis report, it was a narrative that set the tone for fixing Mhlontlo as a killer who employed the ability of his subjects to kill Hope. "It is my sad and painful duty to have the honor of reporting for the information of the Government that Messrs. Hope, Warrene and Henman were brutally murdered by Mpondomise under the Chief Mhlontlo on the 23rd."²⁶ The report did not problematize the innocence of Hamilton Hope but firmly demonstrates the power Mhlontlo exerts on his subjects. Mhlontlo was able to allow Hope and his colleagues to be killed and

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

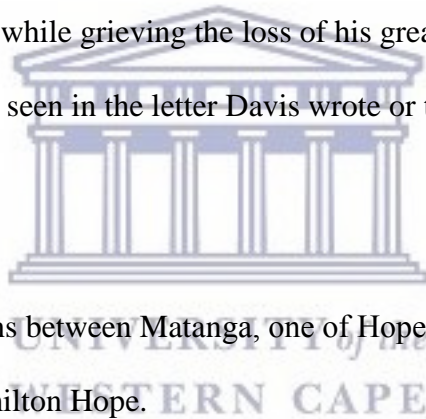
prevent Davis from sharing the same fate. In his report, Davis addressed Hamilton Hope as Mr. Hope and King Mhlontlo as Mhlontlo. While Mhlontlo was a traditional leader of elevated status in his report Davis treated him as one that did not have any such status. But he consistently registered the status of Hamilton Hope. The report indicated signs of ordering and categorization of the African as devoid of authority and standing. In fact, Mhlontlo is completely dismissed as a political figure in the text of the colonial archive.

In the report that Davis sent to Umthatha about the death of Hamilton Hope, he offers an account of a colonial official who was an eyewitness. The report set out the account of the occurrences on the day of the death of Hope and the purported savagery of Mhlontlo and amaMpondomise. Historians such as Christopher Saunders, Clifton Crais, Sean Redding and J.C. Macquarie, draw on the account of the report with little or no attention to the subtle symptoms of colonial power detectable in the description. Hastily seeking to access the report as an original document that documented the occurrences of 23rd October 1880, several scholars mined the archive to entrench Davis' claims without sufficient questioning. This was what Ann Stoler questioned about her fellow anthropologists, the digging of the archive for original documents and the use of such documents without problematizing them for the presuppositions and the implications thereof.²⁷ The question that this raises is how precisely does the discipline of history come to suspect a colonial text. Here the question is whether something beyond a treatment of the text as hostile witness is necessary. It is the question, as Premesh Lalu's *Deaths of Hintsa* asks about the reliability and liability of the colonial archive.

²⁷ Stoler L.A., *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, (Princeton: Princeton University Press, 2009), pp 3 – 19.

The problem of mining the archive for evidence without a protocol of reading that is disclosed often leads to a reinforcement of colonial understandings of what was recorded in the carefully selected documents that were domesticated in the archive.²⁸

Joe Majija writing in the wake of the Nhlapo Commission recently revisited the archive in an attempt to validate a claim of Loyiso Matiwane to kingship and to recover the voice of Mhlontlo and amaMpondomise on the question of the death of Hamilton Hope. Drawing from the colonial archive Joe Majija offered a different account of the reasons behind the killing of Hope as he reflected on the submission of the kingship claim to the Nhlapo Commission by amaMpondomise. According to Majija, Hope forced the hand of Mhlontlo who did not want to go to war while grieving the loss of his great wife – a quite different take on the situation to what can be seen in the letter Davis wrote or the work of subsequent historians.²⁹



Majija drew from conversations between Matanga, one of Hope's policemen, and Mhlontlo on the eve of the death of Hamilton Hope.

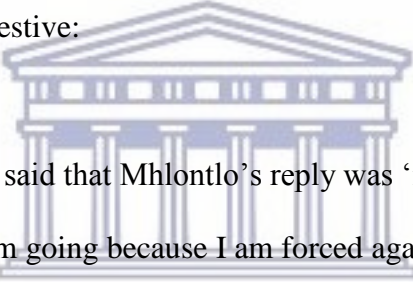
Matanga, who was a policeman, was also a member of Hope's party that left for Sulenkama on the 20th October 1880, said that together with Warrene he was sent back to Qumbu 'to carry out certain instructions from Hope and rejoined Mr. Hope on the following day'. According to Matanga when he arrived at Sulenkama to rejoin the group he found Mhlontlo with about 30 people. He had a conversation with Mhlontlo

²⁸ For a discussion on the domestication of documents and the retention of colonial messaging in the archived evidence see. Mbembe A., 'The power of the Archive and its Limits', in Carolyn Hamilton et al. (eds), *Refiguring the Archive*, (Cape Town: David Phillip, 2002). Lalu P., *The Deaths of Hintsa: Postapartheid South Africa and the shape of recurring pasts*, (Human Sciences Research Council, 2009)

²⁹ Joe Majija, *Dark Clouds at Sulenkama a true story*, (Umthatha: 2009), p13

during the night. Matanga said Mhlontlo asked him, ‘What did he think of the expedition against the Basotho and remarked that the Basotho carried tremendous axes with which they could cut a man’s head off and sending it rolling and also server a horse’s back – ‘I replied that we’ll meet them when they come and that their tactics will not prevail against the British forces.’³⁰

Majija recovered the voice of Mhlontlo through a conversation between Mhlontlo and Matanga who was a policeman under Hamilton Hope. They entered in a discussion about the expedition against the neighboring Basotho people particularly attending to their weaponry, ability, tactics and courage in relation to British forces. The conversation between Mhlontlo and Matanga is extremely suggestive:



Matanga further said that Mhlontlo’s reply was ‘it was all very well to say that you will see. I am going because I am forced against my wish. I ought not to go as I am in mourning for my wife – Chief Kreli’s [King Sarhili’s] daughter (Mamarile). I had deputised my uncle Gxumisa to take charge of my men in the expedition but Mr. Hope insisted upon my going’.³¹

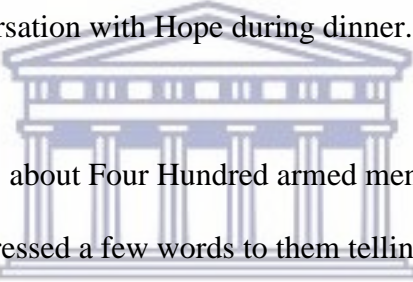
The conversation is useful in understanding Mhlontlo’s predicament under the circumstances. Matanga’s account brought to sharp contrast Mhlontlo’s version of the circumstances that surrounded him. His personal condition of losing a wife on the one hand and that he had to grieve for her bore heavily on him. On the other hand, magistrate Hope insisted that Mhlontlo must go to war at the same time. This suggested that Mhlontlo had to ignore his personal loss

³⁰ Ibid

³¹ Ibid

and focus on the duty that was presented to him by his magistrate.³² The call to duty and paying respect to the British priorities over his individual and personal loss came into sharp focus in this account by Matanga.³³ Such an account was generally absent in the work of historians who have written about the death of Hope and the issues that surrounded the event. Here Majija shows that Mhlontlo was put under tremendous pressure from magistrate Hope who wanted him to go to war and set aside his personal loss. Although Mhlontlo made alternative arrangements by putting Gxumisa in charge of his forces, Hope insisted that Mhlontlo must lead amaMpondomise to war.

The Davis report recorded that on the eve of the death of magistrate Hamilton Hope, Mhlontlo got into a long conversation with Hope during dinner.



On the morrow (Friday) about Four Hundred armed men collected with Mhlonhlo (sic) and Mr. Hope addressed a few words to them telling them why they were there, and that those were willing to accompany him and Mhlonhlo to fight against Mugwayi's Basotos would be enrolled, and that he wished them make as much haste as possible, as it was necessary that a forward move be made at once; Mhlonhlo said that as all his men were not present he wished the enrollment postponed till the following day, this was agreed upon, and Mhlonhlo and his brother Mtshiki with four men took dinner with us that evening, during which Mr. Hope has a long conversation with Mhlonhlo telling him he wished to push on to Mr. Rutters where he has arranged to meet Mr. Thomson, Resident Magistrate of Maclear District, and some Barkly Volunteers.³⁴

³² Ibid

³³ The notion of duty and honour as a civil service policy under the British flag is one that seems to impress a sense of duty upon Hope and Mhlontlo.

³⁴ Joe Majija, *Dark Clouds at Sulenkama a true story*, (Umthatha: 2009), pp79 -84

Mhlontlo made the necessary arrangements of organizing men who had to accompany Hope as he went to war, a sign that Mhlontlo yielded to British pressure even if he might not go personally. However, Hope decided to have a long conversation with Mhlontlo, Mtshiki and four other men “telling him [Mhlontlo] he wished to push on to Mr. Rutters where he had arranged to meet his fellow magistrate, Mr. Thomson, and some Barkly Volunteers.³⁵ The question of a “long conversation” however suggests a sense of reluctance to actively pursue the expedition on the part of Mhlontlo. Given Matanga’s account Mhlontlo must have been telling Hope how his situation changed since their last meeting as a result of death in his wife. Majija argues that Mhlontlo said “I am going because I am forced against my wish. I ought not to go as I am in mourning for my wife.”³⁶

The “long conversation” and the account that Mhlontlo was reluctant to go because of death in the family were recorded as issues for consideration. However, contributing to the “long conversation” could be what Majija allotted to Rev. Adonis account that follows:

A certain Rev. Adonis who was living at Sulenkama visited the camp at Sulenkama on a certain Thursday and Friday in October 1880. He confirms that he saw Mhlontlo and many of his people there. The people had a war dance in the afternoon...I heard previously that there was going to be a general uprising of the national and I spoke to Mhlontlo and told him what I had heard. He denied that he was going to fight against the Government as he is at peace and his children were living peacefully. I also

³⁵ Ibid

³⁶ Ibid, p13

advised Mr. Hope by letter of these rumours. I suspected treachery and that is why I went to Sulenkama to warn Mr. Hope and I did so in Mr. Davis 'presence.'³⁷

According to Majija, Rev. Adonis suggested that he “suspected treachery”. The reverend made use of the rumors that circulated about an uprising against the “Government” and acted on them. It was for this reason that he took it upon himself to write to Hope and also went to see him personally in the camp while at Sulenkama and warned him about it.³⁸ Adonis’ account has strong similarity with what Davis reported about when he said “Mr. Hope advised us all to take our revolvers, adding that he did not feel at all satisfied and was very suspicious that some foul play was being carried on.”³⁹ Davis went a step further to associate Mhlontlo with the rumors when he wrote about what Mhlontlo said and did; “I am going aside to inform Sunduza (myself) [Davis] the words which I wish Mr. Hope ‘to say’ Mhlontlo then led me out of the ring and when about ten yards away we stood... [he told me] he had saved my life through my Father being one of the oldest missionaries, and my Brother (Revd. W.S. Davis) being their missionary. That he (Mhlontlo) was fighting only against the Government”. Here Davis made a very powerful and telling association between Mhlontlo and the death of the colonial officials at Sulenkama.

Mhlontlo was “fighting only against the Government” according to Davis. Majija also brings this association closer when he records “Vantye (Tanye) Booi”, an account that says:

Mr. Hope was talking to Mhlontlo through Mr. Davis as interpreter. When Mhlontlo and Mr. Hope had been talking I heard Mr. Hope saying, ‘I am only a Government

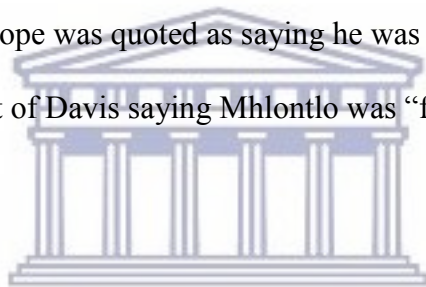
³⁷ Ibid, p 14

³⁸ Ibid

³⁹ Ibid, pp 79 - 84

servant and must do the Government's work. Mhlontlo turned then to his people and said in a loud voice in kafir (which I understand) 'There is your God. I am only a dog'. After this he took Davis by the arm and led him out of the ring.⁴⁰

Vantye (Tantye) Booie suggested that Davis had enough language proficiency to facilitate talks between Mhlontlo and Hope. He suggested that "Mr. Hope was talking to Mhlontlo through Mr. Davis as interpreter."⁴¹ In his account Booie suggested that Mhlontlo said Hope is "God" and he Mhlontlo is "only a dog" as a way of inciting amaMpondomise into killing Hope. This was a devastating blow to Mhlontlo in that it brought his words more closely to a direct instruction for the killing of magistrate Hope. It also ties in with what Davis reports as Mhlontlo's contention. That Hope was quoted as saying he was "the servant of the Government" by Booie and that of Davis saying Mhlontlo was "fighting against the Government."⁴²



Contesting the will and witness of the colonial officer

In the Davis report Mhlontlo was responsible for the death of the colonial officials. But Rev. Adonis argued that Mhlontlo refused to be associated with such violence. Majija suggested that Adonis' conversation with Mhlontlo suggested a denial. He (Rev Adonis) said "I heard previously that there was going to be a general uprising of the nation and I spoke to Mhlontlo and told him what I had heard. He denied that he was going to fight against the Government as he was at peace and his children were living peacefully."⁴³ If as Louise White argues that

⁴⁰ Ibid, p18

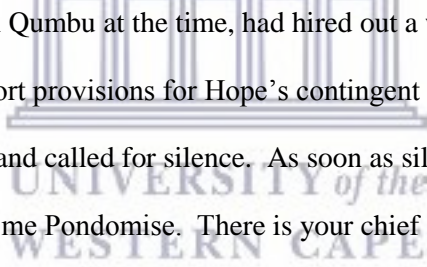
⁴¹ Ibid

⁴² Ibid, pp14, 79 - 84

⁴³ Ibid, p114

there were reasons for the fabrication of the rumors, and that these have consequences for how we write histories, we need to read the implications of rumors.⁴⁴

It was interesting that in Booi's account Mhlontlo was suggested as responsible for Hope's death. This is the same person who understood what he called the "kafir language" under oath, while Davis who interpreted for Mhlontlo and Hope did not report in that manner. The time difference between Booi's sworn statement and that of Davis' was vast and could suggest an altering of how people remembered things. Majija continued to bring to the fore more witnesses who used similar words in their accounts of what Mhlontlo said to amaMpondomise. For instance, Tetani and Gxoyiya also gave accounts about what Mhlontlo said to the people.



Tetani, who was living in Qumbu at the time, had hired out a wagon and a span of oxen to Hamilton Hope to transport provisions for Hope's contingent to Sulenkama...Mhlontlo stood out in front of Mr. Hope and called for silence. As soon as silence had been restored Mhlontlo said, 'Listen to me Pondomise. There is your chief (pointing to Mr. Hope) whose orders you are now to take, who has closed the door against the Baca and Pondos, you are now fat and don't have to sleep in the veldt in fear of your enemies. You all know I am still in mourning. Gxumisa will lead you' Mhlontlo and Davis left the ring.⁴⁵

Majija continued to explore the statements of eyewitnesses on the day. He brought in Gxoyiya's statement about what Mhlontlo said to AmaMpondomise before he left the presence of Hope.

⁴⁴ Louise White, *Speaking with Vampires: Rumours and History in colonial Africa*, (California: University of California Press, 2000)

⁴⁵ Joe Majija, *Dark Clouds at Sulenkama a true story*, (Umthatha: 2009), p18

Referring to this very moment Gxoyiya says ‘On reaching there (the inner circle) all went inside with the exception of Mhlontlo who remained a little behind the rest and at the opening of the circle. Mr. Hope sat down. UMhlontlo then address to people and said. ‘There is your chief, you must look after him. I can’t go on this expedition because I am in mourning. That is your man (meaning Mr. Hope) that has protected you against your enemy.’⁴⁶

The two accounts of Tetani and Gxoyiya were similar but they varied with that of Booi who claimed to understand the language spoken by Mhlontlo when addressing amaMpondomise. Booi argued that Mhlontlo said Hope is “God and that he Mhlontlo is “only a dog” in comparison. This statement suggests a condescending reference to Mhlontlo while elevating Hope in an unnecessary manner and had enough implications for inciting violence. However, Tetani, “who was living in Qumbu at the time, had hired out a wagon and a span of oxen for Hamilton Hope to transport provisions” and Gxoyiya who was in the company of Hope from Qumbu said something different.⁴⁷ Majija further argues that “Booi has been left at the camp and had been instructed by Hope to saddle up the horses.”⁴⁸ All these contradicting accounts were used as evidence in the trial of Mhlontlo in 1904 where the court did not find him guilty of the murder of Hamilton Hope but deposed him and destroyed his kingdom for good.

Majija invokes the words that were used by two key contributors to the destruction of the kingdom of amaMpondomise namely Mr. T. Welsh and Colonel Stanford. The two alluded to the end of the kingdom based on the basis of the killing of Hope. To begin with, Welsh wrote a memorandum addressed to the Secretary of Native affairs in the 1920s where he stated:

⁴⁶ Ibid, p 18

⁴⁷ Ibid, pp 18,14

⁴⁸ Ibid, p19

In 1915, on the death of Mhlontlo who treacherously murdered his Magistrate and two other officials at Qumbu in October 1880, an application for the revival of the Chieftainship was made by the Pandomise and refused on the grounds (1) that Mhlontlo destroyed 'by his own act' the chieftainship (2) that under no circumstances would the chieftainship be revived and (3) that it would be a mistake to go back on the considered policy of the past 30 years.⁴⁹

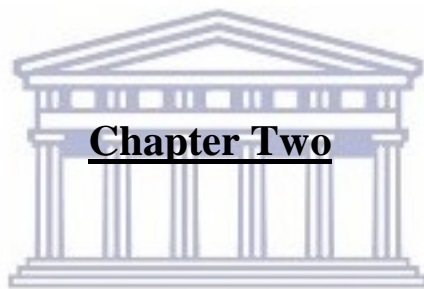
The Welsh memorandum suggested that the colonial office was tightly gripped through the policy argument that was in circulation for 30 years. It appears that Welsh remained firm on the principle that the Mhlontlo kingdom must be utterly and permanently destroyed. He highlighted three significant grounds for such refusal that implicated Mhlontlo in the murder of Hope even though the memorandum was written after the not guilty verdict was passed in the King Williamstown court in 1904. The colonial state considered Mhlontlo guilty of the murder of Hope regardless of lack of evidence that directly linked Mhlontlo to the act. But Welsh stated that "by his own act" which suggested that Mhlontlo had an active role in the death of Hope whereas the court verdict implied otherwise. The policy rationale was that "under no circumstances would the chieftainship" of Mhlontlo and his descendants be revived and that that policy was intact for 30 years already by then.

The second and last role player was Colonel Stanford who uttered a direct statement in a meeting held between Brownlee who was Chief Magistrate to East Griqualand in November 1881 and amaMpondomise. Stanford indicated that:

⁴⁹ Ibid, p 58

Had Hope not been killed, Charles Mhlontlo would have been your Chief today. You killed more than one man that day. You killed Mhlontlo. You killed Charles. You killed all Mhlontlo's descendants. You killed all the fruit of his loins into the last generation.⁵⁰

Stanford did not mince his words about who killed Hope. He simply asserted as fact that the amaMpondomise killed Hope. But he still punished Mhlontlo for an act he did not commit. It was in the Stanford statement that a direct link between the death of Hope and the permanent destruction of amaMpondomise kingdom was made. He claimed that the killing of Hope had direct consequences for Mhlontlo's descendants into the last generation.



Chapter Two

Nhlapo Commission: A Whig History recast

In October 2004, the second post-apartheid state president of South Africa, Thabo Mbeki, established an independent commission of enquiry to investigate all claims and disputes of traditional leadership in South Africa.⁵¹ In so doing, it seemed that Mbeki mandated and

⁵⁰ Ibid

⁵¹ Jeff Peires, 'History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: Fort Hare, 2013). Fraser G Mc Neill, *Aids, Politics and Music in South Africa*, (Cambridge University Press, 2011), pp vi, 38, 275. www.thepresidency.gov.za/pebble.asp?relid=3250. (accessed on 20 June 2015) www.bapedikindom.co.za/nation.html. (accessed on 20 June 2015) mg.co.za/article/2011-07-29-power-and-patronage-in-pondoland. (accessed on 20 June 2015) mg.co.za/article/2014-08-07-crownless-king-wants-precolonial-land-back. (accessed on 20 June 2015) mg.co.za/article/2007-07-06-my-chiefdom-for-a-kingdom. (accessed on 20 June 2015) www.iol.co.za/zwelithini-angered-by-king-claims-1.360803. (accessed on 20 June 2015) www.soweranlive.co.za/news/.../five-kingdoms-stripped-of-claim-to-royalty. (accessed on 20 June 2015) www.anc.org.za/caucus/show.php?ID=1648. (accessed on 20 June 2015) <http://152.111.1.87/argief/berigte/citypress/2004/10/17/C1/7/03.hym1> (accessed on 20 June 2015)

shifted the responsibility from his office to the Nhlapo Commission to deal with all the issues, claims, counter-claims and disputes that related to and affected the institution of traditional leaders. This act, on the part of Mbeki, devolved the powers of his office to the commission to act on behalf of the state to investigate and finalize kingship claims and counter claims that were the order of the day. Such kingship claims and counter claims were matters related to traditional authorities not dealt with substantially during the political transition negotiation process of the early 1990s in South Africa. The mandate included giving a report with recommendations to the state for implementation.

In this chapter, I will argue that by establishing the commission on claims and disputes of traditional leaders, Mbeki wittingly or unwittingly set in motion a binary of backwardness and progress in a context that complicated the meaning of whether South Africa was to be figured as a postcolonial or a specifically post-apartheid question.⁵² The binary that presented and represented the state as staking a claim to progressive political thought and leadership as opposed to stagnant, rigid and archaic systems of rule represented by traditional leadership was one of the core questions that had been deferred in the negotiation process. The transition and the negotiation process tended to lack in addressing the rural question as one about governmentality. The two terms taken together to refer to state policy shifts that were inspired by affording all the inhabitants of South African, not some, rights and liberties that marked discontinuity with repressive apartheid policies. In that way the state seemed to represent an ever moving liberal and a more progressive political environment as against a

⁵² Jeff Peires, 'History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: Fort Hare, 2013). The idea that traditional leadership as an institution represented pre-colonial life and times but that it survived during colonialism and apartheid was embedded in the statements of Mbeki. Again Mbeki drawing from the resolutions the African National Congress conference held in March 1987 with its allies which declared, that apartheid was a continuation of colonialism and a colonialism of a special type to be specific. The declaration advanced a position that South Africa under apartheid experienced internal colonialism for that reason 1994 marked a movement beyond internal colonialism to post-colonial and post-apartheid at the same time. But the two need to be problematized further.

stagnant and less democratic institution of traditional leadership. The question of how the commission on the claims and disputes of traditional leaders came about, its purpose and its dealings with the institution of traditional leadership brushed up against a concept of history that for all intents and purposes appeared to invoke a Whig conception of history, recast in South Africa undergoing a democratic transition.⁵³

That the commission was set up by the state to investigate the institution of traditional leadership was indicative of the politics of progress, progressive societal rights and liberties acting against supposedly rigid backward archaic tendencies and royal prerogative.⁵⁴ Such politics sought to elevate the state as the arch advocate of liberties and as a champion of universal suffrage and the sole arbiter in the ambit of conflict resolution. To this extent the setting up of the commission made no provision for the argument that the question of rights may have indeed entered the space of rural disputes where traditional authorities exercised their powers in apartheid South Africa. In this way the state through its commission was presented as the last port of call in validating the legitimacy of traditional leadership claims and disputes about who had an authentic claim to kingship and who was not, thus representing the institution of traditional leadership as incapable of resolving its own matters about the highest position in the hierarchy of traditional authorities. In the reckoning of the state, traditional authority was seen as derived from a pre-colonial history. For instance, when state president Mbeki established the commission, he effectively ushered in a binary of state and tradition to the life of the state, where the state had the power to investigate, arrange and regulate the affairs of traditional leadership on the one hand, while on the other, the institution of traditional leadership was presented as disordered, misaligned, chaotic,

⁵³Ernst Mayr, "When is Historiography Whiggish?", in *Journal of the History of Ideas*, April 1990, Vol 51 Issue 2, pp 301-309

⁵⁴Ernst Mayr, "When is Historiography Whiggish?", in *Journal of the History of Ideas*, April 1990, Vol 51 Issue 2, pp 301-309

illegitimate and in need of regulation. It needed to be given the hue of a modern state for it to function as constitutive of a post-apartheid political formation. For this reason, it appeared as if the state had the duty and onus to investigate the institution of traditional leadership through its appointed “independent commission of enquiry”.

