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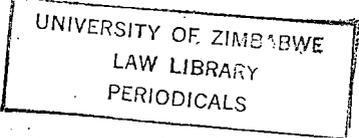
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*Faculty of Law  
University of Zimbabwe  
P.O. Box MP 167  
Harare  
Zimbabwe*

Focus on Criminal Law in Southern Africa



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REFLECTIONS ON THE SOCIO-ECONOMIC CONTENT OF MEDICINE MURDER  
IN LESOTHO\*

D. MABIRIIZI \*\*

1. INTRODUCTION

It was hoped that with the introduction of the death penalty for medicine murders in 1949,<sup>1</sup> the increase of Christianity and education<sup>2</sup> medicine murder would eventually be eliminated in Lesotho.<sup>3</sup> The reality has proved to be different.<sup>4</sup> The number of reported cases of medicine murder increased from an annual average of 8 in 1942-49 to 14 in 1952, and reached a record height of 16 in 1959. Thereafter, there was an annual average of 8 reported cases, up to 1965.<sup>5</sup>

These statistics must, however, be viewed with caution. The

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\*\* Advocate, Lecturer, Faculty of Law, National University of Lesotho.

\* I gratefully acknowledge the effort of my second year law students, with whom I have worked in attempting to comprehend the phenomenon herein.

1. The year in which following the Privy Council's dismissal of the appeal in Rex v. Bereng, Gabashane and 11 others HC 19/1948. Chiefs Bereng and Gabashane were hanged for having murdered one Meleki Ntai of the Bahlakoana "tribe". See also Gunther, J., (1953) "Medicine Murder in Basutoland" in his (ed.) Inside Africa, New York, Harper and Bro.
2. See Jones, G.I. (1951) Basutoland Medicine Murder, A Report on the Outbreak of Diketlo Murders in Basutoland, (hereinafter the Jones Report) London, HMSO, and 8209, p. 2, and para. 55.
3. See ibid. pp. 62-70, especially para. 188.
4. Ibid.: There were medicine murders in Gabshane's own village shortly after he had been hanged.
5. I have relied on figures from the Jones Report and Police reports. The police do not seem to give separate figures of the medicine murders after 1965. It has been suggested that this is due to the low figures of medicine murder after that date. But see n.6 below.
6. See Ashton, H., (1952) The Basuto, OUP, p. 308.

level of police efficiency<sup>6</sup> at criminal investigation, and citizen co-operation is likely to have increased between 1952 and 1965. Therefore, if the number of reported medicine murders remained the same over the same period it probably means that the number of medicine murders actually committed reduced. On the other hand, it is not clear what the "dark figure of crime" really is, given that medicine killers have, as early as the nineteenth century, made every effort to hide or destroy the evidence. It is likely that as the police have become more efficient, so the criminals probably have become more sophisticated.

It is clear that medicine murder is still with us,<sup>7</sup> as the three recent cases of Khokoane Manamolela and 8 others v. Rex<sup>8</sup>; Rex v. Vincent Monaheng Musetse Thebe<sup>9</sup>, and Rex v. Tsabo Phate and 9 others<sup>10</sup> confirm. The pattern of killing remains the same<sup>11</sup>. While decedents were still alive, parts of their bodies were cut from them - in the first two cases, it was the genitals; in Phate's case, it was a nipple of the left breast and part of the mouth of the left lower lip. The motives were, as of old, strengthening the self in person as in Monaheng's case, or in business as in Manamolela's and Phate's cases.

The Jones report of 1951<sup>12</sup> and the report of the Committee on Medicine Murder of 1954 suggest that the fundamental cause of medicine murder was the belief in 'black medicine' or magic, the witch-doctors who prop it up; and related rituals, which demanded the use of medicines containing human ingredients. The 1954 report also suggested that there are 'proximate causes', including "political and economic insecurity, political ambition, a sense of injustice, and of frustration, jealousy or greed."<sup>13</sup> The remedies suggested were that the herbalists and other "doctors" should be controlled as they encouraged the belief in 'black magic'; that initiation schools should be abolished; that there be proper education to combat the uninformed beliefs in 'black medicine'; that the prosecution and severe punishment of those involved be continued, but that it be supplemented with political remedies which would get the people more involved in the handling of their own problems.<sup>14</sup>

This paper will address the question why medicine murder persists in Lesotho, despite capital punishment and other attempts to

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7. Bosiu, M. Marie, Murder in Lesotho, LL.B. dissertation, NUL, (unpublished) p. 13 states that there are hardly any cases of medicine murder in post-Independence Lesotho "but there is much talk about people who have murdered for medicine purposes".

8. Cri. App 2/1982.

9. Cri/T/39/83.

10. Cri/T/34/83.

11. Jones, op cit., para. 37.

12. see note 2.

13. (1954), Report of the Committee Appointed by The Roundtable Conference on Medicine Murder, Maseru, Part II, paras. 6 - 22; Jones, op. cit., para. 180.

14. Roundtable Conference Report, op. cit., para. 193-198.

control it. <sup>15</sup> I will argue that a belief in magic or 'black medicine' was not the fundamental cause of medicine murder, but only an effect, and that political and economic causes were not merely proximate or secondary causes, but fundamental ones. In view of the false diagnosis, the suggested remedies were ineffective.

