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The Political Dilemma of Chieftaincy  
in Colonial Lesotho With Reference To The Administration  
And Courts Reforms of 1938

By:  
L. B. B. J. Machobane

Institute of Southern African Studies

National University of Lesotho

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On December 15, 1938 the British High Commissioner in South Africa Sir W.H. Clark promulgated two related and radical proclamations affecting the British Crown Colony of Lesotho, then anglicized as Basutoland. Proclamation No. 61, the Native Administration Proclamation<sup>1</sup> provided that the High Commissioner, following a consultation with the King of Basotho (arbitrarily styled Paramount Chief by the British colonial order) could declare any person to be Principal Chief, Ward Chief, Chief or Headman in the Territory. Section 3 of the Proclamation specifically gave the High Commissioner the powers to revoke or vary the appointments of Chiefs. The functions of the chieftaincy were specifically defined and its powers reduced. Chiefs were brought fully under the machinery of the colonial administration and their numbers cut down from about 2,500 to 1,340. In the District of Maseru, for instance, where under the jurisdictions of four Chiefs (Sekhonyana, Seeiso, Maama, Khoabane) and the King there were 108 subchiefs and 597 Headmen in 1928, the colonial administration had proposed a reduction to 27 sub-Chiefs and 87 Headmen. And in Mokhotlong, the smallest District in Lesotho, the total number of Chiefs and Headmen was reduced from 128 to 74 in 1938.<sup>2</sup> Proclamation No. 62, the Native Courts Proclamation provided for the "recognition, constitution, powers and jurisdiction of Native Courts and generally for the administration of justice within" the Territory. Section 2 of the Proclamation specifically gave the Resident Commissioner powers "to suspend, cancel or vary any warrant recognising or establishing a Native Court or defining the jurisdiction of any such Court or the limits within which such jurisdiction may be exercised."<sup>3</sup>

Effectively, legitimation to the offices of Chief and Headman was removed from the Lekhotla la Mahosana - the Grand Council of Lesotho, composed mainly of the scions of Moshoeshoe, the founder of the Basotho Kingdom, and accordingly styled "the Sons of Moshoeshoe - and put in the hands of the British executive, the High Commissioner. The office of the King of Basotho thus suffered considerably in authority and prestige. Courts had been a major source of revenue for Chiefs and Headmen. They ate the fines from their judgements and reserved the right to keep stray animals for personal purposes once the fact was established that no one came forth to claim them. In this regard also the reduction of courts meant the reduction in the financial power of the chieftaincy.

Aside from limited references in two Colonial Reports, Sir Alan Pim's Financial and Economic Position of Basutoland, 1935 and Lord Hailey's Native Administration in the British African Territories, 1953, no researcher that I am aware of, in any discipline for that matter, has attempted research on the factors that led to those Reforms. Releasing his Report just three years before the Reforms, Pim is relevant in the subject only in so far as he seems to have convinced the colonial administration that the "fundamental defects" of the indigenous government, which needed to be addressed, rested on the fact of "the multiplication of Courts as Chiefs increased in number indefinitely, and partial dependence of those Chiefs for an income on the fines inflicted in their Courts".<sup>4</sup> This diagnosis is infinitely quoted by those whose research has to refer to the Reforms. Even Lord Hailey, who devotes two and half pages on the causes, and who otherwise criticizes the Reforms, particularly the adoption of the "Native Administration" system as a borrowing from Nigeria and Tanganyika (Tanzania),<sup>5</sup> nevertheless remains comfortable with Pim's analysis of what had gone wrong in the indigenous government at that time. As the paper will reveal, what Pim referred to as the "fundamental defects" were only superficial manifestations of a more complex problem.

I will attempt with this paper to achieve two objectives. First, I will attempt to show that, albeit the Reforms of 1938 were officially initiated by the High Commissioner, through the Resident Commissioner of Lesotho, that was so essentially because the constitutional responsibility for such a move rested on the colonial executive. The need for some type of reforms had otherwise been felt and the pressure for legislation been exerted by Commoners in the Territory to restore a sense of justice and political responsibility in their traditional rulers - the Chiefs and Headmen. Second, I will attempt to show that the loss of justice and political responsibility towards Commoners which the Chiefs and Headmen showed, were themselves largely owing to the fact that the indigenous government (Basotho rulers and their institutions of rule) had broken down. It had broken down owing to a number of factors, some of which were inherent to the nature of the colonial state, while others were a reflection of in-built weaknesses in the indigenous government which gave under the pressure of modern political, economic and social conditions.

THE ESTABLISHMENT OF PARALLEL GOVERNMENT IN LESOTHO

Puzzled by the way Lesotho, a "Crown Colony", had been ruled, Sir Alan Pim remarked in 1935, with remarkable accuracy and clarity in this regard:<sup>6</sup>

The history of Basutoland presents a very different picture and the Protectorate policy followed with reference to it has little in common with indirect rule. It has been a policy "of non-interference, of proffering alliance, of leaving two parallel Governments to work in a state of detachment unknown in tropical Africa, while under indirect rule native institutions are incorporated into a single system of government and subjected to the continuous guidance, supervision and stimulus of European officers.

Pim, however, was unable to go behind his own statement for an explanation. The explanation, as I will show, lay in the lack of clarity surrounding the constitutional position of Lesotho under British hegemony. Was it a Crown Colony, or was it a Protectorate? Confusion on this question would be the basis of our problem.

From the outset, when Lesotho became a British Colony on March 12, 1886, the constitutional role of Chiefs in the Territory was a confused affair. From the wording of the High Commissioner, Sir Phillip Wodehouse's Proclamation on that date, it seemed as though in terms of British constitutional law Lesotho had become a Crown Colony by cession.<sup>7</sup>

I do hereby proclaim and declare that from and after the publication hereof, the said Tribe (i.e. Nation) of the Basutos shall be and shall be taken to be for all intents and purposes, British Subjects; and the Territory of the said Tribe shall be and be taken to be British Territory.

If Lesotho had thus become a Crown Colony, it meant that Moshoeshoe's sovereignty and that of his heirs had been ceded and the authority of the British Crown over the Territory was unimpaired.<sup>8</sup> And if so, ideally there should have been no indigenous government as such - a political structure with a leadership that for all intents and purposes continued to rule as it had in the pre-colonial era.

But his is not exactly the way constitutionally that the Colony was conceived. In the first place, there was doubt on the part of the British Government itself as to whether the High Commissioner's Proclamation had had the legal effect of constituting Lesotho as a Colony. For in May 1886, over two months after the High Commissioner's Proclamation, the British Crown Law Officers still expressed the opinion that on the strict interpretation of the law Lesotho had not yet become a British dominion, and that its cession would be valid only if it was "duly authorised by the Queen and recognised by his (High Commissioner's) creation as Governor, or in some like manner."<sup>9</sup> So that it may be argued that until Lesotho was annexed by an Act to the Cape of Good Hope Colony in 1871, the legality of British rule over it was questionable.<sup>10</sup>

In the second place, and more to the point the King Moshoeshe had written the High Commissioner Phillip Wodehouse a letter on April 21, 1886 requesting that Lesotho should be treated as a "special Territory" - "a Native reserve where natives alone should be allowed to dwell and which would be dependent from the High Commissioner."<sup>11</sup> Moshoeshe essentially sought to retain his sovereignty and his land. He needed the High Commissioner as only a British Agent shielding him from Free State Boer aggression. And in that regard, he was consciously attempting to achieve an objective for his kingdom which he had earlier proposed to the same High Commissioner.

In 1862, three years before the pressures of war with the Boers weakened his negotiations with the British government, he had intimated to Wodehouse the desire for a relationship with his Home Government in which<sup>12</sup>

I am like a man who has a house, the man rules the house and all that is in it, and the Government rules him. My "house" is Basutoland. So that the Queen rules my people only through me ... I shall be like a blind man, but when he (a British Agent placed in the Kingdom) directs me I shall be considered wise ... I wish to govern my own people by native law, by our own laws, but if the Queen wishes after this to introduce other laws into my country, I would be willing, but I should wish such laws to be submitted to the Council of the Basutos, and When they are accepted by my Council, I will send to the Queen and inform her that they have become law. (My emphasis.)