President Thabo Mbeki, an ardent advocate for the advancement of the African continent and a champion of “African solutions to African problems”, is widely hailed as the proponent of the idea of an “African Renaissance”.⁵⁵ Elias Bongmba argues “that the renaissance imperative, as outlined by Mbeki, [was] crucial for reconfiguring the human condition in Africa”.⁵⁶ Mbeki’s thought was important to consider in imagining and arriving at a different Africa from “how it was known” and how it had been constituted in relation to a colonial project of indirect rule in places such as South Africa. Thabo Mbeki deployed the notion of an African renaissance, in ways that indicated a bias towards the recognition of Africa in many respects. Bongmba further suggests that Mbeki’s formulation of the African renaissance was vital since it demanded a post-nationalist agenda that took the African continent seriously, it called for the revitalization of Africa’s cultural ideals, and promoted a new political culture.⁵⁷ However, when Thabo Mbeki established the commission of enquiry on the claims and disputes of traditional leadership he inevitably ushered in a binary in which a democratic parliament was set up against traditional authority that undermined the very call he made in the “African Renaissance” debate that may link with the broad but mostly geopolitical discourse that prescribed “African solutions to African problems”.⁵⁸ The

⁵⁵ Elias K Bongmba, “Reflections on Thabo Mbeki’s African Renaissance.”, *Journal of Southern African Studies*, 30 no.2 (2004), pp 291 – 316.

⁵⁶ Elias K Bongmba, “Reflections on Thabo Mbeki’s African Renaissance.”, *Journal of Southern African Studies*, 30 no.2 (2004), pp 291 – 316

⁵⁷ *ibid*

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<http://www.up.ac.za/media/shared/Legacy/sitefiles/file/46/1322/17295welttrend92themanathansdafrikaafrikanischeunionsicherheitspolitikdiplomaatie.pdf>. (accessed on 20 June 2015) That amidst the many problems Africa had and the interventions of world powers in the affairs of Africa were not necessarily in the interests of the

question of whether a traditional authority could coexist with a parliamentary democracy, without the decimation of traditional rule, is a question that hovered in the background. This idea of decimation had an earlier articulation in the African National Congress (ANC) in exile (Lusaka) where strong objections to the inclusion of traditional authorities in the constitutional proposal for a future South Africa were tabled by members of a specially constituted constitutional committee in 1986.⁵⁹ Rather than explaining this as a product of compromise in the midst of a negotiated settlement, this thesis argues that the very compromise was defined by a concept of history drawn from an earlier tradition of the British Empire.

The establishment of the commission brought into focus a “trail of discourse leading to and from” the understandings of what it meant to set up such a commission.⁶⁰ In one way, Mbeki set up a “trail of discourse” in his deployment of phrases such as the dignity of traditional leaders and the integrity of traditional authorities as a justification for the commission. The commission and the understandings around it were mediated by a discourse of African Renaissance that sought to create a platform for affirming Africa as a continent capable and competent to run its own affairs independent of outside interventions. Mbeki also espoused the idea that, African solutions where African leaders and institutions used African approaches to African problems were key. The process of African restoration echoed by Mbeki collided with those who encountered the justificatory structure of the Nhlapo

African continent but to further advance the interests of world powers. It was time that African people be put at the center of conflict resolution in Africa to avoid the prevalence of a neo-colonialist agenda in the solutions for African problems. In seeking African solutions to African problems, it sounded logical that institutions that were precolonial would be regarded as partners in arriving at such solutions. However, the Nhlapo Commission brought in a colonialist agenda of subjugating traditional leadership to state power, which was the mission of white colonial representatives.

⁵⁹ Albie Sachs collection in the paper archives of University of the Western Cape-Robben Island Mayibuye archive, the minutes and deliberations of the constitution committee of 8 January 1986.

⁶⁰ Zsuzsa Baross, *Posthumously, for Jacques Derrida*, (Sussex University Press, 2011), p56

Commission.⁶¹ This very discourse created the conditions for different interpretations of the commission.⁶² These interpretations can be gauged in the many debates about why the Nhlapo Commission was necessary in the aftermath of the fall of apartheid.

To some scholars, when Thabo Mbeki set up the commission, he was in an interaction with the question of citizen and subject, and despotic arrangements inherited from late colonial rule.⁶³ However, for others, Mbeki recalled to memory or brought back to life the old British tension between parliament and the monarchy, one that had a ripple effect in Britain and its colonies such as America, India and South Africa at the height of Empire.⁶⁴ Together these interpretations reproduced and maintained the divide between a parliamentary democracy and monarchical rule that was the inheritance of the British Empire.⁶⁵

Often ignored in these interpretations is the fact that traditional leaders themselves had called for the questions of the future of traditional authorities at the time of CODESA negotiations. Chitja Twala, Buti Kompfi and Jacob Selesho, drawing from email exchanges with the chairperson of the commission, Professor Thandabantu Nhlapo, argued that in the Kempton Park political negotiations, traditional leaders approached the ANC for such an enquiry.⁶⁶ This suggested a reasonable distance from the state as one responsible for the establishment of the commission. Their argument sought to implicate traditional leaders in the creation of

⁶¹ Zsuzsa Baross, *Posthumously, for Jacques Derrida*, (Sussex University Press, 2011), p56

⁶² Ibid

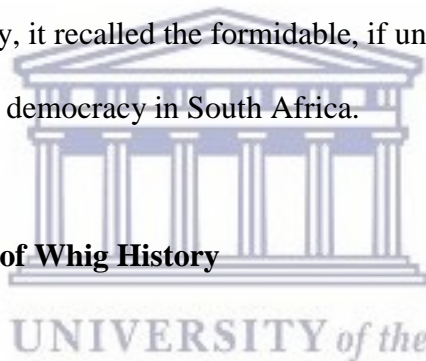
⁶³ Mahmood Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism*, (Kampala: Fountain Publishers, 1996). Lungisile Ntsebeza, 'Democratic decentralization and traditional authority: Dilemma of land administration in rural South Africa', *The European Journal of Development Research*, (volume 16 no. 1, 2004), pp 71 – 89.

⁶⁴ Thomas Babington Macaulay, *The History of England from the accession of James II, Volume 1*, (Philadelphia: E H Butler, 1856), p 1

⁶⁵ Laird Orkie, 'Ideology and Partiality in David Hume's *History of England*', in *Hume Studies*, (Volume 11 issue 1 April 1985). Ernst Mayr, "When is Historiography Whiggish?", in *Journal of the History of Ideas*, April 1990, Vol 51 Issue 2, pp 301-309

⁶⁶ [http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-2-14-Abst-PDF/JSS-40-2-169-14-1687-Twala-C/JSS-40-2-169-14-1687-Twala-C-Tx\[3\].pdf](http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-2-14-Abst-PDF/JSS-40-2-169-14-1687-Twala-C/JSS-40-2-169-14-1687-Twala-C-Tx[3].pdf) (accessed on 20 June 2015)

the commission and excused the state president for any apportioning of blame in relation to the commission. However, the workings of establishing this commission of enquiry recalled the binary that was operational in the very conception of History that underwrote the negotiation process and which emphasized older theories that elevated parliament above the monarchy. Such a conception of history argued for the idea of a progressive society that moved towards attaining more universal liberties and the establishment of constitutional democracy.⁶⁷ It marked the strength of parliamentary rule as an agent of progress and the subjugation of the monarchy to constitutional and democratic demands of parliament.⁶⁸ I will argue that by and large this binary of progress and tradition plagued the dealings of the post-apartheid state through its “independent commission of enquiry” called the Nhlapo Commission. More importantly, it recalled the formidable, if unstated Whig idea as critical to understanding the transition to democracy in South Africa.



Genealogical underpinnings of Whig History

To enter the debate about this binary that the state used through its “Nhlapo Commission”, I will investigate the case of the traditional leadership claim of amaMpondomise that was presented to the commission to illustrate the tension between parliamentary rule and the institution of traditional leadership. But, first I turn to the genealogical and epistemological underpinnings of the “Whig tradition of history” from the seventeenth century up to the twentieth century that ironically, I argue, underwrote the South African transition in the 1990s. To understand the Whig influence, I propose to return to the work of Paul Rapin de Thoyras in his *History of England*, David Hume in *The History of England*, Thomas

⁶⁷ Herbert Butterfield, *The Whig Interpretation of History*, (New York: W.W. Norton, 1965)

⁶⁸ Ernst Mayr, “When is Historiography Whiggish?”, in *Journal of the History of Ideas*, April 1990, Vol 51 Issue 2, pp 301-309 in JSTOR

Babington Macaulay in *The History of England from the accession of James II*, and William Stubbs and Herbert Butterfield in *The Whig Interpretation of History*.⁶⁹ The debate formed around the disagreements of these thinkers of Whiggish history offer us a new perspective on how to think about the ways in which the transition to democracy in South Africa perhaps unwittingly drew on a historiography of empire.

Whig concepts of history were punctuated by a series of disagreements, agreements, deviations and borrowings, beginning with Paul Rapin de Thoyras in *History of England* published in 1723 who first formulated the notion of an “ancient constitution”.⁷⁰ For Thoyras the English ruled themselves through an unwritten social contract, which he called the “ancient constitution”. The “ancient constitution” according to Thoyras’ deployment was a technology to oppose the “royal prerogative” in English parliamentary politics.⁷¹ Through the “ancient constitution”, Thoyras invoked the “Saxon constitution” of the Anglo-Saxon conquest” which brought about the “mixed government” resulting in “power [sharing] between the king and parliament”.⁷² Earlier the term “ancient constitution” was the idea of Edward Coke in his compilation of law reports that marked the political and theoretical developments of the seventeenth century.⁷³ While Edward Coke was considered conservative in his formulation and application of the term, the idea itself had become a radical shift in the

⁶⁹ Hugh Trevor-Roper, ‘Introduction’, *Lord Macaulay’s History of England*, (Penguin Classics, 1979), pp 10, 12. Reba Soffer, *Discipline and Power: The University, History, and Making of an English Elite* (1994), p 87. Herbert Butterfield, *The Whig Interpretation of History*, (New York: W.W. Norton, 1965).

⁷⁰ J. G. A Pocock, *The Ancient Constitution and the feudal Law: a study of English historical thought in the seventeenth century* (2nd ed.), (Cambridge: Cambridge University Press, 1987). [ISBN0521303524](https://doi.org/10.1017/CBO9780511521303)

⁷¹ Ibid. Robert P. Kraynak, *History and Modernity in the Thought of Thomas Hobbes*, (Ithaca, NY: Cornell UP1990), p. 33.

⁷² Laird Orkie, ‘Ideology and Partiality in David Hume’s *History of England*’, in *Hume Studies*, (Volume 11 issue 1 April 1985), p 6. William Dawson Johnston, *The history of England from the accession of James the Second I*, (Boston and New York: Houghton, Mifflin and company 1901), pp. 83

⁷³ Laird Orkie, ‘Ideology and Partiality in David Hume’s *History of England*’, in *Hume Studies*, (Volume 11 issue 1 April 1985), p 6.

politics of England to oppose the firm grip of power of James I and Charles I.⁷⁴ It sought to claim the endurance, existence and domain of common law in English politics since 1066.⁷⁵

The conservative British historian, Hugh Trevor Roper argued that Paul de Thoyras' *History of England* was the classic of Whig History.⁷⁶ Thoyras became an authority of the Whig tradition of history in the first half of the eighteenth century because he pioneered the debate about the relationship between monarchy and parliament.⁷⁷ Other Whig historians that wrote in this period were seen to be subordinate to Thoyras according to Hugh Trevor-Roper.

However, in the second half of the century, the Scotsman, David Hume rose to popularity and strongly differed with some of the early Whig formulations. Powerful figures of the early Whig history writers that added their weight in the “ancient constitution” discourse included Coke and de Thoyras, as well as John Locke and Thomas Hobbes. But was ultimately David Hume who introduced a crucial formulation that became a counter argument to the “ancient constitution”. It emphasized the imperative of a written constitution as direct evidence of any form of a “social contract”. The “social contract” emphasized in David Hume’s discourse indicated that a disruption occurred in that it had a later date than the one claimed by the early cohort of Whig writers as an “ancient constitution”. The background training of Hume channeled and influenced his writings. For instance, in his six volumes of *The History of England* written between 1754 and 1761, Hume leaned on the evidentiary discipline of legal studies by making a careful argument in favor of a “written constitution” or written “social contract”.

⁷⁴For a detailed account on the intellectual contribution of Sir Edward Coke to the English revolution see Christopher Hill, *Intellectual Origins of the English Revolution*, (Oxford: Clarendon Press, 1965) pp 225 – 265.

⁷⁵ Janelle Greenberg, ‘Bacon, Nathaniel. Christopher Hill, *Intellectual Origins of the English Revolution*, (Oxford: Clarendon Press, 1965) pp 225 – 265.

⁷⁶ Hugh Trevor-Roper, ‘Introduction’, *Lord Macaulay’s History of England*, (Penguin Classics, 1979), pp 10, 12.

⁷⁷ Hugh Trevor-Roper, ‘Introduction’, *Lord Macaulay’s History of England*, (Penguin Classics, 1979), p 10.

David Hume, who was a contemporary and a friend of François-Marie Arouet, with a pen name of Voltaire, a self-professed Tory historian, wrote the most explosive Whig history in the second half of the seventeenth century for which he got praise.⁷⁸ Considering that Voltaire was one of the foremost scholars of his time, praise from him affirmed Hume and positioned him as being part of the leading scholars at the time. Okie argued that the extent of Hume's opposition to early Whig formulations advanced by the likes of Locke, Hobbes, Coke and de Thoyras inspired him to write *History of England* wherein he vehemently refuted the notion of an ancient constitution probably because he was closely associated with the disciplinary standards of the evidentiary discipline of Law.⁷⁹ Drawing from Duncan Forbes, Okie suggested that Hume not only wanted to discredit the "shibboleths" of the "ancient constitution" but also to bring to life a historical work of "political moderation".⁸⁰ Instead of the political disunity that was presented in the past, his work attempted to bring about and work towards a rallying point for the unity of thought among the politically and ideologically divided proponents that tore the state asunder.⁸¹ While he was one of the celebrated historians of Whig tradition of history, Hume was not without limitations. For example, he could firstly not present and represent the Whig history in its entirety and satisfy all the competing sides. Secondly, he was trapped in telling a linear story and one that focused on those who led and not those who supported the cause from a distance. While his work was questioned, it resurfaced in the twentieth century with considerable force.

⁷⁸ <http://www.humesociety.org/hsissues/v11n1/okie/okie-v11n1.pdf> (accessed on 25 June 2015)

⁷⁹ David Hume was understood to be a student of Law, a discipline that emphasized more on exhibits and presenting evidence, seemed to lean more on his discipline in his writing, hence his writing favored the highest law of the land namely; the constitution. His Scottish heritage, which was largely underrepresented in Paul Rapin de Thoyras' work, seemed to be fairly represented in his presentation and representation of the History of England. Hume's refusal to recognize the unwritten social contract could be closely associated with the disciplinary standards of the evidentiary discipline of Law.

⁸⁰ Laird Okie, "Ideology and partiality" in David Hume, *History of England* in *Hume Studies* Volume 11, no. 1, April 1985, p 1.

⁸¹ Laird Okie, 'Ideology and partiality in David Hume, *History of England*' in *Hume Studies* Volume 11, issue 1, April 1985, p 3.

Laird Okie, however, omitted the role of Henry Fox from the politics of Whig history, father of Charles James Fox. The Fox combination of father and son proved politically influential in the Whig parliament for most of the seventeenth century. Henry Fox was a promising member of the Whigs who rose in the early eighteenth century but never reached the anticipated zenith of his political development of becoming a prime minister because of his opposition to the crown.⁸² Henry Fox played his political part in the British parliament since 1705 right through the second half of the eighteenth century. He also introduced an aristocratic arrangement in the Whig history when he bought a seat in parliament for his son, Charles James Fox, in 1748 remaining active in parliament for 38 years. In omitting Henry Fox, Okie missed inserting the aristocratic arrangement that powered the Fox family in the parliamentary politics of England. She also missed to show that this same family occupied the “cultural capital” and played a significant role in the structure of Whig / English politics through their long political and commercial involvement. The two Foxes overlapped the period of David Hume’s writing of *The History of England*, which strengthened the Whig position in the British parliament. This suggested that Okie omitted them not by default but by design, however, she shortchanged herself. I argue that the omission of the Foxes compromised the study on Hume because at a later stage Charles Fox pushed the Whig position in parliament to impeach King George III. “Whereas the early years had seen [Charles] Fox and [Richard] Sheridan playing a prominent role in the impeachment” where even King George III felt the sting of impeachment albeit in proximity under the lead of Charles James Fox in the company of Edward Burke, Richard Sheridan and Philip Francis.⁸³

⁸² Amanda Foreman, *The Duchess: Georgiana, Duchess of Devonshire*, (New York: Harper Perennial, 2008), p 31.

⁸³ Edmund Burke, *The writings and speeches of Edmund Burke: Volume VII; Speeches in Parliament; Abridgement of English History*, (New York: Cosimo classics, 2008). Russel Kirk, *Edmund Burke: A Genius Reconsidered*, (Open Road Media, 2014). file:///C:/Users/user/Downloads/Reviews_in_History_-

Okie's omission of the Foxes and emphasis on Hume missed one of the most crucial moments in the Whig / Tory relationship in the British parliament; that of the impeachment campaign against king George III. Their contribution questioned the traditional role of the monarchy in British politics, which Nelson Mandela claimed to admire during his Rivonia trial representations.

Butterfield has suggested that Charles James Fox advanced an idea that the king, George III, was a threat to the constitution, and that ridding him of the position by impeachment would serve the country well. Charles James Fox admired the movements and the achievements of the French Revolution had impetus in his Whig beliefs. That impact of the repercussions of the French Revolution in Fox's life remained even at the breaking point of the party and his relationship with Edward Burke, a situation that suggested a unity of opposites, where the Whig theory held together people of different persuasions.⁸⁴ But their influence weakened in the nineteenth century after Thomas Babington Macaulay published *The History of England from the accession of James II*. That specific text emphasized the exponential growth of England. Macaulay proceeded from multiple efforts and initiatives like the commerce, slave trade, and the expansion of the empire that were made under the British flag.⁸⁵ Macaulay elevated the British empire and emphasized the role of the crown and further elaborated the trope of enlightenment, which projected British achievements of a mixed parliamentary system, a gigantic commerce, and notable empire as superseding any nation on the face of the planet. The intentions of Macaulay conform to the more recent observations of Catherine Hall in her introduction to *Cultures of empire a reader: Colonizers in Britain and the empire in*

[The Writings and Speeches of Edmund Burke Vol. VII India The Hastings Trial 1788-1795 - 2012-03-08.pdf](#) (accessed on 25 June 2015)

⁸⁴ Edmund Burke, *The writings and speeches of Edmund Burke: Volume VII; Speeches in Parliament; Abridgement of English History*, (New York: Cosimo classics, 2008). Russel Kirk, *Edmund Burke: A Genius Reconsidered*, (Open Road Media, 2014).

the nineteenth and twentieth centuries, which offers an outlook that at first appears like the familiar civilizing mission, but in the colonies it was an effort to export a form of government in which a place for monarchy was secured.

In the introduction of his book *The History of England from the Accession of James II*, Macaulay engaged a discourse that revealed that the commercial, military, naval and expansionist efforts by the British helped to produce a mighty empire whose head was the monarch.⁸⁶ In Macaulay's book there was a strange shift in language and meanings about the role of the monarch in British affairs. From a generally anti-monarch British sentiment, Macaulay moved to the other extreme of embracing the monarch as the head of British representation in empire. It might well be that the work of David Hume and the slowly shifting and improved relations between the crown and parliament influenced the writings of Macaulay. He writes: "I [propose] to write the history of England from the accession of king James the Second down to a time which is within the memory of men still living".⁸⁷ Here Macaulay chose to engage the history of England deploying a teleological discourse and he forcefully made the point starting from the beginning of the English monarchy. He proposed to establish a teleological link in his contribution to the structure of English history and English thought which afforded him an avenue to English cultural capital in the age of empire.

In recent years, scholars such as Edward Said and Giorgio Agamben returned to the problem of teleology in history, questioning the kinds of historical discourses that ensue with Plato, Aristotle, Saint Augustine, Hegel and Marx, as well as Macaulay on the thesis of time and

⁸⁶ Thomas Babington Macaulay, *The History of England from the accession of James II, Volume 1*, (Philadelphia: E H Butler, 1856), p 1

⁸⁷ Ibid

history.⁸⁸ These intellectuals and critics are particularly interested in the question of time as it functions in relation to a sense of progress and progression and its entanglement in the discourse of history and colonization. In this regard, recent scholars have implicated the discipline of history formed around a notion of teleological time that facilitated how people of conquered regions and continents came to be known and therefore colonized.⁸⁹ Knowledge was integral to colonization. Said argued that European culture concerned itself with the study, development and production of knowledge about the colonies and central to his position was that this “culture was able to manage - and even produce – the [colonized] politically, sociologically, militarily, ideologically, scientifically and imaginatively during the post-Enlightenment period”.⁹⁰

Giorgio Agamben asks how “time” came to be understood in the telling of history by arguing that the likes of Plato, Aristotle, Saint Augustine, Hegel and Marx and even Macaulay, deployed the notion in particular ways in their thought. Agamben argues that the early scholars paid close attention to the relationship of time, the past, the present and the future, where the past was long lasting, the present was a short period and a future that was ever coming to unfold. Agamben also argues that this conception of “time” remained entangled in history since the period of Greek thought and that it endured well into modern thought, albeit

⁸⁸ Achille Mbembe, ‘Introduction: Time on the Move’, *On the Postcolony*, (California: University of California Press 2001). Dipesh Chakrabarty, *Provincialising Europe: Postcolonial Thought and Historical Difference*, (Princeton: Princeton University Press, 2000). Giorgio Agamben, *Infancy and History. The destruction of experience*, (London: Verso, 1993)

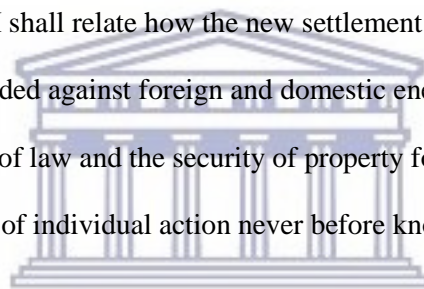
⁸⁹ Edward W. Said, *Orientalism*, (London: Routledge, 1978). Achille Mbembe, ‘Introduction: Time on the Move’, *On the Postcolony*, (University of California Press 2001). Dipesh Chakrabarty, *Provincialising Europe: Postcolonial Thought and Historical Difference*, (Princeton University Press, 2000). Giorgio Agamben, *Infancy and History. The destruction of experience*, (London: Verso, 1993) Marshall notes how a very different conception of Britain's Asiatic empire emerged during the 1790s. A harsher, more militaristic and more absolute conception of imperial power allowed Britons to perceive that they were able to govern an Asian population whilst maintaining their liberties back home. The production of British knowledge about India's laws, commerce and 'customs and manners' allowed Asia to be reduced to governable proportions – Marshall here approvingly cites the work of Edward Said.

⁹⁰ Edward W. Said, *Orientalism*, (London: Routledge, 1978).

unproblematized. From there it was infused into Marxist thought and in the production of history, unabated.⁹¹

This teleological perspective, for instance, can be seen in Macaulay's efforts to narrate the history of Britain not only as one of progress, but of progress that accommodates tradition. Macaulay's view of time and progress sets out his intended purpose of ordering the publics of Scotland and England through his carefully arranged work:

I shall trace the course of that revolution which terminated the long struggle between our sovereigns and their parliaments, and bound up together the rights of the people and the title of the reigning dynasty. I shall relate how the new settlement was, during many troubled years, successfully defended against foreign and domestic enemies; how, under that settlement, the authority of law and the security of property found to be compatible with a liberty of discussion and of individual action never before known⁹²



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Here Macaulay set the scene for his teleological account of the British empire and its founding tension between the monarch and the institution of parliament. He argued that the tension was long and was primarily “bound up together [with] the rights of the people and the title of the reigning dynasty”. Macaulay brought the old Whig /Tory tension that characterized the political life of Britain in the age of empire, to life. Again he intended to make clear a progressive link as the British polity unfolded. However, he buttressed the idea of a settlement, which was an agreement to split roles between the monarchy and parliament. In his thought the settlement was pivotal in the making of Britain and that developed into an unimaginable empire the world over.

