Cultural and rhetorical traditions of communication within African / Black thinking

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Abstract
From a globalization and glocalization lens, this article has examined two interdependent communication traditions (socio-cultural and rhetorical), outlined by Robert Craig in his magnum opus ‘Communication theory as a field’ published in Communication Theory in 1999; and how African thought and, to an extent, emotion can be repositioned through the local and international legal system, more specifically in the popular Bhe Case in South Africa. African thought can effectively and efficiently be explained through a theoretical binocular of what Molefi Asante has aptly called ‘Afrocentricity.’ The African thought on which this article is anchored is what Karenga also called ‘Maat,’ which means ‘rightness in the spiritual and the moral sense in three realms: the divine, the natural and the social.’ We conclude that yoking globalization influences on the socio-cultural and rhetorical traditions of the African and Black people can create uncomfortable bedmates.

Keywords
African Maat, customary law, equality, globalization, glocalization, human rights, legal, rhetoric, socio-cultural

Introduction
Communication theory, as elucidated in Craig’s (1999) ‘socio-cultural’ and ‘rhetorical’ traditions can be analyzed from the perspective of the African/Black thought. The latter can be explained through Asante’s (2014) conceptualization
of ‘Afrocentricity.’ The African thought in this case is what Karenga (2010) calls ‘Maat.’ He defines Maat as ‘rightness in the spiritual and the moral sense in three realms: the Divine, the Natural and the Social’ (Asante, 2014, chapter 3, para. 5). The divine (ontological), the natural (epistemological), and the social (axiological) are the tripartite concepts that this article will attempt to weave into the socio-cultural and the rhetorical traditions of communication that Craig has outlined.

Here, we have tried to explain how local and global systems of law interact with local and global processes of communication to produce multiple processes of ‘glocalization,’ a term popularized by Robertson and White (2007), which are better shaped, shared, and understood through the important values emphasized by the African Maat, i.e., ‘truth, justice, order, harmony, balance, righteousness [or] propriety, and reciprocity’ (Buchanan, 2008: 11).

Craig (1999: 144) theorizes that the socio-cultural tradition is essentially ‘a symbolic process that produces and reproduces shared socio-cultural patterns.’ The key to socio-cultural consciousness, especially with respect to Africans, is the need to ‘fit into’ societal norms and order so as to belong. Fitting into these social norms is equally yoked to the psycho-social control of one’s emotions. Whether in speech acts, or non-verbal performances using a given medium, Africans maintain a societal horizontal and vertical hierarchical order. And, because one is socio-psychologically and culturally conscious in the medium of transmission, the medium also affects rhetoric.

This article argues in the affirmative that socio-cultural and rhetorical communication traditions can gain a long-lasting foothold on the African continent with ‘glocalization’ of the African Maat. By glocalization (Robertson and White, 2007), we are appropriating Patrick Mendis’ (2007) concept of empowering local socio-cultural and value systems at the same time that globalization is spreading its wings on the continent. Mendis (2007: 1–18) calls it globalization with a human touch. We must fly the wings of globalization with caution as Africans in the continent and abroad. That is why Asante affirms [that] ‘our dealings with each other, no longer local but global and digital, must rise to the level of Maat’ (Asante, 2014: 33). The African communicator is an embodiment of the two: socio-cultural and rhetorical acquiescence; hence, the dovetailing of the two traditions in this discourse.

In our time, we describe the state of the global human community in terms of the idea of globalization. The simplest explanation of globalization is that it reflects a degree of porosity in the sovereignty foundations of the putative international community. The implications of this development are that the flow of goods, services, people, technologies and other important values travel with a greater acceleration across state lines, and the traditional boundary limitations of state sovereignty are in some degree weakened (Nagan and Haddad, 2011). This is the exact replica of Ali Mazrui’s (2002) conceptualization of globalization, which privileges Westernizationary principles and values over indigenous mores. This is dependent with a triple face: the first having taken place during Western colonization and the second during Western ‘modernization’ of Africa. This sort of
globalization is not what Gunaratne (2015) has termed de-Westernization. On the contrary, Westernization is intensively fostered and that affects local socio-cultural values. These developments generate greater intimacy between human personalities and institutions because of accelerated interaction.