This proposal, when it was submitted at the King's Grand Council, was espoused by "the great majority" of the principal men in the Kingdom, territorial chiefs and Moshoeshoe's senior sons.

These same "principal men" were privy to their King's overture of April 21, 1886 to Sir Phillip Wodehouse requesting him to qualify his Proclamation of March 12. If Wodehouse agreed to Moshoeshoe's request, it seemed in the King's mind and that of his Grand Council that he would tacitly have granted the Kingdom the ante-bellum constitutional arrangement proposed in 1862. Such an arrangement was more in keeping with a Protectorate than with a Crown Colony status.

Although Wodehouse did not then put it in writing, meantime he had left South Africa in May, while Moshoeshoe had passed away on March 11, 1870, his response had been in the affirmative. And when later in 1880 the difficulties of the Gun War necessitated that this response be made clear to all concerned, Wodehouse came out of retirement with a memorandum in which he stated, when asked if he had intended "Basutoland for Basutos only":<sup>13</sup>

I can only reply, that such was the very thing to the attainment of which all my efforts were directed - it was for the purpose of putting an end to Border disputes, and for removing doubts as to the true limits of the Territory to which the claim of that Tribe, and that alone, should be admitted for the future, that these ... negotiations were carried on ... The object was to secure peace and comfort for the Basutos in the future ...

To this statement one can only add that until Wodehouse committed himself to writing the Colonial Office in London was wont to referring to Lesotho variously as "a kind of outlying territory with a High Commission constitution," "an inchoate Crown colony waiting for annexation to one of its neighbours," "the protectorate under Imperial Government." And at one instance, much later in 1883, speaking in the House of Commons in his capacity as Secretary of State the Earl of Derby could still affirm: "We don't propose to make Basutoland a

Crown Colony, or introduce the costly machinery of European officers. We wish the Basutos to enjoy Home Rule in the strictest sense of the word."<sup>15</sup>

It is this confusion over the constitutional status of the Territory that led to parallel government. On the one hand there was the colonial administration, which in 1884 comprised of thirteen officers and a police force of 159, of whom nineteen were Europeans. By 1900 the staff composed of the Resident Commissioner, Government Secretary, seven District Assistant Commissioners each in charge of a District, four medical Officers and a police force of 259 (for a population of about 264,000 inhabitants) responsible to a British High Commissioner resident in Cape Town. On the other hand there was the indigenous government of Basotho Chiefs, Headmen and institutions of government which remained virtually in full command in the management and mismanagement of the internal administrative and judicial affairs of the Territory. For as long as there was not conflict of authority the colonial administration emphasized British "protection" in its relations with the indigenous government. In the event of conflict, however, especially where the latter pretended to greater powers in the partnership, the colonial administration emphasized the sterner Crown Colony aspect. Such was the time, as late as in 1951 when the first Queen Regent in the history of Lesotho, 'Mantsebo Seeiso, cautioned a Resident Commissioner that "the Government please hold in abeyance any action which might tend to indicate the taking upon itself(sic) powers which are not included in the terms of the covenant of the alliance and protection between the late Moshesh the Wise and Victoria the Good ..."<sup>16</sup> The Resident Commissioner retorted:<sup>17</sup>

I was placed here to govern this country and I mean to do just that. The fact that Her Majesty, Queen Victoria, in her greatness of heart consented to govern through the Paramount Chief and Chiefs, and that here successors have done so, and will probably continue to do so, appears to have blinded you to the fact that His Majesty can rule His Basuto subjects as he pleases.



Following Lesotho's disannexation from the Cape of Good Hope Colony in 1884, as a consequence of the Cape misrule and the resultant Gun War, provisions were inserted in the famous Proclamation 2B of 1884 which, if implemented, might have ended that parallel government. Chief among those provisions were that Basotho Chiefs would be appointed by the Resident Commissioner. The Resident Commissioner authorised them to adjudicate on cases, criminal or civil. He was empowered to make Rules defining the jurisdictions of all Basotho courts in the land.<sup>18</sup> However, so soon after the conclusion of a war in which the indigenous government had vanquished a British settler colony, it was apparently found imprudent to risk another confrontation with Basotho by implementing those provisions. The provisions were shelved and forgotten until 1922 when for the first time the colonial administration, responding to pressure coming from Commonsers, considered "resurrecting" them, to use the language of the threatened Basotho rulers in their moment of political agony.

Now, at least one study in Nigeria has been picked as an example to show that even "indirect rule in the hands of incompetent colonial hands could degenerate into maladministration far more rapidly than direct rule."<sup>19</sup> I hope to demonstrate in the next section, how parallel rule in the constitutionally ill-defined "Colony" of Lesotho, where in reality the colonial administration operated from instinct rather than from policy, an otherwise pre-industrial indigenous government surrounded by the mercantile Boer and Briton settler colonies of South Africa broke down from internal and external stress.

#### THE INDIGENOUS GOVERNMENT BREAKS DOWN

##### The Political Factor: Dynastic Feuds

The Gun War (September 1880 to April 1881), perhaps more than any other single factor, unleashed the pent-up dynastic conflicts in Lesotho and thereby contributed to the weakening and ultimate break down of the indigenous government. The Achilles heel in the ruling order was the King of Basotho, Mohato Letsie, Moshoeshoe's heir.

Mohato was no comparison to his father as a monarch. Blind in one eye and cripple of one hand - at a time that a monarch could still be expected to take up his position on the battleground, he had physical disabilities that weighed heavily on his mind as well as on his following. He was a brave man, but his pluck was moderated by that painful reality. His relations with his wise father had never been cordial, the father's love being blatantly tipped in favour of the second son Molapo, to the point of personally building a first house (legatha) for the latter, which had not been done for the heir. He seemed to have received no personal attention and preparation for the throne which Moshoeshoe had abundantly been given by the wiser predecessor Mohlomi, the son of Monyane. When a few days before his death at the age of 84 Moshoeshoe finally gave him the scepter, Mohato was a 59 year old man and already or soon to be "troubled by gout".<sup>20</sup>

At the break of the Gun War in September 1880, the new King was presiding over an already sharply divided royal house. As observed by the Cape Colony Government, to which divisions in the leadership of Basotho were of military interest, there were two major factions in the core of the royal lineage of the Territory. The first faction, headed by the King himself, featured his warrior brother Chief Masopha, and the King's sons Lerotholi - the heir, Bereng and Maama. The second, headed by Jonathan Molapo, featured Moshoeshoe's educated junior sons - Nehemiah Sekhonyana, Sofonea, George and Tsekelo, and of Chief Potsane.<sup>21</sup> (Chief Molapo had just passed away on May 31. His eldest son and heir Josefa was mentally demented. By default therefore, the second son Jonathan had assumed the leadership of that powerful house.)

The issue in the Gun War was whether or not Basotho would obey the Cape Colony Government disarmament Act and hand in their guns to their Resident Commissioner. The second faction of the royal house complied and so fought the war on the side of the Government as "loyals." Largely owing to King Letsie's dual role in the war, his own faction suffered a further cleavage. Letsie professed his loyalty to the Government and handed in his guns. The rest in the faction, led by Masopha, defied the Government and were declared "rebels." Yet, at the same time it was attested that the King of Basotho was carrying on a "secret instigation" against disarmament and was "really only pretending to be the friend of the Government."<sup>22</sup>

If Letsie used his dual role as a military strategy, he lost the battle to both the Cape Governemnt and the "rebels". In the end, both parties seem to have concluded that he was indecisive and without a backbone. And indeed, at major points in the course of the war the King seemed either to have exercised very poor judgement or to have underrated the fact that once shed, royal dignity is difficult to adorn. Witness the following episode, being one of those which oral evidence submits in the King's favour as showing how well he played this dual role. On July 8, 1880 Letsie entrusted an obviously undervalued arsenal of 9 guns in a Scotch cart to his loyalist half-brother Nehemiah Sekhonyana to hand over to the Resident Commissioner at the Territory's capital Maseru. Just one hundred yards off from the royal residence, at 12 o'clock mid-day, the Scotch cart was raided, by the King's own junior sons, personally driving the Scotch cart against their resistance. Ultimately, about a thousand yards from the royal residence the sons still made away with all the guns.<sup>23</sup> As tradition goes, the King had so ordered his sons to take the guns away from him.<sup>24</sup> If at all a strategy, the episode was unseemly.