⁹¹ Giorgio Agamben, *Infancy and History. The destruction of experience*, (London: Verso, 1993), pp 91,93

⁹² Thomas Babington Macaulay, *The History of England from the accession of James II, Volume 1*, (Philadelphia: E H Butler, 1856), p 1

Macaulay continued to mark Britain and its established institutions as peculiar from the rest of the nations of the world. He went on to argue that:

from the auspicious union of order and freedom, sprang a prosperity of which the annals of human affairs had furnished no example; how our country, from the state of ignominious vassalage, rapidly rose to the place of empire among European powers; how her opulence and her martial glory grew together; how, by wise and resolute good faith, was gradually established a public credit fruitful of marvels which to the statesmen of any former age would have seemed incredible; how a gigantic commerce gave birth to a maritime power, compared with which every other maritime power, ancient or modern, sinks into insignificance; how Scotland, after ages of enmity, was at length united to England, not merely by legal bonds, but by indissoluble ties of interest and affection; how, in America, the British colonies rapidly became far mightier and wealthier than the realms which Cortes and Pizarro had added to the dominions of Charles the Fifth; how in Asia, British adventurers founded an empire not less splendid and more durable than that of Alexander.⁹³

Macaulay introduced a discourse of a “revolution” and suggested that the British order arrived at a tipping point after long, protracted and bitter struggles between the “sovereigns and parliament”.⁹⁴ A revolution in the order of proceeding with how the British managed their affairs suggested a complete change in how they arranged their social structures. He did so by opening an avenue as he developed his argument and said the “revolution ... terminated the long struggle between our sovereigns and their parliaments”.⁹⁵ The revolutionary moment he projected suggested a notion of a turning point in the history of his nation, a notion that

⁹³ Thomas Babington Macaulay, *The History of England from the accession of James II, Volume 1*, (Philadelphia: E H Butler, 1856), p 1

⁹⁴ *Ibid*

⁹⁵ *Ibid*

was synonymous with modernity and the tradition of modern history writing.⁹⁶ It was that notion of a turning point, while it was not fully developed as a thought by Macaulay that nevertheless marked one of the most important milestones in British History and the history of empire.

Keeping in mind Macaulay's idea of the empire, Uday Singh Mehta in *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought* published in 1999 offers a platform for engaging Macaulay as he elucidates on the idea of unfamiliarity. He argues that by and large, the thinkers of the eighteenth and nineteenth centuries were generally ill informed about the people of the territories they occupied in the colonies of the empire based on unfamiliarity.⁹⁷ Bearing in mind the contribution of Macaulay in liberal thought of the empire, Mehta is deeply concerned that Macaulay “endorsed the empire as a legitimate form of political and commercial governance”.⁹⁸ In this regard he accepted and justified “it’s largely undemocratic and non-representative structure” in which the people of the occupied colonies were never part of what liberalism meant for the British who were in those colonies. Instead Macaulay encouraged and invoked “politically relevant categories such as history, ethnicity, civilizational hierarchies, and occasionally race and blood ties”.⁹⁹

Macaulay offered Whig historiography an opportunity to put progress and tradition together in a sequence. In other words, while Whig History supported the general idea of progress, Macaulay found a way to accommodate tradition in that longer story of progress. The difficulty for this Whig reconstruction came with the history of science, in particular the work

⁹⁶ Ciraj Rassool, "The individual, auto/biography and history in South Africa." PhD dissertation, University of the Western Cape, 2004.

⁹⁷ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999), p 2

⁹⁸ Ibid

⁹⁹ Ibid

of Herbert Butterfield's *The Whig interpretation of History* published in 1931.¹⁰⁰ Butterfield made room for an interpretation that used other disciplines beyond history, arguing that Whig history was over-invested in the discipline of history. His writing in 1931 brought the history of science to bear on the broader discipline of history. Nick Jardine's 'Whigs and stories: Herbert Butterfield and the historiography of science' suggests that Butterfield was first and foremost a historian of science. For Jardine, "as Chairman of the Cambridge History of Science Committee, [Butterfield] played an important role in the consolidation of the subject as an academic discipline in the post-WWII years."¹⁰¹

What Butterfield achieved was to question the notion of continuity that had underwritten Whig History. He did that by placing on record three questions. He discredited "narratives of triumphal progress that structured research topics" as early as the 1930s. Second, Butterfield called into question "historical transitions" in which he "opposed the Whig privileging of 'friends of progress' as agents of continuous development".¹⁰² Third, the problem for Butterfield was "the one concerning the methods, scope and uses of history", where he problematized how history was interpreted to suit particular notions of "grand theory".¹⁰³

More recently, E.P. Thompson enters the debate by drawing from Michel Foucault who was chair of History in France in 1960, in his argument that Michel Foucault "offer[ed] a new way of thinking about history, writing history and deploying history in current political struggles",¹⁰⁴ which made many historians, especially Americans and English, critical of his discourses on history. "Many American and British historians have received Foucault's books

¹⁰⁰ Nick Jardine, 'Whig and stories: Herbert Butterfield and the historiography of science', *History of Science* (Cambridge: Science History Publications Ltd, 2003).

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ <http://www.hnet.uci.edu/mposter/books/Chp3.html>. (accessed on 25 June 2015)

not as the development of a new theory of history and not even as the work of an empirical historian, but rather as an attack on the discipline of history".¹⁰⁵ Thompson thought that "for Foucault, history is a form of knowledge and a form of power at the same time. Put differently, it is a means of controlling and domesticating the past in the form of knowing it. The historian pretends to recreate the past"¹⁰⁶ Foucault addressed himself to the deception of writing history along these line and the imposed power of the authors of histories, who made believe that histories and their authors had no power relations with those who received their texts. He sought to insert the idea of discontinuing with the established and unmediated trend of power that flowed from authors to publics and states that are ordered by these means.

On the issue of discontinuity, Thompson's reflections on the work of Foucault suggests that historians tended to make illegitimate claims about knowing the past, they embodied it in their writings, positioned themselves as conduits of the past while concealing the aspect of power that invested their discourse as a result of such claim.

What is at issue is the act of an individual claiming to contain within his or her consciousness a certain truth about the past and representing it in writing. Foucault does not claim that such an effort is impossible or illegitimate, but that this operation is an active, willful working on materials. It is a creation, a fiction, in the full sense of the term.

Positivists, liberals, and Marxists alike have practiced it. Furthermore, it produces a discourse with a set of meanings that acts upon everyone who comes into contact with it. Historical writing, Foucault contends, is a practice that has effects, and these effects tend, whatever one's political predisposition, to erase the difference of the past and justify a certain version

¹⁰⁵ Ibid

¹⁰⁶ Ibid

of the present. And finally, the practice of the discourse of the past places the historian in a privileged position: as the one who knows the past, the historian has power. The historian becomes an intellectual who presides over the past, nurtures it, develops it, and controls it. Since, under the thesis of continuity, the historian is able to collect within him or herself the experience of the past, he or she has an ideological interest in maintaining its importance, reasserting the inevitability with which the past leads to the present, while at the same time denying that there is a certain power at stake.¹⁰⁷

Michel Foucault's work dealt historians of progress a blow because he presented a thesis of discontinuity. His main target was the sponsored idea of a past that was inevitably linked with the present. "Foucault's critique of the epistemology of historical practice [was] clarified and reveal[ed] its importance when it [was] brought to bear on those historical schools that present[ed] themselves consciously as advocates of progress".¹⁰⁸

Thompson deployed the work of Foucault to critique histories of progress like historical materialism and Whig history. Foucault was a contemporary of Jacques Derrida and a fellow deconstructionist who was chair of history in France. He came up with a formulation of "discontinuity" through his concept of difference that was again resulted in a particular problematization of the concept of time inherited through the discourse of history. American and British historians particularly isolated him as a result. Derrida, like Foucault, addressed himself to the notion of disentangling time, progress and the past from the present; these being the key features of the discourse of enlightenment and modernity. Enlightenment and modernity were favored vehicles that catapulted the rise of America and Britain to the central

¹⁰⁷ ibid

¹⁰⁸ ibid

stage of historical thought as keenly presented and represented by their scholars. It was against this background that both Derrida and Foucault implicitly questioned and discredited the centrality of enlightenment notions of Whig history and historical materialism of the Marxist theory. French scholars beheaded the king. British historians, for the better part, did not. The exception to that rule defined Marxist engagements with Whig history.

Marxist engagement with Whig History

Fully aware of the Whig traditions in writing the history of Britain the Marxist historian Christopher Hill wrote about the *English Revolution of 1640*. Published in 1940 and later transcribed by Andy Blunden in 2002, details how in 1640 the English parliament beheaded the British king Charles I in public.¹⁰⁹ Hill compares the English revolution to the French revolution. In fact he argues that the revolution was a “great social movement” that was complex in its nature.¹¹⁰ The often cited leaders of the revolution like Charles I, Cromwell, Hume, George III, Fox and Macaulay for instance, according to Hill, represented a group of the elite classes like the landlords and members of parliament who appealed to the support of traders and industrialists, “the yeomen and progressive gentry and the wider masses”.¹¹¹ While the English revolution may be seen as a genuine tilt in favor of the poor, it constituted a victory of self-government for the wealthier middle and upper classes. The majority of English people were reduced to poverty as a result of a new capitalist order that tilted the scales in society.¹¹²

¹⁰⁹ Christopher Hill, *The English Revolution 1640*, (Lawrence and Wishart, 1940).

¹¹⁰ Ibid. p.3

¹¹¹ Ibid

¹¹² Ibid, p 3

Hill argues that the English Revolution was a tension, conflict and a struggle waged for political, economic and religious power whose central proponents were the middle class and the bourgeoisie at the time of the rise of liberalism and exponential wealth accrued from the development of capitalism. These classes and influences struggled against the monarch Charles I who represented noble landowners who were supported by a “court clique of aristocratic commercial racketeers” that accrued benefit from tax impositions and public funds.¹¹³ To this end, the claims by Charles I before the court which sentenced him to death that he spoke not for himself alone but for the liberty of all his subjects since he was their king, were not true. His interests were “not of the common people at all”.¹¹⁴ Here the British parliament successfully dislodged the authority of the monarchy in the affairs of their country. By relocating the central causes of the English Revolution, Hill and other Marxist historians displaced the question that had guided the Whig debate. In the hands of Marxist historians, the question of the struggle between monarchy and parliament was laid to rest by historical means. But the peace made in Britain did not follow that which was to follow in the former colonies of the British empire, where the division between monarchy and parliament that had been exported to the colonies as a story of citizen and subject affirmed the continuous struggle between monarchy and parliament.

While the matter was settled in the British historiography, in South Africa it reared its head at the time of the transition. In the South African transition, the trace of the tension between monarchy and parliament becomes apparent when one threads the debates in South Africa through the grids of British historiography and places it in relation to the convening of the Nhlapo Commission into the role of traditional leaders. In South Africa, the constitutional

¹¹³ Ibid, p 4

¹¹⁴ Ibid

parliament initially sought to dislodge and subject the remains of the monarchy to South African laws, which cut the monarchy off from the organs of state power. For instance, the Constitution of 1996 and the Traditional Leadership Framework Act of 2003 consistently position the monarchy as being subject to customary law and the Bill of Rights, which are the essential elements of the Constitution. But after several years, the claims of traditional leaders resurfaced, suggesting that the matter was far from resolved. It is in this resurfacing that we see the recall of a Whig concept of history to resolve and African problem.

In the South African situation, which is a former colony of Britain and currently a capitalist economy in a democratic dispensation, the monarchy is completely subjected to the supreme law of the land and operates in parliament through a national house of traditional leadership which reports to a minister in the cabinet. Similarities notwithstanding, there is some difference from the developments of the English Revolution in Britain where the monarchy suffered a literal death of a reigning king and that the feudal system was curtailed and the voice that supported the monarch was silenced for a short while in which historical narration played a crucial role.

Common concerns between the British revolution and the South African transformation epochs are issues of land and land ownership, trade and industry as well as the political role of the monarchy in both countries. Britain moved from feudalism to capitalism whereas South Africa moved from a liberal to a neo-liberal economic set up. For instance Hill suggests that owing to the developments of the sixteenth century of the discovery of silver in America and the settler arrangement there, land ownership in England became competitive even for the monarchy and the bishops.¹¹⁵ This cut through the feudal system of the time and

¹¹⁵Ibid, p 8.

pushed boundaries in the economic system of hand to mouth production. “Landowners controlled local government” and “[o]nly gentlemen were elected by their fellow landowners to represent the country in parliament”.¹¹⁶ Representation in the British parliament at the time was marked by elitism to advocate for the interests of the represented classes which embraced capitalism.¹¹⁷ Because the laws were old and never accommodated the capitalist order radical changes were pushed in parliament to favor capitalism but growing displeasure of forced labor, landlessness and bad treatment inflated the anger of the affected classes against the crown.

The unity of the poor and the richer classes against the crown seem to be identical and all embracing. However, Hill suggests that the industrial expansion, the dictates of price increases, the expansion of export goods and the coal mining increased the stakes for the capitalist in seventeenth century England.¹¹⁸ The power of capital grew and ordered the public in a different and new way, while the crown sought to maintain the old order purportedly in favor of poorer classes of feudal landlords, the crown and the landless.¹¹⁹

Conquest, exploitation, and subjugation are old themes in world history. What was new in the Europe of the Enlightenment, of the development of liberalism, of the French Revolution, and of the classical economists was that such processes were set off against increasingly powerful claims in late eighteenth century political and historical discourse to universal principles as the basis for organizing a polity. Such claims – and competing visions of universal public good – were bitterly contested within Europe, not least over the questions of the social criteria (gender important among them) by which some groups would be included in the body

¹¹⁶Ibid, p 9.

¹¹⁷Ibid, p 11

¹¹⁸ Ibid, p 12.

¹¹⁹ Ibid, p 15.

politic while others would not. Ruling elites trying to claim power on the basis of generalized citizenship and inclusive social rights were forced to confront a basic question: whether those principles were applicable – and to whom – in old overseas empires and in newly conquered territory that were now becoming the dependencies of nation-states.¹²⁰

Liberalism and empire

Lastly I would like to pay attention to the idea of liberalism and empire as a way of dealing with the epistemological and genealogical elements of the Whig conception of history.¹²¹

Catherine Hall deals with the idea of cultures of empire in detail in her edited reader *Cultures of empire: A reader: Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, published in 2000. There she identifies empire to be what J. R. Seeley zoomed in on when he used “the name, England, the race, Englishmen, and the nation which is also an empire”.¹²² According to Uday Singh Mehta it is common cause that the Whig conception of history was a deliberate plan to erase a layer of British and world history in order to institute the idea of modernity and enlightenment.¹²³ Mehta argues that history in relation to liberalism “is never merely a narrative of the past ... it is also a chosen battleground” for the discourse on which enlightenment carries out its multi-pronged mission against religion, superstition, and ignorance”.¹²⁴ In so doing, the thinkers and sympathizers of enlightenment sought to firmly establish the very idea of enlightenment as a super culture. Catherine Hall, drawing

¹²⁰ Ann Laura Stoler and Frederick Cooper, ‘Between Metropole and Colony: Rethinking a Research Agenda’, in Frederick Cooper and Ann Laura Stoler (eds), *Tensions of empire: colonial cultures in a bourgeois world*, (Berkeley: University of California Press, 1997), p 1

¹²¹ Catherine Hall (ed), *Cultures of empire: A reader: Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000) p 2

¹²² Ibid

¹²³ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999), p 83.

¹²⁴ Ibid

from Himani Bannerji, points out that “the writing of history is not a transparent affair, nor is it innocent”. She says this in reference to imperial history and that of empire.¹²⁵

Mehta draws on Friedrich Nietzsche as he suggested plurality in the question of morality and the tendency of presenting non discursive notions in the work of philosophers. He suggests that his work focuses on British liberal thought, particularly the period of the late eighteenth and nineteenth centuries, where he sets to work on rewriting the meaning of the idea of the British empire. He contends that liberalism, British in particular, is framed along European lines if not national ones with the intended purpose to accommodate Europe first and foremost in its thinking and practice. Such a body of thought sprung from an epoch of vast travelling, huge commercial explorations and settling in distant lands that Macaulay leaned on. But in the same vein it was one that bred a sense of unfamiliarity and by contrast challenge the subject of familiarity in British liberal thought.¹²⁶ Liberalism in Britain was the main vehicle for ordering the public and had dominated or occupied the cultural capital but when confronted with unfamiliarity resorted to labeling these unfamiliar spaces as “backward” by reestablishing there, in the colonies, the system of Indirect Rule that propped up the monarchy.¹²⁷ British liberalism dispatched the unfamiliar in its own history that it had inherited from the English Revolution to the colonies, where it would fester and return to haunt the very notion of modern democracy.

¹²⁵ Catherine Hall, ‘Introduction’, in *Cultures of empire: Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000), p 20.

¹²⁶ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999), p 1.

¹²⁷ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999). Mehta on unfamiliarity says “By unfamiliarity, I mean not sharing in the various ways of being and feeling that shape experience and give meaning to the communities and the individuals who constitute them.”

Unfamiliarity was a constitutive element of liberal discourse. It drew on the resources of the unresolved question of monarchy and parliament of the English revolution and traveled to the colonies. A similar situation can be observed about the kingship claim of amaMpondomise, in that it rendered the thinkers of the late eighteenth and nineteenth centuries ill informed, even if they were particularly adept in their ways of thinking about liberalism and the spaces they were in. For instance, in his argument about the roles of Macaulay and James Mill as well as his son John Stuart Mill in developing liberal thought, Mehta says that while they championed the ideas of liberalism, equally they “endorsed the empire as a legitimate form of political and commercial governance”. They also, according to Mehta, “justify and accept its largely undemocratic and non-representative structure and invoke as politically relevant categories such as history, ethnicity, civilizational hierarchies and occasionally race and blood ties”.¹²⁸



Mehta’s criticism of English liberalism draws similarities between the problems of liberal thought, its historical resolutions in England and the Nhlapo commission that dismissed the claim to kingship of amaMpondomise and how they were compromised by unfamiliarity with history. For example, amaMpondomise used their internal cultural systems and institutions to arrive at their claim. But the Nhlapo commission notwithstanding its composition of leading scholars and professionals dismissed their claim on the basis of a dissimilar arrangement of constructing kingship. When contrasting this to how the Nhlapo Commission dismissed the kingship claim, the Commission was found wanting for neglecting the amaMpondomise cultural and political discourse on kingship. As a result, a further claim in the Umthatha high court following the ruling of the Nhlapo Commission resulted in the findings of the commission set aside.

¹²⁸ Ibid, p 2.

The post-apartheid, post-colonial, democratic South African state embraces a thought of progress and universal suffrage that is in line with what liberalism associated with political power, “that capacious imperative for the betterment of life”.¹²⁹ Mehta argues that the conceptualization of India in liberal doctrine and the history of empire by leading thinkers was articulated as one that “requires an identification of those whose past and present did not align themselves with the expectations of that view of progress”. This would mean “those who were deemed to be backward” had to be subjected to liberalism while having no recourse to resolving its inner contradictions.¹³⁰ The state had the responsibility of using its machinery to bring their lives into the order of things in society, not unlike the rule of colonial power. This meant that it is incumbent on the state to identify and act on the “need and justification of a power to bring about such a progressive alignment” in the life of whatever residual element of backwardness remains.¹³¹ As such if there be any tension in the very thought of liberalism between the political and betterment of life or progress, most often than not “the arguments for betterment of life or progress have always held a strong if not trumping suit”.¹³² Likewise in South Africa the constitutional arrangement has always been tilted to the winning side of any debate if ‘unfamiliar’ ideas, institutions or practices are placed alongside the common perceptions that derive from public life. This suggests that the South African transition was deeply embedded is in the belly of liberal thought, and is not accommodating of any deviation from the familiar frames of liberal thought and cultures of empire.

¹²⁹ Ibid, p 78.

¹³⁰ Ibid, p 78

¹³¹ Ibid, pp 78 – 83: here Mehta stresses the importance of history writing during enlightenment which focused on eliminating the thinking traditions before it and firmly place its pivotal principles on the very fabric of societal understandings. Education of the publics became particularly important in furthering the claims of enlightenment thought. Thinkers were also advisers and servants in empire. The complicated interwoven nature of the duplicity of function on the part of the thinkers as advisers and thinkers in empire centralized power and further problematized their role as independent thinkers whose work was innocent.

¹³² Ibid, p 79

Scholars agree that the idea of empire need further study, questioning and problematizing if a different way of thinking the post colony is feasible. Critical thinkers like Frantz Fanon, Raymond Williams, and Michel Foucault help us think the question through and afford us the ability to position the works of the Whig and Enlightenment thinkers in a category of thinkers with specific intended outcomes. They also allow for sufficient problematization of received wisdom. The questions that history resolved for the English revolution, the way the story of empire allowed it to export its sense of the unfamiliar and unresolved questions, and the way these have been now subject to a particular liberal discourse in the post colony may now be opened up to new readings and problematisation in the wake of the critique of teleological history.



State interventions in traditional leadership disputes through the Nhlapo commission

This chapter attends to the idea that the Nhlapo commission was an attempt to address a larger problem of the relationship between the democratic state and traditional leadership which was not dealt with during the negotiation process that resulted in a transition to democracy. With the formation of the post-apartheid state, the Nhlapo commission was mandated to deal with all the issues of traditional leadership that were outstanding during the negotiations. One case that brought the work of the commission into sharp focus in relation to this question of unresolved issues is that of amaMpondomise, who claimed kingship and made representations to the Nhlapo commission. To understand the amaMpondomise claim and the Nhlapo commission debate, one needs to understand the backdrop of the negotiations

process. The claim to autonomy and self-determination of kingship in the democratic South Africa was put into question in that the commission had to investigate and determine the veracity, authenticity and truthfulness of the claim to kingship. In the final analysis, after making considerable efforts and testing the validity of the claim, the commission had the last word, which was to reject the kingship claim of amaMpondomise.

South Africa and its democratic order was juxtaposed with apartheid policy and practices in that its ascendance was one that was mingled with notions of people's power or, as advocated by the ruling ANC, "a government of the people by the people for the people". This phenomenon was also seen to be dissimilar in that the democratic government took over from the apartheid regime and not directly from a colonial power. This was a marked difference from how the independent African states had been constituted and known. However, Mahmood Mamdani reminds us that there are more similarities between the independent African states and South African state in the so-called democratic order. In *Citizen and Subject: Contemporary Africa and the legacy of late colonialism* (1996), Mamdani follows an idea that the African state at a basic level was one of separation between citizens of the empire and subjects of the traditional community. He interrogated the idea of apartheid as a system of government that continued to fracture the ranks of the ruled and disguise racial domination by using strategies of indirect rule, which bore similarities with independent African states after their independence from colonial rule:

Usually understood as institutionalized racial domination, apartheid was actually an attempt to soften racial antagonism by mediating and thereby refracting the impact of racial domination through a range of Native Authorities... as a form of rule, apartheid - like the indirect rule colonial state - fractured the ranks of the ruled along a double divide: ethnic on

the one hand, rural-urban on the other...the same exceptionalism masks the colonial nature of the South African experience.¹³³

Here Mamdani observes that the move from a colonial state to an apartheid state in South Africa was marked by structural continuity in as far as the as the ruled were concerned. He highlights the issue of a “double divide” which was ethnic on the one side and “rural-urban” on the other as a marker of that structural continuity. In *Citizen and Subject*, Mamdani argues that there were inherent similarities between independent African states in post-colonial stages and a post-colonial apartheid South Africa in that Native Authorities were used as a smoke screen of ultimate authority. The white minority held power and that in itself had implications for indirect rule, suggesting that apartheid South Africa maintained a bifurcated state from the colonial order through the maintenance of ‘native authorities’.¹³⁴

As an extension to Mamdani’s argument another scholar of empire, Catherine Hall, however, suggests that when it comes to studying the colonial order and its aftermath, scholars should seriously think about the implications of imperial history in postcolonial times and rethink the connection of race, nation and empire. She asks that scholars carefully interrogate the notion of ‘empire’ along the lines of “the obvious fact of the extension of the English name into other countries of the globe, the foundation of greater Britain”, as Seeley once indicated in late nineteenth century.¹³⁵ The same idea was that of colonies seen as “offshoots of the mother country” that facilitated the making of “Greater Britain”. These suggested the incorporation of colonies in the structures that made up Britain. Such incorporation suggested

¹³³ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Phillip, 1996), p 27.