In making this analysis, the paper will discuss the historical, social and economic circumstances within which medicine murder arose and still arises. Unfortunately, the historical data may not always be complete, especially as regards Sesotho communal society. Therefore, I will use Thomson's comparative method <sup>16</sup>, to look at societies at similar levels of socio-economic development, but keeping in mind that although societies may be at similar levels of development, there may still be cultural variation dependent on the peculiarities of local experiences.

The paper is divided into five major parts. The part above introduces the discussion. The second summarises the essence of communal society, and totemism, its ideological centre-piece, tries to locate the origins of magic in that society, and shows the applicability of communal society theory to Sesotho society. The third discusses the rise of 'new homicide', as communal society gives way to statehood, and the extension of magic to this 'homicide' in the form of human sacrifice and the closely related medicine murder. The fourth part examines the persistence of magical beliefs, and medicine murder in Lesotho, despite religion, education and 'development'. The fifth and last part summarises the discussion and gives a conclusion.

## 2. THE ORIGINS: RITUAL AND MAGIC IN COMMUNAL SOCIETY

### A. GENERAL

The specific origins of medicine murder in Lesotho remain veiled in history. All we learn from Ashton <sup>17</sup> and Cassalis <sup>18</sup> is that from time immemorial human ingredients have been used for medicine-making. This is sometimes disputed but there is some evidence to buttress these scholars' view. <sup>19</sup> We are, further, told that the victims were usually strangers, victims of war <sup>20</sup> or, at the very least, people

15. See ibid pp. 66 - 75; Roundtable Conference Report, op cit.

16. Thomson, George, (1949), Studies in Ancient Greek Society, The Prehistoric Aegean, London, Lawrence and Wishart, pp. 33-36. We are aware of the reservations expressed by scholars like Gluckman, M. (1965), Politics Law and Ritual in Tribal Society, Blackwell, Oxford, especially chapter I, but space and time make it impossible for us to go into them here. Suffice it to say that the data is, to the best of our knowledge, clearly against Gluckman and his like.

17. Op. cit., pp. 300 - 316.

18. Cassalis, (1861), The Basutos Twenty-three years in South Africa, London, James Nisbet, pp. 321 - 322.

19. Jones, op.cit., paras. 28 and 29.

20. Ellenberger and McGregor, (1912) History of the Basuto p. 170; Langdon, Sir Godfrey, (1909) The Basuto, London, p. 128.

from another clan. This latter, in addition to the fact that members of the clan considered themselves close relatives, <sup>21</sup> is a useful hint enabling us to consider medicine murders within the vortex of the development of society from communal to more developed forms <sup>22</sup>.

Under communal society, because of low production and productivity, life is precarious, and every member of the group must live, to continue making the much-needed contribution to his community. Killing a fellow clansman is tabooed. <sup>23</sup> It is, perhaps, in this context that Soforia Moshesh says that those who meted out the death sentence to a murderer "became murderers themselves". <sup>24</sup>

At this stage of development, the clan is itself a significant social grouping, centering around a totem-- at first food <sup>25</sup> for the group, but later inedible, subject to some ceremonial or ritualistic exceptions. Members of the group have a strong sense of affinity, even identity, with their totem species. Thomson summarises:

"Totemism is the magico-religious system characteristic of tribal society. Each clan of which the tribe is composed is associated with some natural object, usually a plant or animal, which is called its totem. The clansmen...perform an annual ceremony to increase its members." <sup>26</sup>

At the increase ceremony, the clansmen danced and dramatically mimicked the totem's movements, cries and sometimes even the act of catching and killing it. The original object of the performance was to practice capturing the totem species for food. Later, with the improvement of technique, this was reduced to a magical rehearsal. Says Thomson:

"By mimicking in anticipation the successful operation of the the quest for food, the clansmen evoked in themselves the concerted energy requisite for the real task. This is the essence of magic. Magic rests on the principle that by creating the illusion that you control reality you can actually control it. It is an illusory technique complementary to the deficiencies of the real technique." <sup>27</sup>

And it also points to the reality that nature can be changed by man. <sup>28</sup>

The ideology of magic had to arise when "human consciousness was

21. Ashton, op. cit., p. 15.

22. See Thomson, op. cit., pp. 33- 52.

23. Ibid, pp. 132 -3; but see also Morgan, L.H., Ancient Society, 2nd ed., Chicago, on whose meaningful pioneering study on communal society many others have been built.

24. Quoted in Burman, S.B., (1976), "The Justice of the Queen's Government", The Cape Administration of Basutoland 1871 - 1884, Cambridge, African Studies Centre, p. 21.