This and other similar episodes led the Cape Government to conclude that the King had lost control of his own government. One colonial Officer referred to him as "an old woman."<sup>25</sup> His warrior brother and independentist, Masopha criticised him for acting unconstitutionally and instructing the Nation to hand in guns before the matter had been decided by a national pitso<sup>26</sup> and quite clearly felt that he was a coward.

Masopha therefore eternally parted ways with Letsie. Until his death in 1891, a decade after the war, Letsie could not bring the war here under his authority. Masopha was only eventually subdued by Letsie's heir Lerotholi in 1898, just a year before he (Masopha) died at the advanced ago of seventy eight. He had taken Chief Maama permanently with him from the King's faction. Maama was twice related to him by marriage: He had married two of the uncle's daughters, and in turn one of Maama's daughters, Mpinane 'Mamathe was married to Masopha's heir, Lepogo.<sup>27</sup>

Lerotholi had also fought the war on his uncle Masopha's side. But after the war he returned to his father's fold. It was infinitely in his interests to do. His younger brother Maama, from Letsie's third house, was a claimant to the throne, strongly backed by Chief Masopha. Additionally, Letsie had on considerations of consanguinity a much softer spot for the younger son, Maama's mother, Marutsoana ('Ma Maama), being the King's own sister, offspring from Moshoeshoe's loins by an affair. By returning to his father's fold Lerotholi hoped at least to win the royal court to his side. And he succeeded. For when finally the dotting King attempted to proclaim the younger Maama before a Grand Council, shortly before his death in 1891, the Council was so strong in favour of Lerotholi that one courtier dared to tell the King: "Letsie u'a hlanya - you are mad."<sup>28</sup>

Upon Lerotholi's succession, however, Maama stayed a thorn on the young King's flesh, constantly provoking bloodshed, until Lerotholi's death in 1905.

The duel between Jonathan and his half brother Joel Molapo over their late father's property and junior wives also came to the surface during the Gun War and it was dignified by it. While Jonathan had fought the war as a "loyalist", Joel was a "rebel". Yet the duel was to continue spasmodically into the nineteenth century, shedding its original causes as it matured and giving the appearance of a contest for the chieftaincy of Leribe District. The duel was to be dignified again by the Anglo-Boer War. When the Boers enticed Basotho to their side Joel was the first to defy the Lesotho colonial administration and seize the opportunity. But his motive was clear from the start. Upon receiving his supply of Mauser rifles from the Free State he set out, in the words of an Assistant Commissioner in his District, "to promote a tumult in Basutoland by raking up the embers of the old feud between the children of Molapo."<sup>29</sup> He attacked Chief Hlasoa, who was in Jonathan's faction. Jonathan reacted as expected. The feud was rekindled.

On that occasion, however, Joel was tried for treason by a combined court of King Lerotholi and his Resident Commissioner and fined £2,000 in lieu of 500 head of cattle, on top of a jail sentence of one year.<sup>30</sup> The King got £200 of the fine, the rest going to the central treasury of the colonial administration. As it was often the case in those days, when a chief got injured his people bled on his behalf: The £2,000 that Joel paid came from his subjects.

In 1914 it was Jonathan's turn for "raking up the embers". Jonathan raided Joel's flock, burned his subjects' houses and returned with 1,716 cattle, 7,942 goats, 5,794 sheep and 418 horses, mostly the property of common people, and three men lost their lives. A combined court of the King and the Resident Commissioner - the "two oxen pulling under the same yoke," as Basotho Kings put it, tried the Chief of Leribe for manslaughter and disturbing the peace. He was fined £4,341, in lieu of 1,000 head of cattle, which he paid through contributions from his subjects. The King, then Griffith Lerotholi, kept £634 of it, the rest going to the central treasury of the colonial administration. In addition, Jonathan was ordered to pay £8,000 to Joel in damages.<sup>31</sup>

The Joel-Jonathan feud only came to an end on Joel's death on March 24, 1919. Yet, even then the old "rebel"'s funeral took place amidst dynastic disputes. King Griffith and his faction were insisting that Joel be given the supreme honour in the royal house of being buried next to the revered Moshoeshoe on top of Thaba Bosiu. But, having fallen intensely in love with his brother in death, Jonathan won the battle to bury him closer to him in his own District. Every single Chief in the King's faction stayed away from the funeral. At the grave site "Chief Jonathan said a few words and then broke down in grief."<sup>32</sup>

Joel's funeral boycott by the Matsieng faction was a reflection of an even more serious and disruptive dynastic feud between Jonathan and the King. And that feud represented the high-water mark of a breakdown in the indigenous government.

To begin with, from the reign of Letsie I, Jonathan's relations with the senior house in Matsieng had never been cordial. The Chief of Leribe always felt that the senior house had never forgiven him for the role that he had played in the Gun war and so he often over-reacted to any queries coming from his kings. Yet the disputes he had with his juniors in the District unavoidably invited Matsieng's intervention. And, as in other districts throughout the country, these were many. In Leribe, in addition to the duel with Joel, Jonathan was constantly in arms with Chief Motsoene, his mentally demented brother's son, who claimed seniority over the uncle in the chieftaincy of the District. Additionally, Jonathan's own sons, Mathealira and Motsarapane, both pretenders to their father's office, were already fighting it out in arms. Nevertheless, until Lerotholi's successor, Letsie II, died in 1913, the Leribe-Matsieng friction was not personalised.

However, when Griffith succeeded to office, the stage for a sharp conflict was set. Letsie II had passed away allegedly without male issue, it being argued that the one surviving son, then a toddler, was not biologically his. That being accepted as a fact, and the toddler having in any event expired allegedly after an uncle had administered poisoned confectionary to him, customary law dictated that Griffith should only act as Regent and meantime devote his energies to raising seed for his late brother in the first house. Griffith rode against the spirit of customary law and wished instead to be appointed King in his own right, arguing that his faith in the Roman Catholic Church forbade him from fulfilling the customary role of raising seed for the deceased, but, just the same, he meant to "sit on the throne with both buttocks." Jonathan's sin was that he protested against this position and, in fact refused even to participate in the selection. He was, however, outweighed by the rest of "the sons of Moshoeshoe" and, even more annoying, required to introduce the new Monarch to a national pitso. He duly introduced him, but in the same breath publicly said he did not know him.<sup>33</sup> Griffith never forgave him for that.

The animus between the two "Sons of Moshoeshoe", then the two most powerful in Lesotho, was to generate constant conflicts. Suffice it here to mention the most immediate and illustrative. Early the following year, Griffith sought to test the disdainful uncle's loyalty by summoning him to

his court in Matsieng in connection with administrative problems in his District. According to the Cape Times, which monitored the succeeding developments, Jonathan defied Griffith's summons, saying he would not "talk to a boy." The Chief was then 61 years of age, and the King was 44. Griffith followed through his summons by sending "several Chiefs to Jonathan with a command. Their visit was also bootless, the recalcitrant chief again refusing to obey." At last Griffith, following an approval from the colonial administration, decided to descend on the old man, "riding at the head of a large force to compel Jonathan to submit to his authority ..." and "to bring (him) on his knees." And only then did Jonathan obey.<sup>34</sup>

Jonathan so loathed the idea of being under Griffith's authority that in 1916 he went to the lengths of petitioning the High Commissioner to recognise his District as an independent State, in view of the fact that "Griffith ... constantly trespasses and unlawfully interferes in your Petitioner's rights in Leribe ..." <sup>35</sup> Although he was not successful with his petition, he was nevertheless not daunted. Cessation would be one of his goals until his death in 1937.

