

**CHIEFSHIP, PTY unLTD.:
reflections on sovereign un/accountability, past and present**

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ABSTRACT

A number of “customary” African kings and chiefs – historically accountable to the will of their subjects – have sought to turn their offices into lucrative sources of accumulation; indeed, into a form of monopoly capital founded on the assertion of a political sovereignty unaccountable to any other. What historical conditions have laid the ground for this transformation? How widespread is it? What, in the “new” economies, technologies, ideologies, and politics of the global order, has given the Kingdom of Custom its material, affective, and political heft in this, the twenty-first century? In addressing these questions with particular focus on South Africa, this essay explores the relationship between “local” structural conditions and those exogenous to the country in order to explain ongoing transformations in traditional authority -- and their impact on the political and cultural economy of the nation at large.

KEYWORDS: “Traditional” African sovereignty, Kingdom of Custom, “business chiefs,” coloniality, postcoloniality, South Africa

I. NOTES FROM THE SOUTH AFRICAN EDGE

In a trouble case notorious in South Africa, the King of the abaThembu, Buyelekhaya Zwelibanzi Dalindyebo ka Sabata – popularly known as Dalindyebo -- waged a battle for his sovereign freedom, and his sovereign authority, for fully two decades, 1995-2015.

The essence of the story is this: in 1995-6, Dalindyebo took punitive action against one of his subjects, Sonteya Stokwana. Stokwana's goats and sheep, allegedly, had infringed upon a restricted grazing area. Trivial? Not at all, as it would turn out. The very nature of traditional authority, of governance, customary law, and sovereignty would all become embroiled in the violent melodrama soon to play itself out in the Eastern Cape Province.

The events in question are both murky and bitterly contested. But, according to the account later entered in the judgment of the Supreme Court of Appeal (SCA),¹ Stokwana was fined by Dalindyebo for his infraction, had his stock impounded, paid part of the amount levied by the king, and then tried to free his animals. The “tyrannical” king, said the court, was enraged. Accompanied by some loyal followers, he burned down Stokwana's homestead, an animal enclosure, and a maize field, then “brutally” assaulted three of his neighbors, and, finally, kidnaped Mrs. Stokwana along with her children.

Arraigned first by the Eastern Cape High Court in 2009, Dalindyebo was found guilty of arson, kidnapping, assault, and defeating the ends of justice. Talk in some parts of rural South Africa had it that his ruthless reaction against Stokwana and others was really an effort to put down rebellious dissidents. Sentenced to fifteen years, he thwarted efforts to incarcerate him by appealing to the SCA and by having his hearing postponed thirty times. Eventually, however, the

charges were upheld, although sentence was reduced to twelve years. And so the king was jailed on 30 December, later to be paroled in December, 2019. But those events, in themselves, were ¹ Dalindyebo v S (090/2015) [2015] ZASCA 144 (1 October 2015).

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not what drew most public attention.² What did were the legal and political dimensions of the case. And the dramaturgy to which it gave rise.

Dalindyebo's defense argued that, as a ruling king – the abaThembu kingship is recognized by the state – he had acted within his authority in punishing Stokwana as he saw fit. Were he familiar with Carl Schmitt (1985 [1922]) or Giorgio Agamben (1998), he might well have asserted his sovereign right to determine the exception; to decide, in the spirit of *homo sacer*, who can be killed, corporeally or socially, without being sacrificed. While the courts rejected his defense, itself a splendid mix of cultural logic and legal logistics, it was to be picked up in the bitter argument that, as a *political* soundtrack, accompanied the long judicial process. In the widely read *City Press*, for example, Thami ka Plaatje (2016), then head of ANC research and advisor to a cabinet minister, wrote that Dalindyebo's conviction pointed to "a constitutional crisis" occasioned by the "relegation into insignificance of African heritage and customary beliefs." Under the customary law recognized by the new constitution of post-apartheid South Africa, the ruler had exercised his sovereign authority in an entirely proper manner as the "highest judicial authority within the kingdom." Dalindyebo, added ka Plaatje, "presided over a case in his capacity as a king... [But he] was convicted as a civilian." The implication? That the Kingdom of Custom – i.e. the sovereign domain of "traditional" culture and those who ruled in its name – was under attack.

Indigenous rulers across the country were equally vocal. Phathekile Holomisa, (then) head of the Congress of Traditional Leaders of South Africa (Contralesa) – also an advocate and

ex-Deputy Minister of Justice – argued that Dalindyebo had been wrongly charged “for exercising his traditional legal duties...*as a king*...in line with customary law” (Feni 2015). Much

²For a comprehensive account of the case, see Thamm (2010).

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was made of the fact that he had been tried in a “Western legal way” (Thamm 2010). Nor did the controversy die quickly. In 2014, when (then) President Zuma appeared to be taking steps to dethrone Dalindyebo, Contralesa protested angrily (Ndenze 2014). Two years later, it sought an interdict in the Western Cape High Court against any effort to remove the king. It also asked the court to recognize “the judicial immunity [of] traditional leaders when they exercise their judicial power.”³ In refusing the application, the three judges offered different opinions about the proper authority of indigenous rulers. But they concurred on the significance of customary law under the constitution. Undeterred, Contralesa demanded a presidential pardon for the abaThembu monarch in August 2019, just four months before his release.

The controversy also spilled over into party politics. Leaders of the Economic Freedom Fighters, in/famous for their populist spectacles, visited the incarcerated king in January 2016, taking the opportunity to mobilize followers under the sign of African sovereignty. Dalindyebo, formerly an anti-apartheid freedom fighter and ANC member, was fond of asserting that sovereignty by insulting sitting national presidents and by defying the government (*Daily News* and *SAPA* 2013). His tactics resonated closely with the edgy dramaturgy to which the EFF was itself partial. The more conventional, largely white Democratic Alliance, which had “proudly” welcomed Dalindyebo into its ranks in 2013 in the hope of deepening its thin layer of black membership (De Vos 2013), expelled him in righteous indignation two years later (Hartleb 2015). This elicited widespread derision, adding yet another echo to the theater of the absurd playing out around the incarcerated ruler.