25. Thomson, op. cit., pp. 37 -8.

26. Ibid, p. 36.

27. Ibid, p. 38.

28. Magic is indeed the beginning of science. See ibid p. 39 and Bernal, J D, (1964), Science in History, London, Watts, Part I.

as yet imperfectly aware of the objectivity of the external world, which, accordingly it treats as though it were changeable at will, and so its preliminary rite is regarded as the cause of success in the real task." 29

Thus, during this time, rites, rituals and or magical practices abound. And outstanding here is the initiation ceremony, emphasising the totemic cycle of birth and death. "Just as the ancestor is born again as an infant, 30 so at puberty, the child dies as a child and is born again as a man or woman." At the ceremony circumcision or other surgery takes place, and the incised piece is kept - standing for the notion of preservation of the dead, so that they may be born again.31 There are also purifactory ordeals, behind the severity of which lies the motive of purification, fertilisation or regeneration. The initiated are born again and are also educated on production, reproduction and preservation of the clan.

As the productive forces improve, leading to division of labour, totemism is gradually transformed into religion, with a priest or some form of "traditional doctor" as the repository of the magico-religious technique. And "the totem is (now) attended with prayer and propitiation, assumes human shape, and becomes a god". 32 Here, the religio-ideological framework reflects the developed class structure at the top of which is a chief or king, who may himself hold the society's priestly powers.

As the totem became a god, the totemic rite became a sacrifice, and the increase ceremony became a meeting to partake sacramentally of the flesh of the sacred totem (animal). Under the sacrifice, someone - usually the totemic god himself - had to die so that the clan might live and or be saved disaster. 33

## B. TOTEMISM IN LESOTHO

The question now is to what extent Thomson's analysis is applicable to Sesotho society. Thomson's account is based on societies at very low levels of development. The available ethnological data on the Basotho, however, unfortunately deals with much more developed societies. By the time ethnologists are writing on Lesotho, class stratification has begun, and the society is well on the way to being a state 34 if it is not already one. Therefore, evidence of totemism is only rudimentary, but nonetheless instructive. We have only "fossils" of totemic or communal practice. 35

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29. Thomson, op. cit., p.39. See also, Thomson, G., (1977) The First Philosophers, London, Lawrence and Wishart, pp. 42 - 52.

30. Through the naming ceremony by which the ancestor's name is given to the child. Thomson, op. cit., p. 46.

31. Ibid p. 48: "the same principle underlies the world wide practice of interring the corpse in the so-called contracted position - arms and legs doubled up against the chest, which reproduces the posture of the unborn child."

32. Ibid, p. 50.

33. Ibid, p. 51.

34. On the state, see Engels, F. (1972) Origin of the Family, Private Property and the State, New York, International Publishers.

35. And these are numerous. See for example, n. 49, below.

All Basotho are divided into clans, <sup>36</sup> each of which has its own totem (siboko). <sup>37</sup> The Bakuena were, for example, attached to the crocodile (kuena); the Batlaping, fish; the Bathlou, the elephant; the Tlokoa, the wild cat, <sup>38</sup> etc. According to McGregor and Ellenberger, the people used to sing and dance in honour of these totems; they glorified, praised and swore by them. <sup>39</sup> This sounds very much like the increase ceremonies described by Thomson. Most of these totems could be used as food, <sup>40</sup> and were eaten ritually, but not otherwise, by the clan. This is so though today: "if anyone ate such an animal..... he could be looked upon as sacrilegious and worthy of punishment by the gods." <sup>41</sup>

Further, Arbousset says the totem was for each clan "an emblem which would be for it a good protector". <sup>42</sup> The totems were regarded as sacred, and according to Ashton,

"Their stock bear its mark as a sign of protection. They put it on their shields, on their domestic utensils, on their skin mantles; .... and by them they conjure evil spirits..... The Kuena considered themselves under the protection of the crocodile, calling it their father and swearing by it." <sup>43</sup>

So, not only were the Basotho so closely affined to their totem species, they also revered those species. This would seem to suggest that by the time our data was collected, the totems had become gods, objects of veneration, and a source of protection. The point is well captured by Ashton, who states that these "emblems (totems) - whether metal, trees, animals or insects - symbolised a mysterious being, a god all the more to be feared because he was a molimo, an inevitable being." <sup>44</sup> This totem deification is also well exemplified by Woodcombe, who reports that the skin of the crocodile is "eagerly bought by medicine men, cut into fragments and used as a charm against accident or disease." <sup>45</sup> The totem had, in short, become a protector

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36. Jones op. cit. para. 5: Ashton op. cit.; p 12: and see the closely related Tswana in Schapera, I (1977) A Handbook of Tswana Law and Custom, London, Frank Cass, pp. 6 - 7.

37. Widdicombe, John, (1895), In the Lesuto, London, Society for Promoting Christian Knowledge, p. 74.

38. Ashton, op. cit., p. 12. On those which cannot be food, see Thomson, op.cit.

39. Widdicombe, John, (1895), op. cit., p. 74.

40. Ashton, op. cit., p. 12. Those which cannot be food are explicable on the analogy of those that can be food. See Thomson op. cit.

41. Ashton, (1844), op. cit., p. 13 quoting Arbousset in Journal de Missions, p. 474.

42. Ibid.

43. Ibid.

44. Ashton, op. cit., p. 13.

45. Op cit., p. 74.

of its people. It could be "sacrificed" (for its skin) though it was revered, so that its people might live. Totemic ritual had turned into a sacrifice of sorts.

Perhaps this is well demonstrated by "the Bafokeng who venerated the hare".

