



PRIME TIME

DATE: 08.03.2018

TIME: 20H30

GUESTS: **CDE KARABO (Zanu Pf Patriots & Lawyer)**
CDE NEVANJI (Zanu Pf Patriots & Traditionalist)

THEME: **AFRICA'S KINGDOMS AND EMPIRES – THE CASE OF CORONATION OF THE NDEBELE KING**

theGodFather:

Good Evening Patriots

Because of the time zones between our two guests we had to find a compromise time that can allow us to engage them both where a meeting of minds is possible

Tonight's Prime Time is important coming at the backdrop of moves by the ethnic Ndebele tribe to coronate their King which central Govt blocked

*Welcome to this special edition of **PRIME TIME***

The past week saw Government of Zimbabwe blocking the coronation of the Ndebele King which courted the anger of many a people. One civic organisation took the Govt to court to challenge the reasons behind the blockage which they felt infringed on people's rights and the constitution which recognises traditional leaders in particular sections 281 and 282 on the role and duties of chiefs.



High Court judge Justice Martin Makonese dismissed the urgent application ruling that it was illegal to install a king under the Zimbabwe Constitution.

In light of the aforementioned developments we have called Cde Karabo who is a lawyer and Cde Nevanji a traditionalist for us to understand the logic or lack thereof of installing a Ndebele King and the Makonese judgement.

Adv. Karabo and *Cde Nevanji*

Nevanji:

Good evening CIC n my fellow guest.

Good evening Patriots

Cde Karabo:

Good Evening CIC and my fellow Cde.

Good Evening Patriots

theGodFather:

Good evening Cdes.

Cde Karabo hope you had a nice Women's Day.

Right....

*Let's start with *Cde Nevanji**

Cde Nevanji

For us to fully understand why it is important or not to install the Ndebele King one has to understand the origin of the Ndebele Kingdom. From how many understand it, these are some arguments being proffered by some:

1. King Mzilikazi was not a king in KwaZulu but he was originally a lieutenant of Shaka.



2. The area which the Ndebele Kingdom itself was established was Bukalanga, the name Bukalanga is used with reference to a congerie of at least Twelve Tribes which are:

1. Bakalanga
2. BaLozwi/Loyi
3. BaTwamambo
4. BaNambya
5. BaLemba
6. BaTembe
7. BaLobedu
8. Vhavenda
9. Babirwa
10. BaLembethu
11. BaTswapong
12. BaShangwe

Given the above scenario, did King Mzilikazi have the moralis stans to declare himself a king?

Can you walk us through your own understanding of why King Mzilikazi had to be the King over BuKalanqa?

Nevanji:

Thank you.

Briefly, Mzilikazi wasn't a king per se when he left Nguni land. The Zulu nation itself was in its infancy n Mzilikazi



Matshobana was leader of The Langa/Khumalo pple under Zwide's Ngwane.

The history of Shaka isn't necessary to get into but Mzilikazi switched allegiance were others like Soshangana, Xaba n Sebetwane ran away after the defeat of the Ngwane by Shaka.

You will be mindful to know that the Nguni were just more of clans then n the first real nation of different tribes was built by Shaka

Now, Mzilikazi was allowed to remain a General under Shaka n raid on behalf of Shaka n pay booty

One day he decided not to pay booty n instead cut th war plumes of th Zulu Warlord's messengers

Shaka instead of sending a war party to punish him actually laughed at first n is reported yo hv said, "wangihudela mntwanami"

A second set of messengers was attacked n defeated leading in a break btwn General n King thus Mzilikazi fled northwards

He encountered many battles n using th latest learnt tactics, conquered some but not all.

He later on reached present day Zimbabwe n divided his ppl into two, one under one of his indunas(for th nation had grown) n th other under himself.

Th one he led was given succour n refuge by Chief Hwange, a duke of the Lozi.

The one led by his induna was accepted by the Mambo who many argue was Tohwehji Tjilismulu



The local Kalanga had been previously attacked by Xaba and other Nguni commanders who passed.

Tumbare the Lozi General had been killed by Nyamazana and thus the Lozi Nation had no spear bearer (Mukomohasha or Captain General)

It is argued by many that Mzilikazi was accepted in the Nation as iNduna-yamabutho (Chief of The Army and thus General to The King/Mambo)

The Captain-General had charge over the army and thus was considered a ruler.