The Dalindyebo case, in short, became a lightning rod for testing and contesting the sovereign exemption of indigenous authorities from the laws of the land; or, as Mnisi Weeks

³ Congress of Traditional Leaders of South Africa v Speaker of the National Assembly and Others (2474/16) [3016] ZAWCHC 206; [2017] 2 All SA 463 (WCC) (23 November 2016).

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(2015) put it, “the degree of impunity with which [they] can act.” Given that it involved life and death, it ran to the existential core of the political theology of South Africa, where claims made in the name of the Kingdom of Custom are not just for polite recognition, but for the right to govern unimpeded (Comaroff and Comaroff 2003). This, of course, is not the only time that a traditional ruler has asserted his sovereign unaccountability. It is, however, an iconic instance. The king’s “antics” may have been mocked by mainstream media and questioned by white constitutional experts (e.g. De Vos 2012). But the case continued to resonate, with serious intent, for many black South Africans – especially those caught up in calls for increasing recognition of the value of indigeneity.

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It is hardly news in South Africa that so-called “traditional” rulers are looming larger, more assertive, than ever before. Far from suffering the dignifying death of anachronism – as was once widely predicted – they have assumed a prominent place in the country’s political and economic life (e.g. Capps 2016). Or at least some have, re-empowered by the state under, among other statutory instruments, the Traditional Leadership and Governance Framework Act (2003), the Communal Land Rights Act (2004), and the Traditional Courts Bill (2012, 2017). The latter day support of the ANC administration for indigenous kings and chiefs is variously attributed to their capacity to deliver electoral votes (e.g. van Kessel and Oomen 1997), their cultural legitimacy, and their ability to provide governance where it is otherwise lacking (e.g. Crais

2006).⁴ For their part, these rulers “constantly push back against subjection to the Constitution” (Mnisi Weeks 2015). Insofar as they rule under the suzerainty of the ancestrally-ordained

⁴ On contemporary South African chiefship see e.g. Oomen (2005), Williams (2010), Turner (2014), and Krämer (2016).

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Kingdom of Custom, they endeavor to subsume, in their persons, the “king’s two bodies” (Kantorowicz 1957): the sacred office, with all its numinous trappings, and its living, decidedly secular incumbency. In so doing, as we shall see, they increasingly seek to exercise sole authority over the political, economic, and cultural capital they claim in the name of their peoples – albeit with varied success.

None of this, patently, is confined to South Africa. As Geschiere (2018)⁵ has shown, indigenous rulers have enjoyed rising prominence elsewhere – although not everywhere, or in the same ways -- across the continent as well; in this respect, South Africa is *not* typical. For some observers, the hyper-assertiveness and heightened political recognition of customary rulers heralds an antidemocratic, constitution-defying descent into patriarchal neo-despotism (e.g. Ntsebesa 2005, 2011; Maloka and Gordon 1996). Others have it that those “local” rulers are effective vectors of representative government and development in an era of decentralization, deregulation, and the outsourcing of the state (e.g. Baldwin 2015; see below). Most scholarly interventions describe the new assertiveness of customary rulers as a “resurgence.” Others argue that it is part of a more complex, dialectical process of the long run – at once local and global, economic and political, cultural and moral – and hence firmly lodged in the history of the present, a history made up of multiple, often disjunctive, temporalities (Comaroff and Comaroff 2018:7ff.). At its most extreme, it is described as the morphing of indigenous sovereignty, in the age of global

neoliberalism, into “rentier chieftaincy” (e.g. Capps 2016:453 *et passim*); basically, ruling for profit under the sign of traditional legitimacy. This form of rule is grounded in the claim that a customary sovereign – being the living incarnation of ancestral authority and therefore “owner” of their sovereign dominion – has an ontological *and* an historical right of

⁵ See also the essays in Comaroff and Comaroff (2018).

proprietorship to all its material and immaterial assets, coupled with an unconditional authority that makes them unanswerable to any other, be it a state, a constitution, or even their subjects. But *how* have South African kings and chiefs, and some of their counterparts to the north, sought to turn “traditional” office into such a thoroughly contemporary species of proprietary rule? How successful have they been? By what historical narrative are their efforts made legible, plausible, credible, fungible? And by what social, material, political, and ideological conditions are they enabled? These questions take us into the past, where history and the ontological imagination enter into a promiscuous conjuncture, one that feeds directly into the political economy of the present.

II. THE GHOST OF RULERS PAST: chiefship ltd.

There is a recursive tendency, in writing about precolonial African sovereignty, to traffic in archetypes, reducing indigenous rulers to one of two generic modalities. According to the first, “kings and queens were like gods with absolute power” (Williams 2007:9). “No king was...called into account...because he was simply above the law” (Igboin 2016:149-50). This image of despotic African sovereigns has innumerable echoes, both scholarly and popular. Where it cites any evidence at all, “facts” are often drawn, ideographically, from a one or other polity

somewhere, anywhere, nowhere-in-particular – and taken to stand for Africa, at large.

The antithesis is stated with equal certitude. “Despotism and dictatorship,” says George Ayittey (2014, 2010), a Ghanaian economist, “did not exist in traditional Africa...In chiefdoms such as the Fante, Mossi, Shona, and Xhosa, the chief could not dictate policy or law. Without the consent of the council of elders – an independent body – [he] was powerless...” (cf. also

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Wong [Omowale] 2019). By their own *explicit* admission, adds Palagashvili (2018:277), even nineteenth-century Zulu chiefs ruled by consent; similarly those in late precolonial West Africa, where rulers were commonly “known to be accountable to their citizens.” Hence the thesis, most emphatically expressed perhaps by Narcisse Tiky (n.d.:1), that “Africa is the birthplace of democracy, not Greece.”

