

State Capacity and Democratic Administration: South Africa's Post-Democracy View

Mashele Rapatsa¹

Abstract: State capacity and democratic administration are conceptually distinct, but theoretically interdependent notions whose significance concerning fulfilment of developmental objectives cannot be understated in any democratic dispensation. Thus, this article discusses how the notion of state capacity affect the pursuit of human development and the enforcement and realization of socio-economic rights under South Africa's post 1994 democratic dispensation. It is considerate of the fact a progressive fulfilment of people's socio-economic entitlements largely depends on having a state which has adequate administrative, economic and technical capabilities to discharge its constitutional obligations. Without these capacities, citizens' legitimate expectations of state fulfilling its obligations as imposed by the Constitution and essential international legal norms diminishes. State capacity is concerned with state's competence to discharge its governance obligations in pursuit of the goal of regulating and protecting rights and interests of private persons and entities. Weakened state lack capacity to control its functionaries and private agents, consequently depriving citizens of their deserved protection. It is argued that the post 1994 transformative democratic dispensation is caught in a quagmire owing to diminishing fiscal capacity, and is inherently struggling to ward off socio-economic deprivations inherited from the past.

Keywords: Public administration; human development; transformation; administrative; fiscal and technical state capacities

1. Introduction

To understand whether contemporary governance arrangements are functionally effective, an assessment of the relationship between symbiotic notions of state capacity and democratic administration is essential. Although state capacity and democratic administration are conceptually distinct, they both play a significant role in human development discourses. Further, they symbolize edifices and institutions needed to service the populace, and are fundamentally predicated on

¹ Lecturer, School of Law, University of Limpopo, South Africa. *PhD candidate*, University of Groningen (the Netherlands). *Address:* Private Bag X1106, SOVENGA 0727. Tel: +27152683980. Corresponding author: mashele.rapatsa@ul.ac.za.

legal norms and bureaucratic rules that require state to have capacity in order to effectuate the pursuit of developmental objectives (Knutsen, 2013, p. 4). Hence, evaluating developmental performances of any democratic administration can best be achieved by invoking the concept of state capacity, which is significant for assessment of efficiency, good governance and social development (Ottervik, 2013, p. 3). This is particularly crucial when seeking to evaluate the state's capacity to run good governance, provide basic social services needed to advance human development and achieve human well-being. Often, states having strong capacities do manage to maintain basic economic functions, societal civil order and thus keeping their democracies intact (Besley & Persson, 2010, p. 1). In contrast, states whose inherent capacities are diminished suffers poor governance and are at high risk of experiencing civil conflicts and social instabilities (Braithwaite, 2010, p. 314).

Therefore, can it be said that state's administrative, technical and economic capabilities are essential preconditions for optimal functionality of any emerging democracy? Such questions may assist in unpacking prospects and challenges constantly emerging out of the post-apartheid South Africa, given the country's critical developmental needs. Suffice it to stress that in human development terms, and in accordance with the rights-based approaches and the Capabilities Approach propounded by Amartya Sen and Martha Nussbaum, state need to have capacity to protect human's socio-economic entitlements, provide social security, physical security, and safeguard people's health, thereby guaranteeing development. Hence, Nussbaum (2007, p. 21) emphasized that achieving rights and these core tenets of human development require governments' involvement, which again boils down to a question of state having capacity to provide material and institutional support in an effort to effect such interventions as and when necessary. It is for this reason that the post-apartheid administration is constantly a subject of scrutiny especially with regards to state's capacity to advance the Constitution's very ambitious transformative ideals.

Notwithstanding widespread skepticisms at the time, South Africa's distinct transition of the nineteen-nineties culminated in profound political and legal changes envisioned to influence every sphere of social life in society, and in a real liberal sense. Remarkable amongst them has been the emergent of strong and normative legal norms, especially because they facilitated the engraining of rights-based discourses (Hammet & Staeheli, 2013, p. 312), amidst the urgency to inculcate state's administrative capacity and good governance at all institutional

levels. Thenceforth, the Constitution of the Republic of South Africa, 1996 (*hereinafter, the Constitution*) has been commended as an advanced liberal democratic instrument (Southall, 2000; Kende, 2003; Christiansen, 2007, p. 29) for its strategic establishment of firm normative and institutional frameworks aimed at building a capacitated state. Although these constitutional changes produced an environment filled with hope, believe and tolerance, they have also bred unwitting implications with regards to state's administrative competencies that are indispensable for sustainable fulfilment of the Constitution's foundational mandate of transformation. This is critical considering that some consider the state as a potential threat to human rights because it wields power, while simultaneously being required to be the principal protector of same (Engelhart, 2009, p. 163). In principle, it is amenable that the state is bound to have both administrative, economic and technical capacities in order to effectuate good governance which prioritizes safeguarding the interests of its citizens and the entities it serves. It is for this reason that the capacity of the state to respect, protect and uphold human rights is seen as the yardstick through which to assess the effectiveness of its democratic administration. Within this context, it is concerning that there has been a growing recognition of institutional failures and dysfunctionality characterizing the post-apartheid era (von Holdt, 2010, p. 241). It is concerning because such failures have implications on good governance and people's realization of fundamental rights and freedoms.