"[They] would when they caught one, assemble in the village court, and then, beginning with the chief, they would each in turn bite the end of the animal's ears; then rubbed their foreheads with the carcass, as if by that means they could be endowed with all the virtues and material benefits which their siboko was able to grant." 46

This remnant of a totemic increase ceremony is not only a sacrifice but a sacrament, a communion at which the clansmen reunited and partook sacramentally of the otherwise sacred (because totemic) animal, giving a sublimated image of the communal consumption of the wealth produced by communal labour under communal society, 47 which had, by then, gone.

In Lesotho, though the totemic cycle of birth and death is still represented by the initiation ceremony, etc, 48 so much has communalism been left behind that there is a belief in a Supreme Being, who is in certain respects similar to the Christian God. 49 But this Being, according to Jingoës, was usually thought of as a cow, 50 a possible indication of His origin in magico-religious totemic symbolism predicated on real species.

With this Being, totemism had become a religion 51 of sorts. The production level, now sufficiently developed to support some specialisation, was able to support a priest or medicine man or equivalent in the form of "ngaka" etc. 52 These people might or might

46. Ashton, op. cit., p. 14, quoting Ellenberger and McGregor, op. cit., p. 241.
47. See Thomson, op. cit., pp. 49 - 51.
48. Ashton, op. cit., p. 46 on initiation; p. 32 on children's names recalling a grandfather or other important relation; p. 102 on placing corpse in crouching position. See also Martin, Minnie, (1903); Basutoland Its Legends and Customs, London, Nichols and Co., Widdicombe, op. cit., pp. 60 - 63.
49. Ashton, op. cit., p. 116. Note that evidence shows that this stage is usually reached only under fairly well-developed class society.
50. Jingoës, S.J. (1975) A Chief is a Chief by the People, London, O.U.P., p. 49.
51. Ashton, op. cit., p. 118 agrees. He suggests the Basotho have a complex religious set-up.
52. See Widdicombe, op. cit., pp. 56-62; Ashton, op. cit., pp. 142 and 166.

not help effect a sacrifice, depending on the nature of the problem. There is evidence, for example of sacrifices in order to recover from disease, to propitiate the gods or ancestral spirits, or to pray Moshoeshoe's spirit for help.<sup>53</sup> The sacrifice would normally be accompanied by rituals or mimetic magic.

### 3. HUMAN SACRIFICE, WITCHCRAFT AND MEDICINE MURDER

#### A. GENERAL

The mimetic magic of old, acquired under communal society is the very same today, although refined and utilised under a new material basis in class society, and now handled by a specialist. While earlier the magic was by collective compulsion, responding to communal command,<sup>54</sup> and was for the general good, now it is through prayer directed, made or led by the said specialists who will increasingly need payment for the profession as exchange peters into commodity exchange. Because of this privatising of magic under increasing division of labour, witchcraft the misapplication by individuals of this magic<sup>55</sup> - formerly tabooed - now becomes more common and the witch doctor thrives as production for exchange increases.

Further, the class character of sacrifices and (magic increasingly asserts itself. Among the Yoruba, for instance, "the objects chosen for sacrifice also depend on the importance of the occasion. The more urgent the need for making or restoring relations with the supernatural, the higher the quality of the offering."<sup>56</sup> So the poor may at times fail to get communication with the supernatural. In Dahomey there was gradation of sacrifice to the gods, dependent on the man's social status. A poor man might sacrifice beans and corn meal, a wealthy commoner a goat or sheep; an important chief or prince a bullock, etc.<sup>57</sup>

Furthermore, while under communal society the killing of a clansman was tabooed, with class differentiation it might be possible so that the state or chief<sup>58</sup> might live--if the totemic god might be sacrificed so might his people for the good of the state, which has now replaced communal society.

But the totemic kinship ideology lingers in the background. Human life may not be taken easily but only by the chief or king.<sup>59</sup> who might even have acquired magical powers.<sup>60</sup> Thus human sacrifice might accompany the death of a king to help him set up in the other

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53. Ashton, op. cit., pp. 114 - 16.

54. Thomson, op. cit., pp. 49-50.

55. Ibid, p. 132; Schapera, I., op. cit., pp. 275 ff.

56. Eades, JS. (1980) The Yoruba Today, London, C.U.P., pp. 126 -7.

57. Herkovits, J. Melville, (1967), Dahomey An Ancient West African Kingdom, vol. II, Evanston, NWUP, pp. 51-3.

58. See for instance, Herkovits, op. cit., pp. 51-3.

59. See Thomson, op. cit., n. 16, op. cit., pp. 23-4 and 157.

60. Herovits, op. cit., pp. 51- 3.

world as he was in this one; or it might be a royal prerogative as in Dahomey, where " the most expensive animal [sacrifice]... a human being...was to the richest and most powerful person in the kingdom, the king, to whom the right to make this costly sacrifice was reserved." 61

Among the Yoruba, human sacrifice was for major annual festivals, offerings at the start of a war, offerings to ward off disaster, or on the foundation of a new town, in which it would seem the chief often took part or even led. 62 Among the Mashona, human sacrifice was sometimes essential for rainmaking, and it was handled by the Chingango, daughter of the great Mhondoro (tribal spirit) Nyakasikana 63 ; among the Tiv, human sacrifice was needed for certain activities and this was handled by Mbatsev a kind of spiritual leader, both loved and feared by the tribe. 64