A more nuanced take suggests that, like in “Italy throughout the thirteenth and fourteenth centuries, when a great multiplicity of systems, namely dictatorship, monarchy, democracy and theocracy, existed within a small geographical area, so too in traditional African societies do we find a great variety of political systems within relatively close proximity to one another” (Asimeng-Boahene 2017). True, of course. But, while this acknowledges a diversity of forms, it remains typological; that is, absent of the dialectics, the intrinsic historicity, of African political life. Indeed, to write of African systems in purely typological terms is, wittingly or not, to reproduce the Hegelian view (1899 [1956]), notoriously repeated by Trevor-Roper (e.g. 1969:6), that precolonial Africa was “unhistorical.”

African political orders, historicized, defy typological reason. Those orders have *always* been embraced in “a counterpoint of continuity and transformation, of reproduction and structural

change, of temporalities of disjunctive kinds...[involving] the birth, rise, fall, and demise of precolonial states; polities with hugely varying institutional interiors, more or less elaborate economies, judiciaries, and militaries, more or less extensive trade networks (Comaroff and Comaroff 2018;9f).⁶ Amidst all of this, African sovereignty, like sovereignty everywhere, has always been subject to contestation and legitimation crises; also, to variations in its ability to

⁶ This and some of the next paragraph are paraphrased from the same text.

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sustain its authority over persons, property, and territory, to monopolize the means violence, to husband its material and spiritual resources – and to deal with attacks from outside, internal entropy, and popular dissent (*ibid.*:10; also Ayittey 1991:135ff.). This is not to say that the *office* of the sovereign did not sustain the ideological *fiction* of numinous perpetuity; sovereignty, like the chimera of “custom,” typically does. But that is only ever half the story. The other half arises from, and lives through, the metapragmatics of *realpolitik*.

In precolonial South Africa, early observers among the peoples now known as “the” Tswana recount political histories that tell both halves of that story. They tell of the unquestioned sovereign pre-eminence of the *office* of *bogosi*, “chiefship.” But that narrative was repeatedly juxtaposed against accounts of living incumbents (*dikgosi*) which make it plain that chiefly power – *pace* the Weberian mythos of ascribed, “traditional” legitimacy – was a delicate, labile, often fraught business. Monarchs were situated in a dynamic political field, subject to perennial power struggles over resources, territory, and tribute, over people and ancestral benevolence. One thing is clear, though: they were *never* unaccountable. However powerful they might become, and some *did* become very powerful (e.g. Burchell 1824,2:376), they could never rule

just as they pleased (e.g. Mackenzie 1871:371). Some who tried, observed Robert Moffat (1842:389), ended up virtually impotent. Or deposed.

John Philip (1828,2:132) put it thus: “[their] *theory of government* is that of an absolute despotism; but the king is checked in the exercise of his power by...his [headmen]...Several cases were related to me, in which the king exercised a despotic authority; but each was followed by a diminution of the number of his subjects” (emphasis added). Often, moreover, rulers were subjected to open critique at public meetings. Once a ruler lost his subjects, it was not long

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before he was removed. Or his followers dispersed and the polity ceased to exist. As this suggests, the everyday dynamics of political life in these *merafe* (“nations”), their ongoing struggles over sovereignty and accountability, could, and sometimes did, change the shape of the social world (Comaroff and Comaroff 1991:Chapter 4).

Anthropologists of colonial South Africa pick up the same story of accountability. Max Gluckman (1940a:54), for example, said of the Zulu, “...despite the apparent autocracy of the king and chiefs, ultimately sovereignty in the State resided in the people”; also, like African rulers elsewhere, they were merely “custodians of the land, not its proprietor” (Mamdani 1996:45). Some might have aspired to sovereign unaccountability, thus to fuse the body of the living king with the sacral body of his office. But it was an endeavor that, sooner or later, ended in desertion or death.

Isaac Schapera (1938:79) went into greater detail about the limits on Tswana chiefly authority: “despite the fact that control over almost every aspect of [precolonial] tribal life was concentrated in [a chief’s] hands...[i]n order to get anything done, he [had to] gain the support of

his advisers and other headmen” – and, Schapera added elsewhere, the people at large. “Any attempt to act without them would lead to obstruction, if not to open revolt.” He stressed, moreover, that, while “[c]ontrol over the land and its resources [may be] vested in the Chief,...*none of the land is his property*; nor can he dispose of [its] use except gratuitously and to members of his own tribe” (p.196; emphasis added). “Gratuitously,” here, meant “without charge.”

For Schapera, like for Gluckman, not much changed in the vernacular “theory of government” with colonial overrule. True, it placed limits on, and made demands of, customary

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courts and indigenous authorities -- although some of those authorities found creative ways around the restrictions placed upon them and continued to reign much as they had done before (Comaroff 1974, 1978); in sum, the implicit contract between ruler and ruled, the mechanisms by which legitimacy was negotiated, and the constraints on autocracy remained broadly similar. Neither Schapera and Gluckman, both of whom wrote extensively on the impact of colonialism on indigenous sovereignty,⁷ suggest that it made Southern African chiefs into “decentralized depots,” and hence unaccountable to their publics. This, of course, is the claim famously made by Mamdani (1996) for African rulers, *sui generis*, in the age of empire. Although Mamdani’s thesis has been subjected to critique, it is frequently cited as an explanation for the extravagant assertions of sovereignty made by those rulers today.

But how plausible is the “decentralized despot” thesis and the related claim that the excesses of the present are a direct consequence of the colonial empowerment of indigenous rulers? Does it negate Schapera’s and Gluckman’s stress on chiefly accountability, itself founded on direct observation of indigenous South African polities in the 1930’s, or the insistence of African

commentators like Ayittey on the essentially democratic nature of vernacular politics?