2. Rationale and Research Approach

Constitutionally speaking, it is one thing to have appealing legal instruments and institutions, while it is the other to have people meaningfully proclaiming, realizing and enjoying socio-economic entitlements and human development. Given widespread rhetoric that South Africa has a better Constitution, an administrative question relating to capacity of the state to ward off social and economic deprivations inherited from the past remain fundamental. This is because evaluating state capacity without regard to ostensible constitutional constraints may render such a process meaningless. Southall (2000, p. 148) asked key questions; can a country that is still mired with apartheid social backlogs and third world burdens be able to achieve such ambitious aspirations as propounded through its Constitution? Does government have capacity to meet the high expectations of the masses to speedily improve their social and economic conditions? In addition, what

capacities does it take for the state to be able to fulfill and dispense people's socio-economic demands? Twenty-two years after the advent of democracy, these questions still remain relevant, essentially because it is clear that socio-economic deprivations inherited from apartheid remain stubbornly prevalent (Sarkin, 1999), and in some cases, seem to be worsening. Does this suggest that the state may be lacking capacity to eradicate such deprivations that flew from apartheid? This article attempts to answer these questions. It is aimed at identifying key areas impeding state's capacity to deliver the well-articulated constitutional aspirations of transforming the country, departing from a divided past into a united prosperous country. Though theoretical in approach, it is aimed at exploring answers to questions relating to state's administrative, technical and economic capacities to turn the tides. It relied on theories of public administration and constitutionalism as tools of analysis.

3. Theoretical Framework

Theoretical connotations founded in classical and modern approaches to public administration, and transformative constitutionalism offers robust instruments that can be utilized to evaluate state capacity under South Africa's post-1994 democratic administration. In particular, this concerns the question of efficacy with regards to crucial developmental aspects, people's welfare and administrative issues. This is necessarily because concepts of state capacity and democratic administration are somewhat traceable in the field of public administration and public governance. Of course, it is worth mentioning that public administration has never been static. It evolved over time, changing and adapting from one model to another. Hence, to locate an appropriate place of state capacity and democratic administration in it, it is crucial to ask; what is it that public administration is principally concerned with? Is it simply about entrenching rigid bureaucratic arrangements or about embedding normative values that safeguards public interests?

For decades, studies pertaining to public administration relied on traditional classical model. This classical approach to public administration is recognized for its historic successes in organizing the public sector by establishing normative bureaucratic tools of governance (Katsamunskaja, 2012, p. 75), under which there ought to be clear distinction between party politics and public interest orientated governance. It entails a system under which government and its administration are

officially under political leadership, which exercises control over subordinates premised on clear hierarchical structures. This thought is attributed to Wilson who stressed that good administration depends on the presence of hierarchically arranged systems where heads of departments at the center of government provide both political and administrative direction in a manner consistent with written rules (Ostrom and Ostrom, 1971, p. 203), in this regard, the Constitution. It is on this basis that every state functionary is recognized as public servant who is motivated to safeguard public interest by implementing legal norms and policies as defined by the legislative organ of the state, often through governing party in parliaments (Hughes, 2003, p. 17). However, those tasked with executing public functions should do so without regard to either political allegiance or undue-influence exerted by the private sector. Wilson further emphasized that clear hierarchical structures of “superior-subordinate” are significant elements of public administration because they forge perfection and efficacy in governance for the public good (Wilson, 1887, p. 33). This is essentially because they enable an environment where there is responsiveness and accountability among all state functionaries tasked with serving the interest of the public. That is, lest rules are breached, it should be clear what punitive measures are applicable and how redress is to be achieved. In a nutshell, Wilson’s approach requires professionals to adhere to legal norms and be loyal to the state and a people.