¹³⁴ The deployment of the term post colonialism guided by the problematique the term carries. It acknowledges the dismantling of the colonial system but not the end of its effects which leads me to use it in ways that indicate the aftermath of such a world system.

¹³⁵ Catherine Hall, *Cultures of empire: A reader: Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000), p 1.

that the “dominance of the Englishmen meant that [the encountered] racial groups could be comfortably assimilated without marring the ethnological unity of the whole”.¹³⁶ These scholars suggest that colonies were to conform to the grand idea of “England” and Englishness as cornerstones for building any form of recognizable nationhood and statehood.

Mamdani’s argument that South Africa was a double divide of the ruled populations was focused on emphasizing the division in the type of ruling and set of regulation principles, policies and procedures for the tribalized and for urbanized.¹³⁷ He maintains that such division typified colonial rule because it sought to facilitate difference between the ethnic under customary laws in the rural and civic rule in the urban. However, Catherine Hall suggests that in fact the double divide was to serve a bigger idea of empire, which must not be left out when dealing with the cross over from colonial rule to ‘post-colonial’ rule.¹³⁸ This is a point which Mamdani sought to address too in *Citizen and Subject*, where he argues that there were institutionalized elements that were not properly interrogated and therefore were left intact. Uday Singh Mehta, another scholar of empire, strongly argues for a careful study of empire, particularly the ideas that were generated to assemble understandings of experience during empire.¹³⁹ Scholars of empire and those of the post colony seem to suggest that there was continuity of coloniality in post-coloniality, which may suggest a sense of residual existence even in democratic orders after the existence of the colony.

¹³⁶ Ibid

¹³⁷ Mahmood Mamdani, *Citizen and Subject: contemporary Africa and the legacy of late colonialism*, (Cape Town: David Philip, 1996),

¹³⁸ Catherine Hall (ed), *Cultures of empire: a reader Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000)

¹³⁹ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999)

In this chapter I ask questions about the kind of state the new South African democratic state became as it was constitutionally made, especially in relation to its inheritance not only of apartheid, but empire. In particular, especially related to the interest of my study, how the democratic, post-apartheid and post-colonial state configured the question of coexistence with traditional authorities that were seen to be pre-colonial institutions side by side with a post-colonial, post-apartheid, democratic state.¹⁴⁰ This draws the question of the two institutions being two sides of the same coin of governmentality, whether from a pre-colonial, colonial, semi colonial, apartheid and/or post-colonial dispensation.

Patricia Hayes, in her study of the deployment of native authorities in South West Africa, argues that South Africa was a semi-colonial state that was a colonial power in South West Africa between 1915 and 1946.¹⁴¹ She suggests that while South Africa may be seen as a post-colonial state after 1910, in fact it was also a colonial power to its neighboring South West Africa from 1915 to 1946 and acted as such in so far as her study was involved. Fraser McNeill noted the investment made into tradition, which translates to institutions and practices of traditional authorities under the apartheid state. This is a feature that followed the semi-colony to which Hayes alludes. Fraser McNeill observes that in “the apartheid period as well as beyond it, a legally sanctioned politics of tradition coexisted with a bureaucratic state and planning”.¹⁴² Following the argument of the scholars of post-colonialism, McNeill suggests that the state employed tradition (I borrow from Foucauldian thought) as a governmental apparatus during, in Mehta’s terms, the fact or experience of apartheid, and

¹⁴⁰ Fraser G. Mc Neill, *Aids, Politics and Music in South Africa*, (Cambridge: Cambridge University Press, 20), p 29.

¹⁴¹ Patricia Hayes, ‘‘Cocky’ Hahn and the ‘Black Venus’: the making of a Native Commissioner in South West Africa, 1915 - 46’, in Catherine Hall (ed), *Cultures of empire: a reader Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000), pp 329 – 355.

¹⁴² Fraser G. Mc Neill, *Aids, Politics and Music in South Africa*, (Cambridge: Cambridge University Press, 20), p 29.

continued to do so even after apartheid ceased to exist.¹⁴³ This suggests that tradition was deployed in the post-apartheid order in similar ways as it was during the apartheid experience, thereby marking uninterrupted continuity from apartheid to post-apartheid.

Such implied continuity of “a legally sanctioned politics of tradition”, as noted by McNeill, suggests a sense of coexistence and accommodation within the democratic constitutional framework, which was seen as a dissimilar political state after apartheid. That “the sanctioned politics of tradition” coexisted alongside “a bureaucratic state and planning” in post-apartheid South Africa, hinted at the presence of apartheid apparatus that was maintained in the new post-apartheid political order. For instance, John Mowitt, a scholar of the medium of radio as an aspect of cultural studies, observed that such continuity may well be indicative of what he calls ‘residual’.¹⁴⁴ In his treatment of radio studies, Mowitt deals with the genealogy of the residual by drawing from Raymond Williams in *Marxism and Literature* where Williams produced the concept of the “emergent”.¹⁴⁵ Here Mowitt holds that in doing so Williams “also produced a concept profoundly relevant to the apparatus of radio and its history, namely, the concept of the residual” or in other words, the emergent, which Williams deployed for monarchism in Britain.¹⁴⁶ Here Mowitt thinks about the notion a cultural apparatus like the monarchy that was considered to have had relevance in the past, which appeared to have been superseded by the prevailing consensus of the dominant.¹⁴⁷ He advances the idea that the notion of residual is useful in thinking about the comeback of a cultural apparatus like the monarchy, setting in the idea of a comeback which “is from some

¹⁴³ Ibid

¹⁴⁴ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 4.

¹⁴⁵ A concept which Mowitt produced to relate to socialism as he dealt with the ‘object’ of radio studies in *Radio essays in bad reception*.

¹⁴⁶ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 4.

¹⁴⁷ Ibid, p6

sort of prior moment".¹⁴⁸ I suggest that as McNeill observed that the post-apartheid state continued to deploy tradition as tied up in its beauracracy and planning marks tradition as residual in post-apartheid South Africa.

Mowitt makes an interesting observation that radio studies, in articulating its aims, has presented the device of radio in consistently residual terms. He marked the limitation of the work of William in so far as the complications of arriving at the emergent. But he proposes that Adorno and Benjamin's work in their use of the vestigial and the archaic may help in complicating the residual. Mowitt placed on record that "the vestigial underscores that aspect of what Williams calls the residual that is simply surpassed in the normative unfolding of a process, whether physical or psychical."¹⁴⁹

Mowitt argued that the residual may be seen in vestigial terms where the "normative unfolding of a process whether physical or psychical" can be noted in the development of societies in the world. The Marxist notion of negation that left a trail of historically material remains which could be visible in the development of societies was marked in the vestigial. However, he complicated it further by suggesting a psychoanalytic notion of the Oedipal complex produced by Sigmund Freud in the developmental stages both physically and psychologically. However, Mowitt argues that such developments were surpassed, which suggests some kind of physiological and psychological erosion and void of visibility in the present.

¹⁴⁸ Ibid, p 5

¹⁴⁹ Ibid, p 6.

While the embedded physical and psychological changes and developments may be eroded in marked changes of societies yet there was the fact of their existence in the vestigial residual. However, Mowitt complicates the residual by taking on the second term which he produced in the residual and calls it the archaic. As another side of the same coin of the residual he stated that “by contrast, the archaic is defined not by development but by metalepsis and resistance” here the boundaries of real and fiction are blurred.¹⁵⁰ He drew on Adorno and Benjamin’s exchanges on the archaic:

Two epistolary formulations of Adorno capture this with concision. In one, Adorno conjoins the archaic and the modern by saying, ‘The archaic itself is a function of the new; it is thus first produced historically’ (“To Walter Benjamin”38) in and by the modern. It is the temporal inversion of the old and the new that I associate with metalepsis, and it implies that the residual registers what the dominant has produced as something like its enabling past.¹⁵¹

Here Adorno emphasized the production of an overlap between the new and the old in which the archaic became “a function of the new” thereby producing metalepsis as a cultural space of hybrid.¹⁵² He goes on to express the meaning of metalepsis as it related the British monarchy:

In other words, if the monarchy still matters in Britain this may have more to do with the contemporary political value of crafting a nationally inflected form of Tradition, or for that matter the dramatic chops of Dame Helen Mirren, than with an abiding popular investment in divine right of kings.¹⁵³

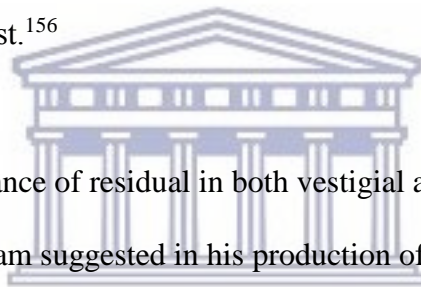
¹⁵⁰ Ibid. Debra Melina, *Breaking the frame: Metalepsis and the construction of the subject*, (Ohio: Ohio University Press, 2002), pp 2-3

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ Ibid

In this regard Mowitt places the production of the residual in the emergent through the idea of the archaic which he holds as not developmental as is the case with the vestigial. By contrast to the vestigial which may not be visible in the present, the archaic according to Mowitt as he draws from Adorno, is visible in the present and is produced by the new.¹⁵⁴ Adorno held that the archaic was the “function of the new” because it existed in relation to the interests of the contemporary political value.¹⁵⁵ Mowitt goes on to argue that archaic is further specified through its resistant aspect in the residual which manifests itself when the site of everything whose voice has fallen silent because of history. In this way Adorno suggested that the modern produced the archaic in order to resist those demands voiced against it both in the present and in the present’s past.¹⁵⁶



Here the problematized endurance of residual in both vestigial and archaic terms came to suggest a consensus that William suggested in his production of the emergent. For instance, Mowitt drawing from Adorno argued that the resistance of the archaic (the monarch in Britain in this case) had more to do with a consensus of the current political presence with its claimed sense of an inflected nationality. Adorno suggested that the archaic was produced by the new political value and in that way implied a sense of the Foucauldian notion of governmentality, wherein the archaic may be an extension of the new, making it “the temporal inversion of the old and the new... and it implies that the residual registers what the dominant has produced as something like its enabling past”.¹⁵⁷ The residual in archaic has notions of governmentality and the deployment of power relations between the old and the new so to speak.

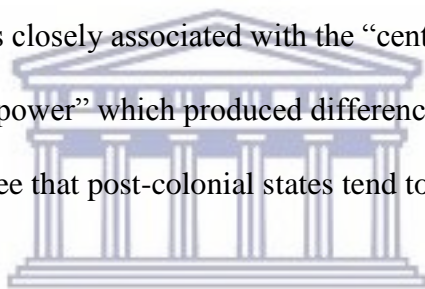
¹⁵⁴ *Ibid*, p6.

¹⁵⁵ *Ibid*

¹⁵⁶ *Ibid*, p 7.

¹⁵⁷ *Ibid*, p 6.

In some ways the debate of the old and the new reproducing each other is an idea that Leslie Banks and Roger Southall drifted towards in ‘Traditional leaders in South Africa’s new democracy’, albeit partially, when they argue that “rather than traditional authority contradicting democracy, it can provide the bedrock upon which to construct new and experimental governments including constitutional democracies.”¹⁵⁸ They did not call for problematizing the politics of power between the new and the old but rather an instrumentality of traditional leadership in the biopolitics of the democratic South Africa. However, McNeill, while acknowledging the coexistence, however, noted that it was an “unsavoury” one, particularly in the past. This pastness related to “experience” about or of the past, where experience was closely associated with the “centrality of colonial relations to patterns of global politics and power” which produced difference in more ways than one during empire.¹⁵⁹ Scholars agree that post-colonial states tend to inherit colonial structures.



Part of the concern for this chapter is the question of the coexistence of a pre-colonial institution side by side a post-colonial and post-apartheid institution; a political constitutional democracy, as two sides of the same coin of rule over citizens with little intentions of transcending the divide.¹⁶⁰ Here the question of the republic as a form of state power that fosters citizenship, sharing the same platform and enjoying institutional protection under a constitution with a pre-colonial institution of traditional leaders that is seen to be emphasizing subject-hood is at the center of examination. The chapter examines the sections that provide

¹⁵⁸ Bank, Leslie, and Roger Southall. "Traditional leaders in South Africa's new democracy." *The Journal of Legal Pluralism and Unofficial Law* 28, no. 37-38 (1996): 407-430.

¹⁵⁹ Catherine Hall, *Cultures of empire: A reader: Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000), p 3.

¹⁶⁰ Hirschl, Ran. *Towards juristocracy: the origins and consequences of the new constitutionalism*. (Harvard University Press, 2009).

for traditional leadership in the South African constitution of 1996 and its draft of 1993, and furthermore examines the roles of at least three different contributors to the processes of developing the constitution, namely Nelson Mandela, Thabo Mbeki and Oliver Tambo. The work of Mandela and Mbeki was visited through their biographies and that of Oliver Tambo through the archive of Albie Sachs (who was a member of the special constitution committee for the African National Congress since January 1988), and historical papers and tapes in the UWC-RIM Mayibuye archives. This chapter interrogates the question of a negotiated settlement as mainly political, followed by focus on the rights of traditional leadership which also became another source of violence in the early 1990s.¹⁶¹

Working traditional leadership into a constitutional proposal of the African National Congress in exile: the special constitution committee

Lungisile Ntsebeza in his article ‘Democratic decentralization and traditional authority: Dilemmas of land administration in South Africa’ advanced an argument that the “post – apartheid South Africa embarked on an important democratization process that included reforms in local government and land administration in former Bantustans.”¹⁶² In his article Ntsebeza brought to sharp focus the tensions of land administration as epitomized by custodianship of land between elected representatives and the non-elected traditional leaders. On the contrary, Leslie Banks and Roger Southall suggested that traditional authority may well be seen as coordinates with constitutional democracies.¹⁶³ Ntsebeza on the other hand is suspicious of the role of traditional leaders as he holds that they were not accountable and did not afford citizens their democratic right to elect a representative of their choice. This tension

¹⁶¹ Willem de Klerk, *FW De Klerk the man in his time*, (Johannesburg: Jonathan Ball Publishers, 1991). Mangosuthu G. Buthelezi, *South Africa: My Vision of the future*, (London: George Weidenfeld and Nicolson, 1990).

¹⁶² Lungisile Ntsebeza, ‘Democratic decentralization and traditional authority: Dilemmas of land administration in South Africa’, in *The European Journal of Development Research*, Vol 16 issue 1 2004.

¹⁶³ Banks Leslie and Southall Roger, ‘Traditional leaders in South Africa’s New Democracy’ in *The Journal of Legal Pluralism and Unofficial Law* (Volume 28, issue 37-38, 1996).

as suggested by the scholars of traditional leadership and democracy in South Africa awakens a debate that erupted in the special constitution committee of the exiled ANC in Lusaka in the mid to late 1980s.

To satisfy the demands of the question of the coexistence of two seemingly juxtaposed institutions whose purposes and functions may be seen as emergent and residual in Mowitt's terms call for a close look into the constitutional proposals before 1994.¹⁶⁴ In this regard the establishment, constitution and workings of the special committee of the ANC in exile becomes relevant to follow the debate that ensued when it crafted its constitutional proposal. In this way we may be afforded a view in the thinking of the liberation movement at the time. Another area of interest would be the constitutional proposal of chief Mangosuthu Gatsha Buthelezi from the early 1980s, then paramount chief of KwaZulu Bantustan, which was grounded on a constitutional monarchy.¹⁶⁵ Again of interest to me would be the reaction of the apartheid government and the ANC alike to Buthelezi's proposal of a constitutional monarchy. These proposals gave a view of what a post-apartheid new South Africa had to inherit from the old order of apartheid and the liberation struggle in South Africa.

For his part Oliver Tambo, then president of the ANC, exiled for more than twenty-five years at the time, initiated discussions within the ANC about a constitutional resolution to the South African problem of apartheid. He assembled a few individuals considered "think tanks" within the ANC in Lusaka to formulate a special Constitution committee on 8 January 1986.¹⁶⁶ The Albie Sachs audiovisual and historical paper archive described the establishment of the special constitution committee of the ANC. The minutes indicated that the first

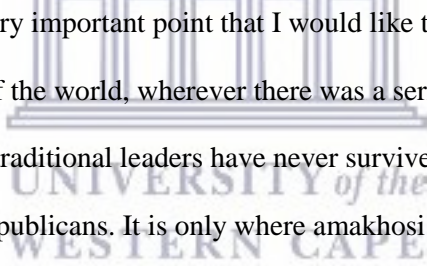
¹⁶⁴ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 6.

¹⁶⁵ *Financial Mail newspaper*, 12 March 1982

¹⁶⁶ MCH 91- 31 – 1-4a minutes of 8 January 1986 meeting

meeting comprised; Oliver Tambo, Alfred Nzo, Zola Skweyiya, Penuel Maduna, Kader Asmal, and Jack Simons. After Nzo, who was the ANC secretary general at the time, made opening remarks, Tambo then inaugurated the special constitution committee and further outlined the committee's aims and objectives.¹⁶⁷

The workings of the constitution committee, its proposals and positions; like the democratization of the institution of traditional leaders by subduing it to democratic rule and an antagonistic attitude to the institution, would have lasting effects even long after its dissolution. This was particularly the case when Jacob Zuma addressed traditional leaders in 2009 on the issue of collaboration between the ANC and the Congress of Traditional Leaders of South Africa (CONTRALESA):



There is a difficult but very important point that I would like to emphasise and place on the table today. In all parts of the world, wherever there was a serious clash between traditional leaders and republicans, traditional leaders have never survived. History shows that they are usually crushed by the republicans. It is only where amakhosi were flexible in outlook, strategy and tactics that they survived as an institution. There are many examples in Europe for example Norway, Netherlands, England and others. It is therefore critical for the institution to be dynamic and be able to adjust to the changing conditions. It is therefore important for CONTRALESA to work with the ANC to map out a strategy to properly locate traditional leaders in a democratic South Africa.¹⁶⁸

¹⁶⁷ MCH 91- 31 – 1-4a minutes of 8 January 1986 meeting. The minutes indicated that Jack Simons had not yet been advised but would be fetched for the meeting and that Albie Sachs had not yet arrive from Maputo.¹⁶⁷ In his address Nzo pointed out that this was a special group appointed by the National Executive Committee (NEC) of the ANC and further clarified that it was ‘not the legal unit’ of the organization. The minutes further indicated the “administrative” structure of the committee was; Jack Simons as chairman, Zola Skweyiya as deputy chairman and Z. N. Jobodwana as secretary.¹⁶⁷ In this regard Tambo gave his full blessing to the committee and his remarks painted a picture of serious and difficult work that was to be done in laying the foundation of a new constitutional democracy for South Africa which included the future of traditional leadership.

¹⁶⁸ <http://www.thepresidency.gov.za/pebble.asp?relid=583> (accessed on 1 July 2015)

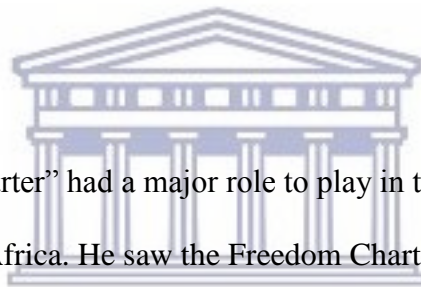
What Jacob Zuma, the president of South Africa, said in his address resembled Whig history and warned traditional leaders of its implications for the institution of traditional leadership. As much as he was positioning his ANC as a political organization that was sympathetic to the institution of traditional leaders, Zuma was implicitly revoking and calling to memory the protracted battles between monarchy and parliament in Britain and its European counterparts as lessons for the new South Africa. “In all parts of the world, wherever there was a serious clash between traditional leaders and republicans, traditional leaders have never survived. History shows that they are usually crushed by the republicans”.¹⁶⁹ Zuma retorted and demonstrated the strength of parliament in how it dealt with traditional leaders. He did not mention that this was an old tension that the ANC as a revolutionary movement was able to bypass or even overcome. But by putting it on record Zuma, wittingly or unwittingly, demonstrated the failure of the ANC in overcoming or resolving the old tension between forces of liberalism that emphasized progress and the residual archaic that survived as a result of being refashioned by the new. In this way Zuma in a post-apartheid democratic order confirmed the aspirations of Adorno that the archaic was produced by the new political value.¹⁷⁰

The constitution committee of the exiled ANC had to focus on developing constitutional proposals for a future South Africa which had to incorporate traditional leaders and present them to the NEC of the ANC for consideration. The seriousness of the constitutional proposals were found in what Tambo stated when he elucidated that “racist” South Africa, the United States of America and the United Kingdom joined hands to identify constitutional

¹⁶⁹ Ibid

¹⁷⁰ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 6.

options for a future South Africa.¹⁷¹ The “accumulated privilege” and preservation of market influences that sought to retain the oppressed in the stage of “tutelage” was suspected to be the envisaged future by the three parties. However, Tambo was alive to the “requests by the friends of the liberation struggle and the demands of its enemies” such as the mentioned trio that had the agenda of putting impediments on the path to a revolutionary progressive South Africa as envisaged in the “Freedom Charter”.¹⁷² Another complication was that Albie Sachs observed that while the “Freedom Charter” attempted to deracialize and equalize South Africans it also lacked constitutionality and therefore could not be refashioned into a constitutional proposal for a future South Africa.¹⁷³ It was against that background that further research even beyond the charter needed to be done to arrive at satisfactory revolutionary proposals.



For Tambo, the “Freedom Charter” had a major role to play in the transformation of “racist” and super exploitative South Africa. He saw the Freedom Charter as central because of its formulation and its attempts to collapse the entrenched hierarchies and accumulated privileges. Tambo emphasized that the “trio”; namely, South Africa, United States of America and the United Kingdom, would not hesitate to seek constitutional solutions that would entrench the former positions of the oppressor and avoid the influence of the “Freedom Charter” for a future South Africa.¹⁷⁴ However, these attempts by the racist regime and its allies would not find the ANC unprepared. Instead “the group [was meant to] look at different proposals” and even transcend the demands that were made in the “Freedom Charter”.¹⁷⁵ The group (constitutional committee) was then charged with the responsibility to assist the ANC

¹⁷¹ Ibid

¹⁷² Albie Sachs Tape 1 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009). MCH91-31-1-4a

¹⁷³ MCH 91-31-1-4i minutes of 10 January 1986 meeting

¹⁷⁴ MCH 91- 31 – 1-4a minutes of 8 January 1986 meeting

¹⁷⁵ MCH 91- 31 – 1-4b minutes of 8 January 1986 meeting

National Executive Committee (NEC) to address “some of the major Constitutional problems” which did not preclude the institution of traditional leaders it (NEC) needed to resolve in the process of engaging the trio.¹⁷⁶

According to the Albie Sachs historical archive, the constitution committee after its establishment concerned itself with affording the majority of the South African population with universal suffrage. Thinking with Catherine Hall I ask if this was not the extension of empire but projected as a revolutionary development? Catherine Hall, when thinking about re-thinking the empire, states that:

The history of the extension of suffrage in Britain, for example, has conventionally been told as the progressive inclusion of those once excluded, middle class men, working class men and eventually women. An examination of the different moments in that history reveals the ways in which the Empire served as a lens through which the specificities of the British nation with its unique constitution could be viewed, how the Empire shaped British imagination.¹⁷⁷

Hall brought the notion of Empire used as the lens in understanding the progressive moments as Britain extended suffrage to the different categories. Consistent with the notion of liberalism embedded in Empire, the linguistic employment of progress and the implied idea of improving life resonate with the residual in Mowitt’s terms. By some extension I want to ask if the workings of the ANC constitution committee were not in any way connected to such a residual of Empire? While the Albie Sachs archival material emphasize a revolutionary move in affording universal suffrage as somewhat different and very

¹⁷⁶ Ibid

¹⁷⁷ Catherine Hall, ‘Histories, empires and the post-colonial moment’ in Chambers Iain and Curti Lidia (eds), *the postcolonial question: common skies different horizons*, (London: Routledge, 1998), p 70.

progressive, I am persuaded to think that it was a recast of British empire thought. The frames of thought during empire seem to be very similar if not the same as that of the ANC constitution committee.