African rulers were clearly indispensable to colonial overrule, to the extent that they had to be conjured into being where they did not exist; the quotidian practices of governance – taxation, labor recruitment, public order, dispute resolution -- depended on them. That said, the imbrication of African sovereignty in the colonial encounter, in its political, economic, cultural and moral dimensions, was, as I have already intimated, bewilderingly diverse. Mamdani's ideal type of decentralized despotism certainly *was* to be found in some parts of the continent at

⁷ See e.g. Gluckman (1940b) and Schapera (1934, 1947).

different moments and with different measures of durability. Notwithstanding indigenous “theories of government,” some rulers *did* contrive to make themselves more or less unaccountable to their polities, deploying not just the authority of their ancestors, or their tributary wealth, but also the backing of the colonial state. A number, moreover, succeeded in persuading their imperial masters that their “traditional” legitimacy, as living embodiments of the Kingdom of Custom, gave them total domination over their people and their land. And so vernacular half-truths became concrete colonial “facts” (Comaroff and Comaroff 2018:8ff.) – reshaping, among other things, the “link between land ownership and chiefly authority” (Berry 2001:196),⁸ thus to pave the way in some contexts to “chiefly landlordism” (Capps 2016:455). And its expansion in postcolonial times to come.

But as many powerful African sovereigns as there might have been in colonial times, there were others who saw their authority fluctuate markedly over time – depending on both local contingency and wider historical forces – and, *in extremis*, evaporate entirely. Many, notes

Vincent (1994:280), were deposed either by their colonial masters or by their own people. The southern Gold Coast in present-day Ghana, for example, underwent an “Age of Destoolment,” 1915-1935: between 1919 and 1924, forty-one paramount chiefs were displaced by their subjects. Significantly, this had a lot to do with land: with the fact that, assuming an absolute right to do so, they had sold it off, leading to mass protest against what was seen as an abuse of sovereignty. In short, they were held to account for seeking to act unaccountably (Gocking 2005:61; Balakrishnan 2020:200ff.). Hardly a story, this, of chiefs made into decentralized despots by colonial fiat -- or of rulers, precolonial or colonial, whose sovereignty was unlimited.

⁸ Berry (2001) was speaking of colonial and postcolonial Asante; Capps (2016:455), however, argues that her study “sets the agenda for a materialist analysis of the rentier chiefship...” in general.

As in Africa north of the Limpopo, so in South Africa.

It is not only anthropologists who made the point. So did black political figures. Albert Luthuli (1962:200), a “tribal chief” who became ANC president in 1933, remarked, at the *height* of apartheid, that traditional rulers had become “minor puppets”; earlier, Govan Mbeki (1939:1), himself son of a chief and also an ANC leader, described what remained of their office as “vestigial.” This, too, bespeaks an extreme, the very opposite of decentralized despotism. Neither extreme speaks to the *historical* complexities to which I have alluded: the processes in which rulers sought to congeal authority in themselves under the constraints posed by popular demands for accountable government and by the exogenous conditions under which they held office; the very processes, that is, involved in the everyday negotiation of sovereign legitimacy -- and in its fluctuations over time.

But here is the point. Throughout the colonial epoch – partly because of its perceived

functional necessity in the administration of empire, partly because of Eurocentric misconceptions of “traditional” African political life – a deformed caricature of chiefship prevailed. The fiction of patriarchal autocracy, ancestrally ascribed, came to be taken as an uncontested reality: a reality inhabited by rulers, alike imperial and indigenous, and construed as inalienable “custom.” By configuring themselves, and being configured, as the beings in whom the king’s two bodies converged, African sovereigns laid claim to the ontological *and* historical right to a transcendent species of power unanswerable to any other. While living incumbents varied in their capacity to make that claim stick, the sanctity of their *office* at the apex of the Kingdom of Custom, a wholly mythic figuration, became entrenched in the historical imagination of both colonizer and colonized. Mythic or not, however, it was to be sustained as an

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immutable truth later to be reclaimed in the postcolonial moment.

III. MANY UN/HAPPY RETURNS: Chiefship PTY un/LTD, or, from un/accountability to accountancy

The post-apartheid assertiveness of kings and chiefs across the landscape of South African political economy was not there from the first.

Quite the opposite.

In the mid-1990's, with the end of the *ancien regime* and its colonial-racist forms of social engineering, the future of those sovereigns looked bleak, their past complicities with apartheid unforgiven, their erasure imminent. That moment, the “nadir of their political legitimacy” (O’Regan 2016:112), and the early ambivalence of the ANC toward most of them, has been thoroughly documented and widely debated; so has the increasing accommodation to them, since

fin de siècle, on the part of the ruling party (Comaroff and Comaroff 2003:449, 2018:5; Oomen 2005; above, p.00). Their postcolonial claim to legitimacy lies precisely in the invocation of the colonial half-truth of which I spoke a moment ago: the half-truth that fuses the two bodies of the customary king in its living incumbent, giving him, occasionally her, absolute sovereignty over the “traditional” realm. Of course, the state *has* sought to impose limits on that sovereignty, more or less effectively. And, in many places, rulers have not been able to exercise it against the will of their subjects. In that respect, the internal dialectics of chiefly power, and the theory of government on which it is founded, continue to operate within the same broad frames, both exogenous and endogenous – even if the *substance* of political life has changed. Nonetheless, the hegemonic *presumption* persists: that customary sovereignty ought, by ontological and historical right, to be total and unaccountable.

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But the material questions remain. Under what conditions, by what means, and in what proportions have customary rulers actually succeeded in realizing the immanent potentiality of the Kingdom of Custom, its presumptively transcendent authority, its sovereign exception? When and how has it been transformed into “rentier chiefship,” yielding economic, political, cultural and moral asset-value to its incumbents? Conversely, what accounts for the inability of a significant proportion of indigenous rulers to deploy their offices to these ends? And what exists between the extremes: between those who have turned traditional authority to substantial profit and those who rule their discounted realms on the thinnest of margins?