Notwithstanding its successes, as acclaimed by Peters Guy (2001), the classical model of public administration has been a subject of scrutiny and radical criticisms. This is especially with regards to its crucial aspects of separating party politics and state administration, for, these aspects are fundamental in enhancing capacity of the state to fulfill its constitutional obligations regarding effective governance and delivering on people’s entitlements. Theoretically speaking, separating politics from administration sounds realistic, but practically, it remains a difficult challenge, if not impossible to achieve. Perhaps, this could be the reason why Herbet Simon (1964) described some administrative concepts of classical model as being logically incoherent. Simon takes into account the fact that contemporary governance systems are characterized by a globalized political economy where the party which garners more votes gets more power to deploy its candidates to implement its preferred social policies. Subsequently, the critics of the classical model spearheaded a different model referred to as the “modern managerial approach” to public administration. It is theoretically premised on ushering governance efficacy, requiring state institutions to be optimally functional, having

constantly stable economic growth and services to meet the needs of citizens. But owing to globalization, this new model inadvertently subscribes to market principles that are favourable to business and the private sector, which is literally about maximization of profit. From a positivist perspective, states do depend intensely on legal norms, that is, clear laws and social policies that expresses such a desire to enhance state capacity under democratic administration in order to fulfill aspirations of modern democratic governance systems. But constitutionally speaking, the modern managerial approach to public administration ought to resonate common aspirations with fundamental ideals of constitutionalism. This is also because public administration has for decades been characterized by normative approaches premised on lawmaking and constitutional arrangements (Lamidi, 2015, p. 2). It is at this point that the theory of constitutionalism permeates.

In the contemporary world, public administration ought to importantly be understood as a machinery, an integral process through which government implements laws and social policy to perform its functions better (Lamidi, 2015, p. 7) and for the benefit of the people. This entails that functions and outcomes of public administration should be predicated on fundamental values which the Constitution enjoins the state to embody. Therefore, the role of constitutional law in public administration cannot be understated. In fact, South Africa's governance system derive all its legitimacy from the Constitution, in which case, state functionaries purporting to represent the state ought to perform all their functions within predetermined prescripts of the law. This accord to the notion of constitutionalism, which entails that the Constitution is the supreme law, and that government and all state functionaries must exercise their powers within written prescripts of the law in a fair and justified manner. Then, because South Africa pursues transformation aimed at dismantling apartheid legacy, Karl Klare (1998) characterized the Constitution as an embodiment of a theory he entitled Transformative Constitutionalism (TC), the notion concerned with transforming political, social, economic and legal institutions in order to capacitate state to fulfill its obligations. The TC provides strong theoretical connotations that capacitate the state, by inculcating among its functionaries, that the law in the Constitution built instruments with which to effect good public administration and safeguard public interests.

It is indisputable that the traditional classical approach to public administration has had an overwhelming impact in shaping public governance and the running of state affairs. Whether the same can be said about the modern approaches to public

administration remain contested. However, what is clear is that these approaches need continuous assessment with regards to how they influence state capacity and development under democratic administration, especially because the TC provides an overarching framework which guides government and state functionaries with regards to administrative priorities for developmental purposes.

4. State Capacity: Institutions and Service to People

Courts and chapter nine institutions have played and continue to play a significant role in capacitating the state towards fulfilling its democratic constitutional obligations. Though independent from other organs of state, courts and chapter nine institutions carry a significant function with regards to the interpretation and application of the law. Thus, they keep rules and legal norms intact, effectively buttressing sustainability of the democratic administration. In the main, the place occupied by these institutions culminated in South Africa's legal system developing rich jurisprudence which inadvertently denotes conspicuous manifestation of the presence or absence of central elements of state capacity. The notable jurisprudence in existence demonstrate instances where state's capacity is missing and/or instances where state capacity is well kept.

Fundamental aspects relating to technical and administrative capacity on the part of the state became subjects of scrutiny in the case of the *Economic Freedom Fighters & Others v the Speaker of the National Assembly & Others* and the *Democratic Alliance v the Speaker of the National Assembly & Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (3) SA 580 (CC). In this case, the Constitutional Court held that head of the executive (as represented by the president) and the legislature (parliament, as represented by the speaker of the National Assembly) failed to demonstrate accountable leadership as is indispensable under democratic administration. The court stressed that failure to comply with remedial actions of the Public Protector or at least challenge such findings through a court of law constituted a breach of constitutional duty to respect, protect and uphold the Constitution. Mosibudi Mangena, a former cabinet minister resonates the view that the misconstruing of legal norms by head of the executive and chairperson of the National Assembly represents dismal erosion of ethical leadership, which ironically symbolizes weak technical and administrative capacities on the part of the state. For purposes of this article, the gist of this case was whether the political leadership has adequate capacity to interpret, apply and implement legal rules and

norms in a manner that safeguards democracy in the best interest of the public. This is significant considerate of the fact that the traditional classical model to public administration requires stringent adherence to bureaucratic structures that require responsiveness and accountability. This entails that should the political leadership (as heads of the executive or legislative structures) at any stage misinterprets or misunderstands enshrined constitutional prescripts, then from a technical or administrative point of view, state's capacity to effect democratic administration in fulfillment of the Constitution's transformative agenda is in doubt.