The expression of the drivers of emotion—through rhetoric—becomes a factor in human behavior. Emotion, therefore, becomes an important factor in understanding the cross-cultural, transnational, exchange of values, and institutions. The effects of a greater degree of interdependence and inter-determination among social participants are an outcome of globalization. This means a greater opportunity for cross-cultural emotionally conditioned exchanges, which is also conditioned by human personalities. Human personalities come with complex structures of emotion. Therefore, human emotion is implicated in many of the significant developments in the culture of globalization. As human activity accelerates its global reach, the salience of the factors driving human emotion become more important, especially for the legal system, which now faces important challenges in having to mediate between cross-cultural emotionalized conflicts.

The socio-cultural tradition and African ‘maat’

If our inter-communicative interactions mirror or rather ‘reproduce the existing socio-cultural order’ (Craig 1999: 144), the African thought process in any given medium should reflect the societal order of a given region on the continent. The existing socio-cultural order has undergone internal modification because of natural local forces. Blending with the new ‘global village’ communicative syndrome should not be coercive lest it becomes an intruding force. The societal order especially from the three realms of Maat (the divine, the natural and the social) characterized the oral interpersonal, group, and mass communication for Africans during the pre-colonial era. During and after colonization when they were introduced to new social ways of life by virtue of their marriage with the West, African thought began to have cracks on its walls. The divine became the worship of a Christian God and not an African ‘god’ or ‘Allah.’ The social was antithetical to primitive. The African god was chastised as ungodly, superstitious, and savage and even non-existent. Consequently, Africa experienced an uncomfortable union with Christianity, African religion, and Islam, what Mazrui calls the triple heritage.

This communicative tradition, according to Craig (1999: 144), has shifted for Africans because the ‘shared socio-cultural patterns’ is not only dysfunctional but heavily dependent on religious belief systems and social adherence of a given group of African interactants at any given time and space. The religious (divine) moral pedestal with which communication is encoded will determine the decoding process, and shared meaning can only be obtained when religion and the communicative acts are inseparable. They might then determine the social and the moral ramifications that are constitutive of Maat from the African thought process. Since Africans in Africa and Blacks in the Diaspora cherish communalism and relationship building, communication theory fashioned from Craig’s socio-cultural
traditions would have significance at the micro-level but not at the macro. The micro-level dichotomizes Blacks either in the continent or in Diaspora from ethno-religious perspective.

This is where Anthony Giddens’ (1984) structuration theory bears a cross analytical relevance. He candidly affirms that social structures of hierarchy, acquiescence, loyalty and, to a much larger extent, order, are maintained in the electronic public sphere intercommunicative discourse between members of similar social set up. So, Muslim women and men would maintain the same discipline in online discourse as they would in an offline discourse. The same is true for members of the ‘Ibo’ cultural group of Nigeria or the ‘Kikiyu’ group of Kenya, etc. However, it may not always be the case because the forces of globalization winds are blowing hard on the continent disrupting the often cherished socio-cultural traditions and nowhere is it more potent than in the legal domain where the ontological stance and axiological stance share a coterminous relationship. This corroborates, in part, Craig’s (1999: 145) views that ‘sociocultural theory thus has much to say about problems arising from technological change, breakdown of traditional social orders, urbanization and mass society, bureaucratic rationalization, and, more recently, postmodern cultural fragmentation and globalization.’ In doing so we honestly agree with Gunaratne (2015) that socio-cultural traditions have a prehistoric origin and therefore robust in harnessing family human-to-human communicative dynamics especially from the African legal (ontological) worldview and axiological (ethical and value) communicative perspective.