There is actually a Ndebele song to this effect which translates to: in the past things were not like this. Mambo and Mzilikazi ruled together

However, the Nguni people had a tradition of being led centrally and the leader they called iNkosi- king.

He was a spiritual leader of the nation, Commander in Chief, High Priest, etc

But, the scenario is that, Mzilikazi was a king over a nation (people) but not over a country.... I hope this makes sense.....after all, they argue, iNkosi, iNkosi ngabantu.....

They had their king and they knew after him, one of his sons born after he was king would be king.

theGodFather:

Cde Nevanji

So you are conceding that Mzilikazi was just a General in the Zulu army because you said he did not have a nation but a people right?



Nevanji:

Yes. He was a general in th Zulu army n there is no record of his crowning either orally or otherwise

theGodFather:

So in the absence of a nation and with no history of being crowned, Mzilikazi was just a leader of a people with a common goal.

Now coming to the other part:

The land he gets to is BuKalanga which has its system of Govt and structures, and Mzilikazi is not a king and comes to displace the organization of BuKalanga, would you say he after the invasion has a moral standing to call himself a king?

Nevanji:

This is one problem with what I call bastardized history.

Mzilikazi was taken in by th Mambo as a war commander to replace th dead Tumbale. He wasn't king, certainly not in Bukalanga nor before tt. He was a leader of a band of refugees, war like yes, but refugees all th same.

He became a captain-general under Mambo but not a king but perhaps overlord of his ppl since they ddnt settle in one place but were spread out to avoid organised insurrection

theGodFather:

Okay. Noted Garaguru. We will come to that later. Cde Karabo is anxiously on the mic now.

Right...

Let me allow Cde Karabo to come in a bit with another angle though still hinged on history,

Cde Karabo



One cardinal, perennial and important debate and controversy in the history of socio-political and legal thoughts in general centres on the relation between law and morality. Where in Africa morality is a sum total of cultural practices, structures and rites.

*Given such scenario **how can the legal experts and law-makers in Africa adequately cater for these two very different aspects where the law being used in the African societies is a result of foreign juristic laws which are legal norms of social conduct?***

CdeKarabo:

Thanks you CIC

Africans have several possible paradigms or models in making relevant laws integrated with public morality in which they can choose from that respect the African people that cherish their values and also importantly , conforms with the International Human Rights Standards. We have the Translational Model, Anthropological model, Mind Liberation model in respect of African culture, The Synthetic model and finally the Praxis Model. For a desired effect i believe as an African that it is also important to have a different set of laws crafted by Africans for Africans in their diverse societies with the same aims of upholding the rule of law. The legislators can help identify with the use of the elders in our cultural setting just as it was done in a religious setting when the British set laws which govern the land to understand the gaps in the society. Consultations to be made should put at the centre of it the desired outcomes both judiciary and parliamentary for the good of the people to preserve culture and traditions in the society.

The people should also be empowered and enabled to actively participate in the process of law-making as to ensure



that their best interests and values and morality are adequately cared for in every law made and which directly concerns them. The process of law-making could be interdisciplinary to widen the scope for the various experts in all related fields to express their views and seriously consider the wider consequences of each law being proposed on the public morality of each community and society as a whole, both present and future. Minority groups, particularly the nomadic peoples, who have ignored the modern laws which they violate daily with impunity and have stuck to their traditional customs deserve no use of force but the power of liberating education and well-designed consultations to be brought on board. Professionals and experts, including lawyers, to become more original and creative in their various fields so as to avoid the temptation of being mainly imitators or copyists of what people in other Continents have thought and come up with for their respective peoples. This originality is what will make Africa contribute richly to the world development of law and to the need to integrate law with people's morality and public morality.

I therefore strongly hope that we will continue for a very long time to closely relate the law with morality in general and public morality in particular in order to preserve, promote and protect the Ubuntu, the human person, the community and the future of Africa.