In accordance with the theory of Transformative Constitutionalism, government has a duty to bury wounds of the past, eradicate apartheid legacies, prioritize human development, human well-being in a sustainable manner. These aspects are only achievable when there is good governance at the national, provincial and local levels, which is corruption free. Most importantly, the state need to deliver the most basic social services to its citizens, the indigent households in particular in accordance with the rights-based and entitlements approaches. In this regard, the state's capacity to fulfill such constitutional imperatives was tested in *the Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC):97-99, in which the Constitutional Court ordered the government to develop a programme that ensures access to housing by indigent households. Ironically, Ms. Grootboom died years later, yet without a house, notwithstanding the court judgment. This represented state's lack of economic capacity to comply with prescripts of the law in fulfilment of the Constitution's transformative ambitions. It illustrates that notwithstanding the presence of coherent legal norms and institutional capabilities displayed by courts and chapter nine institutions, the state still depends on fiscal capabilities in order to meet the demands of its democratic administration. This also played out in *Soobramoney v the Minister of Health (KwaZulu Natal)* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696, where a patient could not receive emergency medical treatment owing to fact that the state lacked adequate resources necessary for successful treatment of renal failure.

State's technical and administrative capacities were also tested in *Section27 and Others v Minister of Education and Another* (24565/2012) [2012] ZAGPPHC 114; [2012] 3 All SA 579 (GNP); 2013 (2) BCLR 237 (GNP); 2013 (2) SA 40 (GNP). In this case, the state failed to fulfill its constitutional obligation of upholding children's access to quality basic education, as a constitutionally entrenched entitlement. The state failed to deliver studying materials to schools, items which

are a precondition for effective learning. Such a failure deprives children of opportunity to enhance their internal and external capabilities, which the TC also seeks to achieve. Most importantly, the state failed children but not as a consequent of lack of resources, but incompetence and lack of accountability by those tasked with duties to ensure that schools receive materials needed for conducive learning and optimally functioning schooling. It supposedly resulted in the state being seen as failing to countenance and give full meaning to protecting the best interests of children.

5. Challenges and Prospects

It may be that Wilson's traditional classical model to public administration never envisioned experiencing challenges that would test its strength to navigate the public sector and stakeholders having direct or indirect interest thereto. Perhaps that explains why it was subsequently discredited for its lapses and lack of cogency both theoretically and practically (Katsamunskaja, 2012, p. 74). With time, it became clear that the rights-based developments and global surge of democracy and democratic administrations would require the classical model to adapt according to modern trends of governance and persistent emerging challenges. For instance, periods between the middle of the twentieth-century and beginning of the twenty-first century saw fundamental shifts in terms of systems of governance, wholly departing from totalitarian states into states where governance would, theoretically speaking, be premised on serving public interest and securing human well-being. South Africa's administration was under apartheid for most part of that period and of course the rights-based legal tools of administration could not develop. But the post 1994 dispensation ushered in widespread waves of reforms aimed at rebuilding new forms of relations between the state and its citizens. It is for this reason that the TC enjoins the state to foster the creation of an environment where everyone is afforded opportunities needed for development.

Of course, the theory of TC is emblematic of the Constitution's ambitious plan to achieve good governance and social stability. But in many respects, such ideals intended to be achieved to a large extent depends on state's fiscal capacity. For instance, for the state to equip citizens with skills and invest in creating technical capacity, it needs resources to fund universal access to education at the tertiary level. Further, the state need resources to finance social programmes that cater for indigent people from households relying on state's social assistance for survival.

In contrast, South Africa faces an immense challenge which to a large extent impedes state's capacity to fulfill the Constitution's appealing ideals. This is none other than the country economic capacity. As stated, fiscal capacity is central to several other state capacities. But during the period between 1995-2011, the country reported an average annual growth rate of just over 3.2%, whereas the population grew by a whopping 27% (Monnana, 2014, p. 1), which presently is sitting approximately at 55 million (Statistics SA, 2015). For 2016, it is projected that the economy may report growth of less-than 1%, which has also been compounded by the shrinking tax-base owing to soaring unemployment levels and lack of economic opportunities. This scenario suggest that state's fiscal capacity is gradually diminishing and this has intrinsic effects on governance. In general, prospects of turning the tide remain unpredictable.