**Socio-cultural tradition, globalization and legal ramifications**

From a global perspective, it is important the technical rules which have evolved to control and regulate trans-state and trans-cultural interaction be better understood. These areas of law when confronted with distinctive or unique problems of cross-cultural conflict may also have to develop a recognition of appropriate normative guidance implicit in international values which implicate human rights and humanitarian law, and in the African context, the Maat. In this sense, cross-cultural conflicts about fundamental human institutions, such as marriage and family, may well be influenced by the normative priority given to human rights standards directly from international law, or filtered through the constitutional law of a particular state.

The modern practice of law—both locally and internationally—has been heavily influenced by the communications revolution (Nagan and Hammer, 2006). Global developments, influenced by human rights and human dignity values, are often affecting local and traditional conflicts. These rights and dignities are overtly manifested through the triple dimension of divinity (ontological), natural (epistemological), and social (axiological) that form the bedrock of the African ‘Maat.’ However, from a legal family communicative perspective, this challenges the forces of globalization. Emotions can easily override reason thereby rocking the
very boat of socio-cultural traditional imperatives for Africans in particular and blacks in general.

Social problems generated are rooted in deep emotionalized sentiment, and the challenge to enlighten decision-making is the reconciliation of how emotion may be respected or managed by broader constructive values of global salience. It is often the case that the rules of custom, which might often regulate some of the most important components of human identity and intimacy, are also conventionally thought of as a simple exercise of following codified tradition (Bennett and Vermule, 1980). However, custom is not frozen in a socio-economic or political vacuum. When conditions change, custom too may change. The Austrian legal scholar and sociologist Eugen Ehrlich (2001 [1913]) coined the phrase ‘the living law’ to point out that any understanding of the ‘living law’ must take into consideration the context of time and place because the ‘living law’ that regulates social life may be quite different from the norms for decision applied by courts or the State (O’Day, 1966).

Conversely, in Erlich’s perspective, not all the norms of human associations should be thought of as ‘law.’ Since official laws, rules, and regulations for the official decision-making process regulate only those disputes that are brought before judicial courts or other tribunals, the living law is a framework for the routine structuring of human relationships. And the source of these human relationships is in the many diverse kinds of social arrangements implicating emotionalized forms of orientation, which is what drives human interaction (Ehrlich, 2001 [1913]). Therefore, the living law expectations are reflected in the accommodations of community peace, tranquility, and cooperation (O’Day, 1966). The notion of a living law is remarkable not because it has resisted state legal absolutism and flourished, but because it is to be found in situations where obvious sub-groups are identified. This makes it an intrinsic component of social organization in its widest possible reach. In addition, the very idea of a living law attests to the dynamism and the vibrancy of the deep structure of social-organization even in situations of extreme repression. This, too, is quite simply an indicator of judicial philosophy. Here it would be useful to distinguish between the formal law of the State and the operational code of the ‘living law’ of human associations, which in the African case is developed through the interactions between the socio-cultural tradition and the African ‘Maat.’

The rhetorical tradition and African ‘Maat’

Natural rightness is intrinsic in the conceptualizations of the ‘Maat.’ To be heard is to be right. To be right is to be followed. To be followed is to regulate or tame your emotional human state. One can only be a leader to be followed. So, there is no separation between the socio-cultural and the rhetoric because they are intertwined in the human communicative acts governed by socially written and unwritten laws. Craig (1999: 135) maintains that ‘artful use of discourse to persuade audiences’ is
intricately linked to what he calls ‘commonplace beliefs’. A chief priest of the African religion or an imam of Islam or a pastor of Christianity is usually skilled in rhetoric and abides by the socio-religious cannons for which she/he has been ordained. She/he is thus seen as naturally endowed by divine providence. The same can be said of any given group elected leader in Africa charged with duties to lead the people to ‘salvation.’