These human sacrifices were accompanied by prayers and rituals so that the thing desired might happen. For example, among the Mashona, before the Chingango offered the human sacrifice for rain she said, "Mwari, it is not my fault that my people are being burnt in the fire, but because I want there to be no famine." 65

## B. IN LESOTHO

Even among the Basotho, prayers accompanied varying sacrifices. 66 Such prayers, which were similarly said before sacrificial offerings for the cure of disease, emphasised the fact that at this stage of development, medicine, sacrifice, ritual and magic are, ultimately part of the same phenomenon of a strong belief in the supernatural, in absence of objective scientific appreciation of nature. Indeed, the Basotho themselves made no distinction between medicine and magic 67

If human beings could be sacrifices for a magical or ritualistic purpose, they could also be used for a medicinal purpose, which at this stage of development is also essentially magical. 68 To say, as does Jones, that ritual murder is human sacrifice for a religious purpose, while medicine murder is not for religious motives but for

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61. See Eades, op. cit., pp . 126-7.

62. Gelfand, Michael, (1956), Medicine and Magic Among the Mashona, Cape Town, Juta, pp. 29 and 154-6.

63. Bohannan, (1957), Paul, Justice and Judgement Among the Tiv, London, OUP for International African Institute pp. 162-3.

64. Gelfand, op. cit., p. 29. Note that the prayer here was also resonant with the background of totemic kinship which had prohibited the killing of clansmen.

65. Ashton, op. cit., pp. 114-5.

66. Ibid, pp. 282.

67. Ashton, op. cit., p.21.

68. Op. cit., para 23.

the purely material objective of cutting from the body of the victim strips of flesh for making medicine, <sup>69</sup> is a neat distinction without a big difference. The bits of flesh are cut because of a magico-religious frame of mind, and they, indeed, result in "magical compounds" and "protective medicines" <sup>70</sup> the source of whose potency is not just physical but is also magical. They are, therefore, in the final analysis, for a religious purpose.

The stratification of ritual ingredients, described above for other societies, also applied in Lesotho. Although some ingredients can, through magical technique, be "made" to hold special powers, the power of the concoction is also determined by the source and name of the ingredients. Those from animals are preferred to those from vegetables and minerals, and even among those from animals, those from the more powerful animals are preferred to those from the weaker ones.

By this gradation,

"Man is superior to the animals; therefore man is the greatest thing in the world. Consequently, medicine containing human flesh and blood will be superior to those which do not, and so it is essential that the strongest medicine shall contain such ingredients."

But even in the human being, the power of each part is dependent upon its normal function. "The best parts are the heart, bowels, generative organs and blood, as they are all sources of man's power and activity." Other organs, may however, be helpful for special purposes, such as ears and eyes in a court case to help one hear and see the opponent's weak points; and the tongue and lips to help one speak well. Since the living are stronger than the dead, living flesh is better than dead. The medicine will, therefore, be stronger if the parts are obtained from a living victim. <sup>71</sup>

This is really an extension <sup>72</sup> of the logic and content of mimetic magic. There has been some observation of nature and its species, but the reality of nature's powers is understood only subjectively, and accordingly captured by illusory (magical) technique, and crystallised into the concoctions. This is medicine (and pharmacy), but it is still in the lap of magico-religious belief.

It is not surprising that those "bold and powerful enough" resort to killing to obtain the requisite human ingredients for their protective horns (lenaka) or other important medicine. <sup>73</sup> The question is who are those "bold and powerful enough?" The cases in Lesotho suggest that in a large number of cases, it was the chiefs, who were able to commandeer the resources required for a medicine

70. Ibid., Ashton, op. cit., p. 307; Ashton: (1943) Medicine, Magic and Survey Among the Southern Sotho, Cape Town.

69. Ibid.

71. This is apparently a step forward. The superiority of man is understood but only subjectively. But it may be a step towards understanding man's "conceptual powers."

72. Ashton, op. cit., p. 307.

73. Jones, op. cit., para 32. See also Mittlebeeler (1976) African Customs and Western Law, NY and London, Africana, p. 178.

killing, and to meet the high payment needed by the "doctor". This emphasises the class element in early homicide, described earlier in relation to other societies. Indeed, in the olden days, only powerful chiefs had lenaka containing human ingredients "while minor chiefs and headmen had to be content with less formidable ingredients." 74

But the chief in Lesotho was closely allied to his people. And while it is true that at first he had to do good for the people or lose his position - a remnant of communal elective leadership and democracy - it is also true that the people had a superstitious respect for the chief, who was also hereditary. They felt if the chieftancy and the chief were strong, they were also strong. So those who participated in a medicine murder were only carrying out a public duty, a regrettable necessity. 75 After all, the chief was supposed to protect his people, and his medicine horn was his people's, his nation's, like Moshoeshoe's was. 76

It would seem the chief even had magical powers, again, to protect his people. 77 Many chiefs were skilled doctors who performed magical rites. Lelingoana, for instance, used to protect his people from lightning and hail, and chief Jonathan was the recognised rainmaker in Northern Lesotho. 78 A few chiefs still doctored their villages and sometimes all their people at the beginning of a new year or after the village had been struck by lightning. 79 So, not only had totemism risen to "god-head-hood" in Lesotho, the chief, - especially the big Chief - was a kind of priest and as such could hold the most powerful medicine, the tribe's lenaka containing human ingredients earlier referred to.