The topography of customary South Africa marks out these extremes very starkly. At one end stands the late Zulu monarch, Goodwill Zwelithini kaBhekuzulu. Until his death in 2021, he was sole trustee of the Ingonyama Trust, in which is vested the entire land mass of apartheid-era

KwaZulu, some 11,000 square miles. All income from mining and other rents accrue to the Trust, whose accounts have been kept well hidden -- despite the fact that they are ostensibly reportable to Parliament annually (Buthelezi and Skosana 2018:111, 129 fn.3). As Delius (2018) notes, the colonial era conversion of chiefly trusteeship over land into a presumptive right of ownership, along with the passing of the Ingonyama Trust Act of 1994, facilitated the introduction of a new leasing system in 2007. Thenceforth, those who lived on Trust property, including those who had long done so freely, “[were] treated as tenants;” they faced eviction if they failed to pay the required rent. At the same time, substantial real estate has been contracted to foreign companies. Together, the income from the land, in 2015, was US\$5.5m. In 2021, the High Court of South Africa found that the Trust’s residential leases, and the extraction of rents, is unlawful and contrary to customary practice. It ordered the refund of all monies collected from those who had

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been reduced to tenants.”⁹ But it remains to be seen whether this decision will be enforced. Not all judgments in the South African legal system are followed by the ordered remedies. While he was alive, King Goodwill received an annual allocation from the provincial government; in 2019-2020, it was some \$945,000 (Mthethwa 2016). Known for his expensive tastes, his net worth was put at \$19m (Onyeakagbu 2020). There also exists a Royal Household Trust (RHT), with its own budget, “to make the king and royal household self-sustainable and generate its own revenue...” In 2018, the RHT announced “a brand makeover of the Zulu king,” managed by an international consulting firm “to take advantage of public-private partnerships...for income generation” (Mthethwa, *ibid.*). Thus have traditional sovereignty and rentier rule merged to make the Zulu Kingdom of Custom into its own species of neoliberal monopoly capital; capital –

invested in currencies political, economic, cultural, and moral – inflated by the rise of corporate ethnicity (Comaroff and Comaroff 2009). It is a potent fusion, one with which more ephemeral power, the sort wielded by state presidents with term limits, must do battle.

In life and in death, Goodwill exemplifies the sovereign exception that serves as paradigm for the aspirations of other kings and chiefs. Having been recognized by a government commission as King of Kwazulu-Natal, he was, to all intents and purposes, a constitutional monarch *inside* a liberal democratic nation-state (Comaroff and Comaroff 2018:23). As such, he believed himself, and is believed by many black South Africans, to have been above any other authority – and hence especially deserving of “judicial immunity,” which Contralesa insists on for all indigenous rulers. For its part, the ANC regime stood down more than once in contests of power with Goodwill. When, for example, the king announced in 2014 that he would lay claim to

⁹ Case no. 12745/2018P, 11 June 2021;
https://www.groundup.org.za/media/uploads/documents/itb_judgment_11_june_2021.pdf.

huge swathes of territory lost to settlers since 1838 – this under the Restitution of Land Rights Amendment Act – he was encouraged to do so by then President Jacob Zuma (Berry 2018:93), even though this claim extended well beyond the limits set down in the law. All Zulu land was regarded by Goodwill as his to allocate, administer, curate, and capitalize as he saw fit. Nor was anyone much in a hurry to defy his jurisdiction. In 2018, when it was reported that the ANC planned sweeping reforms of landholding arrangements, Goodwill declared that President Ramaphosa “must...sign an agreement that the land of the Zulus will not be touched.” In point of fact, Ramaphosa *had* “earlier pledged to the king that he would not touch the land he controls” (Stoddard 2018). Clearly, the state lacked the political will to join battle over Zulu royal sovereignty. Whether this might change in the wake of the recent High Court decision against the

Ingonyama Trust and the accession of a new monarch is yet to be determined. But the ANC government has not always been quick to contest the sovereignty of other indigenous leaders either: *vide* the passing of the Traditional Khoisan Leadership Bill in 2019 -- against the protest of civil society voices -- which has further entrenched chiefly authority (Heywood 2019).

No other ruler in the country approaches Goodwill in the degree to which he fused political sovereignty, economic power, moral authority, landed suzerainty, or cultural legitimacy. But many enjoy some of those elements in substantial measure – among them a few of those in the platinum belt of the North West Province, “South Africa’s Traditional-Industrial Complex” (Cook 2018), who wield enormous financial power but less asset value in other respects. Susan Cooke (*ibid.*) compares the most notable, the Bafokeng king, Leruo Molotlegi – CEO of a large business empire fueled by mining income (see also Capps 2016:70f.) – with Zanozuko Sigcau of the amaMpondo in Eastern Pondoland, whose impoverished polity is situated in the nation’s most

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destitute region. The comparison was occasioned by a poignant social drama: a mass meeting of miners in the wake of the Marikana Massacre, in August 2012, at Lonmin platinum mine. The site of the bloodbath, occasioned by a labor strike, was adjacent to Leruo’s terrain; many of the thirty four mineworkers slain by police were migrant amaMpondo from Zanozuko’s.

Two things are notable about the story. One was the gathering itself, organized by the “striking workers and their union proxies.”¹⁰ It was attended by then President Zuma and the two traditional leaders, each with his entourage. When they arrived at the heavily policed site, Leruo and Zanozuko were taken to a podium and seated on chairs. Nobody else, including the State President, received the same courtesy. What is more, when the latter addressed the angry crowd,

he was heckled. Disrespected, he was ushered away, indecorously, to his vehicle. The customary rulers, by contrast, were accorded fulsome respect. No question here about sovereign precedence.

The other thing of note occurred before the gathering. En route to Marikana, Zanozuko first stopped at Leruo's capital to pay his respects. It was the first time they had met. In an exchange of greetings, the amaMpondo monarch said, "I never wanted to come to this place, and it is my hope and dream that one day soon, my people will not be forced by poverty and desperation...to find work in your region." He added, implicitly referring to the fact that many of the migrant miners paid residential rents to local Bafokeng, "...and contribut[ing] to the ever expanding wealth of your [people]." The contrast was striking. On one hand, a king vastly enriched by mining capital, ruling over a labor-hosting, rent accruing community, enjoying largely unquestioned moral authority and political sovereignty;¹¹ on the other, a ruler from an

¹⁰ All quotes in this and the next paragraph are from Cook (2018:211-214). Approximately 2,000 mineworkers attended the gathering.