The culture which suits Zimbabwe as I have noted is a mixture of ways of life and practices from different sources. But at the centre of it all, should be the core of the Zimbabwean culture and respect of the sanctity of life

Thank you Chair



theGodFather:

Cde Karabo

So from the background where Africa is using the laws which were adopted from another cultural civilization, do you think it is fair to judge a people's culture based on another different civilization which has its own norms? In particular I am looking at the issue at hand where the Ndebele kingship has to be scrutinized under a bastardized Roman-Dutch law?

CdeKarabo:

When the white settlers came to power their first goal was to put borders and also to abolish cultural practices because that is known to unite people. They imposed their own laws which we practice now and their own cultures like Christmas and Easter

most of our laws r inherited from Britain and as such it is interesting to note that slavery was in fact legal before its abolition.

So what is Fair is to me to Uphold the rule of law the freedoms of people to practice their culture and traditions as their heritage. That will be imposing of another's culture and there are certain laws which aim to keep a balance for example Human Rights legislation which supersedes other laws that are in contrast to it.

Cultures are predominantly judged by those who intend to divide and impose a particular culture on other tribes.

It is not fair to judge any culture, you might have diverse opinions on certain issues but you still have to respect the cultural values and norms that other people possess.

Thank you Chair



theGodFather:

Cde Karabo

*Given the background you have given of original African polities, in particular to the way white settlers came to power abolishing cultural practices and imposing their laws *was it not possible then, and even now, for the original African polities to exist in parallel with the modern imported statehood?**

CdeKarabo:

It was possible and that was in fact for the drafters to consider when they chose to draft the Law that presides over the land. You know law is not set in stone it can be amended and a committee needs to preside over such matters to keep the law relevant and also to avoid absurdity and remedy any ambiguity

Law can be repealed too. It can be outdated and it can be biased. So the legislature also have a duty to keep their laws in check.

***** Law i.e. Statutory instruments or legislation ****

Nevanji:

May I take it a bit.

It was very possible n still is possible for African polities to exist with modern imported statehood. Please not, Uganda has a king, in SA the are several kingdoms among The Zulus, Thembu, Xosa, Bafokeng, etc.

Its only in Zim where the powers of African polities was thoroughly n utterly destroyed for political reasons by th settlers. Remember, they had records of the Portuguese defeat by Tshangamile Dombo n the guns captured at Portuguese feira at Mt Hampden are in a museum in Cape Town. To allow existence of African polities wld hv allowed for



organised resistance n thus the whites had to totally destroy them n defile our religion n religious places n centres.

Also note, the missionaries had lots of prior infor on the ways of Africans, our interlinkdness, traditions, rites, customs m beliefs of th ppl. They knew to allow for that cohesion to continue wld result in destruction of their young colony. So BuKalanga had to be destroyed, nonexistent tribes created, history rewritten to show a loose confederacy or no connection at all.

theGodFather:

Insightful Cdes...

Now let's move to an area which many consider a paradox

Cde Nevanji

There was significant heterogeneity in political centralization across African ethnicities before colonization. At the one extreme, there were states with centralized administration and hierarchical organization such as the Shongai Empire in Western Africa, the Luba kingdom in Central Africa, and the kingdoms of Buganda and Ankole in Eastern Africa. You have also said the Ndebeles had a structured well organised state with a clear succession plan.

*One might argue, **why did it take 100-years for the Ndebeles to replace iNkosi Lobengula?***

Nevanji:

It ddnt exactly take 100 years but previous attempts were thwarted by the settler regime. This was informed from th knowledge that in Aftical only kings declared war n cld call for full cohesion n unity of th ppl.



What I only hv an issue with th attempt is to go look for Bulelani Lobengula when th children of Sidojiwe are very much in Zim n hv never left except that their father settled in Marirangwe

So now, we hv a situation whereby, they are seriously making attempts to restore a mornach that has always been there but without a crown wearing it but pretenders hv bn there.

I wld hv thought that th most obvious heir are children of Sidojiwe for records will shoe where they are but maybe coz they now speak th language of th ppl of th North th Ndebeles hv a problem w that

theGodFather:

Very well, wanna combine my next question to you Cde Nevanji after I get response from my next question from Cde Karabo

Cde Karabo

Many have been arguing that the Zimbabwean law does not explicitly mention a king which happens to be a technicality used by those who are against coronation of the Ndebele King yet chiefdoms and chiefs are composite parts of kingdoms or as paramount chiefdoms/chiefs.