The task of developing a constitutional proposal may have required serious consideration on the part of Tambo. According to the Sachs historical papers archive, on 9 January 1986, Jack Simons chaired the constitution committee meeting and made a plea based on the diversity of South African rule indicating that South Africa was made up of diverse people and cultural backgrounds.¹⁷⁸ He suggested that “tribal and national groups” should be accommodated in the constitutional proposals. He presented this to give room to all citizens “side by side” under the banner of equality and the recognition that South Africa was a “plural society”.¹⁷⁹ However, Albie Sachs remarked that constitution committee members vehemently opposed this notion as it appeared to retain the idea of group rights that was advocated by apartheid South Africa.¹⁸⁰ The usage of the term “culture”, “group” or “groups” and the diversity of the population sounded too close to the ideas that entertained “apartheid talk” which emphasized the segregation of different racial groupings. According to Sachs such talk in the eyes of the constitution committee members encouraged the idea of separate development, which the apartheid state pushed all along. Instead the group (constitution committee) pressed for the collapse of apartheid institutions and structures by introducing in the constitutional proposal the notion of equality of citizens in the eyes of the Constitution.¹⁸¹

¹⁷⁸ MCH 91- 31 – 1-4d minutes of 9 January 1986 meeting

¹⁷⁹ Ibid

¹⁸⁰ Albie Sachs Tape 1 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009)

¹⁸¹ Albie Sachs Tape 1 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009)

It is my contention that if the constitution committee had carefully considered the plea from Simons they may have arrived at different conclusions. In her book *Traditional Leadership and Democratization in Southern Africa: A comparative study of Botswana, Namibia and South Africa*, the Political Scientist, Sandra Dusing later observed that in Southern African states like Namibia, Botswana and South Africa traditional authority had a pivotal role to play in the political economy post-colonialism and apartheid. She stated that:

It has been identified that the consolidation of democratic rule regime not only requires the constitutional establishment of representative democratic rules and the legal legitimization of institutions and political actors but also the careful recognition of specific culturally and ethnically bound, pre-constitutional political authorities.¹⁸²

This observation by Dusing took into account key political role players in the post-colonial and post-apartheid constitutional and democratic politics of the three countries. Of particular interest was her insight into the influences of both the constitutional democratic order and the careful recognition of the role of traditional schemes of authority that were at play in consolidating the constitutional politics of the three states. However, as it were the constitution committee was preoccupied with a different idea of state power which related to radical overthrowing existing political regimes with no space for traditional schemes of legitimization and politics. While such can be viewed as radically progressive forms of power they were still in the category of constitutionalism expressed in Marxist form.

Sachs went on to argue that in the meeting of 9 January 1986 the constitution committee argued strongly for the equality of citizens before the Constitution with the intention to

¹⁸² Sandra Dusing, *Traditional leadership and Democratization in Southern Africa: A comparative study of Namibia, Botswana and South Africa*, (Hamburg: Lit Verlag Muster, 2002), p 281.

advance ideas of people's power.¹⁸³ "People's power" was understood to be a revolutionary takeover of power by popular communist parties like it was in Mozambique and Angola at the time.¹⁸⁴ Sachs remarked that Tambo deeply admired Mozambique for instance, for the way it tackled the question of traditionalism¹⁸⁵ in that it afforded all its citizens equality in the constitution of the country and in that way eliminated the embedded hierarchies in the social order. However, Tambo's commitment to the "Freedom Charter" constituted a problem for him because the charter entertained a "multiparty system" which recognized a plural society and did not necessarily conform to the notion of a people's power where the communist party seized all power.

The historical papers and tapes positioned the "Freedom Charter" as one that afforded space for multiplicity in cultural identities and nationalities as a result of its articulated multi-party system.¹⁸⁶ Sachs suggested that the tension that was presented by the charter and the people's power notions led the committee to engage in meaningful discussion of what was to be done. It was against that background that the constitution committee agreed to conduct a comparative study of constitutions from different parts of the world.¹⁸⁷ To look at how these constitutions dealt with the tension of people's power and a liberal constitutional framework and addressing the issue of cultural diversity, which constituted a dilemma for the treatment of traditional authority. But what became more important for the constitution committee was giving universal suffrage to the African majority that was economically exploited by whites

¹⁸³ The idea of people's power relates with the revolutionary seizure of power, where the communist parties in Angola and Mozambique negotiated only the process of the transfer of power and not the constitution. They only declare the constitution, meaning that the constitution is in the language of those in power, it articulates their envisioned future without negotiating it.

¹⁸⁴ Reading on people's power see; Roman Peter, *People's Power: Cuba's experience with representative government*; (Lanham: Rowman and Littlefield Publishers, 2003), pp 61-65. People's power in Mozambique, Angola and Guinea-Bissau

¹⁸⁵ Albie Sachs Tape 1 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009)

¹⁸⁶ *Ibid*

¹⁸⁷ *Ibid*

and was the subject of tribal authorities. This suggested the idea of constitutionalization of traditional authority which called for a shift to traditionalization of traditional authority. The Whig tension captured the making of the new South African democracy at this level in that the anti-monarch sentiment expounded its voice. According to Mowitt the emerging dominant force was soon to articulate its position and was about to make “the archaic itself ... a function of the new ... and it implie[d] that the residual register[ed] what the dominant has produced”.¹⁸⁸ The constitution committee inevitably entered a space of domesticating traditional authority to the demands of the new order even as it was in the making. However, they were blinded by their anger against traditional authorities that were custodians of Bantustans who were seen to be an extension of the white Afrikaner state.

In his treatment of traditional authorities under white minority rule Mahmood Mamdani argued that the Bantustans were a means to soften racial differences and that they were an extension of indirect rule of the colonial period. In *Citizen and Subject* he was dealing with the nonracial institutional legacy of colonialism which remains largely intact, he argues that apartheid was:¹⁸⁹

Scholars of empire, post-colonial and cultural studies agree with Mamdani that the post-colony was shaped by its inheritance from the preceding epoch.¹⁹⁰ While the debates of the constitution committee sought to avoid affording ethnicity, tribalism and racism in the future

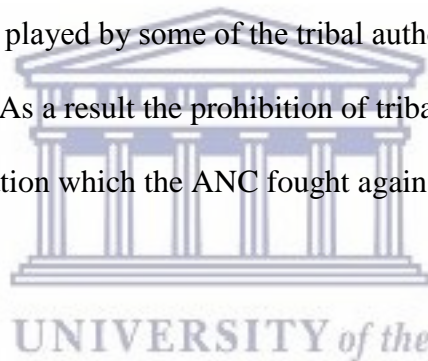
¹⁸⁸ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 6.

¹⁸⁹ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Phillip, 1996), p 4.

¹⁹⁰ Catherine Hall, ‘Introduction’, in *Cultures of empire: A reader; Colonizers in Britain and the empire in the nineteenth and twentieth centuries*, (Manchester: Manchester University Press, 2000). Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999). Ann Laura Stoler and Frederick Cooper, ‘Between Metropole and Colony: Rethinking a Research Agenda’, in Frederick Cooper and Ann Laura Stoler (eds), *Tensions of empire: colonial cultures in a bourgeois world*, (Berkeley: University of California Press, 1997). Edward W. Said, *Orientalism*, (London: Routledge, 1978).

constitution of South Africa by consulting Constitutions from capitalist to socialist countries.¹⁹¹ With its discussions categorically stated that “Tribally based parties will be prohibited” in the new constitutional order to avoid the pitfalls of racial discrimination.¹⁹² However, the committee failed to go beyond Whig historical tendencies and empire in that it maintained the double divide.

Ntsebeza argued that the democratic South Africa was exposed to risk and serious compromise because of concessions made to traditional authorities who enjoyed enormous powers under apartheid.¹⁹³ However, according to Sachs the constitution committee strongly argued against the inclusion of tribal talk in the constitutional proposals; such was indicative of the ANC’s anger at the role played by some of the tribal authorities in charge of the Bantustan system back home. As a result the prohibition of tribalism by the group sought to address the duality of the situation which the ANC fought against: apartheid and its Bantustan system.¹⁹⁴



The publicly known traditional leaders and traditional authorities were closely linked to Bantustan leaders. This link of Bantustan leadership with traditional leadership was seen by the ANC as collaboration with the apartheid state and as a result attracted criticism. But the ANC, being a revolutionary movement that had radical public pronouncements, was dominated by the language of people’s power, which was associated with a complete overthrow of the apartheid state and related institutions as well as the communist rule that

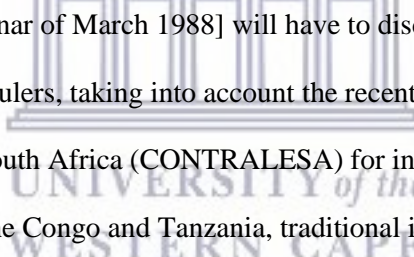
¹⁹¹ MCH 91- 31 – 1-4e minutes of 9 January 1986 meeting

¹⁹² MCH 91- 31 – 1-4h minutes of 9 January 1986 meeting, MCH 91-31- 1 - 4m minutes of 14 January 1986 meeting

¹⁹³ Lungisile Ntsebeza, ‘Democratic decentralization and traditional authority: Dilemmas of land administration in South Africa’, in *The European Journal of Development Research*, Vol 16 issue 1 2004.

¹⁹⁴ Albie Sachs Tape 1 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009)

encouraged the rule of the proletariat interests, in the 1980s which suggested that it was not accommodative to the idea of an institution of traditional leadership especially that this institution was viewed as hereditary and not democratic, especially that it considered it to be encouraging of ethnic divisions under the leadership of traditional leaders. However, on 1 to 4 March 1988 the “In-House Seminar on Constitutional Matters and Related Issues” held in Lusaka led the way to the tolerance of the traditional leadership institution among those that participated in the seminar.¹⁹⁵ In the seminar Penuel Maduna tabled a paper on ‘Non-Central Government Structures in South Africa today’ where he discussed peripheral government structures which included the institution of traditional leadership. Maduna argued for the incorporation of the institution of traditional leadership in the constitutional proposal of a new South Africa; a position that was later followed by Banks and Southall in 1996.¹⁹⁶



The [ANC in house seminar of March 1988] will have to discuss the place and role of the institution of traditional rulers, taking into account the recent emergence of the Congress of Traditional Leaders of South Africa (CONTRALESA) for instance. In some jurisdictions such as Guinea, Benin, the Congo and Tanzania, traditional institutions used by the colonialist for artificially preserving and sustaining disunity among the colonized have been fully liquidated. Yet, in others such as Zambia and Zimbabwe, the institution of traditional rulers even has a place in their constitutions. The British themselves have preserved an archaic institution, namely the House of Lords.¹⁹⁷

¹⁹⁵ MCH91-31, Memo sent out by Alfred Nzo on 22 December 1987 about the In-House Seminar on Constitutional Matters and Related Issues.

¹⁹⁶ Leslie Banks and Roger Southall, ‘Traditional leaders in South Africa’s New Democracy’ in *The Journal of Legal Pluralism and Unofficial Law*, (Volume 28, issue 37-38, 1996).

¹⁹⁷ Penuell M. Maduna, ‘Non-central government structures in South Africa today’, In house Seminar on Constitutional Matters and Related Issues, (Lusaka: African National Congress, March 1988), p 12.

According to Albie Sachs the argument by Penuell Maduna at the “in house seminar” marked the distance travelled by the ANC think tanks on the issue of traditional leadership.¹⁹⁸ It was indicative of the change of heart from rejection to a more accommodative tone. The examples of the “Guinea, Benin, the Congo and Tanzania” were contextualized under the position of the role they played in colonial times. While “Zambia, Zimbabwe and Britain” were used to offset the notion of complete “liquidation” as discussed in the chapter that dealt with Whig history and how empire played a central role in the retention of the monarch in Britain. Also the contribution of Mowitt in discussing the residual holds. Maduna’s argument was that instead of holistically rejecting the institution of traditional leadership and therefore precluding it in the constitutional proposal, it was better to include it and carefully consider the examples of Zambia and Zimbabwe in Southern Africa and Britain in Europe.¹⁹⁹

Adam Ashforth entered that debate by complicating the previously held notion of the constitution committee about the untransformed nature of traditional authorities. He held the view that not all traditional leaders collaborated with the apartheid state.

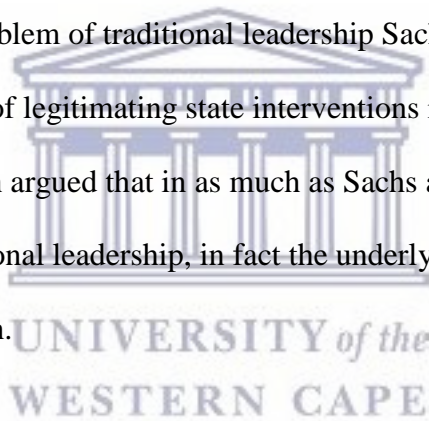
Albie Sachs notes that the institution of chieftainship has not been democratic because chiefs inherit their positions. But many chiefs have assisted in the struggle to achieve democracy in South Africa. The objective of the ANC proposals is “not so much to democratize traditional institutions as to constitutionalize them”.²⁰⁰

¹⁹⁸ Albie Sachs Tape 2 on the constitution, RIM UWC Mayibuye Archives, (Cape Town: University of the Western Cape, 2009)

¹⁹⁹ Penuell M. Maduna, ‘Non-central government structures in South Africa today’, In house Seminar on Constitutional Matters and Related Issues, (Lusaka: African National Congress, March 1988), p 12.

²⁰⁰ Adam Ashforth, ‘Communitarianism Vs. Individualism: Constitutionalism in Namibia and South Africa’, in *Wisconsin International Law Journal*, (Madison: University of Wisconsin Law School, 1994)

Ashforth observed that Sachs was a proponent of constitutional law, to which I add that he was also a former member of the ANC constitution committee in exile and member of the Communist Party both of which supported the idea of people's power. According to Ashforth Sachs seemed to be stuck in the old argument of rendering the institution of traditional leadership as a counter revolutionary institution and therefore anti progressive. This is a view that is shared by Ntsebeza when thinking about the role of traditional leadership in a democratic order.²⁰¹ Interestingly, Ashforth differs with both of them and problematizes their argument by stating that in fact traditional leadership was not homogeneous under apartheid. Because, as Ashforth argues “many chiefs have assisted in the struggle to achieve democracy in South Africa” and may not be ruled out as entirely counter-revolutionary. In citing the example of heredity as the problem of traditional leadership Sachs was able to hold a persuasive argument in favor of legitimating state interventions in the institution of traditional leadership. However, Ashforth argued that in as much as Sachs argued against the undemocratic nature of traditional leadership, in fact the underlying intention was to constitutionalize the institution.

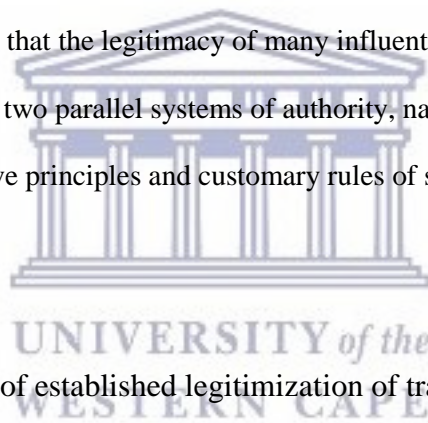


For Sandra Dusing democratic states in the quest for democratizing the institution of traditional leadership managed to formalize relations through constitutional means but neglected certain aspects in the aftermath. She added her voice to the debate by concluding that:

Although traditional leaders lost much of their legitimacy in forming part of the colonial and apartheid dispensation, they managed to maintain traditional systems of accountability and consultation in rural local government. Whilst in some cases traditional leaders lost the

²⁰¹ Lungisile Ntsebeza, ‘Democratic decentralization and traditional authority: dilemmas of land administration in South Africa’, in *The European Journal of Development Research*, Vol 16 issue 1 (Taylor and Francis, 2004).

support of their communities, there are still many in which they continue to play an important role, and enjoy recognition as representatives of traditional government. Democratic-representative principles and institutions have been formerly, i.e. constitutionally, installed and manifested, but further observation of quality, content and long term outcomes of political processes are largely neglected. It has been identified that the consolidation of democratic rule regime not only requires the constitutional establishment of representative democratic rules and the legal legitimization of institutions and political actors but also the careful recognition of specific culturally and ethnically bound, pre-constitutional political authorities. These traditional institutions of political authority and widely accepted rules of political legitimacy, were established centuries before the new democratic regime. The development of realistic prospects and strategies for democratization in Southern African countries must recognize that the legitimacy of many influential political actors is often simultaneously rooted in two parallel systems of authority, namely constitutionally defined democratic-representative principles and customary rules of specific ethnically based, African institutions.²⁰²



Dusing argued along the lines of established legitimization of traditional authority as a bedrock of a transition to a democratic order in Southern African. In what Mowitt called the residual, she unearthed the vestigial aspect of the institution and also highlighted the duration of survival which lasted centuries before the advent of a democratic dispensation in Southern Africa. Secondly she suggested that accountability and consultation in rural communities were integral parts of the legitimating scheme for traditional authorities. Consequently, she suggested that accountability and consultation were traditional institutions of political authority, over and above that, they were widely accepted rules of political legitimacy. Finally, she noted the

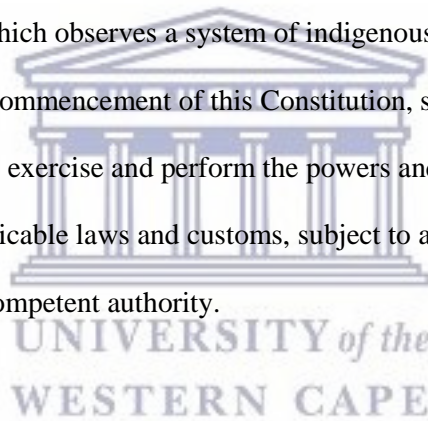
²⁰² Sandra Dusing, *Traditional leadership and Democratisation in Southern Africa: A comparative study of Namibia, Botswana and South Africa*, (Hamburg: Lit Verlag Munster, 2002), p 281.

duration of their existence by stating that they were established centuries before the new democratic regimes in Southern Africa.²⁰³

Were there entanglements in the constitutional development of South Africa in relation to the institution of traditional leadership?

The 1993 draft constitution has a fully-fledged chapter on the recognition of traditional leadership. Chapter 11 of the draft constitution recognized the existence of traditional authorities:

A traditional authority which observes a system of indigenous law and is recognized by law immediately before the commencement of this Constitution, shall continue as such an authority and continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority.



When looking at chapter eleven of the draft Constitution of 1993 which provided for traditional authorities it, to some extent, has a potential of reinforcing notions of tribalism and ethnicity in a post-colonial, post-apartheid state. It reflects a convulsion of and a residue of colonial and apartheid institutionalization in the new South African constitution. This presence of the residue of this institution can be partially associated with a choreographed violence that was orchestrated by what Mandela, Sisulu, Mbeki and O'Malley and the

²⁰³ Ibid

Weekly Mail of July 1991 called the workings and influences of “third force” and chief Buthelezi.²⁰⁴

On the contrary Eddy Maloka in 1995 wrote on the African Communist that traditional leaders worked in unison. He said:

In the last few years the chiefs, through CONTRALESA, the IFP and Goodwill Zwelithini, were able to win a privileged position for themselves during the negotiations. The Interim Constitution has made provision for the creation of a House of Traditional Leaders in the provinces and a Council of Chiefs at the national level.²⁰⁵

Maloka argued that the organization of traditional leaders CONTRALESA, IFP and Goodwill Zwelithini were privileged during the political transition negotiations at Kempton Park.²⁰⁶ That they were accorded chapter eleven in the interim constitution was a privilege they perhaps did not deserve according to Maloka. But such articulation did not translate to an unproblematic relationship between the state and the institution of traditional leaders.

Did the constitutional development liberate, democratize or constitutionalize the institution of traditional leadership; what understandings and processes were involved in this regard?

Could the institution of traditional leadership in South Africa respond to the demands of constitutionalism? Adam Ashforth pointed to the deception that was advanced by Albie Sachs which held the view that traditional leaders, by virtue of their inherited positions of authority,

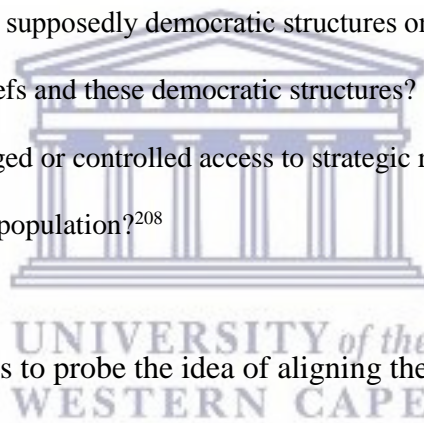
²⁰⁴ Elinor Sisulu, *Walter and Albertina Sisulu: in our lifetime*, (Cape Town: David Philip Publishers, 2004). Adrian Hadland & Jovial Rantao, *the life and times of Thabo Mbeki*, (Rivonia, Zebra press, 1999). Nelson Mandela, *Long Walk to Freedom*, (London: Little, Brown and Company, 1994); *Weekly Mail*, July 1991

²⁰⁵ <http://www.sacp.org.za/pubs/acommunist/1995/issue141.html#ART8> (accessed on 1 July 2015)

²⁰⁶ Ibid

needed to be democratized through constitutional arrangements. On the contrary Ashforth noted that rather than democratizing the institution of traditional leadership Sachs was involved in a process of constitutionalizing it.²⁰⁷ Scholars differ on the issue of democratization of the institution of traditional leaders, and there exists a phenomenon that suggests a chaotic arrangement of how the state handled the matter. Jude Fokwang, drawing from a number of scholars, suggests that what the state talked about in democratizing the institution of traditional leadership left some questions unanswered. He stated the following:

For example, Maloka's (1995) call for an agenda that aims to erode the legitimacy of chiefs and to replace them with democratic structures fails to ask or reflect on the following: i) how 'democratic' are the new supposedly democratic structures on the ground? ii) What is the relationship between chiefs and these democratic structures? iii) Have so-called democratic structures actually managed or controlled access to strategic resources such as land to the satisfaction of the target population?²⁰⁸



Fokwang asked these questions to probe the idea of aligning the institution of traditional leadership with the constitution in the hope of democratizing them. His argument punches holes in the grand scheme that was presented by the ruling party and the trusted jurist Albie Sachs. These practical questions assist us in quickening a critical citizenry.

He went on to outline the arguments of different scholars on the matter and showed that scholars were divided on the question as well:

²⁰⁷ Adam Ashforth, 'Communitarianism Vs. Individualism: Constitutionalism in Namibia and South Africa', in *Wisconsin International Law Journal*, (Madison: University of Wisconsin Law School, 1994)

²⁰⁸ Jude Fokwang, *Mediating Legitimacy: Chieftaincy and Democratisation in Two African Chiefdoms*, (Bamenda: Langaa Research & Publishing CIG, 2009), p 12.

Much of the current literature provides evidence for the compatibility of chiefs and democracy (Becker 2006; Friedman 2005; Goncalves 2005; Lindstrom and White 1997; Oomen 2005). Evidence for this is based on research and discussion on policy frameworks affecting chiefs in rural local government and their involvement in regional and or national politics. Ntsebeza (1998; 2005) for instance has examined the predicament of chiefs in the new South Africa following legislation that has affected the institution since the early 1990s. He points out that the South African Constitution and the Local Government Transition Act of 1993 (as amended), 'do not anticipate any meaningful role for traditional authorities in local government.'²⁰⁹

In the passage Fokwang undertook to outline arguments about compatibility of the institution of traditional leadership and a democratic state. Ntsebeza for instance argues that the legislation that involves traditional authorities reduced their roles in local government. He says legislation did not anticipate any meaningful role for the institution of traditional leadership. In other words, while the state recognized the institution it also through its pieces of legislation undermined and eroded its role.