Rhetoricians who can control their emotions and logic that are central to Craig’s communicative rhetorical postulations, like lawyers, may be in an ambivalent position of toeing the lines of global human rights manifesto and at the same time abiding by internal African family law human communicative relationships. In the Bhe Case (Bhe v. Magistrate Khayelitsha and Ors, 2005 (1) BCLR 1 (CC), 15 October 2004), for example, the court produced a public rhetoric in socio-cultural context to recognize customary law without its accompanying principle against fundamental human rights and dignity. The Recognition of Customary Marriages Act (RCMA) adopted by the South African Parliament in 1998 declared ‘that all customary unions entered into in the past are relabeled “marriages” and that, for the future, all customary marriages that comply with the provisions of the act are valid’ (Chambers, 2000: 113). The recognition of African Customary Law Marriage by legislation also presumed the inclusion of patriarchal tradition that came with legal African marriage. The Bhe Case underscores the fact that in particular circumstances, the institution of patriarchy generated important concerns about the extent to which patriarchy could be compatible with the new human-right-based Constitution (i.e., globalization and glocalization at logger heads).

Sujay Kulshrestha (2013) noted ‘[o]ne way in which to judge a society’s status is by the basic freedoms that its citizens enjoy’ (para 4). In 1941, in the midst of World War II, President Franklin D Roosevelt, in his annual message to US Congress on the State of the Union, proposed the adoption of freedom of speech, of worship, of want, and of fear as the ‘Four Freedoms’ everyone in the world should enjoy. In 1945, the United Nations adopted these four freedoms as the pillars of the UN Charter; and later in 1945, as the foundational principles of the Universal Declaration of Human Rights (UDHR) (UNGA, 1948). The UDHR stipulates that ‘all human beings are born free and equal in dignity and rights,’ that human rights are to be enjoyed ‘without distinction of any kind such as race, color or sex,’ and that ‘everyone has the right to freedom of opinion and expression’ (UDHR Article 1, para 11; Article 2, para 13; Article 19, para 54). So it is the success of Roosevelt’s rhetorical success that the South African Constitutional Principle II of the interim Constitution also requires that everyone must enjoy ‘all universally accepted rights, freedoms and civil liberties’ and such rights must be ‘protected by entrenched and justiciable provisions in the Constitution’ (Blair and Weiner, 2009). The new Constitution requires the honoring of these principles. However, the problems of definition and clarification in cases like the Bhe Case are incredibly complex and often juridically convoluted. Hence, the salience of the persuasive skill set of the lawyer-rhetorician.
For instance, although we can debate the issue of defining marriage, it is unclear from legal literature whether the term refers exclusively to the form of marriage as a contract, or whether it refers to an institution whose implications can reach complex social interests. This is where the fundamental feud between global forces (globalization and human rights) is pitted with the local realities (glocalization and African ‘Maat’). And in this case, women are the victims, and hybridization of the socio-cultural and rhetorical ways of life are at crossroads. Phelan (2011: 318) firmly believes that public discourse from a purely communicative lens should be constitutive of cognition, affection, and ethics ‘involving the rhetorician and the audience.’ That is why the persuasive skill set of the lawyer-rhetorician is cardinal.

One interesting implication of the Bhe Case is that African customary law is a distinction that, although it is not often clearly made in either legislation or judicial practice, can involve the distinction between the rules that prescribe who marries whom, and the non-discriminatory forms and conditions involving fundamental policies of equality of access and liberty to choose (Mwenda 2008). The validity test of African customary law, as described in the legislative frameworks of many Commonwealth African States, is that ‘a custom is only valid if it does not offend public policy, or any laws of a concerned country, or natural justice, good conscience and equity’ (Kaoma Mwenda, 2006: 341). This concept of validity, although it defines the nexus between African customary law and other laws of the country, it does not clearly define what in fact is a custom. Nonetheless, one of the most central qualities of something that qualifies as customary law rule is that it is a rule, which emerges from the inner fabric of human associations and relationships (Rauterbach, 2008).