Does it mean without mentioning a king and kingdom in the law statutes their existence, at law, is thus not binding?

Does the law have to explicitly specify the generic structure and functions of a kingdom and king respectively for the argument of the existence of a king to legally recognised?



CdeKarabo:

Question 1

Taking into account there are different ways of interpreting the law ie literal rule, mischief rule and using a golden rule to interpret the intention of parliament. The said absence or omission of a particular word in statute does not render a subject inexistent. It will depend with how the individual judge interprets towards a desired outcome of parliament.

There are rules of interpreting statute and as such judicial review should preside on matters of such interest whereby a certain phrase or word creates ambiguity and problems of undesirable consequence. So where an Hon Judge passes a decision based on their own interpretation of the constitution or law it binds all parties until this decision is overruled on a point of law or reversed so in so saying another hearing can be set to consider any facts arising

The rule of law is a foundational value and principle of our Constitution of Zimbabwe as set out in section 3. The Preamble of the Constitution recognises the need to entrench the rule of law because it underpins democratic governance. The rule of law is the means by which fundamental human rights are protected. It is therefore absolutely necessary that there be a way in which the legal profession is enabled to play its role in ensuring that the rule of law is maintained and promoted.

Question 2

The constitution is silent on the mention of a King but there is mention of Chiefs and other cultural leaders in the society which leaves me to question as to the time the constitution was drafted was there in presence a King??? I believe Not,



hence the outcome but in so saying even if the King was present the Legislator would have mentioned King in the constitution. It is no merit stating its non existence as this needs to be addressed either way. The Constitution talks about traditional leader and ultimately the King automatically falls within this category as Chiefdoms and chiefs are composite parts of Kingdoms. The Ndebele Kingdom went on without its King because of Colonialism, as we know that a king's seat is left vacant until the rightful heir is appointed

First and foremost the Kings seat can be vacant for as long as it takes. Secondly for the first 63 years of the 100 years the colonialist made sure they destroyed the Ndebele Kingdom after King Lobhengula died because the unity under the Kingship meant it was difficult for the colonialists to divide and rule the people under King Lobhengula.

The Law will definitely have to explicitly identify the generic structure and functions of the king in his kingdom taking also into account the other tribes existent in that kingdom of which the king must also be aware and respect towards harmonised peaceful coexistence within the communities and to also avoid any problems or abuse of powers by the Kingship but there is nothing that says the unity of both can cause problems but I believe to the contrary it can bring together harmonisation for instance in Committee proceedings eg the Gukurahundi whereby a presiding King will bring healing and any effective representation of unity in any presiding matters. So the respondents who are all bound by the court ruling should seek relief through appeals within the Judicial system towards their cause.



theGodFather:

So rather than having to battle in court over the coronation of the King efforts should be made to direct the battle to Parliament where amendment of the Constitution and other laws like the Traditional Leaders Act can be done right?

CdeKarabo:

Yes because the consequences of suppression will not bear fruitful results. I believe going into parliament with all parties and agreeing to what has control of that. This King is a Prince at the moment. Working with Parliament will be very ideal so they don't over step boundaries. Remember he is not a King of Zimbabwe or Shonas or Khalanga or Kharanga or Rozvi

But for the Ndebele as their birthright in history

theGodFather:

Cde Nevanji

The African historiography has proposed various channels via which ethnic institutions shape contemporary economic activity.

First, Herbst (2000) and Boone (2003) argue that in centralized societies there is a high degree of accountability of local chiefs. For example, in ethnic groups that had a state structure, poorly-performing local rulers could be replaced by the king or superior administrators. Even nowadays some ethnic groups have assemblies and supreme officials that make local chiefs accountable.

Second, Diamond (1997) and Acemoglu and Robinson (2012) describe how ethnic groups that formed large states, had organized bureaucracies providing policing and other public goods.

Third, in centralized ethnicities there was access to some formal legal resolution mechanism and some form or property rights steadily emerged (Herbst (2000)).



Fourth, others have argued that centralized societies were quicker in adopting Western technologies, because the colonizers collaborated more strongly with politically complex ethnicities.