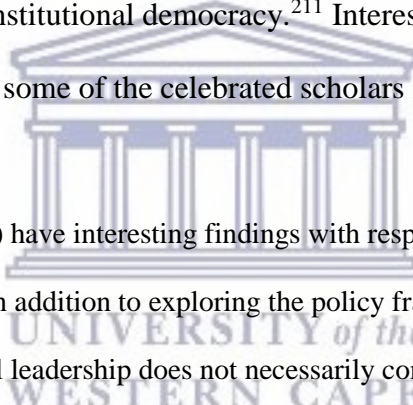
Drawing from Ntsebeza, Fokwang continues to illustrate the divide within the state about the role and place of traditional authorities:

According to him, there is an obvious difference in opinion between the older generation and the younger generation with regard to the question of constitutional guarantees for traditional leadership. While the older generation, for instance represented by Nelson Mandela, supports the view that chieftaincy should gain more constitutional accommodation, the younger camp, represented by the South African National Civic Organisation (SANCO), youths and the

²⁰⁹ Jude Fokwang, *Mediating Legitimacy: Chieftaincy and Democratisation in Two African Chiefdoms*, (Bamenda: Langaa Research & Publishing CIG, 2009), p 12.

South African Communist Party (SACP) maintains that chieftaincy should be restricted to custom and tradition, or better still, eradicated completely.²¹⁰

Here Fokwang demonstrated a tension existing in the system of the state where part of the constituency like the older generation represented by Mandela advocated for the retention and constitutional accommodation of the chieftaincy while the other like the South African Communist Party (SACP), youth and South African National Civic Organisation (SANCO) sought to eradicate it. Indicative of a reverberating debate of the Whigs and the Tory in Britain during empire which was carried through in the debates of the special constitution committee of the exiled ANC. Ntsebeza for instance was opposed to the coexistence of traditional leadership and a constitutional democracy.²¹¹ Interestingly Fokwang followed this thread of discourse to arrive at some of the celebrated scholars in field. He continued:



Bank and Southall (1996) have interesting findings with respect to the status of chiefs in post-apartheid South Africa. In addition to exploring the policy framework dealing with chiefs, they argue that traditional leadership does not necessarily contradict democracy. To them, traditional leadership can in fact 'provide the bedrock upon which to construct new and experimental governments, including constitutional democracies.' They also consider an important question ignored by Maloka (1995) and Mamdani (1996): *what is the relationship between chiefs and new democratic structures on the ground in the countryside?*²¹²

Contrary to Ntsebeza and Maloka Bank and Southall ask the question of relevance and relationship between the institution of traditional leaders and the new democratic structures

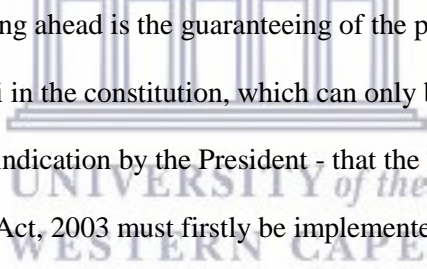
²¹⁰ Jude Fokwang, *Mediating Legitimacy: Chieftaincy and Democratisation in Two African Chiefdoms*, (Bamenda: Langaa Research & Publishing CIG, 2009), p 12.

²¹¹ Lungisile Ntsebeza, *Democracy Compromised: Chiefs and the politics of land in South Africa*, (Leiden: Tuta Sub Aegide Pallas, 2005) p 256

²¹² *Ibid*

on the ground. Both Ntsebeza and Maloka based their arguments on the tension that arose prior to the first local government elections after 1994. In the area of Hershel in the Eastern Cape traditional authorities had a tension with SANCO over roles in local government.²¹³ Now the two scholars use such an isolated incident to generalize about the tension that exists between local government and the institution of traditional leadership. Bank and Southall argue for collaboration and inclusion without creating hostility between the state and the institution.

In 2007 Khosi F. P. Kutama the chairperson of the National House of traditional leaders, in his annual report of the 2006 to 2007 financial year, suggested that traditional leaders' powers were limited in terms of the constitution:



The biggest challenge lying ahead is the guaranteeing of the powers of amakhosi/marena/dikgosi in the constitution, which can only be remedied by constitutional amendment. Despite the indication by the President - that the Traditional Leadership and Governance Framework Act, 2003 must firstly be implemented in full before the amendment of the Constitution can be considered – it remains a critical issue for traditional leadership to pursue. We will proceed to strive for eliminating any form of ambiguity regarding the powers of traditional leadership.²¹⁴

The chairperson of the national house of traditional leaders addressed President Mbeki on the deficiency of constitutional guarantees for traditional leadership. As national chairperson Kutama articulated the frustrations of the national house of traditional leaders about the

²¹³ Eddy Maloka, 'Traditional Leaders and the current transition', *African Communist*, (141, Second Quarter, 1995)

²¹⁴ *National House of Traditional Leaders annual report 2006/07*, (Pretoria: National House of Traditional Leaders, 2007), p 7

powers and roles of traditional leaders in relation to state power. Here Kutama questioned the truth of the relationship between the institution of traditional leaders and the constitution. What that relationship does not lie in what is said about it but the real contradiction that it produced not necessarily in the product but in its process and production of such a relationship. Pointing directly to the deceitful democratization that was claimed by Sachs in earlier years he called upon president Mbeki to consider affording traditional leaders better constitutional guarantees.



CHAPTER FOUR

The Nhlapo Commission and the politics of state commissioned inquiry

How the Nhlapo Commission came about and the debates that brought it into being will be examined. In this chapter I ask about the historical background of commissions of enquiry in relation to traditional leadership in colonial, semi colonial, apartheid South Africa experience. Which may have resemblance, similarity, contradiction and blending with the Nhlapo commission of the post-colonial, post-apartheid and democratic South Africa after 1994. It is

of interest to follow the understandings of state thought about commissions of inquiry where traditional leadership was involved. I want to ask questions about the Nhlapo commission in this chapter as a means of seeking to understand some of the key issues that necessitated the state to establish the Nhlapo commission. In following the process of establishing such a commission I seek to understand who the key role players were in the commission and also trace the politics of power/knowledge in the workings of the commission where possible. Of vital importance to my study, however, is how the Mhlontlo Chieftaincy came to be presented to the Nhlapo Commission.

Who established the commission? Which instruments did they use?

There is general speculation that the democratic state, out of its own volition, set up the Nhlapo commission to sort out, undo and properly restore the institution of traditional leadership in South Africa from the effects of colonialism and apartheid.²¹⁵ By and large this assertion suggests that the democratic state had the best interests of the institution of traditional leaders at heart. A further suggestion was that the democratic order had good moral standing in comparison to its predecessors which may be construed as a legitimate contribution towards the moral turn against colonialism and apartheid.²¹⁶ However, scholars suggest that in the intervening period between the death of apartheid and the beginning of the democratic order, the dying years of apartheid before the ANC took power, the issue of an audit within the institution of traditional leadership was brought to the ANC by traditional

²¹⁵ The official record about the establishment of the Nhlapo Commission on government documents left an impression that the state voluntarily, and out of concern established the commission of enquiry into traditional leadership with no ulterior motive or hidden agenda and without encouragement by any external force. The government website bears testimony to the claim.

²¹⁶ Brojendra Nath Banerjee, *Apartheid: A Crime Against Humanity*, (Michigan: B. R. Publishing Corporation, 1987)

leaders themselves.²¹⁷ Drawing from email exchanges with professor Thandabantu Nhlapo, three South African scholars, namely; Twala, Kompi and Seleho show how the matter was brought to the attention of the African National Congress (ANC) by the Congress of Traditional Leaders of South Africa (CONTRLESA)

According to Twala, Kompi and Seleho it was the traditional leaders through their newly established party who started the process at Kempton Park during the political transition negotiations that approached the ANC.²¹⁸ These scholars suggest that CONTRALESA as a political structure that represented traditional leaders in the last years of apartheid South Africa yielded its responsibility to the ANC. They went on to argue that CONTRALESA, in approaching the ANC at Kempton Park, categorically called for the naming and shaming of imposters in the traditional leadership landscape. A call they made both during the Kempton Park political transition negotiations and in the process of constitutional development for a new South Africa, which suggested consistency in their institutional demands, indicative of the central issue that threatened the institution for them. However, in my observation, by entrusting the future of their institution in the hands of the ANC, traditional leaders left it to the ANC to decide what was good for the institution going into the future, and in this way may have lost a golden opportunity. If according to Twala, Kompi and Seleho traditional leaders made the ANC their conduit and interlocutor during the political transition negotiations, in hindsight, they may have erred. Instead of inserting the institution in the impending political order themselves, in their own terms, they chose to place their internal grievances on the political transition negotiating table, rather than working the institution into

²¹⁷ Buti Kompi, Chitja Twala and Jacob Selasho, 'The Socio-political Consequence of the Commission on Traditional Leadership Disputes and Claims in South Africa: A Post-Apartheid or Modern Political Discourse within the ANC Led Government?', *Journal of Social Sciences Interdisciplinary Reflection of Contemporary Society*, 40(2), (New Delhi: Kamla-Raj Enterprises, 2014), p 172

²¹⁸ Ibid

the future political order and asserting the institution's strategic positioning. This may have either avoided or increased the whiggish tensions exhibited by the likes of Sachs who had to be forced to advocate for the inclusion of traditional authorities in the constitutional arrangement while undermining and destroying its role in state participation at the same time through legislative processes. A consistent and direct involvement, devoid of tabling internal squabbles from within, of CONTRALESA in the negotiations could better manage the tendencies that were at play in the South Africa political landscape at the point of developing the constitution and the regulations that followed its adoption and amendment, a part that chapter one dealt with.

In October 2004 President Thabo Mbeki inaugurated an independent commission of enquiry into the disputes and claims of Traditional leaders.²¹⁹ The commission was established in terms of the Traditional Leadership framework Act 41 of 2003. Section 23 of the Act provides that the State President has the prerogative of establishing an independent inquiry into claims and counter claims and disputes by Traditional Leaders.²²⁰ But the disputes and claims came from the institution of Traditional Leaders itself. Traditional Leaders brought up disputes of legitimacy and imposters as well as new claims to kingship by the Dlaminis of south KwaZulu Natal and amaMpondomise in the Eastern Cape for instance again, during the consultation processes leading up to the adoption of the Traditional Leaders Framework Act

²¹⁹ Jeff Peires, 'History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: University of Fort Hare, 2013), p 1. Fraser G Mc Neill, *Aids, Politics, and Music in South Africa*, (Cambridge: Cambridge University Press, 2011), pp vi, 38, 275. www.bapedikingdom.co.za/nation.html. mg.co.za/article/2011-07-29-power-and-patronage-in-pondoland (accessed on 10 August 2015). mg.co.za/article/2014-08-07-crownless-king-wants-precolonial-land-back (accessed on 10 August 2015). mg.co.za/article/2007-07-06-my-chiefdom-for-a-kingdom (accessed on 10 August 2015). mg.co.za/article/2013-06-21-00-urgent-rethink-on-customary-law-needed (accessed on 10 August 2015). www.iol.co.za/zwelithini-angered-by-king-claims-1.360803 (accessed on 10 August 2015). <http://152.111.1.87/argief/berigte/citypress/2004/10/17/C1/7/03.html> (accessed on 10 August 2015)

²²⁰ Jeff Peires, 'History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: University of Fort Hare, 2013)

of 2003 these claims and counter claims were made. The consultative processes facilitated a conversation among kings and princes where the state recognizes their status, roles and responsibilities in society alongside a constitutional state with a presidential constitution. While the consultative processes just before the enactment of the traditional leader's framework act facilitated a consensus between the state and the institution of traditional leaders, they equally brought up sharp criticism and disputes that questioned each other's legitimacy like pointing out the unequal treatment of kings and complaints about imposter kingdoms that the state continued to recognize.

The question I ask about the different attempts of the state made in dealing with the question of traditional leaders in a post-colonial and post-apartheid state still remains. Why did a state that was delinked from the legacy of the past have to go to great lengths in trying to accommodate or even graft the existence of a supposedly pre-colonial institution in a post-colonial and post-apartheid environment? Timothy Gibbs suggests that the ANC made commitments to Bantustan leaders who in themselves were traditional leaders who ruled those territories by virtue of their royal associations:

When explaining the survival of many Bantustan bureaucrats and the reassertion of traditional authority in rural South Africa after 1994, many academics have suggested that the ANC leadership struck a compromise deal with the remnants of the old order above the heads of the grassroots insurgents. Jeff Peires provides an incisive account of how many Bantustan functionaries adeptly dropped their ties to the apartheid regime and secured their positions in the post-apartheid era. Lungisile Ntsebeza argues that the 'decentralized despotism' of the chieftaincy remains unbroken. Barbara Oomen and Ineke van Kessel emphasize the residual

power of the traditional leadership and the pluralism institutions in the rural regions where the writ of democratically elected, local government does not run far.²²¹

Peires in 'the implosion of Transkei and Ciskei' argued that the homelands produced black middle class who inherited privileges of white traders and civil servants. This was viewed as a class that continued to maintain white interests and interestingly the same ones the ANC made undertakings to keep in the new democratic order even before it was born. Ntsebeza in 'Democratic decentralization and tribal authority: Dilemmas of land administration in rural South Africa' also suggests that while the new democratic dispensation facilitated a link with the local government layer of the state, it also introduced a problematic compatibility matter between elected officials and inherited positions of chiefs. For Ntsebeza the new democratic dispensation continued to advantage the undemocratic institution that was responsible for autocratic rule under apartheid and placed an important task of land redistribution in the hands of such an undemocratic institution. Categorically Ntsebeza decries the concessions being made to traditional authorities even during the democratization process. Consequently, Oomen and van Kessel in 'one chief, one vote: the revival of traditional authorities in post-apartheid' argue that while chiefs were viewed with suspicion as puppets of the state under apartheid, they reinvented themselves under the democratic rule. An important turning point was the formation of CONTRALESA in 1988 which aligned itself with the government in waiting. These arguments suggest that there were continuities and guarantees given to the institution of traditional leadership crossing over from apartheid to the new democratic rule under the ANC government.

²²¹ Timothy Gibbs, *Mandela's Kinsmen: Nationalist Elites and Apartheid's First Bantustan*, (Johannesburg: James Currey, 2014) pp 3, 4

At face value Traditional Leadership cannot have disputes, claims, counter claims, accusations and counter accusations because it is viewed as a custodian of respectable African culture, linked to the fact that Kings and princes occupy positions with clear and undisputed family trees. Therefore, it might not be possible to have or even entertain such disputes. However, Timothy Gibbs, in his book *Mandela's Kinsmen: Nationalist Elites and Apartheid's First Bantustan*; suggests that royal trees can be manipulated to suit particular state policies and purposes. He argues that in 1963 “[a]s a reward for supporting Matanzima’s Government, some of Sigcau’s supporters were raised from being headmen to sub-chiefs, then chiefs – a process that involved a government ethnologist pruning and grafting royal branches onto the king’s genealogical tree.”²²² Here he is suggesting that the first Bantustan state manipulated the Mpondo royal family tree to privilege those who supported the state policy. The royal family did not resist the move as it benefited them at the time, suggesting that this was congruent with the aspirations of gaining more power and influence. The state and the institution of Traditional Leadership joined hands in a mutually beneficial political maneuver.



From the outset the post-apartheid State as a governing institution in a post-colonial and post-apartheid era and the institution of Traditional Leadership set up a framework of working together to advance state policy in the new environment. The post-apartheid State was understood to be representing a value system that marked a clear departure from colonial and apartheid links and tendencies, and sought to restore the dignity of the Traditional Leadership institution. Departure from the modern project was marked by reaffirming the identity of those seen to be “subjects” and not “citizens” under the modern order. But in his introduction

²²² Timothy Gibbs, *Mandela's Kinsmen: Nationalist Elites and Apartheid's First Bantustan*; (Johannesburg: James Currey, 2014), pp 62-63.

of *Citizen and Subject* Mahmood Mamdani argues that we find ourselves at the center of two divides namely; liberal and Africanist. He goes on to argue that “the liberal...is to locate politics in civil society, and the Africanist solution is to put Africa’s age old communities at the center of African politics” which is what the Nhlapo Commission attempts to do to some extent.²²³I draw from Richard Elphick and Hermann Giliomee, who also argued that the South African society under every epoch intensified, modified or extended patterns of social and economic organization that rested on early Cape Colony which was linked to the development of liberal in the South African society.²²⁴ Patterns of domination and subjection continued to mark the landscape of society supported by schemes of privileging even in the post-colonial order of a post-apartheid South Africa.

Gibbs, drawing from Ntsebeza, notes that the institution of Traditional Leaders was inscribed with continued relationships of privileging that came from the colonial order crossing over to the post-apartheid order.²²⁵ Its relationship with the states, namely; colonial state, the apartheid state and the post-apartheid state constantly grappled with the idea of accumulation, reversing and discontinuities of privileging schemes in as far as the state’s involvement was concerned on the one hand.²²⁶On the other hand, to use Mowitt’s terms, the institution of traditional leadership appeared to be residual and archaic to be specific, which represented a pre-colonial value system that has long been eroded by the colonial order and apartheid but resisted.²²⁷

²²³ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Philip, 1996), p 3.

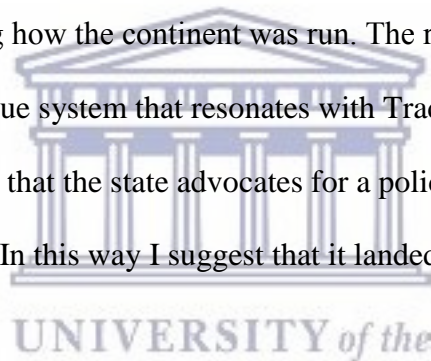
²²⁴ Richard Elphick & Hermann Giliomee; ‘Introduction’, in Richard Elphick & Hermann Giliomee (eds), *The Shaping of South African Society 1652 – 1820*, (London: Longman Penguin, 1979), p xiii

²²⁵ Timothy Gibbs, *Mandela’s Kinsmen: Nationalist Elites and Apartheid’s First Bantustan*, (Johannesburg: James Currey, 2014) pp 3, 4

²²⁶ Pearl Sithole & Thamsanqa Mbele, ‘Fifteen-year review on traditional leadership: a research paper, *Human Sciences Research Council*, (Durban: Human Sciences Research Council, 2008),

²²⁷ John Mowitt, *Radio essays in bad reception*, (California: University of California Press, 2011), p 6.

The post-apartheid State advocated a policy of the "return" to a more inclusive, accommodative, hospitable and respect anchored value system of "ubuntu", understood to be affirming the interconnectedness and brotherhood of men. Just as Mbeki espoused the centrality of African values and norms, systems and institutions in resolving African problems in an attempt to reverse the legacy of slavery, colonialism and the apartheid system. Such oppressive systems sought to govern the psychological reactions of the ruled and to condition them to think of themselves as inferior beings and incapacitated to deal with the challenges they face. Mbeki's attempts were aimed at unsettling the legacy of oppression by inserting the affirmation of African systems values and approaches. The evocation of African institutions sought to reclaim the position Africa once occupied where external hegemony could not take root in dictating how the continent was run. The return to "ubuntu", as advocated by the state, is a value system that resonates with Traditional Leadership systems of governance. This suggested that the state advocates for a policy of pre-coloniality in what it claimed to be post-colonial. In this way I suggest that it landed itself in a discursive space.



The post-apartheid state, considered to be progressive by ANC politicians, deployed state apparatus and sought to accommodate the institution of traditional leadership under a progressive democracy after 1994. Its use of state organs such as the office of the president, the office of the minister of traditional affairs, the Traditional Leadership Framework Act 41 of 2003 to formulate a commission of enquiry to consider issues relating to the institution of traditional leaders suggested attempts for the registration of the archaic by the new political values in Mowitz's terms. Mahmood Mamdani questioned the wholesale accommodation of the institution in a post-colonial state in *Citizen and Subject*. He suggested that the institution of traditional leaders must be "democratized" if it was to occupy an important position in a post-colonial state. Owing to the many state interventions into the institution by the colonial

and apartheid states through concerted interventions like laws and commissions, however, the institution remained with the remnants of coloniality and apartheid.²²⁸ The post-apartheid state equally used its apparatus to exert its power over the institution of traditional leadership as part of its effort to democratize it and make it serve all South African citizens.²²⁹ Against this background Sydney Mufamadi and Thabo Mbeki instituted the commission on traditional leadership dispute and claims in October 2004 as a confirmation of the archaic being registered by the new political value system which asked for the institution to justify its existence. However, in the registration of the archaic by the new, the formation of the commission recognized and undermined and destroyed the very institution of traditional leadership that may have been seen as the custodian of ubuntu. This suggests that the state while advocating a policy of ubuntu it is equally involved in undermining and destroying some of the institutions that presents and represent it.



What is the historical role of commissions of inquiry in South Africa about Traditional Leadership?

The Nhlapo commission follows at least two other independent commissions of enquiry that dealt with the question of traditional leadership under the colonial and apartheid states. In the late nineteenth century there was a Brownlee Commission of enquiry into Native Laws and Customs of 1880-1881.²³⁰ The Brownlee commission followed some of the decisive armed confrontations in the history of late colonial rule in South Africa like the Sandlwane 1878,

²²⁸ Osmanns and Drusilla Yekela, *Unity and division: aspects of the history of Abathembu chieftainship c 1920 – 1980*, PhD Dissertation, (Cape Town: University of Cape Town, 2011)

²²⁹ Bank, Leslie, and Roger Southall. "Traditional leaders in South Africa's new democracy." *The Journal of Legal Pluralism and Unofficial Law* 28, no. 37-38 (1996): 407-430. Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Philip, 1996). Lungisile Ntsebeza, 'Democratic decentralization and traditional authority: dilemmas of land administration in South Africa', in *The European Journal of Development Research*, Vol 16 issue 1 2004.

²³⁰ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Philip, 1996), p 44, Charles Brownlee, *Cape Native Laws and Customs Commission Report, 1881*, (Cape Town: Cape Colony, 1881) in UCT Library, Government Publications section.

Ngcayechibi 1879 and the gun war also known as the (Transkeian rebellion) of 1880.²³¹ It was set up to investigate customary practices and laws of the indigenous people in the colony with the intention of developing the many customary laws for “natives’ as markers of the subdivisions of the “subjects” so as to entrench the idea of “ethnic pluralism” as Mamdani put it.²³² “Ethnic pluralism” implied what he called “territorial segregation” that encouraged the racialization of the state through physical location, linked to a political system that segregated the ruled institutionally. The commission made a comparison between civil colonial laws and indigenous laws, the basis of which was to establish customary laws for the indigenous people on a number of issues. Drawing from Mamdani I want to argue that the commission on Native Laws and Customs was a means to carefully separate people through establishing different customary laws for different people to achieve the separation of ethnically motivated systems. In this way “ethnic pluralism” took root and created the necessary distance between civil law and native law. For Mamdani this set the ground for the laying of the foundations of the ‘structure and the nature of European power in South Africa’ which would afford the Europeans to force their will on the natives using civil laws and customary law.²³³

In accordance with the “continuity and decentralization” imperatives, which were later articulated by Frederick Lurgard in ‘The Dual Mandate in British Tropical Africa, 1926’, the Brownlee commission assisted the Cape Colonial state to consolidate the ‘structure of European power in South Africa’. The same set the stage for the separation of civil society and the rural communities just by using a legal framework.²³⁴ The structure of European

²³¹ Brownlee spent a considerable amount of time interviewing traditional leaders while leading the commission of enquiry into practices of native laws and customs.

²³² Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town: David Philip, 1996), p 6.

²³³ Ibid, pp 7, 15.

²³⁴ Frederick Lurgard, *The Dual Mandate in Tropical Africa*, 1926

power in South Africa' created a platform where the urbanized people were governed by civil laws and the rural people were governed as subjects of customary laws.²³⁵ A separation of the state into two distinct legal spaces as needed by the colonial power was therefore achieved as a result. According to Mamdani a "plural ethnic" state system was equally achieved to separate indigenous people using different customary laws, according to their ethnic groups, as a point of reference. For the most part traditional leaders were encouraged to apply these as markers of their authority in their respective districts.²³⁶ The Brownlee commission successfully usurped the powers of traditional leaders to preside over issues that were marked as issues of civil authority. It rubbished issues like lobola, polygamy and the prosecution of witches.²³⁷ While it could be seen to be an independent commission it strongly reinforced colonial attitude and official policy positions in how the state dealt with rural communities and traditional leaders in particular.