¹¹ Leruo has not escaped criticism as a ruler, although his hold on his office remains strong (Comaroff and Comaroff 2009:109). He has also been respondent to a lawsuit filed by the Bafokeng Land Buyers' Association, which claims that much of "his" territory actually belongs to the "individual communities forming the Bafokeng 'tribe'...[who

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immiserated polity, one reliant on remittances from low wage workers. Although his *office* enjoys deep cultural respect, clearly on display that day at Marikana, Zanozuko's authority at home was never secure. Only recognized by the state as a king in 2018 – several years after he assumed his position – he faced a protracted campaign by a political bloc, the Amadiba Crisis Committee, to depose him; it asserted that, genealogically, he was not the rightful heir to the kingship. But its *substantive* complaint – ironic in light of the contrast with Leruo – was that he was a "business king," having "signed up for mining...without consulting the people." And hence "selling Pondoland." This allegation referred to a mining concession awarded to an Australian company

(Alternative Information & Development Centre 2019). The monarch, by his own account, pursued a developmentalist agenda, seeking to build to an entrepreneurial economy around himself rather than rely on a remittance-dependent one.

Nonetheless, Zanozuko's tenure of office remained lucrative until his death in 2022. He was paid a king's salary, approximately \$80,000 in 2018 (BusinessTech 2018), in addition to other undisclosed compensation. While his sovereign situation was a far cry from Goodwill's or Leruo's, he was not the worst off of traditional authorities. Many rule over terrain scarcely fertile enough to yield much agri-income, are paid less than recognized kings, lack alternate sources of wealth, and face local opposition to their incumbency. But, as did Zanozuko, all of them *do* enjoy the possibility, in some measure, of turning customary office into corporate chiefship; this by rendering territory into commercial real estate, culture into intellectual property, rights into rents. Hence the contradiction that persists as histories past run into the history of the present. To repeat: On one hand is a vernacular "theory of government" that, having survived colonialism, insists on

bought it] in the mid-19th century;' <https://bafokeng-landbuyers.org/>.

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chiefly rule "by" the people, i.e., with their popular consent in a shared commonweal. On the other is the colonial inspired half-truth – echoing the Weberian archetype of "traditional legitimacy" ([1922] 1978:215-6, 226) – that, as sovereigns over their people, owners of their land, and living representatives of their gods, chiefs are essentially unaccountable; all the more so as they enter into the neoliberal global economy wielding the resources of the Kingdom of Custom to their own purposes.

Therein lies the foundation of Chiefship PTY un/LTD.

Under the South African Companies Act of 2008, “Pty Ltd” (Proprietary Limited) refers to a privately held firm whose directors and shareholders have limited liability for its affairs – as long as they do not knowingly engage in reckless or fraudulent practices. These firms, moreover, are not required to lodge annual financial statements with the Registrar of Companies. While the analogy to rentier chiefship is technically imprecise, it is close enough to make the general point about the ways in which indigenous sovereignty has sought to turn to commerce. No wonder, then, that Contralesa created a trust in 1999 to “further the business interests of the chiefs” (Oomen 2005:143, 95-97); a year later, it incorporated as Contralesa Investment Holdings (Pty) Ltd. (South African Companies n.d.), although it recently filed for liquidation. Patently, while traditional authority may enjoy limited liability for its operations in the Business of Custom, its ambitions may better be described as “Pty *un*Limited” as kings and chiefs push the edges of their sovereignty, and their political and financial unaccountability, to the greatest degree possible.

IV. TOWARDS AN EXPLANATION:

from the colonial past into the present, a narrative of partial determinations It is

here that we begin to draw together the various strands of argument, and to answer the

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questions, laid out above. Self-evidently, the genealogical roots of Chiefship Pty unLtd lie deep in the mythical realism of the colonial past. It was then that an Afro-vernacular “theory of government” was partially eclipsed by another, a Euro-modernist “theory” about premodern political rationalities. According to that theory, those who held customary office were “owners” of their sovereign realms, living embodiments of ancestral authority, final arbiters of “native” law, and bearers of an authority unaccountable to any other. Therein lies one of the necessary

conditions for the situation today. Necessary, but not sufficient. After all, the postcolonial regime could have done away with chiefship as a reviled colonial construction; popular opinion about the evils of “tribalism” at the time would have given widespread support for doing so. The fact that the ANC chose to keep indigenous rulers in place, afford them constitutional recognition, and pay them salaries – out of electoral pragmatism, governmental necessity, or cultural politics (above, p.00) – is another necessary element in the emergence of Chiefship Pty unLtd. But, taken alone, it is still, like the effects of the colonial past, far from a *sufficient* explanation for the assertive rise of the Kingdom of Custom. Or for the way in which the state has fallen in line with it.

The explanation for Chiefship Pty unLtd, and for its uneven distribution among the indigenous rulers of post-apartheid South Africa, lies in the layering of other conditions – conditions *both* necessary and sufficient -- onto the lingering effects of the colonial past and the post-apartheid political strategy of the ANC. Some have arisen, exogenously, from transformations in global political economy. Others, as noted earlier, are owed, endogenously, to the Afromodernist history of the present. These conditions have been discussed, in part and unevenly, both in the Africanist scholarly literature and in public discourse in South Africa (Comaroff and Comaroff 2018). But it is in the nature of their fusion – a fusion at once hot and

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cold – that a persuasive accounting of “traditional” sovereignty in contemporary South Africa is to be sought. Let us look first to the effects of recent transformations in global political economy and the ideological platform that has come to buttress it.