Fifth, tribal societies with strong political institutions have been more successful in getting concessions both from colonial powers and from national governments after independence.

Do we really need a Ndebele King or any King for that matter in Zimbabwe?

Nevanji:

My response is like this:

What effect does having a king mean to the Ndebele?

Why are they crying for a king?

Isn't the king the missing link in bringing development to Matebeleland? Isn't he a necessity to the ppl of the south for amasikho abo?

You will find that Britain the colonial power still has a monarch and in fact British law usually is said to be what the crown says it is.

Now, why are we as Africans so eager to do away with what makes us who we are?

Wouldn't it be possible that, the lack of development of our nation is linked to the absence of a king or kings?

A king was a focal point and perhaps that is what is missing and were we to have one in the south, perhaps he would be the required tonic to pacify our restless kinsmen in the South



theGodFather:

Cde Karabo

Now coming to the Justice Makonese judgement where he blocked the coronation of the Ndebele King by saying there is no law in Zimbabwe which recognises a king.

There is ample evidence pointing to the ongoing importance of ethnic-specific institutions.

First, ethnic leaders and chiefs enjoy considerable support and popularity across local communities

Second, Local chiefs have significant power in allocating land rights. Ethnic institutions are instrumental in assigning property rights and resolving disputes.

Third, in many countries local leaders collect taxes and provide some basic public goods

Fourth, since the early 1990s many countries (15 out of 39 according to Herbst (2000)) have passed legislation or even constitutional amendments (in the case of Uganda and Ghana) formally recognizing the role of ethnic institutional structures in settling property rights disputes and enforcing customary law.

*In this regard and in your own opinion, *did the Honorable Judge err in blocking the coronation of the Ndebele King* or he did it to limit the perceived powers the king would have especially based on the powers which his (King's) subordinates have as per the above points?*

CdeKarabo:

Thank you Chair

I believe that the Hon Judge passed the decision based on their own interpretation of the constitution or law which generally



does bind all parties to the proceedings . Taking into account there are different ways of interpreting the law ie literal rule, mischief rule and using a golden rule to interpret the intention of parliament. Not all decisions made by judges are correct so there is an appeal system in place whereby as a matter of upholding the rule of law cases can be heard in a senior court on appeal to look into the merits of the case or points of law.

The constitution says that Zimbabwe is a Republic meaning we cannot have a Monarch but there is nothing that stops the establishment of that King of that specific cultural group as the head of the chiefs other than a threat to imperialism. This has been no doubt a divisive decision made by the courts which is binding to all parties however did they consider economic and cultural positives especially in this day and age where modernisation has threatened our cultural values. The King of the Ndebele would no doubt boost the region's economy tourism, cultural events and remember the same region is the burial ground for Rhodes and Mzilikazi amongst other leaders. Social cohesion is a beauty in a country to uplift culture and harmony between tribes.

The Law will definitely have to explicitly identify the generic structure and functions of the king in his kingdom taking also into account the other tribes existent in that kingdom of which the king must also be aware and respect towards harmonised peaceful coexistence within the communities and to also avoid any problems or abuse of powers by the Kingship but there is nothing that says the unity of both can cause problems but I believe to the contrary it can bring together harmonisation for instance in Committee proceedings eg the Gukurahundi whereby a presiding King will bring healing and any effective representation of unity in any presiding matters. So the



respondents who are all bound by the court ruling should seek relief through appeals within the Judicial system towards their cause.

You have Victoria Falls and all these beautiful places and one difference about Africa and the west is the culture the love and the beauty within the people. If you take that there will always be a hole and you looking at a time bomb because there will always be threats or disturbance which defeats the purpose of peace, love and joy in a country as factions will be created creating in turn animosity and wounds that never will heal until an uprising as history has it. It is always advisable to mediate towards a peaceful agreement and then focus on other things. Than bottling a problem which will eventually come out.

Because you have the leverage on bargaining they will after all take what you propose. That's I am saying if they appeal what next

So the easiest and less exhaustive form will be Amendment of Statutory Instruments in Parliament t

theGodFather:

Cde Nevanji

Your co-guest raised the issue on National Healing which she argues can be assisted well by the king in closing the burnt bridges but won't the BuKalanga also rise to claim the King is not in his territory .