The combined effects of these dynastic feuds on Leribe were devastating. The common people were tired of "bleeding" for Chiefs, in more ways than one. The feuds generated endless disputes over appropriated land and stock which, for their bulk and complexity courts could genuinely not handle. Junior Chiefs went out of control and their seniors could not provide Commoners sufficient protection against them. None other than Chief Jonathan himself admitted by 1921 that "Leribe district is at present in a state of chaos. There is neither law nor order, the Government representative and myself being shown no respect by my under-chiefs ..." <sup>36</sup> Albeit to a lesser degree, the situation was the same throughout the Territory.

#### Institutions of Government

Partially in response to the dynastic feuds, but also due to other factors, the indigenous institutions of government - the Grand Council and the pitsa were also breaking down.

It stands to reason that with so many factions within the "Sons of Moshoeshoe", there were very few instances when they could all assemble together and agree on matters of policy affecting the welfare of their subjects. Basically, the only issues that forced them to unite were those which constituted a common threat to them as a class. In the nineteenth century for instance, just before and after the passing of the Union Act of South Africa, they stuck together in the face of the menace of incorporation to the new white dominated state. No sooner than the threat was waived, however, they fell back to their respective factions.

The same was the case when they were faced with a powerful, self-assertive, non-Basotho chiefdom internally. In collaboration with the colonial administration, they kept 18 senior members of the royal house of the Chiefdom of Baphuthi, then the most powerful in Lesotho, for sixteen years under forced restriction at the capital in Maseru, away from their ancestral lands in Phamong, in the Mohale's Hoek District. When, back in 1899 King Lerotholi had placed his son and future King Griffith over them, the Baphuthi had resented the move and rebelled in arms against it. From 1900 to 1902 they had been imprisoned for two years without a trial and subsequently released to live in Maseru under government rations. But as late as in 1916 the "Sons of Moshoeshoe" and the colonial administration still equally felt that the Baphuthi royal house constituted a "danger" against them and they were weighing the equally extreme measures of either banishing them to Matebeleland in Southern Rhodesia (Zimbabwe) or else settling them on a hardly habitable place on top of Mount Qeme in the Maseru District. The Baphuthi royal house was only granted a safe return to its ancestral lands after its head Mocheke had renounced his original status as Principal Chief, at the same level as Jonathan, Maama and others, in the Territory.<sup>37</sup>

Save on such and similar issues the Grand Council had lost its teeth; so much so that the King found himself referring matters to colonial Officers which even under classical indirect rule should have been settled by or contained within the Council. About the year 1898 or 1899, for instance, Lerotholi had "begged" the then Resident Commissioner Sir Godfrey Lagden "to intervene" between his son and heir



Letsie II and his principal wife Mahali because the heir had for some two years since their marriage defaulted in his conjugal obligations, preferring the permanent company of one of his late grandfather Letsie I's younger wives.<sup>38</sup> The Queen, Mahali, had personally in 1912 begged the High Commissioner, Gladstone "to grant me a hearing as the principal wife ..." as "I have for several years been denied the privileges of my rank ..." From 1898 or 1899 until Letsie II's death in 1913 the Grand Council failed in one of its major responsibilities of insuring a smooth succession for the Nation's sake. One King had had to "beg" the colonial administration to assist him with a very delicate matter that only the royal house should have known. Having failed, the Queen had felt compelled to bring her intimate problems to a white "Chief" who naturally could only tell her that "the matter is one in which I am unable to interfere."<sup>40</sup> The end result was Griffith's problematic succession.

By the year 1900 the national pitso had also degenerated considerably. In Moshoeshoe's times, according to the French missionary Eugene Casalis the pitso had been a singularly democratic institution. A subject of discussion was normally put to the people by one of the King's courtiers, "taking care to let his own personal opinion appear as little as possible." That done, the pitso was open to any one to speak. Those with the gift of speech aired their views "with the greatest freedom and plainness of speech." It was expected on such an occasion that the sovereign "must hear the most cutting remarks without a frown." There were always those who were for and others who were against the government. At the end the King summarised the arguments, presented his own, and then sought to create consensus. And if the pitso was in agreement with his summary, it signified it with an applause.<sup>41</sup> Elsewhere Casalis further informs us that indeed<sup>42</sup>

Freedom of thought and freedom of speech are the foundations and the guarantee of the national rights of (Moshoeshoe's) subjects. They are allowed to express their opinion on the Chief's conduct quite openly; if they disapprove of it, they say so with a virile and eloquent boldness which the fiery Roman tribune would have envied.

What, then, happened to the institution when Lesotho had become a colonial state.

Briefly, it was perverted. And here the greater share of the blame lay on the colonial administration. Colonial officers turned it, initially in the 1870's during the period of the Cape administration, into a forum where they introduced their distinguished guests into the Territory and for purposes of reading their already decided policies and Regulations. Between the outbreak of the Gun War and the re-annexation to the Crown in 1884 it became a sheer mockery of democratic principles. Particularly under the administration of the hard-nosed Governor's Agent (a designation which was turned to Resident Commissioner after 1884) named Blyth, Chiefs and their King were harrangued, threatened and humiliated. In one pitso in 1883, in particular, Blyth so put the fear of the Lord in Letsie I that the King cringed and began apologetically to say "I am stupid ..." and "He who is a coward is not left in the chair ..." Much to the mortification of his subjects.<sup>43</sup> Thus, when General Charles Gordon, a senior Officer who had been sent by the Colonial Office in London as a trouble shooter in the post-war years, asked the Paris Evangelical Missionary Society in Lesotho if the pitso might not be put to more effective use in the administration of the Territory he replied: "The chiefs have never much liked the yearly meetings held by the Government ..." and they were loath to attend them.<sup>44</sup> This new style of using the pitso, however, rubbed on to the majority of Basotho Chiefs in the course of the nineteenth century. In their own District lipitso (plural) the potentates became intolerant of differences of view. By the year 1900 the institution had become a farce.

#### ECONOMIC AND SOCIAL FACTORS

The political factors, however, need to be viewed in close relationship with the obtrusive economic and social factors that had simultaneously been undermining the structure of the indigenous government. For, without the second, the first set of factors will, necessarily, understate the problem. The twain were inseparable.

#### The Economic Factors

The Annexation of Lesotho to the Cape Colony in 1871 brought with

it the introduction into the Territory of a compulsory form of taxation called the "hut tax" (that is, house tax). The formula was that each married adult male should be taxed 10s for each wife. As each adult Mosotho male was customarily allotted a piece of land for cultivation only upon marriage, this meant in essence that the "hut" was as much a "land" tax. And further, and more insidiously in the polygamous Basotho society, it meant that a married man bore the burden of the tax in relation to the number of wives (or pieces of agricultural land) that he had - up to the maximum number of three.

The Chiefly lot, members of which had the most number of wives, were hardest hit by this tax. The wives of senior Chiefs ran into scores. Kings Letsie I and Lerotholi, for instance, had 104 and 68 wives, respectively.<sup>45</sup> At the early age of 38, in 1882, Chief Jonathan had already 33 wives (with a total of 211 children).<sup>46</sup> He still had 45 years left for more. And Chief Maama had 15.<sup>47</sup> By the start of the twentieth century there were about 16 senior Chiefs with a similar marriage propensity. Hence, it is reasonable to say every Chief had at least three wives.

In the effort to raise this tax and still maintain the regal life, the potentates seem to have justified breaking the customary rule guiding the use of matsema - required labour in the cultivation of Chiefs' fields. The numerous junior Chiefs below followed suit. So that at the end Commoners found themselves hopping from one Chief's piece of land to the other's and hardly having enough time to attend to their own.