To begin with, an epochal cliché. With the end of the Cold War, the world saw a shift away from the Euro-modernist ideal of state-managed, Keynesian-curated, nationally bounded

political economies. This was a shift that declared much more than the primacy of the market, its cost-benefit logic, over ever wider reaches of social being. It extended to the outsourcing of many of the functions of government, insisted on the deregulation, decentralization, and financialization of almost everything, and conduced to the folding of political imaginaries into economic technicalities. More and more did corporations interpolate themselves into the interiors of state; more and more did the state come to resemble a holding company in the business of enabling frictionless business. This move toward unremitting financialization also bespoke an ethicized impetus to turn everything, everybody into capital. And capital into rents, whether derived from rights over land or religious ritual, vernacular culture or customary knowledge, communal property or domestic space, civic action or kinship relations. Or the labor of dependent others, At the same time, the deregulation and decentralization of political and economic life expressed itself in a valorization of the local, the indigenous.

Customary rulers – as sovereign embodiments of the indigenous – were especially well placed to insert themselves between “local” worlds and the market. Across much of Africa, they have become conduits through which transnational business has sought to open up sites of enterprise, to plumb resources in the extractive, tourist, agricultural, artisanal, and digital industries, to procure exploitable labor, to license outlets for their products – all in the cause of

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securing its supply chains. As Baldwin (2015) argues, they are also strategically positioned to lobby for state, NGO, and private investment on behalf of their polities. Which many do in the name of development and humanitarian aid. For transnational firms, customary rulers are ideal “partners.” Not only do they have the authority to offer corporations access to local resources and

labor, but they are recognized by the state, in theory hold office for life, and appear to be rightful recipients of the fees and emoluments that go with the “mutually beneficial” contracts signed on behalf of their communities. The quotes here allude to Appel’s (2019:137-71) demonstration that, albeit legal, such contracts are violently unequal instruments of extraction – ones, though, that may pay local authorities off handsomely. And keep them in office. Increasingly, the Kingdom of Custom and Corporate Capital have joined in a neoliberal embrace from which neither is in any hurry to escape.

Local critics, academics and activists alike, may protest that chiefs never were owners of the land or their peoples’ assets, material or immaterial; also, that they have no jural or customary right to traffic monopolistically in those assets. But capital, deeply vested in the language of proprietorship and legal standing, persists in treating them as though they do. Concomitantly, the more these rulers succeed in accruing value to their own account by financializing their office, the more their “traditional” legitimacy is recast in the mold of the market, whose cost-benefit logic has also insinuated itself into their relations with their subjects, some of whom are now effectively fee-paying clients. And so, the Kingdom of Custom – its vernacular “theory of government” under immanent suspension as a fragile colonial myth sediments into a hard postcolonial reality – makes way for chiefship *qua* rent-seeking monopoly capital. At least, potentially.

So much for the impact of the exogenous.

The endogenous conditions implicated in the rise of Chiefship Pty unLtd are more diffuse. The heady effervescence of the post-apartheid moment has given way to creeping disillusion for

many black citizens: to a sense that Eurocentric liberalism continues to infuse the country's public culture, its political, legal, educational, and other institutions; that racial capitalism, now with a neoliberal twist, still buttresses white economic dominance; that property relations remain largely unreconstructed; that strong traces of the *ancien regime* continue to suffuse everyday life. Hence the rising calls, over the past twenty years, for greater black economic empowerment and comprehensive land restitution, for the Africanization of the constitution and the legal system, of education, the arts, and the media. In sum, for an assertion of Africanity as national ideology. It is no happenstance that Jacob Zuma, whose populist presidency coincided this ethno-nationalist conjuncture in South African history, was fond of calling himself a "100% Zuluboy." A polygamist, he answered to a criminal charge of rape in 2006, before becoming president, with a cultural defense – and referred to the (white) judge as *nkos-yenkantolo*, "Chief/King of the Court" (*Mail & Guardian* 2006).¹² In a similar ethno-cultural vein, he spoke publicly of the installation of a new amaXhosa king in 2015 as a "celebration of the constitution," an affirmation of the nation's "African identity, heritage, dignity, and pride" (*Cape Times* 2015).

Under these conditions, the recognition of chiefship in the Traditional Leadership and Governance Framework Act and other statutes (above, p.00) was hardly unexpected. Nor was the view of the president, expressed in 2012, that "the traditional justice system" is preferable to "the white man's way" (Laing 2012), a view shared by some vocal African scholars (e.g. Murungi 2019). Or the objection in the black press, and from Contralesa, to the fact that Dalindyebo was

¹² Throughout the trial, Zuma had vocal support from the ANC Women's League.

tried and convicted in "the Western legal way." Or the fact that Penuel Maduna, when he was Minister of Justice and Constitutional Development, should have urged the incorporation of "the

main currents of [African] traditions...[into] “modern, technically advanced” South Africa (Nkutha 1999). Predictably, many in the country, especially those committed to civic nationhood and liberal democracy, disagree. Nonetheless, the attractions of an ethno-racial Africanity have strong affective and political resonance for those given to cultural nationalism, those who actually live under the Kingdom of Custom, and those who call for decoloniality – and an end to “white supremacy.”

This historical turn has occurred in tandem with an almost planetary move toward the valorization of identity: one that takes biogenetic principles of belonging -- racialized ethno cultural belonging perhaps most of all -- as the existential basis of being-in-the-world. Elsewhere, Jean Comaroff and I (2009:22-59) have sought to explain this phenomenon, along with its contradictions. So have others. Among its most assertive expressions are (i) the rise of a global culture, and political economy, of rights; (ii) the ratification of claims of ethnic peoples to constitutional recognition and, in variable measure, to sovereign self-determination and/or territory; (iii) the rendering of ethno-cultural knowledge-practices as legally protected intellectual property, i.e. commodities with market value; and (iv) the attribution to ethno-racial identity of ineffable differences of faith, philosophical reason, jurisprudence, forms of authority, lifeways, ethical sensibilities, and affective economies.