In the Bhe Case, although the constitutional issues seem to be clear, they emerge in a way that in practice seems to be paradigmatic. There is already an existing marriage, or some recognized form of civil union or affection unit. However, the form of that unit, the conditions under which it was originally made, or the procedures by which it was established, may well be legally flawed. It may be valid in one state and not another. Even more, the parties can assume their validity, even after the fact that one of them is no longer alive, or that one wishes to escape obligations generated by the fact, and expectation-creating nature of their relationship. Courts must now determine whether such questionable marriages are valid or invalid, which would require the court to examine the legal policies about equality,
freedom, access to marriage, and other measurable effects. In short, the Court is now challenged with the question of whether or not to behave in the spirit of the African ‘Maat’ and apply the ‘living law’ as a concept of customary law.

The Bhe Case: Living law and family values in Africa

This section makes a critical discourse analysis of the institution of primogeniture, which is an institution rooted in the cultural tradition of patriarchy, by examining the real question in the Bhe Case, which is the characterization of an African customary law of marriage for the purpose of inheritance policy.

The Bhe Case with two other cases, which came before the court with similar controversies dealt with the law of succession in African custom, which was validated by the Black Administration Act (1927). Mrs Bhe challenged the constitutional validity of this rule ‘(a) on behalf of her two minor daughters, namely Nonkululeko Bhe, born in 1994 and Anelisa Bhe, born in 2001, (b) in the public interest, and (c) in the interest of the female descendants; descendants other than eldest descendants and extra-marital children who are descendants of people who die intestate’ (para. 2).

The legal issues involved (1) the husband of the applicant was married to the applicant under African Customary Law, a law that essentially institutionalizes in varying degrees the principle of patriarchy; and (2) the specific facts involving the death of the husband and the distribution or administration of the marital estate in the same clan. Two statutes were relevant to the law of intestate succession in South Africa: the Intestate Succession Act 81 of 1987 (ISA) and the Native Administration Act 38 of 1927 (NAA), specifically section 23 that contained provisions dealing exclusively with intestate deceased estates of Africans. Estates governed by section 23 were to be specifically excluded from the application of the Intestate Succession Act. Under the particular form of inheritance applicable in this context, the wife and her children, who were also children of the deceased, could not inherit any part of the marital estate because the construction of the customary law of primogeniture, made the oldest surviving male of the extended family of the deceased husband the sole heir to the property acquired held in a customary law marriage.

The law of primogeniture, which precluded the widow and children from succession rights and inheritance to the estate of the marital unit, discriminates against the immediate female relatives of the deceased. By empowering a stranger male to the relationship to have title and, therefore, the entire ownership status over the marital estate, the law generates a market-driven-society. These ubiquitous questions emerged after the struggle to end apartheid and the endeavor to provide for a new humane, comparatively and cross-culturally, family law in communications. This is an important insight, because it tells us that however we define and structure the laws governing human intimacy, they impact a comprehensive range of legal and social values, which touch on some of the most fundamental legal institutions.
of public and private law; and, therefore, the living law (Teubner and Fischer-Lescano, 2004).

Deep in the living law of human association are the important emotionalized structures of human subjectivity. It does not matter how much the state seeks to monopolize the business of law-making, it would be appropriate to recognize that often the state’s role in law making is more at the end-point of a longer and complex process. The Bhe Case for rights would influence the legal and political future of South Africa. An important and strong statement about the peculiar history of customary law within the legal architecture of apartheid was that it was distorted, and its natural development did not permit it to evolve as a ‘living law’ consistent with the fundamental expectations of the African people (Louw, 2004). After a lengthy struggle, which included both internal and international strategies to secure the end of the rule of apartheid, South Africa reorganized itself along the lines of an interim Constitution, adopted in 1994. Two years later, it adopted a permanent constitution and placed a premium on the principle of equality that was so severely compromised in the apartheid era. However, although this suggests that any decision-making-process has to be infused with human rights principles and values, and thus, anti-apartheid de jure and de facto, the institution of patriarchy still survived the creation of the new Constitution.