As you give your closing remarks

CdeKarabo:

My apologies in ref to my latter question as there was duplication.



I do not think it did limit as it created a worldwide recognition and interest of this cause and in this regard I could say if an appeal were to be made on a point of law to a higher or senior court whose aim will be to interpret the law and either give direction or a ruling to avoid a mischief or undesirable outcome to uphold the rule of law in the state. I do not believe that Powers of a King are limited by blocking a coronation as this can be done back door. It is imperative to understand that a King is through lineage and not through a system of merely appointed persons or systems so this is a fact which in fact presides us in this generation that they have traced and identified their King who in fact is a subject of his father who fled from his nation in fear of death by colonial rulers to settle in a neighbouring country noting that border lines were erected to divide and rule by the white colonial rulers. Now interestingly lineage cannot be broken and in so saying he has every right to claim his title it is after all his inheritance but due to changes in time we cannot be talking about Powers because the King also abides to Powers inferred by the state. In so saying it would be beneficial for the state to provide, Limit and scrutinise the powers of that King than to avoid the inevitable just like they have done with the chiefs.

Nevanji:

Right, this is the gist of the whole issue and an understanding has to be reached that the king is not a king over a territory but rather a king over a people.

The moment you make him king over a territory, you will create a problem whereby we will have people who will successfully and truthfully argue that a refugee or a thief can't have rights in the land. It's like saying the whites have claim in Zimbabwe or Africa. So honestly let him be king if he has to be but let it be clearly



spelt out that he is not king of a territory n has no other power over land n mineral issues except over his ppl.

For The BaKalanga will make similar claims n so will th Rozvi, etc. So let's b clear n distinct on that

theGodFather:

Cde Karabo

Historically, one of the philosophical presuppositions on which existing cultures and societies have derived their survival is the critical, integrative examinations and ultimately, of the acceptance of the intersection of the concepts of law and morality.

Has the law, in its contents and features, been influenced by moral principles?

Conversely, has the law influenced moral principles?

As you wind up...

CdeKarabo:

Thank you Cde

Firstly I will define the terms

Law: Among the many schools of jurisprudence, I use Curzon's Dictionary definition of law as 'the written or unwritten body of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state, so that they shall be imposed upon and enforced among those persons as appropriate sanctions'.

Morality: derives from the Latin word Mos, plural Mores which mean customs or people's values and traditions, people' heritage or ways of life and conduct in a given community.



Moral values vary from community to community and from time to time. Among people who share a common heritage or have similar cultures or religious beliefs, some of these values cut across sections of the various communities. Within the societies of Black Africa, there is a shared sense of morality that is similar in many aspects and based on the key concept of Ubuntu.

Public Morality: for this purpose, taken to refer to ‘the total set of ethical-moral, legal-human rights values, customs or traditions which define, describe, promote and defend a given society’s or community’s common good, shared values and vision, their public ethos, and the common pursuit of the good in order to achieve their full potential and civilization. Public morality regulates the behaviour and values of both the community and the individual who lives and achieves his or her full humanness within the community.

Culture: for this purpose to mean ‘the sum total of the ways in which a society preserves, identifies, organizes, sustains and expresses itself’. Culture can also be defined as ‘the sum total of the values a particular society cherishes and by which its members want to identify themselves and be identified by others’. These common values include among others: history and language; rites, rituals and ceremonies; wisdom, philosophy and worldview; religious beliefs and morality; ancestors and leaders; signs and symbols; institutions of family, clan and society as a whole; law, the legal system and the indigenous skills and technologies; education and leadership.

It appears clearly that both the law and public morality do regulate the relationship between individuals and between individuals and the community or the State. Morality also



deals with the way an individual should conduct himself/herself in the community. Public morality and the law should more or less play the same role in society and one ought to be intrinsically integrated within other, thus creating the necessary harmony.

Laws in some Developed Countries are tending to completely deny the existence of public morality or perceiving such morality as an infringement on the individual's free moral choices. In most African countries because of the different people's worldview, the law has not yet come to such extreme views of public morality.