The matsema had always been one of the Chiefs' primary mechanisms of control on Commoners. Thus Chief Masopha could say in 1872, when the Governor's Agent Griffith proposed to do away with them, that they were<sup>49</sup>

... a bridle which the chiefs held in their people's mouths, by which they retained their authority over them, and that if this bridle was taken out of their mouths, they would no longer have authority or control over the people.

The matsema's extended use, however, proved to be a bridle too tight

in the people's mouths. It generated their resentment and alienation from Chiefs.

This alienation was further reinforced by the method used to collect the tax. From its inception the "hut tax" was collected through Chiefs and Headmen. As an inducement for efficient collection, the King and his senior Chiefs in particular were given allowances for their services. So that as early as in 1883 we find, for instance, in the same correspondence in which he was attempting to rebut the accusation that it was due to his weakness as a monarch that the Gun war had broken out, King Letsie I pleading with his Governor's Agent to regularise his share of the "hut tax" allowance. The Governor's Agent had the satisfaction to remind him that he had "hardly brought his influence to induce the people to pay" the tax, besides, he said, he had just "received £100, in November and £70 in June last ..."<sup>50</sup> Later in 1884 King Lerotholi would similarly be pleading for an increase of what he then called his "salary" of £1,000 per annum.<sup>51</sup> So that by the end of the nineteenth century the colonial administration had sufficient confidence in its financial control of Chiefs to consider "a gradual reduction" of their allowances "by time and a fixing of our attention upon those who are responsible and competent to carry out orders."<sup>52</sup> The dependence of the King and his Chiefs on this allowance made them feel increasingly economically indebted to the colonial administration. The outcome was that as the Chiefs gradually turned their misfortune into a privilege, their political bond with Commoners through the misuse of matsema was, however, only a part, and a minor part of a larger economic syndrome in which the Territory was caught up. Lesotho was going through an agrarian revolution. And the revolution was occurring alongside the development of labour migration to the surrounding settler colonies - the Orange Free State, Cape Colony and the Transvaal.

Mainly due to the missionary encouragement for industriousness and market production which had begun in Moshoeshoe's times, and casually from the acquisition of the plough, which replaced the less efficient Basotho hoe, the wagon for quicker transport, the introduction of better seeds in particular wheat as a cash crop, and better methods of cultivation, Lesotho had by 1865 become the grain basket of South Africa. The three years' war with the Orange Free State Boer from 1865 to 1868

interrupted and virtually destroyed that development. In the words of one member of the Paris Evangelical Missionary Society, "there was hardly a single village which was not burned down ..." in the course of the hostilities. "The ploughs and wagons disappeared; all the herds of large and small stock which had not been captured by the enemy, were eaten."<sup>53</sup> In the course of the war the Nation had lost two provinces, many families were decimated, and a considerable number of inhabitants had emigrated. The population had dropped down from between 150 - 180,000 in 1865 to 125,000 in 1869.<sup>54</sup> Albeit, once the Nation had settled down in the 1870's, coincidentally with the discovery of minerals in the surrounding white settler colonies, agrarian production doubled its momentum. In 1875 there were 300 wagons and about 3,000 ploughs in Lesotho, then with a population of 127,323 inhabitants.<sup>55</sup> One could see "innumerable fields of grain extending in every direction ..." <sup>56</sup> Lesotho was "traversed in every direction by wagons of traders who, in exchange for their money and their commercial wares ..." conveyed wheat and maize "to the diamond fields and the Free State."<sup>57</sup>

The King of Basotho and his Chiefs were the greatest benefactors from this agrarian revolution. They exerted their full authority on Commoners and appropriated the biggest and most fertile pieces of land to themselves to produce for the market. They developed the love of money and European goods that money could buy. The economic and social gap between themselves and Commoners increased. Chiefs were losing contact with the rest of the Nation below them.

At the same time, dialectically, the same factors - money and accumulation of European goods, gave Commoners independence from the Chiefs. Christian communities around mission stations in particular, which since Moshoeshe's times had fallen under missionary influence and political control away from their Chiefs, profitted from the agrarian revolution and used their profit to establish small business and to give their children higher education outside the country, mainly in the Cape Colony. Their children became teachers, clerks for the colonial administration, and interpreters for senior colonial officers.

The less privileged Commoners, mostly non-Christians, would find their escape from the grip of Chiefs through that otherwise economically

debilitating trend that was developing and undermining the agrarian boom. In 1873 there were already some 30,000 Basotho out of Lesotho working in Kimberly and elsewhere in the settler colonies. And by 1877 some 5,000 Basotho were working in the railway works in the Cape Colony alone. Migrancy would take a more virulent form in the 1880's. When, due to the combined effects of a general depression in South Africa, the closing of the grain market to the diamond fields, the Free State and the Cape Colony destroyed the agrarian boom in the Territory.<sup>58</sup> Justifying the vicious effects of labour migration in those years, the Civil Commissioner in Kimberly would say that it would teach "natives ... the advantages of civilization, to create in them confidence in the justice of the white man and if it be possible to awaken in them something akin to gratitude for benefits received."<sup>59</sup> While the Resident Commissioner of Lesotho, Sir Godfrey Lagden in 1898 commented with satisfaction that:<sup>60</sup>

Though for its size and population Basutoland produces a comparatively enormous quantity of grain, it has an industry of great economic value to South Africa, viz., the output of native labour. It supplies the sinews of agriculture in the Orange Free State; to a large extent it keeps going railway works, coal mining, the diamond mines at Jagersfontein and Kimberly, and furnishes, in addition, a large proportion of domestic servants in the surrounding territories.

Pulled by the labour market to satisfy new needs and requirements such as tax, and not so persceptive of the damaging effects of migration on their country, the poorer Commoners enjoyed the bit of money that was there to be had. They bought what they could afford of the European goods and build morden houses to enhance their status. Their periodic removal from the country provided them some respite from their increasingly irresponsible and non-responsive Chiefs. The remaining grip that the latter still had on them was the allocation of land and administration of justice for their disputes.

#### The Social Factors

Although in a sense social factors have already been touched upon, two

problems of great significance would appear still to need a separate mention. One was the introduction of the white man's drink, whisky. The other was the general impact of Western civilization and Christianity on the moral fabric of society.

The discipline of Chiefs was greatly damaged by the infusion of the white man's drink. Even under the strict control of the colonial administration, for which intemperance generated the equally irksome problems of lawlessness as it did for the indigenous rulers, brandy was smuggled from the Orange Free State and the Cape Colony by white traders of few scruples through various secret devices to escape the vigilance of Border Police patrols in Lesotho, preponderantly from the 1880's. In turn Chiefs cooperated by setting up canteens throughout the country for its consumption.<sup>61</sup>

The hardest hit sector of society was the Chiefs themselves, people with the money to buy it. Kings Letsie I, Lerotholi and Letsie II, Chief Masopha and his heir Lepogo, to name a few, were so regularly inebriated that they often delegated their responsibilities to their Councillors. Letsie I could figuratively say to a colonial Officer in 1880 that his son Lerotholi was "mad from drinking."<sup>62</sup> Lepogo, by his own father's admission, died in 1886 from the effects of the drink.<sup>63</sup> While an intelligence report by the South African Government, which feared a rebellion from Basotho in event of an adumbrate plan to incorporate their country to the new Union concluded in 1909: "Out of the sixteen Chiefs ... the principal ones are drunkards ..."<sup>64</sup> The heirs as well as other favourite sons of these polygamous Chiefs, most of whom already had their own caretakings in the Territory in which they were judges of courts (and who therefore I classify as junior Chiefs), were in no less a state of sobriety. Such Chiefs were hardly in a position to acquit themselves in their offices as efficiently as the pre-colonial order had been able to.

Suffice it to say then that, by the end of the nineteenth century the indigenous government of colonial Lesotho had, for all intents and purposes, broken down. Society in general had loosened from the various mentioned factors. And to no less a degree it had loosened from the effects of Western civilization and Christianity. To borrow two statements from a spokesman of the latter, made in 1885:

Basotho are no longer what they were at the arrival of the missionaries. They then possessed a distinctive civilization, no doubt primitive, doubtless limited but, for that very reason, perfect for its kind, and presenting the phenomenon which is equally observable in other heathen civilizations of a certain ideal actually attained.