The Jones report suggests that some of the earliest medicine murders were during the turbulent days of the Zulu Wars, when people felt they needed stronger medicine to protect themselves against the uncertainty of the times. 80 Since these earlier medicine pieces

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74. Ashton, op. cit., p. 212., partly relying on Cassalis, op. cit.

75. Jones, op. cit., para. 32.

76. Ashton, op. cit., p. 212 suggests that it was as if "something like divine right of kings" was applicable. And see Schapera's exposition on the closely related Tswana, op. cit., p. 60, where he says the chief was the principal magician and rain-maker; at pp. 70-71: He was the link between his people and the spirits which governed their welfare in many of the ceremonies, and that the role he thus played as tribal priest helps to explain the reverence in which he was always held by his people. He himself, became a tribal god after his death. Quaere: Was the position of Moshoeshoe in Lesotho, to whom the chiefs at times prayed - after his death - that of a god as well?

77. See Thomson, op. cit., pp. 50-51: Ashton, op. cit., p. 212.

78. Ibid.

were from tribal enemies during war, it is reasonable to suggest that chiefs had a role to play therein. <sup>81</sup> Cannibalism arose at the same time <sup>82</sup>, suggesting that the wars coincided with the definite beginning of the violation of the earlier communal homicide rules. If killing had earlier been for the necessity of protecting the tribe or chiefdom, it now acquired the stamp of practical necessity, and the victims could even be kinsmen. Lenaka containing human ingredients might then be possessed by people other than the big Chief, since his alone had, in any case, proved insufficient. So the demand for medicinal human body parts which had now risen could then be satisfied with less revulsion than would, otherwise, have been the case. And there could be no technical problems as all that the "doctor" needed was a payment. <sup>83</sup>

Furthermore, prayer accompanied the medicine murder. In Rex v. Mamakhabane and 14 Others, <sup>84</sup> for example, Dane Rachakane, the first to cut, said as he removed the lower lip,

"With this your lower lip, I am cutting it to make me stronger so that when I talk to people and headmen, they ought to understand me and pay attention to what I say. When I mix your lower lip with my lithare, I must be understood and respected."

Raletsukana, another participant said as he cut, "I want to be honoured by the people and the chiefs." <sup>85</sup>

Similar killings occurred in Swaziland, 1908 - 1933, where the parts of the victims' bodies were to promote fertility and to enhance the personality of important persons. There, the victim was usually described as "a buck", <sup>86</sup> an animal in whose stead he had been pushed. This seems reminiscent of earlier animal sacrifice, which replaced the totemic increase ceremony.

In Lesotho, the victim was described as a bull. <sup>87</sup> At the ho lekisa ceremony, during initiation, the right shoulder of the bull is severed while the animal still lives, in order to instill into the initiates the spirit of the bull, when it paws the ground. This only

81. Jones, op. cit.; para 27; Ashton, op. cit., pp. 2-3; Martin Minnie (1903) Basutoland Its Legends and Customs, Lond: Nichols, pp. 71-5. Quaere: Could this peculiar concurrence of circumstances explain why though there has been cannibalism in the history of many parts of the world over no medicine murders arose in those parts?

82. Quaere: Could this also be the reason why initiates doctored with sheoere were called malingoana (little cannibals)? See Roundtable Conference Report, op. cit., 22.

83. See our discussion above on witchcraft.

84. HC 14/48.

85. Jingoos, op. cit., p. 162.

86. Jones, op. cit., para 27.

87. Roundtable Conference, op. cit., 22.

differs from medicine murder in that the victim is an animal. 88

Similarly, warriors about to go to war were fortified - the very thing sought by medicine killers - by a ritual ceremony at which they tore at a living bull to instill into themselves the spirit of the bull. 89 In the same way medicine killers take a live person for he is stronger than a dead one. This suggests that medicine murder is but an extension of totemic magico-religious ceremonial to human beings, as communal society graduates to statehood. The next question is why the extension should continue under changed material conditions.

#### 4. THE PERSISTANCE OF MEDICINE MURDER IN LESOTHO

The first missionaries came to Lesotho around 1833, and varying Christian religions have since then been established in the country. Claiming superiority to the religious set-up they found - which was dubbed heathen - they vehemently preached against it, but the progress was slower than expected. Thus in the 1940's after a century of Christianisation, there was a re-emergence of medicine killings. What had gone wrong?

Jones' data indicates that the majority of the cases of medicine murder involved chiefs (sub-chiefs and headmen). This can in part be explained from the fact that, as earlier described, the chiefs were the people with sufficient resources to manage such a killing. Besides, historically, it was the chief who had medicine horns with human ingredients. Originally, these horns were supposed to be for the society's good as earlier hinted. However, in the medicine killings of the 1940's, the chief's purposes in respect of these horns had drastically changed.