Insert South Africa into this global turn and the sedimentation of Chiefship Pty unLtd comes into sharp focus. Exogenous and endogenous conditions converge to place the Kingdom of Custom, and those who rule under its sign, in the slipstream of World History. It is what has made the likes of Goodwill Zwelithini and Leruo Molotlegi into CEO-monarchs, both empowered by

the sovereignty of ethno-racial difference, both rulers over realms with a deep affective

investment in cultural belonging, both geopolitically positioned to take advantage of “partnerships” between transnational business and local interests, both financed by a mix of foreign capital and local rents. This is also what transformed Zanozuko from the supplicant ruler of a labor-sending people into a “Business King,” funded largely by speculative investment in the mining industry.

It is impossible to determine precisely how many rulers seek to become “business chiefs,” although the aspiration appears widespread.¹³ Their success depends on a number of contingencies. Some are ecological: whether valuable minerals lie beneath their land, for example, or the terrain is suitable for leisure resort development, agribusiness, or the safari industry. Others are cultural: they hinge on the potential brand value of vernacular products and practices. And on turning them into marketable commodities, sometimes with the intervention of venture capital or of firms that specialize in financializing the “traditional” sector. South African chiefs have sought to enter into business by all these routes, with very different outcomes. But even those who suffer a relative lack of ecological, cultural, or other resources have sometimes found means of capitalizing on their office. Dalindyebo is a case in point: his personal net worth, reportedly augmented by expensive gifts and other rents, is said to be US\$5m (*The Nation* 2023).

But where indigenous rulers have emerged as “business chiefs” conflict have usually followed – as it did so dramatically around Zanozuko; also, around Kings Leruo and Goodwill (Comaroff and Comaroff 2018). The more that indigenous rulers become brokers between their communities and the market – and the more they are believed to accumulate wealth -- the more likely are accusations against them of corruption, theft of the commonweal, and privatizing

¹³ Every indigenous ruler I encountered in the North West and KwaZulu-Natal expressed a desire to take their polities into the market and of being a “business chief”; the variance in their success in doing so, however, makes it impossible to quantify the phenomenon.

collective assets. This is why they are so often figures of deep ambivalence: on the one hand, respected as the living embodiment of a sacred office; on the other, suspected of violating its sacrality by commodifying, capitalizing, and monopolizing it for themselves. When this has had political consequences, especially when rulers have been threatened with removal either by the state or by their subjects, Contralesa has tended to support them actively, asserting, in the name of the Kingdom of Custom, their sovereign inviolability. Hence their defense of Dalindyebo, to return to our opening story, when he was convicted for the violent treatment of a clutch of his subjects – this, by some accounts, to forestall popular opposition to his autocratic rule. In so doing, Contralesa claimed not merely judicial immunity for *all* kings and chiefs, but a species of *political* monopoly capital: the sole right to determine the lives and deaths of their subjects – and, with it, sole control over the commonweal, material and immaterial, of which they are part. It is a claim into which the state has played by virtue of its reluctance to reign in traditional rulers, whose excesses are only intermittently called to account. Senior statesmen often appear at ritually charged events, like royal installations and funerals, which celebrate the sovereignty of those rulers. Hence Jacob Zuma's presence at both the Marikana meeting and the coronation of the new amaXhosa king. Hence, too, President Ramaphosa's parole for Dalindyebo and his delicate handling of Goodwill in the matter of Zulu real estate. This speaks volumes to the capacity of reigning kings and chiefs to assert their unaccountability, to commodify their offices, and to aspire to a form of monopoly capital at once political, cultural, and financial. In sum, to Chiefship Pty unLtd.

V. CONCLUSION

This narrative began with a king from the Eastern Cape exercising sovereignty over life

and death -- and, in so doing, pitting himself, along with other South African traditional leaders, against the state, its constitution, and the liberal democratic ideology of a nation recently reborn. It has taken us through a long, ongoing struggle – with roots deep in the colonial epoch – between two political theologies. One is civic-national, the other ethno-racial. Each aspires to a hegemony that remains incomplete. This struggle has been fought out in many registers: over land, labor, law, life-and-death; over recognition, rights, regulation, and rents. It has been interminably messy, with lots of ups and downs, lots at stake, lots more to come.

Its broader, exogenous context has arisen from changes in the global order, its economies, technologies, ideologies, politics. Its proximate context lies in the complex, labile sociology of post-apartheid South Africa. In respect of the latter, of the proximate, we have seen how rising identity politics has given the Kingdom of Custom – a thoroughly anti-liberal, Afromodernist construct -- renewed affective, economic, and electoral heft for many black South Africans. The constitutional protection of the customary, and its sacralization, has fueled insistent chiefly claims to territory, material and immaterial property, and, most of all, sovereign unaccountability; claims justified by the reconstruction of so-called traditional authority under colonialism, in violation of indigenous “theories [and practices] of government” (above, p.00). We have also seen how the broader context – the neoliberal turn to the ethic of the market, the privatization of public assets, the stress on deregulation and the outsourcing of the state – has engendered the means and ends for commodifying cultural difference, turning it into rents and profits; indeed, into corporate ethnicity and, for “business chiefs,” into new species of political and financial capital. In sum, Chiefship Pty unLtd, as noted earlier, is a creature of contemporary political-economy, a hyphenated fusion, both hot and cold, of the exogenous and the proximate: hot, in that it fires

fierce new passions; cold, in that its transactions occur within the chill logic of cost-benefit

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calculation.

If these are the conditions, both necessary and sufficient, that have remade the Kingdom of Custom, those who rule in its name, as also noted, range widely in their capacity to reap its harvest; this for reasons ecological, cultural, political, transactional, circumstantial. Therein lies the complex relationship between the Kingdom and its Kings: the forms of accumulation, of monopoly capital, that the kingdom promises and potentiates – mythically grounded in a promiscuous mix of revisionist history and putative ontology, facilitated by conditions in the contemporary global order -- depend in large measure on the capacity of living rulers to husband the resources at their disposal. And, more importantly, to sustain the integrity of the king's two bodies against the political forces that may drive a wedge between them. Thus, for better or worse – depending on one's ideological take on such matters -- does Chiefship Pty unLtd move from an aspirational imagining to a more or less accomplished fact.

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