Moving from the Brownlee commission the second commission I would like to examine is the one commissioned by the apartheid state under CB Young.²³⁸ According to Gibbs the apartheid state instituted an independent commission of enquiry that dealt with issues of traditional leadership in the 1950s. In part the apartheid state solicited the power and influence of traditional leaders to legitimate themselves in the eyes of the South African people that stay in rural areas, as Sandra Dusing suggested.²³⁹ Gibbs for his part observed that without attempting to change the arrangement of power relations from the colonial era, the apartheid state sought to establish traditional authorities in line with the Native

²³⁵ Ibid, pp 16 - 18

²³⁶ Ibid, p 17

²³⁷ Charles Brownlee, *Native Laws and Customs*

²³⁸ Timothy Gibbs, *Mandela's Kinsmen: Nationalist Elites and Apartheid's First Bantustan*, (Johannesburg: James Currey, 2014)

²³⁹ Sandra Dusing, *Traditional leadership and Democratisation in Southern Africa: A comparative study of Namibia, Botswana and South Africa*, (Hamburg: LIT Verlag Muster, 2002), p 281.

Administration act of 1927.²⁴⁰ Against this background the state passed the Bantu Authorities Act of 1951 that sought to give traditional authorities more room to exercise power in their localities. Gibbs continued to note that the state “established a system of Tribal Authorities: new tiers of segregated, local ‘tribal’ administration in which government-appointed chiefs took new powers.”²⁴¹ In this way according to Mamdani Bantustans were established as means of self-government where traditional leaders were at the head and that they were means of ‘softening’ racism in South Africa. Gibbs argues that this system brought along with it a series of disputes and conflict between those traditional leaders that supported the apartheid state and those that opposed it. For instance, following a secession bid by Kaiser Matanzima, who supported the apartheid state, from King Sabata Dalindyebo’s Thembuland, the apartheid state established a commission of enquiry. C. B. Young led this commission to investigate the issues of dispute and claims between Kaiser Matanzima and King Sabata Dalindyebo who opposed apartheid.²⁴²

During the next few years, Sabata’s councilors mustered all the firepower they could find in both legal and customary practice in their attempts to derail Kaiser Matanzima from establishing himself as an independent chief under the Bantu Authorities Act. ... An official commission of enquiry led by the Secretary of Native Affairs, C. B. Young, came to Transkei to investigate the genealogy of the Thembu kingdom. The question at hand was whether the Matanzima branch was deserving of an autonomous chieftaincy entirely independent of the main Dalindyebo stem of the Thembu kingdom. The government fiddled the rules to get their way.²⁴³

²⁴⁰ Timothy Gibbs, *Mandela’s Kinsmen: Nationalist Elites and Apartheid’s First Bantustan*, (Johannesburg: James Currey, 2014)

²⁴¹ Ibid, p 25

²⁴² Ibid

²⁴³ Ibid, p 30

As is evident in the example above, Gibbs' treatment of the Young commission suggests state interference in the affairs of traditional leadership through the Bantu Authorities Act of 1951, a piece of legislation that according to Ntsebeza gave traditional leaders more powers under apartheid. At this point he added his voice to the idea of a despotic arrangement of traditional leadership as produced by Mamdani. Gibbs studied the issues that affected the Thembu kingdom in the 1950s to support the notion of state interference to the affairs of traditional leadership through independent commissions of enquiry. The Young commission did not close the history of commissions on issues of traditional leadership but continued the legacy of state commissions. The so called independent Young commission as Gibbs observes was far from being neutral. In fact he argues that "[t]he government fiddled the rules to get their way".²⁴⁴ Fiddling with the rules suggested that the Young commission in itself was subject to operate within a set of rules that had to produce the desired results that suited state agenda. Despite the fact that Dalindyebo and the Thembu people protested against the commission, the state was not to be derailed by claims of tribal seniority of King Sabata Dalindyebo in Thembuland. As long as he opposed the position of the state, he and his followers were ignored and customary practices undermined.

In the wake of the post-colonial, post-apartheid South Africa, Gibbs suggests that "[c]hieftancy disputes [are] not unusual"; they resurfaced and confronted the government of the day as expressed by Sydney Mufamadi in October 2004:

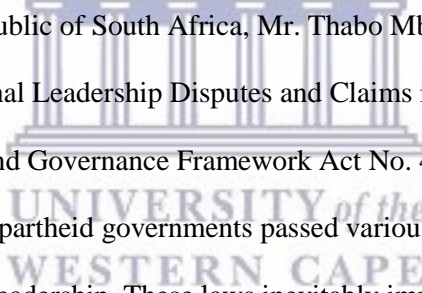
Numerous traditional leadership disputes, claims and counterclaims were and still are, by all accounts, the order of the day. Various attempts were made to settle the disputes through courts of law and commissions of enquiry, to no avail. With the advent of democracy, a

²⁴⁴ Ibid, p 30

strong voice emerged, particularly from those who were unfairly deposed in the past, demanding that the democratic government restore them to their rightful positions.²⁴⁵

Mufamadi makes a point to say that the disputes emanated from within the ranks of traditional leaders who were unfairly treated and unfairly deposed by the past administrations. These traditional leaders must have used the provisions that were available in the Constitution and in the Traditional Leadership Framework Act 41 of 2003 to advance their positions.

On the occasion of announcing the commission of Traditional Leadership Disputes and Claims on 16 October 2004 Mufamadi said:



The President of the Republic of South Africa, Mr. Thabo Mbeki has appointed a Commission on Traditional Leadership Disputes and Claims in terms of Section 23 of the Traditional Leadership and Governance Framework Act No. 41 of 2003. Over the years, the colonial and successive apartheid governments passed various laws aimed at controlling the institution of traditional leadership. These laws inevitably impaired the image and integrity of the institution. When the notorious Bantustan system was introduced, the institution was traumatized further, through a myriad of Bantustan legislation. In the process, those legitimate traditional leaders who differed with the government of the day and supported the liberation movement, were either banished, deposed or driven into exile. Numerous traditional leadership disputes, claims and counterclaims were and still are, by all accounts, the order of the day. Various attempts were made to settle the disputes through courts of law and commissions of enquiry, to no avail. With the advent of democracy, a strong voice emerged, particularly from those who were unfairly deposed in the past, demanding that the democratic

²⁴⁵ <http://www.polity.org.za/article/mufamadi-announcement-of-commission-on-traditional-leadership-disputes-and-claims-16102004-2004-10-16> (Accessed on 21 August 2015).

government restore them to their rightful positions. Provincial governments appointed various commissions of enquiry, in an honest attempt to resolve the disputes..²⁴⁶

Mufamadi stresses the point that the Mbeki state wants to correct the wrongs that were done by previous administrations. From the statement that Mufamadi issues it is spelt out in no uncertain terms that “[o]ver the years, the colonial and successive apartheid governments passed various laws aimed at controlling the institution of traditional leadership. These laws inevitably impaired the image and integrity of the institution”.²⁴⁷ Putting a mark at the issue that he represents a democratically elected government that is subject to the Constitution as a supreme law of the land he sets out to articulate a departure from colonial and apartheid policies. Of interest to me is the question of passing the Traditional Leaders Framework Act of 2003, I want to ask if this piece of legislation was not part of “various laws aimed at controlling the institution of traditional leadership” used by the post-colonial, post-apartheid and democratic government to achieve the same objectives of the colonial, semi colonial and apartheid states?²⁴⁸ However, Mehta’s discourse of unfamiliarity, can be used to examine the workings of the post-apartheid state in producing new categories in the institution of traditional leadership. For instance, the institution is viewed as undemocratic and non-representative structure with the invocation of categories, the same was at play in the Nhlapo commission, as the commission sought to trace blood ties of ethnic groupings in South Africa that are eligible for monarchical status.

How independent are state mandated commissions? What are the implications of their mandate and operation?

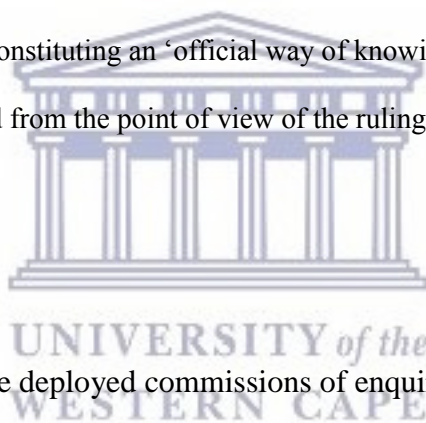
²⁴⁶ Ibid

²⁴⁷ Ibid

²⁴⁸ Ibid

Jeff Peires argues that “[t]he process of selection [commissioners for the composition of the Nhlapo commission], let alone the criteria for selection, remains obscure.”²⁴⁹ There is growing literature that questions the independence of state appointed independent commissions of inquiry, the literature also examines the idea of shifting responsibility on the part of the state when dealing with complex and sensitive matters. On the question of state commissions for instance, Adam Ashforth, and Belinda Bozzoli in ‘the discourses of myth and the myth of discourse’ argued that:

The commission legitimate[d] the idea that the state ha[d] the ‘knowledge’ to speak on behalf of the natives, and to silence African political voices themselves – not only through repression, but through constituting an ‘official way of knowing and speaking ‘of the native’ ... which obviated from the point of view of the ruling orders, the necessity of political representation.²⁵⁰



Bozzoli suggested that the state deployed commissions of enquiry in order for them to be means of legitimizing, endorsing and fixing the ability of the state in knowing the “native question”. Bozzoli suggested that this legitimation of the ways of knowing, on the part of the state, related to the formulation of the idea of the native question with its underlying meanings and implications related to speak on the “native question”.²⁵¹ She argued that through the commission the state disguised its voice through the deployment of the notion of the independence of the commission. In that way the state was imagined to be behind the veil of the commission operating freely under its guise while it actively ordered the lives of

²⁴⁹ Jeff Peires, ‘History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: University of Fort Hare, 2013), p1.

²⁵⁰ Belinda Bozzoli, ‘The Discourse of Myth and the Myth of Discourse, *South African Historical Journal*, (Johannesburg: Witwatersrand University Press Vol 26: 1, 1992), p 193

²⁵¹ Ibid, p 192

natives undetected. But more clearly the state profoundly settled in the position of establishing an authorized discourse on the native question. It was against that background that Bozzoli argued that the state developed more “authoritative ways of speaking about the native question”. In those ways of speaking, drawing from Ashforth, she went on to argue that the state devised structured ways “of speaking of, for and to the native”.²⁵² In other words commissions facilitated state access to its own technologies of ordering natives, which was an apparatus of the state to penetrate the natives undetected through the veil of the commission. In other words, she suggested that Ashforth argued that the state, in establishing the commission, wanted to find ways of legitimating its authority when it spoke on the native question. This made the commission become a vehicle to the state finding itself speaking “on behalf of the natives”



Ann Stoler, an anthropology scholar, is suspicious of state commissions found in state archives. She suggests that state “commissions, reports” and other documents are part and parcel of “archival sources” that relate to state’s aims of knowledge production and can be seen as monuments of states, which must be subject to close examination.²⁵³ Here Stoler is thinking with Premesh Lalu who argues that history contributed a lot in suppressing the “subaltern” and putting him or her in their “place by recourse to the modes of evidence that constitute the colonial archive”.²⁵⁴ Here they are pointing to their mistrust of the contents through language and process of the archive as well as its records. Stoler disagrees with Andrew Ashforth in his study of the Native Affairs Commission in South Africa where he argues that “the real seat of power’ in the modern state is ‘the bureau, the locus of writing”.

²⁵² Ibid, p 193

²⁵³ Ann L Stoler, ‘Colonial Archives and the art of governance’, in *Archival Science*, (Netherlands: Kluwer Academic publishers, 2002), p 87. Students of the colonial experience “mine” the *content* of government commissions and reports, but rarely attend to their peculiar *form* or *context*.

²⁵⁴ Premesh Lalu, *The deaths of Hintsa: postapartheid South Africa and the shape of recurring pasts*, (Cape Town: Human Sciences Research Council, 2009), p 22

She instead argues that “every document comes layered” and influenced by ideologies of the “colonial politics”.²⁵⁵

In her study of state commissions in “colonial Java and early twentieth century South Africa Stoler argues that commissions have an ambiguous status.

Commissions and statistics were features of statecraft in similar ways. Both are eighteenth-century inventions consolidated by the nineteenth-century liberal state. Both were products and instantiations of the state's investment in public accountability. But commissions commanded more moral authority as they purported to scrutinize state practice, reveal bureaucratic mistakes, and produce new truths about the workings of the state itself.²⁵⁶

Stoler argues that “commissions and statistics” are tools in the hands of the state. They achieve the ends of the state because they are engineered and brought to existence through the means of the state.²⁵⁷ She dates back the existence of the two crafts in the hand of the state to three centuries ago. This suggests that the post-apartheid state under Mbeki does not invent a new way of doing things by establishing the Nhlapo commission of enquiry, instead it reinvents the wheel. However, Stoler states that commissions commanded “more moral authority” when they are critical of the state by scrutinizing state practice and uncover bureaucratic shortcomings. She advances the notion that such a close interrogation process produces “new truths about the workings of the state itself.”²⁵⁸ In other words, it was by exposing the mistakes and questioning the moral authority of the state machinery that killed

²⁵⁵ Ibid, p 92

²⁵⁶ Ibid, p 106

²⁵⁷ Ibid

²⁵⁸ Ibid.

existing notions of a well-functioning state which produces “new truths about the workings of the state itself”.

Thabo Mbeki while addressing the National House of Traditional Leaders suggested that as a state president he was not meant to be interfering with the issues of commissions. This is an attempt to create an impression that the Nhlapo commission is free from state interference. However, by his own admission he interfered “I must repeat that I consider it very important and necessary that the President should respect the views and determinations of the Commission.”²⁵⁹

Stoler cites two independent commissions of inquiry in Asia and South Africa; one by the Dutch, another by colonial state in South Africa to illustrate her argument that commissions of inquiries, while appearing to be indeed untangled from the state and therefore independent of it, are in fact intrinsically tied to the state apparatus.

Finally, these commissions were quintessential “quasi-state” technologies, both part of the state and not, at once a product of state agents but constituted invariably by members outside it. If modern states gain force in part by creating and maintaining an elusive boundary between themselves and civil society, as Tim Mitchell has argued, such commissions exemplified that process. Their specific subjects were state generated, but often researched and written by those not in its permanent employ.²⁶⁰

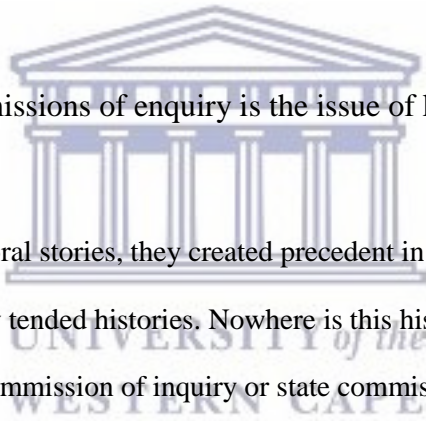
²⁵⁹ <http://www.anc.org.za/show.php?id=4204> (accessed on 1 September 2015).

<http://www.anc.org.za/content/address-president-thabo-mbeki-annual-opening-national-house-traditional-leaders> (accessed on 1 September 2015)

²⁶⁰ Ann L Stoler, ‘Colonial Archives and the art of governance’, in *Archival Science*, (Netherlands: Kluwer Academic publishers, 2002). p 107

In fact, their very terms of reference and configuration determine the desired results in favor of the state. Her argument suggests that the configuration and the terms of reference are carefully constructed by the state to reach the desires of the state while creating a pseudo distance from it. Which imply that when enough guidelines are put in place the outcomes of the investigation are inevitably going to satisfy the wishes of the state?²⁶¹ The Nhlapo commission follows the same trend as stated by Stoler where most of the commissioners are semidetached from the state. For instance, Peires argues that the selection of commissioners is done by the state but it is people that are not civil servants necessarily. Stoler is spot on in saying “these commissions were quintessential “quasi-state” technologies, both part of the state and not”.²⁶²

Central to the politics of commissions of enquiry is the issue of knowledge production.



[Commissioners] told moral stories, they created precedent in the pursuit of evidence, and not least they create carefully tended histories. Nowhere is this history-making work more evident than in the form of the commission of inquiry or state commission. By definition, commissions organized knowledge, rearranged its categories, and prescribed what state officials were charged to know.²⁶³

Stoler suggests that commissions create new truths while disguised as platforms of collecting evidence. In the process of interrogating evidence, a process of meaning making unfolds to inform how the state can intervene and get a foot hold. Commissions are means by which the state hide behind independence while usurping the investigated institution of its authority and

²⁶¹ Ibid

²⁶² Ibid

²⁶³ Ibid, pp 103-104

“organize knowledge, rearrange its categories, and prescribed what state officials were charged to know”.²⁶⁴ In this way and along these lines the Nhlapo commission reconfigured the space of traditional leadership in South Africa when it declined claims of kingship by some royal families not least of those is the Matiwane of amaMpondomise. The Nhlapo commission follows other commissions from the apartheid era whose aims were to interfere with royal family trees and seniority.

Timothy Gibbs suggests that the Young commission of inquiry into the abaThembu chieftaincy favored Kaizer Matanzima who was sympathetic to the state.²⁶⁵ He argues that the state interfered with the rules.²⁶⁶ Zulaiga Adams, in her PhD dissertation that deals with the stabbing of Hendrik F. Verwoerd by Demitrios Tsafendas also observes state interference in the so called independent commission of inquiry. Adams suggests that the state needed to distance itself and its policies, specifically the weak human resources management procedures in parliament that led to the stabbing of Verwoerd inside parliament. In the same vein the Nhlapo commission has evidence of state interference under the Mbeki era, a matter Mbeki himself admits to in his 2007 address in the national house of traditional leaders. Instead of dealing with why Tsafendas stabbed Verwoerd, which emanated from the apartheid policies of racial discrimination and who is responsible for his access to parliament, the commission targeted the emigration officer that gave him access to the country. Adams argues that the state successfully deflected responsibility by carefully crafting the workings of the commission.²⁶⁷ Similarly, the Nhlapo commission dismisses Matiwane’s claim to

²⁶⁴ Ibid

²⁶⁵ Timothy Gibbs, *Mandela’s Kinsmen: Nationalist Elites and Apartheid’s First Bantustan*, (Johannesburg: James Currey, 2014) p 30

²⁶⁶ Ibid

²⁶⁷ Zulaiga Adams, *Demitrios Tsafendas: Race Madness and the Archive*, (Cape Town: University of the Western Cape, 2011)

kingship over amaMpondomise through carefully considered means of legitimating using customary law.

With the Nhlapo commission a question might arise as to what the state wanted to deal with, and how it used similar rules to arrive at its aims? Here I discuss the statements by Mufamadi and Mbeki on what the commission must deal with. In 2004 Government acted and attempted to address the matter through the establishment of the commission for disputes and claims of traditional leaders. Barbara Oomen observes that South Africa has patchwork democracy, she argues that Sydney Mufamadi articulated the central issue about the disputes and claims, “[a] thorny issue ... [is] the legitimacy of those traditional leaders on the government payroll.” As Provincial and Local Government Minister Sydney Mufamadi said: ‘The integrity of traditional leadership cannot be adequately restored without dealing with those cases of traditional leaders who were allegedly imposed on people, or those who were illegitimately deposed for their opposition of the old order,’ and the ensuing of succession disputes”²⁶⁸

Sydney Mufamadi’s statement resonates with what Timothy Gibbs argues about, when he describes the disputes that brought instability within the traditional leadership circles in the 1950s as a result of the introduction of the Bantu Authorities Act of 1951.

In the 1950s the Thembu kingdom was in the midst of a dispute – the chieftaincy split over the figure of King Sabata Dalindyebo (b. 1928), the young paramount chief installed in 1954. Chieftaincy disputes were not unusual, but in the 1950s these clashes carried much broader significance. This was the decade in which apartheid government legislation laid the foundations for the creation of Bantustan self-governing territories, which followed in the

²⁶⁸ <http://books.google.co.za/books?isbn=0852558805> (accessed on 1 September 2015)

1960s. The Bantu Authorities Act of 1951 was unpopular because it established a system of Tribal Authorities: new tiers of segregated, local ‘tribal’ administration in which government-appointed chiefs took new powers. Most importantly, these new Tribal Authorities were used to force through rural Betterment schemes.²⁶⁹

Gibbs highlighted the tension of the 1950s as it related to the royal house of abaThembu personified by Kaizer Matanzima and Sabata Dalindyebo. Of interest are the embedded similarities of how the state decided to intervene in a traditional leadership dispute. In the new South Africa traditional leaders used a different plane, political transition negotiations and the traditional leadership framework consultation sessions, and accused each other in relation to their positions and authority. In turn the president investigated the disputed claims and counter claims that were raised by royals. The investigating commission was set up to investigate and make recommendations that will aid the president to decide on the matters. At the time of establishing the commission President Mbeki emphasized on the restoration of the dignity and integrity of the Traditional Leaders institution.



The establishment of the Nhlapo commission for traditional leaders’ disputes and claims opens an avenue for historical research into the institution. Traditional leaders that have claims would have to bring tangible evidence of their rightful positions before the promulgation of the Native Authorities Act of 1927. They have to show that the implementation of the Act adversely affected their position and therefore unfairly robbed them of their chieftain status. To satisfy the commission and the state one would have to present convincing evidence before the commission based on some historical evidence. To do so, traditional leaders have to visit their archives and the state archives. But Premesh Lalu in

²⁶⁹ Timothy Gibbs, *Mandela’s Kinsmen: Nationalist Elites and Apartheid’s First Bantustan*, (Johannesburg: James Currey, 2014) p 25

his book *The deaths of Hintsa: Postapartheid South Africa and the shape of recurring pasts*, is suspicious of the archive. He argues that there must be a move that helps to question archival modes of evidence in post-apartheid South Africa:

This move has to consist of an initial deconstruction of historiography and the conceptual ground clearing. Central to this deconstructive move, in my way view, is a problematisation of the notion of the colonial archive and its modes of evidence. Historians who have been working with official documents and colonial archive have mostly been aware of the fact that the colonial archive is far from being a neutral storage place, but consists rather of rules of formation which establish hierarchies, labels and categories. However, most historians fail to recognize that they are deeply implicated in this discursive formation. The colonial archive constitutes a pervasive system of knowledge combining poetics and the exercise of power, which act upon individuals and regulates their statements. It is from this shadow that I argue we ought to seek a line of flight. Perhaps such a move may enable a repetition of the story of the killing of Hintsa which is different from that which it repeats.²⁷⁰

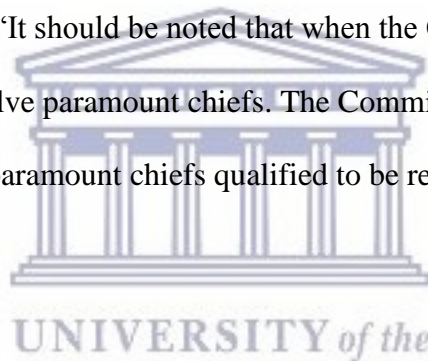
Lalu's argument suggests a different reading of the archival record where most of the colonial and apartheid narrative of the relations between the state and the institution of traditional leadership. But the demands of the Nhlapo commission that calls claimants of kingship to justify their claims force claimants to heavily rely on the archival record without much interrogation. His work helped rethink the recorded and well known account of the event of the death of king Hintsa offering a reading of the archival record with suspicion, something that the Nhlapo commission did not consider much in the Matiwane claim to kingship as

²⁷⁰ Premesh Lalu, *The deaths of Hintsa: Postapartheid South Africa and the shape of recurring pasts*, (Cape Town: Human Sciences Research Council, 2009), p 30.

decedents of Mhlontlo. Lalu's work questions the authorized discourse of the death of Hintsa and forms part of the post-apartheid historiography that informs future archival examination.

What were the key issues for the state in establishing the commission?