Jones also explains that the killings involved chiefs partly due to the "placing system", resulting in an overmultiplication of chiefs and or sub-chiefs and their descendants competing for positions. When the Colonial authorities tried to "improve" this by recognising some chiefs and not others, the process was unwieldy in that there were no clearly defined criteria for recognising some and not others. 90 The result was the belief that those who got recognised had more powerful medicine horns, and the dispossessed resorted to killing in order to strengthen their horns to a competitive level. 91

However, the struggle for chieftainship was primarily an economic one. Many had huge flocks and herds. In the olden days of cattle-raiding, the chiefs were entitled to stray stock, fines, etc. 92 Even when the colonial authorities replaced some of these benefits with

88. Ibid.

89. Jingoos, op. cit., pp. 32-3. See also ibid pp. 166-7 on the chiefs' installation ceremony where there is a more or less similar ceremony.

90. Jones op. cit., Chap V. The crisis surrounding succession to paramount chieftaincy in 1939 is but a glaring manifestation of this problem.

91. Ibid; Jingoos, op. cit., p. 139.

92. Ashton, op. cit., p. 207.

a fixed salary, it was still felt that it was worth something. 93

Further a review of medicine murder cases shows that 15 per cent have economic motives for the killings, including cases of a land dispute 94 ; where accused wants to make grain more plentiful 95 , where desperate accused sells relatives or close friends for money; where accused are offered money to participate 96 ; and where a desperate accused who has lost a job seeks to recover it. 97 In these cases, economic motivations pervade even the prayers offered. Emphasizing that the killing, originally shrouded in the veil of "public necessity" for the chief and his people, is now based on individual economic interests. In Rex v. Mamakhabane, for instance, Dane, when cutting for the second time, said he was cutting so that he might be lucky and successful as a mine induna so that whoever had taken his place would be dismissed when he (Dane) appeared. 98

Even for the "ngaka," it became necessary for them to support medicine murder in order to support themselves, especially under the difficult economic conditions described hereunder. 99

Thus whatever else caused medicine murder, it seems the economic problems of the day were a dominant factor. 100 And the economic problems of Lesotho were severe. Lesotho was much neglected by her colonial masters, who always saw her as a kind of annex to South Africa. Although when the British came, the Basotho were already engaged in craft production, trade, and were self-sufficient in food, and even exported produce to South Africa, all this was dealt a death blow, partly by the Boer Wars of the 1860's partly by colonial policy.

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93. See Jingoes, op. cit., p. 191.

94. See, for example, Rex v. Mojela Letsie and 6 others, Res Com. Records 781/1928; Rex v. Hlolo Khubestoane Ntiki and 7 others Qacha's Nek P.E. 168/34.

95. Rex v. Thabanyana Shokhuba and 3 others RCCR 805/a/1929.

96. Rex v. Malame Senghor and others Qacha's Nek P. E. 38/36; Rex v. Molekisane Mahsela and 4 others Qacha's Nek P.E. 69/37; Rex v. Sebatha Lerotholi H.C. 303/46; Rex v. Mabini Mtandi H.C. 185/43.

97. See Rex v. Tabola Nkuta and 13 others H.C. 196/44.

98. Jingoes, op. cit., p. 163.

99. Many cases directly involved a witchdoctor, quite apart from the fact that it seems he would normally be the person to prepare the medicine.

100. The problem was also political. The course of political direction remained uncertain. The colonialists who had interfered with the socio-economic fabric, first through the missionaries, and favouring certain chiefs against others, were now to be seen continuing the same thing this time by direct statutory intervention. The people were not amused. The resentment in the wake of Gabashane's and Masuphas's hanging for medicine murder really stood for these anti-colonial sentiments, which had been expressed as early as the nineteenth century. See also Damane, M. (1974) "Sotho Medicine", Lesotho Notes and Records. Vol 10., pp 49-50.

The Boers took most of the fertile land and pushed the Basotho into the mountains, where there was little arable land, and where overcrowding and soil erosion worsened the situation. 101

Under increasing monetisation and colonial policy in general, sheer economic pressure made migration to South Africa - for employment - the rule of the day. By the time of the Jones Report, Lesotho is "economically a labour reserve of the Union of South Africa" heavily dependent on the migrants' earnings, No meaningful effort was ever made to improve this situation. As Jones writes:

"no attempt has been made to develop urban centres in Basutoland if anything they have been discouraged; there are no secondary industries, and but little development of distributive trades. There is as yet little scope for clerical, professional or business employment opportunity for ... a stabilising middle class... Agriculture remains a depressed industry..... Thus one finds in Basutoland an unspecialized class system with an unduly large ruling class of chiefs and headmen, supported by a subsidized peasantry, largely dependent on earnings of its menfolk employed in the Union, unable to grow enough food even for its own needs..... a society, in fact, which is both anachronistic and insecure." 102

In this situation where, despite the ever mounting pressures of a cash economy, there were no openings for the rising middle class even in petty trade, economic desperation is clearly understandable. The chiefs simply used the old aura and myth of "chiefly authority for the people" to try to secure their economic well-being through having a powerful lenaka. 103 Others, also economically pressed the chiefs, followed and have continued to follow suit.