Lord Devlin Patrick, argues that 'there is a public morality which provides the cement of any human society, and that the law, especially the criminal law, must regard it as a primary function to maintain this public morality'. Looking at our criminal laws as laid out various offences are provided for. Although it could be argued that it does regulate on morality, for it lays down 'Offences against Morality', which include rape, elopement, indecent assaults, defilement, detention with sexual intention, prostitution, abortion, unnatural offences and incest; these are mainly sexual offences or offences related thereto. It is quite evident that the law does reduce the concept of morality to just one small aspect. This narrow interpretation of morality could be a result of importing the foreign laws wholesale without the full involvement and participation of the people who are to be affected by these laws.

It is my view point that although, morality as understood in the traditional African sense has been prevailed over by the written laws, these laws do not adequately define what public



morality is and neither do they regulate upon morality in its entirety, hence there is a need to revisit our cultural or traditional norms and values in which morality was treated in a holistic approach and each person was compelled to live in accordance with the moral standards of that person's community.

Law is used in society to reflect social values and norms. It is one of the most effective instruments used in upholding and safeguarding community values and aspirations.

Law is an instrument of state power. In ancient societies law was a weapon used by the ruling elite to consolidate their grip on power. Under the modern concept of state power, the law can be used for the same purpose. Certain sanctioned practices are commonly referred to as undemocratic e.g. suppression of freedom of speech and deprivation of other freedoms. The force of law is used to make the practices hold. It is thus a convertible tool capable of being used for good or bad courses by those in position to mobilize it in their favour

without quoting any academic sources I'd say your critical analyses on this would lead you to the conclusion that it's a bit of both.

Historically laws were formulated based on a particular society's morals.

Let's look at discrimination laws for example:

Discrimination laws were formulated to support a society whose morals saw it fit to discriminate on the basis of colour. It was morally acceptable that blacks were inferior and as a result laws were promulgated that made it legal to



discriminate. And with time we've seen those people's morals change and they started to shun discrimination, and we then see morals again shaping laws that abolished and even criminalised racism. Fast forward to our current time and it's now the law influencing our morals on this issue; because it's now illegal to discriminate children grow up already being schooled that "it is not only wrong but it's also criminal to discriminate". Now our moral principle on issues like discrimination are being shaped by a law that was originally shaped as a result of morals leading the law- now law is leading the morals in this.

2nd example is that of murder & the defence of provocation. Originally in The Homicide Act (don't recall the year) if one called on provocation as a defence, the requirement was that the loss of control had to be sudden. This left victims of domestic abuse without a defence for example. Now the argument is that it was felt that abused spouses suffered prolonged provocation that would eventually lead to them "breaking point" and eventually committing murder. Morally it was not right to throw abused spouses under the bus because they did not meet the criteria of sudden loss of control. This led to the current Coroners and Justice Act (CJA 2009) to do away with the defence of provocation and instead introduce a defence of "Loss of self-control". The defence acknowledges that loss of self-control need not be instant and it also goes on to allow factors such as sex and age to come into play. Morally we acknowledge that women are more emotional and maybe even fragile so this defence acknowledges these traits. So yes in the case of murder laws it can be argued that morals have influenced the law.



The 2013 Zimbabwean constitution is another example of morals influencing the law. We still have the death sentence in Zim but it doesn't apply to women. They get life instead. Also Zimbabweans morally do not accept a gay lifestyle and there is therefore no provisions for gay rights. Democratically elected representatives and have an independent judiciary but this does not mean that these institutions should not be constantly regulated by the citizenry.

An example is in platforms for social interaction and political circles, people have tended to accept change. But the one caveat is that the change that should be accepted is a change for the better and not that depreciates a people's worth in terms of law. So in some countries it's moral principles predominantly like us and in other countries it's the law like U.K. with abortion and gay rights into statute.

Thank you

theGodFather:

Right...

This has been an intriguing Prime Time session too bad it ran a bit late.

I would like to thank my two guests for being patient and for well researched responses.

We will avail this Prime Time on soft copy and call our guests to respond to follow up questions from our members.

Thank you very much Patriots who managed to follow in realtime.

Good night and God bless!



I am sure after a long day Cde Karabo you need a rest now

CdeKarabo:

lol I do thank you and Thank you to the co guest.

******* PRIME TIME ENDS *******