.....  
Under the dissolving influence of civilization and Christianity - for the latter has also had its share in this process of demolition - these ancient barriers of the patriarchal institutions were shaken; the antique severity of the customs has softened; the bonds of discipline have slackened ... This is more especially true of the Basuto established abroad, in the Colony or in the Free State, or of those who have been under the influence of Christianity but without receiving it in their hearts, and who have more or less emancipated themselves from the ancient native discipline and its wholesome restraints, without the old order of things having been replaced ... by a new one.<sup>65</sup>

THE ESTABLISHMENT OF THE NATIONAL COUNCIL AND THE ONSET OF A  
POLITICAL STRUGGLE BETWEEN CHIEFS AND COMMONERS

If it had not been clear to Chiefs in general in the nineteenth century that the indigenous government had broken down, King Lerotholi tacitly acknowledged that reality at the start of the twentieth century. In 1903 he agreed to a long-standing and oft-repeated suggestion by the colonial administration to reconstitute his Chiefs into a new institution called a National Council. The idea had first been mooted in 1883, but throughout the remainder of the nineteenth century Basotho Kings were nervous about it, suspecting it to be a potential instrument of their control.<sup>66</sup> In the course of the Anglo-Boer War (1899-1902), however,



Lerotholi changed his mind. He was himself considerably ill during that period. His personal constitution was strained to the limits by perpetual dynastic feuds. In his son and heir, Letsie II, he had an exceedingly weak successor. The King's son indulged excessively in the white man's drink.<sup>67</sup> His interest in the affairs of the state was feeble.

The National Council was supposed to take the place of the customary pitso. It was a Council of hundred. Ninety four of these were appointees of the King and they were either Chiefs or their representatives, mostly Chiefs' courtiers. The four others, all four Commoners, were appointees of the Resident Commissioner, on the advice of the Paris Evangelical Missionary Society. The Resident Commissioner was the President of the Council, and the King of Basotho was his "Chief Councillor".

The National Council, as stated in Section 7 of its Regulations, was a consultative body "on any new laws of a domestic nature which may be proposed and its expression of opinion thereon be submitted to the High Commissioner."<sup>68</sup> According to Section 11 of the Regulations: "Relations with neighbouring States, questions of extradition or the prerogative or authority of the Crown are outside the province of the Council."<sup>69</sup> The Council, however, would not have statutory force until 1910.

In recognition of the fact that the most pressing problem in the indigenous government was lack of justice in the courts, the first and major task of the National Council at its first session in 1903 was to codify customary law. Councillor Dichaba Labane of Mafeteng moved on July 8 "that the Sons of Moshoeshoe be instructed to write the old laws of Moshesh." And Josias Mopeli suggested that a Committee of 24 was duly formed, comprised of men some of whom claimed to have known and worked with the revered King Moshoeshoe, to deliberate on and produce a code of customary law. The result was 24 laws, not all of ancient origin. These were deliberated on for six days and at the end reduced to eighteen. In the traditional fashion, they were named after the reigning Basotho monarch as the Laws of Lerotholi, and subsequently published under a green cover from which they got their nickname - Matalenyane: "the little green book".<sup>70</sup>

In approving those Laws, the Chiefs were generally in agreement that

the unwritten Basotho law had well nigh fallen into disuse and that the greatest transgressors of that law were Chiefs themselves. As the President of the Council stated in his summary of the proceedings, the Laws of Lerotholi were made "with the object of checking the arbitrary conduct of those chiefs who, influenced by greed, gain, or love of power, had abused their positions, and departed from the unwritten, but well understood, code of native custom." "There was even a desire shown by many councillors, that more definite punishment should be prescribed for those Chiefs who neglected, or broke, certain of these rules."<sup>71</sup> Ironically, when the Reforms of 1938 did come, they as a recognition, to no less a degree attested to by Chiefs themselves, that that noble step had failed to right the situation. By 1903 the waning of responsibility and responsiveness toward Commoners had already taken an irreversible turn. Confrontation was inevitable.

The conflict of interests between Chiefs and Commoners which would lead to a collision began in the political sphere. It was a conflict for power. And that conflict centred around the role of the National Council, the new institution of the indigenous government.

The first explicit and methodical criticism of Chiefs by Commoners came in the middle of 1904 in a Sesotho newspaper, Naledi, first published by the educated elite that year. A critic under the nom de plume "Mohlori" - "the Lonely/Persecuted One" - indicated the National Council as a "Parliament" merely of Chiefs. "At that," he asked, rhetorically, "have they been chosen by the Nation, by vote?" Further elaborating on that point "Mohlori" stated:<sup>72</sup>

Now these men who have not been chosen by the Nation go to Parliament at the end of the year, to say what? Only they know, as even in the course of the year they never convene meetings with men of the District from which they come so that they may hear what they say and what (those men) wish to be brought to the attention of Parliament. There they go, these men who have been appointed by one person to speak at this Council which is said to be respectable, as some of us know that it is the foundation of a strong government, when it is run properly.

In 1907 Naledi featured another article which took the criticism a step further. The article, by F. Seele, suggested;<sup>73</sup>

This is, indeed, a Council of Chiefs. They are the ones who requested it and it was given to them, hence it is in order that only they should run it. If the Nation would like participation in Government, it should request for its own Council.

Thus, in Seele's thinking, and in the thinking of others of his persuasion, the era of Chiefs as rulers had run its course. Commoners needed their own Council, the only one that could be said to represent "the Nation".

Although this suggestion had come from a member of the educated elite, quite significantly it would be championed by a sector of society which represented different interests altogether. It would be taken up by Josiel Lefela, an activist Commoner from Mapoteng, in the District of Leribe, and member of the National Council appointed by the Resident Commissioner. Lefela would even later found an Association which would make him extremely unpopular both with the Chiefs and, equally, with the colonial administration. The role of that Association in the politics of Lesotho is soon to be told,<sup>74</sup> and so I will not elaborate on it in the present task.

Albeit, determined to establish themselves as a political force Commoners, between 1907 and 1919, organised themselves into pressure groups. The first of these, founded in 1907, was the Basutoland Progressive Association. Founded by an ex-government interpreter and Resident Commissioner's appointee to the National Council, Simon Majakathata Phamotse from the Leribe District, the Progressive Association was by and large comprised of the educated elite - government interpreters, established Ministers of the Gospel mainly belonging to the Paris Evangelical Missionary Society, writers like the distinguished Thomas Mofolo and Z. Mangoela, teachers, and the well-to-do businessmen. It was Western in its thinking. And while generally professing to be loyal to

all authority, it felt more comfortable associating with the colonial administration than it did with Chiefs. The latter it viewed as not only corrupt but also backward and ignorant.

The second was the Lekhotla la Bafo - "Commoner's Council". Founded by Josiel Lefela in 1909, Lekhotla la Bafo's political base was in the rural area. It encompassed the disaffected, poorer Basotho, the landless spasmodic migrant labourers with a preference for the Fatherland as opposed to the South African labour camps, members of independent Churches, prophets - who often led prayers in major assemblies, disgruntled junior Chiefs with an axe to grind with their seniors, and quite significantly in a male dominated society, women. Josiel Lefela had not attained the Standard VI education, the starting point for the educated elite in the counterpart Association, although he had evidently mastered records, including treaties, on Lesotho more effectively than them, to the point of quoting pages and pages from the standard documentary literature Basutoland Records. While critical of Chiefs and considering that something had to be done to restore their calibre of leadership to what it had been in the pre-colonial days, the Association did not have an immediate programme for their reform. Yet, it was clear that chieftaincy should be retained. Its more vitriolic attacks were on the colonial administration and on imperialism in general. Equally, the Association was unsparing in its indictment of the organised Christian Church. As Lefela said in his annual address in 1929:<sup>75</sup>

Missionaries, who have entered our countries under the guise of the messenger of God to preach the Gospel to all nations of the world, are the pioneers and heralds of the pernicious capitalist and imperialistic forward march which blasts every thing comes its way.