6. Conclusion

This article has illustrated that while constitutional prescripts are crucial foundational norms determining the extent to which a country attains developmental objectives, the issue of state capacity remain a central determinant. States that lack administrative, technical and fiscal capacities are prone to social disruptions and under-development. The theoretical underpinnings of South Africa's constitutional transformation ought to embrace prerequisites of state capacity in order to achieve stable democratic and developmental governance. Without economic circumstances being altered, state's capacity is limited. This entails that while legal norms enjoin the state to deliver according to entrenched constitutional promises, due regard need to be had on fiscal circumstances determining state's capacity. While state's institutional capacity, through courts and chapter nine institutions, remains the pillar of strength, their impact becomes minimal because of lack of resources on the part of the state to implement such directives as may be pronounced.

7. References

- Besley, T. & Persson, T. (2010). State Capacity, Conflict, and Development. *Econometrica*, vol. 78, no. 1, pp. 1-34.
- Braithwaite, A. (2010). Resisting infection: How state capacity conditions conflict contagion. *Journal of Peace Research*, vol. 47, no. 3, pp. 311-319.

- Christiansen, E.C. (2007). Adjudicating Non-Justiciable Rights: Socio-economic Rights and The South African Constitutional Court. *Columbia Human Rights Law Review*, vol. 38, pp. 321-386.
- Englehart, N.A. (2009). State Capacity, State Failure and Human Rights. *Journal of Peace and Research*, vol. 46, no. 2, pp. 163-180.
- Guy, P. (2001). *The Future of Governing*. Kansas University Press.
- Hammet, D. & Staeheli, L. (2013). Transition and the Education of the New South African Citizen. *Comparative Education Review*, vol. 57, no. 2, pp. 309-331.
- Hughes, O.E. (2003). *Public Management and Administration: An Introduction*. UK: Palgrave Macmillan.
- Katsamunskaja, P. (2012). Classical and Modern Approaches to Public Administration. *Economics Alternatives*, vol. 1, pp. 74-81.
- Kende, M.S. (2003). The South African Constitutional Court's Embrace of Socio-economic Rights: a Comparative Perspective. *Chapman Law Review*, vol. 6, no. 1, pp. 137-160.
- Klare, K. (1998). Legal Culture and Transformative Constitutionalism. *South African Journal on Human Rights*, vol. 14, no. 1, pp. 146-188.
- Knutsen, C.H. (2013). Democracy, State Capacity, and Economic Growth. *World Development*, vol. 43, no. 1, pp. 1-18.
- Lamidi, K.O. (2015). Theories of Public Administration: An Anthology of Essays. *International Journal of Politics & Good Governance*, vol. 6, no. 6.3, pp. 1-35.
- Monnana, T. (2014). *Statistics Brief: January 2014*. Studies in Poverty and Inequality Institute.
- Nussbaum, M.C. (2007). Human Rights and Human Capabilities. *Harvard Human Rights Journal*, vol. 20, pp. 21-24.
- Ostrom, V. & Ostrom, E. (1971). A Different Approach to the Study of Public Administration. *Public Administration Review*, vol. 31, no. 2, pp. 203-216.
- Ottervik, M. (2013). *Conceptualizing and Measuring State Capacity: Testing the Validity of Tax Compliance as Measure of State Capacity*. Quality of Governance Institute (QoG) Working Paper Series 20, 16.
- Sarkin, J. (1999). The Drafting of South Africa's Final Constitution from a Human Rights Perspective. *The American Journal of Comparative Law*, vol. 47, no. 1, pp. 67-87.
- Simon, A.S. (1964). *Administrative Behaviour: A Study of Decision-Making Processes in Administrative Organizations*. New York: Macmillan.

Southall, R. (2000). The state of democracy in South Africa. *Commonwealth & Comparative Studies*, vol. 38, no. 3, pp. 147-170.

Statistics South Africa (2015). Quarterly Labour Force Survey – Quarter 3, 2015. *Statistical Release, P0211 October 2015*.

Von Holdt, K. (2010). The South African post-apartheid bureaucracy: inner workings, contradictory rationales and the developmental state. In Edighedji, O. (ed.) *Constructing a democratic developmental state in South Africa: potentials and challenges*. Cape Town, South Africa: Human Sciences Research Council Press.

Wilson, W. (1887). The Study of Administration. *Political Science Quarterly*, vol. 2, no. 2, pp. 197-222.