Twala, Kompi and Seshelo argue that the establishment of the commission on disputes and claims of traditional leaders was an attempt by the state to make good to its promise in the Kempton Park political transition negotiations of the early 1990s. They draw from email exchanges that Kompi had with Professor Thandabantu Nhlapo while at the University of Cape Town in 2011.²⁷¹ Again drawing from Chief Phatekile Holomisa's book published in 2010 they go on to argue that "It should be noted that when the Commission was established in 2004, South Africa had twelve paramount chiefs. The Commission had to investigate whether or not all the twelve paramount chiefs qualified to be recognized as kings or queens."²⁷²

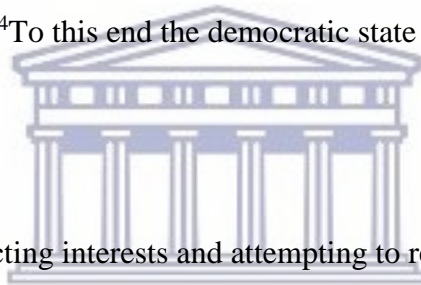


At the time of the appointment of the Commission on Traditional Leaders Disputes and Claims; Sydney Mufamadi, Minister of Provincial and Local Government affairs, issues a press statement announcing the appointment of the Nhlapo commission in which he highlighted the political will to address the disputes and claims of traditional leaders. He sets out the legal framework on which the commission was established; namely, the Traditional Leaders Framework Act of 2003.

²⁷¹ Chitja Twala and Jacob Selasho, 'The Socio-political Consequence of the Commission on Traditional Leadership Disputes and Claims in South Africa: A Post-Apartheid or Modern Political Discourse within the ANC Led Government?', *Journal of Social Sciences Interdisciplinary Reflection of Contemporary Society*, 40(2), (New Delhi: Kamla-Raj Enterprises, 2014), p 172

²⁷² Ibid

In the statement Mufamadi suggests that the state was responding to the impaired image and the integrity of the institution of Traditional Leaders which is a result of state intervention in the past. Mufamadi holds that “[o]ver the years, the colonial and successive apartheid governments passed various laws aimed at controlling the institution of traditional leadership.²⁷³ These laws inevitably impaired the image and integrity of the institution.” For the Mufamadi the intervention of the state hampered the independence and credibility of the institution. He also suggests that the institution “was traumatized” to a greater degree by the draconian laws of the apartheid state when it introduced the “Bantustan” system. This reference by Mufamadi relates to what scholars identified as strategies of “direct and indirect rule” and “centralized and decentralized despotism” that were used by the colonial and apartheid states respectively.²⁷⁴To this end the democratic state is stepping in to right the wrong.



In entering the space of conflicting interests and attempting to resolve them the state goes about influencing key institutions that can assist it in this regard. Thabo Mbeki in his capacity as the head of state refers to “long standing disputes” in his speech of 22 February 2005; this is only four months after he appointed the commission of inquiry into the disputes and claims of traditional leaders. Mbeki addresses himself to the issue of resolving all disputes that relate to traditional leaders on the occasion of him opening the National House of Traditional leaders in Parliament:

²⁷³ <http://www.polity.org.za/article/mufamadi-announcement-of-commission-on-traditional-leadership-disputes-and-claims-16102004-2004-10-16>. Buti Kompi, Chitja Twala and Jacob Selesho, ‘The Socio-political Consequence of the Commission on Traditional Leadership Disputes and Claims in South Africa: A Post-Apartheid or Modern Political Discourse within the ANC Led Government?’, *Journal for Social Science*, 40(2) (Bloemfontein: University of the Free State, 2014), p 169.

²⁷⁴ For a further reading on direct and indirect rule and centralized and decentralized despotism see Jeff Guy, *Theophilus Shepstone and the Forging of Natal: African autonomy and settler colonialism in the making of traditional authority*, (Scottsville, KwaZulu Natal University Press, 2013). Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*, (Cape Town, David Phillip, 1996)

The Department of Provincial and Local Government is actively involved in the implementation of the Traditional Leadership and Governance Framework Act, which our Parliament passed in November 2003. In this regard, you will have noted that an independent Commission on Traditional Leadership Disputes and Claims was established in November 2004. This Commission has the task to investigate and resolve long-standing traditional leadership disputes. Clearly, this House has the responsibility to assist in ensuring that our traditional leaders and communities refer all disputes and claims to the Commission. This will help expedite the finalization of the work of the Commission within the prescribed five-year period. I was informed that the first formal meeting between the Commission and the National House took place yesterday. I am quite confident that you had a fruitful interaction with the Commission, and that you will continue to engage with one another on a regular basis.²⁷⁵

Mbeki suggests that the commission has the mandate to “investigate and resolve” “all disputes and claims”.²⁷⁶ Here the commission is given all the powers to “investigate and resolve” the issues. In the commission report there is a consistent line which is evidence of conferred state craft “*The Commission has the authority to investigate all traditional leadership claims and disputes dating from 1 September 1927, subject to subsection (2)(a)(vi)*”.²⁷⁷

In 2008 after confirming receipt of the report of the Nhlapo commission he associates the work of the commission with what he calls institutional support for “Kings and Queens”:

²⁷⁵ <http://www.thepresidency.gov.za/pebble.asp?relid=3129> (accessed on 5 September 2015)

²⁷⁶ <http://www.thepresidency.gov.za/pebble.asp?relid=3129>. (accessed on 5 September 2015)

²⁷⁷ Final Report on amaMpondomise claim

The implementation of the Framework Act on Traditional Leadership has revealed that the Act requires further refinement, especially as regards the issues of the efficient functioning of the Traditional Leadership Disputes and Claims Commission. Equally, more refinement is required with regard to institutional support to our Kings and Queens and other challenges regarding provincial peculiarities. The necessary Bill is currently being drafted and will be subjected to a process of public consultation before its enactment.²⁷⁸

The commission concerned itself with determining the status of Kings who have a following of about 30 percent of the population of South Africa. Most of these are located in rural areas where the traditional leadership is respected the most.

In 2008 the office of the state president instituted another study by Pearl Sithole and Thamsanqa Mbele into the affairs of traditional leaders which sought to establish if the institution of traditional leadership was successfully integrated into the democratic system of South Africa.²⁷⁹ Sithole and Mbele argue that the president instituted a different study to monitor the alignment of the institution of traditional leaders to the democratic system. This is in line with the early discussion about the role of the institution in the new South Africa while the ANC was still in exile. There was a strong feeling that this institution needs to be democratized if it is to exist in a democratic South Africa.²⁸⁰ On the other hand the study suggests that the post-apartheid state in like manner as its predecessors aims at controlling and aligning the institution of traditional leaders.

²⁷⁸ <http://www.anc.org.za/show.php?id=4204> (accessed on 5 September 2015)

²⁷⁹ Pearl Sithole and Thamsanqa Mbele, 'Fifteen Year Review on Traditional Leadership A Research Paper', (Durban: Human Sciences Research Council Democracy and Governance, 2008), p 1

²⁸⁰ Albie Sachs tapes (Cape Town: University of the Western Cape and Robben Island Museum, 2009).

Who were the key role players in the commission and the politics of power and knowledge in the commission?

Jeff Peires who is one of the commissioners suggests that the commission was evenly spread out:

On 22 October 2004, the President appointed twelve Commissioners on the basis of being “knowledgeable regarding customs and the institution of traditional leadership.” The process of selection, let alone the criteria for selection, remains obscure. The Chairperson, Prof Thandabantu Nhlapo, had been Chair of the Project Committee on customary Law at the South African Law Commission. Of the eleven other members of the Commission, six were specialized in Law, three in Language and Culture, one in Education and one (myself) in History. The distribution of Commissioners according to Gender and Province was admirably balanced but it is clear that the Social Sciences were badly under-represented. Besides myself, the only person attached to the Commission who had any background in Politics, Sociology or Anthropology, was Ms. Welile Khuzwayo, an anthropologist seconded from the National Department of Traditional Affairs, and she, being a seconded official, was excluded from the deliberations of the Commission.²⁸¹

The representation of different experts in the commission relates to the capacity of the commission in dealing with a variety of matters and suggests that they emanate from the relationship between the state and the institution of traditional leaders. This spread of experts also suggests a commitment of the state to capacitate the commission to deal with the wide range of issues that are likely to arise in the intervening period. However, Peires argues that

²⁸¹ Jeff Peires, ‘History versus Customary Law: The Commission on Traditional Leadership: Disputes and Claims (2004 – 2012) unpublished paper, (Alice: University of Fort Hare, 2013), p1.

the commission does not adequately represent the “Social Sciences” which suggests that it has an over representation of other experts than those of the Social Sciences who must be seen as relevant for the commission. In this way he is taking pains that he is the only historian in the team of commissioners. The over representation of legal experts suggests that the state wants more strength on the legal side, probably so as to prevent legal recourse on the part of traditional leaders. The Natives Administration Act of 1927 is another strong signal to the same effect of using the law as promulgated by the state as opposed to historical validity.

Twala, Kompi and Selesho agree with Peires about the shape and size of the commission. They argue that “According to Nhlapo, the commissioners reflected diversity in terms of ethnicity, profession and relevant academic disciplines. Most of the commissioners were lawyers, from language and culture units and from social sciences.”²⁸²



How the Mhlontlo Chieftaincy came to be presented to the Nhlapo Commission

In 2007 Loyiso Matiwane a great grandson of Mhlontlo, the last recognized king of amaMpondomise under colonial rule, represented the royal council of argued that the Nhlapo Commission should restore the kingship of amaMpondomise under his (Matiwane’s) leadership. In a verbal submission to the Nhlapo Commission Mr. Linda Mbabama the spokesperson of the Matiwane pleaded with the Commission to consider their predicament in

²⁸² Chitja Twala and Jacob Selasho, ‘The Socio-political Consequence of the Commission on Traditional Leadership Disputes and Claims in South Africa: A Post-Apartheid or Modern Political Discourse within the ANC Led Government?’, *Journal of Social Sciences Interdisciplinary Reflection of Contemporary Society*, 40(2), (New Delhi: Kamla-Raj Enterprises, 2014), p 172

the spirit of the founding principles of the Commission. “We humbly request this Commission to restore the Mpondomise Kingship status which, were it not for the death of Hamilton Hope [which led to the exile of about twenty years in Lesotho and a later deposition which was a direct result of Mhlontlo’s prosecution emanating from the killing of Hamilton Hope in Sulenkama], would be existing even today and there would have been no need for us to sit before this Commission.”²⁸³ Mbabama argued for the restoration of the dignity and integrity of the amaMpondomise Royal Council.

According to the report of the Nhlapo Commission

There are three claimants to the position of kingship of amaMpondomise namely: (a)Loyiso Matiwane, claims on behalf of the house of Matiwane. Loyiso Matiwane claims he is the rightful heir to the kingship of amaMpondomise in that he is a direct descendant of Cira. (b) Vicks Velile Thonjeni, claims on behalf of the house of Thonjeni; Vicks Velile Thonjeni claims he is the rightful heir to the kingship of amaMpondomise in that he is the direct descendant of Dosini.(c)Masibulele Maseti, claims on behalf of the house of Maseti. Masibulele Maseti claims that he is the rightful heir as he is a direct descent of Dam who was a brother to Dosini. The son and heir of Dosini died without issue therefore, Dam as the surviving paternal uncle, and next in line would have succeeded Dosini.²⁸⁴

It is not clear how the Nhlapo commission dealt with this multiple clam to one position except for dismissing all three claims on the basis of the absence of a nation defining war for amaMpondomise, while ignoring that Mpondo and Mpondomise were twins. But according to Majija’s *Dark clouds at Sulenkama: a true story*, the key arguments of the submission

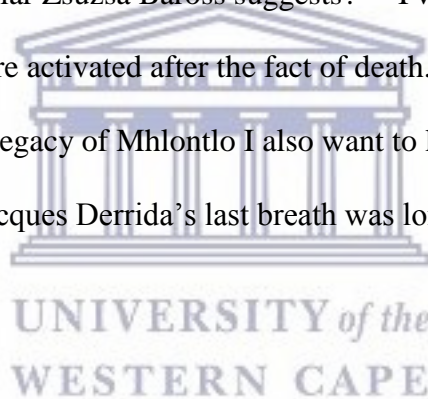
²⁸³ Joe H. Majija, *Dark clouds at Sulenkama: a true story*, (Umthatha: 2009) p 57.

²⁸⁴ www.cogta.gov.za/index.php/2014-04-29-10...commission.../file (accessed on 5 September 2015)

revolve around the notion of legitimation. The Royal Council wanted to be recognized as a kingship and entered a process of contestation which brings heritage to life. amaMpondomise present three claims to the Commission that demanded historical insight than legal persuasion.

Writing posthumously about Mhlontlo

In this part of my study I want to ask a question about what it means to write about Mhlontlo posthumously, when semantically posthumously suggests after the fact of existence as the Canadian cultural studies scholar Zsuzsa Baross suggests?²⁸⁵ I want to explore the metaphor of death and the lessons that are activated after the fact of death. As I explore how history and historiography deals with the legacy of Mhlontlo I also want to lean on what Baross argues posthumous teachings after Jacques Derrida's last breath was long taken:



For this last lesson unlike, any other before it, remains incomplete in an extraordinary manner, irreducible to the vulgar (meaningless) interruption that death always is. It is not left unfinished, its transmission has not been interrupted by a brutal yet banal intervention from the outside, on the contrary, the lesson is in completed, its meaning suspended, deferred (opened) to the future, when precisely there is no more future left to live. As we will see, this happens not by accident of circumstance. The teaching that by necessity arrives last from you necessarily arrives not last but posthumously. If as inheritors we are in mourning ... it is not because the one who professes to know is no longer with us and cannot teach us. The cause rather lies with the difficult wisdom itself: the heterodidactic between life and death is not a

²⁸⁵Zsuzsa Baross, *Posthumously, for Jacques Derrida*, (Sussex University Press, 2011).

given ... to be handed down; it cannot be given since it partakes in the spectrality of ghosts, arrive after the fact (of death) as the pure (after)-effect of a sending from this side of the border of life ... returning or repeating itself from the other side.²⁸⁶

Baross here writes this passage as a direct consequence of the lessons that come to being after the fact of Jacques Derrida's death with the intention to extract lessons from his exemplary life of an educator. She interrogates the idea of lessons that get communicated in as a result of the fact of death. The metaphor of death as Baross extrapolates I further stretch in relation to the legacy of Mhlontlo. For instance, Mhlontlo died in 1909, his memory was carefully laid to rest in the state archive as one blood thirsty despot in the area of Qumbu. In the state archive and the historiography that is generated from such record emphatically inter him as one traditional leader that killed an innocent humble servant of the crown who never had ulterior motives. Scholars like Christopher Saunders and Clifton Crais attempted to bring the memory of Mhlontlo back to life albeit arguing along fixed tropes of their disciplines.²⁸⁷ However, the democratic state of South Africa through its processes of the Nhlapo commission resurrected into national memory the figure of Mhlontlo as king of amaMpondomise. It is at this point that my interest in dealing with issues of coexistence, of subordination, domination and resistance of post-colonial, post-apartheid and democratic state alongside a pre-colonial "backward" "residual" institution of traditional authority come to bear on the argument.²⁸⁸

²⁸⁶ Zsuzsa Baross, *Posthumously, for Jacques Derrida*, (Sussex University Press, 2011), p 8.

²⁸⁷ Christopher C. Saunders, 'The Transkeian Rebellion of 1880–81: A Case-Study of Transkeian Resistance to White Control' *South African Historical Journal*, 8(1) (1976), pp.32-39. Clifton Crais, *The politics of evil. Magic, State Power and the Political Imagination in South Africa*, (Cambridge: Cambridge University Press, 2002). Redding, Sean. 'Sorcery and sovereignty: taxation, witchcraft, and political symbols in the 1880 Transkeian rebellion', *Journal of Southern African Studies* 22, no. 2 (1996): 249-270.

²⁸⁸ Uday Singh Mehta, *Liberalism and Empire: A study in Nineteenth – Century British Liberal thought*, (Chicago: University of Chicago Press, 1999), pp 78,83. John Mowitt, *Radio: Essays in Bad Reception*. (University of California Press, 2011), p 6.

When Mhlonlo died he was a pauper even though he was once the presiding king of amaMpondomise until 1880 when Hamilton Hope died, after his role in leading the people under him for many years. Even the narrative of his life as was reflected in the colonial archival record was questioned. My interest was in understanding the ways in which Mhlonlo was presented and represented in the archival assemblage. I wanted to also understand the archival practices that put his story to rest and how the records that penned his life were carefully treated in order to present his past in an ordered fashion.

After the state commission of enquiry called the Nhlapo commission, a name it was associated with as a result of its chairperson Professor Thandabantu Nhlapo, it became important for claiming families to enter the evidentiary space. It was at this point of convergence between the empire language and the existing record that the archive, its modes of evidence and grammar became important to families with royal claims. Looking for evidence became pivotal as a means to validate, endorse, refute and denounce claims and counter claims by each family with a royal claim. In approaching the Nhlapo Commission researchers in the future will look for some ‘unconscious historical discourse’ that entailed everything that had to be repressed in order to make possible the kind of historical discourse they met with in our culture today. The history that was able to link with literature was better able to connect and appreciate.



Conclusion

In the first chapter the discourse was about going along the archival grain and against the archival grain attempting to recover the voice of Mhlontlo utilizing existing and most used archival record as well as that which was omitted in the official narrative. Drawing from Zsuzsa Baross' *Posthumously, for Jacques Derrida* I ask what did it mean to write

posthumously for Mhlontlo when, unlike Derrida who had the whole archive to propound his voice in posterity, Mhlontlo had the official record representation and a scantily recorded oral history. The posthumously that took into account that Mhlontlo according to scholars of the archive was carefully laid to rest through colonial “representation” (a term I use borrowing from Stuart Hall).²⁸⁹ A view that Jacques Derrida himself alluded to in ‘Admiration For Nelson Mandela’ as white power. Just like in Ronald Barthes’ ‘Dominici’ where the conventional system of writing disadvantaged the uneducated old man facing his trial not because he did not know the language, but because the system and representation both overpowered the old man. Mhlontlo as he was presented and represented in the archive stood no grounds of defending himself over the hegemony the systems of writing produced together with the presentation and representation in colonial and empire literature, law and journalism all of which put him to rest in the state archive.²⁹⁰ In was rendered as one that did not have a voice of his own as the colonial officials, the official record and regimes of the archive demanded that he be put to rest as one murderous traditional leader. However, Joe Majija, Sibizwa Mdaka and Archibald C Jordaan interrupted and questioned the knowledge power relations that were established by the systems of writing and gave Mhlontlo a voice that was never afforded to him by the regime of the official archive and the academy.

Chapter two dealt with the state instituted commission of inquiry called Nhlapo Commission and how it linked with the institution of traditional leadership in general and the house of Mhlontlo in particular afforded me a view in the politics of tradition and progress. As such the study was in part influenced by the impression or not taking things as they are presented. For instance, the state presented the formation of the commission of enquiry as independent

²⁸⁹ Scholars such as Achille Mbembe, Anne Stoler, Jacques Derrida and Premesh Lalu demonstrated the workings of the archives in more elaborate ways than space allowed in this study.

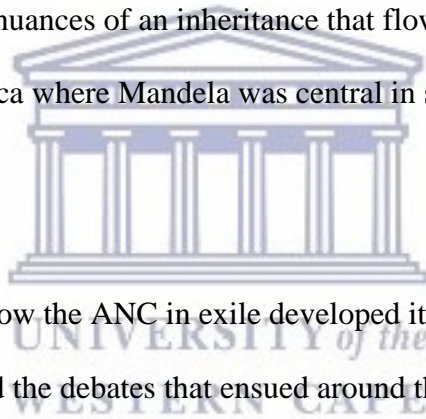
²⁹⁰ For a better understanding of Dominici see: Roland Barthes, ‘Dominici, or the triumph of literature’, in Simon During(ed), *The Cultural Studies Reader*, (London: Routledge, 1993), pp 42-45.

without state influence and persuasion. However, the study investigated closely the subtle involvement of the state and how that involvement was informed by the unresolved issues from the political transition negotiations that led to the 1994 breakthrough. To some extent the study was influenced by Stuart Hall's idea of "interrogating the image" in his lecture on representations media and cultural studies at the Open University. Where Hall referred to an actual image or picture that got used in mass media and impressing the tendency of questioning the image and the reasons for its projection and the meanings it helped to produce. In similar ways, taking from Hall the study used the metaphor of an image for the commission and questioned what the state presented as independent and objective. Hall for instance argued for an interrogation of the image and getting to understand the meanings that get produced and the constitution of meanings. This study interrogated the politics of the relationship between the South African state under Thabo Mbeki and the institution of traditional leadership using the Nhlapo Commission. As I studied this situation there were underlying tensions that found expression in the form of the Whig tradition of history which was an inheritance (I use inheritance in terms of what Jacques Derrida helped to produce in 'Admiration for Nelson Mandela') of British colonialism and empire. The first chapter gleaned on what the new South African state inherited from its predecessors, in 'The Laws in Reflection' Derrida reflected on what he called "Admiration for Nelson Mandela":

But if he admires this tradition, does it mean that he is its inheritor, its simple inheritor? Yes, and no, depending on what is meant here by inheritance. You can recognize an authentic inheritor in the one who conserves and reproduces, but also in the one who respects the logic of the legacy enough to turn it upon occasion against those who claim to be its guardians, enough to reveal, despite and against the usurpers, what has never yet been seen in the

inheritance: enough to give birth, by the unheard-of act of a reflection, to what had never seen the light of day.²⁹¹

Here Derrida referred to the Magna Carta declaration of human rights that was developed in Britain which Mandela said he admired during the famous Revonia trial of the early 1960s. Mandela's admiration balanced on the respect for human rights that the Margna Carta declaration produced and it was where he based his arguments when he defended himself in the Revonia trial. At the trial Mandela twisted on its head the idea of admiration and presented himself as one that truly inherited the Margna Carta declaration as opposed the white minority state that saw itself as genuine inheritors of progress and advocates of liberties. The chapter showed nuances of an inheritance that flowed from British institutions to those of the new South Africa where Mandela was central in setting into existence in the democratic dispensation.



Chapter three tried to follow how the ANC in exile developed its constitutional proposals as it prepared itself for power and the debates that ensued around the proposed inclusion of the institution of traditional leadership back then in 1986 to 1988. Once in South Africa; during the political transition negotiations in Kempton Park, the ANC made concessions to traditional leaders about the inclusion of the institution of traditional leadership into the South African constitution. The chapter followed some of the processes, the comings and goings between traditional leaders and the political organizations that were interested and affected by their interests during that period.

²⁹¹ <http://dx.doi.org/10.1080/1535685X.2014.896149>

During the negotiations the ANC was a popular political organization that seemed carry the mandate of every sector of the South African society including the institution of traditional leadership. However, the contradictions between the mandate of civil society were not (I am borrowing from Stuart Hall) interrogated at the point of intersection with the interests of Communist Party that espoused the idea of “people’s power” which appeared to be hostile to traditional leadership.

The emergence of CONTRALESA and the discussion paper that Maduna presented at the in house seminar of March 1988 brought about a change of heart on the political organization. In October 2004 Thabo Mbeki established the Nhlapo commission as to deal with bigger issues that were ignored during the political transition negotiations in Kempton Park where traditional leaders short changed their cause by entrusting the ANC with their interests. Lastly I am drawing from Adorno, to formulate a question in this chapter: did the ANC; both in exile and in South Africa after the unbanning as a major political organization and later as a ruling party; use the technology at its disposal to produce individuation among South Africans in general and the traditional leadership institution in particular?²⁹²

Chapter four leaned on various scholars of state commissions of enquiry who interrogated that the idea of the “independent” in independent commissions of inquiry. These scholars showed that there was no sense of independence in state commissions of inquiry because their terms of reference, their constitution and workings and disciplines involved emaciated the “independent”. My examination of the Nhlapo commission with the help of Jeff Pieres especially where his scholarship intersects with that of Ann Stoler, Zulaiga Adams and Adam

²⁹² For a better understanding of individuation see Theodor Adorno and Max Horkheimer, ‘The culture Industry: Enlightenment as mass deception’, in Simon During(ed), *The Cultural Studies Reader*, (London: Routledge, 1993), pp 31-41

Ashforth suggested conformity to the held trends of state commissions of enquiry. The chapter was invested in the politics of state commissions of enquiry where the state advanced the idea of the independent” to validate their claim that all state commissions of inquiry were independent. I drew from different studies both locally and internationally to question that assertion of the state.



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