In Rex v. Tsabo Phate and Others, for example, it was alleged that the second accused was ready to "sell" her niece for M 2000. Similarly, five other participants came because of a promised reward of M 2000. One of these who had turned Crown witness, when asked as to whether she was not shocked that a person she knew well was, at her (accused's) bidding, to kill his child for money, she replied that she never thought of these things and "I was happy for the reward I was promised because I was destitute." 104 And accused one wanted the human body parts in order to strengthen his shop.

Further the belief in "black medicine" persisted 105 to help explain what science would, otherwise, have explained, and to help satisfy needs - medical and others - which development would have met. Christianity, with its belief in the supernatural, only enhanced the

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101. Rugege, Sam (1979) Legal Aspects of Labour Migration From Lesotho to South African Mines, Geneva: ILO, pp. 1-9.

102. Jones, op. cit., paras. 17 and 18.

103. Ibid., para. 53.

104. P. 11 of the typescript.

105. See Mbiti, J. S. (1975) Introduction to African Religions, London, Heineman, p. 192.

situation.<sup>106</sup> In fact the Basotho felt that a belief in magical medicine in no way contradicted their belief in the Christian God.<sup>107</sup> There were even many Christians among the medicine killers,<sup>108</sup> and at times prayers were to the Christian God or his saints at the killing itself. In one case, for example, the prayer at the killing ran:

Oh mercy, Mother Maria, for you know I am committing a sin, but I am doing this because I want to be known. I pray to thy holy name, that you do not count this, a sin, because I want to keep the chieftainship of Mats'ekheng, and not to have it taken by Makhabane. Even after my death Makhabane must not take the Chieftainship....."<sup>109</sup>

From the 1940's to Independence, the economic situation was basically the same. Even today serious economic difficulties persist despite post-Independence efforts at development. It is thus not surprising that recent medicine murder cases clearly demonstrate some of the old aspects of economic desperation.

##### 5. CONCLUSION

The specific origins of medicine murder remain uncertain. Our reflections suggest that the origin lies in the transformation of communal society into class society. In that process totemism became a religion, and the totemic increase ceremony, a sacrifice. This was a time, when witchcraft, formerly tabooed, became more widespread and with the growth of exchange economy resulted in payment to the witch doctor. Around the same time the killing of clansmen, formerly tabooed, became a possibility for the good of the rising state. In some societies this is demonstrated by the growth of human sacrifice. In Lesotho there is no evidence of direct human sacrifice, but instead chiefs made their medicine horns, lenaka, from body parts of war victims. This was supposedly for the good of their people.

During the Zulu Wars, cannibalism arose due to attendant famine, and it has been opined that this lent the stamp of necessity to the taking of human life. Thus accustomed to taking life, some people probably found it was easier to kill and make for themselves their own lenaka. This was assisted by the fact that witchcraft was becoming more widespread, and the (witch) doctors, needed for the purpose, were increasingly easily available for a fee.

The medicine murder cases of the 1940's showed that medicine murder was dominated by the chiefs. It has been argued that this was partly due to the former tradition whereby some chiefs held "the peoples lenaka" containing human ingredients, and also because of the high costs of the medicine murder operation which only people like

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106. See Bohannon, P., (1964), African Outline, Penguin, p. 213, where he sees witchcraft as always parasitic on religion because the former answers the same question about misfortune, etc, that religious dogma sets out to answer.

107. Ashton, op. cit., n. 59 p. 26.

108. Mookho, L.M. (1979), Emblems Religious Rites and Sacraments, B A Theology Dissertation, (unpublished) NUL pp. 13- 16 Damane, M. Basutoland Witness, Vol. 7, p. 18.

109. Jingoos, op. cit., p. 163

chiefs could meet. But the murderers themselves, though sometimes justifying their actions with the "need to protect the people" were really desperate participants seeking economic security.

It is also reasonably clear from the discussion that the fundamental cause of medicine murder was not magic. Magic itself had originated in totemism, the magico-religious set-up of communal society. It arose to explain nature in the absence of science. In the absence of genuine development objective scientific appreciation has, on the whole, remained lacking, leading people to fall back on magic and "black medicine" like their forefathers.

The (witch)doctors are also not the cause of medicine murder. Arising under class society as specialists, with the introduction of commodity exchange, they increasingly need payment, and today they remain parasitic on underdevelopment.

Medicine murder was also not caused by initiation rites, which were a remnant of the totemic cycle of life and death, serving definite socio-economic ends. If medicine containing human ingredients was used thereat, it was because it was believed to be magically potent, and the basis of this belief we have already explained.

Thus, on the whole, economic causes were not merely secondary causes for medicine murder, but primary ones. And it is partly to meaningful economic development that we must look for a cure.

Finally, if the murderers kill because of economic desperation, and a belief that magic will solve their problems, no good is served by hanging them.<sup>110</sup> There is no deterrence, when the socio-economic conditions from which the need and the belief arose remain unchanged. The criminal law policy on medicine murder should, therefore, be carefully reconsidered.

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110. Damane, M, noted long ago that capital punishment was not working. See his article op. cit.



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