A key concern for any human rights concept of rationality in decision-making is that intervention should have some approximation to the ostensible goal values that it seeks to promote and defend. The Bhe Case is a legal appraisal of an aspect of the marriage system and African customary law that deals with marriage, family law, inheritance, customary law, legislative interpretation, and constitutional analysis of gender equality (Mwenda, 2008). The clarification of all these issues and ideas taken separately involve substantial levels of complexity including ‘the preservation of culture and custom and the promotion of equality norms within culture’ (Bond, 2011: 35) in the process of solving the difficult problem of being able to have general or standard definitions. In this sense, the concern with the focus on patriarchy and the term ‘family’ obscures the critical values, which should condition the decision-making process that it implicates. In short, whether the decision to intervene enhances or diminishes affect, or impacts values implicated in the intervention, and whether it enhances or diminishes the aspiration for essential dignity. The most direct effects of patriarchy fueled by custom appeared to be in the area of male and female rights, and family. The Constitutional Court ruled that the principle of male primogeniture as applied to the customary law principles of inheritance of property—and several statutory provisions that reinforced the rule—impaired the dignity of and unfairly discriminated against the deceased’s two female children because the rule and the other impugned provisions prevented the children from inheriting the deceased’s estate. By holding that primogeniture discriminates against women on the basis of their gender, the Constitutional Court stressed the protection of fundamental rights. In addition, because equality forms a core value of the new democratic South Africa, equality of sex is a right that should
be respected (Mathekga, 2003). Judge Ngcobo specifically reasoned that African customary law was not a static doctrine, but a living flexible system, which could be interpreted and construed consistently with a sensitivity to African customary values and traditions, as well as the influence of constitutional standards regarding equality and fairness.

As Durojaye (2013: 18) explains, the South African Constitutional Court, by having taken into consideration the lived experiences of women, and thus, customary law, which is an international law concept, took an approach that ‘is not only progressive but also capable of advancing women’s fundamental rights to equality and dignity’; and, therefore, in accordance with the African ‘Maat.’ However, within an understanding of the concept of family, we can see that it is insufficient to cover the complex nature of the social process context of affective relationships of which ‘families,’ however defined, are merely one component outcome. The crucial limits of the term family are further exemplified when we see that the symbol family covers a fantastic range of social behaviors cutting across every other aspect of society (value process of society). Indeed, when the family is considered merely as one of the institutional frames for realizing affective goals implicit in culture, the term is insufficiently inclusive to account for the manifold claims that emerge in the context of the social process dealing with affective interactions. The term also comes freighted with culture-bound, parochial meanings that hinder the ability of progressive lawyers working from a human rights perspective to make clearer distinctions, relative to the process of claim, for resolving concrete disputes in this area.

General standards and definitions are necessary for the operational development of effective rhetoric in the socio-cultural context so that traditional skills of description and analysis become relevant in legal argument. However, there are also critical expectations, inherent in culture about fundamental human relationships, and which recognize that human relationships are complex, volatile, and often create conflicts of incredible sensitivity and difficulty for law and legal regulation. As an overarching value, patriarchy gives preference regarding implications of marriage and other affective values to the male. For instance, in whatever forms of property accumulation emerged under subsistent economic organization—which might, in fact, suggest that land uses were provided by the chief or head male—males could take estate of deceased husbands. These are radically different when dyadic couples are living and earning, in the form of wages in an urban industrial environment.

The Court’s judgment was that under equality principles of the South African Constitution this particular aspect of primogeniture was discriminatory and unlawful. However, it is merely one aspect that touches on the complexity in the construction, maintenance, and dissolution of family ties in African customary law. Another important question left open by the application of customary law is the notion that the traditional African customary law of marriage tolerates polygamy, or at least has the potential to be polygamist. The question then emerges whether the right of the male to concurrently accumulate multiple wives is an institutional practice that is in accordance with the African ‘Maat’ or that is instead
discriminatory from a Constitutional and human rights perspective. Although some might argue that the different forms of plural marriage, better known as polygamy, may be justified by the customary practices of a specific civilization or society (Dupret, 2007), others might argue that under modern conditions this form of marriage represents an unconstitutional preference for patriarchal families (Pswarayi, 2010). What should be considered here is if polygamy is in fact an institution for the conspicuous classes of traditional societies, or if it is the institution of bride-price vested with elements of patriarchy that suggest unfair discrimination.