Coincidentally with the founding of Lekhotla la Bafo, Josiel Lefela got kicked out of the National Council in 1920. Hated by both the colonial administration and the indigenous government for his criticisms against both in the National Council, he had for some time been a potential victim. The opportunity presented itself in September 1920 when he contributed an article in Naledi which mortified Puritan sensibility and embarrassed Chiefs. He referred to the newly formed chapter of the Y.W.C.A. in Johannesburg as "a home for Christian whores, young and old to whore in." In Lefela's view the Christian Association was "the way our people will be put and end to ... so that in ten years time the Black races would diminish and half-castes increase."<sup>76</sup> That was taken as sufficient ground for his expulsion.

Combining their efforts in reaction to Lefela's expulsion from the National Council, the Progressive Association and the Lekhotla la Bafo retorted in March 1921:<sup>77</sup>

If the President desired to exercise his authority over the Council which has lain dormant for many years why in all goodness did he not start by suspending thieves, murders and law-breakers (Chiefs) who constitute a majority of the Council? He is pleased to listen to the advice of such outcasts and confer with them in matters of theft, murder and law breaking, but shuns the society of a man who fights tooth and nail against such barbarities .... It is simply scandalous!

THE FAILURE OF THE LAWS OF LEROTHOLO AND THE COMMENCEMENT OF  
AGITATION FOR REFORMS

Only five years after the approval of the Laws of Lerotholi, in 1908 Chiefs in the National Council were admitting to one another that their proud code of customary law had not resolved their impasse. The problem of injustices in Basotho courts became a repeated topic of discussion in almost every session of the National Council thereafter. In 1918, for instance, Chiefs Makhaola and Sekhonyana, the two leading members of the King's judicial court in Matsieng admitted that Chiefs

had become irresponsible in their administration of justice. There were inordinate delays in the trial of cases. In most cases Chiefs were not there to preside over their own courts. One other Chief even admitted that "some men of the courts were bribed to try cases quickly."<sup>78</sup>

At the start of the third decade of the twentieth century Commoners' various charges, in and outside the National Council, escalated. And then they led to a head-on collision with Chiefs. It all began with the publication in the Bloemfontain (Union of South Africa) newspaper The Friend in December 1921 of two aggressive articles against the court system. One writer, under the pseudonym "Mosotho" charged in general that Chiefs had in effect "turned the Basotho into a nation of slaves." They made them to work in the fields of their "several wives without food or payment or even a drink of water." "Moshotho" alleged that some people had been killed by frolicking "young chiefs" in a spate of lawlessness by indigenous rulers. As a rule, he said, court cases were awaited to stockpile before trial began. Yet, in the event a litigant lost heart and disappeared from the court, judgement was brought against him and he was fined for contempt of court. People could not even have their cases allowed on appeal to higher courts. When they attempted to appeal, higher Chiefs's courts returned them to courts of first instance. "Moshotho" let it be known that his article was aimed at the white public in general and colonial authorities in Lesotho in particular as a strategy to expose "the great misuse of justice as carried out by the Chiefs of Basutoland" from whom "we groan under a burden of oppression." And he hoped that as a result of his agitation a "Commission of Enquiry" into his allegations might be established.<sup>79</sup>

A fortnight later, Simon Majakathata Phamotse followed. Also featured in The Friend, Simon Majakathata said indeed any Mosotho "would be wanting in patriotism were he to fail to endorse" the anonymous "Mosotho" on the question of the "uneven balance"

of justice in the Territory. Chiefs, he said, ran their courts with extreme subjectivity and vindictiveness, and that they each had a "black list" of Commoners in their jurisdictions. In reaction to such a state of affairs, Basotho throughout the Territory were "clamouring for reform of some kind or other." He hoped, he said, to "gain the ear of high officials and to draw public attention to this woeful state of affairs in this our fair little country." And as a first step, Majakathata proposed the establishment of a Department of Justice for Lesotho which should be presided over by an "experienced and qualified judge" and which should "have nothing to do with political affairs."<sup>80</sup> His was, in that sense, the first suggestion from a Mosotho for a separation of powers in the customary functions of Chiefs.

Then a barrage of newspaper charges followed in Naledi and Mochochono through February of the following year 1922. At one time it was Simon Phamotse once again. At another, somebody who called himself "Another Mosotho". And at yet another time it was an anonymous "Mohlouoa" - "The-Hated-One". The punch line from these critics, following which Chiefs felt compelled to react, was carried in a leading article in Naledi on February 24, and it read:<sup>81</sup>

I am sure neither of our Paramount Chiefs... know anything of the Proclamation No. 2B, 1884, Section 4. To their knowledge and belief every male child born of a woman whose dowry was paid with cattle belonging to Moshoeshe's estate is ipso facto a chief with the right to adjudicate upon and try any case, criminal or civil, and to exercise jurisdiction within such limits as may be definitely defined by his superior ... The condition of affairs in the country are (sic) going to the dogs all because the Resident Commissioner will not make use of this power ... (Yet), in order to save the Basuto chieftainship from sure destruction to which it is now speeding headlong, and to have justice and freedom in the country, some way must be found out of the deadlock.

Exposed and driven to the wall, Chiefs reacted with vigour and venom to the articles. King Griffith Lerotholi convened a huge pitso

at the royal residence in Matsieng at which, one in a few, "the Sons of Moshoeshe" were fully represented, and he summoned Simon Majakathata and his followers to come and speak to their various charges against his government. Probably the longest in the century to date, the pitso lasted for 8 days from April 18th to the 25th.

According to The Friend, which covered the event, the spokesmen of the Progressive Association - Simon Majakathata, C.H. Mofokeng and the novelists, Thomas Mofolo and Z.D. Mangoela underwent "a severe cross-examination as to which Chiefs were accused ...." Certainly a tricky procedure, and one fraught with danger for those asked. The spokesmen refused to fall for the bait, promising, instead, to name names only in a proper trial court and not a pitso. The King would not fall for their strategy either. Backed up by 150 members of the Association alone, Phamotse and his men were obviously feeling triumphant throughout the duration of the pitso. "The meeting was constantly interrupted by voices from the crowd, which formed a ring supporting the Association's spokesmen, and deriding the Chiefs," although the owners of the voices could not be identified. And at the end of the pitso:<sup>81</sup>

Women of the Paramount Chief's village came to shake hands with the President of the Association, whom they called their Moses and to whom they turned their eyes for their salvation and the salvation of the country. Many women sat at the approaches of the village, just to see "the one who had come to deliver them" and newly born infants there were named after him.

The triumph, however, was commingled with trepidation. For, as Simon Majakathata and Thomas Mofolo later informed the Resident Commissioner, to whom they had repaired for protection, the King had concluded the pitso by warning them "that we must never organise in the villages of the chiefs and headmen, for we shall meet with accidents which will cause him trouble."<sup>82</sup>



Summarising the views of the Association on the role of Chiefs in government, following that confrontation, Simon Majakathata stated, in an evident display of bravado and learning:<sup>83</sup>

True to their habitual indifference, born of years of unlimited authority and indulgent luxury, (Chiefs) very soon got over the shock they had received when their incorporation (to the Union of South Africa)... was first mooted.... For over ten years, the Basutoland Chiefs have been callous to the cries and grievances of their people. ...History is truly repeating itself in the case of Basutoland. All the incidents which happened in the reign of King John and King Charles in connection with the trampling down of the people's rights (in England), by both the Kings, have taken place in the reign of the present King of Basutoland.... Like the English of old, the Basuto love their kings and will think twice before they declare against them. But the love is only on one side. The King and his barons show no reciprocity of that love, all they do is maltreat them, dispense uneven justice and make them slaves for them, without any recompense.