Unfair discrimination should be seen not only based on gender differences, but also as an economic discrimination, in the sense that poor males must delay marriage or are limited from entering the marriage market (Dhillon and Yousef, 2011). If it happens to be the latter, then the analysis should shift; and the question should be whether the institution of bride-price or a functional equivalent thereof, depreciate the personhood of the woman as an object, by making her a commodity or a thing analogous to property or property values. Here, it would be important to consider if a patriarchal family structure depreciates the freedom of choice of the parties, thereby undermining the freedom of association and the liberty interest in the freedom of choice of the parties to marry with restrictions that cannot be justified in a democratic society based on human rights and the rule of law (Kurtz, 2006).

The above discussion is part of the implication on the dichotomized cultural experience that the African has imbibed post-colonization and continues in some measure to globalization. When does the term ‘patriarchy’ become an anathema and when does it become acceptable? Who decides to call it that way and what is the subtext, Afrocentrically speaking and Eurocentrically speaking? This is a socio-cultural life span that has defined relationship between both sexes for centuries.

**Maat as the socio-cultural African rhetoric after Bhe**

We may use The *Bhe Case* as a starting point of analysis of how socio-cultural and rhetorical traditions of communication affects and influences the process of globalization. The Court essentially redefined an African customary law marriage to outlaw the institution of primogeniture, which represents an ‘important legal victory for women’s equality in the face of [South African] patriarchal custom’ (Higgins, 2006: 535). ‘Very little power has been redistributed as a result of this legal victory’ (p. 536), consequently, the situation of women living under customary law has not changed. The knowledge of its existence is almost nonexistent in rural and semi-urban communities, and it has had virtually no impact on the adjudication of disputes concerning inheritance rights.

The fact that The *Bhe Case* has not yet been able to provide an alternative discourse suggests that an important task should not be to identify what the specific form of marriage they are facing, but what are the legal implications of the court in establishing a principal of non-patriarchy in the establishment of intimate
gender-based relations (Tolstoy, 1968). What the terms ‘African marriage’ and ‘family’ mean are not as stable cross-culturally as they once might have been. This leaves uncertainty as to exactly how far the changes in the institutions of patriarchy extend, and how to deal with a concept of marriage and family, that are cross-culturally dependent. These are atypical problems of the efforts to give coherence to the meaning of such terms as marriage and family across cultural lines. In this sense, one of the challenges confronting lawyers, scholars of family law, and communication theorists is to come to grips with a social reality of the diversity of marriage and family forms, and to propose a better conceptualization that works for cross-cultural, and trans-national contexts.

One of the most recognized values tied to marriage, as traditionally and religiously understood, is that it is a monogamous and heterosexual relationship. In other words, it is a dyadic relationship involving a single man and a single woman (O’Leary, 2007). These are matters that go to the structure of marriage and family forms, making the term marriage to overlap with family. In the Islamic tradition, marriage is essentially viewed as a contract, with special characteristics, but as a real transactional relationship between the parties (Ali, 2010). However, other uses of the term marriage may produce confusing aspects, like when a man desires to have more than one wife concurrently (polygamous), or a woman desires to have more than one husband concurrently (polyandrous), which raises the problems of the concept of plural marriage. Rhetorically speaking, a mastery of the emotional and knowledge bases of socio-cultural codes and ethics are central to lawyers’ skill in managing these kinds of cases from the African ‘Maat’ point of view.

One of the problems associated with finding an understanding of the different emotional and knowledge-based socio-cultural codes and ethics is the problem of perception versus reality. In a world of multiple cultural traditions there will be multiple frameworks of asserted moral support for different kinds of affective alignments, even in the dominant societies that have established monogamy as the established morally appropriate ideal for those affective associations that are given the preferred status of marriage. The most dynamic forms of emerging family ties are not the ones that are prefixed by the term or the family rituals that legally support the term marriage (Teachman et al., 2000). For example, the family form that is the most dynamic in the US is the single parent family with the mother at the head of the household, even when this may not be the desirable social outcome (US Census Bureau (USCB), 2003). Another major problem often confronted is that the institution of monogamy holds a great deal of credence, simply because it is presumed that the relationship between a man and a woman, which is a sacrament, could only be terminated by God. This is the exact reflection of the ‘Maat’ from the spiritual moral and social domain in the present globalized world. This belief system is omnipresent in the psyche of the African in his/her rhetorical performances. God would normally terminate a marriage when God decreed death to one or both of the parties (Owusu, 2007). This model of marriage and family, as a monogamous and sacramental institution,
was forced to confront the formidable sexual needs of King Henry VIII in England. Henry married six consecutive times giving the appearance that he seemed to believe that sex itself needed the blessing of the sacraments (Woods, 2006). Henry introduced into the sacrament the idea of a marital termination that he, the King, could ordain regardless of the sacramental nature of the institution of marriage. Apparently, the King could do no wrong, or alternatively, reasons of state would prove to be a higher value than the sacramental tie of marriage. Henry’s injection of an element of the state into marriage contained the creeping and subversive idea that marriage might be a status created and ended by state action. Monogamy would of course endure, but as a result of state sovereignty, the values of monogamy and fidelity are now seen as state secular values to be protected and enhanced (Douthat, 2010).

**Discussion and conclusion**

This article set out to demonstrate the impact of Craig’s (1999) socio-cultural and rhetorical *traditions* of communication as they relate to the African scenario (‘Maat’). It applied to Africa the tripartite constitutive elements of the ‘Maat’—the divine, the spiritual and the social—from a legal point of view. Apparently, the polarized universe of existence in the continent orchestrated, on the one hand, by the forces of globalization and, on the other, by glocalization has created a puzzling situation, when examined from the family court case scenario, the *Bhe Case* in South Africa. The position of the court, as well as the view of Judge Ngcobo, is important, because it generates a vital discourse, extending well beyond the specific litigants, about the scope and content of fundamental values, often rooted in culture, and recognized, at a deeper level, as reflecting a general commitment to progressive change, and the scope of that change (Mokgoro, 1996).

The aim of this study was to illustrate how the application of the principles of customary law coupled with the fundamental elements of the African ‘Maat’ may help to better understand the shaping and sharing of other practices against human rights and human dignity, such as torture, slavery, and genocidal practices, and thus, better deal with them with the purpose of total extermination for a more stable civic order. The perplexing rhetorical and socio-cultural *traditions* of communication theory seem to hit a roadblock. However, this roadblock can only be cleared if hybridization of international human rights laws (globalization) can yoke comfortably with state and customary family law practices in Africa (glocalization). How to achieve this without apparent visible and invisible conflict is what is left to be determined.

Globalization itself is synonymous to homogenization. It can be scary when one thinks of Westernization riding over Africanization for the sake of a stable civic order that follows the rule of law. The discussion on male and female status, when it comes to power, monogamy, and polygamy in Africa, shows how these issues cannot be easily resolved, especially as two interrelated social systems collide. We seem to be in a state of ‘tension’ whereby in some African countries prior
socio-cultural mores of life reflect the rhetorical renditions in any given event, thereby empowering local systems. However, we also have other countries that because of the intense influence of colonization, and now globalization, have embraced foreign socio-cultural and rhetorical systems, especially with education and religion. And, it is difficult to let them see empowerment from the local established laws before colonization.

References