#### THE COLONIAL ADMINISTRATION TAKES THE INITIATIVE FOR REFORMS

It has to be admitted that until 1921 the colonial administration had lost control of the running of the "Colony". It had no general policy. It had no immediate plan to deal with the state of affairs as it was being described in the newspapers. Quite daunting, following the spate of articles in 1921 - 1922, the Resident Commissioner, Colonel E.C.F. Sarraway, advised his High Commissioner in a confidential memorandum on February 18, 1922 that he had confirmed the existence of Section 4 of the Proclamation No. 2B 1884. It did give the colonial administration the necessary powers to intervene, but to his consternation "in no case have the conditions laid down therein been enforced," although the principal law was 37 years old.<sup>83</sup>

The Resident Commissioner thought the members of the Progressive Association were handling the crisis in the right direction and he believed that "by a judicious handling of some" of the members

of the National Council Chiefs might be made aware of the fact that complaints against them had already reached the Secretary of State and were printed in a number of English papers. Beyond that, the only other thing in his view which might be tried was along the lines of Phamotse's proposal for a new judiciary body. The proposal, in its modified form, was for the establishment of a Court of Appeal for appellants against judgements given in the various Chiefs' courts, to consist of a President, who would be an Assistant Commissioner of the District of parties in dispute, plus 7 members, one from each of 7 Districts of Lesotho then. In any event, cautioned the Resident Commissioner:<sup>84</sup>

The suggestion for this innovation should emanate from the nation itself, and not be thrust on them by the Government. I think that a motion introducing the suggestion could be arranged for the next Session of the Basutoland Council (i.e. 1923)

Seeing the innovation as undermining the role of his own court in Matsieng, King Griffith rejected the idea outright. A fresh start had to be made. And this time the colonial administration decided to take the bull by the horns and introduce reforms directly.

Having gained the impression that Chiefs had at last accepted their failure to deal with their own administrative and judicial problems and that they would welcome intervention by the colonial administration, the new Resident Commissioner, J.C.R. Sturrock set about drafting a lengthy set of Regulations in 1927. He subsequently circulated these for comments throughout the territory. He would present them to the National Council in October 1929, as a last step before passing them to the High Commissioner for proclamation. As he pointed out to his High Commissioner in June 1928, Chiefs were ready for reforms: "Practically all councillors save one, who is closely connected with the Paramount Chief's Court, have admitted it in my hearing in Council."<sup>85</sup>

Just at that point, however, Lekhotla la Bafo reversed the tide. The relations with of Lekhotla la Bafo and the Progressive Association had soured and were at their worst in those years. Basically this was due to the fact that Lefela had come to believe that the members of the rival Progressive Association were politically disoriented and were agents of imperialism. Scoffing at their education he said:<sup>86</sup>

...it is not an exaggeration that defective education is worse than illiteracy because of its misleading effects, and diseased knowledge is poison to every healthy mind or brain, that is why our so-called educated in Basutoland are not able to distinguish bread coated with political poison from bread without poison.

Partly to foil their coveted reforms, therefore, and partly from the genuine fear that the Nation would be deprived of its natural leadership, Lekhotla la Bafo initiated a campaign a few weeks before the Draft Regulations were to be discussed in the National Council, in defence of Chiefs. Going back to the old question of the constitutional status of the territory, Lefela argued that Lesotho was a Protectorate. The colonial administration, he said, had been sent to protect his country. In the event, he was appalled in 1929 to find that colonial Officers were bent on the "breaking down of our social fabric to bring about the detribalisation of our political existence as a nation... in the vilification and pollution of our chiefs by the officers of the Government through enmeshing them in judicial manoeuvres directed against them to prepare for their expulsion from posts of exercising their duties as judges for their people..."<sup>87</sup>

Largely owing to this ammunition, and to no less a degree because Lekhotla la Bafo obviously also prepared the strategy, when the Regulations were brought for discussion in the National Council in October 1929, Chiefs torpedoed them out. The strategy was to knock

down the centre pin of the Draft Regulations, namely the enabling Proclamation 2B of 1884. In a typical Josiel Lefela fashion, the Chiefs argued that Proclamation 2B was a Cape Colony law and not one of the British Government, and hence it was null and void. The contrary was the case, but the new Resident Commissioner did not know his facts. Further, again one of Lefela's pet arguments; Chiefs asked the Resident Commissioner if he was familiar with what they termed the Treaty of Mokema, by which Moshoeshe and Wodehouse had agreed that Lesotho would be a Protectorate and submitted that the Treaty had been reduced to writing. No such a "Treaty" existed. But, ignorant of the fact, Resident Commissioner Sturrock admitted confusion and virtually threw in the towel. He did so when he granted the Chiefs leave to go and consult the Nation. Five days later the Chiefs came back to say they had held public assemblies throughout the country (11,700 sq miles) and the Nation was in agreement with them that they did not want his Regulations.<sup>88</sup>

But, that grievances existed, was admitted by none other than Lekhotla la Bafo, which pointed out just a year later in 1930: "The treatment of the chiefs upon the people is most vexatious and...you all see that our success in repelling the proposed regulations for the abolition of hereditary chieftainship is no better than an ephemeral success ...."<sup>89</sup>

Indeed, the success was ephemeral. Effectively beginning in 1931, the Resident Commissioner established a procedure of consultation between Chiefs and Commoners. Before as after each session of the National Council, Chiefs were to hold meetings with their people in the respective Districts from which they brought motions on subjects affecting their welfare. The procedure established a measure of accountability between the rulers and their subjects, but it also placed Chiefs in the awkward position of having to introduce to the Council motions from a majority of Commoners who indicted them for mal-administration and injustices in their courts. At the same time

the Progressive Association kept up its agitation for reforms. The situation was made desparate by Lekhotla la Bafu which began to refer to the colonial administration and Chiefs as equally "our enemy".<sup>90</sup> Suffering from the acute disability from a section of the Nation, of being seen as having no legitimacy to office, King Griffith Lerotholi was in no position to intervene in the historical process.

Thus, when Labane Chokobane moved the motion for the famous or infamous Proclamations No. 61 and No. 62 in the National Council on November 17, 1937, the position of the indigenous rulers was aptly summarised by Chief Lengolo Monyake of Taung, who stated:<sup>91</sup>

The Chief and the people are equal, if the Chief goes one way and the people go in the opposite direction there must be a collision somewhere. There are some Councillors who seem to think that in order to remain Councillors they must keep on saying the Paramount Chief is good: how long are we going to be hoodwinked: Our position is becoming insecure. You want us to continue to play with matters until we are pushed over the precipice. This nation of beer drinkers and dagga smokers, as it is called, I have heard that they have a grievance. This is a curse which even comes up in the Paramount Chief's Court that we are beer drinkers and dagga smokers. You should listen to the cry of the nation: the people are crying to you, Chief of the Basuto, they want you to stand up on your feet to support yourself and the people will stand by you to the end...When the people say a certain thing is bad do you think we play with matters? The people who say they will protect you will be the first to run away.

The Reforms gained the force of law in 1938. They were only a refined version of the Draft Regulations of 1929 and the work of the colonial administration. But the impetus for their introduction had come from Commoners.

#### SUMMARY

The Reforms of 1938 were the culmination of a historical process. From the ill-defined constitutional status of Lesotho under the British Crown an unsystematic product of parallel government had

resulted. The indigenous government was by and large in charge of the internal affairs of the territory. Under a combination of factors, some of which were inherent in the pre-colonial structure of rule, while others represented the contradictions of the colonial situation, it broke down. Chiefs lost touch with Commoners. Resentful of chiefly abuses, Commoners demanded political change, the reduction of the power of Chiefs, and a share in power.

Notes and References

- 00 . This is a revised version of a paper that I read at the first of the seminars sponsored by the Institute of Southern African Studies at the National University of Lesotho on September 24, 1985. I am grateful to ISAS for all the material and intellectual support that it gave me to undertake a larger piece of work, of which this paper is only one aspect, during that personally academically trying period in Lesotho. Above all, my indebtedness goes to the Director, Dr. M. Sefali, who helped me selflessly.
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